2020年度前期

アメリカ法

第１分冊

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Cases and Materials on American Law
(2020 Spring Term)

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THE UNITED STATES CONSTITUTION

(See Note 1)

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

Article. I.

Section 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2.

Clause 1: The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Clause 2: No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Clause 3: Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. (See Note 2) The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Clause 4: When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

Clause 5: The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3.

Clause 1: The Senate of the United States shall be composed of two Senators from each State,

chosen by the Legislature thereof, (See Note 3) for six Years; and each Senator shall have one Vote.

Clause 2: Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies. (See Note 4)

Clause 3: No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

Clause 4: The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

Clause 5: The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

Clause 6: The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Clause 7: Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4.

Clause 1: The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Clause 2: The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, (See Note 5) unless they shall by Law appoint a different Day.

Section. 5.

Clause 1: Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Clause 2: Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Clause 3: Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Clause 4: Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6.
Clause 1: The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. (See Note 6) They shall in all Cases, except Treason, Felony and Breach of the Peace, beprivileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Clause 2: No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7.
Clause 1: All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Clause 2: Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal

of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Clause 3: Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8.

Clause 1: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Clause 2: To borrow Money on the credit of the United States;

Clause 3: To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Clause 4: To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

Clause 5: To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Clause 6: To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

Clause 7: To establish Post Offices and post Roads;

Clause 8: To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Clause 9: To constitute Tribunals inferior to the supreme Court;

Clause 10: To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

Clause 11: To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

Clause 12: To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Clause 13: To provide and maintain a Navy;

Clause 14: To make Rules for the Government and Regulation of the land and naval Forces;

Clause 15: To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Clause 16: To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Clause 17: To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, byCession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;--And

Clause 18: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9.

Clause 1: The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Clause 2: The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Clause 3: No Bill of Attainder or ex post facto Law shall be passed.

Clause 4: No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken. (See Note 7)

Clause 5: No Tax or Duty shall be laid on Articles exported from any State.

Clause 6: No Preference shall be given by any Regulation of Commerce or Revenue to the

Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

Clause 7: No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Clause 8: No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section. 10.

Clause 1: No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Clause 2: No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

Clause 3: No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article. II.

Section. 1.

Clause 1: The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Clause 2: Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Clause 3: The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of

the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President. (See Note 8)

Clause 4: The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

Clause 5: No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

Clause 6: In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, (See Note 9) the Same shall devolve on the VicePresident, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

Clause 7: The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Clause 8: Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:--"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2.

Clause 1: The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the

executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Clause 2: He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Clause 3: The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section. 3.

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section. 4.

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article. III.

Section. 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2.

Clause 1: 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; (See Note 10)--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.

Clause 2: In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Clause 3: The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3.
Clause 1: Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

Clause 2: The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. IV.
Section. 1.
Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section. 2.
Clause 1: The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Clause 2: A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Clause 3: No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due. (See Note 11)

Section. 3.

Clause 1: New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Clause 2: 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.

Section. 4.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; 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; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article. VI.

Clause 1: All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Clause 2: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Clause 3: The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;

but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII.
The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

GO WASHINGTON--Presidt. and deputy from Virginia

[Signed also by the deputies of twelve States.][Omitted]

Amendments to the Constitution

ARTICLES IN ADDITION TO, AND AMENDMENTS OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION (See Note 12)

Article [I.] (See Note 13)
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article [II.]
A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article [III.]
No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article [IV.]
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article [V.]
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a

presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article [VI.]
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article [VII.]
In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article [VIII.]
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article [IX.]
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article [X.]
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.

[Article XI.]
The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Proposal and Ratification

The eleventh amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress, on the 4th of March 1794; and was declared in a message from the President to Congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States. The dates of ratification were: New York, March 27, 1794; Rhode Island, March 31, 1794; Connecticut, May 8, 1794; New

Hampshire, June 16, 1794; Massachusetts, June 26, 1794; Vermont, between October 9, 1794 and November 9, 1794; Virginia, November 18, 1794; Georgia, November 29, 1794; Kentucky, December 7, 1794; Maryland, December 26, 1794; Delaware, January 23, 1795; North Carolina, February 7, 1795.

Ratification was completed on February 7, 1795.

The amendment was subsequently ratified by South Carolina on December 4, 1797. New Jersey and Pennsylvania did not take action on the amendment.

[Article XII.]
The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;--The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;--The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. (See Note 14)--The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Proposal and Ratification The twelfth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Eighth Congress, on the 9th of December, 1803, in lieu of the original third paragraph of the first section of the second article; and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of 13 of the 17 States. The dates of ratification were: North Carolina, December 21, 1803; Maryland, December 24, 1803;

Kentucky, December 27, 1803; Ohio, December 30, 1803; Pennsylvania, January 5, 1804; Vermont, January 30, 1804; Virginia, February 3, 1804; New York, February 10, 1804; New Jersey, February 22, 1804; Rhode Island, March 12, 1804; South Carolina, May 15, 1804; Georgia, May 19, 1804; New Hampshire, June 15, 1804.

Ratification was completed on June 15, 1804.

The amendment was subsequently ratified by Tennessee, July 27, 1804.

The amendment was rejected by Delaware, January 18, 1804; Massachusetts, February 3, 1804; Connecticut, at its session begun May 10, 1804.

Article XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party 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.

Proposal and Ratification

The thirteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 31st day of January, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States. The dates of ratification were: Illinois, February 1, 1865; Rhode Island, February 2, 1865; Michigan, February 2, 1865; Maryland, February 3, 1865; New York, February 3, 1865; Pennsylvania, February 3, 1865; West Virginia, February 3, 1865; Missouri, February 6, 1865; Maine, February 7, 1865; Kansas, February 7, 1865; Massachusetts, February 7, 1865; Virginia, February 9, 1865; Ohio, February 10, 1865; Indiana, February 13, 1865; Nevada, February 16, 1865; Louisiana, February 17, 1865; Minnesota, February 23, 1865; Wisconsin, February 24, 1865; Vermont, March 9, 1865; Tennessee, April 7, 1865; Arkansas, April 14, 1865; Connecticut, May 4, 1865; New Hampshire, July 1, 1865; South Carolina, November 13, 1865; Alabama, December 2, 1865; North Carolina, December 4, 1865; Georgia, December 6, 1865.

Ratification was completed on December 6, 1865.

The amendment was subsequently ratified by Oregon, December 8, 1865; California, December 19, 1865; Florida, December 28, 1865 (Florida again ratified on June 9, 1868, upon its adoption of a new constitution); Iowa, January 15, 1866; New Jersey, January 23, 1866 (after having rejected the amendment on March 16, 1865); Texas, February 18, 1870; Delaware, February 12, 1901 (after having rejected the amendment on February 8, 1865); Kentucky, March 18, 1976 (after having rejected it on February 24, 1865).

The amendment was rejected (and not subsequently ratified) by Mississippi, December 4, 1865.

Article XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,(See Note 15) and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Proposal and Ratification

The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 13th of June, 1866. It

was declared, in a certificate of the Secretary of State dated July 28, 1868 to have been ratified by the legislatures of 28 of the 37 States. The dates of ratification were: Connecticut, June 25, 1866; New Hampshire, July 6, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866 (subsequently the legislature rescinded its ratification, and on March 24, 1868, readopted its resolution of rescission over the Governor's veto, and on Nov. 12, 1980, expressed support for the amendment); Oregon, September 19, 1866 (and rescinded its ratification on October 15, 1868); Vermont, October 30, 1866; Ohio, January 4, 1867 (and rescinded its ratification on January 15, 1868); New York, January 10, 1867; Kansas, January 11, 1867; Illinois, January 15, 1867; West Virginia, January 16, 1867; Michigan, January 16, 1867; Minnesota, January 16, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Indiana, January 23, 1867; Missouri, January 25, 1867; Rhode Island, February 7, 1867; Wisconsin, February 7, 1867; Pennsylvania, February 12, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, March 16, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; North Carolina, July 4, 1868 (after having rejected it on December 14, 1866); Louisiana, July 9, 1868 (after having rejected it on February 6, 1867); South Carolina, July 9, 1868 (after having rejected it on December 20, 1866).

Ratification was completed on July 9, 1868.

The amendment was subsequently ratified by Alabama, July 13, 1868; Georgia, July 21, 1868 (after having rejected it on November 9, 1866); Virginia, October 8, 1869 (after having rejected it on January 9, 1867); Mississippi, January 17, 1870; Texas, February 18, 1870 (after having rejected it on October 27, 1866); Delaware, February 12, 1901 (after having rejected it on February 8, 1867); Maryland, April 4, 1959 (after having rejected it on March 23, 1867); California, May 6, 1959; Kentucky, March 18, 1976 (after having rejected it on January 8, 1867).

Article XV.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

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

Proposal and Ratification

The fifteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Fortieth Congress, on the 26th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States. The dates of ratification were: Nevada, March 1, 1869; West Virginia, March 3, 1869; Illinois, March 5, 1869; Louisiana, March 5, 1869; North Carolina, March 5, 1869; Michigan, March 8, 1869; Wisconsin, March 9, 1869; Maine, March 11, 1869; Massachusetts, March 12, 1869; Arkansas, March 15, 1869; South Carolina, March 15, 1869; Pennsylvania, March 25, 1869;

New York, April 14, 1869 (and the legislature of the same State passed a resolution January 5, 1870, to withdraw its consent to it, which action it rescinded on March 30, 1970); Indiana, May 14, 1869; Connecticut, May 19, 1869; Florida, June 14, 1869; New Hampshire, July 1, 1869; Virginia, October 8, 1869; Vermont, October 20, 1869; Missouri, January 7, 1870; Minnesota, January 13, 1870; Mississippi, January 17, 1870; Rhode Island, January 18, 1870; Kansas, January 19, 1870; Ohio, January 27, 1870 (after having rejected it on April 30, 1869); Georgia, February 2, 1870; Iowa, February 3, 1870.

Ratification was completed on February 3, 1870, unless the withdrawal of ratification by New York was effective; in which event ratification was completed on February 17, 1870, when Nebraska ratified.

The amendment was subsequently ratified by Texas, February 18, 1870; New Jersey, February 15, 1871 (after having rejected it on February 7, 1870); Delaware, February 12, 1901 (after having rejected it on March 18, 1869); Oregon, February 24, 1959; California, April 3, 1962 (after having rejected it on January 28, 1870); Kentucky, March 18, 1976 (after having rejected it on March 12, 1869).

The amendment was approved by the Governor of Maryland, May 7, 1973; Maryland having previously rejected it on February 26, 1870.

The amendment was rejected (and not subsequently ratified) by Tennessee, November 16, 1869.

Article XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Proposal and Ratification

The sixteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Sixty-first Congress on the 12th of July, 1909, and was declared, in a proclamation of the Secretary of State, dated the 25th of February, 1913, to have been ratified by 36 of the 48 States. The dates of ratification were: Alabama, August 10, 1909; Kentucky, February 8, 1910; South Carolina, February 19, 1910; Illinois, March 1, 1910; Mississippi, March 7, 1910; Oklahoma, March 10, 1910; Maryland, April 8, 1910; Georgia, August 3, 1910; Texas, August 16, 1910; Ohio, January 19, 1911; Idaho, January 20, 1911; Oregon, January 23, 1911; Washington, January 26, 1911; Montana, January 30, 1911; Indiana, January 30, 1911; California, January 31, 1911; Nevada, January 31, 1911; South Dakota, February 3, 1911; Nebraska, February 9, 1911; North Carolina, February 11, 1911; Colorado, February 15, 1911; North Dakota, February 17, 1911; Kansas, February 18, 1911; Michigan, February 23, 1911; Iowa, February 24, 1911; Missouri, March 16, 1911; Maine, March 31, 1911; Tennessee, April 7, 1911; Arkansas, April 22, 1911 (after having rejected it

earlier); Wisconsin, May 26, 1911; New York, July 12, 1911; Arizona, April 6, 1912; Minnesota, June 11, 1912; Louisiana, June 28, 1912; West Virginia, January 31, 1913; New Mexico, February 3, 1913.

Ratification was completed on February 3, 1913.

The amendment was subsequently ratified by Massachusetts, March 4, 1913; New Hampshire, March 7, 1913 (after having rejected it on March 2, 1911).

The amendment was rejected (and not subsequently ratified) by Connecticut, Rhode Island, and Utah.

[Article XVII.]
The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Proposal and Ratification

The seventeenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Sixty-second Congress on the 13th of May, 1912, and was declared, in a proclamation of the Secretary of State, dated the 31st of May, 1913, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Massachusetts, May 22, 1912; Arizona, June 3, 1912; Minnesota, June 10, 1912; New York, January 15, 1913; Kansas, January 17, 1913; Oregon, January 23, 1913; North Carolina, January 25, 1913; California, January 28, 1913; Michigan, January 28, 1913; Iowa, January 30, 1913; Montana, January 30, 1913; Idaho, January 31, 1913; West Virginia, February 4, 1913; Colorado, February 5, 1913; Nevada, February 6, 1913; Texas, February 7, 1913; Washington, February 7, 1913; Wyoming, February 8, 1913; Arkansas, February 11, 1913; Maine, February 11, 1913; Illinois, February 13, 1913; North Dakota, February 14, 1913; Wisconsin, February 18, 1913; Indiana, February 19, 1913; New Hampshire, February 19, 1913; Vermont, February 19, 1913; South Dakota, February 19, 1913; Oklahoma, February 24, 1913; Ohio, February 25, 1913; Missouri, March 7, 1913; New Mexico, March 13, 1913; Nebraska, March 14, 1913; New Jersey, March 17, 1913; Tennessee, April 1, 1913; Pennsylvania, April 2, 1913; Connecticut, April 8, 1913.

Ratification was completed on April 8, 1913.

The amendment was subsequently ratified by Louisiana, June 11, 1914.

The amendment was rejected by Utah (and not subsequently ratified) on February 26, 1913.

Article [XVIII].(See Note 16)
Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Proposal and Ratification

The eighteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Sixty-fifth Congress, on the 18th of December, 1917, and was declared, in a proclamation of the Secretary of State, dated the 29th of January, 1919, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Mississippi, January 8, 1918; Virginia, January 11, 1918; Kentucky, January 14, 1918; North Dakota, January 25, 1918; South Carolina, January 29, 1918; Maryland, February 13, 1918; Montana, February 19, 1918; Texas, March 4, 1918; Delaware, March 18, 1918; South Dakota, March 20, 1918; Massachusetts, April 2, 1918; Arizona, May 24, 1918; Georgia, June 26, 1918; Louisiana, August 3, 1918; Florida, December 3, 1918; Michigan, January 2, 1919; Ohio, January 7, 1919; Oklahoma, January 7, 1919; Idaho, January 8, 1919; Maine, January 8, 1919; West Virginia, January 9, 1919; California, January 13, 1919; Tennessee, January 13, 1919; Washington, January 13, 1919; Arkansas, January 14, 1919; Kansas, January 14, 1919; Alabama, January 15, 1919; Colorado, January 15, 1919; Iowa, January 15, 1919; New Hampshire, January 15, 1919; Oregon, January 15, 1919; Nebraska, January 16, 1919; North Carolina, January 16, 1919; Utah, January 16, 1919; Missouri, January 16, 1919; Wyoming, January 16, 1919.

Ratification was completed on January 16, 1919. See Dillon v. Gloss, 256 U.S. 368, 376 (1921).

The amendment was subsequently ratified by Minnesota on January 17, 1919; Wisconsin, January 17, 1919; New Mexico, January 20, 1919; Nevada, January 21, 1919; New York,

January 29, 1919; Vermont, January 29, 1919; Pennsylvania, February 25, 1919; Connecticut, May 6, 1919; and New Jersey, March 9, 1922.

The amendment was rejected (and not subsequently ratified) by Rhode Island.

Article [XIX].
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 sex.

Congress shall have power to enforce this article by appropriate legislation.

Proposal and Ratification

The nineteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Sixty-sixth Congress, on the 4th of June, 1919, and was declared, in a proclamation of the Secretary of State, dated the 26th of August, 1920, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Illinois, June 10, 1919 (and that State readopted its resolution of ratification June 17, 1919); Michigan, June 10, 1919; Wisconsin, June 10, 1919; Kansas, June 16, 1919; New York, June 16, 1919; Ohio, June 16, 1919; Pennsylvania, June 24, 1919; Massachusetts, June 25, 1919; Texas, June 28, 1919; Iowa, July 2, 1919; Missouri, July 3, 1919; Arkansas, July 28, 1919; Montana, August 2, 1919; Nebraska, August 2, 1919; Minnesota, September 8, 1919; New Hampshire, September 10, 1919; Utah, October 2, 1919; California, November 1, 1919; Maine, November 5, 1919; North Dakota, December 1, 1919; South Dakota, December 4, 1919; Colorado, December 15, 1919; Kentucky, January 6, 1920; Rhode Island, January 6, 1920; Oregon, January 13, 1920; Indiana, January 16, 1920; Wyoming, January 27, 1920; Nevada, February 7, 1920; New Jersey, February 9, 1920; Idaho, February 11, 1920; Arizona, February 12, 1920; New Mexico, February 21, 1920; Oklahoma, February 28, 1920; West Virginia, March 10, 1920; Washington, March 22, 1920; Tennessee, August 18, 1920.

Ratification was completed on August 18, 1920.

The amendment was subsequently ratified by Connecticut on September 14, 1920 (and that State reaffirmed on September 21, 1920); Vermont, February 8, 1921; Delaware, March 6, 1923 (after having rejected it on June 2, 1920); Maryland, March 29, 1941 (after having rejected it on February 24, 1920, ratification certified on February 25, 1958); Virginia, February 21, 1952 (after having rejected it on February 12, 1920); Alabama, September 8, 1953 (after having rejected it on September 22, 1919); Florida, May 13, 1969; South Carolina, July 1, 1969 (after having rejected it on January 28, 1920, ratification certified on August 22, 1973); Georgia, February 20, 1970 (after having rejected it on July 24, 1919); Louisiana, June 11, 1970 (after having rejected it on July 1, 1920); North Carolina, May 6, 1971; Mississippi, March 22, 1984 (after having rejected it on March 29, 1920).

Article [XX.]

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section. 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Proposal and Ratification

The twentieth amendment to the Constitution was proposed to the legislatures of the several states by the Seventy-Second Congress, on the 2d day of March, 1932, and was declared, in a proclamation by the Secretary of State, dated on the 6th day of February, 1933, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Virginia, March 4, 1932; New York, March 11, 1932; Mississippi, March 16, 1932; Arkansas, March 17, 1932; Kentucky, March 17, 1932; New Jersey, March 21, 1932; South Carolina, March 25, 1932; Michigan, March 31, 1932; Maine, April 1, 1932; Rhode Island, April 14, 1932; Illinois, April 21, 1932; Louisiana, June 22, 1932; West Virginia, July 30, 1932; Pennsylvania, August 11, 1932; Indiana, August 15, 1932; Texas, September 7, 1932; Alabama, September 13, 1932; California, January 4, 1933; North Carolina, January 5, 1933; North Dakota, January 9, 1933; Minnesota, January 12, 1933; Arizona, January 13, 1933; Montana, January 13, 1933; Nebraska, January 13, 1933; Oklahoma, January 13, 1933;

Kansas, January 16, 1933; Oregon, January 16, 1933; Delaware, January 19, 1933; Washington, January 19, 1933; Wyoming, January 19, 1933; Iowa, January 20, 1933; South Dakota, January 20, 1933; Tennessee, January 20, 1933; Idaho, January 21, 1933; New Mexico, January 21, 1933; Georgia, January 23, 1933; Missouri, January 23, 1933; Ohio, January 23, 1933; Utah, January 23, 1933.

Ratification was completed on January 23, 1933.

The amendment was subsequently ratified by Massachusetts on January 24, 1933; Wisconsin, January 24, 1933; Colorado, January 24, 1933; Nevada, January 26, 1933; Connecticut, January 27, 1933; New Hampshire, January 31, 1933; Vermont, February 2, 1933; Maryland, March 24, 1933; Florida, April 26, 1933.

Article [XXI.]

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Proposal and Ratification

The twenty-first amendment to the Constitution was proposed to the several states by the Seventy-Second Congress, on the 20th day of February, 1933, and was declared, in a proclamation by the Secretary of State, dated on the 5th day of December, 1933, to have been ratified by 36 of the 48 States. The dates of ratification were: Michigan, April 10, 1933; Wisconsin, April 25, 1933; Rhode Island, May 8, 1933; Wyoming, May 25, 1933; New Jersey, June 1, 1933; Delaware, June 24, 1933; Indiana, June 26, 1933; Massachusetts, June 26, 1933; New York, June 27, 1933; Illinois, July 10, 1933; Iowa, July

Amendment XXII

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the Congress.

Amendment XXIII

Section 1. The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

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

Amendment XXIV

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

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

Amendment XXV

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his

office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI

Section 1. The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XXVII

No law varying the compensation for the services of the Senators and Representatives shall take effect until an election of Representatives shall have intervened.

NOTES

Note 1: This text of the Constitution follows the engrossed copy signed by Gen. Washington and the deputies from 12 States. The small superior figures preceding the paragraphs designate Clauses, and were not in the original and have no reference to footnotes.

The Constitution was adopted by a convention of the States on September 17, 1787, and was subsequently ratified by the several States, on the following dates: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788.

Ratification was completed on June 21, 1788.

The Constitution was subsequently ratified by Virginia, June 25, 1788; New York, July 26,

1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790; and Vermont, January 10, 1791.

In May 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the State Legislatures to proceed in the matter. In January 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report, (drawn by Mr. Hamilton, of New York,) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the States by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the Second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and afterwards confirmed by the Legislatures of every State, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the Legislatures of those States which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven States having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed Federal Government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the resolutions and letter concerning the same, to "be transmitted to the several Legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of

Government under the new Constitution, it had been ratified by the conventions chosen in each State to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 25, 1788; and New York, July 26, 1788.

The President informed Congress, on the 28th of January, 1790, that North Carolina had ratified the Constitution November 21, 1789; and he informed Congress on the 1st of June, 1790, that Rhode Island had ratified the Constitution May 29, 1790. Vermont, in convention, ratified the Constitution January 10, 1791, and was, by an act of Congress approved February 18, 1791, "received and admitted into this Union as a new and entire member of the United States."

Note 2: The part of this Clause relating to the mode of apportionment of representatives among the several States has been affected by Section 2 of amendment XIV, and as to taxes on incomes without apportionment by amendment XVI.

Note 3: This Clause has been affected by Clause 1 of amendment XVII.

Note 4: This Clause has been affected by Clause 2 of amendment XVIII.

Note 5: This Clause has been affected by amendment XX.

Note 6: This Clause has been affected by amendment XXVII.

Note 7: This Clause has been affected by amendment XVI.

Note 8: This Clause has been superseded by amendment XII.

Note 9: This Clause has been affected by amendment XXV.

Note 10: This Clause has been affected by amendment XI.

Note 11: This Clause has been affected by amendment XIII.

Note 12: The first ten amendments to the Constitution of the United States (and two others, one of which failed of ratification and the other which later became the 27th amendment) were proposed to the legislatures of the several States by the First Congress on September 25, 1789. The first ten amendments were ratified by the following States, and the notifications of ratification by the Governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; New York, February 24, 1790; Pennsylvania, March 10, 1790; Rhode Island, June 7, 1790; Vermont, November 3, 1791; and Virginia, December 15, 1791.

Ratification was completed on December 15, 1791.

The amendments were subsequently ratified by the legislatures of Massachusetts, March 2, 1939; Georgia, March 18, 1939; and Connecticut, April 19, 1939.

Note 13: Only the 13th, 14th, 15th, and 16th articles of amendment had numbers assigned to them at the time of ratification.

Note 14: This sentence has been superseded by section 3 of amendment XX.

Note 15: See amendment XIX and section 1 of amendment XXVI.

Note 16: Repealed by section 1 of amendment XXI.

United States District Court, E.D. Wisconsin.

Julie ROGERS, Plaintiff,
v.
Leroy LOETHER, and Mariane Loether, his Wife, and Mrs. Anthony Perez,
Defendants.

Civ. A. No. 69-C-524.

May 19, 1970.

Action under Civil Rights Act of 1968, wherein plaintiff claimed that defendants discriminated against her by refusing to rent apartment to her because she was a Negro. Upon request of defendants for jury trial, after preliminary injunction had been dissolved with consent of plaintiff, the District Court Reynolds, J., held that defendants were not entitled to jury trial on plaintiff's claim for compensatory and punitive damages and attorney's fees.

Request denied.

***1008** Seymour Pikofsky and Otto Tucker, Milwaukee Legal Services, Milwaukee, Wis., of plaintiff.

Robert D. Scott, Milwaukee, Wis., for defendants.

OPINION AND ORDER

REYNOLDS, District Judge.

This is an action brought under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619, which prohibits discrimination in the rental of housing. Plaintiff claims that defendants discriminated against her by refusing to rent her an apartment because she is a Negro. Plaintiff requested injunctive relief restraining the rental of the subject apartment except to the plaintiff, money damages for loss incurred by the plaintiff due to the alleged discrimination, punitive damages in the amount of $1,000, and attorney's fees.

***1009** The court granted plaintiff's motion for a temporary restraining order on November 17, 1969, and, following an extended hearing, entered a preliminary injunction temporarily restraining the rental of the apartment pending final determination of the case. At a hearing on April 30, 1970, the Court, with consent of plaintiff, dissolved the preliminary injunction. Therefore, the only issues remaining in the suit are plaintiff's claim for compensatory and punitive damages and attorney's fees.

The defendants have requested a jury trial on these issues, and plaintiff has objected to this request. The parties have submitted briefs and argued to the court on this issue which is now before the court for decision.

[1][2] To warrant a jury trial, a claim must be of such a nature as would entitle a party to a jury at the time of the adoption of the Seventh Amendment. NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893 (1936); United States v. Louisiana, 339 U.S. 699, 70 S.Ct 914, 94 L.Ed. 1216 (1950). The question before this court, therefore, is whether the cause of action under 42 U.S.C. 3601-3919 is one recognized at common law which consequently requires a jury trial. I find that this cause of action is a statutory one invoking the equity powers of the court, by which the court may award compensatory and punitive money damages as an intergral part of the final decree so that complete relief may be had. The action is not one in the nature of a suit at common law, and therefore there is no right to trial by jury on the issue of money damages in the case.

Defendant argues that the Seventh Amendment of the Constitution; Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S.Ct. 948, 3 L.Ed.2d 988 (1959); Thermo-Stitch, Inc. v. Chemi-Cord Processing Corp., 294 F.2d 486 (5th Cir. 1961); Dairy Queen, Inc. v. Wood, 369 U.S. 469, 82 S.Ct. 894, 8 L.Ed.2d 44 (1962); Harkless v. Sweeny Independent School District, 278 F.Supp. 632 (S.D. Texas 1968); and Ross v. Bernhard, 396 U.S. 531, 90 S.Ct. 733, 24 L.Ed.2d 729 (1970), require a jury trial on the issue of plaintiff's prayer for money damages due to the alleged discrimination.

Beacon, Dairy Queen, and Thermo-Stitch hold that where equitable and legal claims are joined in the same cause of action, there is a right to trial by jury on the legal claims that must not be infringed by trying the legal issues as incidental to the equitable issues or by a court trial of common issues between the two. The Court in Swofford v. B & W, Inc., 336 F.2d 406, 414 (5th Cir. 1964), commented on these cases:

'* * * This is not to say, however, that they have converted typical non-jury claims, or remedies, into jury ones. Therefore, we reject a view that the trio of Beacon Theatres, Dairy Queen, and Thermo-Stitch is a catalyst which suddenly converts any money request into a money claim triable by jury.'

The Harkless court granted a jury trial on the issue

of back pay award in an action brought under 42 U.S.C. 1983 seeking reinstatement as teachers following a discharge allegedly based on racial discrimination. However, 1983 expressly provides that persons acting under color of state law who deprive other persons of constitutional rights shall be liable 'in an action at law.' There is no such provision in 42 U.S.C. 3612(c).

The Supreme Court in Ross held that plaintiffs in a shareholder's derivative action had a right to a jury trial on those issues to which the corporation, had it brought the action itself, would have had the right to a jury trial. The Court found that where the claims asserted were damages against the corporation's broker under the brokerage contract and rights against the corporate directors because of their negligence, both actions at common law, '* * * it is no longer tenable for a district court, administering both law and equity in the same action, to deny legal remedies to a corporation, merely because the ***1010** corporation's spokesmen are its shareholders rather than its directors. * * *' 396 U.S. at 540, 90 S.Ct. at 739. While Ross may reflect 'an unarticulated but apparently overpowering bias in favor of jury trials in civil actions,' Ross, supra, at 551, 90 S.Ct. at 745, Justice Stewart dissenting, the case does not stand for the proposition that any money claim in a cause of action must be tried by a jury. The decision deals narrowly with the right to jury trial in a shareholder's derivative action and is clearly distinguishable from the case before this court.

The section of the statute dealing with remedies for violation of the act, 42 U.S.C. 3612(c), provides:

'(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order or other order, and may award to the plaintiff actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: Provided, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.'

On its face, this statutory language seems to treat the actual damages issue as one for the trial judge rather than a jury. District courts is Hayes v. Seaboard Coast Line Railroad Co., 46 F.R.D. 49 (S.D.Ga.1969), and Cheatwood v. South Central Bell Telephone and Telegraph Co., 303 F.Supp. 754 (M.D.Ala.1969), have construed similar language in Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(g), [FN1] to mean that the issue of back pay award in employment discrimination cases does not require jury remtermination.

> FN1. 'If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). * * *'

Both Hayes and Cheatwood held that the money damages issue of back pay in an action under 42 U.S.C. 2000e-5(g) of the 1964 Civil Rights Act was not a separate legal issue, but rather was a remedy the court could employ for violation of the statute in a statutory proceeding unknown at common law, and that there was no right to a trial by jury on that issue. As I have noted, the language of the remedial provisions of 42 U.S.C. 2000e-5(g) of the Civil Rights Act of 1964 and 42 U.S.C. 3612(c) of the Civil Rights Act of 1968 are very similar. The purpose of the two acts is similar. Title VII of the 1964 Act prohibits discrimination on the basis of race, color, religion, sex, or national origin by specified groups of employers, labor unions, and employment agencies. Title VIII of the 1968 Act prohibits discrimination on the basis of race, color, religion, or national origin in the sale or rental of housing by private owners, real estate brokers, and financial institutions. The award of money damages in a Title VIII action has the same place in the statutory scheme as does the award of back pay in a Title VII action. Determining the amount of a back pay award in a Title VII action can be as difficult a question of fact as determining the amount of money damages in a Title VIII action. Hayes, 46 F.R.D. at 53.

An action under Title VIII is not an action at common law. The statute does not expressly provide for trial by jury of any issues in the action. In the absence of a clear mandate from Congress requiring a jury trial, I find that the similarities between the remedial provisions of the Civil Rights Acts of 1964 and 1968, in light of the undivided authority holding that the issue of money damages for back pay under Title VII of ***1011** the 1964 Act is not an issue for the jury, compel the conclusion that the issue of compensatory and punitive money damages in an action under Title VIII of the 1968

Act is likewise an issue for the court. Accordingly, defendants' request for a jury trial must be denied.

Therefore, it is ordered that defendants' request for a jury trial be and it hereby is denied.

312 F.Supp. 1008, 14 Fed.R.Serv.2d 525

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United States Court of Appeals,
Seventh Circuit.

Julia ROGERS, Plaintiff-Appellee,
v.
Leroy LOETHER et al., Defendants-Appellants.

No. 71-1145.

Argued Feb. 22, 1972.
Decided Sept. 29, 1972.

Suit was brought under the Civil Rights Act of 1968 to recover compensatory and punitive damages against landlord for discrimination and for injunctive relief. The United States District Court for the Eastern District of Wisconsin, John W. Reynolds, J., 312 F.Supp. 1008 awarded punitive damages and an appeal was taken. The Court of Appeals, Stevens, Circuit Judge, held that action was in the nature of a suit at common law and defendant was entitled to a jury trial.

Reversed and remanded.

***1111** Edward A. Dudek, Robert D. Scott, Milwaukee, Wis., for defendants-appellants.

Patricia D. McMahon, Seymour Pinofsky, Milwaukee, Wis., for plaintiff-appellee.

Before SWYGERT, Chief Judge, STEVENS, Circuit Judge, and CAMPBELL, District Judge. [FN*]

FN* Senior District Judge William J. Campbell of the Northern District of Illinois is sitting by designation.

STEVENS, Circuit Judge.

The question presented is whether appellant was entitled to a jury trial in an action for compensatory and punitive damages brought under § 812 of the Civil Rights Act of 1968, 42 U.S.C. § 3612. [FN1]

FN1. Section 812 provides, in part:
"(a) The rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: . .

* * *

"(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided*, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees." 82 Stat. 88, 42 U.S.C. § 3612.

In her complaint, plaintiff alleged that the three defendants had refused to rent her an apartment because of her race. [FN2] She requested injunctive relief restraining defendants from renting the apartment to anyone else, money damages for her actual losses, punitive damages of $1,000, and attorney's fees.

FN2. Section 804 of the 1968 act provides, in part:
"As made applicable by section 803 and except as exempted by sections 803 (b) and 807, it shall be unlawful-
"(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin." 82 Stat. 83, 42 U.S.C. § 3604.

The district court, after an extended hearing, entered a preliminary injunction. Subsequently, with plaintiff's consent, the injunction was dissolved; thereafter only plaintiff's claims for compensatory and punitive damages and attorney's fees remained. Defendants' request for a jury trial of those issues was denied, D.C., 312 F.Supp. 1008. After trial, the court found that plaintiff had suffered no actual damages but assessed punitive damages of $250; the prayer for attorney's fees was denied.

[1][2] On appeal defendants contend that the finding of discrimination is clearly erroneous, that it was error to award punitive damages, and that they were entitled to a jury trial. We shall not describe the evidence of discrimination except to note that it was marginal; ***1112** whichever way the trial judge had ruled, his determination of that issue would not have been clearly erroneous. [FN3] We are also satisfied that if his finding of discrimination is accepted, an award of punitive

damages was authorized by the statute notwithstanding the absence of any actual loss to the plaintiff. [FN4] We shall confine our analysis to the jury trial issue.

FN3. Defendants contend that their refusal was motivated by the obnoxious behavior of a white social worker who was helping the plaintiff find an apartment; they had offered to rent the apartment to any black tenant other than the plaintiff and offered considerable evidence of absence of racial prejudice by either themselves or other tenants in the apartment. On the other hand, plaintiff's evidence tended to indicate that negotiations proceeded smoothly until defendants learned that plaintiff was a Negro.

FN4. As we read the statute it does not require a finding of actual damages as a condition to the award of punitive damages. In any event, in other litigation the federal courts have held that punitive damages may be awarded without requiring an award of compensatory damages. See, *e. g.*, Wardman-Justice Motors, Inc. v. Petrie, 59 App.D.C. 262, 39 F.2d 512, 516 (1930); Basista v. Weir, 340 F.2d 74, 85-88 (3rd Cir. 1965). The *Basista* case involved a suit against policemen for punitive damages under the Civil Rights Act of 1871, 42 U.S.C. § 1983.

The district court held that a jury trial was not required by the Seventh Amendment [FN5] or by a fair interpretation of the statute. [FN6]

FN5. "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law." United States Constitution, Amendment VII.

FN6. The opinion is reported at 312 F.Supp. 1008.

The court rejected the constitutional claim on the grounds (1) that the cause of action was created by statute and not recognized at common law; and (2) that the statutory claim invoked the equitable powers of the court and the amendment has no application to the recovery of money damages as an incident to complete equitable relief. Both propositions are supported by N. L. R. B. v. Jones & Laughlin Steel Corp., 301 U.S. 1, 48-49, 57 S.Ct. 615, 81 L.Ed. 893. [FN7]

FN7. The district court also cited United States v. Louisiana, which holds that the Seventh Amendment is "applicable only to actions at law." 339 U.S. 699, 706, 70 S.Ct. 914, 917, 94 L.Ed. 1216.

The district court also considered the award of damages in a housing discrimination case arising under the 1968 Act analogous to an award of back pay in an employment discrimination case under the Civil Rights Act of 1964 and therefore relied on cases holding that there is no right to a jury trial in such litigation. [FN8] In its opinion the district court placed no reliance on the argument, sometimes advanced by proponents of civil rights legislation, that allowance of a jury trial might undermine effective enforcement of the statute. [FN9]

FN8. Hayes v. Seaboard Coast Line R.R., 46 F.R.D. 49 (S.D.Ga.1970); Cheatwood v. South Central Bell Tel. & Tel. Co., 303 F.Supp. 754 (M.D.Ala.1969).

FN9. See, *e. g.*, mention of such factors in Note, Jones v. Mayer: The Thirteenth Amendment and the Federal Anti-Discrimination Laws, 69 Colum.L.Rev. 1019, 1051; Comment, The Right to Jury Trial Under Title VII of the Civil Rights Act of 1964, 37 U.Chi.L.Rev. 167; Developments in the Law, Employment Discrimination and Title VII of the Civil Rights Act of 1964, 84 Harv.L.Rev. 1109, 1264. Among the cases, see Hayes v. Seaboard Coast Line R.R., 46 F.R.D. 49, 53 (S.D.Ga.1970); Lawton v. Nightingale, 345 F.Supp. 683 (D.C.Ohio, 1972).

Our study of the issue persuades us that (1) the constitutional right to trial by jury applies in at least some judicial proceedings to enforce rights created by statute; (2) this action for damages is "in the nature of a suit at common law"; [FN10] (3) the nature of the claim is "legal" within the test identified in ***1113**Ross v. Bernhard, 396 U.S. 531, 538, 90 S.Ct. 733, 24 L.Ed.2d 729; (4) the right to a jury trial may not be denied on the ground that the damage claim is incidental to a claim for equitable relief; (5) cases involving an award of back pay pursuant to the 1964 Act are inapplicable; and finally (6) in view of our grave doubts as to the constitutionality of a denial of the right to a jury trial and the failure of Congress expressly to

indicate that the traditional procedure for litigating damage claims should not be followed, the statute should be construed to authorize trial by jury. Accordingly, we have decided to reverse.

FN10. See N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. at 48, 57 S.Ct. at 629.

I.

[3][4] The Seventh Amendment preserves the substance of the right to a jury trial which existed under English common law when the amendment was adopted. [FN11] It has never been suggested that the application of the amendment is narrowly confined to such common law writs as might be enforceable in a federal court. On the contrary, since the bulk of the civil litigation in the federal judicial system involves the assertion of a federal right derived either from an act of Congress or the Constitution itself, necessarily the principal significance of the Seventh Amendment has been in such cases. [FN12] It is perfectly clear that the fact that a litigant is asserting a statutory right does not deprive him or his adversary of the protection of the amendment.

FN11. Baltimore & Carolina Line, Inc. v. Redman, 295 U.S. 654, 657, 55 S.Ct. 890, 79 L.Ed. 1636.

FN12. "The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence which is protected by the Seventh Amendment." Jacob v. New York City, 315 U.S. 752, 62 S.Ct. 854, 86 L.Ed. 1166.

In Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 7 L.Ed. 732, Mr. Justice Story, writing for the Court, rejected the contention expressed by Mr. Justice M'Lean in dissent that the amendment was inapplicable because the claim arose not under the common law but rather under the statutes of Louisiana. [FN13] Mr. Justice Story focused on the character of the claim as a "legal right" and eloquently described the purpose of the amendment:

FN13. "It is not strictly a common law proceeding; but a proceeding under the peculiar system of Louisiana; . . .

* * *

"In the state of Louisiana, the principles of common law are not recognized; neither do the principles of the civil law of Rome furnish the basis of their jurisprudence. They have a system peculiar to themselves, adopted by their statutes, which embodies much of the civil law, some of the principles of the common law, and, in a few instances, the statutory provisions of other states. This system may be called the civil law of Louisiana, and is peculiar to that state." 28 U.S. at 449-450, 7 L.Ed. 732 (Mr. Justice M'Lean dissenting).

"The trial by jury is justly dear to the American people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy. The right to such a trial is, it is believed, incorporated into, and secured in every state constitution in the union; and it is found in the constitution of Louisiana. One of the strongest objections originally taken against the constitution of the United States, was the want of an express provision securing the right of trial by jury in civil cases. As soon as the constitution was adopted, this right was secured by the seventh amendment of the constitution proposed by Congress; and which received an assent of the people so general, as to establish its importance as a fundamental guarantee of the rights and liberties of the people. This amendment declares, that 'In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact once tried by a jury shall be otherwise re-examinable in any Court of the United States, than according ***1114** to the rules of the common law.' At this time there were no states in the union, the basis of whose jurisprudence was not essentially that of the common law in its widest meaning; and probably no states were contemplated, in which it would not exist. The phrase 'common law,' found in this clause, is used in contradistinction to equity, and admiralty, and maritime jurisprudence. . . . By common law, they meant what the constitution denominated in the third article 'law;' not merely suits, which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those, where equitable rights alone were recognized, and equitable remedies were administered; or where, as in the admiralty, a mixture of public law, and of maritime law and equity was often found in the same suit. Probably there were few, if any, states in the union, in which some new legal remedies differing from the old common law forms were not in use; but in which, however, the trial by jury intervened, and the general regulations in other respects were according to the course of the common law.

> Proceedings in cases of partition, and of foreign and domestic attachment, might be cited as examples variously adopted and modified. In a just sense, the amendment then may well be construed to embrace all suits, which are not of equity and admiralty jurisdiction, whatever may be the peculiar form which they may assume to settle legal rights." 28 U.S. at 445-446, 7 L.Ed. 732.

In an unbroken line of cases involving enforcement of statutory rights, the Supreme Court has treated the right to a jury trial as a matter too obvious to be doubted. Thus, in a civil action to recover a statutory penalty for a violation of the immigration laws, the first Mr. Justice Harlan, speaking for the Court, said that the "defendant was, of course, entitled to have a jury summoned in this case." Hepner v. United States, 213 U.S. 103, 115, 29 S.Ct. 474, 479, 53 L.Ed. 720. In an action for treble damages under § 7 of the Sherman Act, Mr. Justice Holmes, also speaking for a unanimous Court, considered it plain that "the statute should not be read as attempting to authorize liability to be enforced otherwise than through the verdict of a jury in a court of common law." Fleitmann v. Welsbach Street Lighting Co., 240 U.S. 27, 29, 36 S.Ct. 233, 234, 60 L.Ed. 505. In a case alleging violation of the Safety Appliance Act of 1910, which did not expressly authorize a private remedy, the Court found an implied right to recover damages in a jury trial "according to a doctrine of the common law." Texas & Pacific Ry. v. Rigsby, 241 U.S. 33, 39, 36 S.Ct. 482, 484, 60 L.Ed. 874. In a case involving an ambiguous claim for damages, either as an amount due under a contract or as a statutory claim for damages for trademark infringement, the Court held that the claim was "wholly legal in its nature however the complaint is construed" and that the "constitutional right to trial by jury" was applicable to the claim. Dairy Queen, Inc. v. Wood, 369 U.S. 469, 477, 82 S.Ct. 894, 899, 8 L.Ed.2d 44. And in an action brought under § 4 of the Clayton Act, the Court has expressly characterized the right to a jury trial as "constitutional." Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 510, 79 S.Ct. 948, 3 L.Ed.2d 988. [FN14]

> FN14. "Since the right to a jury trial is a constitutional one, however, while no similar requirement protects trials by the court, that discretion is very narrowly limited and must, wherever possible, be exercised to preserve jury trial." *Id.* at 510, 79 S.Ct. at 956.
> It is of interest that in the elaborate argument presented to us in Dasho v. Susquehanna Corp., 461 F.2d 11 (7th Cir. 1972), cert. denied, 408 U.S. 925, 92 S.Ct. 2496, 33 L.Ed.2d 336 (1972), in which the decision turned on the constitutional right to a jury trial in an action asserting rights under § 10(b) of the Securities Act of 1934, none of the defendants even suggested that the statutory source of plaintiffs' claim affected their right to demand a jury.

***1115** N. L. R. B. v. Jones & Laughlin Steel Corp., 301 U.S. 1, 48-49, 57 S.Ct. 615, 81 L.Ed. 893, does not hold-as is sometimes assumed-that no jury trial is required in a cause of action created by statute since any such action would have been unknown to the common law and therefore beyond the reach of the Seventh Amendment. The *Jones & Laughlin* opinion expressly recognizes that the amendment is applicable not only to a suit at common law, but also to a judicial proceeding "in the nature of such a suit." The distinction drawn in the opinion is not between substantive rights derived from the common law as opposed to those created by statute; it is the difference between a proceeding "in the nature of a suit at common law" and a "statutory proceeding." [FN15]

> FN15. The Court's entire discussion of the Seventh Amendment issue occupies less than one page of a 27-page opinion. That page includes the Court's discussion of both the historic view that no jury is required if the recovery of damages is an incident to equitable relief (a proposition discussed in part IV of this opinion) and to the statutory proceeding point. The Court said:
> "The Amendment thus preserves the right which existed under the common law when the Amendment was adopted. Shields v. Thomas, 18 How. 253, 262 [59 U.S. 253, 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]; Baltimore & Carolina Line v. Redman, 295 U.S. 654, 657 [, 55 S.Ct. 890, 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]. 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 requirements imposed for violation of the statute and are remedies appropriate to its enforcement. The contention under the Seventh Amendment is without merit." 301 U.S. at 48-49, 57 S.Ct. at 629. (Emphasis added.)

The Court's reference to a "statutory proceeding" rather than to a judicial proceeding brought to redress a right created by statute is important. Cases such as Parsons v. Bedford and Fleitmann v. Welsbach Street Lighting Co. were such judicial proceedings, and their teaching is not undermined in the slightest by the *Jones & Laughlin* holding. The procedure approved by *Jones & Laughlin* was, of course, fundamentally different from a common law trial. It was administrative rather than judicial and did not invoke the original jurisdiction of a court in determining factual issues or fashioning a remedy. The initial case was not "tried" in a court of law or equity; it was "tried" in a separate *proceeding* created by statute. [FN16]

> FN16. That this is what the Court meant when it referred to a "*proceeding* . . . not in the nature of a suit at common law" (emphasis added) is clear from the case which it cites to support the statement, Guthrie National Bank v. Guthrie, 173 U.S. 528, 19 S.Ct. 513, 43 L.Ed. 796. In that case a territorial legislature set up a special commission that did not include a jury to hear certain claims against a municipality. The claims had no legal force, but the legislature thought it equitable to provide for their payment in appropriate cases. While a court became involved in approving or disapproving the recommendations of the commission, it is clear that the *proceeding*, and not merely the right to relief, was statutory. See Developments, *supra* note 9, 84 Harv.L.Rev. at 1266-1268.

[5] Here there is no statutory *proceeding*. The statute authorizes a "civil action" in the courts of the United States. The rights protected and the relief available are set forth in the statute, but the proceeding is not statutory ***1116** in the *Jones & Laughlin* or *Guthrie* [FN17] sense. [FN18] The issue we must consider, therefore, is whether an action for damages authorized by the Civil Rights Act of 1968 is, in the language of *Jones & Laughlin*, "in the nature of a suit at common law."

> FN17. See note 16, *supra*.

> FN18. In making a similar analysis of *Jones & Laughlin* in the context of a damage remedy for employment discrimination under Title VII of the Civil Rights Act of 1964, one commentator drew this conclusion:
> "The Court there held that a jury trial was not required in a 'statutory *proceeding*'; its concern was to protect the comprehensive administrative scheme of the NLRB, which would have been substantially destroyed if jury trials were required. The relevant distinction thus appears to be between those statutory actions which invoke an administrative process and those which do not. If the Congress makes a judgment that a comprehensive scheme of administrative adjudication is required, the Court will be willing to find that it is a 'statutory proceeding' to which the seventh amendment has no application. If, however, a statutory claim is entrusted to court decision, where there is no functional justification for not granting a jury trial, and the claim is for the type of relief normally awarded by a court of law, as would be the case in an action for compensatory damages under Title VII, the similarity to common law forms of action will require a jury trial." Developments, *supra*, note 9, 84 Harv.L.Rev. at 1267-1268.

II.

There are three reasons why this action is the kind of case which is appropriately described as in the nature of a suit at common law.

[6] First, the tribunal whose jurisdiction is invoked is a court created pursuant to Article III of the Constitution. Unquestionably, congressional power to prescribe the procedures to be employed in such a court is limited by the Constitution and specifically by the Seventh Amendment. [FN19] The proceeding is judicial in character rather than administrative or "statutory." In all respects-at least all except the right to a jury trial if our appraisal of that right is not correct-it is clear that the procedure to be followed in this case is precisely that which is applicable to suits at common law which are tried in the federal judicial system.

> FN19. In Minneapolis & St. Louis R.R. v.

> Bombolis the Court expressly noted that "the Seventh Amendment is controlling upon Congress." 241 U.S. 211, 219, 36 S.Ct. 595, 597, 60 L.Ed. 961.

Second, the remedy sought, including both compensatory and punitive damages, is the relief most typical of an action at law. If, as the scholars have consistently indicated, we should look to history for guidance in determining whether or not a claim is of the kind which is triable to a jury, [FN20] unquestionably the prayer for damages points to that result. [FN21]

> FN20. The proposition that we should look to history for guidance is well settled. See 5 Moore's Federal Practice ¶ 38.11 [7]; 9 Wright and Miller, Federal Practice and Procedure, Civil § 2302; James, Civil Procedure § 8.1 at p. 338 (1965). Even the dissenters in Ross v. Bernhard agreed, 396 U.S. 531, 543 n. 1, 90 S.Ct. 733, 24 L.Ed.2d 729.

> FN21. Damages, of course, were traditionally awarded in legal actions to compensate a plaintiff for a breach of a legal duty owed him by defendant. That duty may be prescribed by the common law (*e. g.*, the tort law of negligence), by contract or by statute. The origin of the duty does not necessarily determine the nature of the suit. In Texas & Pacific Ry. v. Rigsby, 241 U.S. 33, 36 S.Ct. 482, 60 L.Ed. 874, for example, the Court found an implied remedy for damages for violation of the duty placed upon defendant by the Safety Appliance Act. The case was tried to a jury.
> In concluding that a jury trial was required in a suit seeking damages under the Labor-Management Reporting and Disclosure Act of 1959, the Fourth Circuit said in part:
> "The right asserted is indeed one created by statute, but we do not agree that a jury trial is necessarily unavailable because the suit for damages is one to vindicate a statutory right. There is no such cleavage between rights existing under common law and rights established by enacted law, where the relief sought is an award of damages." Simmons v. Avisco, Local 713, Textile Workers Union, 350 F.2d 1012, 1018 (1965).

***1117** [7] Finally, the nature of the substantive right asserted, although not specifically recognized at common law, is analogous to common law rights. An English innkeeper who refused, without justification, to rent lodgings to a traveler was apparently liable in an action at law triable to a jury. [FN22] Refusing to rent an apartment on the false ground that an applicant is an unfit tenant, when race is the real motivation, is a species of defamation; libel and slander, of course, are common law causes of action. Discrimination might involve mental distress or other emotional harm, and the developing common law of torts recognizes a cause of action for the intentional infliction of emotional harm. [FN23]

> FN22. "Thus innkeepers, who have nowhere been described as public utilities, have from early times been subject to the obligation to receive and afford proper entertainment to every one who offers himself as a guest, if there be sufficient room for him in the inn, and no good reason for refusing him." Davies Warehouse Co. v. Brown, 137 F.2d 201, 207 (Emerg.Ct.App.1943), and cases there cited. *Davies* was reversed on other grounds, 321 U.S. 144, 64 S.Ct. 474, 88 L.Ed. 635.
> See also Thomas v. Pick Hotels Corp., 224 F.2d 664, 666 (10th Cir. 1955) (common law action against innkeeper for discrimination sounds in tort); 43 C.J.S. Innkeepers § 9 at p. 1149.

> FN23. At common law, an innkeeper was liable in damages for insulting or abusing his guests or indulging in any conduct resulting in unnecessary physical discomfort or distress of mind. See Odom v. East Avenue Corp., 178 Misc. 363, 34 N.Y.S.2d 312 (1942), affirmed, 264 App.Div. 985, 37 N.Y.S.2d 491 (complaint seeking damages against innkeeper for failure to serve guest in hotel restaurant because of race states common law cause of action). Professors Gregory and Kalven have suggested that the logic of the common law development of the dignitary tort might well apply in cases of racial discrimination. Gregory & Kalven, Cases and Materials On Torts 961 (2d ed. 1969). In addition, a racial discrimination suit might also be considered analogous to the so-called "new tort" for extreme and outrageous conduct which results in emotional harm. As to this "new tort," see Eckenrode v. Life of America Ins. Co., 470 F.2d 1 (7th Cir. 1972).

We therefore conclude that a suit for damages

for discrimination in the sale or rental of housing facilities is sufficiently analogous to a suit at common law to be appropriately characterized as a "legal" claim triable to a jury.

III.

Although the full implications of the Supreme Court's decision in Ross v. Bernhard, 396 U.S. 531, 90 S.Ct. 733, 24 L.Ed.2d 729 have yet to be determined, it is clear that mere analogy to history may not be sufficient to define the scope of the Seventh Amendment. In that case the constitutional right to a jury trial was held to encompass at least some claims in litigation which historically had been the exclusive province of equity. That was a derivative action brought by a shareholder in the name of a corporation. The shareholder's standing to litigate was governed by equitable principles; the corporate claim which he asserted was, at least in part, legal. [FN24]

> FN24. "In the instant case we have no doubt that the corporation's claim is, at least in part, a legal one. The relief sought is money damages. There are allegations in the complaint of a breach of fiduciary duty, but there are also allegations of ordinary breach of contract and gross negligence. The corporation, had it sued on its own behalf, would have been entitled to a jury's determination, at a minimum, of its damages against its broker under the brokerage contract and of its rights against its own directors because of their negligence. Under these circumstances it is unnecessary to decide whether the corporation's other claims are also properly triable to a jury. Dairy Queen, Inc. v. Wood, 369 U.S. 469 [, 82 S.Ct. 894, 8 L.Ed.2d 44] (1962)." 396 U.S. 531, 542-543, 90 S.Ct. 733, 740.

History was unquestionably relevant to the Court's analysis of the question whether a jury trial was required in such a case. But, following the lead set in *Beacon* and *Dairy Queen*, the traditional treatment of the entire litigation ***1118** was subordinated to the traditional characterization of particular claims. Thus, the Court had "no doubt" that a claim for money damages predicated on breach of contract or gross negligence was legal in character.

This conclusion did not rest, as it might, simply on the fact that such a claim was enforceable at common law in England in 1791. Instead, the Court identified history as only one of three criteria that should be considered in determining the "legal" nature of an issue. The other two were: "second, the remedy sought; and, third, the practical abilities and limitations of juries." [FN25] Indeed, not only did the Court identify these two additional criteria; it also implied, without expressly stating, that history may be a less reliable guide than the other two. [FN26] We have already concluded that under an historical analysis a jury trial is required in the present case; we proceed to consider the other two criteria.

> FN25. "As our cases indicate, the 'legal' nature of an issue is determined by considering, first, the pre-merger custom with reference to such questions; second, the remedy sought; and, third, the practical abilities and limitations of juries. *Of these factors, the first, requiring extensitve and possibly abstruse historical inquiry, is obviously the most difficult to apply.*" 396 U.S. at 538 note 10, 90 S.Ct. at 738. (Emphasis added.)

> FN26. In the preceding footnote we have emphasized the language which so implies.

Under the second and third criteria identified in Ross v. Bernhard, the civil rights claim asserted in this case was certainly appropriate for determination by a jury. The relief sought was actual damages and punitive damages. Both the determination of the amount which would adequately compensate a litigant for an unliquidated claim and the punitive element of the award are appropriate for jury determination. As we have already discussed, juries historically have been required where the remedy sought was damages, either compensatory or punitive.

The "practical abilities and limitations of juries" obviously present no obstacle to their determination of the issues presented in these civil rights cases. Typically, the facts are not complex and decision turns on appraisals of credibility and motive. Certainly such matters are far more suitable for jury determination than complicated commercial issues that routinely arise in derivative and antitrust litigation. Thus, the third as well as the second criterion identified in Ross v. Bernhard strongly militates in favor of recognition of the right to a jury trial in a case of this kind.

History indicates that a jury trial is required. And if the Supreme Court adheres to its identification of two additional criteria in Ross v. Bernhard, both the damage relief sought and the character of the issue to be tried compel the conclusion that the litigants are entitled to a jury.

IV.

The *Jones & Laughlin* holding that the Seventh Amendment is inapplicable to an N.L.R.B. proceeding terminating in the entry of an order directing reinstatement and awarding back pay was supported not only by the Court's characterization of the proceeding as statutory, but also by reference to chancery practice in which damages could be awarded as an element of complete equitable relief. [FN27] In this case the district court also regarded the relief authorized by the 1968 Act as primarily equitable and considered it appropriate to award damages as incident to such relief.

FN27. See quotation from the Court's opinion in footnote 15, *supra*.

As the case developed, the defendant's right to demand a jury was not determined until after plaintiff's claim for equitable relief had been abandoned. Nevertheless, we share the district court's view that the right to a jury trial in this kind of case may properly be tested by the character of the relief ***1119** requested in plaintiff's complaint. Our decision is not predicated on the special circumstance that only the damage claims remained when defendant's demand for a jury was denied.

At common law, a court of equity, in a proceeding properly before it, would hear and determine any legal issues incidental to the equitable issues and award any legal relief which might be incidental to equitable relief. [FN28] Multiplicity of suits could thus be avoided. And if equitable relief were no longer appropriate, the chancellor might nevertheless award damages or, in his discretion, permit the complaint to be amended to state only a legal claim which would then be triable to a jury. [FN29]

FN28. For purposes of our discussion of this "incidental to equitable relief" issue, we will assume, without deciding, that compensatory damages comparable to those sought herein might have been recovered in an 18th century chancery proceeding in which equitable relief appropriate when the suit was filed later became inappropriate.

FN29. See generally 5 Moore's Federal Practice, ¶ 38.19 [2]; 9 Wright & Miller, Federal Practice and Procedure, Civil § 2308, at pp. 42-43.

[8] Today, however, legal and equitable issues can both be raised in one "civil action" under the Federal Rules. Thus, the avoidance of a multiplicity of suits and the desire to afford a complete remedy in one proceeding are no longer justifications for the "incidental" power of an equity court to award money damages. The right of the court, without a jury, to award "incidental" legal relief was nevertheless thought secure under the Federal Rules until the Supreme Court indicated differently in Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S.Ct. 948, 3 L.Ed.2d 988, and Dairy Queen, Inc. v. Wood, 369 U.S. 469, 82 S.Ct. 894, 8 L.Ed.2d 44.

In *Beacon*, the Court upheld the petitioner's right to a jury trial of his counterclaim for treble damages under the antitrust laws which he had asserted in response to a complaint seeking, in part, equitable relief. In *Dairy Queen*, plaintiff sought injunctive relief against use of a trademark and an accounting to determine the amount due under a contract deemed breached. The district court held that the proceeding was either "purely equitable" or that any legal issues were "incidental" to the equitable issues. Mr. Justice Black, speaking for the Court, disposed of the "incidental" issue quite bluntly: "[N]o such rule may be applied in the federal courts." [FN30] Referring to *Beacon*, he wrote:

FN30. 369 U.S. at 470, 82 S.Ct. at 896. The complete sentence was:
"At the outset, we may dispose of one of the grounds upon which the trial court acted in striking the demand for trial by jury-that based upon the view that the right to trial by jury may be lost as to legal issues where those issues are characterized as 'incidental' to equitable issues-for our previous decisions make it plain that no such rule may be applied in the federal courts." *Ibid.*

"The holding in *Beacon Theatres* was that where both legal and equitable issues are presented in a single case, 'only under the most imperative circumstances, circumstances which in view of the flexible procedures of the Federal Rules we cannot now anticipate, can the right to a jury trial of legal issues be lost through prior determination of equitable claims.' That holding, of course, applies whether the trial judge chooses to characterize the legal issues presented as 'incidental' to equitable issues or not. Consequently, in a case such as this where there cannot even be a contention of such 'imperative circumstances,' *Beacon Theatres* requires that any legal issues for which a trial by jury is timely and properly demanded be submitted to a jury. There being no question of the timeliness or correctness of the demand involved here, the sole

question which we must decide is whether the action now pending before the District Court contains legal issues." [FN31]

FN31. *Id.* at 472-473, 82 S.Ct. at 897. Preceding the quotation in the text, the Court wrote:
". . . Rule 38(a) expressly reaffirms that constitutional principle, declaring: 'The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate." Nonetheless, after the adoption of the Federal Rules, attempts were made indirectly to undercut that right by having federal courts in which cases involving both legal and equitable claims were filed decide the equitable claim first. The result of this procedure in those cases in which it was followed was that any issue common to both the legal and equitable claims was finally determined by the court and the party seeking trial by jury on the legal claim was deprived of that right as to these common issues. This procedure finally came before us in Beacon Theatres, Inc. v. Westover, ..." *Id.* at 472, 82 S.Ct. at 896.

***1120** [9][10] It would appear that *Beacon* and *Dairy Queen* have mandated that once any claim for money damages is made, the legal issue-whether defendant breached a duty owed plaintiff for which defendant is liable in damages-must be tried to a jury whether or not there exists an equitable claim to which the damage claim might once have been considered "incidental." [FN32] We therefore conclude that the right to a jury trial of a claim for damages under the Civil Rights Act of 1968 may not be denied on the ground that such damages are merely incidental to the prayer for injunctive relief. [FN33]

FN32. "Since the decision of the Supreme Court in Beacon Theatres, Inc. v. Westover, and Dairy Queen, Inc. v. Wood, it is clear that there is a right to a jury trial on an issue of damages, whether they are pleaded independently, or as an incident to a request for an injunction." 5 Moore's Federal Practice ¶ 38.24 [1] at p. 190.4. See also ¶ 39.19 [2] at p. 172.1. There is an equitable remedy of restitution which would not, of course, be eliminated by these decisions. In Porter v. Warner Holding Co., 328 U.S. 395, 66 S.Ct. 1086, 90 L.Ed. 1332, the Court recognized that in the government's suit for an injunction to enforce the emergency Price Control Act of 1942, the government might recover overcharges as restitution. The court thought the equitable remedy of restitution appropriate-even though not not specified in the statute-because it was incidental to other equitable relief and because its use would be appropriate to the enforcement of the statute. But these were justifications for the awarding of relief concededly equitable. The statute also permitted a private suit for damages and a government suit for damages (in the nature of penalties as the Court described them); in either case the damages might be trebled. The Court noted that restitution "differs greatly from the damages and penalties which may be awarded." *Id.* at 402, 66 S.Ct. at 1091. These remedies were expressly identified as legal in nature, and hence a jury trial would have been required.

FN33. It seems quite clear that the punitive damages in this case cannot be considered "incidental" to equitable relief. See note 44, *infra*. See also Porter v. Warner Holding Co., 328 U.S. 395, 66 S.Ct. 1086, 90 L.Ed. 1332, in which the Supreme Court viewed the government's right to sue for damages under the Emergency Price Control Act of 1942 as an action at law for "penalties." *Id.* at 401-402, 66 S.Ct. 1086. See also United States v. Jepson, 90 F.Supp. 983 (D.N.J.1950). But *cf.* United States v. Shaughnessy, 86 F.Supp. 175 (D.Mass.1949). The *Shaughnessy* court held that the government could recover statutory penalties along with an injunction under the Housing and Rent Act of 1947. One basis for the decision, that the damages could be considered "incidental" to equitable relief, is now obsolete in view of *Beacon* and *Dairy Queen*. The other basis was that the "damages sought are in the nature of a penalty when sued for by the United States, and this right to sue exists only where the tenant himself has failed to bring his action. It is essentially what would be an old action in equity and, as such, is triable before a court without a jury." *Ibid.* Professor Moore is critical of this decision. 5 Moore's Federal Practice ¶ 38.37 [1] at 307. The court failed to mention either the Supreme Court's decision in *Porter* or the general proposition that equity will not avoid

damages penal in character. To the extent that it may have viewed the suit as one in equity because the government stood in the shoes of the individual tenant, Ross v. Bernhard, 396 U.S. 531, 90 S.Ct. 733, 24 L.Ed.2d 729 (discussed in the text, *supra*), has clearly eliminated that basis for denying a jury trial.

***1121** V.

Since the district court relied on several cases [FN34] holding that in an employee's suit for reinstatement and back pay under Title VII of the Civil Rights Act of 1964, the employer is not entitled to a jury trial, we should briefly indicate why we think the reasoning of those cases is inapplicable here.

FN34. See note 8, *supra*. See also Johnson v. Georgia Highway Express, Inc., 417 F.2d 1122, 1125 (5th Cir. 1969); Harkless v. Sweeny Independent School District, 427 F.2d 319, 324 (5th Cir. 1970), cert. denied, 400 U.S. 991, 91 S.Ct. 451, 27 L.Ed.2d 439 (no jury trial for back pay claim under 42 U.S.C. § 1983); Culpepper v. Reynolds Metals Co., 296 F.Supp. 1232, 1239-1243 (N.D.Ga.1968), reversed on other grounds, 421 F.2d 888 (5th Cir. 1970). *Cf.* Ochoa v. American Oil Co., 338 F.Supp. 914 (S.D.Tex.1972) (court writes in depth opinion contrary to these prevailing cases but follows circuit precedent in denying jury trial).

First, insofar as the cases hold that back pay is a legal remedy which may be recovered as incidental to equitable relief, we believe they cannot stand in the face of *Beacon* and *Dairy Queen.*

Second, to the extent that they hold, relying on N. L. R. B. v. Jones & Laughlin Steel Corp., 301 U.S. 1, 48-49, 57 S.Ct. 615, 81 L.Ed. 893, that a jury trial is not required because the right vindicated is a statutory right, we reject the conclusion because it fails to differentiate between a statutory proceeding and the enforcement of a statutory right in an ordinary "civil action" in the courts.

Third, an acceptable rationale for awarding back pay in a non-jury judicial proceeding is consistent with our analysis of the damage claims asserted in this case. It is not unreasonable to regard an award of back pay as an appropriate exercise of a chancellor's power to require restitution. [FN35] Restitution is clearly an equitable remedy. As Professor Moore put it:

FN35. This reasoning is applicable to 42 U.S.C. § 1983 as well since that statute authorizes not only "an action at law" but also a "suit in equity."

"In equity, restitution is usually thought of as a remedy by which defendant is made to disgorge illgotten gains or to restore the status quo, or to accomplish both objectives." [FN36]

FN36. 5 Moore's Federal Practice ¶ 38.24 [2] at p. 190.5.

The retention of "wages" which would have been paid but for the statutory violation (of improper discharge) might well be considered "ill-gotten gains"; ultimate payment restores the situation to that which would have existed had the statute not been violated. [FN37]

FN37. Similarly, rent overcharges might be termed "ill-gotten gains." Porter v. Warner Holding Co., 328 U.S. 395, 66 S.Ct. 1086, 90 L.Ed. 1332, discussed in note 32, *supra*. Attempts have been made to distinguish private actions and actions intended to correct an offense against the public interest, with the conclusion that a jury trial need not be afforded in the latter situation. In addition to the analytic difficulty with this public-private distinction, see Note, The Right to Jury Trial Under Title VII of the Civil Rights Act of 1964, 37 U.Chi.L.Rev. 167, 175-176, we fail to see how this makes any difference in the application of the Seventh Amendment. Whether a purely private wrong or a wrong somehow associated with the public interest is to be vindicated, if Congress chooses to permit its vindication by a "civil action" in the courts, it must respect the commands of the Seventh Amendment. Suits to collect statutory penalites-clearly suits brought to redress offenses against the public interest-have long been considered suits to collect a debt which are triable to a jury. See Hepner v. United States, 213 U.S. 103, 29 S.Ct. 474, 53 L.Ed. 720, and cases there cited. See also Fleitmann v. Welsbach Street Lighting Co., 240 U.S. 27, 29, 36 S.Ct. 233, 60 L.Ed. 505; Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 510, 79 S.Ct. 948, 3 L.Ed.2d 988. This "public interest" concept might appropriately be used as a persuasive justification for the use of the equitable remedy of restitution. See Porter v. Warner Holding Co., 328 U.S. at 402, 66

S.Ct. 1086. The court in Wirtz v. Jones, 340 F.2d 901, 905 (5th Cir. 1965) referred to the fact that the suit was "to redress a wrong done to the public good" when it denied a jury trial in a suit by the government to enjoin violation of the Fair Labor Standards Act and to compel payment of withheld wages. However, the opinion makes it clear, citing as it does the *Porter* case, that the court was speaking of the equitable power to order restitution. If the remedy cannot fairly be characterized as restitution, however, the fact that the recovery sought is to redress a wrong done to the public good should not affect the right to a jury trial.

***1122** [11] The payment of compensatory damages in a housing discrimination case, however, is not a return to plaintiff of something which defendant illegally obtained or retained; it is a payment in money for those losses-tangible and intangible-which plaintiff has suffered by reason of a breach of duty by defendant. Such damages, as opposed to rent overcharges, [FN38] unpaid overtime wages, [FN39] or back pay, cannot properly be termed restitution. [FN40]

FN38. Porter v. Warner Holding Co., 328 U.S. 395, 66 S.Ct. 1086, 90 L.Ed. 1332. See note 32, *supra.*

FN39. Wirtz v. Jones, 340 F.2d 901 (5th Cir. 1965). See note 37, *supra.* If, however, an employee rather than the government sues for back wages and liquidated damages under the Fair Labor Standards Act, the action is triable to a jury. See cases cited in *Wirtz* at p. 904. The employee's action is generally viewed as analogous to a common law action of debt or assumpsit. The liquidated damages available to an individual plaintiff would not be recoverable in equity as restitution. In any event, the same recovery available as restitution in equity might also be available in the common law action for general assumpsit. See 5 Moore's Federal Practice ¶ 38.24 [2] at p. 190.5.

FN40. One commentator's observation in the Title VII situation might apply equally well to other instances of restitution: "However, it is important to note that the highly subjective questions of damages, which are often felt to be particularly appropriate for jury determination, are not present in Title VII cases. Back pay awards usually involve a definite amount for a definite period of time, and the total amount in controversy often can be stipulated by the parties. Most problems in determining the amount of a back pay award would be ones of computation rather than subjective evaluation." Comment, The Right to Jury Trial Under Title VII of the Civil Rights Act of 1964, 37 U.Chi.L.Rev. 167, 173 (1969).

Whether or not the jury trial issue was correctly resolved in the back pay cases arising under the 1964 Act, [FN41] we are satisfied that they are not applicable to the question presented to us under the 1968 statute.

FN41. We note the conflicting views expressed by Judge Noel in Ochoa v. American Oil Co., 338 F.Supp. 914 (S.D.Tex.1972), but we, of course, express no opinion on the issue since it is not before us.

VI.

As the district court correctly emphasized, there are persuasive reasons for interpreting § 812 to authorize "the court" but not a jury to award damages to an injured party. When those words are used in connection with the allowance of fees, they clearly describe the judge rather than the jury. [FN42] Therefore, it is argued that the same words in the clause providing that the "court" may award damages must also refer to the trial judge rather than the jury.

FN42. The proviso to subparagraph (c) states that the prevailing plaintiff shall be awarded fees if "said plaintiff in the opinion of the court is not financially able to assume said attorneys' fees." 42 U.S.C. § 3612(c).

The argument is persuasive but not compelling. The "award" may refer to the entry of judgment by the court just as the amount which a plaintiff may "recover" in antitrust litigation is finally determined by the court's judgment rather than the verdict of a jury, which is unmentioned in the Clayton Act but is undeniably required if demanded by either party.

Other language in the statute implies, without expressly stating, that a jury's participation is appropriate. The statutory reference to "damages" and also to "punitive damages" would normally contemplate a jury verdict as an element of the judicial process leading up to the final ***1123** award. [FN43] Certainly it is highly unusual for a federal statute to authorize a court to impose punishment,

even if limited to $1,000, without according the defendant the right to a jury trial. [FN44]

FN43. Title VII of the Civil Rights Act of 1964, see 42 U.S.C. § 2000e-5(g), provides for back pay but not for "damages" or "punitive damages."

FN44. A court of equity would not enforce a penalty or forfeiture absent a specific statutory authorization. See Livingston v. Woodworth, 56 U.S. (15 How.) 546, 559-560, 14 L.Ed. 809; Stevens v. Gladding, 58 U.S. (17 How.) 447, 453-454, 15 L.Ed. 155. (Except in admiralty, forfeiture cases are triable to a jury. C. J. Hendry Co. v. Moore, 318 U.S. 133, 153, 63 S.Ct. 499, 87 L.Ed. 663; 5 Moore's Federal Practice ¶ 38.12 [7], subdivision 1 at p. 135.) *Cf.* Decorative Stone Co. v. Building Trades Council of Westchester County, 23 F.2d 426 (2d Cir. 1928), cert. denied, 277 U.S. 594, 48 S.Ct. 530, 72 L.Ed. 1005. Furthermore, it appears that the few cases which have held that a court may decide if punitive damages shall be awarded have all been patent cases in which a jury trial was available on the issues of infringement and actual damages and the court merely decided, pursuant to unequivocal statutory language, whether the damages should be increased (up to a maximum of three times the actual damages). See Seymour v. McCormick, 57 U.S. 480, 488-489, 16 How. 480, 14 L.Ed. 1024; Swofford v. B. & W., Inc., 336 F.2d 406 (5th Cir. 1964), cert. denied, 379 U.S. 962, 85 S.Ct. 653, 13 L.Ed.2d 557; Kennedy v. Lasko Co., 414 F.2d 1249 (3rd Cir. 1969). Those cases indicate that the jury shall determine the issue of actual damages; the latter two cases find that *Beacon* and *Dairy Queen* compel a jury trial on the actual damage question. It is one thing to permit a judge to increase the damage award after a jury trial in which a statutory violation has been found and actual damages awarded (the trial judge's right to set the amount of a fine in a criminal case *after* a jury trial on the factual issues is somewhat analogous); it is quite another thing to permit the imposition of punishment when there is no jury trial as an element of the judicial process leading up to that result.

[12] The term "civil action" in legislation enacted since the merger of law and equity in 1938 is comparable to the words "action at law" or "suit in equity" which were used previously. [FN45] The words "action at law" implied a right to jury trial. The words "civil action," as *Beacon, Dairy Queen* and *Ross* make clear, do not in any sense imply that there is no right to a jury trial-a "civil action" asserting a legal claim is triable to a jury.

FN45. See 42 U.S.C. § 1983.

The legislative history of the 1968 act is silent on the question. There is no evidence that the proponents of the legislation expressed fear that the right to a jury trial would undermine the statute's effectiveness, or conversely, that opponents accepted any compromise in reliance on an assurance that juries could be demanded. The policy considerations which prompted the legislation probably favor a denial of the right; on the other hand, the more basic constitutional considerations which surround the right to a jury as a protection against the over-zealous judge, point the other way. Nor, if the right to have a jury represent a fair cross section of the community and the desirability of broadening lay participation in judicial implementation of civil rights are kept in mind, can one assert that policy considerations unequivocally favor one view rather than the other.

In the end, we look to another canon of construction as controlling in this case. As Mr. Justice Holmes stated in United States v. Jin Fuey Moy: "A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score." 241 U.S. 394, 401, 36 S.Ct. 658, 659, 60 L.Ed. 1061. See also United States v. Campos-Serrano, 404 U.S. 293, 92 S.Ct. 471, 30 L.Ed.2d 457. [FN46]

FN46. And see Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 448-449, 7 L.Ed. 732: "If, indeed, the construction contended for at the bar were to be given to the act of Congress, we entertain the most serious doubts, whether it would not be unconstitutional. No Court ought, unless the terms of an act rendered it unavoidable, to give a construction to it which should involve a violation, however unintentional, of the constitution. . . ."

***1124** Even if our discussion of the Seventh Amendment is deemed inadequate to overcome an unambiguous statutory denial of a jury trial in an action to recover compensatory and punitive damages, there are certainly enough "grave doubts upon that score" that we should place an interpretation on the statute which will avoid the constitutional issue. We therefore hold that it was

error for the district court to refuse defendants' request for a jury trial.

The judgment is reversed and the case is remanded for further proceedings consistent with this opinion.

Reversed and remanded.

467 F.2d 1110, 16 Fed.R.Serv.2d 956

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Supreme Court of the United States

Julia Rogers CURTIS, Petitioner,
v.
Leroy LOETHER et al.

No. 72--1035.

Argued Dec. 4--5, 1973.
Decided Feb. 20, 1974.

Suit was brought on charges of violation of fair housing provisions of the Civil Rights Act of 1968. The United States District Court for the Eastern District of Wisconsin, 312 F.Supp. 1008, awarded punitive damages and an appeal was taken. The United States Court of Appeals for the Seventh Circuit, 467 F.2d 1110, reversed and remanded and certiorari was granted. The Supreme Court, Mr. Justice Marshall, held that the Seventh Amendment entitled either party on demand to jury trial in action for damages under such Act.

Affirmed.

****1006** Syllabus [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

***189** The Seventh Amendment of the Constitution entitles either party to demand a jury trial in an action for damages in the federal courts under s 812 of the Civil Rights Act of 1968, which authorizes private plaintiffs to bring civil actions to redress violations of the Act's fair housing provisions. Pp. 1006--1010.

467 F.2d 1110, affirmed.

Jack Greenberg, New York City, for petitioner.

Robert D. Scott, Washington, D.C., for respondents.

Mr. Justice MARSHALL delivered the opinion of the Court.

Section 812 of the Civil Rights Act of 1968, 82 Stat. 88, 42 U.S.C. s 3612, authorizes private plaintiffs to bring civil actions to redress violations of Title VIII, the fair housing provisions of the Act, and provides that '(t)he court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff ***190** actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney fees . . ..' The question presented in this case is whether the Civil Rights Act or the Seventh Amendment requires a jury trial upon demand by one of the parties in an action for damages and injunctive relief under this section.

Petitioner, a Negro woman, brought this action under s 812, claiming that respondents, who are white, had refused to rent an apartment to her because of her race, in violation of s 804(a) of the Act, 42 U.S.C. s 3604(a). In her complaint she sought only injunctive relief and punitive damages; a claim for compensatory damages was later added. [FN1] After an evidentiary hearing, the District Court granted preliminary injunctive relief, enjoining the respondents from renting the apartment in question to anyone else pending the trial on the merits. This injunction was dissolved some five months later with the petitioner's consent, after she had finally obtained other housing, and the case went to trial on the issues of actual and punitive damages.

FN1. Although the lower courts treated the action as one for compensatory and punitive damages, petitioner has emphasized in this Court that her complaint sought only punitive damages. It is apparent, however, that petitioner later sought to recover actual damages as well. The District Court's pretrial order indicates the judge's understanding, following a pretrial conference with counsel, that the question of actual damages would be one of the issues to be tried. App. 18a. Petitioner in fact attempted to prove actual damages, App. 45a, but her testimony was excluded for failure to comply with a pretrial discovery order. The District Judge later dismissed the claim of actual damages for failure of proof. In these circumstances, it is irrelevant that the pleadings were never formally amended. Fed.Rules Civ.Proc. 15(b), 16.

Respondents made a timely demand for jury trial in their answer. The District Court, however, held that ***191** jury trial was neither authorized by Title VIII nor required by the Seventh Amendment, and denied the jury request. Rogers v. Loether, 312 F.Supp. 1008 (ED Wis.1970). After trial on the merits, the District Judge found that respondents had in fact discriminated against petitioner on account of her race. Although he found no actual damages, see n. 1, supra, he awarded $250 in

punitive damages, denying petitioner's request for attorney's fees and court costs.

**1007 The Court of Appeals reversed on the jury trial issue. Rogers v. Loether, 467 F.2d 1110 (CA7 1972). After an extended analysis, the court concluded essentially that the Seventh Amendment gave respondents the right to a jury trial in this action, and therefore interpreted the statute to authorize jury trials so as to eliminate any question of its constitutionality. In view of the importance of the jury trial issue in the administration and enforcement of Title VIII and the diversity of views in the lower courts on the question, [FN2] we granted certiorari, 412 U.S. 937, 93 S.Ct. 2770, 37 L.Ed.2d 396 (1973). [FN3] We affirm.

FN2. The Seventh Circuit here was the first court of appeals to consider this issue, but the reported decisions of the district courts are evenly divided on the question. In addition to the District Court in this case, the court in Cauley v. Smith, 347 F.Supp. 114 (E.D.Va.1972), held that jury trial was not required in an action under s 812. Kastner v. Brackett, 326 F.Supp. 1151 (Nev.1971), and Kelly v. Armbrust, 351 F.Supp. 869 (N.D.1972), held that jury trial was required.

FN3. Petitioner married while the case was pending before the Court, and her motion to change the caption of the case accordingly was granted. 414 U.S. 1140, 94 S.Ct. 890, 39 L.Ed.2d 96 (1974).

[1] The legislative history on the jury trial question is sparse, and what little is available is ambiguous. There seems to be some indication that supporters of Title VIII were concerned that the possibility of racial prejudice on juries might reduce the effectiveness of civil *192 rights damages actions. [FN4] On the other hand, one bit of testimony during committee hearings indicates an awareness that jury trials would have to be afforded in damages actions under Title VIII. [FN5] Both petitioner and respondents have presented plausible arguments from the wording and construction of s 812. We see no point to giving extended consideration to these arguments, however, for we think it is clear that the Seventh Amendment entitles either party to demand a jury trial in an action for damages in the federal courts under s 812. [FN6]

FN4. See, e.g., Hearings on Miscellaneous Proposals Regarding Civil Rights before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 2d Sess., ser. 16, p. 1183 (1966).

FN5. See Hearings on S.3296 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 89th Cong., 2d Sess., pt. 2, p. 1178 (1966).

FN6. We recognize, of course, the 'cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the (constitutional) question may be avoided.' United States v. Thirty-seven Photographs, 402 U.S. 363, 369, 91 S.Ct. 1400, 1404, 28 L.Ed.2d 822 (1971), and cases there cited. In this case, however, the necessity for jury trial is so clearly settled by our prior Seventh Amendment decisions that it would be futile to spend time on the statutory issue, particularly since our result is not to invalidate the Civil Rights Act but only to direct that a certain form of procedure be employed in federal court actions under s 812.
Moreover, the Seventh Amendment issue in this case is in a very real sense the narrower ground of decision. Section 812(a) expressly authorizes actions to be brought 'in appropriate State or local courts of general jurisdiction,' as well as in the federal courts. The Court has not held that the right to jury trial in civil cases is an element of due process applicable to state courts through the Fourteenth Amendment. Since we rest our decision on Seventh Amendment rather than statutory grounds, we express no view as to whether jury trials must be afforded in s 812 actions in the state courts.

[2] The Seventh Amendment provides that '(i)n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.' *193 Although the thrust of the Amendment was to preserve the right to jury trial as it existed in 1791, it has long been settled that the right extends beyond the common-law forms of action recognized at that time. Mr. Justice Story established the basic principle in 1830:

'The phrase 'common law,' found in this clause, is used in contradistinction to equity, and admiralty, and **1008 maritime jurisprudence. . . . By common law, (the Framers of the Amendment) meant . . . not merely suits, which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and

equitable remedies were administered . . .. In a just sense, the amendment then may well be construed to embrace all suits which are not of equity and admiralty jurisdiction, whatever might be the peculiar form which they may assume to settle legal rights.' Parsons v. Bedford, 3 Pet. 433, 446--447, 7 L.Ed. 732 (1830) (emphasis in original).

[3] Petitioner nevertheless argues that the Amendment is inapplicable to new causes of action created by congressional enactment. As the Court of Appeals observed, however, we have considered the applicability of the constitutional right to jury trial in actions enforcing statutory rights 'as a matter too obvious to be doubted.' 467 F.2d, at 1114. Although the Court has apparently never discussed the issue at any length, we have often found the Seventh Amendment applicable to causes of action based on statutes. See, e.g., Dairy Queen, Inc. v. Wood, 369 U.S. 469, 477, 82 S.Ct. 894, 899, 8 L.Ed.2d 44 (1962) (trademark laws); Hepner v. United States, 213 U.S. 103, 115, 29 S.Ct. 474, 479, 53 L.Ed. 720 (1909) (immigration laws); cf. Fleitmann v. Welsbach Street Lighting Co., 240 U.S. 27, 36 S.Ct. 233, 60 L.Ed. 505 (1916) (antitrust laws), and the ***194** discussion of Fleitmann in Ross v. Bernhard, 396 U.S. 531, 535--536, 90 S.Ct. 733, 736--737, 24 L.Ed.2d 729 (1970). [FN7] Whatever doubt may have existed should now be dispelled. The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law.

FN7. See also Porter v. Warner Holding Co., 328 U.S. 395, 401-- 402, 66 S.Ct. 1086, 1090--1091, 90 L.Ed. 1332 (1946) (Emergency Price Control Act); Texas & Pacific R. Co. v. Rigsby, 241 U.S. 33, 36 S.Ct. 482, 60 L.Ed. 874 (1916) (Safety Appliance Act). The Courts of Appeals have similarly rejected the notion that the Seventh Amendment has no application to causes of action created by statute. See e.g., International Brotherhood of Boilermakers v. Braswell, 388 F.2d 193, 197 (CA5), cert. denied, 391 U.S. 935, 88 S.Ct. 1848, 20 L.Ed.2d 854 (1968); Simmons v. Avisco, Local 713, Textile Workers, 350 F.2d 1012, 1018 (CA4 1965); Arnstein v. Porter, 154 F.2d 464, 468 (CA2 1946), as well as the decision of the Seventh Circuit in this case, 467 F.2d, at 1113--1116. See generally Developments in the Law--Employment Discrimination and Title VII of the Civil Rights Act of 1964, 84 Harv.L.Rev. 1109, 1266 (1971).

[4][5] NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893 (1937), relied on by petitioner, lends no support to her statutory-rights argument. The Court there upheld the award of back pay without jury trial in an NLRB unfair labor practice proceeding, rejecting a Seventh Amendment claim on the ground that the case involved a 'statutory proceeding' and 'not a suit at common law or in the nature of such a suit.' Id., at 48, 57 S.Ct. at 629. Jones & Laughlin merely stands for the proposition that the Seventh Amendment is generally inapplicable in administrative proceedings, where jury trials would be incompatible with the whole concept of administrative adjudication [FN8] and would substantially interfere with the NLRB's role in the statutory scheme. ***195**Katchen v. Landy, 382 U.S. 323, 86 S.Ct. 467, 15 L.Ed.2d 391 (1966), also relied upon by petitioner, is to like effect. There the Court upheld, over a Seventh Amendment challenge, the Bankruptcy Act's grant of summary jurisdiction to the bankrutpcy court over the trustee's action ****1009** to compel a claimant to surrender a voidable preference; the Court recognized that a bankruptcy court has been traditionally viewed as a court of equity, and that jury trials would 'dismember' the statutory scheme of the Bankruptcy Act. Id., at 339, 86 SCt., at 478. See also Guthrie National Bank v. Guthrie, 173 U.S. 528, 19 S.Ct. 513, 43 L.Ed. 796 (1899). These cases uphold congressional power to entrust enforcement of statutory rights to an administrative process or specialized court of equity free from the strictures of the Seventh Amendment. But when Congress provides for enforcement of statutory rights in an ordinary civil action in the district courts, where there is obviously no functional justification for denying the jury trial right, a jury trial must be available if the action involves rights and remedies of the sort typically enforced in an action at law. [FN9]

FN8. '(T)he concept of expertise on which the administrative agency rests is not consistent with the use by it of a jury as fact finder.' L. Jaffe, Judicial Control of Administrative Action 90 (1965).

FN9. See Rogers v. Loether, 467 F.2d 1110, 1115--1116 (CA7 1972); Developments in the Law, supra, n. 7, at 1267--1268.

[6][7][8] We think it is clear that a damages action under s 812 is an action to enforce 'legal rights' within the meaning of our Seventh Amendment decisions. See, e.g., Ross v. Bernhard, supra, 396 U.S., at 533, 542, 90 S.Ct., at

735, 740; Dairy Queen, Inc. v. Wood, supra, 369 U.S., at 476--477, 82 S.Ct., at 899. A damages action under the statute sounds basically in tort--the statute merely defines a new legal duty, and authorizes the courts to compensate a plaintiff for the injury caused by the defendant's wrongful breach. As the Court of Appeals noted, this cause of action is analogous to a number of tort actions recognized at common law. [FN10] ***196** More important, the relief sought here--actual and punitive damages--is the traditional form of relief offered in the courts of law. [FN11]

FN10. For example, the Court of Appeals recognized that Title VIII could be viewed as an extension of the common-law duty of innkeepers not to refuse temporary lodging to a traveler without justification, a duty enforceable in a damages action triable to a jury, to those who rent apartments on a long-term basis. See 467 F.2d at 1117. An action to redress racial discrimination may also be likened to an action for defamation or intentional infliction of mental distress. Indeed, the contours of the latter tort are still developing, and it has been suggested that 'under the logic of the common law development of a law of insult and indignity, racial discrimination might be treated as a dignitary tort.' C. Gregory & H. Kalven, Cases and Materials on Torts 961 (2d ed. 1969).

FN11. The procedural history of this case generated some question in the courts below as to whether the action should be viewed as one for damages and injunctive relief, or as one for damages alone, for purposes of analyzing the jury trial issue. The Court of Appeals concluded that the right to jury trial was properly tested by the relief sought in the complaint and not by the claims remaining at the time of trial. 467 F.2d, at 1118--1119. We need express no view on this question. If the action is properly viewed as one for damages only, our conclusion that this is a legal claim obviously requires a jury trial on demand. And if this legal claim is joined with an equitable claim, the right to jury trial on the legal claim, including all issues common to both claims, remains intact. The right cannot be abridged by characterizing the legal claim as 'incidental' to the equitable relief sought. Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S.Ct. 948, 3 L.Ed.2d 988 (1959); Dairy Queen, Inc. v. Wood, 369 U.S. 469, 470--473, 82 S.Ct. 894, 896--897, 8 L.Ed.2d 44 (1962).

We need not, and do not, go so far as to say that any award of monetary relief must necessarily be 'legal' relief. See, e.g., Mitchell v. Robert DeMario Jewelry, Inc., 361 U.S. 288, 80 S.Ct. 332, 4 L.Ed.2d 323 (1960); Porter v. Warner Holding Co., 328 U.S. 395, 60 S.Ct. 1086, 90 L.Ed. 1332 (1946). [FN12] A comparison of Title VIII with Title VII of the Civil Rights Act of 1964, where the courts of appeals have held that jury trial is not required in an action for reinstatement and back pay, [FN13] is ***197** instructive, although ****1010** we of course express no view on the jury trial issue in that context. In Title VII cases the courts of appeals have characterized back pay as an integral part of an equitable remedy, a form of restitution. But the statutory language on which this characterization is based--

FN12. See also Swofford v. B&W, Inc., 336 F.2d 406, 414 (CA5 1964).

FN13. Johnson v. Georgia Highway Express, Inc., 417 F.2d 1122, 1125 (CA5 1969); Robinson v. Lorillard Corp., 444 F.2d 791, 802 (CA4), cert. dismissed under Rule 60, 404 U.S. 1006, 92 S.Ct. 573, 30 L.Ed.2d 655 (1971); cf. McFerren v. County Board of Education, 455 F.2d 199, 202--204 (CA6 1972); Harkless v. Sweeny Independent School District, 427 F.2d 319, 324 (CA5 1970), cert. denied, 400 U.S. 991, 91 S.Ct. 451, 27 L.Ed.2d 439 (1971); Smith v. Hampton Training School, 360 F.2d 577, 581 n. 8 (CA4 1966) (en banc); see generally Developments in the Law, supra, n. 7, at 1265--1266.

'(T)he court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay . . ., or any other equitable relief as the court deems appropriate,' 42 U.S.C. s 2000e--5(g) (1970 ed., Supp. II)--

contrasts sharply with s 812's simple authorization of an action for actual and punitive damages. In Title VII cases, also, the courts have relied on the fact that the decision whether to award back pay is committed to the discretion of the trial judge. There is no comparable discretion here: if a plaintiff proves unlawful discrimination and actual damages, he is entitled to judgment for that amount. Nor is there any sense in which the award here can be viewed as requiring the defendant to disgorge funds wrongfully withheld from the plaintiff. Whatever may be the merit of

the 'equitable' characterization in Title VII cases, there is surely no basis for characterizing the award of compensatory and punitive damages here as equitable relief. [FN14]

FN14. See Comment, The Seventh Amendment and Civil Rights Statutes: History Adrift in a Maelstrom, 68 Nw.U.L.Rev. 503, 524--527 (1973).

***198** We are not oblivious to the force of petitioner's policy arguments. Jury trials may delay to some extent the disposition of Title VIII damages actions. But Title VIII actions seeking only equitable relief will be unaffected, and preliminary injunctive relief remains available with out a jury trial even in damages actions Dairy Queen, Inc. v. Wood, 369 U.S., at 479 n. 20, 82 S.Ct., at 901. Moreover, the statutory requirement of expedition of s 812 actions, 42 U.S.C. s 3614 (1970), applies equally to jury and nonjury trials. We recognize, too, the possibility that jury prejudice may deprive a victim of discrimination of the verdict to which he or she is entitled. Of course, the trial judge's power to direct a verdict, to grant judgment notwithstanding the verdict, or to grant a new trial provides substantial protection against this risk, and respondents' suggestion that jury trials will expose a broader segment of the populace to the example of the federal civil rights laws in operation has some force. More fundamentally, however, these considerations are insufficient to overcome the clear command of the Seventh Amendment. [FN15] The decision of the Court of Appeals must be affirmed.

FN15. Although petitioner has emphasized that the policies underlying the Fair Housing Act are derived from the Thirteenth and Fourteenth Amendments, she expressly 'does not maintain that these constitutional considerations could prevent a jury trial if a jury were otherwise required by the Seventh Amendment.' Brief for Petitioner 7. Moreover, although the legislative history of Title VIII with respect to jury trials is ambiguous, there is surely no indication that Congress intended to override the requirements of the Seventh Amendment if it mandates that jury trials be provided in s 812 damage actions. We therefore have no occasion to consider in this case any question of the scope of congressional power to enforce s 2 of the Thirteenth Amendment or s 5 of the Fourteenth Amendment.

Affirmed.

415 U.S. 189, 94 S.Ct. 1005, 39 L.Ed.2d 260, 18 Fed.R.Serv.2d 189

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The Mayflower Compact (1620)

The settlers who came to the New World brought with them a great deal of baggage in the form of ideas and beliefs they had held dear in England. Indeed, many of them, such as the Puritans, came to America so they could live in stricter accord with those beliefs. The Pilgrims, a branch of the Puritans, arrived off the coast of Massachusetts in November 1620, determined to live sacred lives according to biblical commands, and in so doing to build a "city upon a hill" that would be a beacon to the rest of the world.

But aside from their religious enthusiasm, the Pilgrims also knew that the English settlement founded a few years earlier at Jamestown in Virginia had practically foundered because of the lack of a strong government and leadership. They would not make that mistake, and agreed that once a government had been established, they would obey the commands of its leaders.

In making this compact, the Pilgrims drew upon two strong traditions. One was the notion of a social contract, which dated back to biblical times and which would receive fuller expression in the works of Thomas Hobbes and John Locke later in the century. The other was the belief in covenants. Puritans believed that covenants existed not only between God and man, but also between man and man. The Pilgrims had used covenants in establishing their congregations in the Old World. The Mayflower Compact is such a covenant in that the settlers agreed to form a government and be bound by its rules.

The Compact is often described as America's first constitution, but it is not a constitution in the sense of being a fundamental framework of government. Its importance lies in the belief that government is a form of covenant, and that for government to be legitimate, it must derive from the consent of the governed. The settlers recognized that individually they might not agree with all of the actions of the government they were creating; but they, and succeeding generations, understood that government could be legitimate only if it originated with the consent of those it claimed to govern.

For further reading: William Bradford, Of Plymouth Plantation (Morison, ed., 1952); George Langdon, Pilgrim Colony (1966); John Demos, A Little Commonwealth (1970).

The Mayflower Compact

We whose names are underwritten, the loyal subjects of our dread Sovereign Lord King James, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, etc.

Having undertaken, for the Glory of God and advancement of the Christian Faith and Honour of our King and Country, a Voyage to plant the First Colony in the Northern Parts of Virginia, do by these presents solemnly and mutually in the presence of God and one of another, Covenant and Combine ourselves together into a Civil Body Politic, for our better ordering

and preservation and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute and frame such just and equal Laws, Ordinances, Acts, Constitutions and Offices, from time to time, as shall be thought most meet and convenient for the general good of the Colony, unto which we promise all due submission and obedience. In witness whereof we have hereunder subscribed our names at Cape Cod, the 11th of November, in the year of the reign of our Sovereign Lord King James, of England, France and Ireland the eighteenth, and of Scotland the fifty-fourth. Anno Domini 1620.

Source: William Bradford, Of Plymouth Plantation, 1620-1647 (Samuel Eliot Morison, ed., 1952), 75-76.

The Declaration of Independence (1776)

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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 to 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. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. -- Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world. He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws of Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries. He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance. He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States: For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us of many cases, of the benefits of Trial by Jury: For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments: For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all cases whatsoever. He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation, and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too must have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be free and independent states; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

Source: F. N. Thorpe, ed., Federal and State Constitutions, vol. 1 (1909), 3.

The Articles of Confederation

* Preamble
* Article I - Style
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The Articles of Confederation

Agreed to by Congress November 15, 1777; ratified and in force, March 1, 1781.

Preamble
To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Article I. The Stile of this Confederacy shall be "The United States of America."

Article II. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.

Article III. The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State, of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

Article V. For the most convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislatures of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests or imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

Article VI. No State, without the consent of the United States in Congress assembled, shall

send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, Prince or State; nor shall any person holding any office of profit or trust under the United States, or any of them, accept any present, emolument, office or title of any kind whatever from any King, Prince or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any King, Prince or State, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessel of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defense of such State, or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only, as in the judgement of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of filed pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the Kingdom or State and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

Article VII. When land forces are raised by any State for the common defense, all officers of or under the rank of colonel, shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

Article VIII. All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in

proportion to the value of all land within each State, granted or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Article IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article -- of sending and receiving ambassadors -- entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever -- of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated -- of granting letters of marque and reprisal in times of peace -- appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other causes whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgement and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of

such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgement, which shall in like manner be final and decisive, the judgement or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgement, shall take an oath to be administered by one of the judges of the supreme or superior court of the State, where the cause shall be tried, 'well and truly to hear and determine the matter in question, according to the best of his judgement, without favor, affection or hope of reward': provided also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States -- fixing the standards of weights and measures throughout the United States -- regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated -- establishing or regulating post offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office -- appointing all officers of the land forces, in the service of the United States, excepting regimental officers -- appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States -- making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated 'A Committee of the States', and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction -- to appoint one of their members to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses -- to borrow money, or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted -- to build and equip a navy -- to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the legislature of each State shall appoint the regimental officers, raise the men and cloath,

arm and equip them in a solid- like manner, at the expense of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled. But if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of each State, unless the legislature of such State shall judge that such extra number cannot be safely spread out in the same, in which case they shall raise, officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque or reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of the majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgement require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

Article X. The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of the nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled be requisite.

Article XI. Canada acceding to this confederation, and adjoining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Article XII. All bills of credit emitted, monies borrowed, and debts contracted by, or under

the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

Article XIII. Every State shall abide by the determination of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said Confederation are submitted to them. And that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In Witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the Year of our Lord One Thousand Seven Hundred and Seventy-Eight, and in the Third Year of the independence of America.

[Signatories omitted]

The Judiciary Act of 1789

One of the first acts of the new Congress was to establish a federal court system in the Judiciary Act of 1789. The Constitution provided that the judicial branch should be composed of one Supreme Court and such inferior courts as Congress from time to time established. But unlike the legislative provisions, in which the framers clearly spelled out the powers of the Congress, Article III of the Constitution is rather vague on just what the judicial powers should be.

Congress had little precedent to guide it, since in the British system the three court systems -- Common Pleas (private law), King's Bench (criminal law) and Chancery (equity) -- operated independently, and derived their authority from the King's writ. Even during colonial times, when American courts followed English precedent, the frontier society had been too poor in resources and trained personnel to follow British practice. So Congress had, in essence, a clean slate upon which to write. One of the more imaginative steps was combining law and equity into a single court system, thus providing for a more effective and efficient means of delivering justice.

The debate in Congress centered on how much power the Constitution transferred from the states to the federal government. States' rights activists opposed giving the new courts too much authority, while supporters argued that only a strong federal court system could overcome the weaknesses that had been so apparent during the Confederation period.

Looking back, it is hard to envision how the supremacy of the Constitution provided for in Article VI could possibly have been sustained without a strong federal court system, one empowered to review and, if necessary, overturn state court decisions. Otherwise, the country would have been saddled again with thirteen independent jurisdictions and no means to conform them to a single national standard. "I have never been able to see," James Madison wrote in 1832 commenting on the federal courts, how "the Constitution itself could have been the supreme law of the land; or that the uniformity of Federal authority throughout the parts to it could be preserved; or that without the uniformity, anarchy and disunion could be prevented."

The courts of the United States, as much as the legislative and executive branches, have been instruments of democratic government, binding a diverse people together.

For further reading: D.F. Henderson, Courts for a New Nation (1971); Julius Goebel, Antecedents and Beginnings to 1801 (1971); the first volume of the Holmes Devise, History of the Supreme Court of the United States; and Maeva Marcus, ed., Origins of the Federal Judiciary (1992).

The Judiciary Act of 1789

An Act to establish the Judicial Courts of the United States

Sec. 1. Be it enacted, That the supreme court of the United States shall consist of a chief justice and five associate justices, any four of whom shall be a quorum, and shall hold annually at the seat of government two sessions, the one commencing the first Monday of February, and the other the first Monday of August. That the associate justices shall have precedence according to the date of their commissions, or when the commissions of two or more of them bear the same date on the same day, according to their respective ages.

Sec. 2. That the United States shall be, and they hereby are, divided into thirteen districts, to be limited and called as follows, . . .

Sec. 3. That there be a court called a District Court in each of the aforementioned districts, to consist of one judge, who shall reside in the district for which he is appointed, and shall be called a District Judge, and shall hold annually four sessions, . . .

Sec. 4. That the beforementioned districts, except those of Maine and Kentucky, shall be divided into three circuits, and be called the eastern, the middle, and the southern circuit. . . . [T]hat there shall be held annually in each district of said circuits two courts which shall be called Circuit Courts, and shall consist of any two justices of the Supreme Court and the district judge of such districts, any two of whom shall constitute a quorum. Provided, That no district judge shall give a vote in any case of appeal or error from his own decision; but may assign the reasons of such his decision. . . .

Sec. 9. That the district courts shall have, exclusively of the courts of the several States, cognizance of all crimes and offenses that shall be cognizable under the authority of the United States, committed within their respective districts, or upon the high seas; where no other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is to be inflicted; and shall also have exclusive original cognizance of all civil cases of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, or trade of the United States. . . . And shall also have cognizance, concurrent with the courts of the several States, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States. And shall also have cognizance, concurrent as last mentioned, of all suits at common law where the United States sue, and the matter in dispute amounts, exclusive of costs, to the sum or value of one hundred dollars. And shall also have jurisdiction exclusively of the courts of the several States, of all suits against consuls or vice-consuls, except for offenses above the description aforesaid. And the trial of issues in fact, in the district courts, in all cases except civil causes of admiralty and maritime jurisdiction, shall be by jury. . . .

Sec 11. That the circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs or petitioners; or an alien is a party, or the suit is between a citizen of the State where the suit is brought and a citizen of another State. And shall have exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where this act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offenses cognizable therein. . . . And the circuit courts shall also have appellate jurisdiction from the district courts under the regulations and restrictions herinafter provided. . . .

Sec. 13. That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a state is a party, except between a state and its citizens; and except also between a state and citizens of other states, or aliens, in which latter case it shall have original but not exclusive jurisdiction. And shall have exclusively all such jurisdiction of suits or proceedings against ambassadors or other public ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original, but not exclusive jurisdiction of all suits brought by ambassadors or other public ministers, or in which a consul or vice-consul shall be a party. And the trial of issues in fact in the Supreme Court in all actions at law against citizens of the United States shall be by jury. The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states in the cases hereinafter specially provided for and shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of mandamus, in cases warranted by the principle and usages of law, to any courts appointed, or persons holding office under the authority of the United States. . . .

Sec. 25. That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favour of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision is against the title, right, privilege, or exemption, specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute, or commission, may be re-examined, and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceedings upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before

provided, may, at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before-mentioned questions of validity or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute.

Source: U.S. Statutes at Large 1 (1789): 73.

5 U.S. 137, *; 2 L. Ed. 60, **;
1803 U.S. LEXIS 352, ***; 1 Cranch 137

WILLIAM MARBURY v. JAMES MADISON, SECRETARY OF STATE OF THE UNITED STATES.

SUPREME COURT OF THE UNITED STATES

5 U.S. 137; 2 L. Ed. 60; 1803 U.S. LEXIS 352; 1 Cranch 137

February 24, 1803, Decided

PRIOR HISTORY: [***1] AT the last term, viz. December term, 1801, William Marbury, Dennis Ramsay, Robert Townsend Hooe, and William Harper, by their counsel, Charles Lee, esq. late attorney general of the United States, severally moved the court for a rule to James Madison, secretary of state of the United States, to show cause why a mandamus should not issue commanding him to cause to be delivered to them respectively their several commissions as justices of the peace in the district of Columbia. This motion was supported by affidavits of the following facts; that notice of this motion had been given to Mr. Madison; that Mr. Adams, the late president of the United States, nominated the applicants to the senate for their advice and consent to be appointed justices of the peace of the district of Columbia; that the senate advised and consented to the appointments; that commissions in the due form were signed by the said president appointing them justices, &c. and that the seal of the United States was in due form affixed to the said commissions by the secretary of state; that the applicants have requested Mr. Madison to deliver them their said commissions, who has not complied with that request; and that [***2] their said commissions are withheld from them; that the applicants have made application to Mr. Madison as secretary of state of the United States at his office, for information whether the commissions were signed and sealed as aforesaid; that explicit and satisfactory information has not been given to that enquiry, either by the secretary of state or by any officer of the department of state; that application has been made to the secretary of the Senate for a certificate of the nomination of the applicants, and of the advice and consent of the senate, who has declined giving such a certificate; whereupon a rule was laid to show cause on the 4th day of this term. This rule having been duly served,

SYLLABUS

REPORTER'S NOTES

The supreme court of the United States has not power to issue a mandamus to a secretary of state of the United States, it being an exercise of original jurisdiction not warranted by the constitution. Congress have not power to give original jurisdiction to the supreme court in other case than those described in the constitution. An act of congress repugnant to the constitution can not become a law. The courts of U. States are bound to take notice of the constitution. [***3] A commission is not necessary to the appointment of an officer by the executive -- Semb. A commission is only evidence of an appointment.

Delivery is not necessary to the validity of letters patent. The President cannot authorize a secretary of state to omit the performance of those duties which are enjoined by law.

A justice of peace in the district of Columbia is not removable at the will of the President. When a commission for an officer not holding his office at the will of the President, is by him signed and transmitted to the secretary of state to be sealed and recorded, it is irrevocable; the appointment is complete. A mandamus is the proper remedy to compel a secretary of state to deliver a commission to which the party is entitled.

OPINION BY: MARSHALL

OPINION

[*153] [**66] Afterwards, on the 24th of February the following opinion of the court was delivered by the chief justice.

Opinion of the court.

At the last term on the affidavits then read and filed with the clerk, a rule was granted in this case, requiring the secretary of state to show cause why a mandamus [*154] should not issue, directing him to deliver to William Marbury his commission as a justice of the peace of the county of Washington, in the district of Columbia.

No cause has been shown, and the present motion is for a mandamus. [***32] The peculiar delicacy of this case, the novelty of some of its circumstances, and the real difficulty attending the points which occur in it, require a complete exposition of the principles, on which the opinion to be given by the court, is founded.

These principles have been, on the side of the applicant, very ably argued at the bar. In rendering the opinion of the court, there will be some departure in form, though not in substance, from the points stated in that argument.

In the order in which the court has viewed this subject, the following questions have been considered and decided.

1st. Has the applicant a right to the commission he demands?

2dly. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?

3dly. If they do afford him a remedy, is it a mandamus issuing from this court?

The first object of enquiry is,

1st. Has the applicant a right to the commission he demands?

His right originates in an act of congress passed in February, 1801, concerning the district of Columbia.

After dividing the district into two counties, the 11th section of this law, enacts, "that there shall be appointed in and for [***33] each of the said counties, such number of discreet persons to be justices of the peace as the president of the United States shall, from time to time, think expedient, to continue in office for five years.

[*155] It appears, from the affidavits, that in compliance with this law, a commission for William Marbury as a justice of peace for the county of Washington, was signed by John Adams, then president of the United States; after which the seal of the United States was affixed to it; but the commission has never reached the person for whom it was made out.

In order to determine whether he is entitled to this commission, it becomes necessary to enquire whether he has been appointed to the office. For if he has been appointed, the law continues him in office for five years, and he is entitled to the possession of those evidences of office, which, being completed, became his property.

The 2d section of the 2d article of the constitution, declares, that "the president shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, and all other officers of the United States, whose appointments are not [***34] otherwise provided for."

The third section declares, that "he shall commission all the officers of the United States."

An act of congress directs the secretary of state to keep the seal of the United States, "to make out and record, and affix the said seal to all civil commissions to officers of the United States, to be appointed by the President, by and with the consent of the senate, or by the President alone; provided that the said seal shall not be affixed to any commission before the same shall have been signed by the President of the United States."

These are the clauses of the constitution and laws of the United States, which affect this part of the case. They seem to contemplate three distinct operations:

1st, The nomination. This is the sole act of the President, and is completely voluntary.

2d. The appointment. This is also the act of the President, and is also a voluntary act, though it can only be performed by and with the advice and consent of the senate.

[*156] 3d. The commission. To grant a commission to a person appointed, might perhaps be deemed a duty enjoined by the constitution. "He shall," says that instrument, "commission all the officers [***35] of the United States."

The acts of appointing to office, and commissioning the person appointed, can scarcely be considered as one and the same; since the power to perform them is given in two separate and distinct sections of the constitution. The distinction between the appointment and the commission will be rendered more apparent, by [**67] adverting to that provision in the second section of the second article of the constitution, which authorizes congress "to vest, by law, the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments;" thus contemplating cases where the law may direct the President to commission an officer appointed by the courts, or by the heads of departments. In such a case, to issue a commission would be apparently a duty distinct from the appointment, the performance of which, perhaps, could not legally be refused.

Although that clause of the constitution which requires the President to commission all the officers of the United States, may never have been applied to officers appointed otherwise than by himself, yet it would be difficult to deny the legislative power [***36] to apply it to such cases. Of consequence the constitutional distinction between the appointment to an office and the commission of an officer, who has been appointed, remains the same as if in practice the President had commissioned officers appointed by an authority other than his will.

It follows too, from the existence of this distinction, that, if an appointment was to be evidenced by any public act, other than the commission, the performance of such public act would create the officer; and if he was not removable at the will of the President, would either give him a right to his commission, or enable him to perform the duties without it.

These observations are premised solely for the purpose of rendering more intelligible those which

apply more directly to the particular case under consideration.

[*157] This is an appointment by the President, by and with the advice and consent of the senate, and is evidenced by no act but the commission itself. In such a case therefore the commission and the appointment seem inseparable; it being almost impossible to show an appointment otherwise than by proving the existence of a commission; still the commission is not necessarily [***37] the appointment; though conclusive evidence of it.

But at what state does it amount to this conclusive evidence?

The answer to this question seems an obvious one. The appointment being the sole act of the President, must be completely evidenced, when it is shown that he has done every thing to be performed by him.

Should the commission, instead of being evidence of an appointment, even be considered as constituting the appointment itself; still it would be made when the last act to be done by the President was performed, or, at furthest, when the commission was complete.

The last act to be done by the President, is the signature of the commission. He has then acted on the advice and consent of the senate to his own nomination. The time for deliberations has then passed. He has decided. His judgment, on the advice and consent of the senate concurring with his nomination, has been made, and the officer is appointed. This appointment is evidenced by an open, unequivocal act; and being the last act required from the person making it, necessarily excludes the idea of its being, so far as respects the appointment, an inchoate and incomplete transaction.

Some point of [***38] time must be taken when the power of the executive over an officer, not removable at his will, must cease. That point of time must be when the constitutional power of appointment has been exercised. And this power has been exercised when the last act, required from the person possessing the power, has been performed. This last act is the signature of the commission. This idea seems to have prevailed with the legislature, when the act passed, converting the department [*158] of foreign affairs into the department of state. By that act it is enacted, that the secretary of state shall keep the seal of the United States, "and shall make out and record, and shall affix the said seal to all civil commissions to officers of the United States, to be appointed by the President:" "Provided that the said seal shall not be affixed to any commission, before the same shall have been signed by the President of the United States; nor to any other instrument or act, without the special warrant of the President therefor."

The signature is a warrant for affixing the great seal to the commission; and the great seal is only to be affixed to an instrument which is complete. It asserts, by an [***39] act supposed to be of public notoriety, the verity of the Presidential signature.

It is never to be affixed till the commission is signed, because the signature, which gives force and effect to the commission, is conclusive evidence that the appointment is made.

The commission being signed, the subsequent duty of the secretary of state is prescribed by law, and not to be guided by the will of the President. He is to affix the seal of the United States to the commission, and is to record it.

This is not a proceeding which may be varied, if the judgment of the executive shall suggest one more eligible; but is a precise course accurately marked out by law, and is to be strictly pursued. It is the duty of the secretary of state to conform to the law, and in this he is an officer of the United States, bound to obey the laws. He acts, in this regard, as has been very properly stated at the bar, under the authority of law, and not by the instructions of the President. It is a ministerial act which the law enjoins on a particular officer for a particular purpose.

If it should be supposed, that the solemnity of affixing the seal, is necessary not only to the validity of the [***40] commission, but even to the completion of an appointment, still when the seal is affixed the appointment is made, and [*159] the commission is valid. No other solemnity is required by law; no other act is to be performed on the part of government. All that the executive can do to invest the person with his office, is done; and unless the appointment be then made, the executive cannot make one without the co-operation of others.

After searching anxiously for the principles on which a contrary opinion may be supported, none have been found which appear of sufficient force to maintain the opposite doctrine.

Such as the imagination of the court could suggest, have been very deliberately examined, and after allowing them all the weight which it appears possible to give them, they do not shake the opinion which has been formed.

In considering this question, it has been conjectured [**68] that the commission may have been assimilated to a deed, to the validity of which, delivery is essential.

This idea is founded on the supposition that the commission is not merely evidence of an appointment, but is itself the actual appointment; a supposition by no means unquestionable. [***41] But for the purpose of examining this objection fairly, let it be conceded, that the principle, claimed for its support, is established.

The appointment being, under the constitution, to be made by the President personally, the delivery of the deed of appointment, if necessary to its completion, must be made by the President also. It is not necessary that the livery should be made personally to the grantee of the office: It never is so made. The law would seem to contemplate that it should be made to the secretary of state, since it directs the secretary to affix the seal to the commission after it shall have been signed by the President. If then the act of livery be necessary to give validity to the commission, it has been delivered when executed and given to the secretary for the purpose of being sealed, recorded, and transmitted to the party.

But in all cases of letters patent, certain solemnities are required by law, which solemnities are the evidences [*160] of the validity of the instrument. A formal delivery to the person is not among them. In cases of commissions, the sign manual of the President, and the seal of the United States, are those solemnities. This [***42] objection therefore does not touch the case.

It has also occurred as possible, and barely possible, that the transmission of the commission, and the acceptance thereof, might be deemed necessary to complete the right of the plaintiff.

The transmission of the commission, is a practice directed by convenience, but not by law. It cannot therefore be necessary to constitute the appointment which must precede it, and which is the mere act of the President. If the executive required that every person appointed to an office, should himself take means to procure his commission, the appointment would not be the less valid on that account. The appointment is the sole act of the President; the transmission of the commission is the sole act of the officer to whom that duty is assigned, and may be accelerated or retarded by circumstances which can have no influence on the appointment. A commission is transmitted to a person already appointed; not to a person to be appointed or not, as the letter enclosing the commission should happen to get into the post-office and reach him in safety, or to miscarry.

It may have some tendency to elucidate this point, to enquire, whether the possession [***43] of the original commission be indispensably necessary to authorize a person, appointed to any office, to perform the duties of that office. If it was necessary, then a loss of the commission would lose the office. Not only negligence, but accident or fraud, fire or theft, might deprive an individual of his office. In such a case, I presume it could not be doubted, but that a copy from the record of the office of the secretary of state, would be, to every intent and purpose, equal to the original. The act of congress has expressly made it so. To give that copy validity, it would not be necessary to prove that the original had been transmitted and afterwards lost. The copy would be complete evidence that the original had existed, and that the appointment had been made, but, not that the original had been transmitted. If indeed it should appear that [*161] the original had been mislaid in the office of state, that circumstance would not affect the operation of the copy. When all the requisites have been performed which authorize a recording officer to record any instrument whatever, and the order for that purpose has been given, the instrument is, in law, considered as recorded, [***44] although the manual labor of inserting it in a book kept for that purpose may not have been performed.

In the case of commissions, the law orders the secretary of state to record them. When therefore they are signed and sealed, the order for their being recorded is given; and whether inserted in the book or not, they are in law recorded.

A copy of this record is declared equal to the original, and the fees, to be paid by a person requiring a copy, are ascertained by law. Can a keeper of a public record, erase therefrom a commission which has been recorded? Or can he refuse a copy thereof to a person demanding it on the terms prescribed by law?

Such a copy would, equally with the original, authorize the justice of peace to proceed in the performance of his duty, because it would, equally with the original, attest his appointment.

If the transmission of a commission be not considered as necessary to give validity to an appointment; still less is its acceptance. The appointment is the sole act of the President; the acceptance is the sole act of the officer, and is, in plain common sense, posterior to the appointment. As he may resign, so may he refuse to accept: but neither [***45] the one, nor the other, is capable of rendering the appointment a non-entity.

That this is the understanding of the government, is apparent from the whole tenor of its conduct.

A commission bears date, and the salary of the officer commences from his appointment; not from the transmission or acceptance of his commission. When a person, appointed to any office, refuses to accept the office, the successor is nominated in the place of the person who [*162] has declined to accept, and not in the place of the person who had been previously in office, and had created the original vacancy.

It is therefore decidedly the opinion of the court, that when a commission has been signed by the President, the appointment is made; and that the commission is complete, when the seal of the United States has been affixed to it by the secretary of state.

Where an officer is removable at the will of the executive, the circumstance which completes his appointment is of no concern; because the act is at any

time revocable; and the commission may be arrested, if still in the office. But when the officer is not removable at the will of the executive, the appointment is not revocable, and [***46] cannot be annulled. It has conferred legal rights which cannot be resumed.

The discretion of the executive is to be exercised until the appointment has been made. [**69] But having once made the appointment, his power over the office is terminated in all cases, where, by law, the officer is not removable by him. The right to the office is then in the person appointed, and he has the absolute, unconditional, power of accepting or rejecting it.

Mr. Marbury, then, since his commission was signed by the President, and sealed by the secretary of state, was appointed; and as the law creating the office, gave the officer a right to hold for five years, independent of the executive, the appointment was not revocable; but vested in the officer legal rights, which are protected by the laws of his country.

To withhold his commission, therefore, is an act deemed by the court not warranted by law, but violative of a vested legal right.

This brings us to the second enquiry; which is,

2dly. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?

[*163] The very essence of civil liberty certainly consists in the right of every [***47] individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court.

In the 3d vol. of his commentaries, p. 23, Blackstone states two cases in which a remedy is afforded by mere operation of law.

"In all other cases," he says, "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded."

And afterwards, p. 109, of the same vol. he says, "I am next to consider such injuries as are cognizable by the courts of the common law. And herein I shall for the present only remark, that all possible injuries whatsoever, that did not fall within the exclusive cognizance of either the ecclesiastical, military, or maritime tribunals, are for that very reason, within the cognizance of the common law courts of justice; for it is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress."

[***48] The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

If this obloquy is to be cast on the jurisprudence of our country, it must arise from the peculiar character of the case.

It behooves us then to enquire whether there be in its composition any ingredient which shall exempt it from legal investigation, or exclude the injured party from legal redress. In pursuing this enquiry the first question which presents itself is, whether this can be arranged [*164] with that class of cases which comes under the description of damnum absque injuria -- a loss without an injury.

This description of cases never has been considered, and it is believed never can be considered, as comprehending offices of trust, of honor or of profit. The office of justice of peace in the district of Columbia is such an office; it is therefore worthy of the attention and guardianship of the laws. It has received that attention and guardianship. It has been created by special act of congress, and has been secured, so far [***49] as the laws can give security to the person appointed to fill it, for five years. It is not then on account of the worthlessness of the thing pursued, that the injured party can be alleged to be without remedy.

Is it in the nature of the transaction? Is the act of delivering or withholding a commission to be considered as a mere political act, belonging to the executive department alone, for the performance of which, entire confidence is placed by our constitution in the supreme executive; and for any misconduct respecting which, the injured individual has no remedy.

That there may be such cases is not to be questioned; but that every act of duty, to be performed in any of the great departments of government, constitutes such a case is not to be admitted.

By the act concerning invalids, passed in June, 1794, vol. 3. p. 112, the secretary of war is ordered to place on the pension list, all persons whose names are contained in a report previously made by him to congress. If he should refuse to do so, would the wounded veteran be without remedy? Is it to be contended that where the law in precise terms, directs the performance of an act, in which an individual is interested, [***50] the law is incapable of securing obedience to its mandate? Is it on account of the character of the person against whom the complaint is made? Is it to be contended that the heads of departments are not amenable to the laws of their country?

Whatever the practice on particular occasions may be, the theory of this principle will certainly never be maintained. [*165] No act of the legislature confers so extraordinary a privilege, nor can it derive countenance from the doctrines of the common law. After stating that personal injury from the king to a subject is presumed to be impossible, Blackstone, vol. 3. p. 255, says, "but injuries to the rights of property can scarcely be committed by the crown without the intervention of its officers; for whom, the law, in matters of right, entertains no respect or delicacy; but furnishes various methods of detecting the errors and misconduct of those agents, by whom the king has been deceived and induced to do a temporary injustice."

By the act passed in 1796, authorizing the sale of the lands above the mouth of Kentucky river (vol. 3d. p. 299) the purchaser, on paying his purchase money, becomes completely entitled to the property [***51] purchased; and on producing to the secretary of state, the receipt of the treasurer upon a certificate required by the law, the president of the United States is authorized to grant him a patent. It is further enacted that all patents shall be countersigned by the secretary of state, and recorded in his office. If the secretary of state should choose to withhold this patent; or the patent being lost, should refuse a copy of it; can it be imagined that the law furnishes to the injured person no remedy?

It is not believed that any person whatever would attempt to maintain such a proposition.

[**70] It follows then that the question, whether the legality of an act of the head of a department be examinable in a court of justice or not, must always depend on the nature of that act.

If some acts be examinable, and others not, there must be some rule of law to guide the court in the exercise of its jurisdiction.

In some instances there may be difficulty in applying the rule to particular cases; but there cannot, it is believed, be much difficulty in laying down the rule.

By the constitution of the United States, the President is invested with certain important political [***52] powers, in the [*166] exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority and in conformity with his orders.

In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political. They respect the nation, not individual rights, and being entrusted to the executive, the decision of the executive is conclusive. The application of this remark will be perceived by adverting to the act of congress for establishing the department of foreign affairs. This office, as his duties were prescribed by that act, is to conform precisely to the will of the President. He is the mere organ by whom that will is communicated. The acts of such an officer, as an officer, can never be examinable by the courts.

But when the legislature proceeds to impose on that officer other duties; when he is directed peremptorily to [***53] perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others.

The conclusion from this reasoning is, that where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the President, or rather to act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy.

If this be the rule, let us enquire how it applies to the case under the consideration of the court.

[*167] The power of nominating to the senate, and the power of appointing the person nominated, are political powers, to be exercised by the President according to his own discretion. When he has made an appointment, he has [***54] exercised his whole power, and his discretion has been completely applied to the case. If, by law, the officer be removable at the will of the President, then a new appointment may be immediately made, and the rights of the officer are terminated. But as a fact which has existed cannot be made never to have existed, the appointment cannot be annihilated; and consequently if the officer is by law not removable at the will of the President; the rights he has acquired are protected by the law, and are not resumeable by the President. They cannot be extinguished by executive authority, and he has the privilege of asserting them in like manner as if they had been derived from any other source.

The question whether a right has vested or not, is, in its nature, judicial, and must be tried by the judicial authority. If, for example, Mr. Marbury had taken the oaths of a magistrate, and proceeded to act as one; in consequence of which a suit had been instituted against him, in which his defence had depended on his being a magistrate; the validity of his appointment must have been determined by judicial authority.

So, if he conceives that, by virtue of his appointment, he has a legal [***55] right, either to the commission which has been made out for him, or to a copy of that commission, it is equally a question examinable in a court, and the decision of the court upon it must depend on the opinion entertained of his appointment.

That question has been discussed, and the opinion is, that the latest point of time which can be taken as that at which the appointment was complete, and evidenced, was when, after the signature of the president, the seal of the United States was affixed to the commission.

It is then the opinion of the court,

1st. That by signing the commission of Mr. Marbury, the president of the United States appointed him a justice [*168] of peace, for the county of Washington in the district of Columbia; and that the seal of the United States, affixed thereto by the secretary of state, is conclusive testimony of the verity of the signature, and of the completion of the appointment; and that the appointment conferred on him a legal right to the office for the space of five years.

2dly. That, having this legal title to the office, he has a consequent right to the commission; a refusal to deliver which, is a plain violation of that right, for [***56] which the laws of his country afford him a remedy.

It remains to be enquired whether,

3dly. He is entitled to the remedy for which he applies. This depends on,

1st. The nature of the writ applied for, and,

2dly. The power of this court.

1st. The nature of the writ.

Blackstone, in the 3d volume of his commentaries, page 110, defines a mandamus to be, "a command issued in the King's name from the court of King's Bench, and directed to any person, corporation, or inferior court of judicature within the King's dominions, requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the court of King's Bench has previously determined, or at least supposed, to be consonant to right and justice."

Lord Mansfield, in 3d Burrows 1266, in the case of the King v. Baker, et al. states with much precision and explicitness the cases in which this writ may be used.

"Whenever," says that very able judge, "there [**71] is a right to execute an office, perform a service, or exercise a franchise (more specifically if it be in a matter of public concern, or attended with profit) and a person is kept out of the possession, [***57] or dispossessed of such right, and [*169] has no other specific legal remedy, this court ought to assist by mandamus, upon reasons of justice, as the writ expresses, and upon reasons of public policy, to preserve peace, order and good government." In the same case he says, "this writ ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one."

In addition to the authorities now particularly cited, many others were relied on at the bar, which show how far the practice has conformed to the general doctrines that have been just quoted.

This writ, if awarded, would be directed to an officer of government, and its mandate to him would be, to use the words of Blackstone, "to do a particular thing therein specified, which appertains to his office and duty and which the court has previously determined, or at least supposes, to be consonant to right and justice." Or, in the words of Lord Mansfield, the applicant, in this case, has a right to execute an office of public concern, and is kept out of possession of that right.

These circumstances certainly concur in this case.

Still, to render [***58] the mandamus a proper remedy, the officer to whom it is directed, must be one to whom, on legal principles, such writ may be directed; and the person applying for it must be without any other specific and legal remedy.

1st. With respect to the officer to whom it would be directed. The intimate political relation, subsisting between the president of the United States and the heads of departments, necessarily renders any legal investigation of the acts of one of those high officers peculiarly irksome, as well as delicate; and excites some hesitation with respect to the propriety of entering into such investigation. Impressions are often received without much reflection or examination, and it is not wonderful that in such a case as this, the assertion, by an individual, of his legal claims in a court of justice; to which claims it is the duty of that court to attend; should at first view be considered [*170] by some, as an attempt to intrude into the cabinet, and to intermeddle with the prerogatives of the executive.

It is scarcely necessary for the court to disclaim all pretensions to such a jurisdiction. An extravagance, so absurd and excessive, could not have been entertained [***59] for a moment. The province of the court is, solely, to decide on the rights of individuals, not to enquire how the executive, or executive officers, perform duties in which they have a discretion. Questions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.

But, if this be not such a question; if so far from being an intrusion into the secrets of the cabinet, it respects a paper, which, according to law, is upon record, and to a copy of which the law gives a right, on the payment of ten cents; if it be no intermeddling with a subject, over which the executive can be considered as having exercised any control; what is there in the exalted station of the officer, which shall bar a citizen from asserting, in a court of justice, his legal rights, or shall forbid a court to listen to the claim; or to issue a mandamus, directing the performance of a duty, not depending on executive discretion, but on particular acts of congress and the general principles of law?

If one of the heads of departments commits any illegal act, under the color of his office, by which an individual sustains an injury, it cannot [***60] be pretended that his office alone exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law. How then can his office exempt him from this particular mode of deciding on the legality of his conduct, if the case be such a case as would, were any other individual the party complained of, authorize the process?

It is not by the office of the person to whom the writ is directed, but the nature of the thing to be done that the propriety or impropriety of issuing a mandamus, is to be determined. Where the head of a department acts in a case, in which executive discretion is to be exercised; in which he is the mere organ of executive will; it is [*171] again repeated, that any application to a court to control, in any respect, his conduct, would be rejected without hesitation.

But where he is directed by law to do a certain act affecting the absolute rights of individuals, in the performance of which he is not placed under the particular direction of the President, and the performance of which, the President cannot lawfully forbid, and therefore is never presumed to have forbidden; as for example, to record a commission, [***61] or a patent for land, which has received all the legal solemnities; or to give a copy of such record; in such cases, it is not perceived on what ground the courts of the country are further excused from the duty of giving judgment, that right be done to an injured individual, than if the same services were to be performed by a person not the head of a department.

This opinion seems not now, for the first time, to be taken upon in this country.

It must be well recollected that in 1792, an act passed, directing the secretary at war to place on the pension list such disabled officers and soldiers as should be reported to him, by the circuit courts, which act, so far as the duty was imposed on the courts, was deemed unconstitutional; but some of the judges, thinking that the law might be executed by them in the character of commissioners, proceeded to act and to report in that character.

This law being deemed unconstitutional at the circuits, was repealed, and a different system was established; but this question whether those persons, who had been reported by the judges, as commissioners, were entitled, in consequence of that report, to be placed on the pension list, was a legal [***62] question, properly determinable in the courts, although the act of placing such persons on the list was to be preformed by the head of a department.

That this question might be properly settled, congress passed an act in February, 1793, making [**72] it the duty of the secretary of war, in conjunction with the attorney general, to take such measures, as might be necessary to obtain an adjudication of the supreme court of the United [*172] States on the validity of any such rights, claimed under the act aforesaid.

After the passage of this act, a mandamus was moved for, to be directed to the secretary at war, commanding him to place on the pension list, a person stating himself to be on the report of the judges.

There is, therefore, much reason to believe, that this mode of trying the legal right of the complainant, was deemed by the head of a department, and by the highest law officer of the United States, the most proper which could be selected for the purpose.

When the subject was brought before the court the decision was, not that a mandamus would not lie to the head of a department, directing him to perform an act, enjoined by law, in the performance of which [***63] an individual had a vested interest; but that a mandamus ought not to issue in that case -- the decision necessarily to be made if the report of the commissioners did not confer on the applicant a legal right.

The judgment in that case, is understood to have decided the merits of all claims of that description; and the persons on the report of the commissioners found it necessary to pursue the mode prescribed by the law subsequent to that which had been deemed unconstitutional, in order to place themselves on the pension list.

The doctrine, therefore, now advanced, is by no means a novel one.

It is true that the mandamus, now moved for, is not for the performance of an act expressly enjoined by statute.

It is to deliver a commission; on which subject the acts of Congress are silent. This difference is not considered as affecting the case. It has already been stated that the applicant has, to that commission, a vested legal right, of which the executive cannot deprive him. He has been appointed to an office,

from which he is not removable at the will of the executive; and being so [*173] appointed, he has a right to the commission which the secretary has received [***64] from the president for his use. The act of congress does not indeed order the secretary of state to send it to him, but it is placed in his hands for the person entitled to it; and cannot be more lawfully withheld by him, than by any other person.

It was at first doubted whether the action of detinue was not a specified legal remedy for the commission which has been withheld from Mr. Marbury; in which case a mandamus would be improper. But this doubt has yielded to the consideration that the judgment in detinue is for the thing itself, or its value. The value of a public office not to be sold, is incapable of being ascertained; and the applicant has a right to the office itself, or to nothing. He will obtain the office by obtaining the commission, or a copy of it from the record.

This, then, is a plain case for a mandamus, either to deliver the commission, or a copy of it from the record; and it only remains to be enquired,

Whether it can issue from this court.

The act to establish the judicial courts of the United States authorizes the supreme court "to issue writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons [***65] holding office, under the authority of the United States."

The secretary of state, being a person holding an office under the authority of the United States, is precisely within the letter of the description; and if this court is not authorized to issue a writ of mandamus to such an officer, it must be because the law is unconstitutional, and therefore absolutely incapable of conferring the authority, and assigning the duties which its words purport to confer and assign.

The constitution vests the whole judicial power of the United States in one supreme court, and such inferior courts as congress shall, from time to time, ordain and establish. This power is expressly extended to all cases arising under the laws of the United States; and consequently, in some form, may be exercised over the present [*174] case; because the right claimed is given by a law of the United States.

In the distribution of this power it is declared that "the supreme court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the supreme court shall have appellate jurisdiction."

[***66] It has been insisted, at the bar, that as the original grant of jurisdiction, to the supreme and inferior courts, is general, and the clause, assigning original jurisdiction to the supreme court, contains no negative or restrictive words; the power remains to the legislature, to assign original jurisdiction to that court in other cases than those specified in the article which has been recited; provided those cases belong to the judicial power of the United States.

If it had been intended to leave it to the discretion of the legislature to apportion the judicial power between the supreme and inferior courts according to the will of that body, it would certainly have been useless to have proceeded further than to have defined the judicial powers, and the tribunals in which it should be vested. The subsequent part of the section is mere surplusage, is entirely without meaning, if such is to be the construction. If congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared their jurisdiction shall be original; and original jurisdiction where the constitution has declared it shall be appellate; the distribution of jurisdiction, made [***67] in the constitution, is form without substance.

Affirmative words are often, in their operation, negative of other objects than those affirmed; and in this case, a negative or exclusive sense must be given to them or they have no operation at all.

It cannot be presumed that any clause in the constitution is intended to be without effect; and therefore such a construction is inadmissible, unless the words require it.

[*175] If the solicitude of the convention, respecting our peace with foreign powers, induced a provision that the supreme court should take original jurisdiction in cases which [**73] might be supposed to affect them; yet the clause would have proceeded no further than to provide for such cases, if no further restriction on the powers of congress had been intended. That they should have appellate jurisdiction in all other cases, with such exceptions as congress might make, is no restriction; unless the words be deemed exclusive of original jurisdiction.

When an instrument organizing fundamentally a judicial system, divides it into one supreme, and so many inferior courts as the legislature may ordain and establish; then enumerates its powers, and [***68] proceeds so far to distribute them, as to define the jurisdiction of the supreme court by declaring the cases in which it shall take original jurisdiction, and that in others it shall take appellate jurisdiction; the plain import of the words seems to be, that in one class of cases its jurisdiction is original, and not appellate; in the other it is appellate, and not original. If any other construction would render the clause inoperative, that is an additional reason for rejecting such other construction, and for adhering to their obvious meaning.

To enable this court then to issue a mandamus, it must be shown to be an exercise of appellate

jurisdiction, or to be necessary to enable them to exercise appellate jurisdiction.

It has been stated at the bar that the appellate jurisdiction may be exercised in a variety of forms, and that if it be the will of the legislature that a mandamus should be used for that purpose, that will must be obeyed. This is true, yet the jurisdiction must be appellate, not original.

It is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and does not create that cause. Although, [***69] therefore, a mandamus may be directed to courts, yet to issue such a writ to an officer for the delivery of a paper, is in effect the same as to sustain an original action for that paper, and therefore seems not to belong to [*176] appellate, but to original jurisdiction. Neither is it necessary in such a case as this, to enable the court to exercise its appellate jurisdiction.

The authority, therefore, given to the supreme court, by the act establishing the judicial courts of the United States, to issue writs of mandamus to public officers, appears not to be warranted by the constitution; and it becomes necessary to enquire whether a jurisdiction, so conferred, can be exercised.

The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, [***70] is the basis, on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority, from which they proceed, is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns, to different departments, their respective powers. It may either stop here; or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction, between a government with limited and unlimited powers, is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited [*177] and acts allowed, are of equal obligation. [***71] It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

This theory is essentially attached to a written constitution, and is consequently to be considered, by this court, as one of the fundamental principles of our society. It is not therefore to be [***72] lost sight of in the further consideration of this subject.

If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

[*178] So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of [**74] these conflicting rules governs the case. This is of the [***73] very essence of judicial duty.

If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of

the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply.

Those then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void; is yet, in practice, completely obligatory. It would declare, that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

That it thus reduces to nothing what we have deemed the greatest improvement [***74] on political institutions -- a written constitution -- would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the constitution of the United States furnish additional arguments in favor of its rejection.

The judicial power of the United States is extended to all cases arising under the constitution.

[*179] Could it be the intention of those who gave this power, to say that, in using it, the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises?

This is too extravagant to be maintained.

In some cases then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read, or to obey?

There are many other parts of the constitution which serve to illustrate this subject.

It is declared that "no tax or duty shall be laid on articles exported from any state." Suppose a duty on the export of cotton, of tobacco, or of flour; and a suit instituted to recover it. Ought judgment to be rendered [***75] in such a case? ought the judges to close their eyes on the constitution, and only see the law.

The constitution declares that "no bill of attainder or ex post facto law shall be passed."

If, however, such a bill should be passed and a person should be prosecuted under it; must the court condemn to death those victims whom the constitution endeavors to preserve?

"No person," says the constitution, "shall be convicted of treason unless on the testimony of two witnesses to the fame overt act, or on confession in open court."

Here the language of the constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the legislature should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these, and many other selections which might be made, it is apparent, that the framers of the constitution [*180] contemplated that instrument, as a rule for the government of courts, as well as of the legislature.

Why otherwise does it direct the judges to take an oath to support it? This oath certainly [***76] applies, in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on the subject. It is in these words, "I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the constitution, and laws of the United States."

Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him, and cannot be inspected by him?

If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution [***77] itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.

The rule must be discharged.

301 U.S. 1

NATIONAL LABOR RELATIONS BOARD v. JONES & LAUGHLIN STEEL CORPORATION.

No. 419.

Argued Feb. 10, 11, 1937.

Decided April 12, 1937.

1. Master and servant ⇐15

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 ⇐7

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 (Const. Amend. 10).

3. Statutes ⇐205

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 ⇐48

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 ⇐48

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; Const. Amend. 5).

6. Commerce ⇐16

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. Master and servant ⇐16

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; Const. Amend. 5).

8. Commerce ⇐16

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 ⇐1

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 ⇐5

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 ⇐16

Though activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their con-

trol is essential or appropriate to protect that commerce from burdens and obstructions, Congress has power to exercise that control.

12. Commerce ⇐16

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 ⇐43

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.).

14. Constitutional law ⇐275(1)
Master and servant ⇐16

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.; Const. Amend. 5).

15. Master and servant ⇐16

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. § 159(a).

16. Master and servant ⇐16

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. Master and servant ⇐16

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. Master and servant ⇐16

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. Master and servant ⇐15

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. Master and servant ⇐16

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 ⇐19(1)

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); Const. Amend. 7).

Mr. Justice McREYNOLDS, Mr. Justice VAN DEVANTER, Mr. Justice SUTHERLAND, and Mr. Justice BUTLER, dissenting.

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.

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Messrs. Homer S. Cummings, Atty. Gen., and Stanley F. Reed, Sol. Gen., and J. Warren Madden, both of Washington, D. C., for petitioner.

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Mr. Earl F. Reed, of Pittsburgh, Pa., for respondent.

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Mr. Chief Justice HUGHES delivered the opinion of the Court.

In a proceeding under the National Labor Relations Act of 1935[1] 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 employees in order to interfere with their self-organization. The discriminatory and coercive action alleged was the discharge of certain employees.

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. —.

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. § 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 col

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lective 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.[2] The act

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then defines the terms it

[1] Act of July 5, 1935, 49 Stat. 449, 29 U.S.C. § 151 et seq. (29 U.S.C.A. § 151 et seq.).

[2] 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

uses, including the terms "commerce" and "affecting commerce." Section 2 (29 U.S.C.A. § 152). It creates the National Labor Relations Board and prescribes its organization. Sections 3–6 (29 U.S.C.A. §§ 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. § 157). It defines "unfair labor practices." Section 8 (29 U.S.C.A. § 158). It lays down rules as to the representation of employees for the purpose of collective bargaining. Section 9 (29 U.S.C.A. § 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. § 160). The Board has broad powers of investigation. Section 11 (29 U.S.C.A. § 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. § 162). Nothing in the act is to be construed to interfere with the right to strike. Section 13 (29 U.S.C.A. § 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. § 165). The particular provisions which are involved in the instant case will be considered more in detail in the course of the discussion.

The procedure in the instant case followed the statute. The labor union filed with the Board its verified charge.

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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 purpose of

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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. § 151.

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

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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 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

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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

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

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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 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.

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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[3]) 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.

[2] If this conception of terms, intent and consequent inseparability were sound, the act would necessarily fall

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by reason of

[3] See note 2.

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 "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 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.

[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. § 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."

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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."

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. § 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

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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; 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."[4]

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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

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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 action would 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 negotia-

[4] 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."

tion 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. § 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, 45 S.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

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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.[5] 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 a nondiscriminatory 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[6] with respect to transactions on the Chicago Board of Trade, although these transactions were "not in and of themselves interstate commerce." Congress had found

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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.

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

[5] 42 Stat. 159 (7 U.S.C.A. § 181 et seq.).

[6] 42 Stat. 998 (7 U.S.C.A. §§ 1–17).

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.

[8-12] 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

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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 the power 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 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

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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,[7] Congress went so far as to authorize the Interstate

[7] Sections 416, 422, 41 Stat. 484, 488 (49 U.S.C.A. §§ 13, 15a); Interstate Commerce Act, § 13 (4), 49 U.S.C.A. § 13(4).

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. Other illustrations are found in the broad requirements of the Safety Appliance Act (45 U.S.C.A. §§ 1–10) and the Hours of Service Act (45 U.S.C.A. §§ 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.

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. §§ 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, 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.

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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,

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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

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 the employees' 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

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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

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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 Virginian 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

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!

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These questions have frequently engaged the attention of Congress and have been the subject of many inquiries.[8] The steel industry is one of the great basic industries of the United States, with ramifying activities affecting interstate commerce at every point. [9] The Government aptly refers to the steel strike of 1919-1920 with its far-reaching consequences.[9] 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.

[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

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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) [10] 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. § 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

[8] 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.

[9] See Investigating Strike in Steel Industries, Sen.Rep. No. 289, 66th Cong., 1st Sess.

[10] 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. § 159(a).

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,[11] the injunc

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tion 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 also applies to section 9 (a) of the National Labor Relations Act (29 U.S.C.A. § 159 (a).

[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."[12] 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

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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.

[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; 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

[11] 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.

[12] See note 11.

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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. § 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

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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 complains 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

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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

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.

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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,[1] the obligation to present our views becomes plain.

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

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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.[2] 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.

By its terms the Labor Act extends to employers—large and small—unless excluded by definition,[3] and declares that, if one of these interferes with, restrains, or coerces any employee regarding his labor affiliations, etc., this shall be regarded as

1 National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U.S. C.Supp. I, tit. 29, § 151 et seq. [29 U.S.C.A. § 151 et seq.]).

2 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.

3 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.

312 U.S. 100, 657

UNITED STATES v. DARBY.

No. 82.

Argued Dec. 19, 20, 1940.

Decided Feb. 3, 1941.

As Amended Feb. 17, 1941.

1. Evidence ⇐34

The Supreme Court judicially knows that the purpose of the Fair Labor Standards Act is to exclude from interstate commerce goods produced for the commerce and to prevent their production for interstate commerce under conditions detrimental to the maintenance of the minimum standards of living necessary for health and general well-being, and to prevent the use of interstate commerce as the means of competition in the distribution of goods so produced and as the means of spreading and perpetuating such substandard labor conditions among the workers of the several states. Fair Labor Standards Act of 1938, §§ 2(a), 3(b), 29 U.S.C.A. §§ 202(a), 203(b).

2. Courts ⇐385(1½)

On direct appeal to the Supreme Court from a district court judgment sustaining a demurrer to an indictment charging violations of the Fair Labor Standards Act and quashing the indictment, the jurisdiction of the Supreme Court was limited under statute to a review of the determination of the district court so far only as it was based on the validity or construction of the act, and hence the Supreme Court would accept the district court's interpretation of the indictment and confine its decision to the validity and construction of the act. 18 U.S.C.A. § 682; Jud.Code, § 238, as amended, 28 U.S.C.A. § 345; Fair Labor Standards Act of 1938, § 15(a) (1, 2, 5), 29 U.S.C.A. § 215(a) (1, 2, 5).

3. Commerce ⇐16, 40(1), 55

Though manufacture is not itself "interstate commerce", the shipment of manufactured goods interstate is interstate commerce and the prohibition of such shipment by Congress is a regulation of the commerce. U.S.C.A.Const. art. 1, § 8, cl. 3.

See Words and Phrases, Permanent Edition, for all other definitions of "Interstate Commerce".

4. Commerce ⇐5, 48, 55

The power of Congress to "regulate commerce" is the power to prescribe the rule by which commerce is to be governed, and it extends not only to those regulations which aid, foster and protect the commerce, but embraces those which prohibit it. U.S.C.A. Const. art. 1, § 8, cl. 3.

See Words and Phrases, Permanent Edition, for all other definitions of "Regulate Commerce".

5. Commerce ⇐5

The power of Congress over interstate commerce is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed by the constitution, and that power can neither be enlarged nor diminished by the exercise or nonexercise of state power. U.S.C.A. Const. art. 1, § 8, cl. 3.

6. Commerce ⇐55
States ⇐4

Congress following its own conception of public policy concerning the restrictions which may appropriately be imposed on interstate commerce is free to exclude from the commerce articles whose use in the states for which they are destined it may conceive to be injurious to the public health, morals or welfare even though the state has not sought to regulate their use, and such regulation is not a forbidden invasion of state power merely because either its motive or its consequence is to restrict the use of articles of commerce within the states of destination and is not prohibited unless by other constitutional provisions. U.S.C.A.Const. art. 1, § 8, cl. 3.

7. Commerce ⇐5

It is no objection to the assertion by Congress of the power to regulate interstate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the states. U.S.C.A.Const. art. 1, § 8, cl. 3.

8. Commerce ⇐55

The motive and purpose of the provision of the Fair Labor Standards Act prohibiting the shipment in interstate commerce of goods produced for interstate commerce by employees whose wages and hours of employment do not conform to require-

ments of the act is to make effective the congressional conception of "public policy" that interstate commerce should not be made the instrument of competition which is injurious to the commerce and to the states from and to which the commerce flows in the distribution of goods produced under substandard labor conditions. Fair Labor Standards Act of 1938, § 15(a) (1), 29 U.S.C.A. § 215(a) (1); U.S.C.A.Const. art. 1, § 8, cl. 3.

See Words and Phrases, Permanent Edition, for all other definitions of "Public Policy".

9. Constitutional law ⇐70(3)

The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the constitution places no restriction and over which the courts are given no control. U.S.C.A.Const. art. 1, § 8, cl. 3.

10. Constitutional law ⇐70(1)

The judicial department cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged power.

11. Commerce ⇐48

Whatever their motive and purpose, regulations of commerce which do not infringe some constitutional prohibition are within the plenary power conferred on Congress by the commerce clause. U.S.C.A.Const. art. 1, § 8, cl. 3.

12. Commerce ⇐55

The provision of the Fair Labor Standards Act prohibiting the shipment in interstate commerce of goods produced for interstate commerce by employees whose wages and hours of employment do not conform to the requirements of the act is within the constitutional authority of Congress. Fair Labor Standards Act of 1938, § 15(a) (1), 29 U.S.C.A. § 215(a) (1); U.S.C.A.Const. art. 1, § 8, cl. 3.

13. Commerce ⇐33(1), 55

The power of Congress under the commerce clause is plenary to exclude any article from interstate commerce subject only to the specific prohibitions of the constitution. U.S.C.A.Const. art. 1, § 8, cl. 3.

14. Commerce ⇐5, 13

The authority of the federal government over interstate commerce does not differ in extent or character from that retained by the states over intrastate commerce. U.S.C.A.Const. art. 1, § 8, cl. 3.

15. Commerce ⇐16, 40(1)

The employees of a manufacturer engaged in the business of acquiring raw materials which he manufactures into finished lumber with the intent, when manufactured, to ship it in interstate commerce to customers outside the state and engaged in actually shipping a large part of the lumber so produced in interstate commerce are engaged in the "production of goods for commerce" within the wage and hour requirements of the Fair Labor Standards Act. Fair Labor Standards Act of 1938, §§ 6, 7, 15(a) (2), 29 U.S.C.A. §§ 206, 207, 215(a) (2); U.S.C.A.Const. art. 1, § 8, cl. 3.

See Words and Phrases, Permanent Edition, for all other definitions of "Production of Goods for Commerce".

16. Commerce ⇐55

The obvious purpose of the Fair Labor Standards Act, which prohibits the shipment in interstate commerce of goods produced for interstate commerce by employees whose wages and hours do not conform to the requirements of the act, was not only to prevent the interstate transportation of the proscribed product, but to stop the initial step toward transportation, production with the purpose of so transporting it. Fair Labor Standards Act of 1938, §§ 6, 7, 15(a) (2), 29 U.S.C.A. §§ 206, 207, 215(a) (2); U.S.C.A. Const. art. 1, § 8, cl. 3.

17. Commerce ⇐16, 40(1)

The recognized need of drafting a workable statute and the well known circumstances in which it was to be applied are persuasive of the conclusion that the "production of goods for commerce" intended in the section of the Fair Labor Standards Act making the wage and hour requirements of the act applicable to employees engaged in the production of goods for interstate commerce includes at least production of goods which, at the time of production, the employer, according to the normal course of his business, intends or expects to move in interstate commerce although, through the exigencies of the business, all of the goods may not thereafter actually enter interstate commerce. Fair Labor Standards Act of 1938, §§ 6, 7, 15(a) (2), 29 U.S.C.A. §§ 206, 207, 215 (a) (2); U.S.C.A.Const. art. 1, § 8, cl. 3.

18. Commerce ⇐5

The power of Congress over interstate commerce is not confined to the regulation of commerce among the states, but it extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of the exercise of the granted power. U.S.C.A.Const. art. 1, § 8, cl. 3.

19. Commerce ⇐5, 10

In absence of congressional legislation on the subject, state laws which are not regulations of interstate commerce itself or its instrumentalities are not forbidden even though they affect interstate commerce, but it does not follow that Congress may not by appropriate legislation regulate intrastate activities where they have a substantial effect on interstate commerce. U.S.C.A.Const. art. 1, § 8, cl. 3.

20. Constitutional law ⇐47

In passing on the validity of legislation wherein Congress itself says that a particular activity affects interstate commerce, the only function of courts is to determine whether the particular activity regulated or prohibited is within the reach of the federal power. U.S.C.A.Const. art. 1, § 8, cl. 3.

21. Commerce ⇐16

The provisions of the Fair Labor Standards Act requiring employers to conform to the wage and hour requirements with respect to employees engaged in the production of goods for interstate commerce are a valid exercise of constitutional authority, since Congress having by the act adopted the policy of excluding from interstate commerce all goods produced for the commerce which do not conform to the specified labor standards, could choose the means reasonably adapted to the attainment of the permitted end, even though they involved control of intrastate activities. Fair Labor Standards Act of 1938, §§ 6, 7, 15(a) (1, 2), 29 U.S.C.A. §§ 206, 207, 215(a) (1, 2); U.S.C.A.Const. art. 1, § 8, cl. 3.

22. Commerce ⇐55

The provision of the Fair Labor Standards Act making it unlawful to violate the wage and hour requirements with respect to employees engaged in the production of goods for interstate commerce is within the reach of the commerce power independently of the provision which makes unlawful the shipment in interstate commerce of any goods in the production of which any employee was employed in violation of the wage and hour requirements, since the act is directed at the suppression in interstate commerce of a kind of competition which it has in effect condemned as "unfair competition". Fair Labor Standards Act of 1938, §§ 6, 7, 15(a) (1, 2), 29 U.S.C.A. §§ 206, 207, 215(a) (1, 2); U.S.C.A. Const. art. 1, § 8, cl. 3.

See Words and Phrases, Permanent Edition, for all other definitions of "Unfair Competition".

23. States ⇐4

The provisions of the Fair Labor Standards Act requiring employers to conform to the wage and hour requirements with respect to all employees engaged in the production of goods for interstate commerce do not violate the Tenth Amendment. Fair Labor Standards Act of 1938, §§ 6, 7, 15(a) (2), 29 U.S.C.A. §§ 206, 207, 215(a) (2); U.S.C.A.Const. art. 1, § 8, cl. 3; Amend. 10.

24. States ⇐4

The Tenth Amendment is merely declaratory of the relationship between the national and state governments as it was established by the constitution before the amendment, and its purpose was to allay fears that the new national government might seek to exercise powers not granted and that the states might not be able to exercise fully their reserved powers. U.S.C.A.Const. Amend. 10.

25. States ⇐4

The Tenth Amendment does not deprive the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end. U.S.C.A. Const. Amend. 10.

26. Commerce ⇐57

The provisions of the Fair Labor Standards Act making it unlawful for an employer subject to the act to violate the section which requires him to keep such records of the persons employed by him and of their wages and hours of employment as the administrator shall prescribe by regulation or order are valid even to the extent of requiring records of intrastate transactions as an appropriate means to the legitimate end of enforcing the wage and hour provisions.

Fair Labor Standards Act of 1938, §§ 6, 7, 11(c), 15(a) (5), 29 U.S.C.A. §§ 206, 207, 211 (c), 215(a) (5); U.S.C.A.Const. art. 1, § 8, cl. 3.

27. Constitutional law ⇐275(2)
Master and servant ⇐69

The wage and hour provisions of the Fair Labor Standards Act compelling the payment of a minimum standard wage with a prescribed increased wage for overtime do not deny "due process of law" in violation of the Fifth Amendment, nor are they objectionable because applied alike to both men and women. Fair Labor Standards Act of 1938, §§ 6, 7, 29 U.S.C.A. §§ 206, 207; U.S.C.A.Const. art. 1, § 8, cl. 3; Amend. 5.

See Words and Phrases, Permanent Edition, for all other definitions of "Due Process of Law".

28. Commerce ⇐43
Constitutional law ⇐275(2)

The fixing of a minimum wage is within the legislative power of Congress under the commerce clause, and the bare fact of its exercise is not a denial of "due process of law" under the Fifth Amendment or under the Fourteenth Amendment. U.S.C.A.Const. art. 1, § 8, cl. 3; Amends. 5, 14.

29. Criminal law ⇐13

The Fair Labor Standards Act which warns anyone who employs persons without conforming to the prescribed wage and hour conditions to work on goods which he ships or expects to ship across state lines that he may be subject to the criminal penalties of the act is sufficiently definite to meet constitutional demands. Fair Labor Standards Act of 1938, §§ 6, 7, 15, 16(a), 29 U.S.C.A. §§ 206, 207, 215, 216(a); U.S.C.A.Const. art. 1, § 8, cl. 3; Amend. 5.

Appeal from the District Court of the United States for the Southern District of Georgia.

Fred W. Darby was indicted for alleged violations of section 15(a) (1, 2, 5) of the Fair Labor Standards Act of 1938, 29 U.S.C.A. § 215(a) (1, 2, 5), and from a judgment sustaining a demurrer to the indictment and quashing the indictment, 32 F. Supp. 734, the United States of America appeals.

Reversed.

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Messrs. Robert H. Jackson, Atty. Gen., and Francis Biddle, Sol. Gen., for appellant.

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Mr. Archibald B. Lovett, of Savannah, Ga., for appellee.

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Mr. Justice STONE delivered the opinion of the Court.

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

Appellee demurred to an indictment found in the district court for southern Georgia charging him with violation of § 15(a) (1) (2) and (5) of the Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U.S.C. § 201, et seq., 29 U.S.C.A. § 201 et seq. The district court sustained the demurrer and quashed the indictment and the case comes here on direct appeal under § 238 of the Judicial Code as amended, 28

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U.S.C. § 345, 28 U.S.C.A. § 345, and § 682, Title 18 U.S.C., 34 Stat. 1246, 18 U.S.C.A. § 682, which authorizes an appeal to this Court when the judgment sustaining the demurrer "is based upon the invalidity, or construction of the statute upon which the indictment is founded".

[1] The Fair Labor Standards Act set up a comprehensive legislative scheme for preventing the shipment in interstate com-

merce of certain products and commodities produced in the United States under labor conditions as respects wages and hours which fail to conform to standards set up by the Act. Its purpose, as we judicially know from the declaration of policy in § 2(a) of the Act,[1] and the reports of Congressional committees proposing the legislation, S.Rept. No. 884, 75th Cong. 1st Sess.; H.Rept. No. 1452, 75th Cong. 1st Sess.; H.Rept. No. 2182, 75th Cong. 3d Sess., Conference Report, H.Rept. No. 2738, 75th Cong. 3d Sess., is to exclude from interstate commerce goods produced for the commerce and to prevent their production for interstate commerce, under conditions detrimental to the maintenance of the minimum standards of living necessary for health and general well-being; and to prevent the use of interstate

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commerce as the means of competition in the distribution of goods so produced, and as the means of spreading and perpetuating such substandard labor conditions among the workers of the several states. The Act also sets up an administrative procedure whereby those standards may from time to time be modified generally as to industries subject to the Act or within an industry in accordance with specified standards, by an administrator acting in collaboration with "Industry Committees" appointed by him.

Section 15 of the statute prohibits certain specified acts and § 16(a) punishes willful violation of it by a fine of not more than $10,000 and punishes each conviction after the first by imprisonment of not more than six months or by the specified fine or both. Section 15(a) (1) makes unlawful the shipment in interstate commerce of any goods "in the production of which any employee was employed in violation of section 6[206] or section 7[207]", which provide, among other things, that during the first year of operation of the Act a minimum wage of 25 cents per hour shall be paid to employees "engaged in [interstate] commerce or in the production of goods for [interstate] commerce," § 6, and that the maximum hours of employment for employees "engaged in commerce or in the production of goods for commerce" without increased compensation for overtime, shall be forty-four hours a week. § 7.

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

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The indictment charges that appellee is engaged, in the state of Georgia, in the business of acquiring raw materials, which he manufactures into finished lumber with the intent, when manufactured, to ship it in interstate commerce to customers outside the state, and that he does in fact so ship a large part of the lumber so produced. There are numerous counts charging appellee with the shipment in interstate commerce from Georgia to points outside the state of lumber in the production of which, for interstate commerce, appellee has employed workmen at less than the prescribed minimum wage or more than the prescribed maximum hours without payment to them of any wage for overtime. Other counts charge the employment by appellee of workmen in the pro-

1 "Sec. 2 [§ 202]. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce."

Section 3(b) defines "commerce" as "trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof."

duction of lumber for interstate commerce at wages of less than 25 cents an hour or for more than the maximum hours per week without payment to them of the prescribed overtime wage. Still another count charges appellee with failure to keep records showing the hours worked each day a week by each of his employees as required by § 11(c) and the regulation of the administrator, Title 29, Ch. 5, Code of Federal Regulations, Part 516, and also that appellee unlawfully failed to keep such records of employees engaged "in the production and manufacture of goods, to-wit lumber, for interstate commerce".

The demurrer, so far as now relevant to the appeal, challenged the validity of the Fair Labor Standards Act under the Commerce Clause, Art. 1, § 8, cl. 3, and the Fifth and Tenth Amendments. The district court quashed the indictment in its entirety upon the broad grounds that the Act, which it interpreted as a regulation of manufacture within the states, is unconstitutional. It declared that manufacture is not interstate commerce and that the regulation by the Fair Labor Standards Act of wages and hours of employment of those engaged in the manufacture

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of goods which it is intended at the time of production "may or will be" after production "sold in interstate commerce in part or in whole" is not within the congressional power to regulate interstate commerce.

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

[2] The case comes here on assignments by the Government that the district court erred insofar as it held that Congress was without constitutional power to penalize the acts set forth in the indictment, and appellees seek to sustain the decision below on the grounds that the prohibition by Congress of those Acts is unauthorized by the commerce clause and is prohibited by the Fifth Amendment. The appeals statute limits our jurisdiction on this appeal to a review of the determination of the district court so far only as it is based on the validity or construction of the statute. United States v. Borden Co., 308 U.S. 188, 193, 195, 60 S.Ct. 182, 185, 186, 84 L.Ed. 181, and cases cited. Hence we accept the district court's interpretation of the indictment and confine our decision to the validity and construction of the statute.

The prohibition of shipment of the proscribed goods in interstate commerce. Section 15 (a) (1) prohibits, and the indictment charges, the shipment in interstate commerce, of goods produced for interstate commerce by employees whose wages and hours of employment do not

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conform to the requirements of the Act. Since this section is not violated unless the commodity shipped has been produced under labor conditions prohibited by § 6 and § 7, the only question arising under the commerce clause with respect to such shipments is whether Congress has the constitutional power to prohibit them.

[3, 4] While manufacture is not of itself interstate commerce the shipment of manufactured goods interstate is such commerce and the prohibition of such shipment by Congress is indubitably a regulation of the commerce. The power to regulate commerce is the power "to prescribe the rule by which commerce is to be governed". Gibbons v. Ogden, 9 Wheat. 1, 196, 6 L.Ed. 23. It extends not only to those regulations which aid, foster and protect the commerce, but embraces those which prohibit it. Reid v. Colorado, 187 U.S. 137, 23 S.Ct. 92, 47 L.Ed. 108; Lottery Case (Champion v. Ames), 188 U.S. 321, 23 S.Ct. 321, 47 L.Ed. 492; United States v. Delaware & Hudson Co., 213 U.S. 366, 29 S.Ct. 527, 53 L.Ed. 836; Hoke v. United States, 227 U.S. 308, 33 S.Ct. 281, 57 L.Ed. 523, 43 L.R.A., N.S., 906, Ann.Cas.1913E, 905; Clark Distilling Co. v. Western Maryland R. Co., 242 U.S. 311, 37 S.Ct. 180, 61 L.Ed. 326, L.R.A.1917B, 1218, Ann.Cas.1917B, 845;

United States v. Hill, 248 U.S. 420, 39 S. Ct. 143, 63 L.Ed. 337; McCormick & Co. v. Brown, 286 U.S. 131, 52 S.Ct. 522, 76 L.Ed. 1017, 87 A.L.R. 448. It is conceded that the power of Congress to prohibit transportation in interstate commerce includes noxious articles, Lottery Case, supra; Hipolite Egg Co. v. United States, 220 U.S. 45, 31 S.Ct. 364, 55 L.Ed. 364; cf. Hoke v. United States, supra; stolen articles, Brooks v. United States, 267 U.S. 432, 45 S.Ct. 345, 69 L.Ed. 699, 37 A.L.R. 1407; kidnapped persons, Gooch v. United States, 297 U.S. 124, 56 S.Ct. 395, 80 L.Ed. 522, and articles such as intoxicating liquor or convict made goods, traffic in which is forbidden or restricted by the laws of the state of destination. Kentucky Whip & Collar Co. v. Illinois Central R. Co., 299 U.S. 334, 57 S.Ct. 277, 81 L.Ed. 270.

But it is said that the present prohibition falls within the scope of none of these categories; that while the prohibition is nominally a regulation of the commerce its motive or purpose is regulation of wages and hours of persons engaged in manufacture, the control of which has been reserved to the states and upon which Georgia

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and some of the states of destination have placed no restriction; that the effect of the present statute is not to exclude the prescribed articles from interstate commerce in aid of state regulation as in Kentucky Whip & Collar Co. v. Illinois Central R. Co., supra, but instead, under the guise of a regulation of interstate commerce, it undertakes to regulate wages and hours within the state contrary to the policy of the state which has elected to leave them unregulated.

[5-7] The power of Congress over interstate commerce "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed by the constitution." Gibbons v. Ogden, supra, 9 Wheat. 196, 6 L.Ed. 23. That power can neither be enlarged nor diminished by the exercise or non-exercise of state power. Kentucky Whip & Collar Co. v. Illinois Central R. Co., supra. Congress, following its own conception of public policy concerning the restrictions which may appropriately be imposed on interstate commerce, is free to exclude from the commerce articles whose use in the states for which they are destined it may conceive to be injurious to the public health, morals or welfare, even though the state has not sought to regulate their use. Reid v. Colorado, supra; Lottery Case, supra; Hipolite Egg Co. v. United States, supra; Hoke v. United States, supra.

Such regulation is not a forbidden invasion of state power merely because either its motive or its consequence is to restrict the use of articles of commerce within the states of destination and is not prohibited unless by other Constitutional provisions. It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the states. Seven Cases v. United States, 239 U.S. 510, 514, 36 S.Ct. 190, 191, 60 L.Ed. 411; Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146, 156, 40 S.Ct. 106, 108, 64 L.Ed. 194; United States v. Carolene Products Co., 304 U.S.

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144, 147, 58 S.Ct. 778, 780, 82 L.Ed. 1234; United States v. Appalachian Electric Power Co., 311 U.S. 377, 61 S.Ct. 291, 85 L.Ed. 243, decided December 16, 1940.

[8-12] The motive and purpose of the present regulation are plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and to the states from and to which the commerce flows. The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the Constitution places no restriction and over which the courts are given no control. McCray v. United States, 195 U.S. 27, 24 S.Ct. 769, 49 L.Ed. 78, 1 Ann.Cas. 561; Sonzinsky v. United States, 300 U.S. 506, 513, 57 S.Ct. 554, 555, 81 L.Ed. 772, and cases cited. "The judicial cannot prescribe to the legislative departments of the government limitations upon the exercise of its acknowledged power". Veazie Bank v. Fenno, 8 Wall. 533, 548, 19 L.Ed. 482. Whatever their motive and purpose, regulations of commerce which do not infringe some constitutional prohibition are within the plenary

power conferred on Congress by the Commerce Clause. Subject only to that limitation, presently to be considered, we conclude that the prohibition of the shipment interstate of goods produced under the forbidden substandard labor conditions is within the constitutional authority of Congress.

[13] In the more than a century which has elapsed since the decision of Gibbons v. Ogden, these principles of constitutional interpretation have been so long and repeatedly recognized by this Court as applicable to the Commerce Clause, that there would be little occasion for repeating them now were it not for the decision of this Court twenty-two years ago in Hammer v. Dagenhart, 247 U.S. 251, 38 S.Ct. 529, 62 L.Ed. 1101, 3 A.L.R. 649, Ann.Cas.1918E, 724. In that case it was held by a bare majority of the Court over the powerful and now classic dissent of Mr. Justice Holmes setting forth the fundamental issues involved,

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that Congress was without power to exclude the products of child labor from interstate commerce. The reasoning and conclusion of the Court's opinion there cannot be reconciled with the conclusion which we have reached, that the power of Congress under the Commerce Clause is plenary to exclude any article from interstate commerce subject only to the specific prohibitions of the Constitution.

[14] Hammer v. Dagenhart has not been followed. The distinction on which the decision was rested that Congressional power to prohibit interstate commerce is limited to articles which in themselves have some harmful or deleterious property—a distinction which was novel when made and unsupported by any provision of the Constitution—has long since been abandoned. Brooks v. United States, supra; Kentucky Whip & Collar Co. v. Illinois Central R. Co., supra; Electric Bond & Share Co. v. Securities & Exchange Commission, 303 U.S. 419, 58 S.Ct. 678, 82 L.Ed. 936, 115 A.L.R. 105; Mulford v. Smith, 307 U.S. 38, 59 S.Ct. 648, 83 L.Ed. 1092. The thesis of the opinion that the motive of the prohibition or its effect to control in some measure the use or production within the states of the article thus excluded from the commerce can operate to deprive the regulation of its constitutional authority has long since ceased to have force. Reid v. Colorado, supra; Lottery Case, supra; Hipolite Egg Co. v. United States, supra; Seven Cases v. United States, supra, 239 U.S. 514, 36 S.Ct. 191, 60 L.Ed. 411; Hamilton v. Kentucky Distilleries & Warehouse Co., supra, 251 U.S. 156, 40 S.Ct. 108, 64 L.Ed. 194; United States v. Carolene Products Co., supra, 304 U.S. 147, 58 S.Ct. 780, 82 L.Ed. 1234. And finally we have declared "The authority of the Federal Government over interstate commerce does not differ in extent or character from that retained by the states over intrastate commerce". United States v. Rock Royal Co-Operative, Inc., 307 U.S. 533, 569, 59 S. Ct. 993, 1011, 83 L.Ed. 1446.

The conclusion is inescapable that Hammer v. Dagenhart, was a departure from the principles which have prevailed in the interpretation of the commerce clause both

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before and since the decision and that such vitality, as a precedent, as it then had has long since been exhausted. It should be and now is overruled.

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

To answer this question we must at the outset determine whether the particular acts charged in the counts which are laid under § 15(a) (2) as they were construed below, constitute "production for commerce" within the meaning of the statute. As the Government seeks to apply the statute in the indictment, and as the court below construed the phrase "produced for interstate commerce", it embraces at least the case where an employer engaged, as are appellees, in the manufacture and shipment of goods in filling orders of extrastate customers, manu-

factures his product with the intent or expectation that according to the normal course of his business all or some part of it will be selected for shipment to those customers.

[15, 16] Without attempting to define the precise limits of the phrase, we think the acts alleged in the indictment are within the sweep of the statute. The obvious purpose of the Act was not only to prevent the interstate transportation of the proscribed product, but to stop the initial step toward transportation, production with the purpose of so transporting it. Congress was not unaware that

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most manufacturing businesses shipping their product in interstate commerce make it in their shops without reference to its ultimate destination and then after manufacture select some of it for shipment interstate and some intrastate according to the daily demands of their business, and that it would be practically impossible, without disrupting manufacturing businesses, to restrict the prohibited kind of production to the particular pieces of lumber, cloth, furniture or the like which later move in interstate rather than intrastate commerce. Cf. United States v. New York Central R. Co., 272 U.S. 457, 464, 47 S.Ct. 130, 132, 71 L.Ed. 350.

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

[18] There remains the question whether such restriction on the production of goods for commerce is a permissible exercise of the commerce power. The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce. See McCulloch

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v. Maryland, 4 Wheat. 316, 421, 4 L.Ed. 579. Cf. United States v. Ferger, 250 U.S. 199, 39 S.Ct. 445, 63 L.Ed. 936.

[19] While this Court has many times found state regulation of interstate commerce, when uniformity of its regulation is of national concern, to be incompatible with the Commerce Clause even though Congress has not legislated on the subject, the Court has never implied such restraint on state control over matters intrastate not deemed to be regulations of interstate commerce or its instrumentalities even though they affect the commerce. Minnesota Rate Cases, 230 U.S. 352, 398, 410 et seq., 33 S.Ct. 729, 739, 744, 57 L.Ed. 1511, 48 L.R.A.,N.S., 1151, Ann.Cas.1916A, 18, and cases cited. In the absence of Congressional legislation on the subject state laws which are not regulations of the commerce itself or its instrumentalities are not forbidden even though they affect interstate commerce. Kidd v. Pearson, 128 U.S. 1, 9 S.Ct. 6, 32 L.Ed. 346; Bacon v. Illinois, 227 U.S. 504, 33 S.Ct. 299, 57 L.Ed. 615; Heisler v. Thomas Colliery Co., 260 U.S. 245, 43 S.Ct. 83, 67 L.Ed. 237; Oliver Iron Mining Co. v. Lord, 262 U.S. 172, 43 S.Ct. 526, 67 L.Ed. 929.

But it does not follow that Congress may not by appropriate legislation regulate intrastate activities where they have a substantial effect on interstate commerce. See Santa Cruz Fruit Packing Co. v. National Labor Relations Board, 303 U.S. 453, 466, 58 S.Ct. 656, 660, 82 L.Ed. 954. A recent example is the National Labor Relations Act, 29 U.S.C.A. § 151 et seq., for the regulation of employer and employee relations in industries in which strikes, induced by unfair labor practices named in the Act, tend to disturb or obstruct interstate commerce. See National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 38, 40, 57 S.Ct. 615, 625, 81 L.Ed. 893, 108 A.L.R. 1352;

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

National Labor Relations Board v. Fainblatt, 306 U.S. 601, 604, 59 S.Ct. 668, 670, 83 L.Ed. 1014, and cases cited. But long before the adoption of the National Labor Relations Act, this Court had many times held that the power of Congress to regulate interstate commerce extends to the regulation through legislative action of activities intrastate

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which have a substantial effect on the commerce or the exercise of the Congressional power over it.[3]

[20] In such legislation Congress has sometimes left it to the courts to determine whether the intrastate activities have the prohibited effect on the commerce, as in the Sherman Act, 15 U.S.C.A. §§ 1–7, 15 note. It has sometimes left it to an administrative board or agency to determine whether the activities sought to be regulated or prohibited have such effect, as in the case of the Interstate Commerce Act, 49 U.S.C.A. § 1 et seq., and the National Labor Relations Act or whether they come within the statutory definition of the prohibited Act as in the Federal Trade Commission Act, 15 U.S.C.A. § 41 et seq. And sometimes Congress itself has said that a particular activity affects the commerce as it did in the present act, the Safety Appliance Act, 15 U.S.C.A. § 1 et seq., and the Railway Labor Act, 45 U.S.C.A. § 181 et seq. In passing on the validity of legislation of the class last mentioned the only function of courts is to determine whether the particular activity regulated or prohibited is within the reach

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of the federal power. See United States v. Ferger, supra; Virginian R. Co. v. System Federation, 300 U.S. 515, 553, 57 S.Ct. 592, 602, 81 L.Ed. 789.

[21] Congress, having by the present Act adopted the policy of excluding from interstate commerce all goods produced for the commerce which do not conform to the specified labor standards, it may choose the means reasonably adapted to the attainment of the permitted end, even though they involve control of intrastate activities. Such legislation has often been sustained with respect to powers, other than the commerce power granted to the national government, when the means chosen, although not themselves within the granted power, were nevertheless deemed appropriate aids to the accomplishment of some purpose within an admitted power of the national government. See Ruppert, Inc., v. Caffey, 251 U.S. 264, 40 S.Ct. 141, 64 L.Ed. 260; Everard's Breweries v. Day, 265 U.S. 545, 560, 44 S.Ct. 628, 631, 68 L.Ed. 1174; Westfall v. United States, 274 U.S. 256, 259, 47 S.Ct. 629, 71 L.Ed. 1036. As to state power under the Fourteenth Amendment, compare Otis v. Parker, 187 U.S. 606, 609, 23 S.Ct. 168, 47 L.Ed. 323; St. John v. New York, 201 U.S. 633, 26 S.Ct. 554, 50 L.Ed. 896, 5 Ann.Cas. 909; Purity Extract & Tonic Company v. Lynch, 226 U.S. 192, 201, 202, 33 S.Ct. 44, 45, 46, 57 L.Ed. 184. A familiar like exercise of power is the regulation of intrastate transactions which are so commingled with or related to interstate commerce that all must be regulated if the

[3] It may prohibit wholly intrastate activities which, if permitted, would result in restraint of interstate commerce. Coronado Coal Co. v. United Mine Workers, 268 U.S. 295, 310, 45 S.Ct. 551, 556, 69 L.Ed. 963; Local 167 v. United States, 291 U.S. 293, 297, 54 S.Ct. 396, 398, 78 L.Ed. 804. It may regulate the activities of a local grain exchange shown to have an injurious effect on interstate commerce. Chicago Board of Trade v. Olsen, 262 U.S. 1, 43 S.Ct. 470, 67 L.Ed. 839. It may regulate intrastate rates of interstate carriers where the effect of the rates is to burden interstate commerce. Houston, E. & W. Texas R. Co. v. United States, 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341; Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. Co., 257 U.S. 563, 42 S.Ct. 232, 66 L.Ed. 371, 22 A.L.R. 1086; United States v. Louisiana, 290 U.S. 70, 74, 54 S.Ct. 28, 31, 78 L.Ed. 181; Florida v. United States, 292 U.S. 1, 54 S.Ct. 603, 78 L.Ed. 1077. It may compel the adoption of safety appliances on rolling stock moving intrastate because of the relation to and effect of such appliances upon interstate traffic moving over the same railroad. Southern R. Co. v. United States, 222 U.S. 20, 32 S.Ct. 2, 56 L.Ed. 72. It may prescribe maximum hours for employees engaged in intrastate activity connected with the movement of any train, such as train dispatchers and telegraphers. Baltimore & Ohio R. Co. v. Interstate Commerce Commission, 221 U.S. 612, 619, 31 S.Ct. 621, 625, 55 L.Ed. 878.

interstate commerce is to be effectively controlled. Shreveport Case, 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341; Wisconsin Railroad Comm. v. Chicago, B. & Q. R. Co., 257 U.S. 563, 42 S.Ct. 232, 66 L.Ed. 371, 22 A.L.R. 1086; United States v. New York Central R. R. Co., supra, 272 U.S. 464, 47 S.Ct. 132, 71 L.Ed. 350; Currin v. Wallace, 306 U.S. 1, 59 S.Ct. 379, 83 L.Ed. 441; Mulford v. Smith, supra. Similarly Congress may require inspection and preventive treatment of all cattle in a disease infected area in order to prevent shipment in interstate commerce of some of the cattle without the treatment. Thornton v. United States, 271 U.S. 414, 46 S.Ct. 585, 70 L.Ed. 1013. It may prohibit the removal, at destination, of labels required by the Pure Food & Drugs Act, 21 U.S.C.A. § 1 et seq., to be affixed to articles

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transported in interstate commerce. McDermott v. Wisconsin, 228 U.S. 115, 33 S.Ct. 431, 57 L.Ed. 754, 47 L.R.A.,N.S., 984, Ann.Cas.1915A, 39. And we have recently held that Congress in the exercise of its power to require inspection and grading of tobacco shipped in interstate commerce may compel such inspection and grading of all tobacco sold at local auction rooms from which a substantial part but not all of the tobacco sold is shipped in interstate commerce. Currin v. Wallace, supra, 306 U.S. 11, 59 S.Ct. 385, 83 L.Ed. 441, and see to the like effect United States v. Rock Royal Co-Op., supra, 307 U.S. 568, 59 S.Ct. 1010, 83 L.Ed. 1446, note 37.

[22] We think also that § 15(a) (2), now under consideration, is sustainable independently of § 15(a) (1), which prohibits shipment or transportation of the proscribed goods. As we have said the evils aimed at by the Act are the spread of substandard labor conditions through the use of the facilities of interstate commerce for competition by the goods so produced with those produced under the prescribed or better labor conditions; and the consequent dislocation of the commerce itself caused by the impairment or destruction of local businesses by competition made effective through interstate commerce. The Act is thus directed at the suppression of a method or kind of competition in interstate commerce which it has in effect condemned as "unfair", as the Clayton Act, 38 Stat. 730, has condemned other "unfair methods of competition" made effective through interstate commerce. See Van Camp & Sons v. American Can Co., 278 U.S. 245, 49 S.Ct. 112, 73 L.Ed. 311, 60 A.L.R. 1060; Federal Trade Comm. v. R. F. Keppel & Bro., 291 U.S. 304, 54 S.Ct. 423, 78 L.Ed. 814.

The Sherman Act and the National Labor Relations Act are familiar examples of the exertion of the commerce power to prohibit or control activities wholly intrastate because of their effect on interstate commerce. See as to the Sherman Act, Northern Securities Company v. United States, 193 U.S. 197, 24 S.Ct. 436, 48 L.Ed. 679; Swift & Co. v. United States, 196 U.S. 375, 25 S.Ct. 276, 49 L.Ed. 518; United States v. Patten, 226 U.S. 525, 33 S.Ct. 141, 57 L.Ed. 333, 44 L.R.A.,N.S., 325; United Mine Workers v. Coronado Coal Co., 259 U.S. 344, 42 S.Ct. 570, 66 L.Ed. 975, 27 A.L.R. 762; Local

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167 v. United States, 291 U.S. 293, 54 S.Ct. 396, 78 L.Ed. 804; Stevens Co. et al. v. Foster & Kleiser Co. et al., 311 U.S. 255, 61 S.Ct. 210, 85 L.Ed. 173, decided December 9, 1940. As to the National Labor Relations Act, see National Labor Relations Board v. Fainblatt, supra, and cases cited.

The means adopted by § 15(a) (2) for the protection of interstate commerce by the suppression of the production of the condemned goods for interstate commerce is so related to the commerce and so affects it as to be within the reach of the commerce power. See Currin v. Wallace, supra, 306 U.S. 11, 59 S.Ct. 385, 83 L.Ed. 441. Congress, to attain its objective in the suppression of nationwide competition in interstate commerce by goods produced under substandard labor conditions, has made no distinction as to the volume or amount of shipments in the commerce or of production for commerce by any particular shipper or producer. It recognized that in present day industry, competition by a small part may affect the whole and that the total effect of the competition of many small producers may be great. See H. Rept. No. 2182, 75th Cong. 1st Sess., p. 7. The legislation aimed at a whole embraces all its parts. Cf. National Labor Relations Board v. Fainblatt, supra, 306 U.S. 606, 59 S.Ct. 671, 83 L.Ed. 1014.

So far as Carter v. Carter Coal Co., 298 U.S. 238, 56 S.Ct. 855, 80 L.Ed. 1160, is inconsistent with this conclusion, its doctrine is limited in principle by the decisions under the Sherman Act and the National Labor Relations Act, which we have cited and which we follow. See, also, Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 60 S.Ct. 907, 84 L.Ed. 1263; Currin v. Wallace, supra; Mulford v. Smith, supra; United States v. Rock Royal Co-Op., supra; Clover Fork Coal Co. v. National Labor Relations Board, 6 Cir., 97 F.2d 331; National Labor Relations Board v. Crowe Coal Co., 8 Cir., 104 F.2d 633; National Labor Relations Board v. Good Coal Co., 6 Cir., 110 F.2d 501.

[23, 24] Our conclusion is unaffected by the Tenth Amendment which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the

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

[25] From the beginning and for many years the amendment has been construed as not depriving the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end. Martin v. Hunter's Lessee, 1 Wheat. 304, 324, 325, 4 L.Ed. 97; McCulloch v. Maryland, supra, 4 Wheat. 405, 406, 4 L.Ed. 579; Gordon v. United States, 117 U.S. Appendix, 697, 705; Lottery Case, supra; Northern Securities Co. v. United States, supra, 193 U.S. 344, 345, 24 S.Ct. 459, 460, 48 L.Ed. 679; Everard's Breweries v. Day, supra, 265 U.S. 558, 44 S.Ct. 631, 68 L. Ed. 1174; United States v. Sprague, 282 U. S. 716, 733, 51 S.Ct. 220, 222, 75 L.Ed. 640, 71 A.L.R. 1381; see United States v. The Brigantine William, 28 Fed.Cas. 614, 622, No. 16,700. Whatever doubts may have arisen of the soundness of that conclusion they have been put at rest by the decisions under the Sherman Act and the National Labor Relations Act which we have cited. See, also, Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 330, 331, 56 S.Ct. 466, 475, 80 L.Ed. 688; Wright v. Union Central Ins. Co., 304 U.S. 502, 516, 58 S. Ct. 1025, 1033, 82 L.Ed. 1490.

[26] *Validity of the requirement of records of wages and hours.* § 15(a) (5) and § 11(c). These requirements are incidental to those for the prescribed wages and

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hours, and hence validity of the former turns on validity of the latter. Since, as we have held, Congress may require production for interstate commerce to conform to those conditions, it may require the employer, as a means of enforcing the valid law, to keep a record showing whether he has in fact complied with it. The requirement for records even of the intrastate transaction is an appropriate means to the legitimate end. See Baltimore & Ohio R. Co. v. Interstate Commerce Commission, 221 U.S. 612, 31 S.Ct. 621, 55 L.Ed. 878; Interstate Commerce Commission v. Goodrich Transit Co., 224 U.S. 194, 32 S.Ct. 436, 56 L.Ed. 729; Chicago Board of Trade v. Olsen, 262 U.S. 1, 42, 43 S.Ct. 470, 479, 67 L.Ed. 839.

[27, 28] *Validity of the wage and hour provisions under the Fifth Amendment.* Both provisions are minimum wage requirements compelling the payment of a minimum standard wage with a prescribed increased wage for overtime of "not less than one and one-half times the regular rate" at which the worker is employed. Since our decision in West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S.Ct. 578, 81 L. Ed. 703, 108 A.L.R. 1330, it is no longer open to question that the fixing of a minimum wage is within the legislative power and that the bare fact of its exercise is not a denial of due process under the Fifth more than under the Fourteenth Amendment. Nor is it any longer open to question that it is within the legislative power to fix maximum hours. Holden v. Hardy, 169 U.S. 366, 18 S.Ct. 383, 42 L.Ed. 780; Muller v. Oregon, 208 U.S. 412, 28 S.Ct. 324,

52 L.Ed. 551, 13 Ann.Cas. 957; Bunting v. Oregon, infra; Baltimore & Ohio R. Co. v. Interstate Commerce Commission, supra. Similarly the statute is not objectionable because applied alike to both men and women. Cf. Bunting v. Oregon, 243 U.S. 426, 37 S.Ct. 435, 61 L.Ed. 830, Ann. Cas.1918A, 1043.

[29] The Act is sufficiently definite to meet constitutional demands. One who employs persons, without conforming to the prescribed wage and hour conditions, to work on goods which he ships or expects to ship across state

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lines, is warned that he may be subject to the criminal penalties of the Act. No more is required. Nash v. United States, 229 U.S. 373, 377, 33 S.Ct. 780, 781, 57 L.Ed. 1232.

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

Reversed.



312 U.S. 219

UNITED STATES v. HUTCHESON et al.

No. 43.

Argued Dec. 10, 1940.

Decided Feb. 3, 1941.

1. Indictment and Information ⇐108

To determine whether an indictment charges an offense, the pleader's designation of a statute purporting to support the charge is immaterial, since the charge, though not sustained by that statute, may come within the terms of another, just as other statutes not referred to by the pleader may draw the sting of criminality from the allegations.

2. Monopolies ⇐12(1)

Whether labor union activities constitute a violation of the Sherman Anti-Trust Act is to be determined only by reading, as a harmonizing text, the Sherman Act, the Norris-LaGuardia Act, and the section of the Clayton Act restricting injunctions in labor cases. Sherman Anti-Trust Act § 1, as amended, 15 U.S.C.A. § 1; Clayton Act, § 20, 29 U.S.C.A. § 52; Norris-LaGuardia Act, §§ 1–15, 29 U.S.C.A. §§ 101–115.

3. Courts ⇐262(4)

The section of the Clayton Act restricting injunctions in labor cases does not differentiate between labor union conduct directed against an employer because of a controversy arising in the relation between employer and employee, as such, and conduct similarly directed but ultimately due to strife between unions competing for jobs. Clayton Act, § 20, 29 U.S.C.A. § 52.

4. Monopolies ⇐31(1)

Where an indictment for violating the Sherman Anti-Trust Act alleged that the employer and its lessee sold their products largely through interstate shipments and that the employer and companies contracting for construction work for the employer and its lessee depended on interstate commerce for their materials, and that defendants called out members of a carpenters' union, competing with a machinists' union for employment, on strike against the employer and construction companies, followed by attempts to call sympathy strikes and by picketing of the employer and its lessee, and a request through circular letters, etc., that union members and their friends refrain from buying the employer's products, the acts charged were lawful under the section of the Clayton Act restricting injunctions in labor cases, especially in the light of the Norris-LaGuardia Act establishing that the allowable area of union activity is not to be restricted to an immediate employer-employee relation. Sherman Anti-Trust Act, § 1, as amended, 15 U.S.C.A. § 1; Clayton Act, § 20, 29 U.S.C.A. § 52; Norris-LaGuardia Act, § 13(b, c), 29 U.S.C.A. § 113(b, c).

5. Courts ⇐262(4)

The underlying aim of the Norris-LaGuardia Act was to restore the broad purpose which Congress thought it had formulated in the section of the Clayton Act restricting injunctions in labor cases, but which was frustrated, so Congress believed, by unduly restrictive judicial construction, and in this light such section removes labor union activities enumerated therein and redefined by the Norris-LaGuardia Act from the taint of being violations of any law of the United States, including the Sherman Anti-Trust Act. Sherman Anti-Trust Act, § 1, as amend-

317 U.S. 111

WICKARD, Secretary of Agriculture, et al. v. FILBURN.

No. 59.

Reargued Oct. 13, 1942.

Decided Nov. 9, 1942.

1. Agriculture ⇐1
Injunction ⇐75

Where Secretary of Agriculture by radio address urged wheat farmers to vote affirmatively in referendum on approval of quota allotment under pending Agricultural Adjustment Act amendment which increased penalty for farm marketing excess, but secretary did not indicate that in accepting benefits of increased parity loan farmers were subjecting themselves to increased penalties, the speech did not invalidate the referendum and did not furnish basis for injunction against collection of marketing penalty imposed under the amendment. Agricultural Adjustment Act of 1938, § 1 et seq., as amended and Amendment of May 26, 1941, 7 U.S.C.A. § 1281 et seq. and § 1340.

2. Commerce ⇐7

The commerce power is not confined in its exercise to the regulation of commerce among the states, but it extends to those activities intrastate which so affect interstate commerce or the exertion of the power of Congress over it as to make regulation of them appropriate means to the effective execution of the granted power to regulate "interstate commerce." U.S.C.A.Const. art. 1, § 8, cl. 3.

See Words and Phrases, Permanent Edition, for all other definitions of "Interstate Commerce".

3. Agriculture ⇐1

Where wheat grower forestalls resort to the market by producing wheat to meet his own needs, that his own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where his contribution taken together with that of many others similarly situated is far from trivial. Agricultural Adjustment Act of 1938, § 1 et seq., as amended and Amendment of May 26, 1941, 7 U.S.C.A. § 1281 et seq. and § 1340; U.S.C.A.Const. art. 1, § 8, cl. 3.

4. Commerce ⇐60(1)

The power of Congress to regulate "interstate commerce" includes the power to regulate the price at which commodities in that commerce are dealt in and practices affecting such prices. U.S.C.A.Const. art. 1, § 8, cl. 3.

5. Agriculture ⇐1

One of the primary purposes of the Agricultural Adjustment Act as amended in May, 1941, was to increase the market price of wheat and to that end to limit the volume thereof that could affect the market. Agricultural Adjustment Act of 1938, § 1 et seq., as amended and Amendment of May 26, 1941, 7 U.S.C.A. § 1281 et seq. and § 1340; U.S.C.A.Const. art. 1, § 8, cl. 3.

6. Commerce ⇐60(1)

Where the effect of the Agricultural Adjustment Act as amended is to restrict the amount which may be produced for market and the extent as well to which wheat grower may forestall resort to the market by producing to meet his own needs, the act constitutes a valid exercise of the power of Congress to regulate "interstate commerce", since Congress could properly have considered that wheat consumed on the farm where grown, if wholly outside the scheme of regulation, would have a substantial effect in defeating its purpose to stimulate trade therein at increased prices. Agricultural Adjustment Act of 1938, § 1 et seq., as amended and Amendment of May 26, 1941, 7 U.S.C.A. § 1281 et seq. and § 1340; U.S.C.A.Const. art. 1, § 8, cl. 3.

7. Agriculture ⇐1

Where the effect of the Agricultural Adjustment Act as amended is to restrict amount which may be produced for market and the extent as well to which a farmer may forestall resort to market by producing to meet his own needs, the act is not invalid as an unfair promotion of the markets and prices of specializing wheat growers. Agricultural Adjustment Act of 1938, § 1 et seq., as amended and Amendment of May 26, 1941, 7 U.S.C.A. § 1281 et seq. and § 1340.

8. Constitutional law ⇐70(3)

The Supreme Court is not concerned with the wisdom, workability, or fairness of plan of regulation provided by the Agricultural Adjustment Act as amended.

Agricultural Adjustment Act of 1938, § 1 et seq., as amended and Amendment of May 26, 1941, 7 U.S.C.A. § 1281 et seq., and § 1340.

9. Constitutional law ⇐253

An act of Congress is not to be refused application by court as arbitrary and capricious and forbidden by the "due process of law" merely because the act is deemed in a particular case to work an inequitable result. U.S.C.A.Const. Amend. 5.

See Words and Phrases, Permanent Edition, for all other definitions of "Due Process of Law".

10. Agriculture ⇐1
Constitutional law ⇐303

Where, as a result of the wheat programs under the Agricultural Adjustment Act as amended, a wheat grower is able to market his wheat at a price far above any world price based on natural reaction of supply and demand, the act is not invalid as a deprivation of property without "due process of law" on theory that the Fifth Amendment requires that grower be free from penalty for threshing wheat and disposing of his crop as he sees fit. Agricultural Adjustment Act of 1938, § 1 et seq., as amended and Amendment of May 26, 1941, 7 U.S.C.A. § 1281 et seq. and § 1340; U.S.C.A.Const. Amend. 5.

11. Agriculture ⇐1
Constitutional law ⇐190, 303

Where, between seed time and harvest, the Agricultural Adjustment Act was amended so as to change the quota and penalty provisions, but the penalty provided by the amendment for farm marketing excess is incurred and becomes due only on threshing, and it did not appear that wheat grower was worse off for the aggregate of the legislation, but only that if he could get all that the government gives and do nothing that the government asks he would be better off than the act allowed, such facts did not establish that the amendment was invalidly "retroactive" or that it denied "due process of law". Agricultural Adjustment Act of 1938, § 1 et seq., as amended and Amendment of May 26, 1941, 7 U.S.C.A. § 1281 et seq. and § 1340; U.S.C.A.Const. Amend. 5.

See Words and Phrases, Permanent Edition, for all other definitions of "Retroactive".

On Appeal from the District Court of the United States for the Southern District of Ohio.

Action for injunction and for declaratory judgment by Roscoe C. Filburn against Claude R. Wickard, Secretary of Agriculture of the United States and others. From a judgment, 43 F.Supp. 1017, granting an injunction, the defendants appeal.

Reversed.

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Messrs. Francis Biddle, Atty. Gen., and Charles Fahy, Sol. Gen., for appellants.

Mr. Webb R. Clark, of Dayton, Ohio, for appellee.

Mr. Justice JACKSON delivered the opinion of the Court.

The appellee filed his complaint against the Secretary of Agriculture of the United States, three members of the County Agricultural Conservation Committee for Montgomery County, Ohio, and a member of the State Agricultural Conservation Committee for Ohio. He sought to enjoin enforcement against himself of the marketing penalty imposed by the amendment of May 26, 1941,[1] to the Agricultural Adjustment Act of 1938,[2] upon that part of his 1941 wheat crop which was available for marketing in excess of the marketing quota established for his farm. He also sought a declaratory judgment that the wheat marketing quota provisions of the Act as amended and applicable to him were unconstitutional because not sustainable

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under the Commerce Clause or consistent with the Due Process Clause of the Fifth Amendment.

The Secretary moved to dismiss the action against him for improper venue but

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[1] 55 Stat. 203, 7 U.S.C. (Supp. No. I) § 1340, 7 U.S.C.A. § 1340.

[2] 52 Stat. 31, as amended, 7 U.S.C. § 1281 et seq., 7 U.S.C.A. § 1281 et seq.

later waived his objection and filed an answer. The other appellants moved to dismiss on the ground that they had no power or authority to enforce the wheat marketing quota provisions of the Act, and after their motion was denied they answered, reserving exceptions to the ruling on their motion to dismiss.[3] The case was submitted for decision on the pleadings and upon a stipulation of facts.

The appellee for many years past has owned and operated a small farm in Montgomery County, Ohio, maintaining a herd of dairy cattle, selling milk, raising poultry, and selling poultry and eggs. It has been his practice to raise a small acreage of winter wheat, sown in the Fall and harvested in the following July; to sell a portion of the crop; to feed part to poultry and livestock on the farm, some of which is sold; to use some in making flour for home consumption; and to keep the rest for the following seeding. The intended disposition of the crop here involved has not been expressly stated.

In July of 1940, pursuant to the Agricultural Adjustment Act of 1938, as then amended, there were established for the appellee's 1941 crop a wheat acreage allotment of 11.1 acres and a normal yield of 20.1 bushels of wheat an acre. He was given notice of such allotment in July of 1940 before the Fall planting of his 1941 crop of wheat, and again in July of 1941, before it was harvested. He sowed, however, 23 acres, and harvested from his 11.9 acres of excess acreage 239 bushels, which under the terms of the Act as amended on May 26, 1941, constituted farm

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marketing excess, subject to a penalty of 49 cents a bushel, or $117.11 in all. The appellee has not paid the penalty and he has not postponed or avoided it by storing the excess under regulations of the Secretary of Agriculture, or by delivering it up to the Secretary. The Committee, therefore, refused him a marketing card, which was, under the terms of Regulations promulgated by the Secretary, necessary to protect a buyer from liability to the penalty and upon its protecting lien.[4]

The general scheme of the Agricultural Adjustment Act of 1938 as related to wheat is to control the volume moving in interstate and foreign commerce in order to avoid surpluses and shortages and the consequent abnormally low or high wheat prices and obstructions to commerce.[5] Within prescribed limits and by prescribed standards the Secretary of Agriculture is directed to ascertain and proclaim each year a national acreage allotment for the next crop of wheat, which is then apportioned to the states and their counties, and is eventually broken up into allotments for individual farms.[6] Loans and payments to wheat farmers are authorized in stated circumstances.[7]

The Act provides further that whenever it appears that the total supply of wheat as of the beginning of any marketing year, beginning July 1, will exceed a normal year's domestic consumption and export by more than 35 per cent, the Secretary shall so proclaim not later than May 15 prior to the beginning of such marketing year; and that during the marketing year a compulsory national marketing quota shall be in effect with respect to the marketing

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of wheat.[8] Between the issuance of the proclamation and June 10, the Secretary must, however, conduct a referendum of farmers who will be subject to the quota to determine whether they favor or oppose it; and if more than one-third of the farmers voting in the referendum do oppose, the Secretary must prior to the effective date of the quota by proclamation suspend its operation.[9]

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[3] Because of the conclusion reached as to the merits we need not consider the question whether these appellants would be proper parties if our decision were otherwise.

[4] Wheat—507, §§ 728.240, 728.248, 6 Federal Register 2695, 2699-2701.

[5] § 331, 7 U.S.C. § 1331, 7 U.S.C.A. § 1331.

[6] § 335, 7 U.S.C. § 1335, 7 U.S.C.A. § 1335.

[7] §§ 302(b) (h), 303, 7 U.S.C. §§ 1302 (b) (h), 1303, 7 U.S.C.A. §§ 1302(b, h), 1303; § 10 of the amendment of May 26, 1941, 7 U.S.C. (Supp. I) § 1340(10), 7 U.S.C.A. § 1340(10).

[8] § 335(a), 7 U.S.C. § 1335(a), 7 U.S.C.A. § 1335(a).

[9] § 336, 7 U.S.C. § 1336, 7 U.S.C.A. § 1336.

On May 19, 1941 the Secretary of Agriculture made a radio address to the wheat farmers of the United States in which he advocated approval of the quotas and called attention to the pendency of the amendment of May 26, 1941, which had at the time been sent by Congress to the White House, and pointed out its provision for an increase in the loans on wheat to 85 per cent of parity. He made no mention of the fact that it also increased the penalty from 15 cents a bushel to one-half of the parity loan rate of about 98 cents, but stated that "Because of the uncertain world situation, we deliberately planted several million extra acres of wheat. * * * Farmers should not be penalized because they have provided insurance against shortages of food."

Pursuant to the Act, the referendum of wheat growers was held on May 31, 1941. According to the required published statement of the Secretary of Agriculture, 81 per cent of those voting favored the marketing quota, with 19 per cent opposed.

The court below held, with one judge dissenting, that the speech of the Secretary invalidated the referendum; and that the amendment of May 26, 1941, "in so far as it increased the penalty for the farm marketing excess over the fifteen cents per bushel prevailing at the time of planting and subjected the entire crop to a lien for the payment thereof," should not be applied to the appellee because

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as so applied it was retroactive and in violation of the Fifth Amendment; and, alternatively, because the equities of the case so required Filburn v. Helke, D.C., 43 F.Supp. 1017. Its judgment permanently enjoined appellants from collecting a marketing penalty of more than 15 cents a bushel on the farm marketing excess of appellee's 1941 wheat crop, from subjecting appellee's entire 1941 crop to a lien for the payment of the penalty, and from collecting a 15-cent penalty except in accordance with the provisions of § 339 of the Act as that section stood prior to the amendment of May 26, 1941.[10] The Secretary and his co-defendants have appealed.[11]

I.

[1] The holding of the court below that the Secretary's speech invalidated the referendum is manifest error. Read as a whole and in the context of world events that constituted his principal theme, the penalties of which he spoke were more likely those in the form of ruinously low prices resulting from the excess supply rather than the penalties prescribed in the Act. But under any interpretation the speech cannot be given the effect of invalidating the referendum. There is no evidence that any voter put upon the Secretary's words the interpretation that impressed the court below or was in any way misled. There is no showing that the speech influenced the outcome of the referendum. The record in fact does not show that any, and does not suggest a basis for even a guess as to how many, of the voting farmers dropped work to listen to "Wheat Farmers and the Battle for

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Democracy" at 11:30 in the morning of May 19th, which was a busy hour in one of the busiest of seasons. If this discourse intended reference to this legislation at all, it was of course a public Act, whose terms were readily available, and the speech did not purport to be an exposition of its provisions.

To hold that a speech by a Cabinet officer, which failed to meet judicial ideals of clarity, precision, and exhaustiveness, may defeat a policy embodied in an Act of Congress, would invest communication between administrators and the people with perils heretofore unsuspected. Moreover, we should have to conclude that such an officer is able to do by accident what he has no power to do by design. Appellee's complaint, in so far as it is based on this speech, is frivolous, and the injunction, in so far as it rests on this ground, is unwarranted. United States v. Rock Royal Co-operative, 307 U.S. 533, 59 S.Ct. 993, 83 L.Ed. 1446.

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10 7 U.S.C. § 1339, 7 U.S.C.A. § 1339. This imposed a penalty of 15¢ per bushel upon wheat marketed in excess of the farm marketing quota while such quota was in effect. See also, amendments of July 26, 1939, 53 Stat. 1126, 7 U.S.C. § 1335(c), 7 U.S.C.A. § 1335(c) and of July 2, 1940, 54 Stat. 727, 7 U.S.C. § 1301(b) (6) (A), (B), 7 U.S.C.A. § 1301(b) (6) (A, B).

11 50 Stat. 752-753, § 3, 28 U.S.C. § 380a, 28 U.S.C.A. § 380a.

II.

It is urged that under the Commerce Clause of the Constitution, Article I, § 8, clause 3, Congress does not possess the power it has in this instance sought to exercise. The question would merit little consideration since our decision in United States v. Darby, 312 U.S. 100, 61 S.Ct. 451, 85 L.Ed. 609, 132 A.L.R. 1430,[12] sustaining the federal power to regulate production of goods for commerce except for the fact that this Act extends federal regulation to production not intended in any part for commerce but wholly for consumption on the farm. The Act includes a definition of "market" and its derivatives so that as related to wheat in addition to its conventional meaning it also means to dispose of "by feeding (in any

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form) to poultry or livestock which, or the products of which, are sold, bartered, or exchanged, or to be so disposed of."[13] Hence, marketing quotas not only embrace all that may be sold without penalty but also what may be consumed on the premises. Wheat produced on excess acreage is designated as "available for marketing" as so defined and the penalty is imposed thereon.[14] Penalties do not depend upon whether any part of the wheat either within or without the quota is sold or intended to be sold. The sum of this is that the Federal Government fixes a quota including all that the farmer may harvest for sale or for his own farm needs, and declares that wheat produced on excess acreage may neither be disposed of nor used except upon payment of the penalty or except it is stored as required by the Act or delivered to the Secretary of Agriculture.

Appellee says that this is a regulation of production and consumption of wheat. Such activities are, he urges, beyond the reach of Congressional power under the Commerce Clause, since they are local in character, and their effects upon interstate commerce are at most "indirect." In answer the Government argues that the statute regulates neither production nor consumption, but only marketing; and, in the alternative, that if the Act does go beyond the regulation of marketing it is sustainable as a "necessary and proper"[15] implementation of the power of Congress over interstate commerce.

The Government's concern lest the Act be held to be a regulation of production or consumption rather than of marketing is attributable to a few dicta and decisions of this Court which might be understood to lay it down that activities such as "production," "manufacturing," and

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"mining" are strictly "local" and, except in special circumstances which are not present here, cannot be regulated under the commerce power because their effects upon interstate commerce are, as matter of law, only "indirect."[16] Even today, when this power has been held to have great latitude, there is no decision of this Court that such activities may be regulated where no part of the

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[12] See, also, Gray v. Powell, 314 U.S. 402, 62 S.Ct. 326, 86 L.Ed. 301; United States v. Wrightwood Dairy Co., 315 U.S. 110, 62 S.Ct. 523, 86 L.Ed. 726; Cloverleaf Co. v. Patterson, 315 U.S. 148, 62 S.Ct. 491, 86 L.Ed. 754; Kirschbaum v. Walling, 316 U.S. 517, 62 S.Ct. 1116, 86 L.Ed. 1638; Overnight Transportation, Inc., v. Missel, 316 U.S. 572, 62 S.Ct. 1216, 86 L.Ed. 1682.

[13] 54 Stat. 727, 7 U.S.C. § 1301(b)(6)(A), (B), 7 U.S.C.A. § 1301(b)(6)(A, B).

[14] §§ 1, 2, of the amendment of May 26, 1941, 7 U.S.C.A. § 1340(1, 2); Wheat—507, § 728.251, 6 Federal Register 2695, 2701.

[15] Constitution, Article I, § 8, cl. 18.

[16] After discussing and affirming the cases stating that such activities were "local," and could be regulated under the Commerce Clause only if by virtue of special circumstances their effects upon interstate commerce were "direct," the opinion of the Court in Carter v. Carter Coal Co., 298 U.S. 238, 308, 56 S.Ct. 855, 871, 80 L.Ed. 1160, stated that: "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. * * * The matter of degree has no bearing upon the question here, since that question is not—What is the *extent* of the local activity or condition, or the *extent* of the effect produced upon interstate commerce? but—What is the *relation* between the activity or condition and the effect?" See also, cases cited infra, notes 17 and 21.

product is intended for interstate commerce or intermingled with the subjects thereof. We believe that a review of the course of decision under the Commerce Clause will make plain, however, that questions of the power of Congress are not to be decided by reference to any formula which would give controlling force to nomenclature such as "production" and "indirect" and foreclose consideration of the actual effects of the activity in question upon interstate commerce.

At the beginning Chief Justice Marshall described the federal commerce power with a breadth never yet exceeded. Gibbons v. Ogden, 9 Wheat. 1, 194, 195, 6 L.Ed. 23. He made emphatic the embracing and penetrating nature of this power by warning that effective restraints on its exercise must proceed from political rather than from judicial processes. 9 Wheat. at page 197, 6 L.Ed. 23.

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For nearly a century, however, decisions of this Court under the Commerce Clause dealt rarely with questions of what Congress might do in the exercise of its granted power under the Clause and almost entirely with the permissibility of state activity which it was claimed discriminated against or burdened interstate commerce. During this period there was perhaps little occasion for the affirmative exercise of the commerce power, and the influence of the Clause on American life and law was a negative one, resulting almost wholly from its operation as a restraint upon the powers of the states. In discussion and decision the point of reference instead of being what was "necessary and proper" to the exercise by Congress of its granted power, was often some concept of sovereignty thought to be implicit in the status of statehood. Certain activities such as "production," "manufacturing," and "mining" were occasionally said to be within the province of state governments and beyond the power of Congress under the Commerce Clause.[17]

It was not until 1887 with the enactment of the Interstate Commerce Act[18] that the interstate commerce power began to exert positive influence in American law and life. This first important federal resort to the commerce power was followed in 1890 by the Sherman Anti-Trust Act[19] and, thereafter, mainly after 1903, by many others. These statutes ushered in new phases of adjudication, which required the Court to approach the interpretation of the Commerce Clause in the light of an actual exercise by Congress of its power thereunder.

When it first dealt with this new legislation, the Court adhered to its earlier pronouncements, and allowed but

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little scope to the power of Congress. United States v. E. C. Knight Co., 156 U.S. 1, 15 S.Ct. 249, 39 L.Ed. 325.[20] These earlier pronouncements also played an important part in several of the five cases in which this Court later held that Acts of Congress under the Commerce Clause were in excess of its power.[21]

Even while important opinions in this line of restrictive authority were being

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17 Veazie v. Moor, 14 How. 568, 573, 574, 14 L.Ed. 545; Kidd v. Pearson, 128 U.S. 1, 20-22, 9 S.Ct. 6, 9, 10, 32 L.Ed. 346.

18 24 Stat. 379, 49 U.S.C. § 1, et seq., 49 U.S.C.A. § 1 et seq.

19 26 Stat. 209, 15 U.S.C. § 1, et seq., 15 U.S.C.A. § 1 et seq.

20 See, also, Hopkins v. United States, 171 U.S. 578, 19 S.Ct. 40, 43 L.Ed. 290; Anderson v. United States, 171 U.S. 604, 19 S.Ct. 50, 43 L.Ed. 300.

21 Employers Liability Cases (Howard v. Illinois Central R. Co.), 207 U.S. 463, 28 S.Ct. 141, 52 L.Ed. 297; Hammer v. Dagenhart, 247 U.S. 251, 38 S.Ct. 529, 62 L.Ed. 1101, 3 A.L.R. 649, Ann.Cas. 1918E, 724; Railroad Retirement Board v. Alton R. Co., 295 U.S. 330, 55 S.Ct. 758, 79 L.Ed. 1468; Schechter Corp. v. United States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570, 97 A.L.R. 947; Carter v. Carter Coal Co., 298 U.S. 238, 56 S. Ct. 855, 80 L.Ed. 1160; cf. United States v. Dewitt, 9 Wall. 41, 19 L.Ed. 593; Trade Mark Cases (United States v. Steffens), 100 U.S. 82, 25 L.Ed. 550; Hill v. Wallace, 259 U.S. 44, 42 S.Ct. 453, 66 L.Ed. 822; Heisler v. Thomas Colliery Co., 260 U.S. 245, 259, 260, 43 S.Ct. 83, 86, 67 L.Ed. 237; Oliver Iron Co. v. Lord, 262 U.S. 172, 178, 179, 43 S.Ct. 526, 529, 67 L.Ed. 929; Utah Power & Light Co. v. Pfost, 286 U.S. 165, 52 S.Ct. 548, 76 L.Ed. 1038.

written, however, other cases called forth broader interpretations of the Commerce Clause destined to supersede the earlier ones, and to bring about a return to the principles first enunciated by Chief Justice Marshall in Gibbons v. Ogden, supra.

Not long after the decision of United States v. E. C. Knight Co., supra, Mr. Justice Holmes, in sustaining the exercise of national power over intrastate activity, stated for the Court that "commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business." Swift & Co. v. United States, 196 U.S. 375, 398, 25 S.Ct. 276, 280, 49 L.Ed. 518. It was soon demonstrated that the effects of many kinds of intrastate activity upon interstate commerce were such as to make them a proper subject of federal regulation.[22] In some cases sustaining the exercise of federal power over intrastate matters the term "direct"

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was used for the purpose of stating, rather than of reaching, a result;[23] in others it was treated as synonymous with "substantial" or "material;"[24] and in others it was not used at all.[25] Of late its use has been abandoned in cases dealing with questions of federal power under the Commerce Clause.

In the Shreveport Rate Cases (Houston, E. & W. T. R. Co. v. United States), 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341, the Court held that railroad rates of an admittedly intrastate character and fixed by authority of the state might, nevertheless, be revised by the Federal Government because of the economic effects which they had upon interstate commerce. The opinion of Mr. Justice Hughes found federal intervention constitutionally authorized because of "matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of the conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance." 234 U.S. at page 351, 34 S.Ct. at page 836, 58 L.Ed. 1341.

[2] The Court's recognition of the relevance of the economic effects in the application of the Commerce Clause exemplified

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by this statement has made the mechanical application of legal formulas no longer feasible. Once an economic measure of the reach of the power granted to Congress in the Commerce Clause is accepted, questions of federal power cannot be decided simply by finding the activity in question to be "production" nor can consideration of its economic effects be foreclosed by calling them "indirect." The

[22] Northern Securities Co. v. United States, 193 U.S. 197, 24 S.Ct. 436, 48 L.Ed. 679; Swift & Co. v. United States, supra; Loewe v. Lawlor, 208 U.S. 274, 28 S.Ct. 301, 52 L.Ed. 488, 13 Ann.Cas. 815; Baltimore & O. R. Co. v. Interstate Commerce Commission, 221 U.S. 612, 31 S.Ct. 621, 55 L.Ed. 878; Southern Ry. Co. v. United States, 222 U.S. 20, 32 S.Ct. 2, 56 L.Ed. 72; Second Employers' Liability Cases (Mondou v. New York, N. H. & H. R. Co.), 223 U. S. 1, 32 S.Ct. 169, 56 L.Ed. 327, 38 L. R.A.,N.S., 44; United States v. Patten, 226 U.S. 525, 33 S.Ct. 141, 57 L.Ed. 333, 44 L.R.A.,N.S., 325.

[23] United Leather Workers v. Herkert & Meisel Trunk Co., 265 U.S. 457, 471, 44 S.Ct. 623, 627, 68 L.Ed. 1104, 33 A.L. R. 566; cf. Apex Hosiery Co. v. Leader, 310 U.S. 469, 511, 60 S.Ct. 982, 1001, 84 L.Ed. 1311, 128 A.L.R. 1044; Di Santo v. Pennsylvania, 273 U.S. 34, 44, 47 S.Ct. 267, 271, 71 L.Ed. 524 (dissent); Northern Securities Co. v. United States, 193 U.S. 197, 395, 24 S. Ct. 436, 484, 48 L.Ed. 679; Standard Oil Co. v. United States, 221 U.S. 1, 66-69, 31 S.Ct. 502, 518, 519, 55 L.Ed. 619, 34 L.R.A.,N.S., 834, Ann.Cas.1912D, 734.

[24] In Santa Cruz Co. v. Labor Board, 303 U.S. 453, 466, 467, 58 S.Ct. 656, 660, 82 L.Ed. 954, Chief Justice Hughes said: " 'direct' has been contrasted with 'indirect,' and what is 'remote' or 'distant' with what is 'close and substantial'. Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution such as 'interstate commerce,' 'due process,' 'equal protection.' "

[25] Baltimore & O. R. Co. v. Interstate Commerce Commission, 221 U.S. 612, 31 S.Ct. 621, 55 L.Ed. 878; Second Employers' Liability Cases (Mondou v.

present Chief Justice has said in summary of the present state of the law: "The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce. * * * The power of Congress over interstate commerce is plenary and complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. * * * It follows that no form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress. Hence the reach of that power extends to those intrastate activities which in a substantial way interfere with or obstruct the exercise of the granted power." United States v. Wrightwood Dairy Co., 315 U.S. 110, 119, 62 S.Ct. 523, 526, 86 L.Ed. 726.

Whether the subject of the regulation in question was "production," "consumption," or "marketing" is, therefore, not material for purposes of deciding the question of federal power before us. That an activity is of local character may help in a doubtful case to determine whether Congress intended to reach it.[26] The same consideration might help in determining whether in the absence of Congressional action it would be permissible for the state

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to exert its power on the subject matter, even though in so doing it to some degree affected interstate commerce. But even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce and this irrespective of whether such effect is what might at some earlier time have been defined as "direct" or "indirect."

The parties have stipulated a summary of the economics of the wheat industry. Commerce among the states in wheat is large and important. Although wheat is raised in every state but one, production in most states is not equal to consumption. Sixteen states on average have had a surplus of wheat above their own requirements for feed, seed, and food. Thirty-two states and the District of Columbia, where production has been below consumption, have looked to these surplus-producing states for their supply as well as for wheat for export and carryover.

The wheat industry has been a problem industry for some years. Largely as a result of increased foreign production and import restrictions, annual exports of wheat and flour from the United States during the ten-year period ending in 1940 averaged less than 10 per cent of total production, while during the 1920's they averaged more than 25 per cent. The decline in the export trade has left a large surplus in production which in connection with an abnormally large supply of wheat and other grains in recent years caused congestion in a number of markets; tied up railroad cars; and caused elevators in some instances to turn away grains, and railroads to institute embargoes to prevent further congestion.

Many countries, both importing and exporting, have sought to modify the impact of the world market conditions on their own economy. Importing countries have taken measures to stimulate production and self-sufficiency. The four large exporting countries of Argentina,

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Australia, Canada, and the United States have all undertaken various programs for the relief of growers. Such measures have been designed in part at least to protect the domestic price received by producers. Such plans have generally evolved towards control by the central government.[27]

In the absence of regulation the price of wheat in the United States would be much

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New York, N. H. & H. R. Co.), 223 U.S. 1, 32 S.Ct. 169, 56 L.Ed. 327, 38 L.R.A.,N.S., 44; Interstate Commerce Commission v. Goodrich Transit Co., 224 U.S. 194, 32 S.Ct. 436, 56 L.Ed. 729.

[26] Cf. Federal Trade Commission v. Bunte Bros., 312 U.S. 349, 61 S.Ct. 580, 85 L.Ed. 881.

[27] It is interesting to note that all of these have federated systems of government, not of course without important differences. In all of them wheat reg-

affected by world conditions. During 1941 producers who cooperated with the Agricultural Adjustment program received an average price on the farm of about $1.16 a bushel as compared with the world market price of 40 cents a bushel.

Differences in farming conditions, however, make these benefits mean different things to different wheat growers. There are several large areas of specialization in wheat, and the concentration on this crop reaches 27 percent of the crop land, and the average harvest runs as high as
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acres. Except for some use of wheat as stock feed and for seed, the practice is to sell the crop for cash. Wheat from such areas constitutes the bulk of the interstate commerce therein.

On the other hand, in some New England states less than one percent of the crop land is devoted to wheat, and the average harvest is less than five acres per farm. In 1940 the average percentage of the total wheat production that was sold in each state as measured by value ranged from 29 per cent thereof in Wisconsin to 90 per cent in Washington. Except in regions of large-scale production, wheat is usually grown in rotation with other crops; for a nurse crop for grass seeding; and as a cover crop to prevent soil erosion and leaching. Some is sold, some kept for seed, and a percentage of the total production much larger than in areas of specialization is consumed on the farm and grown for such purpose. Such farmers, while growing some wheat, may even find the balance of their interest on the consumer's side.

The effect of consumption of home-grown wheat on interstate commerce is due to the fact that it constitutes the most variable factor in the disappearance of the wheat crop. Consumption on the farm where grown appears to vary in an amount greater than 20 per cent of average production. The total amount of wheat consumed as food varies but relatively little, and use as seed is relatively constant.

[3] The maintenance by government regulation of a price for wheat undoubtedly can be accomplished as effectively by sustaining or increasing the demand as by limiting the supply. The effect of the statute before us is to restrict the amount which may be produced for market and the extent as well to which one may forestall resort to the market by producing to meet his own needs. That appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the
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scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial. National Labor Relations Board v. Fainblatt, 306 U.S. 601, 606, et seq., 307 U.S. 609, 59 S.Ct. 668, 83 L.Ed. 1014; United States v. Darby, supra, 312 U.S. at page 123, 61 S.Ct. 461, 85 L.Ed. 609, 132 A.L.R. 1430.

[4-6] It is well established by decisions of this Court that the power to regulate commerce includes the power to regulate the prices at which commodities in that commerce are dealt in and practices affecting such prices.[28] One of the primary purposes of the Act in question was to

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ulation is by the national government. In Argentina wheat may be purchased only from the national Grain Board. A condition of sale to the Board, which buys at pegged prices, is the producer's agreement to become subject to restrictions on planting. See Nolan, Argentine Grain Price Guaranty, Foreign Agriculture (Office of Foreign Agricultural Relations, Department of Agriculture) May, 1942, pp. 185, 202. The Australian system of regulation includes the licensing of growers, who may not sow more than the amount licensed, and who may be compelled to cut part of their crops for hay if a heavy crop is in prospect. See Wright, Australian Wheat Stabilization, Foreign Agriculture (Office of Foreign Agricultural Relations, Department of Agriculture) September, 1942, pp. 329, 336. The Canadian Wheat Board has wide control over the marketing of wheat by the individual producer. 4 Geo. VI, c. 25, § 5. Canadian wheat has also been the subject of numerous Orders in Council. E.g., 6 Proclamations and Orders in Council (1942) 183, which gives the Wheat Board full control of sale, delivery, milling and disposition by any person or individual. See, also, Wheat Acreage Reduction Act, 1942, 6 Geo. VI, c. 10.

[28] Swift & Co. v. United States, 196 U.S. 375, 25 S.Ct. 276, 49 L.Ed. 518;

increase the market price of wheat and to that end to limit the volume thereof that could affect the market. It can hardly be denied that a factor of such volume and variability as home-consumed wheat would have a substantial influence on price and market conditions. This may arise because being in marketable condition such wheat overhangs the market and if induced by rising prices tends to flow into the market and check price increases. But if we assume that it is never marketed, it supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market. Home-grown wheat in this sense competes with wheat in commerce. The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon. This record leaves us in no doubt that Congress

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may properly have considered that wheat consumed on the farm where grown if wholly outside the scheme of regulation would have a substantial effect in defeating and obstructing its purpose to stimulate trade therein at increased prices.

[7, 8] It is said, however, that this Act, forcing some farmers into the market to buy what they could provide for themselves, is an unfair promotion of the markets and prices of specializing wheat growers. It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others. The conflicts of economic interest between the regulated and those who advantage by it are wisely left under our system to resolution by the Congress under its more flexible and responsible legislative process.[29] Such conflicts rarely lend themselves to judicial determination. And with the wisdom, workability, or fairness, of the plan of regulation we have nothing to do.

III.

[9] The statute is also challenged as a deprivation of property without due process of law contrary to the Fifth Amendment, both because of its regulatory effect on the appellee and because of its alleged retroactive effect. The court below sustained the plea on the ground of forbidden retroactivity "or in the alternative, that the equities of the case as shown by the record favor the plaintiff." 43 F.Supp. 1017, 1019. An Act of Congress is not to be refused application by the courts as arbitrary and capricious and forbidden by the Due Process Clause merely

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because it is deemed in a particular case to work an inequitable result.

[10] Appellee's claim that the Act works a deprivation of due process even apart from its allegedly retroactive effect is not persuasive. Control of total supply, upon which the whole statutory plan is based, depends upon control of individual supply. Appellee's claim is not that his quota represented less than a fair share of the national quota, but that the Fifth Amendment requires that he be free from

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Stafford v. Wallace, 258 U.S. 495, 42 S. Ct. 397, 66 L.Ed. 735, 23 A.L.R. 229; Board of Trade of Chicago v. Olsen, 262 U.S. 1, 43 S.Ct. 470, 67 L.Ed. 839; Coronado Coal Co. v. United Mine Workers, 268 U.S. 295, 45 S.Ct. 551, 69 L. Ed. 963; United States v. Trenton Potteries Co., 273 U.S. 392, 47 S.Ct. 377, 71 L.Ed. 700, 50 A.L.R. 989; Tagg Bros. & Moorhead v. United States, 280 U.S. 420, 50 S.Ct. 220, 74 L.Ed. 524; Standard Oil Co. of Indiana v. United States, 283 U.S. 163, 51 S.Ct. 421, 75 L.Ed. 926; Currin v. Wallace, 306 U.S. 1, 59 S.Ct. 379, 83 L.Ed. 441; Mulford v. Smith, 307 U.S. 38, 59 S.Ct. 648, 83 L.Ed. 1092; United States v. Rock Royal Co-operative, supra; United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 60 S.Ct. 811, 84 L.Ed. 1129; Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 60 S.Ct. 907, 84 L.Ed. 1263; United States v. Darby, supra; United States v. Wrightwood Dairy Co., supra; Federal Power Commission v. Pipeline Co., 315 U.S. 575, 62 S.Ct. 736, 86 L.Ed. 1037.

[29] Cf. McCulloch v. Maryland, 4 Wheat. 316, 413-415, 435, 436, 4 L.Ed. 579; Gibbons v. Ogden, supra, 9 Wheat. at page 197, 6 L.Ed. 23; Stafford v. Wallace, 258 U.S. 495, 521, 42 S.Ct. 397, 403, 66 L.Ed. 735, 23 A.L.R. 229; Board of Trade of Chicago v. Olsen, 262 U.S. 1, 37, 43 S.Ct. 470, 477, 67 L. Ed. 839; Helvering v. Gerhardt, 304 U. S. 405, 412, 58 S.Ct. 969, 971, 82 L.Ed. 1427.

penalty for planting wheat and disposing of his crop as he sees fit.

We do not agree. In its effort to control total supply, the Government gave the farmer a choice which was, of course, designed to encourage cooperation and discourage non-cooperation. The farmer who planted within his allotment was in effect guaranteed a minimum return much above what his wheat would have brought if sold on a world market basis. Exemption from the applicability of quotas was made in favor of small producers.[30] The farmer who produced in excess of his quota might escape penalty by delivering his wheat to the Secretary or by storing it with the privilege of sale without penalty in a later year to fill out his quota, or irrespective of quotas if they are no longer in effect, and he could obtain a loan of 60 per cent of the rate for cooperators, or about 59 cents a bushel, on so much of his wheat as would be subject to penalty if marketed.[31] Finally, he might make other disposition of his wheat, subject to the penalty. It is agreed

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that as the result of the wheat programs he is able to market his wheat at a price "far above any world price based on the natural reaction of supply and demand." We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellee's burdens under the program outweigh his benefits. It is hardly lack of due process for the Government to regulate that which it subsidizes.

[11] The amendment of May 26, 1941 is said to be invalidly retroactive in two respects: first, in that it increased the penalty from 15 cents to 49 cents a bushel; secondly, in that by the new definition of "farm marketing excess" it subjected to the penalty wheat which had theretofore been subject to no penalty at all, i. e., wheat not "marketed" as defined in the Act.

It is not to be denied that between seed time and harvest important changes were made in the Act which affected the desirability and advantage of planting the excess acreage. The law as it stood when the appellee planted his crop made the quota for his farm the normal or the actual production of the acreage allotment, whichever was greater, plus any carry-over wheat that he could have marketed without penalty in the preceding marketing year.[32] The Act also provided that the farmer who, while quotas were in effect, marketed wheat in excess of the quota for the farm on which it was produced should be subject to a penalty of 15 cents a bushel on the excess so marketed.[33] Marketing of wheat was defined as including disposition "by feeding (in any form) to poultry or livestock which, or the products of which, are sold, bartered, or exchanged, * * *."[34] The amendment of May 26,

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1941, made before the appellee had harvested the growing crop, changed the quota and penalty provisions. The quota for each farm became the actual production of acreage planted to wheat less the normal or the actual production, whichever was smaller, of any excess acreage.[35] Wheat in excess of this quota, known as the "farm-marketing excess" and declared by the amendment to be "regarded as available

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30 § 7 of the amendment of May 26, 1941 provided that a farm marketing quota should not be applicable to any farm on which the acreage planted to wheat is not in excess of fifteen acres. When the appellee planted his wheat the quota was inapplicable to any farm on which the normal production of the acreage planted to wheat was less than 200 bushels. § 335(d) of the Agricultural Adjustment Act of 1938, as amended by 54 Stat. 232, 7 U.S.C.A. § 1335(d).

31 §§ 6, 10(c) of the amendment of May 26, 1941.

32 § 335(c) as amended July 26, 1939, 53 Stat. 1126, 7 U.S.C. § 1335(c), 7 U.S.C.A. § 1335(c).

33 § 339, 7 U.S.C. § 1339, 7 U.S.C.A. § 1339.

34 § 301(b) (6) (A), (B), as amended July 2, 1940, 54 Stat. 727, 7 U.S.C. § 1301(b) (6) (A), (B), 7 U.S.C.A. § 1301(b) (6) (A, B).

35 By an amendment of December 26, 1941, 55 Stat. 872, effective as of May 26, 1941, 7 U.S.C.A. § 1340, it was provided that the farm marketing excess should not be larger than the amount by which the actual production exceeds the normal production of the farm wheat-acreage allotment, if the producer estab-

for marketing" was subjected to a penalty fixed at 50 per cent of the basic loan rate for cooperators,[36] or 49 cents, instead of the penalty of 15 cents which obtained at the time of planting. At the same time there was authorized an increase in the amount of the loan which might be made to non-cooperators such as the appellee upon wheat which "would be subject to penalty if marketed" from about 34 cents per bushel to about 59 cents.[37] The entire crop was subjected by the amendment to a lien for the payment of the penalty.

The penalty provided by the amendment can be postponed or avoided only by storing the farm marketing excess according to regulations promulgated by the Secretary or by delivering it to him without compensation;

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and the penalty is incurred and becomes due on threshing.[38] Thus the penalty was contingent upon an act which appellee committed not before but after the enactment of the statute, and had he chosen to cut his excess and cure it or feed it as hay, or to reap and feed it with the head and straw together, no penalty would have been demanded. Such manner of consumption is not uncommon. Only when he threshed and thereby made it a part of the bulk of wheat overhanging the market did he become subject to penalty. He has made no effort to show that the value of his excess wheat consumed without threshing was less than it would have been had it been threshed while subject to the statutory provisions in force at the time of planting. Concurrently with the increase in the amount of the penalty Congress authorized a substantial increase in the amount of the loan which might be made to cooperators upon stored farm marketing excess wheat. That appellee is the worse off for the aggregate of this legislation does not appear; it only appears that if he could get all that the Government gives and do nothing that the Government asks, he would be better off than this law allows. To deny him this is not to deny him due process of law. Cf. Mulford v. Smith, 307 U.S. 38, 59 S. Ct. 648, 83 L.Ed. 1092.

Reversed.



317 U.S. 78

MARINE HARBOR PROPERTIES, Inc., v. MANUFACTURER'S TRUST CO. et al.

No. 24.

Argued Oct. 16, 17, 1942.

Decided Nov. 9, 1942.
Rehearing Denied Dec. 7, 1942.
See 317 U.S. 710, 63 S.Ct. 254, 87 L.Ed. —.

1. Bankruptcy ⇐1

The federal bankruptcy power is paramount and may be so exercised by Congress as to exclude every competing or conflicting proceeding in state or federal tribunals.

2. Bankruptcy ⇐604, 605

Although pendency of prior proceedings does not bar filing of petition for corporate reorganization, Congress by requiring petition to be filed in "good faith" in effect directs bankruptcy courts not to approve petitions for corporate reorganization unless it appears that interests of creditors and stockholders would not be best subserved in prior proceeding, and put on petitioner burden of making that showing. Bankr.Act §§ 141, 146(4), 256, 11 U.S.C.A. §§ 541, 546(4), 656.

See Words and Phrases, Permanent Edition, for all other definitions of "Good Faith".

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lishes such actual production to the satisfaction of the Secretary, provision being made for adjustment of the penalty in the event of a downward adjustment in the amount of the farm marketing excess.

[36] §§ 1, 2, 3 of the amendment of May 26, 1941.

[37] § 302(b) had provided for a loan to non-cooperators of 60% of the basic loan rate for cooperators, which in 1940 was 64¢. See United States Department of Agriculture Press Release, May 20, 1940. The same percentage was employed in § 10(c) of the amendment of May 26, 1941, and the increase in the amount of the loan is the result of an increase in the basic loan rate effected by § 10(a) of the amendment.

[38] Wheat—507, § 728.251(b), 6 Federal Register 2695, 2701.

CIVIL RIGHTS ACT OF 1964.

Document Number: PL 88-352

Date: 02 JUL 64

88th Congress, H. R. 7152

An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

TITLE II--INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, and privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the

premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of

exhibition or entertainment; and

(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

(e) The provisions of this title shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

TITLE VI--NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

can fashion a law drawing the guidelines necessary and appropriate to facilitate practical administration and to distinguish between genuinely public and private accommodations." The challenged Act is just such a law and, in my view, Congress clearly had authority under both § 5 of the Fourteenth Amendment and the Commerce Clause to enact the Civil Rights Act of 1964.



379 U.S. 294

Nicholas deB. KATZENBACH, Acting Attorney General, et al., Appellants,

v.

Ollie McCLUNG, Sr., and Ollie McClung, Jr.

No. 543.

Argued Oct. 5, 1964.

Decided Dec. 14, 1964.

Action to enjoin enforcement of Civil Rights Act. The three-judge United States District Court for the Northern District of Alabama, 233 F.Supp. 815, granted injunctive relief, and a direct appeal was taken. The Supreme Court, Mr. Justice Clark, held that Congress had ample basis upon which to find that racial discrimination at restaurants which received from out of state a substantial portion of food served had direct and adverse effect on interstate commerce.

Reversed.

1. Injunction ⇐85(1)

Ordinarily, equity will not interfere by injunction where there has been no threat of enforcement of statute against plaintiffs and they have suffered no irreparable injury.

2. Declaratory Judgment ⇐254

Supreme Court could and did consider injunction complaint attacking constitutionality of statute as application for declaratory judgment. 28 U.S.C.A. §§ 2201, 2202.

3. Courts ⇐385(6)

Direct appeal to Supreme Court would still lie even though Supreme Court considered injunction complaint attacking constitutionality of statute as application for declaratory judgment. 28 U.S.C.A. § 1252.

4. Declaratory Judgment ⇐41, 44

Federal Rule permits declaratory relief even though another adequate remedy exists, but such relief should not be granted where special statutory proceeding has been provided. Fed.Rules Civ.Proc. rule 57, 28 U.S.C.A.

5. Declaratory Judgment ⇐44

Since Civil Rights Act provides statutory proceeding for determination of rights and duties arising thereunder, courts should ordinarily refrain from exercising jurisdiction to grant declaratory relief in cases involving rights and duties thereunder. Fed.Rules Civ.Proc. rule 57, 28 U.S.C.A.; Civil Rights Act of 1964, §§ 204–207, 42 U.S.C.A. §§ 2000a–3 to 2000a–6.

6. Declaratory Judgment ⇐123

Denial of discretionary declaratory relief, in case involving attack upon constitutionality of Civil Rights Act as applied to restaurant, was not required where interference with governmental action had occurred, constitutional question was before Supreme Court in companion case as well, and it was important that decision on constitutionality of Act as applied in both cases be announced as quickly as possible. Fed.Rules Civ.Proc. rule 57, 28 U.S.C.A.; Civil Rights Act of 1964, §§ 204–207, 42 U.S.C.A. §§ 2000a–3 to 2000a–6.

7. Commerce ⇐60(3)

Public accommodations provisions of Civil Rights Act, as applied to restaurant

serving food, a substantial portion of which had moved in interstate commerce, was valid exercise of power of Congress to regulate interstate commerce. U.S.C.A.Const.Amends. 5, 9, 10, 13; Civil Rights Act of 1964, §§ 201–207, 201(b)(2), (c), 42 U.S.C.A. §§ 2000a–2000a–6, 2000a(b)(2), (c); U.S.C.A.Const. art. 1, § 8, cl. 3.

8. Statutes ⇐40

Formal findings were not necessary to validity of exercise of power of Congress to regulate interstate commerce. U.S.C.A.Const. art. 1, § 8, cl. 3.

9. Commerce ⇐40(1)

Congress had ample basis upon which to find that racial discrimination at restaurants which received from out of state a substantial portion of food served had direct and adverse effect on interstate commerce. Civil Rights Act of 1964, § 201, 42 U.S.C.A. § 2000a; U.S.C.A.Const. art. 1, § 8, cl. 3.

10. Commerce ⇐40(1)

That restaurant's own relation to interstate commerce was trivial by itself would not be enough to remove it from scope of federal regulation where such relationship, taken together with that of many others similarly situated, was far from trivial; and, in enacting Civil Rights Act, Congress appropriately considered importance of individual restaurant's connection with interstate commerce with knowledge that it was but representative of many others throughout country and total incidence of discrimination practiced in such restaurants might, if left unchecked, become far-reaching in its harm to commerce. Civil Rights Act of 1964, § 201, 42 U.S.C.A. § 2000a; U.S.C.A.Const. art. 1, § 8, cl. 3.

11. Commerce ⇐48

Exertion of federal power need not await disruption of commerce, and Congress is entitled to provide reasonable preventive measures. U.S.C.A.Const. art. 1, § 8, cl. 3.

12. Commerce ⇐7

Grant of power to regulate commerce extends to those activities intrastate which so affect interstate commerce, or exertion of power of Congress over it, as to make regulation of them appropriate means to attainment of legitimate end, the effective execution of granted power to regulate interstate commerce. U.S.C.A.Const. art. 1, § 8, cls. 3, 18.

13. Commerce ⇐5

Even if activity were local and could not be regarded as commerce, it could still, whatever its nature, be reached by Congress if it exerted substantial economic effect on interstate commerce. U.S.C.A.Const. art. 1, § 8, cl. 3.

14. States ⇐4.16

Activities that are beyond reach of Congress are those which are completely within particular state, which do not affect other states, and with which it is not necessary to interfere for purpose of executing some of general powers of government. U.S.C.A.Const. art. 1, § 8, cl. 3.

15. Commerce ⇐5

Power of Congress extends to activities of retail establishments, including restaurants, which directly or indirectly burden or obstruct interstate commerce. U.S.C.A.Const. art. 1, § 8, cl. 3.

16. Commerce ⇐16

As regards power of federal regulation, interstate commerce does not end when goods come to rest in state of destination. U.S.C.A.Const. art. 1, § 8, cl. 3.

17. Commerce ⇐60(3)

Omission of provision for case-by-case determination—judicial or administrative—that racial discrimination in particular restaurant affected commerce did not invalidate Civil Rights Act prohibition of racial discrimination by restaurant if substantial portion of food served therein has moved in interstate commerce. Civil Rights Act of 1964,

§§ 201–207, 42 U.S.C.A. §§ 2000a–2000a–6.

18. Constitutional Law ⇐47

Mere fact that Congress has said when particular activity shall be deemed to affect commerce does not preclude further examination by Supreme Court; but when Supreme Court finds that legislators, in light of facts and testimony before them, have rational basis for finding chosen regulatory scheme necessary to protection of commerce, investigation is at an end.

19. Statutes ⇐40

Absence of formal findings was not fatal to validity of Civil Rights Act where evidence presented at hearings fully indicated nature and effect of burdens on commerce which Congress meant to alleviate. Civil Rights Act of 1964, § 201, 42 U.S.C.A. § 2000a; U.S.C.A. Const. art. 1, § 8.

20. Commerce ⇐60(3)

Congress acted well within its power to protect and foster commerce in extending coverage of public accommodations provisions of Civil Rights Act only to those restaurants offering to serve interstate travelers or serving food, a substantial portion of which had moved in interstate commerce. Civil Rights Act of 1964, § 201, 42 U.S.C.A. § 2000a; U.S.C.A.Const. art. 1, § 8, cl. 3.

21. Commerce ⇐3
Constitutional Law ⇐70(1)

Power of Congress in commerce field is broad and sweeping, and where it keeps within its sphere and violates no express constitutional limitation, Supreme Court will not interfere. U.S.C.A. Const. art. 1, § 8, cl. 3.

Archibald Cox, Sol. Gen., for appellants.

Robert McDavid Smith, Birmingham, Ala., for appellees.

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Mr. Justice CLARK delivered the opinion of the Court.

This case was argued with No. 515, Heart of Atlanta Motel v. United States, decided this date, 379 U.S. 241, 85 S.Ct. 348, in which we upheld the constitutional validity of Title II of the Civil Rights Act of 1964 against an attack by hotels, motels, and like establishments. This complaint for injunctive relief against appellants attacks the constitutionality of the Act as applied to a restaurant. The case was heard by a three-judge United States District Court and an injunction was issued restraining appellants from enforcing the Act against the restaurant. 233 F.Supp. 815. On direct appeal, 28 U.S.C. §§ 1252, 1253 (1958 ed.), we noted probable jurisdiction. 379 U.S. 802, 85 S.Ct. 348. We now reverse the judgment.

1. *The Motion to Dismiss.*

[1–6] The appellants moved in the District Court to dismiss the complaint for want of equity jurisdiction and that claim is pressed here. The grounds are that the Act authorizes only preventive relief; that there has been no threat of enforcement against the appellees and that they have alleged no irreparable injury. It is true that ordinarily equity will not interfere in such cases. However, we may and do consider this complaint as an application for a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 (1958 ed.). In this case, of course, direct appeal to this Court would still lie under 28 U.S.C. § 1252 (1958 ed.).

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But even though Rule 57 of the Federal Rules of Civil Procedure permits declaratory relief although another adequate remedy exists, it should not be granted where a special statutory proceeding has been provided. See Notes on Rule 57 of Advisory Committee on Rules, 28 U.S.C.App. p. 5178 (1958 ed.) Title II provides for such a statutory proceeding for the determination of rights and duties arising thereunder, §§ 204–207, and courts should, therefore, ordinarily refrain from exercising their jurisdiction in such cases.

The present case, however, is in a unique position. The interference with

governmental action has occurred and the constitutional question is before us in the companion case of Heart of Atlanta Motel as well as in this case. It is important that a decision on the constitutionality of the Act as applied in these cases be announced as quickly as possible. For these reasons, we have concluded, with the above caveat, that the denial of discretionary declaratory relief is not required here.

2. *The Facts.*

Ollie's Barbecue is a family-owned restaurant in Birmingham, Alabama, specializing in barbecued meats and homemade pies, with a seating capacity of 220 customers. It is located on a state highway 11 blocks from an interstate one and a somewhat greater distance from railroad and bus stations. The restaurant caters to a family and white-collar trade with a take-out service for Negroes. It employs 36 persons, two-thirds of whom are Negroes.

In the 12 months preceding the passage of the Act, the restaurant purchased locally approximately $150,000 worth of food, $69,683 or 46% of which was meat that it bought from a local supplier who had procured it from outside the State. The District Court expressly found that a substantial portion of the food served in the restaurant

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had moved in interstate commerce. The restaurant has refused to serve Negroes in its dining accommodations since its original opening in 1927, and since July 2, 1964, it has been operating in violation of the Act. The court below concluded that if it were required to serve Negroes it would lose a substantial amount of business.

On the merits, the District Court held that the Act could not be applied under the Fourteenth Amendment because it was conceded that the State of Alabama was not involved in the refusal of the restaurant to serve Negroes. It was also admitted that the Thirteenth Amendment was authority neither for validating nor for invalidating the Act. As to the Commerce Clause, the court found that it was "an express grant of power to Congress to regulate interstate commerce, which consists of the movement of persons, goods or information from one state to another"; and it found that the clause was also a grant of power "to regulate intrastate activities, but only to the extent that action on its part is necessary or appropriate to the effective execution of its expressly granted power to regulate interstate commerce." There must be, it said, a close and substantial relation between local activities and interstate commerce which requires control of the former in the protection of the latter. The court concluded, however, that the Congress, rather than finding facts sufficient to meet this rule, had legislated a conclusive presumption that a restaurant affects interstate commerce if it serves or offers to serve interstate travelers or if a substantial portion of the food which it serves has moved in commerce. This, the court held, it could not do because there was no demonstrable connection between food purchased in interstate commerce and sold in a restaurant and the conclusion of Congress that discrimination in the restaurant would affect that commerce.

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[7] The basic holding in Heart of Atlanta Motel, answers many of the contentions made by the appellees.[1] There we outlined the overall purpose and operational plan of Title II and found it a valid exercise of the power to regulate interstate commerce insofar as it requires hotels and motels to serve transients without regard to their race or color. In this case we consider its application to restaurants which serve

1. That decision disposes of the challenges that the appellees base on the Fifth, Ninth, Tenth, and Thirteenth Amendments, and on the Civil Rights Cases, 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835 (1883).

food a substantial portion of which has moved in commerce.

3. *The Act As Applied.*

Section 201(a) of Title II commands that all persons shall be entitled to the full and equal enjoyment of the goods and services of any place of public accommodation without discrimination or segregation on the ground of race, color, religion, or national origin; and § 201(b) defines establishments as places of public accommodation if their operations affect commerce or segregation by them is supported by state action. Sections 201(b)(2) and (c) place any "restaurant * * principally engaged in selling food for consumption on the premises" under the Act "if * * * it serves or offers to serve interstate travelers or a substantial portion of the food which it serves * * has moved in commerce."

Ollie's Barbecue admits that it is covered by these provisions of the Act. The Government makes no contention that the discrimination at the restaurant was supported by the State of Alabama. There is no claim that interstate travelers frequented the restaurant. The sole question, therefore, narrows down to whether Title II, as applied to a restaurant annually receiving about $70,000 worth of food which has moved in commerce, is a valid exercise of the power of Congress. The Government has contended

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that Congress had ample basis upon which to find that racial discrimination at restaurants which receive from out of state a substantial portion of the food served does, in fact, impose commercial burdens of national magnitude upon interstate commerce. The appellees' major argument is directed to this premise. They urge that no such basis existed. It is to that question that we now turn.

4. *The Congressional Hearings.*

[8–11] As we noted in Heart of Atlanta Motel both Houses of Congress conducted prolonged hearings on the Act. And, as we said there, while no formal findings were made, which of course are not necessary, it is well that we make mention of the testimony at these hearings the better to understand the problem before Congress and determine whether the Act is a reasonable and appropriate means toward its solution. The record is replete with testimony of the burdens placed on interstate commerce by racial discrimination in restaurants. A comparison of per capita spending by Negroes in restaurants, theaters, and like establishments indicated less spending, after discounting income differences, in areas where discrimination is widely practiced. This condition, which was especially aggravated in the South, was attributed in the testimony of the Under Secretary of Commerce to racial segregation. See Hearings before the Senate Committee on Commerce on S. 1732, 88th Cong., 1st Sess., 695. This diminutive spending springing from a refusal to serve Negroes and their total loss as customers has, regardless of the absence of direct evidence, a close connection to interstate commerce. The fewer customers a restaurant enjoys the less food it sells and consequently the less it buys. S.Rep. No. 872, 88th Cong., 2d Sess., at 19; Senate Commerce Committee Hearings, at 207. In addition, the Attorney General testified that this type of discrimination imposed "an artificial restriction on the market" and interfered

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with the flow of merchandise. Id., at 18–19; also, on this point, see testimony of Senator Magnuson, 110 Cong. Rec. 7402–7403. In addition, there were many references to discriminatory situations causing wide unrest and having a depressant effect on general business conditions in the respective communities. See, e. g., Senate Commerce Committee Hearings, at 623–630, 695–700, 1334–1385.

Moreover there was an impressive array of testimony that discrimination in restaurants had a direct and highly restrictive effect upon interstate travel by Negroes. This resulted, it was said, because discriminatory practices prevent

Negroes from buying prepared food served on the premises while on a trip, except in isolated and unkempt restaurants and under most unsatisfactory and often unpleasant conditions. This obviously discourages travel and obstructs interstate commerce for one can hardly travel without eating. Likewise, it was said, that discrimination deterred professional, as well as skilled, people from moving into areas where such practices occurred and thereby caused industry to be reluctant to establish there. S.Rep. No. 872, supra, at 18–19.

We believe that this testimony afforded ample basis for the conclusion that established restaurants in such areas sold less interstate goods because of the discrimination, that interstate travel was obstructed directly by it, that business in general suffered and that many new businesses refrained from establishing there as a result of it. Hence the District Court was in error in concluding that there was no connection between discrimination and the movement of interstate commerce. The court's conclusion that such a connection is outside "common experience" flies in the face of stubborn fact.

It goes without saying that, viewed in isolation, the volume of food purchased by Ollie's Barbecue from sources supplied from out of state was insignificant when

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compared with the total foodstuffs moving in commerce. But, as our late Brother Jackson said for the Court in Wickard v. Filburn, 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942):

> "That appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial." At 127–128, 63 S.Ct. at 90.

We noted in Heart of Atlanta Motel that a number of witnesses attested to the fact that racial discrimination was not merely a state or regional problem but was one of nationwide scope. Against this background, we must conclude that while the focus of the legislation was on the individual restaurant's relation to interstate commerce, Congress appropriately considered the importance of that connection with the knowledge that the discrimination was but "representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce." Polish National Alliance of U. S. v. National Labor Relations Board, 322 U.S. 643, 648, 64 S.Ct. 1196, 1199, 88 L.Ed. 1509 (1944).

With this situation spreading as the record shows, Congress was not required to await the total dislocation of commerce. As was said in Consolidated Edison Co. of New York v. National Labor Relations Board, 305 U.S. 197, 59 S.Ct. 206, 83 L.Ed. 126 (1938):

> "But it cannot be maintained that the exertion of federal power must await the disruption of that commerce. Congress was entitled to provide reasonable preventive measures and that was the object of the National Labor Relations Act." At 222, 59 S.Ct. at 213.

5. *The Power of Congress to Regulate Local Activities.*

[12–14] Article I, § 8, cl. 3, confers upon Congress the power "[t]o regulate Commerce * * * among the several States" and Clause 18 of the same Article grants it the power

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"[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers * * *." This grant, as we have pointed out in Heart of Atlanta Motel "extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce." United States

v. Wrightwood Dairy Co., 315 U.S. 110, 119, 62 S.Ct. 523, 526, 86 L.Ed. 726 (1942). Much is said about a restaurant business being local but "even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce * * *." Wickard v. Filburn, supra, at 125, 63 S.Ct. at 89. The activities that are beyond the reach of Congress are "those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government." Gibbons v. Ogden, 9 Wheat. 1, 195, 6 L.Ed. 23 (1824). This rule is as good today as it was when Chief Justice Marshall laid it down almost a century and a half ago.

[15] This Court has held time and again that this power extends to activities of retail establishments, including restaurants, which directly or indirectly burden or obstruct interstate commerce. We have detailed the cases in Heart of Atlanta Motel, and will not repeat them here.

[16] Nor are the cases holding that interstate commerce ends when goods come to rest in the State of destination apposite here. That line of cases has been applied with reference to state taxation or regulation but not in the field of federal regulation.

[17] The appellees contend that Congress has arbitrarily created a conclusive presumption that all restaurants

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meeting the criteria set out in the Act "affect commerce." Stated another way, they object to the omission of a provision for a case-by-case determination—judicial or administrative—that racial discrimination in a particular restaurant affects commerce.

But Congress' action in framing this Act was not unprecedented. In United States v. Darby, 312 U.S. 100, 657, 61 S.Ct. 451, 85 L.Ed. 609 (1941), this Court held constitutional the Fair Labor Standards Act of 1938.[2] There Congress determined that the payment of substandard wages to employees engaged in the production of goods for commerce, while not itself commerce, so inhibited it as to be subject to federal regulation. The appellees in that case argued, as do the appellees here, that the Act was invalid because it included no provision for an independent inquiry regarding the effect on commerce of substandard wages in a particular business. (Brief for appellees, pp. 76–77, United States v. Darby, 312 U.S. 100, 657, 61 S.Ct. 451, 85 L.Ed. 609.) But the Court rejected the argument, observing that:

> "[S]ometimes Congress itself has said that a particular activity affects the commerce, as it did in the present Act, the Safety Appliance Act * * * and the Railway Labor Act * * *. In passing on the validity of legislation of the class last mentioned the only function of courts is to determine whether the particular activity regulated or prohibited is within the reach of the federal power." At 120–121, 61 S.Ct. at 460.

[18] Here, as there, Congress has determined for itself that refusals of service to Negroes have imposed burdens both upon the interstate flow of food and upon the movement of products generally. Of course, the mere fact that Congress has said when particular activity shall be deemed to affect commerce does not preclude further examination by this Court. But where we find that the legislators, in

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light of the facts and testimony before them, have a rational basis for finding a chosen regulatory scheme necessary to the protection of commerce, our investigation is at an end. The only remaining question—one answered in the

2. 52 Stat. 1060, 29 U.S.C. § 201 et seq. (1958 ed.).

affirmative by the court below—is whether the particular restaurant either serves or offers to serve interstate travelers or serves food a substantial portion of which has moved in interstate commerce.

[19] The appellees urge that Congress, in passing the Fair Labor Standards Act and the National Labor Relations Act,[3] made specific findings which were embodied in those statutes. Here, of course, Congress has included no formal findings. But their absence is not fatal to the validity of the statute, see United States v. Carolene Products Co., 304 U.S. 144, 152, 58 S.Ct. 778, 783, 82 L.Ed. 1234 (1938), for the evidence presented at the hearings fully indicated the nature and effect of the burdens on commerce which Congress meant to alleviate.

[20] Confronted as we are with the facts laid before Congress, we must conclude that it had a rational basis for finding that racial discrimination in restaurants had a direct and adverse effect on the free flow of interstate commerce. Insofar as the sections of the Act here relevant are concerned, §§ 201(b) (2) and (c), Congress prohibited discrimination only in those establishments having a close tie to interstate commerce, *i. e.*, those, like the McClungs', serving food that has come from out of the State. We think in so doing that Congress acted well within its power to protect and foster commerce in extending the coverage of Title II only to those restaurants offering to serve interstate travelers or serving food, a substantial portion of which has moved in interstate commerce.

The absence of direct evidence connecting discriminatory restaurant service with the flow of interstate food,

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factor on which the appellees place much reliance, is not, given the evidence as to the effect of such practices on other aspects of commerce, a crucial matter.

[21] The power of Congress in this field is broad and sweeping; where it keeps within its sphere and violates no express constitutional limitation it has been the rule of this Court, going back almost to the founding days of the Republic, not to interfere. The Civil Rights Act of 1964, as here applied, we find to be plainly appropriate in the resolution of what the Congress found to be a national commercial problem of the first magnitude. We find it in no violation of any express limitations of the Constitution and we therefore declare it valid.

The judgment is therefore reversed.

Reversed.

Concurring opinions by Mr. Justice BLACK, Mr. Justice DOUGLAS and Mr. Justice GOLDBERG printed in No. 515, Heart of Atlanta Motel, Inc., v. United States, 379 U.S. 241, 85 S.Ct. 348.

379 U.S. 306

Arthur HAMM, Jr., Petitioner,

v.

CITY OF ROCK HILL.

Frank James LUPPER et al., Petitioners,

v.

STATE OF ARKANSAS.

Nos. 2, 5.

Argued Oct. 12, 1964.

Decided Dec. 14, 1964.

Rehearing Denied Jan. 25, 1965.

See 379 U.S. 995, 85 S.Ct. 698.

"Sit in" cases wherein state courts of last resort affirmed convictions based on state trespass statutes against Negro petitioners for participating in "sit in" demonstrations in luncheon facilities of retail stores. In one case, the Circuit Court, Pulaski County, Arkansas, rendered judgment and the Supreme Court of Arkansas, 236 Ark. 596, 367 S.W.2d 750, affirmed. In the other case, the City

3. 49 Stat. 449, as amended, 29 U.S.C. § 151 et seq. (1958 ed.).

379 U.S. 241

HEART OF ATLANTA MOTEL, INC., Appellant,

v.

UNITED STATES et al.

No. 515.

Argued Oct. 5, 1964.

Decided Dec. 14, 1964.

Action by a motel operator for declaratory judgment as to the constitutionality of the public accommodations provisions of the Civil Rights Act of 1964 and for injunctive relief. Defendants counterclaimed for enforcement and asked for three-judge district court. The three-judge court, convened in the United States District Court for the Northern District of Georgia, 231 F.Supp. 393, sustained the validity of the Act and issued a permanent injunction on the counterclaim, and plaintiff appealed. The Supreme Court, Mr. Justice Clark, held that the public accommodations provisions of the Civil Rights Act of 1954 are valid under the Commerce Clause.

Affirmed.

See also 85 S.Ct. 1.

1. Commerce ⇐55

Congress possessed ample power under Commerce Clause to enact provisions of Civil Rights Act of 1964 precluding discrimination in public accommodations. U.S.C.A.Const. art. 1, § 8, cl. 3; Civil Rights Act of 1964, §§ 201–207, 201(a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a(a), (b) (1), (c) (1).

2. Courts ⇐90(1)

That certain kinds of businesses might not in 1875 have been sufficiently involved in interstate commerce to warrant bringing them within ambit of commerce power is not necessarily dispositive of same question today. Civil Rights Act of 1964, §§ 201–207, 201(a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a(a), (b) (1), (c) (1).

3. Courts ⇐90(1)

Though principles to be applied in determining permissible enactment under commerce power were same as those formulated in 1824, as conditions of transportation and commerce had changed dramatically, court was required to apply those principles to present state of commerce. U.S.C.A.Const. art. 1, § 8, cl. 3; Civil Rights Act of 1964, §§ 201–207, 201(a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a(a), (b) (1), (c) (1).

4. Commerce ⇐40(1)

Voluminous testimony before Senate and House Committees presented overwhelming evidence that discrimination by hotels and motels impedes interstate travel. U.S.C.A.Const. art. 1, § 8, cl. 3; Civil Rights Act of 1964, §§ 201–207, 201(a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a(a), (b) (1), (c) (1).

5. Commerce ⇐16

Determinative test of exercise of power by Congress under Commerce Clause is simply whether activity sought to be regulated is commerce which concerns more than one state and has real and substantial relation to national interest. U.S.C.A.Const. art. 1, § 8, cl. 3.

6. Commerce ⇐16

Intercourse subject to regulation under Commerce Clause includes movement of persons through more States than one. U.S.C.A.Const. art. 1, § 8, cl. 3.

7. Commerce ⇐33(1), 47

It makes no difference whether transportation is commercial in character to validity of its regulation under Commerce power. U.S.C.A.Const. art. 1, § 8, cl. 3.

8. Commerce ⇐48

That Congress was legislating against moral wrongs in many areas when it acted under Commerce Clause rendered its enactments no less valid. U.S.C.A.Const. art. 1, § 8, cl. 3.

9. Commerce ⇐57

Congress in enacting public accommodations provisions of Civil Rights Act of 1964 was not restricted by fact that particular obstruction to interstate commerce with which it was dealing was also deemed moral and social wrong. U.S.C.A.Const. art. 1, § 8, cl. 3; Civil Rights Act of 1964, §§ 201–207, 201(a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a(a), (b) (1), (c) (1).

10. Commerce ⇐48

If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze to validity of regulation under Commerce power. U.S.C.A.Const. art. 1, § 8, cl. 3.

11. Commerce ⇐5

Power of Congress to promote interstate commerce includes power to regulate local incidents thereof, including local activities, in both the states of origin and destination, which might have a substantial and harmful effect upon that commerce. U.S.C.A.Const. art. 1, § 8, cl. 3.

12. Commerce ⇐57

Congress could, as it did in enacting public accommodations provisions of Civil Rights Act of 1964, prohibit under Commerce power racial discrimination by motels serving interstate travelers, however "local" their operations might appear. U.S.C.A.Const. art. 1, § 8, cl. 3; Civil Rights Act of 1964, §§ 201–207, 201(a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a(a), (b) (1), (c) (1).

13. Civil Rights ⇐2

Constitutional Law ⇐296(1)

Public accommodations provisions of Civil Rights Act of 1964 did not deprive motel owner of liberty or property under Fifth Amendment. U.S.C.A.Const. art. 1, § 8, cl. 3; Amend. 5; Civil Rights Act of 1964, §§ 201–207, 201(a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a(a), (b) (1), (c) (1).

14. Civil Rights ⇐2

Commerce ⇐40(1)

Only questions as to validity of public accommodations provisions of Civil Rights Act of 1964 under Commerce Clause with respect to motel operator was whether Congress had rational basis for finding that racial discrimination by motels affected commerce, and, if it had such a basis, whether means it selected to eliminate that evil were reasonable and appropriate, and if they were, motel owner had no "right" to select its guests as it saw fit, free from governmental regulation. U.S.C.A.Const. art. 1, § 8, cl. 3; Amend. 5; Civil Rights Act of 1964, §§ 201–207, 201(a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a(a), (b) (1), (c) (1).

15. Civil Rights ⇐2

Whether elimination of discrimination in public accommodations under Civil Rights Act of 1964 would or would not cause motel operator to suffer economic loss was of no consequence to validity of Act. U.S.C.A.Const. art. 1, § 8, cl. 3; Amend. 5; Civil Rights Act of 1964, §§ 201–207, 201(a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a(a), (b) (1), (c) (1).

16. Civil Rights ⇐2

Constitutional Law ⇐296(1)

Prohibition of racial discrimination in public accommodations does not interfere with personal liberty. U.S.C.A. Const. art. 1, § 8, cl. 3; Amend. 5; Civil Rights Act of 1964, §§ 201–207, 201(a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a(a), (b) (1), (c) (1).

17. Eminent Domain ⇐2(1)

Public accommodations provisions of Civil Rights Act of 1964 did not constitute taking of property without just compensation. U.S.C.A.Const. art. 1, § 8, cl. 3; Amend. 5; Civil Rights Act of 1964, §§ 201–207, 201(a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a(a), (b) (1), (c) (1).

18. Civil Rights ⇐2
Constitutional Law ⇐83(2)

The public accommodation provisions of the Civil Rights Act of 1964 do not, by requiring motel operator to render available rooms to Negroes against its will, subject operator to involuntary servitude in violation of Thirteenth Amendment. U.S.C.A.Const. art. 1, § 8, cl. 3; Amend. 13; Civil Rights Act of 1964, §§ 201–207, 201(a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a(a), (b) (1), (c) (1).

19. Constitutional Law ⇐70(3)

Contention that Congress could arguably have pursued other methods to eliminate obstructions it found in interstate commerce caused by racial discrimination, rather than enacting Civil Rights Act of 1964, related only to a matter of policy resting entirely with Congress and not with the courts. U.S.C.A.Const. art. 1, § 8, cl. 3; Civil Rights Act of 1964, §§ 201–207, 201(a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a (a), (b) (1), (c) (1).

20. Constitutional Law ⇐70(1)

How obstructions in commerce may be removed and what means are to be employed are matters within the sound and exclusive discretion of Congress, subject only to one caveat—that the means chosen must be reasonably adapted to ends permitted by Constitution. U.S. C.A.Const. art. 1, § 8, cl. 3.

21. Civil Rights ⇐2

Congressional choice of means to remove obstructions in commerce made in enactment of public accommodations provisions of Civil Rights Act was reasonably adapted to end permitted by Constitution, and the Constitution required no more. U.S.C.A.Const. art. 1, § 8, cl. 3; Civil Rights Act of 1964, §§ 201–207, 201 (a), (b) (1), (c) (1), 42 U.S.C.A. §§ 2000a to 2000a–6, 2000a(a), (b) (1), (c) (1).

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Moreton Rolleston, Jr., Atlanta, Ga., for appellant.

Archibald Cox, Sol. Gen., for appellees.

Mr. Justice CLARK delivered the opinion of the Court

This is a declaratory judgment action, 28 U.S.C. § 2201 and § 2202 (1958 ed.) attacking the constitutionality of Title II of the Civil Rights Act of 1964, 78 Stat.

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241, 243.[1] In addition to declaratory relief the complaint sought an injunction restraining the enforcement of the Act and damages against appellees based on allegedly resulting injury in the event compliance was required. Appellees counterclaimed for enforcement under § 206(a) of the Act and asked for a three-judge district court under § 206(b). A three-judge court, empaneled under § 206(b) as well as 28 U.S.C. § 2282 (1958 ed.) sustained the validity of the Act and issued a permanent injunction on appellees' counterclaim restraining appellant from continuing to violate the Act which remains in effect on order of Mr. Justice BLACK, 85 S.Ct. 1. We affirm the judgment.

1. *The Factual Background and Contentions of the Parties.*

The case comes here on admissions and stipulated facts. Appellant owns and operates the Heart of Atlanta Motel which has 216 rooms available to transient guests. The motel is located on Courtland Street, two blocks from downtown Peachtree Street. It is readily accessible to interstate highways 75 and 85 and state highways 23 and 41. Appellant solicits patronage from outside the State of Georgia through various national advertising media, including magazines of national circulation; it maintains over 50 billboards and highway signs within the State, soliciting patronage for the motel; it accepts convention trade from outside Georgia and approximately 75% of its registered guests are from out of

1. See Appendix.

State. Prior to passage of the Act the motel had followed a practice of refusing to rent rooms to Negroes, and it alleged that it intended to continue to do so. In an effort to perpetuate that policy this suit was filed.

The appellant contends that Congress in passing this Act exceeded its power to regulate commerce under Art. I,
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§ 8, cl. 3, of the Constitution of the United States; that the Act violates the Fifth Amendment because appellant is deprived of the right to choose its customers and operate its business as it wishes, resulting in a taking of its liberty and property without due process of law and a taking of its property without just compensation; and, finally, that by requiring appellant to rent available rooms to Negroes against its will, Congress is subjecting it to involuntary servitude in contravention of the Thirteenth Amendment.

The appellees counter that the unavailability to Negroes of adequate accommodations interferes significantly with interstate travel, and that Congress, under the Commerce Clause, has power to remove such obstructions and restraints; that the Fifth Amendment does not forbid reasonable regulation and that consequential damage does not constitute a "taking" within the meaning of that amendment; that the Thirteenth Amendment claim fails because it is entirely frivolous to say that an amendment directed to the abolition of human bondage and the removal of widespread disabilities associated with slavery places discrimination in public accommodations, beyond the reach of both federal and state law.

At the trial the appellant offered no evidence, submitting the case on the pleadings, admissions and stipulation of facts; however, appellees proved the refusal of the motel to accept Negro transients after the passage of the Act. The District Court sustained the constitutionality of the sections of the Act under attack (§§ 201(a), (b) (1) and (c) (1)) and issued a permanent injunction on the counterclaim of the appellees. It restrained the appellant from "[r]efusing to accept Negroes as guests in the motel by reason of their race or color" and from "[m]aking any distinction whatever upon the basis of race or color in the availability of the goods, services, facilities
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privileges, advantages or accommodations offered or made available to the guests of the motel, or to the general public, within or upon any of the premises of the Heart of Atlanta Motel, Inc."

2. *The History of the Act.*

Congress first evidenced its interest in civil rights legislation in the Civil Rights or Enforcement Act of April 9, 1866.[2] There followed four Acts,[3] with a fifth, the Civil Rights Act of March 1, 1875,[4] culminating the series. In 1883 this Court struck down the public accommodations sections of the 1875 Act in the Civil Rights Cases, 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835. No major legislation in this field had been enacted by Congress for 82 years when the Civil Rights Act of 1957[5] became law. It was followed by the Civil Rights Act of 1960.[6] Three years later, on June 19, 1963, the late President Kennedy called for civil rights legislation in a message to Congress to which he attached a proposed bill. Its stated purpose was

> "to promote the general welfare by eliminating discrimination based on race, color, religion, or national origin in * * * public accommodations through the exercise by Congress of the powers conferred upon it * * *

2. 14 Stat. 27.

3. Slave Kidnaping Act, 14 Stat. 50; Peonage Abolition Act of March 2, 1867, 14 Stat. 546; Act of May 31, 1870, 16 Stat. 140; Anti-Lynching Act of April 20, 1871, 17 Stat. 13.

4. 18 Stat. 335.

5. 71 Stat. 634.

6. 74 Stat. 86.

to enforce the provisions of the fourteenth and fifteenth amendments, to regulate commerce among the several States, and to make laws necessary and proper to execute the powers conferred upon it by the Constitution." H.R.Doc.No. 124, 88th Cong., 1st Sess., at 14.

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Bills were introduced in each House of the Congress, embodying the President's suggestion, one in the Senate being S. 1732 [7] and one in the House, H.R. 7152. However, it was not until July 2, 1964, upon the recommendation of President Johnson, that the Civil Rights Act of 1964, here under attack, was finally passed.

After extended hearings each of these bills was favorably reported to its respective house. H.R. 7152 on November 20, 1963, H.R.Rep.No.914, 88th Cong., 1st Sess., and S. 1732 on February 10, 1964, S.Rep.No.872, 88th Cong., 2d Sess. Although each bill originally incorporated extensive findings of fact these were eliminated from the bills as they were reported. The House passed its bill in January 1964 and sent it to the Senate. Through a bipartisan coalition of Senators Humphrey and Dirksen, together with other Senators, a substitute was worked out in informal conferences. This substitute was adopted by the Senate and sent to the House where it was adopted without change. This expedited procedure prevented the usual report on the substitute bill in the Senate as well as a Conference Committee report ordinarily filed in such matters. Our only frame of reference as to the legislative history of the Act is, therefore, the hearings, reports and debates on the respective bills in each house.

The Act as finally adopted was most comprehensive, undertaking to prevent through peaceful and voluntary settlement discrimination in voting, as well as in places of accommodation and public facilities, federally secured programs and in employment. Since Title II is the only portion under attack here, we confine our consideration to those public accommodation provisions.

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3. *Title II of the Act.*

This Title is divided into seven sections beginning with § 201(a) which provides that:

> "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."

There are listed in § 201(b) four classes of business establishments, each of which "serves the public" and "is a place of public accommodation" within the meaning of § 201(a) "if its operations affect commerce, or if discrimination or segregation by it is supported by State action." The covered establishments are:

> "(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;
>
> "(2) any restaurant, cafeteria * * * [not here involved];
>
> "(3) any motion picture house * * * [not here involved];
>
> "(4) any establishment * * * which is physically located within the premises of any establishment otherwise covered by this subsection, or * * * within the premises of which is physically located any such covered establishment * * * [not here involved]."

Section 201(c) defines the phrase "affect commerce" as applied to the above estab-

7. S. 1732 dealt solely with public accommodations. A second Senate bill, S. 1731, contained the entire administration proposal. The Senate Judiciary Committee conducted the hearings on S. 1731 while the Committee on Commerce considered S. 1732.

lishments. It first declares that "any inn, hotel, motel, or other establishment which provides lodging to transient guests" affects commerce *per se*. Restaurants, cafeterias, etc., in class two affect

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commerce only if they serve or offer to serve interstate travelers or if a substantial portion of the food which they serve or products which they sell have "moved in commerce." Motion picture houses and other places listed in class three affect commerce if they customarily present films, performances, etc., "which move in commerce." And the establishments listed in class four affect commerce if they are within, or include within their own premises, an establishment "the operations of which affect commerce." Private clubs are excepted under certain conditions. See § 201(e).

Section 201(d) declares that "discrimination or segregation" is supported by state action when carried on under color of any law, statute, ordinance, regulation or any custom or usage required or enforced by officials of the State or any of its subdivisions.

In addition, § 202 affirmatively declares that all persons "shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof."

Finally, § 203 prohibits the withholding or denial, etc., of any right or privilege secured by § 201 and § 202 or the intimidation, threatening or coercion of any person with the purpose of interfering with any such right or the punishing, etc., of any person for exercising or attempting to exercise any such right.

The remaining sections of the Title are remedial ones for violations of any of the previous sections. Remedies are limited to civil actions for preventive relief. The Attorney General may bring suit where he has "reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to

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the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described * * *." § 206(a).

A person aggrieved may bring suit, in which the Attorney General may be permitted to intervene. Thirty days' written notice before filing any such action must be given to the appropriate authorities of a State or subdivision the law of which prohibits the act complained of and which has established an authority which may grant relief therefrom. § 204(c). In States where such condition does not exist the court after a case is filed may refer it to the Community Relations Service which is established under Title X of the Act. § 204(d). This Title establishes such service in the Department of Commerce, provides for a Director to be appointed by the President with the advice and consent of the Senate and grants it certain powers, including the power to hold hearings, with reference to matters coming to its attention by reference from the court or between communities and persons involved in disputes arising under the Act.

4. *Application of Title II to Heart of Atlanta Motel.*

It is admitted that the operation of the motel brings it within the provisions of § 201(a) of the Act and that appellant refused to provide lodging for transient Negroes because of their race or color and that it intends to continue that policy unless restrained.

The sole question posed is, therefore, the constitutionality of the Civil Rights Act of 1964 as applied to these facts. The legislative history of the Act indicates that Congress based the Act on § 5 and the Equal Protection Clause of the Fourteenth Amendment as well as its power to regulate interstate commerce under Art. I, § 8, cl. 3, of the Constitution.

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[1] The Senate Commerce Committee made it quite clear that the fundamental object of Title II was to vindicate "the deprivation of personal dignity that surely accompanies denials of equal access to public establishments." At the same time, however, it noted that such an objective has been and could be readily achieved "by congressional action based on the commerce power of the Constitution." S.Rep. No. 872, supra, at 16–17. Our study of the legislative record, made in the light of prior cases, has brought us to the conclusion that Congress possessed ample power in this regard, and we have therefore not considered the other grounds relied upon. This is not to say that the remaining authority upon which it acted was not adequate, a question upon which we do not pass, but merely that since the commerce power is sufficient for our decision here we have considered it alone. Nor is § 201(d) or § 202, having to do with state action, involved here and we do not pass upon either of those sections.

5. *The Civil Rights Cases, 109 U.S. 3, 3 S.Ct. 18 (1883), and their Application.*

[2, 3] In light of our ground for decision, it might be well at the outset to discuss the Civil Rights Cases, supra, which declared provisions of the Civil Rights Act of 1875 unconstitutional. 18 Stat. 335, 336. We think that decision inapposite, and without precedential value in determining the constitutionality of the present Act. Unlike Title II of the present legislation, the 1875 Act broadly proscribed discriminaton in "inns, public conveyances on land or water, theaters, and other places of public amusement," without limiting the categories of affected businesses to those impinging upon interstate commerce. In contrast, the applicability of Title II is carefully limited to enterprises having a direct and substantial relation to the interstate flow of goods and people,

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except where state action is involved. Further, the fact that certain kinds of businesses may not in 1875 have been sufficiently involved in interstate commerce to warrant bringing them within the ambit of the commerce power is not necessarily dispositive of the same question today. Our populace had not reached its present mobility, nor were facilities, goods and services circulating as readily in interstate commerce as they are today. Although the principles which we apply today are those first formulated by Chief Justice Marshall in Gibbons v. Ogden, 9 Wheat. 1, 6 L.Ed. 23 (1824), the conditions of transportation and commerce have changed dramatically, and we must apply those principles to the present state of commerce. The sheer increase in volume of interstate traffic alone would give discriminatory practices which inhibit travel a far larger impact upon the Nation's commerce than such practices had on the economy of another day. Finally, there is language in the Civil Rights Cases which indicates that the Court did not fully consider whether the 1875 Act could be sustained as an exercise of the commerce power. Though the Court observed that "no one will contend that the power to pass it was contained in the constitution before the adoption of the last three amendments [Thirteenth, Fourteenth, and Fifteenth]," the Court went on specifically to note that the Act was not "conceived" in terms of the commerce power and expressly pointed out:

> "Of course, these remarks [as to lack of congressional power] do not apply to those cases in which congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an express or implied denial of such power to the states, as in the regulation of commerce with foreign nations, among the several states, and with the Indian tribes * * *. In these cases congress has

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> power to pass laws for regulating the subjects specified, in every detail, and the conduct and transactions of individuals in respect thereof." 109 U.S. at 18, 3 S.Ct. at 26.

Since the commerce power was not relied on by the Government and was without support in the record it is understandable that the Court narrowed its inquiry and excluded the Commerce Clause as a possible source of power. In any event, it is clear that such a limitation renders the opinion devoid of authority for the proposition that the Commerce Clause gives no power to Congress to regulate discriminatory practices now found substantially to affect interstate commerce. We, therefore, conclude that the Civil Rights Cases have no relevance to the basis of decision here where the Act explicitly relies upon the commerce power, and where the record is filled with testimony of obstructions and restraints resulting from the discriminations found to be existing. We now pass to that phase of the case.

6. *The Basis of Congressional Action.*

[4] While the Act as adopted carried no congressional findings the record of its passage through each house is replete with evidence of the burdens that discrimination by race or color places upon interstate commerce. See Hearings before Senate Committee on Commerce on S. 1732, 88th Cong., 1st Sess.; S.Rep. No. 872, supra; Hearings before Senate Committee on the Judiciary on S. 1731, 88th Cong., 1st Sess.; Hearings before House Subcommittee No. 5 of the Committee on the Judiciary on miscellaneous proposals regarding Civil Rights, 88th Cong., 1st Sess., ser. 4; H.R.Rep. No. 914, supra. This testimony included the fact that our people have become increasingly mobile with millions of people of all races traveling from State to State; that Negroes in particular have been the subject of discrimination in transient accommodations, having to travel great distances to secure the same; that often they

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have been unable to obtain accommodations and have had to call upon friends to put them up overnight, S.Rep. No. 872, supra, at 14–22; and that these conditions had become so acute as to require the listing of available lodging for Negroes in a special guidebook which was itself "dramatic testimony to the difficulties" Negroes encounter in travel. Senate Commerce Committee Hearings, supra, at 692–694. These exclusionary practices were found to be nationwide, the Under Secretary of Commerce testifying that there is "no question that this discrimination in the North still exists to a large degree" and in the West and Midwest as well. Id., at 735, 744. This testimony indicated a qualitative as well as quantitative effect on interstate travel by Negroes. The former was the obvious impairment of the Negro traveler's pleasure and convenience that resulted when he continually was uncertain of finding lodging. As for the latter, there was evidence that this uncertainty stemming from racial discrimination had the effect of discouraging travel on the part of a substantial portion of the Negro community. Id., at 744. This was the conclusion not only of the Under Secretary of Commerce but also of the Administrator of the Federal Aviation Agency who wrote the Chairman of the Senate Commerce Committee that it was his "belief that air commerce is adversely affected by the denial to a substantial segment of the traveling public of adequate and desegregated public accommodations." Id., at 12–13. We shall not burden this opinion with further details since the voluminous testimony presents overwhelming evidence that discrimination by hotels and motels impedes interstate travel.

7. *The Power of Congress Over Interstate Travel.*

[5] The power of Congress to deal with these obstructions depends on the meaning of the Commerce Clause. Its meaning was first enunciated 140 years ago by the great

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Chief Justice John Marshall in Gibbons v. Ogden, 9 Wheat. 1, 6 L.Ed. 23 (1824), in these words:

> "The subject to be regulated is commerce; and * * * to ascertain the extent of the power, it be-

comes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities * * * but it is something more: it is intercourse * * * between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. [At 189–190.]

* * * * * *

"To what commerce does this power extend? The constitution informs us, to commerce 'with foreign nations, and among the several States, and with the Indian tribes.'

"It has, we believe, been universally admitted, that these words comprehend every species of commercial intercourse * * *. No sort of trade can be carried on * * * to which this power does not extend. [At 193–194.]

* * * * * *

"The subject to which the power is next applied, is to commerce 'among the several States.' The word 'among' means intermingled * * *.

* * * * * *

"* * * [I]t may very properly be restricted to that commerce which concerns more States than one. * * * The genius and character of the whole government seem to be, that its action is to be applied to all the * * * internal concerns [of the Nation] which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary

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to interfere, for the purpose of executing some of the general powers of the government. [At 194–195.]

* * * * * *

"We are now arrived at the inquiry—What is this power?

"It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution. * * * If, as has always been understood, the sovereignty of Congress * * * is plenary as to those objects [specified in the Constitution], the power over commerce * * * is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments. [At 196–197.]"

In short, the determinative test of the exercise of power by the Congress under the Commerce Clause is simply whether the activity sought to be regulated is "commerce which concerns more States than one" and has a real and substantial relation to the national interest. Let us now turn to this facet of the problem.

[6, 7] That the "intercourse" of which the Chief Justice spoke included the movement of persons through more

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States than one was settled as early as 1849, in the Passenger Cases (Smith v. Turner), 7 How. 283, 12 L.Ed. 702, where Mr. Justice McLean stated: "That the transportation of passengers is a part of commerce is not now an open question." At 401. Again in 1913 Mr. Justice McKenna, speaking for the Court,

said: "Commerce among the states, we have said, consists of intercourse and traffic between their citizens, and includes the transportation of persons and property." Hoke v. United States, 227 U.S. 308, 320, 33 S.Ct. 281, 283, 57 L.Ed. 523. And only four years later in 1917 in Caminetti v. United States, 242 U.S. 470, 37 S.Ct. 192, 61 L.Ed. 442, Mr. Justice Day held for the Court:

> "The transportation of passengers in interstate commerce, it has long been settled, is within the regulatory power of Congress, under the commerce clause of the Constitution, and the authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question." At 491, 37 S.Ct. at 197.

Nor does it make any difference whether the transportation is commercial in character. Id., at 484–486, 37 S.Ct. at 194–195. In Morgan v. Com. of Virginia, 328 U.S. 373, 66 S.Ct. 1050, 90 L.Ed. 1317 (1946), Mr. Justice Reed observed as to the modern movement of persons among the States:

> "The recent changes in transportation brought about by the coming of automobiles [do] not seem of great significance in the problem. People of all races travel today more extensively than in 1878 when this Court first passed upon state regulation of racial segregation in commerce. [It but] emphasizes the soundness of this Court's early conclusion in Hall v. De Cuir, 95 U.S. 485 [24 L.Ed. 547]." At 383, 66 S.Ct. at 1056.

The same interest in protecting interstate commerce which led Congress to deal with segregation in interstate

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carriers and the white-slave traffic has prompted it to extend the exercise of its power to gambling, Lottery Case (Champion v. Ames), 188 U.S. 321, 23 S.Ct. 321, 47 L.Ed. 492 (1903); to criminal enterprises, Brooks v. United States, 267 U.S. 432, 45 S.Ct. 345, 69 L.Ed. 699 (1925); to deceptive practices in the sale of products, Federal Trade Comm. v. Mandel Bros., Inc., 359 U.S. 385, 79 S.Ct. 818, 3 L.Ed.2d 893 (1959); to fraudulent security transactions, Securities & Exchange Comm. v. Ralston Purina Co., 346 U.S. 119, 73 S.Ct. 981, 97 L.Ed. 1494 (1953); to misbranding of drugs, Weeks v. United States, 245 U.S. 618, 38 S.Ct. 219, 62 L.Ed. 513 (1918); to wages and hours, United States v. Darby, 312 U.S. 100, 657, 61 S.Ct. 451, 85 L.Ed. 609 (1941); to members of labor unions, National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893 (1937); to crop control, Wickard v. Filburn, 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942); to discrimination against shippers, United States v. Baltimore & Ohio R. Co., 333 U.S. 169, 68 S.Ct. 494, 92 L.Ed. 618 (1948); to the protection of small business from injurious price cutting, Moore v. Mead's Fine Bread Co., 348 U.S. 115, 75 S.Ct. 148, 99 L.Ed. 145 (1954); to resale price maintenance, Hudson Distributors, Inc. v. Eli Lilly & Co., 377 U.S. 386, 84 S.Ct. 1273, 12 L.Ed.2d 394 (1964), Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384, 71 S.Ct. 745, 95 L.Ed. 1035 (1951); to professional football, Radovich v. National Football League, 352 U.S. 445, 77 S.Ct. 390, 1 L.Ed.2d 456 (1957); and to racial discrimination by owners and managers of terminal restaurants, Boynton v. Com. of Virginia, 364 U.S. 454, 81 S.Ct. 182, 5 L.Ed.2d 206 (1960).

[8, 9] That Congress was legislating against moral wrongs in many of these areas rendered its enactments no less valid. In framing Title II of this Act Congress was also dealing with what it considered a moral problem. But that fact does not detract from the overwhelming evidence of the disruptive effect that racial discrimination has had on commercial intercourse. It was this burden which empowered Congress to enact appropriate legislation, and, given this basis for the exercise of its power,

Congress was not restricted by the fact that the particular obstruction to interstate commerce with which it was dealing was also deemed a moral and social wrong.

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[10–12] It is said that the operation of the motel here is of a purely local character. But, assuming this to be true, "[i]f it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze." United States v. Women's Sportswear Mfg. Ass'n, 336 U.S. 460, 464, 69 S.Ct. 714, 716, 93 L.Ed. 805 (1949). See National Labor Relations Board v. Jones & Laughlin Steel Corp., supra. As Chief Justice Stone put it in United States v. Darby, supra:

> "The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce. See McCulloch v. Maryland, 4 Wheat. 316, 421, 4 L. Ed. 579." 312 U.S. at 118, 61 S.Ct. at 459.

Thus the power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce. One need only examine the evidence which we have discussed above to see that Congress may—as it has—prohibit racial discrimination by motels serving travelers, however "local" their operations may appear.

[13, 14] Nor does the Act deprive appellant of liberty or property under the Fifth Amendment. The commerce power invoked here by the Congress is a specific and plenary one authorized by the Constitution itself. The only questions are: (1) whether Congress had a rational basis for finding that racial discrimination by motels affected commerce, and (2) if it had such a basis, whether the means it selected to eliminate that evil are reasonable and appropriate.

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If they are, appellant has no "right" to select its guests as it sees fit, free from governmental regulation.

There is nothing novel about such legislation. Thirty-two States [8] now have it on their books either by statute or execu-

8. The following statutes indicate States which have enacted public accommodation laws:

Alaska Stat., §§ 11.60.230 to 11.60.240 (1962); Cal.Civil Code, §§ 51 to 54 (1954); Colo.Rev.Stat.Ann., §§ 25–1–1 to 25–2–5 (1953); Conn.Gen.Stat.Ann., § 53–35 (1963 Supp.); Del.Code Ann., Tit. 6, c. 45 (1963); Idaho Code Ann., §§ 18–7301 to 18–7303 (1963 Supp.); Ill.Ann.Stat. (Smith-Hurd ed.), c. 38, §§ 13–1 to 13–4 (1964), c. 43, § 133 (1944); Ind.Ann.Stat. (Burns ed.), §§ 10–901 to 10–914 (1956, and 1963 Supp.); Iowa Code Ann., §§ 735.1 and 735.2 (1950); Kan.Gen.Stat.Ann., § 21–2424 (1961 Supp.); Me.Rev.Stat.Ann., c. 137, § 50 (1954); Md.Ann.Code, Art. 49B, § 11 (1964); Mass.Ann.Laws, c. 140, §§ 5 and 8 (1957), c. 272, §§ 92A and 98 (1963 Supp.); Mich.Stat.Ann., §§ 28.343 and 28.344 (1962); Minn.Stat.Ann., § 327.09 (1947); Mont.Rev.Codes Ann., § 64–211 (1962); Neb.Rev.Stat., §§ 20–101 and 20–102 (1962); N.H.Rev.Stat.Ann., §§ 354:1, 354:2, 354:4 and 354:5 (1955, and 1963 Supp.); N.J.Stat.Ann., §§ 10:1–2 to 10:1–7 (1960), §§ 18:25–1 to 18:25–6 (1964 Supp.); N.M.Stat.Ann., §§ 49–8–1 to 49–8–7 (1963 Supp.); N.Y.Civil Rights Law (McKinney ed.), Art. 4, §§ 40 and 41 (1948, and 1964 Supp.), Exec. Law, Art. 15, §§ 290 to 301 (1951, and 1964 Supp.), Penal Law, Art. 46, §§ 513 to 515 (1944); N.D.Cent.Code, § 12–22–30 (1963 Supp.); Ohio Rev.Code Ann. (Page's ed.), §§ 2901.35 and 2901.36 (1954); Ore.Rev.Stat., §§ 30.670, 30.675 and 30.680 (1963); Pa.Stat.Ann., Tit. 18, § 4654 (1963); R.I.Gen.Laws Ann., §§ 11–24–1 to 11–24–6 (1956); S.Dak. Sess.Laws, c. 58 (1963); Vt.Stat.Ann., Tit. 13, §§ 1451 and 1452 (1958); Wash.

tive order and many cities provide such regulation. Some of these Acts go back fourscore years. It has been repeatedly held by this Court that such laws

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do not violate the Due Process Clause of the Fourteenth Amendment. Perhaps the first such holding was in the Civil Rights Cases themselves, where Mr. Justice Bradley for the Court inferentially found that innkeepers, "by the laws of all the States, so far as we are aware, are bound, to the extent of their facilities, to furnish proper accommodation to all unobjectionable persons who in good faith apply for them." 109 U.S. at 25, 3 S.Ct. at 31.

As we have pointed out, 32 States now have such provisions and no case has been cited to us where the attack on a state statute has been successful, either in federal or state courts. Indeed, in some cases the Due Process and Equal Protection Clause objections have been specifically discarded in this Court. Bob-Lo Excursion Co. v. People of State of Michigan, 333 U.S. 28, 34, 68 S.Ct. 358, 361, 92 L.Ed. 455, n. 12 (1948). As a result the constitutionality of such state statutes stands unquestioned. "The authority of the Federal government over interstate commerce does not differ," it was held in United States v. Rock Royal Co-op., Inc., 307 U.S. 533, 59 S.Ct. 993, 83 L.Ed. 1446 (1939), "in extent or character from that retained by the states over intrastate commerce." At 569-570, 59 S.Ct. at 1011. See also Bowles v. Willingham, 321 U.S. 503, 64 S.Ct. 641, 88 L.Ed. 892 (1944).

[15–17] It is doubtful if in the long run appellant will suffer economic loss as a result of the Act. Experience is to the contrary where discrimination is completely obliterated as to all public accommodations. But whether this be true or not is of no consequence since this Court has specifically held that the fact that a "member of the class which is regulated may suffer economic losses not shared by others * * * has never been a barrier" to such legislation. Bowles v. Willingham, supra, at 518, 64 S.Ct. at 649. Likewise in a long line of cases this Court has rejected the claim that the prohibition of racial discrimination in public accommodations interferes with personal liberty. See District of Columbia v. John R. Thompson Co., 346 U.S.

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100, 73 S.Ct. 1007, 97 L.Ed. 1480 (1953), and cases there cited, where we concluded that Congress had delegated law-making power to the District of Columbia "as broad as the police power of a state" which included the power to adopt a "law prohibiting discriminations against Negroes by the owners and managers of restaurants in the District of Columbia." At 110, 73 S.Ct. at 1013. Neither do we find any merit in the claim that the Act is a taking of property without just compensation. The cases are to the contrary. See Legal Tender Cases, 12 Wall. 457, 551, 20 L.Ed. 287 (1870); Omnia Commercial Co. v. United States, 261 U.S. 502, 43 S.Ct. 437, 67 L.Ed. 773 (1923); United States v. Central Eureka Mining Co., 357 U.S. 155, 78 S.Ct. 1097, 2 L.Ed.2d 1228 (1958).

[18] We find no merit in the remainder of appellant's contentions, including that of "involuntary servitude." As we have seen, 32 States prohibit racial discrimination in public accommodations. These laws but codify the common-law innkeeper rule which long predated the Thirteenth Amendment. It is difficult to believe that the Amendment was intended to abrogate this principle. Indeed, the opinion of the Court in the Civil Rights Cases is to the contrary as we have seen, it having noted with approval

Rev.Code, §§ 49.60.010 to 49.60.170, and § 9.91.010; Wis.Stat.Ann., § 942.04 (1958); Wyo.Stat.Ann., §§ 6-83.1 and 6-83.2 (1963 Supp.).

In 1963 the Governor of Kentucky issued an executive order requiring all governmental agencies involved in the supervision or licensing of businesses to take all lawful action necessary to prevent racial discrimination.

the laws of "all the States" prohibiting discrimination. We could not say that the requirements of the Act in this regard are in any way "akin to African slavery." Butler v. Perry, 240 U.S. 328, 332, 36 S.Ct. 258, 259, 60 L.Ed. 672 (1916).

[19–21] We, therefore, conclude that the action of the Congress in the adoption of the Act as applied here to a motel which concededly serves interstate travelers is within the power granted it by the Commerce Clause of the Constitution, as interpreted by this Court for 140 years. It may be argued that Congress could have pursued other methods to eliminate the obstructions it found in interstate commerce caused by racial discrimination. But this is a matter of policy that rests entirely with the Congress not with the courts. How obstructions in commerce

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may be removed—what means are to be employed—is within the sound and exclusive discretion of the Congress. It is subject only to one caveat—that the means chosen by it must be reasonably adapted to the end permitted by the Constitution. We cannot say that its choice here was not so adapted. The Constitution requires no more.

Affirmed.

APPENDIX TO OPINION OF THE COURT.

"TITLE II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

"Sec. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

"(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

"(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

"(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

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"(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

"(4) any establishment (A) (i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

"(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection

(b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, 'commerce' means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

"(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried

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on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

"(e) The provisions of this title shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

"Sec. 202. All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

"Sec. 203. No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202.

"Sec. 204. (a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case

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is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security.

"(b) In any action commenced pursuant to this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

"(c) In the case of an alleged act or practice prohibited by this title which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local

L.Ed.2d 563 (1987) (stating that the Federal Employers' Liability Act is a "broad remedial statute" which must be given a liberal construction). But it would surely come as news to the millions of taxpayers in this country that the Internal Revenue Code has a "beneficent purpose" as far as they are concerned. It does not, and the Court is mistaken to decide this case in a way that can only be justified if it does.



514 U.S. 549, 131 L.Ed.2d 626

549 **UNITED STATES, Petitioner**

v.

Alfonso LOPEZ, Jr.

No. 93-1260.

Argued Nov. 8, 1994.

Decided April 26, 1995.

Defendant was convicted in the United States District Court for the Western District of Texas, H.F. Garcia, J., of possessing firearm in school zone in violation of Gun-Free School Zones Act, and he appealed. The Court of Appeals for the Fifth Circuit, Garwood, Circuit Judge, 2 F.3d 1342, reversed and remanded with directions, and government petitioned for certiorari review. After granting certiorari, 114 S.Ct. 1536, the United States Supreme Court, Chief Justice Rehnquist, held that Gun-Free School Zones Act, making it federal offense for any individual knowingly to possess firearm at place that individual knows or has reasonable cause to believe is school zone, exceeded Congress' commerce clause authority, since possession of gun in local school zone was not economic activity that substantially affected interstate commerce.

Affirmed.

Justice Kennedy filed concurring opinion in which Justice O'Connor joined.

Justice Thomas filed concurring opinion.

Justices Stevens and Souter filed dissenting opinions.

Justice Breyer filed dissenting opinion, in which Justices Stevens, Souter and Ginsburg joined.

1. Commerce ⇐5

Test for determining whether activity is within Congress' power to regulate under commerce clause is whether it substantially affects interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.

2. Commerce ⇐5

Where economic activity substantially affects interstate commerce, federal legislation regulating that activity will be sustained. U.S.C.A. Const. Art. 1, § 8, cl. 3.

3. Criminal Law ⇐5

States ⇐4.4(2)

Under federal system, states possess primary authority for defining and enforcing criminal law.

4. Commerce ⇐82.50

Weapons ⇐3

Gun-Free School Zones Act, which makes it federal offense for any individual knowingly to possess firearm in place that individual believes or has reasonable cause to believe is school zone, exceeded Congress' commerce clause authority; Act was criminal statute that by its terms had nothing to do with "commerce" or any sort of economic enterprise, however broadly defined; possession of gun in local school zone was not economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce; and statute contained no jurisdictional element to ensure, through case-by-case inquiry, that possession of firearm had any concrete tie to interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3; 18 U.S.C.(1988 Ed.) § 922(q)(1)(A).

5. Commerce ⇐5

Congress normally is not required to make formal findings as to substantial burdens that activity has on interstate commerce to establish constitutionality of legislation un-

der commerce clause. U.S.C.A. Const. Art. 1, § 8, cl. 3.

6. Commerce ⇐82.20

Congressional authority under commerce clause to regulate numerous commercial activities that substantially affect interstate commerce and also affect educational process, though broad, does not include authority to regulate each and every aspect of local schools. U.S.C.A. Const. Art. 1, § 8, cl. 3.

Syllabus *

After respondent, then a 12th–grade student, carried a concealed handgun into his high school, he was charged with violating the Gun–Free School Zones Act of 1990, which forbids "any individual knowingly to possess a firearm at a place that [he] knows ... is a school zone," 18 U.S.C. § 922(q)(1)(A). The District Court denied his motion to dismiss the indictment, concluding that § 922(q) is a constitutional exercise of Congress' power to regulate activities in and affecting commerce. In reversing, the Court of Appeals held that, in light of what it characterized as insufficient congressional findings and legislative history, § 922(q) is invalid as beyond Congress' power under the Commerce Clause.

Held: The Act exceeds Congress' Commerce Clause authority. First, although this Court has upheld a wide variety of congressional Acts regulating intrastate economic activity that substantially affected interstate commerce, the possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, have such a substantial effect on interstate commerce. Section 922(q) is a criminal statute that by its terms has nothing to do with "commerce" or any sort of economic enterprise, however broadly those terms are defined. Nor is it an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under the Court's cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which, viewed in the aggregate, substantially affects interstate commerce. Second, § 922(q) contains no jurisdictional element that would ensure, through case-by-case inquiry, that the firearms possession in question has the requisite nexus with interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce. To uphold the Government's contention that § 922(q) is justified because firearms possession in a local school zone does indeed substantially affect interstate commerce would require this Court to pile inference upon inference in a manner that would bid fair to convert congressional Commerce Clause |550 authority to a general police power of the sort held only by the States. Pp. 1626–1634.

2 F.3d 1342, (CA5 1993), affirmed.

REHNQUIST, C.J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. KENNEDY, J., filed a concurring opinion, in which O'CONNOR, J., joined, *post*, p. 1634. THOMAS, J., filed a concurring opinion, *post*, p. 1642. STEVENS, J., *post*, p. 1651, and SOUTER, J., *post*, p. 1651, filed dissenting opinions. BREYER, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined, *post*, p. 1657.

Drew S. Days, III, New Haven, CT, for petitioner.

John R. Carter, Georgetown, TX, for respondent.

For U.S. Supreme Court briefs, see:

1994 WL 242541 (Pet.Brief)

1994 WL 396915 (Resp.Brief)

1994 WL 449691 (Reply.Brief)

1994 WL 534698 (Pet.Supp.Brief)

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

[551]Chief Justice REHNQUIST delivered the opinion of the Court.

In the Gun–Free School Zones Act of 1990, Congress made it a federal offense "for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone." 18 U.S.C. § 922(q)(1)(A) (1988 ed., Supp. V). The Act neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce. We hold that the Act exceeds the authority of Congress "[t]o regulate Commerce ... among the several States...." U.S. Const., Art. I, § 8, cl. 3.

On March 10, 1992, respondent, who was then a 12th–grade student, arrived at Edison High School in San Antonio, Texas, carrying a concealed .38–caliber handgun and five bullets. Acting upon an anonymous tip, school authorities confronted respondent, who admitted that he was carrying the weapon. He was arrested and charged under Texas law with firearm possession on school premises. See Tex.Penal Code Ann. § 46.03(a)(1) (Supp.1994). The next day, the state charges were dismissed after federal agents charged respondent by complaint with violating the Gun–Free School Zones Act of 1990. 18 U.S.C. § 922(q)(1)(A) (1988 ed., Supp. V).[1]

A federal grand jury indicted respondent on one count of knowing possession of a firearm at a school zone, in violation of § 922(q). Respondent moved to dismiss his federal indictment on the ground that § 922(q) "is unconstitutional as it is beyond the power of Congress to legislate control over our public schools." The District Court denied the motion, concluding that § 922(q) "is a constitutional exercise of Congress' well-defined power to regulate activities in and affecting [552]commerce, and the 'business' of elementary, middle and high schools ... affects interstate commerce." App. to Pet. for Cert. 55a. Respondent waived his right to a jury trial. The District Court conducted a bench trial, found him guilty of violating § 922(q), and sentenced him to six months' imprisonment and two years' supervised release.

On appeal, respondent challenged his conviction based on his claim that § 922(q) exceeded Congress' power to legislate under the Commerce Clause. The Court of Appeals for the Fifth Circuit agreed and reversed respondent's conviction. It held that, in light of what it characterized as insufficient congressional findings and legislative history, "section 922(q), in the full reach of its terms, is invalid as beyond the power of Congress under the Commerce Clause." 2 F.3d 1342, 1367–1368 (1993). Because of the importance of the issue, we granted certiorari, 511 U.S. 1029, 114 S.Ct. 1536, 128 L.Ed.2d 189 (1994), and we now affirm.

We start with first principles. The Constitution creates a Federal Government of enumerated powers. See Art. I, § 8. As James Madison wrote: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292–293 (C. Rossiter ed. 1961). This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." *Gregory v. Ashcroft*, 501 U.S. 452, 458, 111 S.Ct. 2395, 2400, 115 L.Ed.2d 410 (1991) (internal quotation marks omitted). "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Ibid.*

The Constitution delegates to Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, § 8, [553]cl. 3. The Court, through Chief Justice Marshall, first defined the nature of Con-

1. The term "school zone" is defined as "in, or on the grounds of, a public, parochial or private school" or "within a distance of 1,000 feet from the grounds of a public, parochial or private school." § 921(a)(25).

gress' commerce power in *Gibbons v. Ogden*, 9 Wheat. 1, 189–190, 6 L.Ed. 23 (1824):

> "Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

The commerce power "is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Id.*, at 196. The *Gibbons* Court, however, acknowledged that limitations on the commerce power are inherent in the very language of the Commerce Clause.

> "It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary.
>
> "Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one.... The enumeration presupposes something not enumerated; and that something, if we regard the language, or the subject of the sentence, must be the exclusively internal commerce of a State." *Id.*, at 194–195.

For nearly a century thereafter, the Court's Commerce Clause decisions dealt but rarely with the extent of Congress' power, and almost entirely with the Commerce Clause as a limit on state legislation that discriminated against interstate commerce. See, *e.g.*, *Veazie v. Moor*, 14 How. 568, 573–575, 14 L.Ed. 545 (1853) (upholding a state-created steamboat monopoly[554] because it involved regulation of wholly internal commerce); *Kidd v. Pearson*, 128 U.S. 1, 17, 20–22, 9 S.Ct. 6, 9–10, 32 L.Ed. 346 (1888) (upholding a state prohibition on the manufacture of intoxicating liquor because the commerce power "does not comprehend the purely internal domestic commerce of a State which is carried on between man and man within a State or between different parts of the same State"); see also L. Tribe, American Constitutional Law 306 (2d ed. 1988). Under this line of precedent, the Court held that certain categories of activity such as "production," "manufacturing," and "mining" were within the province of state governments, and thus were beyond the power of Congress under the Commerce Clause. See *Wickard v. Filburn*, 317 U.S. 111, 121, 63 S.Ct. 82, 87, 87 L.Ed. 122 (1942) (describing development of Commerce Clause jurisprudence).

In 1887, Congress enacted the Interstate Commerce Act, 24 Stat. 379, and in 1890, Congress enacted the Sherman Antitrust Act, 26 Stat. 209, as amended, 15 U.S.C. § 1 *et seq.* These laws ushered in a new era of federal regulation under the commerce power. When cases involving these laws first reached this Court, we imported from our negative Commerce Clause cases the approach that Congress could not regulate activities such as "production," "manufacturing," and "mining." See, *e.g.*, *United States v. E.C. Knight Co.*, 156 U.S. 1, 12, 15 S.Ct. 249, 253–254, 39 L.Ed. 325 (1895) ("Commerce succeeds to manufacture, and is not part of it"); *Carter v. Carter Coal Co.*, 298 U.S. 238, 304, 56 S.Ct. 855, 869, 80 L.Ed. 1160 (1936) ("Mining brings the subject matter of commerce into existence. Commerce disposes of it"). Simultaneously, however, the Court held that, where the interstate and intrastate aspects of commerce were so mingled together that full regulation of interstate commerce required incidental regulation of intrastate commerce, the Commerce Clause authorized such regulation. See, *e.g.*, *Shreveport Rate Cases*, 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341 (1914).

In *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 550, 55 S.Ct. 837, 851–52, 79 L.Ed. 1570 (1935), the Court struck down regulations that[555] fixed the hours and wages of individuals employed by an intrastate business because the activity being regulated related to interstate commerce only indirectly. In doing so, the Court characterized the distinction between

direct and indirect effects of intrastate transactions upon interstate commerce as "a fundamental one, essential to the maintenance of our constitutional system." *Id.*, at 548, 55 S.Ct., at 851. Activities that affected interstate commerce directly were within Congress' power; activities that affected interstate commerce indirectly were beyond Congress' reach. *Id.*, at 546, 55 S.Ct., at 850. The justification for this formal distinction was rooted in the fear that otherwise "there would be virtually no limit to the federal power and for all practical purposes we should have a completely centralized government." *Id.*, at 548, 55 S.Ct., at 851.

Two years later, in the watershed case of *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893 (1937), the Court upheld the National Labor Relations Act against a Commerce Clause challenge, and in the process, departed from the distinction between "direct" and "indirect" effects on interstate commerce. *Id.*, at 36–38, 57 S.Ct., at 623–624 ("The question [of the scope of Congress' power] is necessarily one of degree"). The Court held that intrastate activities that "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" are within Congress' power to regulate. *Id.*, at 37, 57 S.Ct., at 624.

In *United States v. Darby*, 312 U.S. 100, 61 S.Ct. 451, 85 L.Ed. 609 (1941), the Court upheld the Fair Labor Standards Act, stating:

> "The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce." *Id.*, at 118, 61 S.Ct., at 459.

[556] See also *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 119, 62 S.Ct. 523, 526, 86 L.Ed. 726 (1942) (the commerce power "extends to those intrastate activities which in a substantial way interfere with or obstruct the exercise of the granted power").

In *Wickard v. Filburn*, the Court upheld the application of amendments to the Agricultural Adjustment Act of 1938 to the production and consumption of homegrown wheat. 317 U.S., at 128–129, 63 S.Ct., at 90–91. The *Wickard* Court explicitly rejected earlier distinctions between direct and indirect effects on interstate commerce, stating:

> "[E]ven if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'" *Id.*, at 125, 63 S.Ct., at 89.

The *Wickard* Court emphasized that although Filburn's own contribution to the demand for wheat may have been trivial by itself, that was not "enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial." *Id.*, at 127–128, 63 S.Ct., at 90–91.

Jones & Laughlin Steel, *Darby*, and *Wickard* ushered in an era of Commerce Clause jurisprudence that greatly expanded the previously defined authority of Congress under that Clause. In part, this was a recognition of the great changes that had occurred in the way business was carried on in this country. Enterprises that had once been local or at most regional in nature had become national in scope. But the doctrinal change also reflected a view that earlier Commerce Clause cases artificially had constrained the authority of Congress to regulate interstate commerce.

But even these modern-era precedents which have expanded congressional power under the Commerce Clause [557] confirm that this power is subject to outer limits. In *Jones & Laughlin Steel*, the Court warned that the scope of the interstate commerce power "must be considered in the light of our dual system of government and may 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." 301 U.S., at 37, 57 S.Ct., at 624; see also *Darby, supra*, 312 U.S., at 119–120, 61 S.Ct., at 459–460 (Congress may regulate intrastate activity that has a "substantial effect" on interstate commerce); *Wickard, supra*, at 125, 63 S.Ct., at 89 (Congress may regulate activity that "exerts a substantial economic effect on interstate commerce"). Since that time, the Court has heeded that warning and undertaken to decide whether a rational basis existed for concluding that a regulated activity sufficiently affected interstate commerce. See, *e.g., Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 276–280, 101 S.Ct. 2352, 2360–2361, 69 L.Ed.2d 1 (1981); *Perez v. United States*, 402 U.S. 146, 155–156, 91 S.Ct. 1357, 1362, 28 L.Ed.2d 686 (1971); *Katzenbach v. McClung*, 379 U.S. 294, 299–301, 85 S.Ct. 377, 381–382, 13 L.Ed.2d 290 (1964); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 252–253, 85 S.Ct. 348, 354–355, 13 L.Ed.2d 258 (1964).[2]

Similarly, in *Maryland v. Wirtz*, 392 U.S. 183, 88 S.Ct. 2017, 20 L.Ed.2d 1020 (1968), the Court reaffirmed that "the power to regulate commerce, though broad indeed, has limits" that "[t]he Court has ample power" to enforce. *Id.*, at 196, 88 S.Ct., at 2023–2024, overruled on other grounds, *National League of Cities v. Usery*, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976), overruled by *Garcia v. San Antonio Metropolitan Transit*|558*Authority*, 469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985). In response to the dissent's warnings that the Court was powerless to enforce the limitations on Congress' commerce powers because "[a]ll activities affecting commerce, even in the minutest degree, *[Wickard]*, may be regulated and controlled by Congress," 392 U.S., at 204, 88 S.Ct., at 2028 (Douglas, J., dissenting), the *Wirtz* Court replied that the dissent had misread precedent as "[n]either here nor in *Wickard* has the Court declared that Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities," *id.*, at 197, n. 27, 63 S.Ct., at 89–90, n. 27. Rather, "[t]he Court has said only that where *a general regulatory statute bears a substantial relation to commerce*, the *de minimis* character of individual instances arising under that statute is of no consequence." *Ibid.* (first emphasis added).

Consistent with this structure, we have identified three broad categories of activity that Congress may regulate under its commerce power. *Perez, supra*, at 150, 91 S.Ct., at 1359; see also *Hodel, supra*, at 276–277, 101 S.Ct., at 2360–2361. First, Congress may regulate the use of the channels of interstate commerce. See, *e.g., Darby*, 312 U.S., at 114, 61 S.Ct., at 457; *Heart of Atlanta Motel, supra*, at 256, 85 S.Ct., at 357 (" '[T]he authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question.' " (quoting *Caminetti v. United States*, 242 U.S. 470, 491, 37 S.Ct. 192, 197, 61 L.Ed. 442 (1917))). Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. See, *e.g., Shreveport Rate Cases*, 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341 (1914); *Southern R. Co. v. United States*, 222 U.S. 20, 32 S.Ct. 2, 56 L.Ed. 72 (1911) (upholding amendments to Safety Appliance Act as applied to vehicles used in intrastate commerce); *Perez, supra*, at 150, 91 S.Ct., at 1359 ("[F]or example, the destruction of an aircraft (18 U.S.C. § 32), or ... thefts from interstate shipments (18 U.S.C. § 659)"). Finally, Congress' commerce authority includes the power to regulate those activities559 having a substantial

2. See also *Hodel*, 452 U.S., at 311, 101 S.Ct., at 2391 ("[S]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so") (REHNQUIST, J., concurring in judgment); *Heart of Atlanta Motel*, 379 U.S., at 273, 85 S.Ct., at 366 ("[W]hether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court") (Black, J., concurring).

relation to interstate commerce, *Jones & Laughlin Steel*, 301 U.S., at 37, 57 S.Ct., at 624, *i.e.*, those activities that substantially affect interstate commerce, *Wirtz, supra*, at 196, n. 27, 88 S.Ct., at 2024, n. 27.

[1] Within this final category, admittedly, our case law has not been clear whether an activity must "affect" or "substantially affect" interstate commerce in order to be within Congress' power to regulate it under the Commerce Clause. Compare *Preseault v. ICC*, 494 U.S. 1, 17, 110 S.Ct. 914, 924–925, 108 L.Ed.2d 1 (1990), with *Wirtz, supra*, at 196, n. 27, 88 S.Ct., at 2024, n. 27 (the Court has never declared that "Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities"). We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity "substantially affects" interstate commerce.

We now turn to consider the power of Congress, in the light of this framework, to enact § 922(q). The first two categories of authority may be quickly disposed of: § 922(q) is not a regulation of the use of the channels of interstate commerce, nor is it an attempt to prohibit the interstate transportation of a commodity through the channels of commerce; nor can § 922(q) be justified as a regulation by which Congress has sought to protect an instrumentality of interstate commerce or a thing in interstate commerce. Thus, if § 922(q) is to be sustained, it must be under the third category as a regulation of an activity that substantially affects interstate commerce.

[2] First, we have upheld a wide variety of congressional Acts regulating intrastate economic activity where we have concluded that the activity substantially affected interstate commerce. Examples include the regulation of intrastate coal mining; *Hodel, supra*, intrastate extortionate credit transactions, *Perez, supra*, restaurants utilizing substantial interstate supplies, *McClung, supra*, inns and hotels catering to interstate guests, *Heart of Atlanta Motel, supra*, and production[560] and consumption of homegrown wheat, *Wickard v. Filburn*, 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942). These examples are by no means exhaustive, but the pattern is clear. Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.

Even *Wickard*, which is perhaps the most far reaching example of Commerce Clause authority over intrastate activity, involved economic activity in a way that the possession of a gun in a school zone does not. Roscoe Filburn operated a small farm in Ohio, on which, in the year involved, he raised 23 acres of wheat. It was his practice to sow winter wheat in the fall, and after harvesting it in July to sell a portion of the crop, to feed part of it to poultry and livestock on the farm, to use some in making flour for home consumption, and to keep the remainder for seeding future crops. The Secretary of Agriculture assessed a penalty against him under the Agricultural Adjustment Act of 1938 because he harvested about 12 acres more wheat than his allotment under the Act permitted. The Act was designed to regulate the volume of wheat moving in interstate and foreign commerce in order to avoid surpluses and shortages, and concomitant fluctuation in wheat prices, which had previously obtained. The Court said, in an opinion sustaining the application of the Act to Filburn's activity:

> "One of the primary purposes of the Act in question was to increase the market price of wheat and to that end to limit the volume thereof that could affect the market. It can hardly be denied that a factor of such volume and variability as home-consumed wheat would have a substantial influence on price and market conditions. This may arise because being in marketable condition such wheat overhangs the market and, if induced by rising prices, tends to flow into the market and check price increases. But if we assume that it is never marketed, it supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market. [561]Home-grown wheat in this sense competes with wheat in commerce." 317 U.S., at 128, 63 S.Ct., at 90–91.

[3, 4] Section 922(q) is a criminal statute that by its terms has nothing to do with

"commerce" or any sort of economic enterprise, however broadly one might define those terms.[3] Section 922(q) is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce.

Second, § 922(q) contains no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce. For example, in *United States v. Bass*, 404 U.S. 336, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971), the Court interpreted former 18 U.S.C. § 1202(a), which made it [562]a crime for a felon to "receiv[e], posses[s], or transpor[t] in commerce or affecting commerce ... any firearm." 404 U.S., at 337, 92 S.Ct., at 517. The Court interpreted the possession component of § 1202(a) to require an additional nexus to interstate commerce both because the statute was ambiguous and because "unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance." *Id.*, at 349, 92 S.Ct., at 523. The *Bass* Court set aside the conviction because, although the Government had demonstrated that Bass had possessed a firearm, it had failed "to show the requisite nexus with interstate commerce." *Id.*, at 347, 92 S.Ct., at 522. The Court thus interpreted the statute to reserve the constitutional question whether Congress could regulate, without more, the "mere possession" of firearms. See *id.*, at 339, n. 4, 92 S.Ct., at 518, n. 4; see also *United States v. Five Gambling Devices*, 346 U.S. 441, 448, 74 S.Ct. 190, 194, 98 L.Ed. 179 (1953) (plurality opinion) ("The principle is old and deeply imbedded in our jurisprudence that this Court will construe a statute in a manner that requires decision of serious constitutional questions only if the statutory language leaves no reasonable alternative"). Unlike the statute in *Bass*, § 922(q) has no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce.

[5] Although as part of our independent evaluation of constitutionality under the Commerce Clause we of course consider legislative findings, and indeed even congressional committee findings, regarding effect on interstate commerce, see, *e.g.*, *Preseault v. ICC*, 494 U.S., at 17, 110 S.Ct., at 924–925, (1990), the Government concedes that "[n]either the statute nor its legislative history contain[s] express congressional findings regarding the effects upon interstate commerce of gun possession in a school zone." Brief for United States 5–6. We agree with the Government that Congress normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce. See *McClung*, 379 U.S., at 304, 85 S.Ct., at 383–384; [563]see also *Perez*, 402 U.S., at 156, 91 S.Ct., at 1362 ("Congress need [not] make particularized findings in order to legislate"). But to the

3. Under our federal system, the " 'States possess primary authority for defining and enforcing the criminal law.' " *Brecht v. Abrahamson*, 507 U.S. 619, 635, 113 S.Ct. 1710, 1720, 123 L.Ed.2d 353 (1993) (quoting *Engle v. Isaac*, 456 U.S. 107, 128, 102 S.Ct. 1558, 1572, 71 L.Ed.2d 783 (1982)); see also *Screws v. United States*, 325 U.S. 91, 109, 65 S.Ct. 1031, 1039, 89 L.Ed. 1495 (1945) (plurality opinion) ("Our national government is one of delegated powers alone. Under our federal system the administration of criminal justice rests with the States except as Congress, acting within the scope of those delegated powers, has created offenses against the United States"). When Congress criminalizes conduct already denounced as criminal by the States, it effects a " 'change in the sensitive relation between federal and state criminal jurisdiction.' " *United States v. Enmons*, 410 U.S. 396, 411–412, 93 S.Ct. 1007, 1015–1016, 35 L.Ed.2d 379 (1973) (quoting *United States v. Bass*, 404 U.S. 336, 349, 92 S.Ct. 515, 523, 30 L.Ed.2d 488 (1971)). The Government acknowledges that § 922(q) "displace[s] state policy choices in ... that its prohibitions apply even in States that have chosen not to outlaw the conduct in question." Brief for United States 29, n. 18; see also Statement of President George Bush on Signing the Crime Control Act of 1990, 26 Weekly Comp. of Pres. Doc. 1944, 1945 (Nov. 29, 1990) ("Most egregiously, section [922(q)] inappropriately overrides legitimate State firearms laws with a new and unnecessary Federal law. The policies reflected in these provisions could legitimately be adopted by the States, but they should not be imposed upon the States by the Congress").

extent that congressional findings would enable us to evaluate the legislative judgment that the activity in question substantially affected interstate commerce, even though no such substantial effect was visible to the naked eye, they are lacking here.[4]

The Government argues that Congress has accumulated institutional expertise regarding the regulation of firearms through previous enactments. Cf. *Fullilove v. Klutznick*, 448 U.S. 448, 503, 100 S.Ct. 2758, 2787, 65 L.Ed.2d 902 (1980) (Powell, J., concurring). We agree, however, with the Fifth Circuit that importation of previous findings to justify § 922(q) is especially inappropriate here because the "prior federal enactments or Congressional findings [do not] speak to the subject matter of section 922(q) or its relationship to interstate commerce. Indeed, section 922(q) plows thoroughly new ground and represents a sharp break with the long-standing pattern of federal firearms legislation." 2 F.3d, at 1366.

The Government's essential contention, *in fine*, is that we may determine here that § 922(q) is valid because possession of a firearm in a local school zone does indeed substantially affect interstate commerce. Brief for United States 17. The Government argues that possession of a firearm in a school zone may result in violent crime and that violent crime can be expected to affect the functioning of the national economy in two ways. First, the costs of violent [564] crime are substantial, and, through the mechanism of insurance, those costs are spread throughout the population. See *United States v. Evans*, 928 F.2d 858, 862 (CA9 1991). Second, violent crime reduces the willingness of individuals to travel to areas within the country that are perceived to be unsafe. Cf. *Heart of Atlanta Motel*, 379 U.S., at 253, 85 S.Ct., at 355. The Government also argues that the presence of guns in schools poses a substantial threat to the educational process by threatening the learning environment. A handicapped educational process, in turn, will result in a less productive citizenry. That, in turn, would have an adverse effect on the Nation's economic well-being. As a result, the Government argues that Congress could rationally have concluded that § 922(q) substantially affects interstate commerce.

We pause to consider the implications of the Government's arguments. The Government admits, under its "costs of crime" reasoning, that Congress could regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce. See Tr. of Oral Arg. 8–9. Similarly, under the Government's "national productivity" reasoning, Congress could regulate any activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example. Under the theories that the Government presents in support of § 922(q), it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.

Although Justice BREYER argues that acceptance of the Government's rationales would not authorize a general federal police power, he is unable to identify any activity that the States may regulate but Congress may not. Justice BREYER posits that there might be some limitations on Congress' [565] commerce power, such as family law or certain aspects of education. *Post*, at 1661–1662. These suggested limitations, when viewed in light of the dissent's expansive analysis, are devoid of substance.

Justice BREYER focuses, for the most part, on the threat that firearm possession in

4. We note that on September 13, 1994, President Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994, Pub.L. 103–322, 108 Stat. 1796. Section 320904 of that Act, *id.*, at 2125, amends § 922(q) to include congressional findings regarding the effects of firearm possession in and around schools upon interstate and foreign commerce. The Government does not rely upon these subsequent findings as a substitute for the absence of findings in the first instance. Tr. of Oral Arg. 25 ("[W]e're not relying on them in the strict sense of the word, but we think that at a very minimum they indicate that reasons can be identified for why Congress wanted to regulate this particular activity").

and near schools poses to the educational process and the potential economic consequences flowing from that threat. *Post*, at 1659–1662. Specifically, the dissent reasons that (1) gun-related violence is a serious problem; (2) that problem, in turn, has an adverse effect on classroom learning; and (3) that adverse effect on classroom learning, in turn, represents a substantial threat to trade and commerce. *Post*, at 1661. This analysis would be equally applicable, if not more so, to subjects such as family law and direct regulation of education.

For instance, if Congress can, pursuant to its Commerce Clause power, regulate activities that adversely affect the learning environment, then, *a fortiori*, it also can regulate the educational process directly. Congress could determine that a school's curriculum has a "significant" effect on the extent of classroom learning. As a result, Congress could mandate a federal curriculum for local elementary and secondary schools because what is taught in local schools has a significant "effect on classroom learning," cf. *post*, at 1661, and that, in turn, has a substantial effect on interstate commerce.

[6] Justice BREYER rejects our reading of precedent and argues that "Congress ... could rationally conclude that schools fall on the commercial side of the line." *Post*, at 1664. Again, Justice BREYER's rationale lacks any real limits because, depending on the level of generality, any activity can be looked upon as commercial. Under the dissent's rationale, Congress could just as easily look at child rearing as "fall[ing] on the commercial side of the line" because it provides a "valuable service—namely, to equip [children] with the skills they need to survive in life and, more specifically, in the workplace." *Ibid.* We do not doubt that Congress |566 has authority under the Commerce Clause to regulate numerous commercial activities that substantially affect interstate commerce and also affect the educational process. That authority, though broad, does not include the authority to regulate each and every aspect of local schools.

Admittedly, a determination whether an intrastate activity is commercial or noncommercial may in some cases result in legal uncertainty. But, so long as Congress' authority is limited to those powers enumerated in the Constitution, and so long as those enumerated powers are interpreted as having judicially enforceable outer limits, congressional legislation under the Commerce Clause always will engender "legal uncertainty." *Post*, at 1664. As Chief Justice Marshall stated in *McCulloch v. Maryland*, 4 Wheat. 316, 4 L.Ed. 579 (1819):

> "Th[e] [federal] government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it ... is now universally admitted. But the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise, as long as our system shall exist." *Id.*, at 405.

See also *Gibbons v. Ogden*, 9 Wheat., at 195 ("The enumeration presupposes something not enumerated"). The Constitution mandates this uncertainty by withholding from Congress a plenary police power that would authorize enactment of every type of legislation. See Art. I, § 8. Congress has operated within this framework of legal uncertainty ever since this Court determined that it was the Judiciary's duty "to say what the law is." *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60 (1803) (Marshall, C.J.). Any possible benefit from eliminating this "legal uncertainty" would be at the expense of the Constitution's system of enumerated powers.

In *Jones & Laughlin Steel*, 301 U.S., at 37, 57 S.Ct., at 624, we held that the question of congressional power under the Commerce Clause "is necessarily one of degree." To the same effect |567 is the concurring opinion of Justice Cardozo in *Schechter Poultry:*

> "There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the center. A society such as ours 'is an elastic medium which transmits all tremors throughout its territory; the only question is of their size.'" 295 U.S., at 554, 55 S.Ct., at 853

(quoting *United States v. A.L.A. Schechter Poultry Corp.*, 76 F.2d 617, 624 (CA2 1935) (L. Hand, J., concurring)).

These are not precise formulations, and in the nature of things they cannot be. But we think they point the way to a correct decision of this case. The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action. See *supra*, at 1629. The broad language in these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated, cf. *Gibbons v. Ogden, supra*, at 195, and that there never will be a distinction between what is truly national and what is [568] truly local, cf. *Jones & Laughlin Steel, supra*, at 30, 57 S.Ct., at 621. This we are unwilling to do.

For the foregoing reasons the judgment of the Court of Appeals is

Affirmed.

Justice KENNEDY, with whom Justice O'CONNOR joins, concurring.

The history of the judicial struggle to interpret the Commerce Clause during the transition from the economic system the Founders knew to the single, national market still emergent in our own era counsels great restraint before the Court determines that the Clause is insufficient to support an exercise of the national power. That history gives me some pause about today's decision, but I join the Court's opinion with these observations on what I conceive to be its necessary though limited holding.

Chief Justice Marshall announced that the national authority reaches "that commerce which concerns more States than one" and that the commerce power "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Gibbons v. Ogden*, 9 Wheat. 1, 194, 196, 6 L.Ed. 23 (1824). His statements can be understood now as an early and authoritative recognition that the Commerce Clause grants Congress extensive power and ample discretion to determine its appropriate exercise. The progression of our Commerce Clause cases from *Gibbons* to the present was not marked, however, by a coherent or consistent course of interpretation; for neither the course of technological advance nor the foundational principles for the jurisprudence itself were self-evident to the courts that sought to resolve contemporary disputes by enduring principles.

Furthermore, for almost a century after the adoption of the Constitution, the Court's Commerce Clause decisions did not concern the authority of Congress to legislate. Rather, [569] the Court faced the related but quite distinct question of the authority of the States to regulate matters that would be within the commerce power had Congress chosen to act. The simple fact was that in the early years of the Republic, Congress seldom perceived the necessity to exercise its power in circumstances where its authority would be called into question. The Court's initial task, therefore, was to elaborate the theories that would permit the States to act where Congress had not done so. Not the least part of the problem was the unresolved question whether the congressional power was exclusive, a question reserved by Chief Justice Marshall in *Gibbons v. Ogden, supra*, at 209–210.

At the midpoint of the 19th century, the Court embraced the principle that the States and the National Government both have authority to regulate certain matters absent the

529 U.S. 598, 146 L.Ed.2d 658

[598] **UNITED STATES, Petitioner,**

v.

Antonio J. MORRISON, et al.

Christy Brzonkala, Petitioner,

v.

Antonio J. Morrison et al.

Nos. 99–5, 99–29.

Argued Jan. 11, 2000.

Decided May 15, 2000.

Former university student brought claims under Violence Against Women Act (VAWA) against students who allegedly raped her. The United States District Court for the Western District of Virginia, Jackson L. Kiser, Senior District Judge, 935 F.Supp. 779, dismissed claims. Former student appealed. Following reversal, 132 F.3d 949, and following rehearing en banc, the Fourth Circuit Court of Appeals, Luttig, Circuit Judge, 169 F.3d 820, affirmed. Certiorari was granted. The Supreme Court, Justice Rehnquist, held that: (1) Commerce Clause did not provide Congress with authority to enact civil remedy provision of VAWA, inasmuch as provision was not regulation of activity that substantially affected interstate commerce, and (2) enforcement clause of Fourteenth Amendment did not provide Congress with authority to enact provision.

Affirmed.

Justice Thomas concurred and filed opinion.

Justice Souter filed dissenting opinion in which Justices Stevens, Ginsburg, and Breyer joined.

Justice Breyer filed dissenting opinion in which Justice Stevens joined, and in which Justices Souter and Ginsburg joined in part.

1. Statutes ⇐4

Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution.

2. Constitutional Law ⇐50

The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the Constitution is written.

3. Constitutional Law ⇐70.1(3)

Due respect for the decisions of a coordinate branch of Government demands that the Supreme Court invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds.

4. Commerce ⇐3

Congress' regulatory authority under the Commerce Clause is not without effective bounds. U.S.C.A. Const. Art. 1, § 8, cl. 3.

5. Commerce ⇐7(2)

The scope of the interstate commerce power must be considered in the light of our dual system of government and may 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. U.S.C.A. Const. Art. 1, § 8, cl. 3.

6. Commerce ⇐5, 7(2)

There are three broad categories of activity that Congress may regulate under its commerce power: first, Congress may regulate the use of the channels of interstate commerce; second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and, finally, Congress' commerce authority includes the

power to regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.

7. Commerce ⇐82.6

Commerce Clause did not provide Congress with authority to enact civil remedy provision of Violence Against Women Act (VAWA), inasmuch as provision was not regulation of activity that substantially affected interstate commerce; gender-motivated crimes of violence were not economic activity, provision contained no jurisdictional element establishing that federal cause of action was in pursuance of Congress' power to regulate interstate commerce, and, although Congress made findings regarding impact of gender-motivated violence on victims and their families, such findings were based on unworkable "but-for" reasoning. U.S.C.A. Const. Art. 1, § 8, cl. 3; Violent Crime Control and Law Enforcement Act of 1994, § 40302, 42 U.S.C.A. § 13981.

8. Commerce ⇐7(2)

Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained. U.S.C.A. Const. Art. 1, § 8, cl. 3.

9. Commerce ⇐7(2)

While Congress normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce, the existence of such findings may enable the Supreme Court to evaluate the legislative judgment that the activity in question substantially affects interstate commerce, even though no such substantial effect is visible to the naked eye. U.S.C.A. Const. Art. 1, § 8, cl. 3.

10. Commerce ⇐5

A jurisdictional element establishing that the federal cause of action created by a federal statute is in pursuance of Congress' power to regulate interstate commerce would lend support to the argument that the statute was sufficiently tied to interstate commerce to withstand a Commerce Clause challenge. U.S.C.A. Const. Art. 1, § 8, cl. 3.

11. Commerce ⇐3

The existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation. U.S.C.A. Const. Art. 1, § 8, cl. 3.

12. Commerce ⇐7(2)

Simply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so; rather, whether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by the Supreme Court. U.S.C.A. Const. Art. 1, § 8, cl. 3.

13. Commerce ⇐82.6

The but-for causal chain from the initial occurrence of violent crime, the suppression of which has always been the prime object of the States' police power, to every attenuated effect upon interstate commerce must have its limits in the Commerce Clause area. U.S.C.A. Const. Art. 1, § 8, cl. 3.

14. Constitutional Law ⇐50

Under our written Constitution, the limitation of congressional authority is not solely a matter of legislative grace.

15. Constitutional Law ⇐50

The Framers of the Constitution crafted the federal system of government so that the people's rights would be secured by the division of power.

16. Constitutional Law ⇐50

Departing from their parliamentary past, the Framers adopted a written Constitution that further divided authority at the federal level so that the Constitution's provisions would not be defined solely by

the political branches nor the scope of legislative power limited only by public opinion and the legislature's self-restraint.

17. Constitutional Law ⇐67

It is a permanent and indispensable feature of our constitutional system that the federal judiciary is supreme in the exposition of the law of the Constitution.

18. Constitutional Law ⇐67

The political branches have a role in interpreting and applying the Constitution, but the Supreme Court remains the ultimate expositor of the constitutional text.

19. Constitutional Law ⇐50, 67

In the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others; however, it is emphatically the province and duty of the judicial department to say what the law is.

20. Commerce ⇐82.6

Congress may not regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce; the Constitution requires a distinction between what is truly national and what is truly local. U.S.C.A. Const. Art. 1, § 8, cl. 3.

21. Commerce ⇐82.6

The regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States. U.S.C.A. Const. Art. 1, § 8, cl. 3.

22. Constitutional Law ⇐81
States ⇐4.4(2)

There is no better example of the police power, which the Founders of the Constitution denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.

23. Constitutional Law ⇐27

With its careful enumeration of federal powers and explicit statement that all powers not granted to the Federal Government are reserved, the Constitution does not grant the Federal Government an unlimited license to regulate.

24. Constitutional Law ⇐67

The Constitution's separation of federal power and the creation of the Judicial Branch indicate that disputes regarding the extent of congressional power are largely subject to judicial review.

25. Constitutional Law ⇐27
States ⇐4.4(2)

The Constitution created a Federal Government of limited powers, while reserving a generalized police power to the States.

26. Civil Rights ⇐103
Constitutional Law ⇐224(2)

Enforcement clause of Fourteenth Amendment did not provide Congress with authority to enact civil remedy provision of Violence Against Women Act (VAWA); although state-sponsored gender discrimination could violate equal protection under certain circumstances, Fourteenth Amendment did not prohibit private conduct, provision was not aimed at proscribing discrimination by officials which Fourteenth Amendment might not itself proscribe, and provision applied uniformly throughout the Nation even though Congress found that discrimination against victims of gender-motivated violence did not exist in all States. U.S.C.A. Const.Amend. 14, § 5; Violent Crime Control and Law Enforcement Act of 1994, § 40302, 42 U.S.C.A. § 13981.

27. Constitutional Law ⇐209, 251

The enforcement clause of the Fourteenth Amendment states that Congress may "enforce," by "appropriate legislation" the constitutional guarantee that no State shall deprive any person of "life, liberty or property, without due process of law," nor

deny any person "equal protection of the laws." U.S.C.A. Const.Amend. 14, § 5.

28. Constitutional Law ⇐82(6.1)

The enforcement clause of the Fourteenth Amendment is a positive grant of legislative power that includes authority to prohibit conduct which is not itself unconstitutional and to intrude into legislative spheres of autonomy previously reserved to the States. U.S.C.A. Const.Amend. 14, § 5.

29. Constitutional Law ⇐82(6.1)

As broad as the Fourteenth Amendment congressional enforcement power is, it is not unlimited. U.S.C.A. Const. Amend. 14, § 5.

30. Constitutional Law ⇐224(1)

State-sponsored gender discrimination violates equal protection unless it serves important governmental objectives and the discriminatory means employed are substantially related to the achievement of those objectives. U.S.C.A. Const.Amend. 14.

31. Constitutional Law ⇐211(1)

The language and purpose of the Fourteenth Amendment place certain limitations on the manner in which Congress may attack discriminatory conduct; these limitations are necessary to prevent the Fourteenth Amendment from obliterating the Framers' carefully crafted balance of power between the States and the National Government. U.S.C.A. Const.Amend. 14.

32. Constitutional Law ⇐82(5)

The Fourteenth Amendment, by its terms, prohibits only state action. U.S.C.A. Const.Amend. 14.

33. Constitutional Law ⇐213(2), 254(2)

The action inhibited by the Fourteenth Amendment's first section, which, inter alia, prohibits States from denying due process or equal protection, is only such action as may fairly be said to be that of the States. U.S.C.A. Const.Amend. 14, § 1.

34. Constitutional Law ⇐213(4)

The Fourteenth Amendment erects no shield against merely private conduct, however discriminatory or wrongful. U.S.C.A. Const.Amend. 14.

35. Constitutional Law ⇐82(6.1)

Under the enforcement clause of the Fourteenth Amendment, where a subject has not submitted to the general legislative power of Congress, but is only submitted thereto for the purpose of rendering effective some prohibition against particular State legislation or State action in reference to that subject, the power given is limited by its object, and any legislation by Congress in the matter must necessarily be corrective in its character, adapted to counteract and redress the operation of such prohibited state laws or proceedings of State officers. U.S.C.A. Const.Amend. 14, § 5.

36. Constitutional Law ⇐82(6.1)

Prophylactic legislation under the enforcement clause of the Fourteenth Amendment must have a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end. U.S.C.A. Const. Amend. 14, § 5.

Syllabus *

Petitioner Brzonkala filed suit, alleging, *inter alia*, that she was raped by respondents while the three were students at Virginia Polytechnic Institute, and that this attack violated 42 U.S.C. § 13981, which provides a federal civil remedy for the victims of gender-motivated violence. Respondents moved to dismiss on the grounds that the complaint failed to state a claim and that § 13981's civil remedy is

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

unconstitutional. Petitioner United States intervened to defend the section's constitutionality. In dismissing the complaint, the District Court held that it stated a claim against respondents, but that Congress lacked authority to enact § 13981 under either the Commerce Clause or § 5 of the Fourteenth Amendment, which Congress had explicitly identified as the sources of federal authority for § 13981. The en banc Fourth Circuit affirmed.

Held: Section 13981 cannot be sustained under the Commerce Clause or § 5 of the Fourteenth Amendment. Pp. 1748–1759.

(a) The Commerce Clause does not provide Congress with authority to enact § 13981's federal civil remedy. A congressional enactment will be invalidated only upon a plain showing that Congress has exceeded its constitutional bounds. See *United States v. Lopez*, 514 U.S. 549, 568, 577–578, 115 S.Ct. 1624, 131 L.Ed.2d 626. Petitioners assert that § 13981 can be sustained under Congress' commerce power as a regulation of activity that substantially affects interstate commerce. The proper framework for analyzing such a claim is provided by the principles the Court set out in *Lopez*. First, in *Lopez*, the noneconomic, criminal nature of possessing a firearm in a school zone was central to the Court's conclusion that Congress lacks authority to regulate such possession. Similarly, gender-motivated crimes of violence are not, in any sense, economic activity. Second, like the statute at issue in *Lopez*, § 13981 contains no jurisdictional element establishing that the federal cause of action is in pursuance of Congress' regulation of interstate commerce. Although *Lopez* makes clear that such a jurisdictional element would lend support to the argument that § 13981 is sufficiently tied to interstate commerce [599] to come within Congress' authority, Congress elected to cast § 13981's remedy over a wider, and more purely intrastate, body of violent crime. Third, although § 13981, unlike the *Lopez* statute, *is* supported by numerous findings regarding the serious impact of gender-motivated violence on victims and their families, these findings are substantially weakened by the fact that they rely on reasoning that this Court has rejected, namely, a but-for causal chain from the initial occurrence of violent crime to every attenuated effect upon interstate commerce. If accepted, this reasoning would allow Congress to regulate any crime whose nationwide, aggregated impact has substantial effects on employment, production, transit, or consumption. Moreover, such reasoning will not limit Congress to regulating violence, but may be applied equally as well to family law and other areas of state regulation since the aggregate effect of marriage, divorce, and childrearing on the national economy is undoubtedly significant. The Constitution requires a distinction between what is truly national and what is truly local, and there is no better example of the police power, which the Founders undeniably left reposed in the States and denied the central Government, than the suppression of violent crime and vindication of its victims. Congress therefore may not regulate noneconomic, violent criminal conduct based solely on the conduct's aggregate effect on interstate commerce. Pp. 1748–1754.

(b) Section 5 of the Fourteenth Amendment, which permits Congress to enforce by appropriate legislation the constitutional guarantee that no State shall deprive any person of life, liberty, or property without due process, or deny any person equal protection of the laws, *City of Boerne v. Flores*, 521 U.S. 507, 517, 117 S.Ct. 2157, 138 L.Ed.2d 624, also does not give Congress the authority to enact § 13981. Petitioners' assertion that there is pervasive bias in various state justice systems against victims of gender-motivated violence is supported by a voluminous congressional record. However, the Fourteenth Amendment places limitations on the manner in which Congress may attack discriminatory conduct. Foremost among

them is the principle that the Amendment prohibits only state action, not private conduct. This was the conclusion reached in *United States v. Harris,* 106 U.S. 629, 1 S.Ct. 601, 27 L.Ed. 290, and the *In re Civil Rights Cases,* 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835, which were both decided shortly after the Amendment's adoption. The force of the doctrine of *stare decisis* behind these decisions stems not only from the length of time they have been on the books, but also from the insight attributable to the Members of the Court at that time, who all had intimate knowledge and familiarity with the events surrounding the Amendment's adoption. Neither *United States v. Guest,* 383 U.S. 745, 86 S.Ct. 1170, 16 L.Ed.2d 239, nor *District of Columbia v. Carter,* 409 U.S. 418, 93 S.Ct. 602, 34 L.Ed.2d 613, casts any doubt on the enduring vitality of the *Civil Rights Cases* and *Harris.* [600]Assuming that there has been gender-based disparate treatment by state authorities in these cases, it would not be enough to save § 13981's civil remedy, which is directed not at a State or state actor but at individuals who have committed criminal acts motivated by gender bias. Section 13981 visits no consequence on any Virginia public official involved in investigating or prosecuting Brzonkala's assault, and it is thus unlike any of the § 5 remedies this Court has previously upheld. See, *e.g., South Carolina v. Katzenbach,* 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769. Section 13981 is also different from previously upheld remedies in that it applies uniformly throughout the Nation, even though Congress' findings indicate that the problem addressed does not exist in all, or even most, States. In contrast, the § 5 remedy in *Katzenbach* was directed only to those States in which Congress found that there had been discrimination. Pp. 1754–1759.

169 F.3d 820, affirmed.

REHNQUIST, C.J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. THOMAS, J., filed a concurring opinion, *post,* p. 1759. SOUTER, J., filed a dissenting opinion, in which STEVENS, GINSBURG, and BREYER, JJ., joined, *post,* p. 1759. BREYER, J., filed a dissenting opinion, in which STEVENS, J., joined, and in which SOUTER and GINSBURG, JJ., joined as to Part I–A, *post,* p. 1774.

Julie Goldscheid, Brooklyn, NY, for petitioner in case No. 99–29.

Seth P. Waxman, Washington, DC, for petitioner in case No. 99–5.

Michael E. Rosman, Washington, DC, for respondents.

For U.S. Supreme Court briefs, see:

1999 WL 1034453 (Pet.Brief)
1999 WL 1037259 (Pet.Brief)
1999 WL 1146894 (Resp.Brief)
1999 WL 1146897 (Resp.Brief)
1999 WL 1276924 (Reply.Brief)
1999 WL 1269316 (Reply.Brief)

[601]Chief Justice REHNQUIST delivered the opinion of the Court.

In these cases we consider the constitutionality of 42 U.S.C. § 13981, which provides a federal civil remedy for the [602]victims of gender-motivated violence. The United States Court of Appeals for the Fourth Circuit, sitting en banc, struck down § 13981 because it concluded that Congress lacked constitutional authority to enact the section's civil remedy. Believing that these cases are controlled by our decisions in *United States v. Lopez,* 514 U.S. 549, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995), *United States v. Harris,* 106 U.S. 629, 1 S.Ct. 601, 27 L.Ed. 290 (1883), and the *In re Civil Rights Cases,* 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835 (1883), we affirm.

I

Petitioner Christy Brzonkala enrolled at Virginia Polytechnic Institute (Virginia Tech) in the fall of 1994. In September of that year, Brzonkala met respondents Antonio Morrison and James Crawford, who

were both students at Virginia Tech and members of its varsity football team. Brzonkala alleges that, within 30 minutes of meeting Morrison and Crawford, they assaulted and repeatedly raped her. After the attack, Morrison allegedly told Brzonkala, "You better not have any ... diseases." Complaint ¶ 22. In the months following the rape, Morrison also allegedly announced in the dormitory's dining room that he "like[d] to get girls drunk and...." *Id.*, ¶ 31. The omitted portions, quoted verbatim in the briefs on file with this Court, consist of boasting, debased remarks about what Morrison would do to women, vulgar remarks that cannot fail to shock and offend.

Brzonkala alleges that this attack caused her to become severely emotionally disturbed and depressed. She sought assistance from a university psychiatrist, who prescribed [603] antidepressant medication. Shortly after the rape Brzonkala stopped attending classes and withdrew from the university.

In early 1995, Brzonkala filed a complaint against respondents under Virginia Tech's Sexual Assault Policy. During the school-conducted hearing on her complaint, Morrison admitted having sexual contact with her despite the fact that she had twice told him "no." After the hearing, Virginia Tech's Judicial Committee found insufficient evidence to punish Crawford, but found Morrison guilty of sexual assault and sentenced him to immediate suspension for two semesters.

Virginia Tech's dean of students upheld the judicial committee's sentence. However, in July 1995, Virginia Tech informed Brzonkala that Morrison intended to initiate a court challenge to his conviction under the Sexual Assault Policy. University officials told her that a second hearing would be necessary to remedy the school's error in prosecuting her complaint under that policy, which had not been widely circulated to students. The university therefore conducted a second hearing under its Abusive Conduct Policy, which was in force prior to the dissemination of the Sexual Assault Policy. Following this second hearing the Judicial Committee again found Morrison guilty and sentenced him to an identical 2–semester suspension. This time, however, the description of Morrison's offense was, without explanation, changed from "sexual assault" to "using abusive language."

Morrison appealed his second conviction through the university's administrative system. On August 21, 1995, Virginia Tech's senior vice president and provost set aside Morrison's punishment. She concluded that it was "'excessive when compared with other cases where there has been a finding of violation of the Abusive Conduct Policy,'" *Brzonkala v. Virginia Polytechnic and State Univ.*, 132 F.3d 949, 955 (C.A.4 1997). Virginia Tech did not inform Brzonkala of this decision. After learning from a [604] newspaper that Morrison would be returning to Virginia Tech for the fall 1995 semester, she dropped out of the university.

In December 1995, Brzonkala sued Morrison, Crawford, and Virginia Tech in the United States District Court for the Western District of Virginia. Her complaint alleged that Morrison's and Crawford's attack violated § 13981 and that Virginia Tech's handling of her complaint violated Title IX of the Education Amendments of 1972, 86 Stat. 373–375, 20 U.S.C. §§ 1681–1688. Morrison and Crawford moved to dismiss this complaint on the grounds that it failed to state a claim and that § 13981's civil remedy is unconstitutional. The United States, petitioner in No. 99–5, intervened to defend § 13981's constitutionality.

The District Court dismissed Brzonkala's Title IX claims against Virginia Tech for failure to state a claim upon which relief can be granted. See *Brzonkala v. Virginia Polytechnic and State Univ.*, 935 F.Supp. 772 (W.D.Va.1996). It then held that Brzonkala's complaint stated a claim against Morrison and Crawford under § 13981, but dismissed the complaint be-

cause it concluded that Congress lacked authority to enact the section under either the Commerce Clause or § 5 of the Fourteenth Amendment. *Brzonkala v. Virginia Polytechnic and State Univ.*, 935 F.Supp. 779 (W.D.Va.1996).

A divided panel of the Court of Appeals reversed the District Court, reinstating Brzonkala's § 13981 claim and her Title IX hostile environment claim.[1] *Brzonkala v. Virginia Polytechnic and State Univ.*, 132 F.3d 949 (C.A.4 1997). The full Court of Appeals vacated the panel's opinion and reheard the case en banc. The en banc court then issued an opinion affirming the District Court's conclusion that Brzonkala stated a claim under § 13981 because her complaint alleged a crime of violence and the allegations of Morrison's crude and derogatory statements regarding his [605]treatment of women sufficiently indicated that his crime was motivated by gender animus.[2] Nevertheless, the court by a divided vote affirmed the District Court's conclusion that Congress lacked constitutional authority to enact § 13981's civil remedy. *Brzonkala v. Virginia Polytechnic and State Univ.*, 169 F.3d 820 (C.A.4 1999). Because the Court of Appeals invalidated a federal statute on constitutional grounds, we granted certiorari. 527 U.S. 1068, 120 S.Ct. 11, 144 L.Ed.2d 842 (1999).

Section 13981 was part of the Violence Against Women Act of 1994, § 40302, 108 Stat. 1941–1942. It states that "[a]ll persons within the United States shall have the right to be free from crimes of violence motivated by gender." 42 U.S.C. § 13981(b). To enforce that right, subsection (c) declares:

> "A person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence motivated by gender and thus deprives another of the right declared in subsection (b) of this section shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate."

Section 13981 defines a "crim[e] of violence motivated by gender" as "a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an [606]animus based on the victim's gender." § 13981(d)(1). It also provides that the term "crime of violence" includes any

> "(A) ... act or series of acts that would constitute a felony against the person or that would constitute a felony against property if the conduct presents a serious risk of physical injury to another, and that would come within the meaning of State or Federal offenses described in section 16 of Title 18, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction and whether or not those acts were committed in the special maritime, territorial, or prison jurisdiction of the United States;" and
>
> "(B) includes an act or series of acts that would constitute a felony described in subparagraph (A) but for the relationship between the person who takes such action and the individual against whom such action is taken." § 13981(d)(2).

1. The panel affirmed the dismissal of Brzonkala's Title IX disparate treatment claim. See 132 F.3d, at 961–962.

2. The en banc Court of Appeals affirmed the District Court's conclusion that Brzonkala failed to state a claim alleging disparate treatment under Title IX, but vacated the District Court's dismissal of her hostile environment claim and remanded with instructions for the District Court to hold the claim in abeyance pending this Court's decision in *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629, 119 S.Ct. 1661, 143 L.Ed.2d 839 (1999). *Brzonkala v. Virginia Polytechnic and State Univ.*, 169 F.3d 820, 827, n. 2 (C.A.4 1999). Our grant of certiorari did not encompass Brzonkala's Title IX claims, and we thus do not consider them in this opinion.

Further clarifying the broad scope of § 13981's civil remedy, subsection (e)(2) states that "[n]othing in this section requires a prior criminal complaint, prosecution, or conviction to establish the elements of a cause of action under subsection (c) of this section." And subsection (e)(3) provides a § 13981 litigant with a choice of forums: Federal and state courts "shall have concurrent jurisdiction" over complaints brought under the section.

Although the foregoing language of § 13981 covers a wide swath of criminal conduct, Congress placed some limitations on the section's federal civil remedy. Subsection (e)(1) states that "[n]othing in this section entitles a person to a cause of action under subsection (c) of this section for random acts of violence unrelated to gender or for acts that cannot be demonstrated, by a preponderance of the evidence, to be motivated by gender." Subsection (e)(4) further states that § 13981 shall not be construed "to confer on the courts of the United States jurisdiction over any State law claim seeking [607] the establishment of a divorce, alimony, equitable distribution of marital property, or child custody decree."

[1, 2] Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution. "The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." *Marbury v. Madison*, 1 Cranch 137, 176, 2 L.Ed. 60 (1803) (Marshall, C. J.). Congress explicitly identified the sources of federal authority on which it relied in enacting § 13981. It said that a "Federal civil rights cause of action" is established "[p]ursuant to the affirmative power of Congress ... under section 5 of the Fourteenth Amendment to the Constitution, as well as under section 8 of Article I of the Constitution." 42 U.S.C. § 13981(a). We address Congress' authority to enact this remedy under each of these constitutional provisions in turn.

II

[3] Due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds. See *United States v. Lopez*, 514 U.S., at 568, 577–578, 115 S.Ct. 1624 (KENNEDY, J., concurring); *United States v. Harris*, 106 U.S., at 635, 1 S.Ct. 601. With this presumption of constitutionality in mind, we turn to the question whether § 13981 falls within Congress' power under Article I, § 8, of the Constitution. Brzonkala and the United States rely upon the third clause of the section, which gives Congress power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

As we discussed at length in *Lopez*, our interpretation of the Commerce Clause has changed as our Nation has developed. See 514 U.S., at 552–557, 115 S.Ct. 1624; *id.*, at 568–574, 115 S.Ct. 1624 (KENNEDY, J., concurring); *id.*, at 584, 593–599, 115 S.Ct. 1624 (THOMAS, J., concurring). We need not repeat that detailed review of [608] the Commerce Clause's history here; it suffices to say that, in the years since *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893 (1937), Congress has had considerably greater latitude in regulating conduct and transactions under the Commerce Clause than our previous case law permitted. See *Lopez*, 514 U.S., at 555–556, 115 S.Ct. 1624; *id.*, at 573–574, 115 S.Ct. 1624 (KENNEDY, J., concurring).

[4, 5] *Lopez* emphasized, however, that even under our modern, expansive interpretation of the Commerce Clause, Congress' regulatory authority is not without effective bounds. *Id.*, at 557, 115 S.Ct. 1624.

"[E]ven [our] modern-era precedents which have expanded congressional pow-

er under the Commerce Clause confirm that this power is subject to outer limits. In *Jones & Laughlin Steel*, the Court warned that the scope of the interstate commerce power 'must be considered in the light of our dual system of government and may 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.*, at 556–557, 115 S.Ct. 1624 (quoting *Jones & Laughlin Steel, supra*, at 37, 57 S.Ct. 615).[3]

[6] As we observed in *Lopez*, modern Commerce Clause jurisprudence has "identified three broad categories of activity that Congress may regulate under its commerce power." [609]514 U.S., at 558, 115 S.Ct. 1624 (citing *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 276–277, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981); *Perez v. United States*, 402 U.S. 146, 150, 91 S.Ct. 1357, 28 L.Ed.2d 686 (1971)). "First, Congress may regulate the use of the channels of interstate commerce." 514 U.S., at 558, 115 S.Ct. 1624 (citing *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 256, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964); *United States v. Darby*, 312 U.S. 100, 114, 61 S.Ct. 451, 85 L.Ed. 609 (1941)). "Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." 514 U.S., at 558, 115 S.Ct. 1624 (citing *Shreveport Rate Cases*, 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341 (1914); *Southern R. Co. v. United States*, 222 U.S. 20, 32 S.Ct. 2, 56 L.Ed. 72 (1911); *Perez, supra*, at 150, 91 S.Ct. 1357). "Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, ... *i.e.*, those activities that substantially affect interstate commerce." 514 U.S., at 558–559, 115 S.Ct. 1624 (citing *Jones & Laughlin Steel, supra*, at 37, 57 S.Ct. 615).

[7] Petitioners do not contend that these cases fall within either of the first two of these categories of Commerce Clause regulation. They seek to sustain § 13981 as a regulation of activity that substantially affects interstate commerce. Given § 13981's focus on gender-motivated violence wherever it occurs (rather than violence directed at the instrumentalities of interstate commerce, interstate markets, or things or persons in interstate commerce), we agree that this is the proper inquiry.

Since *Lopez* most recently canvassed and clarified our case law governing this third category of Commerce Clause regulation, it provides the proper framework for conducting the required analysis of § 13981. In *Lopez*, we held that the Gun-Free School Zones Act of 1990, 18 U.S.C. § 922(q)(1)(A), which made it a federal crime to knowingly possess a firearm in a school zone, exceeded Congress' authority under the Commerce Clause. See 514 U.S., at 551, 115 S.Ct. 1624. Several significant considerations contributed to our decision.

[8] [610]First, we observed that § 922(q) was "a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however

3. Justice SOUTER's dissent takes us to task for allegedly abandoning *Jones & Laughlin Steel* in favor of an inadequate "federalism of some earlier time." *Post*, at 1766–1767, 1774. As the foregoing language from *Jones & Laughlin Steel* makes clear however, this Court has always recognized a limit on the commerce power inherent in "our dual system of government." 301 U.S., at 37, 57 S.Ct. 615. It is the dissent's remarkable theory that the commerce power is without judicially enforceable boundaries that disregards the Court's caution in *Jones & Laughlin Steel* against allowing that power to "effectually obliterate the distinction between what is national and what is local." *Ibid.*

broadly one might define those terms." *Id.*, at 561, 115 S.Ct. 1624. Reviewing our case law, we noted that "we have upheld a wide variety of congressional Acts regulating intrastate economic activity where we have concluded that the activity substantially affected interstate commerce." *Id.*, at 559, 115 S.Ct. 1624. Although we cited only a few examples, including *Wickard v. Filburn*, 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942); *Hodel, supra; Perez, supra; Katzenbach v. McClung*, 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964); and *Heart of Atlanta Motel, supra*, we stated that the pattern of analysis is clear. *Lopez*, 514 U.S., at 559–560, 115 S.Ct. 1624. "Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained." *Id.*, at 560, 115 S.Ct. 1624.

Both petitioners and Justice SOUTER's dissent downplay the role that the economic nature of the regulated activity plays in our Commerce Clause analysis. But a fair reading of *Lopez* shows that the noneconomic, criminal nature of the conduct at issue was central to our decision in that case. See, *e.g.*, *id.*, at 551, 115 S.Ct. 1624 ("The Act [does not] regulat[e] a commercial activity"), 560 ("Even *Wickard*, which is perhaps the most far reaching example of Commerce Clause authority over intrastate activity, involved economic activity in a way that the possession of a gun in a school zone does not"), 561 ("Section 922(q) is not an essential part of a larger regulation of economic activity"), 566 ("Admittedly, a determination whether an intrastate activity is commercial or noncommercial may in some cases result in legal uncertainty. But, so long as Congress' authority is limited to those powers enumerated in the Constitution, and so long as those enumerated powers are interpreted as having judicially enforceable outer limits, congressional legislation under the Commerce Clause always will engender 'legal uncertainty' "), 567 ("The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition [611] elsewhere, substantially affect any sort of interstate commerce"); see also *id.*, at 573–574, 115 S.Ct. 1624 (KENNEDY, J., concurring) (stating that *Lopez* did not alter our "practical conception of commercial regulation" and that Congress may "regulate in the commercial sphere on the assumption that we have a single market and a unified purpose to build a stable national economy"), 577 ("Were the Federal Government to take over the regulation of entire areas of traditional state concern, areas having nothing to do with the regulation of commercial activities, the boundaries between the spheres of federal and state authority would blur"), 580 ("[U]nlike the earlier cases to come before the Court here neither the actors nor their conduct has a commercial character, and neither the purposes nor the design of the statute has an evident commercial nexus. The statute makes the simple possession of a gun within 1,000 feet of the grounds of the school a criminal offense. In a sense any conduct in this interdependent world of ours has an ultimate commercial origin or consequence, but we have not yet said the commerce power may reach so far" (citation omitted)). *Lopez's* review of Commerce Clause case law demonstrates that in those cases where we have sustained federal regulation of intrastate activity based upon the activity's substantial effects on interstate commerce, the activity in question has been some sort of economic endeavor. See *id.*, at 559–560, 115 S.Ct. 1624.[4]

The second consideration that we found important in analyzing § 922(q) was that

4. Justice SOUTER's dissent does not reconcile its analysis with our holding in *Lopez* because it apparently would cast that decision aside. See *post*, at 1764–1767. However, the dissent cannot persuasively contradict *Lopez's* conclusion that, in every case where we have sustained federal regulation under the aggregation principle in *Wickard v. Filburn*, 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942), the regulated activity was of an apparent commercial character. See, *e.g.*, *Lopez*, 514 U.S., at 559–560, 580, 115 S.Ct. 1624.

the statute contained "no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have [612] an explicit connection with or effect on interstate commerce." *Id.*, at 562, 115 S.Ct. 1624. Such a jurisdictional element may establish that the enactment is in pursuance of Congress' regulation of interstate commerce.

[9] Third, we noted that neither § 922(q) " 'nor its legislative history contain[s] express congressional findings regarding the effects upon interstate commerce of gun possession in a school zone.' " *Ibid.* (quoting Brief for United States, O.T. 1994, No. 93–1260, pp. 5–6). While "Congress normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce," 514 U.S., at 562, 115 S.Ct. 1624 (citing *McClung, supra*, at 304, 85 S.Ct. 377; *Perez*, 402 U.S., at 156, 91 S.Ct. 1357), the existence of such findings may "enable us to evaluate the legislative judgment that the activity in question substantially affect[s] interstate commerce, even though no such substantial effect [is] visible to the naked eye." 514 U.S., at 563, 115 S.Ct. 1624.

Finally, our decision in *Lopez* rested in part on the fact that the link between gun possession and a substantial effect on interstate commerce was attenuated. *Id.*, at 563–567, 115 S.Ct. 1624. The United States argued that the possession of guns may lead to violent crime, and that violent crime "can be expected to affect the functioning of the national economy in two ways. First, the costs of violent crime are substantial, and, through the mechanism of insurance, those costs are spread throughout the population. Second, violent crime reduces the willingness of individuals to travel to areas within the country that are perceived to be unsafe." *Id.*, at 563–564, 115 S.Ct. 1624 (citation omitted). The Government also argued that the presence of guns at schools poses a threat to the educational process, which in turn threatens to produce a less efficient and productive work force, which will negatively affect national productivity and thus interstate commerce. *Ibid.*

We rejected these "costs of crime" and "national productivity" arguments because they would permit Congress [613] to "regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce." *Id.*, at 564, 115 S.Ct. 1624. We noted that, under this but-for reasoning:

> "Congress could regulate any activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example. Under the[se] theories ..., it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate." *Ibid.*

With these principles underlying our Commerce Clause jurisprudence as reference points, the proper resolution of the present cases is clear. Gender-motivated crimes of violence are not, in any sense of the phrase, economic activity. While we need not adopt a categorical rule against aggregating the effects of any noneconomic activity in order to decide these cases, thus far in our Nation's history our cases have upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature. See, *e.g.*, *id.*, at 559–560, 115 S.Ct. 1624, and the cases cited therein.

[10] Like the Gun–Free School Zones Act at issue in *Lopez*, § 13981 contains no jurisdictional element establishing that the federal cause of action is in pursuance of Congress' power to regulate interstate commerce. Although *Lopez* makes clear that such a jurisdictional element would lend support to the argument that § 13981

is sufficiently tied to interstate commerce, Congress elected to cast § 13981's remedy over a wider, and more purely intrastate, body of violent crime.[5]

[11, 12] [614]In contrast with the lack of congressional findings that we faced in *Lopez*, § 13981 *is* supported by numerous findings regarding the serious impact that gender-motivated violence has on victims and their families. See, *e.g.*, H.R. Conf. Rep. No. 103–711, p. 385 (1994), U.S.Code Cong. & Admin.News 1994, pp. 1803, 1853; S.Rep. No. 103–138, p. 40 (1993); S.Rep. No. 101–545, p. 33 (1990). But the existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation. As we stated in *Lopez*, " '[S]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so.' " 514 U.S., at 557, n. 2, 115 S.Ct. 1624 (quoting *Hodel*, 452 U.S., at 311, 101 S.Ct. 2389 (REHNQUIST, J., concurring in judgment)). Rather, " '[w]hether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court.' " 514 U.S., at 557, n. 2, 115 S.Ct. 1624 (quoting *Heart of Atlanta Motel*, 379 U.S., at 273, 85 S.Ct. 348 (Black, J., concurring)).

[615]In these cases, Congress' findings are substantially weakened by the fact that they rely so heavily on a method of reasoning that we have already rejected as unworkable if we are to maintain the Constitution's enumeration of powers. Congress found that gender-motivated violence affects interstate commerce

> "by deterring potential victims from traveling interstate, from engaging in employment in interstate business, and from transacting with business, and in places involved in interstate commerce; ... by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and the demand for interstate products." H.R. Conf. Rep. No. 103–711, at 385, U.S.Code Cong. & Admin.News 1994, pp. 1803, 1853.

Accord, S.Rep. No. 103–138, at 54. Given these findings and petitioners' arguments, the concern that we expressed in *Lopez* that Congress might use the Commerce Clause to completely obliterate the Constitution's distinction between national and local authority seems well founded. See *Lopez, supra*, at 564, 115 S.Ct. 1624. The reasoning that petitioners advance seeks to follow the but-for causal chain from the initial occurrence of violent crime (the suppression of which has always been the prime object of the States' police power) to every attenuated effect upon interstate commerce. If accepted, petitioners' reasoning would allow Congress to regulate any crime as long as the nationwide, aggregated impact of that crime has substan-

5. Title 42 U.S.C. § 13981 is not the sole provision of the Violence Against Women Act of 1994 to provide a federal remedy for gender-motivated crime. Section 40221(a) of the Act creates a federal criminal remedy to punish "interstate crimes of abuse including crimes committed against spouses or intimate partners during interstate travel and crimes committed by spouses or intimate partners who cross State lines to continue the abuse." S.Rep. No. 103–138, p. 43 (1993). That criminal provision has been codified at 18 U.S.C. § 2261(a)(1), which states:

> "A person who travels across a State line or enters or leaves Indian country with the intent to injure, harass, or intimidate that person's spouse or intimate partner, and who, in the course of or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner, shall be punished as provided in subsection (b)."

The Courts of Appeals have uniformly upheld this criminal sanction as an appropriate exercise of Congress' Commerce Clause authority, reasoning that "[t]he provision properly falls within the first of *Lopez's* categories as it regulates the use of channels of interstate commerce—i.e., the use of the interstate transportation routes through which persons and goods move." *United States v. Lankford*, 196 F.3d 563, 571–572 (C.A.5 1999) (collecting cases) (internal quotation marks omitted).

tial effects on employment, production, transit, or consumption. Indeed, if Congress may regulate gender-motivated violence, it would be able to regulate murder or any other type of violence since gender-motivated violence, as a subset of all violent crime, is certain to have lesser economic impacts than the larger class of which it is a part.

[13–19] Petitioners' reasoning, moreover, will not limit Congress to regulating violence but may, as we suggested in *Lopez*, be applied equally as well to family law and other areas of traditional state regulation since the aggregate effect of [616] marriage, divorce, and childrearing on the national economy is undoubtedly significant. Congress may have recognized this specter when it expressly precluded § 13981 from being used in the family law context.[6] See 42 U.S.C. § 13981(e)(4). Under our written Constitution, however, the limitation of congressional authority is not solely a matter of legislative grace.[7] See *Lopez, supra*, at 575–579, 115 S.Ct. 1624 (KENNEDY, J., concurring); *Marbury*, 1 Cranch, at 176–178, 2 L.Ed. 60.

6. We are not the first to recognize that the but-for causal chain must have its limits in the Commerce Clause area. In *Lopez*, 514 U.S., at 567, 115 S.Ct. 1624, we quoted Justice Cardozo's concurring opinion in *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570 (1935): "There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the center. A society such as ours 'is an elastic medium which transmits all tremors throughout its territory; the only question is of their size.' " *Id.*, at 554, 55 S.Ct. 837 (quoting *United States v. A.L.A. Schechter Poultry Corp.*, 76 F.2d 617, 624 (C.A.2 1935) (L.Hand, J., concurring)).

7. Justice SOUTER's theory that *Gibbons v. Ogden*, 9 Wheat. 1, 6 L.Ed. 23 (1824), *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985), and the Seventeenth Amendment provide the answer to these cases, see *post*, at 1768–1772, is remarkable because it undermines this central principle of our constitutional system. As we have repeatedly noted, the Framers crafted the federal system of Government so that the people's rights would be secured by the division of power. See, *e.g.*, *Arizona v. Evans*, 514 U.S. 1, 30, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995) (GINSBURG, J., dissenting); *Gregory v. Ashcroft*, 501 U.S. 452, 458–459, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991) (cataloging the benefits of the federal design); *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242, 105 S.Ct. 3142, 87 L.Ed.2d 171 (1985) ("The 'constitutionally mandated balance of power' between the States and the Federal Government was adopted by the Framers to ensure the protection of 'our fundamental liberties' ") (quoting *Garcia, supra*, at 572, 105 S.Ct. 1005 (Powell, J., dissenting)). Departing from their parliamentary past, the Framers adopted a written Constitution that further divided authority at the federal level so that the Constitution's provisions would not be defined solely by the political branches nor the scope of legislative power limited only by public opinion and the Legislature's self-restraint. See, *e.g.*, *Marbury v. Madison*, 1 Cranch 137, 176, 2 L.Ed. 60 (1803) (Marshall, C.J.) ("The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written"). It is thus a " 'permanent and indispensable feature of our constitutional system' " that " 'the federal judiciary is supreme in the exposition of the law of the Constitution.' " *Miller v. Johnson*, 515 U.S. 900, 922–923, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995) (quoting *Cooper v. Aaron*, 358 U.S. 1, 18, 78 S.Ct. 1401, 3 L.Ed.2d 5 (1958)).

No doubt the political branches have a role in interpreting and applying the Constitution, but ever since *Marbury* this Court has remained the ultimate expositor of the constitutional text. As we emphasized in *United States v. Nixon*, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974): "In the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others.... Many decisions of this Court, however, have unequivocally reaffirmed the holding of *Marbury* that '[i]t is emphatically the province and duty of the judicial department to say what the law is.' " *Id.*, at 703, 94 S.Ct. 3090 (citation omitted).

Contrary to Justice SOUTER's suggestion, see *post*, at 1769–1772, and n. 14, *Gibbons* did not exempt the commerce power from this cardinal rule of constitutional law. His assertion that, from *Gibbons* on, public opinion has been the only restraint on the congressional

[20–25] |617We accordingly reject the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce. The Constitution requires a distinction between what is |618truly national and what is truly local. *Lopez*, 514 U.S., at 568, 115 S.Ct. 1624 (citing *Jones & Laughlin Steel*, 301 U.S., at 30, 57 S.Ct. 615). In recognizing this fact we preserve one of the few principles that has been consistent since the Clause was adopted. The regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States. See, *e.g.*, *Cohens v. Virginia*, 6 Wheat. 264, 426, 428, 5 L.Ed. 257 (1821) (Marshall, C.J.) (stating that Congress "has no general right to punish murder committed within any of the States," and that it is "clear ... that congress cannot punish felonies generally"). Indeed, we can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.[8] See, *e.g.*, *Lopez*, 514 U.S., at 566, 115 S.Ct. 1624 ("The Constitution ... withhold[s] from Congress a plenary police power"); *id.*, at 584–585, 115 S.Ct. 1624 (THOMAS, J., concurring) ("[W]e *always* have rejected readings|619 of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power"), 596–597, and n. 6, 115 S.Ct. 1624 (noting that the first Congresses did not enact nationwide punishments for criminal conduct under the Commerce Clause).

III

[26] Because we conclude that the Commerce Clause does not provide Con-

exercise of the commerce power is true only insofar as it contends that political accountability is and has been the only limit on Congress' exercise of the commerce power *within that power's outer bounds*. As the language surrounding that relied upon by Justice SOUTER makes clear, *Gibbons* did not remove from this Court the authority to define that boundary. See *Gibbons*, *supra*, at 194–195 ("It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States.... Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a State, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended, would not have been made, had the intention been to extend the power to every description. The enumeration presupposes something not enumerated; and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a State").

8. Justice SOUTER disputes our assertion that the Constitution reserves the general police power to the States, noting that the Founders failed to adopt several proposals for additional guarantees against federal encroachment on state authority. See *post*, at 1768–1769, and n. 14. This argument is belied by the entire structure of the Constitution. With its careful enumeration of federal powers and explicit statement that all powers not granted to the Federal Government are reserved, the Constitution cannot realistically be interpreted as granting the Federal Government an unlimited license to regulate. See, *e.g.*, *New York v. United States*, 505 U.S. 144, 156–157, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). And, as discussed above, the Constitution's separation of federal power and the creation of the Judicial Branch indicate that disputes regarding the extent of congressional power are largely subject to judicial review. See n. 7, *supra*. Moreover, the principle that " '[t]he Constitution created a Federal Government of limited powers,' " while reserving a generalized police power to the States, is deeply ingrained in our constitutional history. *New York*, *supra*, at 155, 112 S.Ct. 2408 (quoting *Gregory v. Ashcroft*, *supra*, at 457, 111 S.Ct. 2395); see also *Lopez*, 514 U.S., at 584–599, 115 S.Ct. 1624 (THOMAS, J., concurring) (discussing the history of the debates surrounding the adoption of the Commerce Clause and our subsequent interpretation of the Clause); *Maryland v. Wirtz*, 392 U.S. 183, 196, 88 S.Ct. 2017, 20 L.Ed.2d 1020 (1968).

gress with authority to enact § 13981, we address petitioners' alternative argument that the section's civil remedy should be upheld as an exercise of Congress' remedial power under § 5 of the Fourteenth Amendment. As noted above, Congress expressly invoked the Fourteenth Amendment as a source of authority to enact § 13981.

[27–29] The principles governing an analysis of congressional legislation under § 5 are well settled. Section 5 states that Congress may "'enforce' by 'appropriate legislation' the constitutional guarantee that no State shall deprive any person of 'life, liberty, or property, without due process of law,' nor deny any person 'equal protection of the laws.'" *City of Boerne v. Flores*, 521 U.S. 507, 517, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997). Section 5 is "a positive grant of legislative power," *Katzenbach v. Morgan*, 384 U.S. 641, 651, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966), that includes authority to "prohibit conduct which is not itself unconstitutional and [to] intrud[e] into 'legislative spheres of autonomy previously reserved to the States.'" *Flores, supra*, at 518, 117 S.Ct. 2157 (quoting *Fitzpatrick v. Bitzer*, 427 U.S. 445, 455, 96 S.Ct. 2666, 49 L.Ed.2d 614 (1976)); see also *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 81, 120 S.Ct. 631, 145 L.Ed.2d 522 (2000). However, "[a]s broad as the congressional enforcement power is, it is not unlimited." *Oregon v. Mitchell*, 400 U.S. 112, 128, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970); see also *Kimel, supra*, at 81, 120 S.Ct. 631. In fact, as we discuss in detail below, several limitations inherent in § 5's text and constitutional context have been recognized since the Fourteenth Amendment was adopted.

Petitioners' § 5 argument is founded on an assertion that there is pervasive bias in various state justice systems against victims of gender-motivated violence. This assertion[620] is supported by a voluminous congressional record. Specifically, Congress received evidence that many participants in state justice systems are perpetuating an array of erroneous stereotypes and assumptions. Congress concluded that these discriminatory stereotypes often result in insufficient investigation and prosecution of gender-motivated crime, inappropriate focus on the behavior and credibility of the victims of that crime, and unacceptably lenient punishments for those who are actually convicted of gender-motivated violence. See H.R. Conf. Rep. No. 103–711, at 385–386; S.Rep. No. 103–138, at 38, 41–55; S.Rep. No. 102–197, at 33–35, 41, 43–47. Petitioners contend that this bias denies victims of gender-motivated violence the equal protection of the laws and that Congress therefore acted appropriately in enacting a private civil remedy against the perpetrators of gender-motivated violence to both remedy the States' bias and deter future instances of discrimination in the state courts.

[30–34] As our cases have established, state-sponsored gender discrimination violates equal protection unless it "'serves "important governmental objectives and ... the discriminatory means employed" are "substantially related to the achievement of those objectives."'" *United States v. Virginia*, 518 U.S. 515, 533, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996) (quoting *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724, 102 S.Ct. 3331, 73 L.Ed.2d 1090 (1982), in turn quoting *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 150, 100 S.Ct. 1540, 64 L.Ed.2d 107 (1980)). See also *Craig v. Boren*, 429 U.S. 190, 198–199, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976). However, the language and purpose of the Fourteenth Amendment place certain limitations on the manner in which Congress may attack discriminatory conduct. These limitations are necessary to prevent the Fourteenth Amendment from obliterating the Framers' carefully crafted balance of power between the States and the National Government. See *Flores, supra*, at 520–524, 117 S.Ct. 2157 (reviewing the history of the Fourteenth Amendment's enactment and discussing the contemporary belief

that the Amendment " 'does [621] not concentrate power in the general government for any purpose of police government within the States' ") (quoting T. Cooley, Constitutional Limitations 294, n. 1 (2d ed. 1871)). Foremost among these limitations is the time-honored principle that the Fourteenth Amendment, by its very terms, prohibits only state action. "[T]he principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful." *Shelley v. Kraemer,* 334 U.S. 1, 13, and n. 12, 68 S.Ct. 836, 92 L.Ed. 1161 (1948).

Shortly after the Fourteenth Amendment was adopted, we decided two cases interpreting the Amendment's provisions, *United States v. Harris,* 106 U.S. 629, 1 S.Ct. 601, 27 L.Ed. 290 (1883), and the *Civil Rights Cases,* 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835 (1883). In *Harris,* the Court considered a challenge to § 2 of the Civil Rights Act of 1871. That section sought to punish "private persons" for "conspiring to deprive any one of the equal protection of the laws enacted by the State." 106 U.S., at 639, 1 S.Ct. 601. We concluded that this law exceeded Congress' § 5 power because the law was "directed exclusively against the action of private persons, without reference to the laws of the State, or their administration by her officers." *Id.,* at 640, 1 S.Ct. 601. In so doing, we reemphasized our statement from *Virginia v. Rives,* 100 U.S. 313, 318, 25 L.Ed. 667 (1879), that " 'these provisions of the fourteenth amendment have reference to State action exclusively, and not to any action of private individuals.' " *Harris, supra,* at 639, 1 S.Ct. 601 (misquotation in *Harris*).

We reached a similar conclusion in the *Civil Rights Cases.* In those consolidated cases, we held that the public accommodation provisions of the Civil Rights Act of 1875, which applied to purely private conduct, were beyond the scope of the § 5 enforcement power. 109 U.S., at 11, 3 S.Ct. 18 ("Individual invasion of individual rights is not the subject-matter of the [Fourteenth] [A]mendment"). See also, *e.g., Romer v. [622] Evans,* 517 U.S. 620, 628, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996) ("[I]t was settled early that the Fourteenth Amendment did not give Congress a general power to prohibit discrimination in public accommodations"); *Lugar v. Edmondson Oil Co.,* 457 U.S. 922, 936, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982) ("Careful adherence to the 'state action' requirement preserves an area of individual freedom by limiting the reach of federal law and federal judicial power"); *Blum v. Yaretsky,* 457 U.S. 991, 1002, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982); *Moose Lodge No. 107 v. Irvis,* 407 U.S. 163, 172, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972); *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 147, n. 2, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970); *United States v. Cruikshank,* 92 U.S. 542, 554, 23 L.Ed. 588 (1875) ("The fourteenth amendment prohibits a state from depriving any person of life, liberty, or property, without due process of law; but this adds nothing to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society").

The force of the doctrine of *stare decisis* behind these decisions stems not only from the length of time they have been on the books, but also from the insight attributable to the Members of the Court at that time. Every Member had been appointed by President Lincoln, Grant, Hayes, Garfield, or Arthur—and each of their judicial appointees obviously had intimate knowledge and familiarity with the events surrounding the adoption of the Fourteenth Amendment.

Petitioners contend that two more recent decisions have in effect overruled this longstanding limitation on Congress' § 5 authority. They rely on *United States v.*

Guest, 383 U.S. 745, 86 S.Ct. 1170, 16 L.Ed.2d 239 (1966), for the proposition that the rule laid down in the *Civil Rights Cases* is no longer good law. In *Guest*, the Court reversed the construction of an indictment under 18 U.S.C. § 241, saying in the course of its opinion that "we deal here with issues of statutory construction, not with issues of constitutional power." 383 U.S., at 749, 86 S.Ct. 1170. Three Members of the Court, in a separate opinion by Justice Brennan, expressed the view that the *Civil Rights Cases* [623] were wrongly decided, and that Congress could under § 5 prohibit actions by private individuals. 383 U.S., at 774, 86 S.Ct. 1170 (opinion concurring in part and dissenting in part). Three other Members of the Court, who joined the opinion of the Court, joined a separate opinion by Justice Clark which in two or three sentences stated the conclusion that Congress could "punis[h] all conspiracies—with or without state action—that interfere with Fourteenth Amendment rights." *Id.*, at 762, 86 S.Ct. 1170 (concurring opinion). Justice Harlan, in another separate opinion, commented with respect to the statement by these Justices:

> "The action of three of the Justices who joined the Court's opinion in nonetheless cursorily pronouncing themselves on the far-reaching constitutional questions deliberately not reached in Part II seems to me, to say the very least, extraordinary." *Id.*, at 762, n. 1, 86 S.Ct. 1170 (opinion concurring in part and dissenting in part).

Though these three Justices saw fit to opine on matters not before the Court in *Guest*, the Court had no occasion to revisit the *Civil Rights Cases* and *Harris*, having determined "the indictment [charging private individuals with conspiring to deprive blacks of equal access to state facilities] in fact contain[ed] an express allegation of state involvement." 383 U.S., at 756, 86 S.Ct. 1170. The Court concluded that the implicit allegation of "active connivance by agents of the State" eliminated any need to decide "the threshold level that state action must attain in order to create rights under the Equal Protection Clause." *Ibid.* All of this Justice Clark explicitly acknowledged. See *id.*, at 762, 86 S.Ct. 1170 (concurring opinion) ("The Court's interpretation of the indictment clearly avoids the question whether Congress, by appropriate legislation, has the power to punish private conspiracies that interfere with Fourteenth Amendment rights, such as the right to utilize public facilities").

[624] To accept petitioners' argument, moreover, one must add to the three Justices joining Justice Brennan's reasoned explanation for his belief that the *Civil Rights Cases* were wrongly decided, the three Justices joining Justice Clark's opinion who gave no explanation whatever for their similar view. This is simply not the way that reasoned constitutional adjudication proceeds. We accordingly have no hesitation in saying that it would take more than the naked dicta contained in Justice Clark's opinion, when added to Justice Brennan's opinion, to cast any doubt upon the enduring vitality of the *Civil Rights Cases* and *Harris*.

[35] Petitioners also rely on *District of Columbia v. Carter*, 409 U.S. 418, 93 S.Ct. 602, 34 L.Ed.2d 613 (1973). *Carter* was a case addressing the question whether the District of Columbia was a "State" within the meaning of Rev. Stat. § 1979, 42 U.S.C. § 1983—a section which by its terms requires state action before it may be employed. A footnote in that opinion recites the same litany respecting *Guest* that petitioners rely on. This litany is of course entirely dicta, and in any event cannot rise above its source. We believe that the description of the § 5 power contained in the *Civil Rights Cases* is correct:

> "But where a subject is not submitted to the general legislative power of Congress, but is only submitted thereto for the purpose of rendering effective some prohibition against particular [s]tate legislation or [s]tate action in reference to that subject, the power given is limited

by its object, and any legislation by Congress in the matter must necessarily be corrective in its character, adapted to counteract and redress the operation of such prohibited state laws or proceedings of [s]tate officers." 109 U.S., at 18, 3 S.Ct. 18.

Petitioners alternatively argue that, unlike the situation in the *Civil Rights Cases*, here there has been gender-based disparate treatment by state authorities, whereas in those cases there was no indication of such state action. There is [625] abundant evidence, however, to show that the Congresses that enacted the Civil Rights Acts of 1871 and 1875 had a purpose similar to that of Congress in enacting § 13981: There were state laws on the books bespeaking equality of treatment, but in the administration of these laws there was discrimination against newly freed slaves. The statement of Representative Garfield in the House and that of Senator Sumner in the Senate are representative:

"[T]he chief complaint is not that the laws of the State are unequal, but that even where the laws are just and equal on their face, yet, by a systematic maladministration of them, or a neglect or refusal to enforce their provisions, a portion of the people are denied equal protection under them." Cong. Globe, 42d Cong., 1st Sess., App. 153 (1871) (statement of Rep. Garfield).

"The Legislature of South Carolina has passed a law giving precisely the rights contained in your 'supplementary civil rights bill.' But such a law remains a dead letter on her statute-books, because the State courts, comprised largely of those whom the Senator wishes to obtain amnesty for, refuse to enforce it." Cong. Globe, 42d Cong., 2d Sess., 430 (1872) (statement of Sen. Sumner).

See also, *e.g.*, Cong. Globe, 42d Cong., 1st Sess., at 653 (statement of Sen. Osborn); *id.*, at 457 (statement of Rep. Coburn); *id.*, at App. 78 (statement of Rep. Perry); 2 Cong. Rec. 457 (1874) (statement of Rep. Butler); 3 Cong. Rec. 945 (1875) (statement of Rep. Lynch).

[36] But even if that distinction were valid, we do not believe it would save § 13981's civil remedy. For the remedy is simply not "corrective in its character, adapted to counteract and redress the operation of such prohibited [s]tate laws or proceedings of [s]tate officers." *Civil Rights Cases, supra*, at 18, 3 S.Ct. 18. Or, as we have phrased it in more recent cases, prophylactic legislation under § 5 must have a "congruence [626] and proportionality between the injury to be prevented or remedied and the means adopted to that end." *Florida Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank*, 527 U.S. 627, 639, 119 S.Ct. 2199, 144 L.Ed.2d 575 (1999); *Flores*, 521 U.S., at 526, 117 S.Ct. 2157. Section 13981 is not aimed at proscribing discrimination by officials which the Fourteenth Amendment might not itself proscribe; it is directed not at any State or state actor, but at individuals who have committed criminal acts motivated by gender bias.

In the present cases, for example, § 13981 visits no consequence whatever on any Virginia public official involved in investigating or prosecuting Brzonkala's assault. The section is, therefore, unlike any of the § 5 remedies that we have previously upheld. For example, in *Katzenbach v. Morgan*, 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966), Congress prohibited New York from imposing literacy tests as a prerequisite for voting because it found that such a requirement disenfranchised thousands of Puerto Rican immigrants who had been educated in the Spanish language of their home territory. That law, which we upheld, was directed at New York officials who administered the State's election law and prohibited them from using a provision of that law. In *South Carolina v. Katzenbach*, 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966), Congress imposed voting rights requirements on States that, Congress found, had a history of discriminating against blacks in voting.

The remedy was also directed at state officials in those States. Similarly, in *Ex parte Virginia*, 100 U.S. 339, 25 L.Ed. 676 (1879), Congress criminally punished state officials who intentionally discriminated in jury selection; again, the remedy was directed to the culpable state official.

Section 13981 is also different from these previously upheld remedies in that it applies uniformly throughout the Nation. Congress' findings indicate that the problem of discrimination against the victims of gender-motivated crimes does not exist in all States, or even most States. By contrast, the § 5 remedy upheld in *Katzenbach v. Morgan*, *supra*, [627] was directed only to the State where the evil found by Congress existed, and in *South Carolina v. Katzenbach*, *supra*, the remedy was directed only to those States in which Congress found that there had been discrimination.

For these reasons, we conclude that Congress' power under § 5 does not extend to the enactment of § 13981.

IV

Petitioner Brzonkala's complaint alleges that she was the victim of a brutal assault. But Congress' effort in § 13981 to provide a federal civil remedy can be sustained neither under the Commerce Clause nor under § 5 of the Fourteenth Amendment. If the allegations here are true, no civilized system of justice could fail to provide her a remedy for the conduct of respondent Morrison. But under our federal system that remedy must be provided by the Commonwealth of Virginia, and not by the United States. The judgment of the Court of Appeals is

Affirmed.

Justice THOMAS, concurring.

The majority opinion correctly applies our decision in *United States v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995), and I join it in full. I write separately only to express my view that the very notion of a "substantial effects" test under the Commerce Clause is inconsistent with the original understanding of Congress' powers and with this Court's early Commerce Clause cases. By continuing to apply this rootless and malleable standard, however circumscribed, the Court has encouraged the Federal Government to persist in its view that the Commerce Clause has virtually no limits. Until this Court replaces its existing Commerce Clause jurisprudence with a standard more consistent with the original understanding, we will continue to see Congress appropriating state police powers under the guise of regulating commerce.

[628] Justice SOUTER, with whom Justice STEVENS, Justice GINSBURG, and Justice BREYER join, dissenting.

The Court says both that it leaves Commerce Clause precedent undisturbed and that the Civil Rights Remedy of the Violence Against Women Act of 1994, 42 U.S.C. § 13981, exceeds Congress's power under that Clause. I find the claims irreconcilable and respectfully dissent.[1]

I

Our cases, which remain at least nominally undisturbed, stand for the following propositions. Congress has the power to legislate with regard to activity that, in the aggregate, has a substantial effect on interstate commerce. See *Wickard v. Filburn*, 317 U.S. 111, 124–128, 63 S.Ct. 82, 87 L.Ed. 122 (1942); *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 277, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981). The fact of such a substantial effect is not an issue for the courts in the first instance, *ibid.*, but for the Congress, whose institutional capacity for gathering evidence and taking testimony

1. Finding the law a valid exercise of Commerce Clause power, I have no occasion to reach the question whether it might also be sustained as an exercise of Congress's power to enforce the Fourteenth Amendment.

95 U.S. 714, *; 24 L. Ed. 565, **;
1877 U.S. LEXIS 2227, ***; 5 Otto 714

PENNOYER v. NEFF.

SUPREME COURT OF THE UNITED STATES

95 U.S. 714; 24 L. Ed. 565; 1877 U.S. LEXIS 2227; 5 Otto 714

January 21, 1878, Decided; OCTOBER, 1877 Term

PRIOR HISTORY: [***1] ERROR to the Circuit Court of the United States for the District of Oregon.

This action was brought by Neff against Pennoyer for the recovery of a tract of land situated in Multnomah County, Oregon. Pennoyer, in his answer, denied Neff's title and right to possession, and set up a title in himself.

By consent of parties, and in pursuance of their written stipulation filed in the case, the cause was tried by the court and a special verdict given, upon which judgment was rendered in favor of Neff; whereupon Pennoyer sued out this writ of error.

The parties respectively claimed title as follows: Neff, under a patent issued to him by the United States, March 19, 1866; and Pennoyer, by virtue of a sale made by the sheriff of said county, under an execution sued out upon a judgment against Neff, rendered Feb. 19, 1866, by the Circuit Court for said county, in an action wherein he was defendant, and J. H. Mitchell was plaintiff. Neff was then a non-resident of Oregon.

In *Mitchell* v. *Neff,* jurisdiction of Neff was obtained by service of summons by publication. Pennoyer offered in evidence duly certified copies of the complaint, summons, order for publication of summons, [***2] affidavit of service by publication, and the judgment in that case; to the introduction of which papers the plaintiff objected, because, 1, said judgment is *in personam,* and appears to have been given without the appearance of the defendant in the action, or personal service of the summons upon him, and while he was a non-resident of the State, and is, therefore, void; 2, said judgment is not *in rem,* and, therefore, constitutes no basis of title in the defendant; 3, said copies of complaint, &c., do not show jurisdiction to give the judgment alleged, either *in rem* or *personam;* and, 4, it appears from said papers that no proof of service by publication was ever made, the affidavit thereof being made by the "editor" of the "Pacific Christian Advocate," and not by "the printer, or his foreman or principal clerk." The court admitted the evidence subject to the objections.

The finding of the court in regard to the facts bearing upon the asserted jurisdiction of the State court is as follows: --

That on Nov. 13, 1865, Mitchell applied to said Circuit Court, upon his own affidavit of that date, for an order allowing the service of the summons in said action to be made [***3] upon Neff, by publication thereof; whereupon said court made said order, in the words following: "Now, at this day, comes the plaintiff in his proper person, and by his attorneys, Mitchell and Dolph, and files affidavit of plaintiff, and motion for an order of publication of summons, as follows, to wit: 'Now comes the plaintiff, by his attorneys, and upon the affidavit of plaintiff, herewith filed, moves the court for an order of publication of summons against defendant, as required by law, he being a non-resident;, and it appearing to the satisfaction of the court that the defendant cannot, after due diligence, be found in this State, and that he is a non-resident thereof, that his place of residence is unknown to plaintiff, and cannot, with reasonable diligence, be ascertained by him, and that the plaintiff has a cause of action against defendant, and that defendant has property in this county and State, it is ordered and adjudged by the court that service of the summons in this action be made by publication for six weeks successively in the 'Pacific Christian Advocate,' a weekly newspaper published in Multnomah County, Oregon, and this action is continued for such service." That [***4] the affidavit of plaintiff, referred to in said order, is in the words following: "I, J. Mitchell, being first duly sworn, say that the defendant, Marcus Neff, is a nonresident of this State; that he resides somewhere in the State of California, at what place affiant knows not, and he cannot be found in this State; that plaintiff has a just cause of action against defendant for a money-demand on account; that this court has jurisdiction of such action; that the defendant has property in this county and State." That the complaint in said action was verified and filed on Nov. 3, 1865, and contained facts tending to prove that at that date said Mitchell had a cause of action against said Neff for services as an attorney, performed "between Jan. 1, 1862, and May 15, 1863." That the entry of judgment in said action contained the following averments: "And it appearing to the court that the defendant was, at the time of the commencement of this action, and ever since has been, a non-resident of this State; and it further appearing that he has property in this State, and that defendant had notice of the pendency of this action by publication of the summons for six successive weeks in the 'Pacific [***5] Christian Advocate,' a weekly

newspaper of general circulation published in Multnomah County, State of Oregon, the last issue of which was more than twenty days before the first day of this term." That the affidavit showing the publication of the summons in the "Advocate" aforesaid was made as stated therein by the "editor" of that paper. That said complaint, summons, affidavit of Mitchell and of the "editor" of the "Advocate" aforesaid, and entry of judgment, were in the judgment roll, made up by the clerk in the case, but the order for publication of the summons aforesaid was not placed in said roll by said clerk, but remains on the files of said court; and that when said court made said order for publication, and gave said judgment against Neff, the only evidence it had before it to prove the facts necessary to give it jurisdiction therefor, and particularly to authorize it to find and state that Neff's residence was unknown to Mitchell, and could not, with reasonable diligence, be ascertained by him, and that Neff had notice of the pendency of said action by the publication of the summons as aforesaid, was, so far as appears by the said roll and the records and files of the said [***6] court, the said complaint and affidavits of Mitchell and the editor of the "Advocate."

The statute of Oregon at the time of the commencement of the suit against Neff was as follows: --

"SECT. 55. When service of the summons cannot be made as prescribed in the last preceding section, and the defendant, after due diligence, cannot be found within the State, and when that fact appears, by affidavit, to the satisfaction of the court or judge thereof, or justice in an action in a justice's court, and it also appears that a cause of action exists against the defendant, or that he is a proper party to an action relating to real property in this State, such court or judge or justice may grant an order that the service be made by publication of summons in either of the following cases: . . .

"3. When the defendant is not a resident of the State, but has property therein, and the court has jurisdiction of the subject of the action.

"SECT. 56. The order shall direct the publication to be made in a newspaper published in the county where the action is commenced, and, if no newspaper be published in the county, then in a newspaper to be designated as most likely to give notice to the [***7] person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks. In case of publication, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post-office, directed to the defendant, at his place of residence, unless it shall appear that such residence is neither known to the party making the application, nor can, with reasonable diligence, be ascertained by him. When publication is ordered, personal service of a copy of the summons and complaint out of the State shall be equivalent to publication and deposit in the post-office. In either case, the defendant shall appear and answer by the first day of the term following the expiration of the time prescribed in the order for publication; and, if he does not, judgment may be taken against him for want thereof. In case of personal service out of the State, the summons shall specify the time prescribed in the order for publication.

"SECT. 57. The defendant against whom publication is ordered, or his personal representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the [***8] action; and the defendant against whom publication is ordered, or his representatives, may in like manner, upon good cause shown, and upon such terms as may be proper, be allowed to defend after judgment, and within one year after the entry of such judgment, on such terms as may be just; and, if the defence be successful, and the judgment or any part thereof have been collected or otherwise enforced, such restitution may thereupon be compelled as the court shall direct. But the title to property sold upon execution issued on such judgment to a purchaser in good faith shall not be thereby affected."

"SECT. 60. Proof of the service of summons shall be, in case of publication, the affidavit of the printer, or his foreman, or his principal clerk, showing the same."

SYLLABUS

1. A statute of Oregon, after providing for service of summons upon parties or their representatives, personally or at their residence, declares that when service cannot be thus made, and the defendant, after due diligence, cannot be found within the State, and "that fact appears, by affidavit, to the satisfaction of the court or judge thereof, and it, in like manner, appears that a cause of action exists against [***9] the defendant, or that he is a proper party to an action relating to real property in the State, such court or judge may grant an order that the service be made by publication of summons, . . . when the defendant is not a resident of the State, but has property therein, and the court has jurisdiction of the subject of the action," -- the order to designate a newspaper of the county where the action is commenced in which the publication shall be made, -- and that proof of such publication shall be "the affidavit of the printer, or his foreman, or his principal clerk." *Held,* that defects in the affidavit for the order can only be taken advantage of on appeal, or by some other direct proceeding, and cannot be urged to impeach the judgment collaterally; and that the provision as to proof of the publication is satisfied when the affidavit is made by the editor of the paper.

2. A personal judgment is without any validity, if it be rendered by a State court in an action upon a money-demand against a non-resident of the State, who was served by a publication of summons, but upon whom no personal service of process within the State was made, and who did not appear; and no title to property [***10] passes by a sale under an execution issued upon such a judgment.

3. The State, having within her territory property of a non-resident, may hold and appropriate it to satisfy the claims of her citizens against him; and her tribunals may inquire into his obligations to the extent necessary to control the disposition of that property. If he has no property in the State, there is nothing upon which her tribunals can adjudicate.

4. Substituted service by publication, or in any other authorized form, is sufficient to inform a non-resident of the object of proceedings taken, where property is once brought under the control of the court by seizure or some equivalent act; but where the suit is brought to determine his personal rights and obligations, that is, where it is merely *in personam,* such service upon him is ineffectual for any purpose.

5. Process from the tribunals of one State cannot run into another State, and summon a party there domiciled to respond to proceedings against him; and publication of process or of notice within the State in which the tribunal sits cannot create any greater obligation upon him to appear. Process sent to him out of the State, and process [***11] published within it, are equally unavailing in proceedings to establish his personal liability.

6. Except in cases affecting the personal *status* of the plaintiff, and in those wherein that mode of service may be considered to have been assented to in advance, the substituted service of process by publication, allowed by the law of Oregon and by similar laws in other States where actions are brought against non-residents, is effectual only where, in connection with process against the person for commencing the action, property in the State is brought under the control of the court, and subjected to its disposition by process adapted to that purpose, or where the judgment is sought as a means of reaching such property, or affecting some interest therein; in other words, where the action is in the nature of a proceeding *in rem.*

7. Whilst the courts of the United States are not foreign tribunals in their relations to the State courts, they are tribunals of a different sovereignty, and are bound to give to a judgment of a State court only the same faith and credit to which it is entitled in the courts of another State.

8. The term, "due process of law," when applied to [***12] judicial proceedings, means a course of legal proceedings according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a competent tribunal to pass upon their subject-matter; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or by his voluntary appearance.

COUNSEL: *Mr. W. F. Trimble* for the plaintiff in error.

Mr. James K. Kelly, contra.

OPINION BY: FIELD

OPINION

[*719] [**567] MR. JUSTICE FIELD delivered the opinion of the court.

This is an action to recover the possession of a tract of land, of the alleged value of $15,000, situated in the State of Oregon. The plaintiff asserts title to the premises by a patent of the United States issued to him in 1866, under the act of Congress of Sept. 27, 1850, usually known as the Donation Law of Oregon. The defendant claims to have acquired the premises under a sheriff's deed, made upon a sale of the property on execution issued upon a judgment recovered against the plaintiff [***13] in one of the circuit courts of the State. The case turns upon the validity of this judgment.

It appears from the record that the judgment was rendered in February, 1866, in favor of J. H. Mitchell, for less than $300, including costs, in an action brought by him upon a demand for services as an attorney; that, at the time the action was commenced and the judgment rendered, the defendant therein, the plaintiff here, was a non-resident of the State; [*720] that he was not personally served with process, and did not appear therein; and that the judgment was entered upon his default in not answering the complaint, upon a constructive service of summons by publication.

The Code of Oregon provides for such service when an action is brought against a non-resident and absent defendant, who has property [**568] within the State. It also provides, where the action is for the recovery of money or damages, for the attachment of the property of the non-resident. And it also declares that no natural person is subject to the jurisdiction of a court of the State, "unless he appear in the court, or be found within the State, or be a resident thereof, or have property therein; and, [***14] in the last case, only to the extent of such property at the time the jurisdiction attached." Construing this latter provision to mean, that, in an action for money or damages where a defendant does not appear in the court, and is

not found within the State, and is not a resident thereof, but has property therein, the jurisdiction of the court extends only over such property, the declaration expresses a principle of general, if not universal, law. The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been said by this court, an illegitimate assumption of power, and be resisted as mere abuse. *D'Arcy* v. *Ketchum et al.,* 11 How. 165. In the case against the plaintiff, the property here in controversy sold under the judgment rendered was not attached, nor in any way brought under the jurisdiction of the court. Its first connection with the case was caused by a levy of the execution. It was not, therefore, disposed of pursuant to any adjudication, but only in enforcement of a personal judgment, having no relation [***15] to the property, rendered against a non-resident without service of process upon him in the action, or his appearance therein. The court below did not consider that an attachment of the property was essential to its jurisdiction or to the validity of the sale, but held that the judgment was invalid from defects in the affidavit upon which the order of publication was obtained, and in the affidavit by which the publication as proved.

[*721] There is some difference of opinion among the members of this court as to the rulings upon these alleged defects. The majority are of opinion that inasmuch as the statute requires, for an order of publication, that certain facts shall appear by affidavit *to the satisfaction of the court or judge,* defects in such affidavit can only be taken advantage of on appeal, or by some other direct proceeding, and cannot be urged to impeach the judgment collaterally. The majority of the court are also of opinion that the provision of the statute requiring proof of the publication in a newspaper to be made by the "affidavit of the printer, or his foreman, or his principal clerk." is satisfied when the affidavit is made by the editor of the paper. [***16] The term "printer," in their judgment, is there used not to indicate the person who sets up the type, -- he does not usually have a foreman or clerks, -- it is rather used as synonymous with publisher. The Supreme Court of New York so held in one case; observing that, for the purpose of making the required proof, publishers were "within the spirit of the statute." *Bunce* v. *Reed,* 16 Barb. (N.Y.) 350. And, following this ruling, the Supreme Court of California held that an affidavit made by a "publisher and proprietor" was sufficient. *Sharp* v. *Daugney,* 33 Cal. 512. The term "editor," as used when the statute of New York was passed, from which the Oregon law is borrowed, usually included not only the person who wrote or selected the articles for publication, but the person who published the paper and put it into circulation. Webster, in an early edition of his Dictionary, gives as one of the definitions of an editor, a person "who superintends the publication of a newspaper." It is principally since that time that the business of an editor has been separated from that of a publisher and printer, and has become an independent profession.

If, therefore, we were confined [***17] to the rulings of the court below upon the defects in the affidavits mentioned, we should be unable to uphold its decision. But it was also contended in that court, and is insisted upon here, that the judgment in the State court against the plaintiff was void for want of personal service of process on him, or of his appearance in the action in which it was rendered, and that the premises in controversy could not be subjected to the payment of the demand [*722] of a resident creditor except by a proceeding *in rem;* that is, by a direct proceeding against the property for that purpose. If these positions are sound, the ruling of the Circuit Court as to the invalidity of that judgment must be sustained, notwithstanding our dissent from the reasons upon which it was made. And that they are sound would seem to follow form two wellestablished principles of public law respecting the jurisdiction of an independent State over persons and property. The several States of the Union are not, it is true, in every respect independent, many of the rights and powers which originally belonged to them being now vested in the government created by the Constitution. But, except as restrained [***18] and limited by that instrument, they possess and exercise the authority of independent States, and the principles of public law to which we have referred are applicable to them. One of these principles is, that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the civil *status* and capacities of its inhabitants; to prescribe the subjects upon which they may contract, the forms and solemnities with which their contracts shall be executed, the rights and obligations arising from them, and the mode in which their validity shall be determined and their obligations enforced; and also to regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed, and transferred. The other principle of public law referred to follows from the one mentioned; that is, that no State can exercise direct jurisdiction and authority over persons or property without its territory. Story, Confl. Laws, c. 2; Wheat. Int. Law, pt. 2, c. 2. The several States are of equal dignity and authority, and the independence [***19] of one implies the exclusion of power from all others. And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions. "Any exertion of authority of this sort beyond this limit, [**569] " says Story, "is a mere nullity, and incapable of binding [*723] such persons or

property in any other tribunals." Story, Confl. Laws, sect. 539.

But as contracts made in one State may be enforceable only in another State, and property may be held by non-residents, the exercise of the jurisdiction which every State is admitted to possess over persons and property within its own territory will often affect persons and property without it. To any influence exerted in this way by a State affecting persons resident or property situated elsewhere, no objection can be justly taken; whilst any direct exertion of authority upon them, in an attempt to give ex-territorial operation to its laws, or to enforce an ex-territorial jurisdiction by its [***20] tribunals, would be deemed an encroachment upon the independence of the State in which the persons are domiciled or the property is situated, and be resisted as usurpation.

Thus the State, through its tribunals, may compel persons domiciled within its limitsto execute, in pursuance of their contracts respecting property elsewhere situated, instruments in such form and with such solemnities as to transfer the title, so far as such formalities can be complied with; and the exercise of this jurisdiction in no manner interferes with the supreme control over the property by the State within which it is situated. *Penn* v. *Lord Baltimore,* 1 Ves. 444; *Massie* v. *Watts,* 6 Cranch, 148; *Watkins* v. *Holman,* 16 Pet. 25; *Corbett* v. *Nutt,* 10 Wall. 464.

So the State through its tribunals, may subject property situated within its limits owned by non-residents to the payment of the demand of its own citizens against them; and the exercise of this jurisdiction in no respect infringes upon the sovereignty of the State where the owners are domiciled. Every State owes protection to its own citizens; and, when non-residents deal with them, it is a legitimate and just exercise [***21] of authority to hold and appropriate any property owned by such non-residents to satisfy the claims of its citizens. It is in virtue of the State's jurisdiction over the property of the non-resident situated within its limits that its tribunals can inquire into that non-resident's obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property. If the non-resident [*724] have no property in the State, there is nothing upon which the tribunals can adjudicate.

These views are not new. They have been frequently expressed, with more or less distinctness, in opinions of eminent judges, and have been carried into adjudications in numerous cases. Thus, in *Picquet* v. *Swan,* 5 Mas. 35, Mr. Justice Story said: --

"Where a party is within a territory, he may justly be subjected to its process, and bound personally by the judgment pronounced on such process against him. Where he is not within such territory, and is not personally subject to its laws, if, on account of his supposed or actual property being within the territory, process by the local laws may, by attachment, go to compel his appearance, [***22] and for his default to appear judgment may be pronounced against him, such a judgment must, upon general principles, be deemed only to bind him to the extent of such property, and cannot have the effect of a conclusive judgmnt *in personam,* for the plain reason, that, except so far as the property is concerned, it is a judgment *coram non judice."*

And in *Boswell's Lessee* v. *Otis,* 9 How. 336, where the title of the plaintiff in ejectment was acquired on a sheriff's sale, under a money decree rendered upon publication of notice against non-residents, in a suit brought to enforce a contract relating to land, Mr. Justice McLean said: --

"Jurisdiction is acquired in one of two modes: first, as against the person of the defendant by the service of process; or, secondly, by a procedure against the property of the defendant within the jurisdiction of the court. In the latter case, the defendant is not personally bound by the judgment beyond the property in question. And it is immaterial whether the proceeding against the property be by an attachment or bill in chancerty. It must be substantially a proceeding *in rem."*

These citations are not made as authoritative [***23] expositions of the law; for the language was perhaps not essential to the decision of the cases in which it was used, but as expresssions of the opinion of eminent jurists. But in *Cooper* v. *Reynolds,* reported in the 10th of Wallace, it was essential to the disposition of the case to declare the effect of a personal action against an absent party, without the jurisdiction of the court, not served [*725] with process or voluntarily submitting to the tribunal, when it was sought to subject his property to the payment of a demand of a resident complainant; and in the opinion there delivered we have a clear statement of the law as to the efficacy of such actions, and the jurisdiction of the court over them. In that case, the action was for damages for alleged false imprisonment of the plaintiff; and, upon his affidavit that the defendants had fled from the State, or had absconded or concealed themselves so that the ordinary proces of law could not reach them, a writ of attachment was sued out against their property. Publication was ordered by the court, giving notice to them to appear and plead, answer or demur, or that the action would be taken as confessed and proceeded [***24] in *ex parte* as to them. Publication was had; but they made default, and judgment was entered against them, and the attached property was sold under it. The purchaser having been put into possession of the property, the original owner brought ejectment for its recovery. In considering the character of the proceeding, the court, speaking through Mr. Justice Miller, said: --

"Its essential purpose or nature is to establish, by the judgment of the court, a demand or claim against the defendant, and subject his property lying within the territorial jurisdiction of the court to the payment of that demand. But the plaintiff is met at the commencement of his proceedings by the fact that the defendant is not within the territorial jurisdiction, and cannot be served with any process by which he can be brought personally within the power of the court. For this difficulty the statute has provided a remedy. It says that, upon affidavit being made of that fact, a writ of attachment may be issued and levied on any of the defendant's property, and a publication may be made warning him to appear; and that thereafter the court may proceed in the case, whether he appears or not. If the defendant [***25] appears, the cause becomes mainly a suit *in personam,* with the added [**570] incident, that the property attached remains liable, under the control of the court, to answer to any demand which may be established against the defendant by the final judgment of the court. But if there is no appearance of the defendant, and no service of process on him, the case becomes in its essential nature a proceeding *in rem,* the only effect of which is to subject the property attached to the payment of the demand which the court may find to be due to the plaintiff. That such is [*726] the nature of this proceeding in this latter class of cases is clearly evinced by two well-established propositions: first, the judgment of the court, though in form a personal judgment against the defendant, has no effect beyond the property attached in that suit. No general execution can be issued for any balance unpaid after the attached property is exhausted. No suit can be maintained on such a judgment in the same court, or in any other; nor can it be used as evidence in any other proceeding not affecting the attached property; nor could the costs in that proceeding be collected of defendant [***26] out of any other property than that attached in the suit. Second, the court, in such a suit, cannot on which to levy the writ of attachment. A return that none can be found is the end of the case, and deprives the court of further jurisdiction, though the publication may have been duly made and proven in court."

The fact that the defendants in that case had fled from the State, or had concealed themselves, so as not to be reached by the ordinary process of the court, and were not non-residents, was not made a point in the decision. The opinion treated them as being without the territorial jurisdiction of the court; and the grounds and extent of its authority over persons and property thus situated were considered, when they were not brought within its jurisdiction by personal service or voluntary appearance.

The writer of the present opinion considered that some of the objections to the preliminary proceedings in the attachment suit were well taken, and therefore dissented from the judgment of the court; but to the doctrine declared in the above citation he agreed, and he may add, that it received the approval of all the judges. It is the only doctrine consistent with proper [***27] protection to citizens of other States. If, without personal service, judgments *in personam,* obtained *ex parte* against non-residents and absent parties, upon mere publication of process, which, in the great majority of cases, would never be seen by the parties interested, could be upheld and enforced, they would be the constant instruments of fraud and oppression. Judgments for all sorts of claims upon contracts and for torts, real or pretended, would be thus obtained, under which property would be seized, when the evidence of the transactions upon [*727] which they were founded, if they ever had any existence, had perished.

Substituted service by publication, or in any other authorized form, may be sufficient to inform parties of the object of proceedings taken where property is once brought under the control of the court by seizure or some equivalent act. The law assumes that property is always in the possession of its owner, in person or by agent; and it proceeds upon the theory that its seizure will inform him, not only that it is taken into the custody of the court, but that he must look to any proceedings authorized by law upon such seizure for its condemnation [***28] and sale. Such service may also be sufficient in cases where the object of the action is to reach and dispose of property in the State, or of some interest therein, by enforcing a contract or a lien respecting the same, or to partition it among different owners, or, when the public is a party, to condemn and appropriate it for a public purpose. In other words, such service may answer in all actions which are substantially proceedings *in rem.* But where the entire object of the action is to determine the personal rights and obligations of the defendants, that is, where the suit is merely *in personam,* constructive service in this form upon a non-resident is ineffectual for any purpose. Process from the tribunals of one State cannot run into another State, and summon parties there domiciled to leave its territory and respond to proceedings against them. Publication of process or notice within the State where the tribunal sits cannot create any greater obligation upon the non-resident to appear. Process sent to him out of the State, and process published within it, are equally unavailing in proceedings to establish his personal liability.

The want of authority of the tribunals [***29] of a State to adjudicate upon the obligations of non-residents, where they have no property within its limits, is not denied by the court below: but the position is assumed, that, where they have property within the State, it is immaterial whether the property is in the first instance brought under the control of the court by attachment or some other equivalent act, and afterwards applied by its judgment to the satisfaction of demands against its owner; or such demands be first

established in a personal action, and [*728] the property of the non-resident be afterwards seized and sold on execution. But the answer to this position has already been given in the statement, that the jurisdiction of the court to inquire into and determine his obligations at all is only incidental to its jurisdiction over the property. Its jurisdiction in that respect cannot be made to depend upon facts to be ascertained after it has tried the cause and rendered the judgment. If the judgment be previously void, it will not become valid by the subsequent discovery of property of the defendant, or by his subsequent acquisition of it. The judgment, if void when rendered, will always remain void: it [***30] cannot occupy the doubtful position of being valid if property be found, and void if there be none. Even if the position assumed were confined to cases where the non-resident defendant possessed property in the State at the commencement of the action, it would still make the validity of the proceedings and judgment depend upon the question whether, before the levy of the execution, the defendant had or had not disposed of the property. If before the levy the property should be sold, then, according to this position, the judgment would not be binding. This doctrine would introduce a new element of uncertainty in judicial proceedings. The contrary is the law: the validity of every judgment depends upon the jurisdiction of the court before it is rendered, [**571] not upon what may occur subsequently. In *Webster* v. *Reid,* reported in 11th of Howard, the plaintiff claimed title to land sold under judgments recovered in suits brought in a territorial court of Iowa, upon publication of notice under a law of the territory, without service of process; and the court said: --

"These suits were not a proceeding *in rem* against the land, but were *in personam* against the [***31] owners of it. Whether they all resided within the territory or not does not appear, nor is it a matter or any importance. No person is required to answer in a suit on whom process has not been served, or whose property has not been attached. In this case, there was no personal notice, nor an attachment or other proccding against the land, until after the judgments. The judgments, therefore, are nullities, and did not authorize the executions on which the land was sold."

[*729] The force and effect of judgments rendered against non-residents without personal service of process upon them, or their voluntary appearance, have been the subject of frequent consideration in the courts of the United States and of the several States, as attempts have been made to enforce such judgments in States other than those in which they were rendered, under the provision of the Constitution requiring that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State;" and the act of Congress providing for the mode of authenticating such acts, records, and proceedings, and declaring that, when thus authenticated, "they shall have [***32] such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are or shall be taken." In the earlier cases, it was supposed that the act gave to all judgments the same effect in other States which they had by law in the State where rendered. But this view was afterwards qualified so as to make the act applicable only when the court rendering the judgment had jurisdiction of the parties and of the subject-matter, and not to preclude an inquiry into the jurisdiction of the court in which the judgment was rendered, or the right of the State itself to exercise authority over the person or the subject-matter. *M'Elmoyle* v. *Cohen,* 13 Pet. 312. In the case of *D'Arcy* v. *Ketchum,* reported in the 11th of Howard, this view is stated with great clearness. That was an action in the Circuit Court of the United States for Louisiana, brought upon a judgment rendered in New York under a State statute, against two joint debtors, only one of whom had been served with process, the other being a non-resident of the State. The Circuit Court held the judgment conclusive and binding upon the non-resident [***33] not served with process; but this court reversed its decision, observing, that it was a familiar rule that countries foreign to our own disregarded a judgment merely against the person, where thedefendant had not been served with process nor had a day in court; that national comity was never thus extended; that the proceeding was deemed an illegitimate assumption of power, and resisted as mere abuse; that no faith and credit or force and effect had been given to such judgments by any State of the Union, so far [*730] as known; and that the State courts had uniformly, and in many instances, held them to be void. "The international law," said the court, "as it existed among the States in 1790, was that a judgment rendered in one State, assuming to bind the person of a citizen of another, was void within the foreign State, when the defendant had not been served with process or voluntarily made defence; because neither the legislative jurisdiction nor that of courts of justice had binging force." And the court held that the act of Congress did not intend to declare a new rule, or to embrace judicial records of this description. As was stated in a subsequent case, the doctrine of [***34] this court is, that the act "was not designed to displace that principle of natural justice which requires a person to have notice of a suit before he can be conclusively bound by its result, nor those rules of public law which protect persons and property within one State from the exercise of jurisdiction over them by another." *The Lafayette Insurance Co.* v. *French et at.,* 18 How. 404.

This whole subject has been very fully and learnedly considered in the recent case of *Thompson* v. *Whitman,* 18 Wall. 457, where all the authorities are carefully reviewed and distinguished, and the conclusion above stated is not only reaffirmed, but the

doctrine is asserted, that the record of a judgment rendered in another State may be contradicted as to the facts necessary to give the court jurisdiction against its recital of their existence. In all the cases brought in the State and Federal courts, where attempts have been made under the act of Congress to give effect in one State to personal judgments rendered in another State against non-residents, without service upon them, or upon substituted service by publication, or in some other form, it has been held, without an exception, [***35] so far as we are aware, that such judgments were without any binding force, except as to property, or interests in property, within the State, to reach and affect which was the object of the action in which the judgment was rendered, and which property was brought under control of the court in connection with the process against the person. The proceeding in such cases, though in the form of a personal action, has been uniformly treated, where service was not obtained, and the party did not voluntarily [*731] appear, as effectual and binding merely as a proceeding *in rem,* and as having no operation beyond the disposition of the property, or some interest therein. And the reason assigned for this conclusion has been that which we have already stated, that the tribunals of one State have no jurisdiction over persons beyond its limits, and can inquire only into their obligations to its citizens when exercising its conceded jurisdiction over their property within its limits. In *Bissell* v. *Briggs,* decided by the Supreme Court of Massachusetts as early as 1813, the law is stated substantially in conformity with these views. In that case, the court considered at length [***36] the effect of the constitutional provision, and the act of Congress mentioned, and after stating that, in order to entitle the judgment rendered in any court of the United States to the full faith and credit mentioned in the Constitution, the court must have had jurisdiction not only of the cause, but of the parties, it proceeded to illustrate its position by observing, that, where a debtor living in one State has goods, effects, and credits in another, his creditor living in the [**572] other State may have the property attached pursuant to its laws, and, on recovering judgment, have the property applied to its satisfaction; and that the party in whose hands the property was would be protected by the judgment in the State of the debtor against a suit for it, because the court rendering the judgment had jurisdiction to that extent; but that if the property attached were insufficient to satisfy the judgment, and the creditor should sue on that judgment in the State of the debtor, he would fail, because the defendant was not amenable to the court rendering the judgment. It other words, it was held that over the property within the State the court had jurisdiction by the attachment, [***37] but had none over his person; and that any determination of his liability, except so far as was necessary for the disposition of the property, was invalid.

In *Kilbourn* v. *Woodworth,* 5 Johns, (N.Y.) 37, an action of debt was brought in New York upon a personal judgment recovered in Massachusetts. The defendant in that judgment was not served with process; and the suit was commenced by the attachment of a bedstead belonging to the defendant, accompanied with a summons to appear, served on his wife after she had left her place in Massachusetts. The court held that [*732] the attachment bound only the property attached as a proceeding *in rem,* and that it could not bind the defendant, observing, that to bind a defendant personally, when he was never personally summoned or had notice of the proceeding, would be contrary to the first principles of justice, repeating the language in that respect of Chief Justice DeGrey, used in the case of *Fisher* v. *Lane,* 3 Wils. 297, in 1772. See also *Borden* v. *Fitch,* 15 Johns. (N.Y.) 121, and the cases there cited, and *Harris* v. *Hardeman et al.,* 14 How. 334. To the same purport decisions are found in all the [***38] State courts. In several of the cases, the decision has been accompanied with the observation that a personal judgment thus recovered has no binding force without the State in which it is rendered, implying that in such State it may be valid and binding. But if the court has no jurisdiction over the person of the defendant by reason of his nonresidence, and, consequently, no authority to pass upon his personal rights and obligations; if the whole proceeding, without service upon him or his appearance, is *coran non judice* and void; if to hold a defendant bound by such a judgment is contrary to the first principles of justice, -- it is difficult to see how the judgment can legitimately have any force within the State. The language used can be justified only on the ground that there was no mode of directly reviewing such judgment or impeaching its validity within the State where rendered; and that, therefore, it could be called in question only when its enforcement was elsewhere attempted. In later cases, this language is repeated with less frequency than formerly, it beginning to be considered, as it always ought to have been, that a judgment which can be treated in any State [***39] of this Union as contrary to the first principles of justice, and as an absolute nullity, because rendered without any jurisdiction of the tribunal over the party, is not entitled to any respect in the State where rendered. *Smith* v. *McCutchen,* 38 Mo. 415; *Darrance* v. *Preston,* 18 Iowa, 396; *Hakes* v. *Shupe,* 27 id. 465; *Mitchell's Administrator* v. *Gray,* 18 Ind. 123.

Be that as it may, the courts of the United States are not required to give effect to judgments of this character when any right is claimed under them. Whilst they are not foreign tribunals in their relations to the State courts, are tribunals [*733] of a different sovereignty, exercising a distinct and independent jurisdiction, and are bound to give to the judgments of the State courts only the same faith and

credit which the courts of another State are bound to give to them.

Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to deter mine the personal rights and obligations of parties over whom that [***40] court has no jurisdiction do not constitute due process of law. Whatever difficulty may be experienced in giving to those terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They them mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution -- that is, by the law of its creation -- to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance.

Except in cases affecting the personal *status* of the plaintiff, and cases in which that mode of service may be considered to have been assented to in advance, as hereinafter mentioned, the substituted service of process by publication, allowed by the law of Oregon and by similar [***41] laws in other States, where actions are brought against non-residents, is effectual only where, in connection with process against the person for commencing the action, property in the State is brought under the control of the court, and subjected to its disposition by process adapted to that purpose, or where the judgment is sought as a means of reaching such property or affecting some interest therein; in other words, where the action is in the nature of a proceeding *in rem.* As stated by Cooley in his Treatise on Constitutional Limitations, 405, for any other purpose than to subject the property of a non-resident to valid claims against [*734] him in the State, "due process of law would require appearance or personal service before the defendant could be personally bound by any judgment rendered."

It is true that, in a strict sense, a proceeding *in rem* is one taken directly against property, and has for its object the disposition of the property, without reference to the title of individual claimants; but, in a larger and more general sense, the terms are applied to actions between parties, where the direct object is to reach and dispose of property owned by them, [***42] or of some interest therein. Such are cases commenced by attachment against the property of debtors, or instituted to partition real estate, foreclose a [**573] mortgage, or enforce a lien. So far as they affect property in the State, they are substantially proceedings *in rem* in the broader sense which we have mentioned.

It is hardly necessary to observe, that in all we have said we have had reference to proceedings in courts of first instance, and to their jurisdiction, and not to proceedings in an appellate tribunal to review the action of such courts. The latter may be taken upon such notice, personal or constructive, as the State creating the tribunal may provide. They are considered as rather a continuation of the original litigation than the commencement of a new action. *Nations et al.* v. *Johnson et al.,* 24 How. 195.

It follows from the views expressed that the personal judgment recovered in the State court of Oregon against the plaintiff herein, then a non-resident of the State, was without any validity, and did not authorize a sale of the property in controversy.

To prevent any misapplication of the views expressed in this opinion, it is proper to [***43] observe that we do not mean to assert, by any thing we have said, that a State may not authorize proceedings to determine the *Status* of one of its citizens towards a non-resident, which would be binding within the State, though made without service of process or personal notice to the non-resident. The jurisdiction which every State possesses to determine the civil *status* and capacities of all its inhabitants involve authority to prescribe the conditions on which proceedings affecting them may be commenced and carried on within its territory. The State, for example, has absolute [*735] right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved. One of the parties guilty of acts for which, by the law of the State, a dissolution may be granted, may have removed to a State where no dissolution is permitted. The complaining party would, therefore, fail if a divorce were sought in the State of the defendant; and if application could not be made to the tribunals of the complainant's domicile in such case, and proceedings be there instituted without personal service of process [***44] or personal notice to the offending party, the injured citizen would be without redress. Bish. Marr. and Div., sect. 156.

Neither do we mean to assert that a State may not require a non-resident entering into a partnership or association within its limits, or making contracts enforceable there, to appoint an agent or representative in the State to receive service of process and notice in legal proceedings instituted with respect to such partnership, association, or contracts, or to designate a place where such service may be made and notice given, and provide, upon their failure, to make such appointment or to designate such place that service may be made upon a public officer designated for that purpose, or in some other prescribed way, and that

judgments rendered upon such service may not be binding upon the non-residents both within and without the State. As was said by the Court of Exchequer in *Vallee* v. *Dumergue,* 4 Exch. 290, "It is not contrary to natural justice that a man who has agreed to receive a particular mode of notification of legal proceedings should be bound by a judgment in which that particular mode of notification has been followed, even though he may [***45] not have actual notice of them." See also *The Lafayette Insurance Co.* v. *French et al.,* How. 404, and *Gillespie V Commercial Mutual Marine Insurance Co.,* 12 Gray (Mass.), 201. Nor do we doubt that a State, on creating corporations or other institutions for pecuniary or charitable purposes, may provide a mode in which their conduct may be investigated, their obligations enforced, or their charters revoked, which shall require other than personal service upon their officers or members. Parties becoming members of such corporations or institutions would hold their [*736] interest subject to the conditions prescribed by law. *Copin* v. *Adamson,* Law Rep. 9 Ex. 345.

In the present case, there is no feature of this kind, and, consequently, no consideration of what would be the effect of such legislation in enforcing the contract of a non-resident can arise. The question here respects only the validity of a money judgment rendered in one State, in an action upon a simple contract against the resident of another, without service of process upon him, or his appearance therein.

Judgment affirmed.

DISSENT BY: HUNT

242 U.S. 160, *; 37 S. Ct. 30, **;
61 L. Ed. 222, ***; 1916 U.S. LEXIS 1544

KANE *v.* STATE OF NEW JERSEY

No. 51

SUPREME COURT OF THE UNITED STATES

242 U.S. 160; 37 S. Ct. 30; 61 L. Ed. 222; 1916 U.S. LEXIS 1544

Argued October 31, 1916
December 4, 1916

PRIOR HISTORY: ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

SYLLABUS

In regulating the use of motor vehicles upon its highways, (*Hendrick* v. *Maryland*, 235 U.S. 610), a State may require nonresident owners to appoint a state official as agent upon whom process may be served in legal proceedings brought against them, and resulting from the operation of their motor vehicles, within the State.

A registration fee, not unreasonable in amount, which is exacted by a State from residents and nonresidents alike as a condition to the use of its highways by motor vehicles, is not a discrimination against the citizens of other States either (a) because the amount of the fee is fixed for each calendar year without reference to the extent to which the highways are used, or (b) because the liability of nonresidents to pay is not tempered by the allowance of any period of free use in reciprocation for like privileges allowed by the States in which they reside.

It is clearly within the discretion of the State to determine whether the compensation for the use of highways by automobiles shall be determined by way of a fee, payable annually or semi-annually, or by a toll based on mileage or otherwise.

The power of the State, in the absence of national legislation upon the subject, to regulate the use of its highways by motor vehicles moving in interstate commerce, applies as well to such as are moving through the State as to such as are moving into it only.

As applied to vehicles of nonresidents moving in interstate commerce as well as to vehicles of residents, the amount of the registration fee may properly be based not only on the cost of inspection and regulation, but also on the cost of maintaining improved roads. *Hendrick* v. *Maryland, supra*, explained and followed.

81 N.J.L. 594, affirmed.

OPINION

[*164] [**31] [***226] MR. JUSTICE BRANDEIS delivered the opinion of the court.

The New Jersey automobile law of 1906, as amended in 1908 (P.L. 1908, p. 613), provides in substance that no person, whether a resident or nonresident of the State, shall drive an automobile upon a public highway unless he shall have been licensed so to do and the automobile shall have been registered under the statute; and also that a nonresident owner shall appoint the Secretary of State his attorney upon whom process may be served "in any action or legal proceeding caused by the operation of his registered motor vehicle, within this State, against such owner." The statute fixes the driver's license fee for cars of less than thirty horse power at two dollars and more than thirty horse power at four dollars. It fixes the registration fee at three dollars for cars of not more than ten horse power; five dollars for those from eleven to twenty-nine horse power; and ten dollars for those of thirty or greater horse power. Both license fees and registration fees, whensoever issued, expire at the close of the calendar year. The moneys received from license and registration fees in excess of the amount required for the maintenance of the Motor Vehicle Department are to be applied to the maintenance of the improved highways. Penalties are prescribed for using the public highways [*165] without complying with the requirements of the act. The material portions of the statute are copied in the margin. [1]

> 1 "Part IV. -- THE OPERATION OF MOTOR VEHICLES.
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> * * * *
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> "16. -- (1) Every resident of this State and every nonresident, whose automobile shall be driven in this State, shall, before using such vehicle on the public highways, register the same, and no motor vehicle shall be driven unless so registered. Every registration shall expire and the certificate thereof become void on the thirty-first of December of each year; provided, it may be lawful for any automobile duly registered, to operate under said registration certificate for a period not

exceeding thirty-one days after the expiration of said registration certificate. . . . The applicant shall pay the Commissioner of Motor Vehicles for each registration, a fee of three dollars for automobiles of the first class; five dollars for the second class; and ten dollars for the third class. Automobiles of ten horsepower or less, shall be of the first class; from eleven to twenty-nine horsepower, inclusive, of the second class; and of thirty horsepower or more, of the third class. . . . Each owner having a residence outside of the State shall file with the Secretary of State a duly executed instrument, constituting the Secretary of State, and his successors in office, the true and lawful attorney upon whom all original process in any action or legal proceeding caused by the operation of his registered motor vehicle, within the State, against such owner may be served, and therein shall agree that any original process against such owner shall be of the same force and effect as if served on such owner within this State; the service of such process shall be made by leaving a copy of the same in the office of the Secretary of State, with a service fee of two dollars, to be taxed on the plaintiff's costs of suit. Said Commissioner of Motor Vehicles shall forthwith notify such owner of such service by letter directed to him at the post office address stated in his application. . . .

"17. -- No person shall hereafter drive an automobile upon any public highway in this State, unless licensed to do so in accordance with the provisions of this act. No person under the age of sixteen years shall be licensed to drive automobiles, nor shall any person be licensed to drive automobiles until said person shall have passed a satisfactory examination as to his ability as an operator. . . . There shall be two classes of drivers' licenses. Those authorizing the licensee to drive cars of less than thirty horsepower shall be of the first class, and those authorizing the licensee to drive cars of thirty and greater horsepower shall be of the second class. The annual license fee to be charged shall be two dollars for drivers of the first class, and four dollars for drivers of the second class. . . .

* * * *

"Part X. -- MISCELLANEOUS.

"37. -- Moneys received in accordance with the provisions of this act, whether from fines, penalties, registration fees, license fees, or otherwise, shall be accounted for and forwarded to the Commissioner of Motor Vehicles and by him paid over to the Treasurer of the State of New Jersey, to be appropriated annually to the Commissioner of Public Roads, to be used as a fund for the repair of the improved roads throughout the State, whether they had been originally built by State aid or not, and to be by the said Commissioner, apportioned once each year among the several counties of this State according to the mileage of improved roads in each county, the share apportioned each county to be used for the repair of improved roads in that county under the direction of the Commissioner of Public Roads or his authorized representatives, and to be paid in the same manner as State funds are now paid for the improvement of public roads. The term 'improved roads' as used in this section shall not include streets paved with cobble stones, Belgium block or asphalt."

Kane, a resident of New York, was arrested while driving his automobile on the public highways of New Jersey [*166] and tried in the Recorder's Court. The following facts were stipulated: Kane had been duly licensed as a driver under the laws of both New York and New Jersey. He had registered his car in New York but not in New Jersey. He had not filed with the Secretary of State of New Jersey the prescribed instrument appointing that official his attorney upon whom process might be served. When arrested he was on his way from New York to Pennsylvania. The aggregate receipts from license and registration fees for the year exceeded the amount required to defray the expenses of the Motor Vehicle Department, so that a large sum became available for maintenance of the improved roads of the State. Kane contended that the statute was invalid as to him, a nonresident, because it violated the Constitution and laws of the United States regulating interstate commerce and also because it violated [*167] the Fourteenth Amendment. These contentions were overruled; and he was fined five dollars. The conviction was duly reviewed both in the [***227] Supreme Court and by the Court of Errors and Appeals. The contentions were repeated in both of those courts; and both courts affirmed the conviction. *Kane* v. *New Jersey*, 81 N.J.L. 594. The case was brought here by writ of error.

The power of a State to regulate the use of motor vehicles on its highways has been recently considered by this court and broadly sustained. It extends to nonresidents as well as to residents. It includes the right to exact reasonable compensation for special facilities afforded as well as reasonable provisions to ensure safety. And it is properly exercised in imposing a license fee graduated according to the horse power of the engine. [**32] *Hendrick* v. *Maryland*, 235 U.S. 610. Several reasons are urged why that case should not be deemed controlling:

1. The Maryland law did not require the nonresident to appoint an agent within the State upon whom process may be served. But it was recognized in discussing it, that "the movement of motor vehicles over the highways is attended by constant and serious dangers to the public" (p. 622). We know that ability to enforce criminal and civil penalties for transgression is an aid to securing observance of laws. And in view of the speed of the automobile and the habits of men, we cannot say that the Legislature of New Jersey was unreasonable in believing that ability to establish, by legal proceedings within the State, any financial liability of nonresident owners, was essential to public safety. There is nothing to show that the requirement is unduly burdensome in practice. It is not a discrimination against nonresidents, denying them equal protection of the law. On the contrary, it puts nonresident owners upon an equality with resident owners.

2. The Maryland law contained a reciprocal provision by which nonresidents whose cars are duly registered in [*168] their home State are given, for a limited period, free use of the highways in return for similar privileges granted to residents of Maryland. Such a provision promotes the convenience of owners and prevents the relative hardship of having to pay the full registration fee for a brief use of the highways. It has become common in state legislation; and New Jersey has embodied it in her law since the trial of this case in the lower court. But it is not [***228] an essential of valid regulation. Absence of it does not involve discrimination against nonresidents; for any resident similarly situated would be subjected to the same imposition. A resident desiring to use the highways only a single day would also have to pay the full annual fee. The amount of the fee is not so large as to be unreasonable; and it is clearly within the discretion of the State to determine whether the compensation for the use of its highways by automobiles shall be determined by way of a fee, payable annually or semi-annually, or by a toll based on mileage or otherwise. Our decision sustaining the Maryland law was not dependent upon the existence of the reciprocal provision. Indeed, the plaintiff in error there was not in a position to avail himself of the reciprocal clause; and it was referred to only because of the contention that the law discriminated between nonresidents; that is, that Maryland extended to residents of other States privileges it denied to residents of the District of Columbia.

3. In *Hendrick* v. *Maryland*, it appeared only that the nonresident drove his automobile *into* the State. In this case it is admitted that he was driving *through* the State. The distinction is of no significance. As we there said (622): "In the absence of national legislation covering the subject a State may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles -- those moving in interstate commerce as well as others."

[**33] 4. In the *Hendrick Case* it did not appear, as here, that [*169] the fees collected under the motor vehicle law exceeded the amount required to defray the expense of maintaining the regulation and inspection department. But the Maryland statute, like that of New Jersey, contemplated that there would be such excess and provided that it should be applied to the maintenance of improved roads. And it was expressly recognized that the purpose of the Maryland law "was to secure some compensation for the use of facilities provided at great cost from the class for whose needs they are essential and whose operations over them are peculiarly injurious."

The judgment should be

Affirmed.

MR. JUSTICE PITNEY took no part in the consideration or decision of this case.

274 U.S. 352, *; 47 S. Ct. 632, **;
71 L. Ed. 1091, ***; 1927 U.S. LEXIS 34

HESS v. PAWLOSKI

No. 263

SUPREME COURT OF THE UNITED STATES

274 U.S. 352; 47 S. Ct. 632; 71 L. Ed. 1091; 1927 U.S. LEXIS 34

April 18, 1927, Argued
May 16, 1927, Decided

PRIOR HISTORY: ERROR TO THE SUPERIOR COURT OF WORCESTER COUNTY, MASSACHUSETTS.

ERROR to a judgment of the Superior Court of Worcester County, Massachusetts, entered on rescript from the Supreme Judicial Court, sustaining a verdict for damages in an action for personal injuries inflicted on Pawlowski, the plaintiff, by the negligent driving of a motor vehicle, by Hess, non-resident defendant, on a Massachusetts highway.
Pawloski v. Hess, 253 Mass. 478, 149 N.E. 122, 1925 Mass. LEXIS 1247 (1925)

DISPOSITION: 250 Mass. 22; 253 Mass. 478, affirmed.

SYLLABUS

Massachusetts Gen. Ls., c. 90, as amended by Stat. 1923, c. 431, § 2, which declares that use of the State's highways by a non-resident motorist shall be deemed equivalent to an appointment by him of the registrar as his attorney upon whom process may be served in any action growing out of any accident or collision in which the non-resident may be involved while operating a motor vehicle upon such highways, and which provides for service in such case by leaving a copy of the process and a fee with the registrar or in his office, but conditions the sufficiency of the service upon the sending of notice of it forthwith and a copy of the process to the defendant by registered mail and upon his actually receiving and receipting for the same, and which allows the non-resident when so served such continuances as may be necessary to afford him a reasonable opportunity to defend the action, -- *held* not in conflict with the Due Process Clause of the Fourteenth Amendment. *Kane* v. *New Jersey*, 242 U.S. 160. P. 355.

COUNSEL: Mr. George Gowen Parry for plaintiff in error.

Mr. Harry John Meleski was on the brief for defendant in error.

JUDGES: Taft, Holmes, Van Devanter, McReynolds, Brandeis, Sutherland, Butler, Sanford, Stone

OPINION BY: BUTLER

OPINION

[*353] [**632] [***1093] MR. JUSTICE BUTLER delivered the opinion of the Court.

This action was brought by defendant in error to recover damages for personal injuries. The declaration alleged that plaintiff in error negligently and wantonly drove a motor vehicle on a public highway in Massachusetts and that by reason thereof the vehicle struck and injured defendant in error. Plaintiff in error is a resident of Pennsylvania. No personal service was made on him and no property belonging to him was attached. The service of process was made in compliance with c. [*354] 90, General Laws of Massachusetts, as amended by Stat. 1923, c. 431, § 2, the material parts of which follow:

"The acceptance by a non-resident of the rights and privileges conferred by section three or four, as evidenced by his operating a motor vehicle thereunder, or the operation by a non-resident of a motor vehicle on a public way in the commonwealth other than under said sections, shall be deemed equivalent to an appointment by such non-resident of the registrar or his successor in office, to be his true and lawful attorney upon whom may be served all lawful processes in any action [***1094] or proceeding against him, growing out of any accident or collision in which said non-resident may be involved while operating a motor vehicle on such a way, and said acceptance or operation shall be a signification of his agreement that any [**633] such process against him which is so served shall be of the same legal force and validity as if served on him personally. Service of such process shall be made by leaving a copy of the process with a fee of two dollars in the hands of the registrar, or in his office, and such service shall be sufficient service upon the said non-resident; provided, that notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff to the defendant, and the defendant's return receipt and the plaintiff's affidavit of compliance herewith are appended to the writ and entered with the declaration. The court in which the action is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action."

Plaintiff in error appeared specially for the purpose of contesting jurisdiction and filed an answer in abatement and moved to dismiss on the ground that the service of process, if sustained, would deprive him of his property without due process of law in violation of the Fourteenth Amendment. The court overruled the answer in abatement and denied the motion. The Supreme Judicial [*355] Court held the statute to be a valid exercise of the police power, and affirmed the order. 250 Mass. 22. At the trial the contention was renewed and again denied. Plaintiff in error excepted. The jury returned a verdict for defendant in error. The exceptions were overruled by the Supreme Judicial Court. 253 Mass. 478. Thereupon the Superior Court entered judgment. The writ of error was allowed by the chief justice of that court.

The question is whether the Massachusetts enactment contravenes the due process clause of the Fourteenth Amendment.

The process of a court of one State cannot run into another and summon a party there domiciled to respond to proceedings against him. Notice sent outside the State to a non-resident is unavailing to give jurisdiction in an action against him personally for money recovery. *Pennoyer* v. *Neff*, 95 U.S. 714. There must be actual service within the State of notice upon him or upon some one authorized to accept service for him. *Goldey* v. *Morning News*, 156 U.S. 518. A personal judgment rendered against a non-resident who has neither been served with process nor appeared in the suit is without validity. *McDonald* v. *Mabee*, 243 U.S. 90. The mere transaction of business in a State by non-resident natural persons does not imply consent to be bound by the process of its courts. *Flexner* v. *Farson*, 248 U.S. 289. The power of a State to exclude foreign corporations, although not absolute but qualified, is the ground on which such an implication is supported as to them. *Pennsylvania Fire Insurance Co.* v. *Gold Issue Mining Co.*, 243 U.S. 93, 96. But a State may not withhold from non-resident individuals the right of doing business therein. The privileges and immunities clause of the Constitution, § 2, Art. IV, safeguards to the citizens of one State the right "to pass through, or to reside in any other state for purposes of trade, agriculture, professional pursuits, or otherwise." [*356] And it prohibits state legislation discriminating against citizens of other States, *Corfield* v. *Coryell*, 4 Wash. C. C. 371, 381; *Ward* v. *Maryland*, 12 Wall. 418, 430; *Paul* v. *Virginia*, 8 Wall. 168, 180.

Motor vehicles are dangerous machines; and, even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest the State may make and enforce regulations reasonably calculated to promote care on the part of all, residents and non-residents alike, who use its highways. The measure in question operates to require a non-resident to answer for his conduct in the State where arise causes of action alleged against him, as well as to provide for a claimant a convenient method by which he may sue to enforce his rights. Under the statute the implied consent is limited to proceedings growing out of accidents or collisions on a highway in which the non-resident may be involved. It is required that he shall actually receive and receipt for notice of the service and a copy of the process. And it contemplates such continuances as may be found necessary to give reasonable time and opportunity for defense. It [***1095] makes no hostile discrimination against non-residents but tends to put them on the same footing as residents. Literal and precise equality in respect of this matter is not attainable; it is not required. *Canadian Northern Ry. Co.* v. *Eggen*, 252 U.S. 553, 561-562. The State's power to regulate the use of its highways extends to their use by non-residents as well as by residents. *Hendrick* v. *Maryland*, 235 U.S. 610, 622. And, in advance of the operation of a motor vehicle on its highway by a non-resident, the State may require him to appoint one of its officials as his agent on whom process may be served in proceedings growing out of such use. *Kane* v. *New Jersey*, 242 U.S. 160, 167. That case recognizes power of the State to exclude a non-resident until the formal appointment is made. And, having the power so to exclude, the State [*357] may declare that the use of the highway by the non-resident is the equivalent of the appointment of the registrar as agent on whom process may be served. Cf. *Pennsylvania Fire Insurance Co.* v. *Gold Issue Mining Co., supra*, 96; *Lafayette Ins. Co.* v. *French*, 18 How. 404, 407-408. The difference between the formal and implied appointment is not substantial [**634] so far as concerns the application of the due process clause of the Fourteenth Amendment.

Judgment affirmed.

311 U.S. 457, *; 61 S. Ct. 339, **;
85 L. Ed. 278, ***; 1940 U.S. LEXIS 2

MILLIKEN ET AL. v. MEYER, ADMINISTRATRIX

No. 66

SUPREME COURT OF THE UNITED STATES

311 U.S. 457; 61 S. Ct. 339; 85 L. Ed. 278; 1940 U.S. LEXIS 2; 132 A.L.R. 1357

December 13, 1940, Argued
December 23, 1940, Decided

SUBSEQUENT HISTORY: Rehearing denied by Milliken v. Meyer, 312 U.S. 712, 85 L. Ed. 1143, 61 S. Ct. 548, 1941 U.S. LEXIS 1030 (1941)

PRIOR HISTORY: CERTIORARI TO THE SUPREME COURT OF COLORADO.

CERTIORARI, 310 U.S. 622, to review the affirmance of a judgment which denied full faith and credit to a foreign judgment.
Meyer v. Milliken, 105 Colo. 532, 100 P.2d 151, 1940 Colo. LEXIS 314 (1940)

DISPOSITION: 105 Colo. 532; 100 P. 2d 151, reversed.

SYLLABUS

1. Where its judgment is challenged in another State, the jurisdiction of a state court over the parties or the subject matter is open to inquiry. P. 462.

2. If the judgment on its face appears to be a record of a court of general jurisdiction, then jurisdiction over the parties and the subject matter will be presumed, unless disproved by extrinsic evidence or by the record itself. P. 462.

3. Where a judgment of a state court having jurisdiction of the parties and the subject matter is challenged in another State, the full faith and credit clause of the Federal Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based. P. 462.

4. A judgment *in personam* rendered in the State of his domicile against a defendant who, pursuant to a statute of that State providing for the service of process on absent defendants, was personally served in another State, *held* valid and entitled to full faith and credit under the Federal Constitution. P. 463.

A court of another State can not refuse to give full faith and credit to such judgment on the ground of an inconsistency between the judgment and the findings.

5. An incident of domicile is amenability to suit within the State even during sojourns without the State, where the State has provided a reasonable method for apprising the absent party of the proceedings against him. P. 464.

COUNSEL: Mr. Jean S. Breitenstein, with whom Messrs. Harold H. Healy and Edward M. Freeman were on the brief, for petitioners.

Mr. Fred S. Caldwell submitted for respondent.

JUDGES: Hughes, McReynolds, Stone, Roberts, Black, Reed, Frankfurter, Douglas, Murphy

OPINION BY: DOUGLAS

OPINION

[*458] [**340] [***281] MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The Colorado Supreme Court held null and void a judgment of the Wyoming court against the claim of Milliken that that judgment was entitled to full faith and credit under the federal constitution. 101 Colo. 564; 76 P. 2d 420; 105 Colo. 532; 100 P. 2d 151. The case is here on a petition for certiorari which we granted because of the substantial character of the federal question which is raised.

The controversy is over a 1/64th interest in profits from operation of certain Colorado oil properties. Transcontinental [1] on August 31, 1922, contracted to pay Meyer [*459] 4/64ths of those profits. Milliken asserted a claim to a two-thirds interest in that 4/64ths share. As a settlement of that dispute Transcontinental on May 3, 1924, contracted to pay Milliken a 2/64ths interest and Milliken assigned [2] to Transcontinental [**341] all his claims against Meyer pertaining to the lands in question and to Meyer's 4/64ths interest in the profits.

1 Transcontinental Oil Co. In June, 1923, Transcontinental had disposed of a one-half interest in the properties in question to Texas Production Co. In April, 1931, Ohio Oil Co. acquired the remaining interest of Transcontinental in the properties.

2 Milliken's son, Carl S. Milliken, had an interest in the Milliken claim which he likewise assigned to Transcontinental.

Later Milliken instituted suit in the Wyoming court alleging a joint adventure with Transcontinental and Meyer and charging a conspiracy on their part to defraud him of his rights. He sought a cancellation of the contracts of May 3, 1924, and an accounting from Transcontinental and Meyer. Meyer, who was asserted to be a resident of Wyoming, was personally served with process in Colorado pursuant to the Wyoming statutes; [3] but he made no appearance in the Wyoming cause. [4] Transcontinental appeared and answered. The court found that there was a joint venture between Milliken and [*460] Transcontinental; that the contracts of May 3, 1924, were valid; and that the action against Transcontinental should be dismissed with prejudice. It found, however, that there was a joint venture between Milliken and Meyer; that they were entitled to share equally in 6/64ths of the net profits; and that, while Meyer had regularly received 4/64ths, he had refused to account to Milliken for his 1/64th part. The court did not purport to decree the 1/64th interest to Milliken or anyone else but entered an *in personam* judgment against Meyer for the profits which Meyer had withheld from Milliken, together with interest thereon; and enjoined Transcontinental from paying, and Meyer from receiving, more than 3/64ths of the net profits. This was on July 11, 1931. Thereafter the 1/64th share was withheld from Meyer and paid over to Milliken. [5] In 1935 respondent instituted this [***282] suit [6] in the Colorado court praying, *inter alia*, for a judgment against Milliken for the sums withheld under the Wyoming judgment and paid to Milliken, for an injunction against Milliken attempting to enforce the Wyoming judgment, and for a decree that the Wyoming judgment was a nullity for want of jurisdiction over Meyer or his property. The bill alleged, *inter alia*, that Meyer at the time of service in the Wyoming court had long ceased to be a resident of Wyoming and was a resident of Colorado; that the service obtained on him did [*461] not give the Wyoming court jurisdiction of his person or property; and that such judgment was violative of the due process clause of the Fourteenth Amendment. Milliken's answer alleged, *inter alia*, that Meyer was a resident of Wyoming at the time of the Wyoming action and that the Wyoming judgment was entitled to full faith and credit in Colorado under the federal constitution. The Colorado court, on issues joined, found that Meyer was domiciled in Wyoming when the Wyoming suit was commenced, that the Wyoming statutes for substituted service were constitutional, that [**342] the affidavit for constructive service [7] on Meyer was filed in good faith, substantially conformed to the Wyoming statute and stated the truth, that Wyoming had jurisdiction over the person of Meyer, that the Wyoming decree [8] was not void, and that the bill should be dismissed.

3 Wyo. Comp. Stat. 1920, § 5636 provided: "Service by publication may be had in either of the following cases: . . . 6. In actions where the defendant, being a resident of this state, has departed from the county of his residence with the intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed with like intent."

Sec. 5641 provided:

"Personal service out of state. In all cases where service may be made by publication under the provisions of this chapter, personal service of a copy of the summons and the petition in said action may be made out of the state, and such summons when issued for service out of the state, shall be returnable at the option of the party having it issued, on the second, third or fourth Monday after its date, and shall require the defendant or defendants named therein to answer the petition in said action on or before the third Saturday after the return day named in said summons."

4 His deposition, however, was taken on oral interrogatories concerning his legal residence in Wyoming.

5 By the Ohio Oil Co. one of the vendees of Transcontinental. These payments were to Margaret M. Milliken to whom Milliken's interests had been assigned.

6 Texas Production Co. and Ohio Oil Co. were joined as defendants. They filed separate answers and cross-complaints which are not material here. It should be noted, however, that the Ohio Oil Co. in its answer set up the contract between Milliken and Transcontinental whereby Milliken assigned all of his rights against Meyer in the lands and the 4/64ths interest in question to Transcontinental and alleged that Milliken was estopped thereby to make any claims against it for the disputed 1/64th interest.

7 While the affidavit for constructive service stated in accordance with § 5636 of the Wyoming Comp. Stat., *supra*, note 3, that Meyer concealed himself in order to avoid service of summons, the present record does not show whether or not the Wyoming court so found.

8 The Wyoming judgment does not seem to have been proved by respondents in accordance with the provisions of R. S. § 905, 28 U. S. C. §

687 in their suit in Colorado to set it aside. Nor was that judgment so proved by the answers. But since the Colorado trial court gave the Wyoming judgment full faith and credit despite lack of such proof, respondents cannot here claim that that was error.

[***LEdHR1] [1]That judgment was reversed by the Supreme Court of Colorado. It did not pass on the question of whether or not the Wyoming court had jurisdiction of the parties and subject matter. It held that the Wyoming decree was void on its face because of an irreconcilable contradiction between the findings and the decree. In its view the finding of the Wyoming court that Milliken's assignment of May 3, 1924, to Transcontinental of his claims against Meyer was valid, deprived the court of any ground upon which it could predicate a judgment against Meyer, since [*462] the only basis for an action by Milliken against Meyer rested upon the claim before its assignment.

[***LEdHR2] [2] [***LEdHR3] [3] [***LEdHR4] [4] [***LEdHR5] [5]Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry. *Grover & Baker Sewing Machine Co.* v. *Radcliffe*, 137 U.S. 287;*Adam* v. *Saenger*, 303 U.S. 59.But if the judgment on its face appears to be a "record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself." *Adam* v. *Saenger, supra*, at p. 62. In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the [***283] cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based. *Fauntleroy* v. *Lum*, 210 U.S. 230; *Roche* v. *McDonald*, 275 U.S. 449; *Titus* v. *Wallick*, 306 U.S. 282. Whatever mistakes of law may underlie the judgment (*Cooper* v. *Reynolds*, 10 Wall. 308) it is "conclusive as to all the media concludendi. " *Fauntleroy* v. *Lum, supra*, at p. 237.

Accordingly, if the Wyoming court had jurisdiction over Meyer, the holding by the Colorado Supreme Court that the Wyoming judgment was void because of an inconsistency between the findings and the decree was not warranted.

[***LEdHR6] [6] [***LEdHR7] [7] [***LEdHR8] [8] [***LEdHR9] [9] [***LEdHR10] [10] [***LEdHR11] [11] [***LEdHR12] [12]On the findings of the Colorado trial court, not impaired by the Colorado Supreme Court, it is clear that Wyoming had jurisdiction over Meyer in the 1931 suit. Domicile in the state is alone sufficient to bring an absent defendant within the reach of the state's jurisdiction for purposes of a personal judgment by means of appropriate substituted service. Substituted service in such cases has been quite uniformly upheld where the absent defendant was served at his usual place of abode in the state (*Huntley* v. *Baker*, 33 Hun 578; *Hurlbut* v. *Thomas*, 55 Conn. 181; [*463] 10 A. 556; *Harryman* v. *Roberts*, 52 Md. 64) as well as where he was personally served without the state. *In re Hendrickson*, 40 S. D. 211; 167 N. W. 172. That such substituted service may be wholly adequate to meet the requirements of due process was recognized by this Court in *McDonald* v. *Mabee*, 243 U.S. 90, despite earlier intimations to the contrary. See *Pennoyer* v. *Neff*, 95 U.S. 714, 733; Burdick, Service as a Requirement of Due Process in Actions In Personam, 20 Mich. L. Rev. 422. Its adequacy so far as due process is concerned is dependent on [**343] whether or not the form of substituted service provided for such cases and employed is reasonably calculated to give him actual notice of the proceedings and an opportunity to be heard. If it is, the traditional notions of fair play and substantial justice (*McDonald* v. *Mabee, supra*) implicit in due process are satisfied. Here there can be no question on that score. Meyer did not merely receive actual notice of the Wyoming proceedings. While outside the state, he was personally served in accordance with a statutory scheme which Wyoming had provided for such occasions. And in our view the machinery employed met all the requirements of due process. Certainly then Meyer's domicile in Wyoming was a sufficient basis for that extraterritorial service. As in case of the authority of the United States over its absent citizens (*Blackmer* v. *United States*, 284 U.S. 421), the authority of a state over one of its citizens is not terminated by the mere fact of his absence from the state. The state which accords him privileges and affords protection to him and his property by virtue of his domicile may also exact reciprocal duties. "Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable" from the various incidences of state citizenship. See *Lawrence* v. *State Tax Commission*, 286 U.S. 276, 279; *New York ex rel. Cohn* v. *Graves*, 300 U.S. 308. The responsibilities [*464] [***284] of that citizenship arise out of the relationship to the state which domicile creates. That relationship is not dissolved by mere absence from the state. The attendant duties, like the rights and privileges incident to domicile, are not dependent on continuous presence in the state. One such incident of domicile is amenability to suit within the state even during sojourns without the state, where the state has provided and employed a reasonable method for apprising such an absent party of the proceedings against him. See Restatement, Conflict of Laws, §§ 47, 79; Dodd, Jurisdiction in Personal Actions, 23 Ill. L. Rev. 427. Here such a reasonable method was so provided and so employed.

Reversed.

326 U.S. 310, *; 66 S. Ct. 154, **;
90 L. Ed. 95, ***; 1945 U.S. LEXIS 1447

INTERNATIONAL SHOE CO. v. STATE OF WASHINGTON ET AL.

No. 107

SUPREME COURT OF THE UNITED STATES

326 U.S. 310; 66 S. Ct. 154; 90 L. Ed. 95; 1945 U.S. LEXIS 1447; 161 A.L.R. 1057

November 14, 1945, Argued
December 3, 1945, Decided

PRIOR HISTORY: APPEAL FROM THE SUPREME COURT OF WASHINGTON.

APPEAL from a judgment upholding the constitutionality of a state unemployment compensation statute as applied to the appellant corporation.

DISPOSITION: 22 Wash. 2d 146, 154 P. 2d 801, affirmed.

SYLLABUS

Activities within a State of salesmen in the employ of a foreign corporation, exhibiting samples of merchandise and soliciting orders from prospective buyers to be accepted or rejected by the corporation at a point outside the State, were systematic and continuous, and resulted in a large volume of interstate business. A statute of the State requires employers to pay into the state unemployment compensation fund a specified percentage of the wages paid for the services of employees within the State. *Held*:

1. In view of 26 U. S. C. § 1606 (a), providing that no person shall be relieved from compliance with a state law requiring payments to an unemployment fund on the ground that he is engaged in interstate commerce, the fact that the corporation is engaged in interstate commerce does not relieve it from liability for payments to the state unemployment compensation fund. P. 315.

2. The activities in behalf of the corporation render it amenable to suit in courts of the State to recover payments due to the state unemployment compensation fund. P. 320.

(a) The activities in question established between the State and the corporation sufficient contacts or ties to make it reasonable and just, and in conformity to the due process requirements of the Fourteenth Amendment, for the State to enforce against the corporation an obligation arising out of such activities. P. 320.

(b) In such a suit to recover payments due to the unemployment compensation fund, service of process upon one of the corporation's salesmen within the State, and notice sent by registered mail to the corporation at its home office, satisfies the requirements of due process. P. 320.

3. The tax imposed by the state unemployment compensation statute -- construed by the state court, in its application to the corporation, as a tax on the privilege of employing salesmen within the State -- does not violate the due process clause of the Fourteenth Amendment. P. 321.

COUNSEL: Mr. Henry C. Lowenhaupt, with whom Messrs. Lawrence J. Bernard, Jacob Chasnoff and Abraham Lowenhaupt were on the brief, for appellant.

George W. Wilkins, Assistant Attorney General of the State of Washington, with whom Smith Troy, Attorney General, and Edwin C. Ewing, Assistant Attorney General, were on the brief, for appellees.

JUDGES: Stone, Black, Reed, Frankfurter, Douglas, Murphy, Rutledge, Burton; Jackson took no part in the consideration or decision of this case.

OPINION BY: STONE

OPINION

[*311] [**156] [***99] MR. CHIEF JUSTICE STONE delivered the opinion of the Court.

The questions for decision are (1) whether, within the limitations of the due process clause of the Fourteenth Amendment, appellant, a Delaware corporation, has by its activities in the State of Washington rendered itself amenable to proceedings in the courts of that state to recover unpaid contributions to the state unemployment compensation fund exacted by state statutes, Washington Unemployment Compensation Act, Washington Revised Statutes, § 9998-103a through § 9998-123a, 1941 Supp., and (2) whether the state can exact those contributions consistently with the due process clause of the Fourteenth Amendment.

The statutes in question set up a comprehensive scheme of unemployment compensation, the costs of which are defrayed by contributions required to be made by employers to a state unemployment compensation fund. [*312] The contributions are a specified percentage of the wages payable annually by

each employer for his employees' services in the state. The assessment and collection of the contributions and the fund are administered by appellees. Section 14 (c) of the Act (Wash. Rev. Stat., 1941 Supp., § 9998-114c) authorizes appellee Commissioner to issue an order and notice of assessment of delinquent contributions upon prescribed personal service of the notice upon the employer if found within the state, or, if not so found, by mailing the notice to the employer by registered mail at his last known address. That section also authorizes the Commissioner to collect the assessment by distraint if it is not paid within ten days after service of the notice. By §§ 14e and 6b the order of assessment may be administratively reviewed by an appeal tribunal within the office of unemployment upon petition of the employer, and this determination is by § 6i made subject to judicial review on questions of law by the state Superior Court, with further right of appeal in the state Supreme Court as in other civil cases.

In this case notice of assessment for the years in question was personally served upon a sales solicitor employed by appellant in the State of Washington, and a copy of the notice was mailed by registered mail to appellant at its address in St. [***100] Louis, Missouri. Appellant appeared specially before the office of unemployment and moved to set aside the order and notice of assessment on the ground that the service upon appellant's salesman was not proper service upon appellant; that appellant was not a corporation of the State of Washington and was not doing business within the state; that it had no agent within the state upon whom service could be made; and that appellant is not an employer and does not furnish employment within the meaning of the statute.

The motion was heard on evidence and a stipulation of facts by the appeal tribunal which denied the motion [*313] and ruled that appellee Commissioner was entitled to recover the unpaid contributions. That action [**157] was affirmed by the Commissioner; both the Superior Court and the Supreme Court affirmed. 22 Wash. 2d 146, 154 P. 2d 801. Appellant in each of these courts assailed the statute as applied, as a violation of the due process clause of the Fourteenth Amendment, and as imposing a constitutionally prohibited burden on interstate commerce. The cause comes here on appeal under § 237 (a) of the Judicial Code, 28 U. S. C. § 344 (a), appellant assigning as error that the challenged statutes as applied infringe the due process clause of the Fourteenth Amendment and the commerce clause.

The facts as found by the appeal tribunal and accepted by the state Superior Court and Supreme Court, are not in dispute. Appellant is a Delaware corporation, having its principal place of business in St. Louis, Missouri, and is engaged in the manufacture and sale of shoes and other footwear. It maintains places of business in several states, other than Washington, at which its manufacturing is carried on and from which its merchandise is distributed interstate through several sales units or branches located outside the State of Washington.

Appellant has no office in Washington and makes no contracts either for sale or purchase of merchandise there. It maintains no stock of merchandise in that state and makes there no deliveries of goods in intrastate commerce. During the years from 1937 to 1940, now in question, appellant employed eleven to thirteen salesmen under direct supervision and control of sales managers located in St. Louis. These salesmen resided in Washington; their principal activities were confined to that state; and they were compensated by commissions based upon the amount of their sales. The commissions for each year totaled more than $ 31,000. Appellant supplies its salesmen with a line of samples, each consisting of one shoe of a pair, which [*314] they display to prospective purchasers. On occasion they rent permanent sample rooms, for exhibiting samples, in business buildings, or rent rooms in hotels or business buildings temporarily for that purpose. The cost of such rentals is reimbursed by appellant.

The authority of the salesmen is limited to exhibiting their samples and soliciting orders from prospective buyers, at prices and on terms fixed by appellant. The salesmen transmit the orders to appellant's office in St. Louis for acceptance or rejection, and when accepted the merchandise for filling the orders is shipped f. o. b. from points outside Washington to the purchasers within the state. All the merchandise shipped into Washington is invoiced at the place of shipment from which collections are made. No salesman has authority to enter into contracts or to make collections.

The Supreme Court of Washington was of opinion that the regular and systematic solicitation of orders in the state by appellant's salesmen, resulting in a continuous flow of appellant's product into the state, [***101] was sufficient to constitute doing business in the state so as to make appellant amenable to suit in its courts. But it was also of opinion that there were sufficient additional activities shown to bring the case within the rule frequently stated, that solicitation within a state by the agents of a foreign corporation plus some additional activities there are sufficient to render the corporation amenable to suit brought in the courts of the state to enforce an obligation arising out of its activities there. *International Harvester Co.* v. *Kentucky*, 234 U.S. 579, 587; *People's Tobacco Co.* v. *American Tobacco Co.*, 246 U.S. 79, 87; *Frene* v. *Louisville Cement Co.*, 77 U. S. App. D. C. 129, 134 F.2d 511, 516. The court found such additional activities in the salesmen's display of samples sometimes in permanent display rooms, and the salesmen's residence within the state, continued over a period of years, all resulting in a [*315] substantial

volume of merchandise regularly shipped by appellant to purchasers within the state. The court also held that the statute as applied did not invade the constitutional power of Congress to regulate interstate commerce and did not impose a prohibited burden on such commerce.

[***LEdHR1] [1]Appellant's argument, renewed here, that the statute imposes an unconstitutional burden on interstate commerce need not detain us. For 53 Stat. 1391, 26 U. S. C. § 1606 (a) provides that "No person required under a State law to make payments to an unemployment fund shall be [**158] relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce." It is no longer debatable that Congress, in the exercise of the commerce power, may authorize the states, in specified ways, to regulate interstate commerce or impose burdens upon it. *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co.,* 299 U.S. 334;*Perkins* v. *Pennsylvania*, 314 U.S. 586;*Standard Dredging Corp.* v. *Murphy,* 319 U.S. 306, 308;*Hooven & Allison Co.* v. *Evatt*, 324 U.S. 652, 679;*Southern Pacific Co.* v. *Arizona*, 325 U.S. 761, 769.

Appellant also insists that its activities within the state were not sufficient to manifest its "presence" there and that in its absence the state courts were without jurisdiction, that consequently it was a denial of due process for the state to subject appellant to suit. It refers to those cases in which it was said that the mere solicitation of orders for the purchase of goods within a state, to be accepted without the state and filled by shipment of the purchased goods interstate, does not render the corporation seller amenable to suit within the state. See *Green* v. *Chicago, B. & Q. R. Co.,* 205 U.S. 530, 533; *International Harvester Co.* v. *Kentucky, supra,* 586-587; *Philadelphia* [*316] *& Reading R. Co.* v. *McKibbin,* 243 U.S. 264, 268; *People's Tobacco Co.* v. *American Tobacco Co., supra,* 87. And appellant further argues that since it was not present within the state, it is a denial of due process to subject it to taxation or other money exaction. It thus denies the power of the state to lay the tax or to subject appellant to a suit for its collection.

[***LEdHR2] [2]Historically the jurisdiction of courts to render judgment *in personam* [***102] is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. *Pennoyer* v. *Neff,* 95 U.S. 714, 733. But now that the *capias ad respondendum* has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *Milliken* v. *Meyer,* 311 U.S. 457, 463. See Holmes, J., in *McDonald* v. *Mabee,* 243 U.S. 90, 91. Compare *Hoopeston Canning Co.* v. *Cullen,* 318 U.S. 313, 316, 319. See *Blackmer* v. *United States,* 284 U.S. 421; *Hess* v. *Pawloski,* 274 U.S. 352; *Young* v. *Masci,* 289 U.S. 253.

[***LEdHR3] [3] [***LEdHR4] [4] [***LEdHR5] [5]Since the corporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact, *Klein* v. *Board of Supervisors,* 282 U.S. 19, 24, it is clear that unlike an individual its "presence" without, as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it. To say that the corporation is so far "present" there as to satisfy due process requirements, for purposes of taxation or the maintenance of suits against it in the courts of the state, is to beg the question to be decided. For the terms "present" or "presence" are [*317] used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process. L. Hand, J., in *Hutchinson* v. *Chase & Gilbert,* 45 F.2d 139, 141. Those demands may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. An "estimate of the inconveniences" which would result to the corporation from a trial away from its "home" or principal place of business is relevant in this connection. *Hutchinson* v. *Chase & Gilbert, supra,* 141.

[**159] [***LEdHR6] [6] [***LEdHR7] [7]"Presence" in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. *St. Clair* v. *Cox,* 106 U.S. 350, 355; *Connecticut Mutual Co.* v. *Spratley,* 172 U.S. 602, 610-611; *Pennsylvania Lumbermen's Ins. Co.* v. *Meyer,* 197 U.S. 407, 414-415; *Commercial Mutual Co.* v. *Davis,* 213 U.S. 245, 255-256; *International Harvester Co.* v. *Kentucky, supra;* cf. *St. Louis S. W. R. Co.* v. *Alexander,* 227 U.S. 218. Conversely it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the [***103] corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there. *St. Clair* v. *Cox, supra,* 359, 360; *Old Wayne Life Assn.* v. *McDonough,*

204 U.S. 8, 21; *Frene* v. *Louisville Cement Co., supra,* 515, and cases cited. To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process.

[*318] While it has been held, in cases on which appellant relies, that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity, *Old Wayne Life Assn.* v. *McDonough, supra; Green* v. *Chicago, B. & Q. R. Co., supra; Simon* v. *Southern R. Co.,* 236 U.S. 115; *People's Tobacco Co.* v. *American Tobacco Co., supra;* cf. *Davis* v. *Farmers Co-operative Co.,* 262 U.S. 312, 317, there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities. See *Missouri, K. & T. R. Co.* v. *Reynolds,* 255 U.S. 565; *Tauza* v. *Susquehanna Coal Co.,* 220 N. Y. 259, 115 N. E. 915; cf. *St. Louis S. W. R. Co.* v. *Alexander, supra.*

Finally, although the commission of some single or occasional acts of the corporate agent in a state sufficient to impose an obligation or liability on the corporation has not been thought to confer upon the state authority to enforce it, *Rosenberg Bros. & Co.* v. *Curtis Brown Co.,* 260 U.S. 516, other such acts, because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit. Cf. *Kane* v. *New Jersey,* 242 U.S. 160; *Hess* v. *Pawloski, supra; Young* v. *Masci, supra.* True, some of the decisions holding the corporation amenable to suit have been supported by resort to the legal fiction that it has given its consent to service and suit, consent being implied from its presence in the state through the acts of its authorized agents. *Lafayette Insurance Co.* v. *French,* 18 How. 404, 407; *St. Clair* v. *Cox, supra,* 356; *Commercial Mutual Co.* v. *Davis, supra,* 254; *Washington* v. *Superior Court,* 289 U.S. 361, 364-365. But more realistically it may be said that those authorized acts were of such a nature as to justify the fiction. *Smolik* v. *Philadelphia &* [*319] *Reading Co.,* 222 F. 148, 151. Henderson, The Position of Foreign Corporations in American Constitutional Law, 94-95.

[***LEdHR8] [8] [***LEdHR9] [9]It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. *St. Louis S. W. R.* [***104] *Co.* v. *Alexander, supra,* 228; [**160] *International Harvester Co.* v. *Kentucky, supra,* 587.Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations. Cf. *Pennoyer* v. *Neff, supra; Minnesota Commercial Assn.* v. *Benn,* 261 U.S. 140.

[***LEdHR10] [10]But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue. Compare *International Harvester Co.* v. *Kentucky, supra,* with *Green* v. *Chicago, B. & Q. R. Co., supra,* and *People's Tobacco Co.* v. *American Tobacco Co., supra.* Compare *Connecticut Mutual Co.* v. *Spratley, supra,* 619, 620 and *Commercial Mutual Co.* v. *Davis, supra,* with *Old Wayne Life Assn.* v. *McDonough, supra.* See 29 Columbia Law Review, 187-195.

[*320] [***LEdHR11] [11]Applying these standards, the activities carried on in behalf of appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the state, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of those very activities. It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just, according to our traditional conception of fair play and substantial justice, to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say that the maintenance of the present suit in the State of Washington involves an unreasonable or undue procedure.

[***LEdHR12] [12] [***LEdHR13] [13]We are likewise unable to conclude that the service of the process within the state upon an agent whose activities establish appellant's "presence" there was not sufficient notice of the suit, or that the suit was so unrelated to those activities as to make the agent an inappropriate vehicle for communicating the notice. It is enough that appellant has established such contacts with the state that the particular form of substituted service adopted

there gives reasonable assurance that the notice will be actual. *Connecticut Mutual Co.* v. *Spratley, supra,* 618, 619; *Board of Trade* v. *Hammond Elevator Co.,* 198 U.S. 424, 437-438; *Commercial Mutual Co.* v. *Davis, supra,* 254-255. Cf. *Riverside Mills* v. *Menefee,* 237 U.S. 189, 194, 195; see [***105] *Knowles* v. *Gaslight & Coke Co.,* 19 Wall. 58, 61; *McDonald* v. *Mabee, supra; Milliken* v. *Meyer, supra.* Nor can we say that the mailing of the notice of suit to appellant by registered mail at its home office was not reasonably calculated to apprise appellant of the suit. Compare *Hess* v. *Pawloski, supra,* with *McDonald* v. *Mabee, supra,* 92, [*321] and *Wuchter* v. *Pizzutti,* 276 U.S. 13, 19, 24; cf. *Becquet* v. *MacCarthy,* 2 B. & Ad. 951; *Maubourquet* v. *Wyse,* 1 Ir. Rep. C. L. 471. See *Washington* v. *Superior Court, supra,* 365.

[***LEdHR14] [14]Only a word need be said of appellant's liability for the demanded contributions to the state unemployment fund. The Supreme Court of Washington, construing and applying the statute, has held that it imposes a tax on the privilege of employing appellant's salesmen within the state measured by a percentage of the wages, here the commissions payable to the salesmen. This construction we accept for purposes of determining the constitutional validity of the statute. The right to employ labor has been [**161] deemed an appropriate subject of taxation in this country and England, both before and since the adoption of the Constitution. *Steward Machine Co.* v. *Davis,* 301 U.S. 548, 579, *et seq.* And such a tax imposed upon the employer for unemployment benefits is within the constitutional power of the states. *Carmichael* v. *Southern Coal Co.,* 301 U.S. 495, 508, *et seq.*

Appellant having rendered itself amenable to suit upon obligations arising out of the activities of its salesmen in Washington, the state may maintain the present suit *in personam* to collect the tax laid upon the exercise of the privilege of employing appellant's salesmen within the state. For Washington has made one of those activities, which taken together establish appellant's "presence" there for purposes of suit, the taxable event by which the state brings appellant within the reach of its taxing power. The state thus has constitutional power to lay the tax and to subject appellant to a suit to recover it. The activities which establish its "presence" subject it alike to taxation by the state and to suit to recover the tax. *Equitable Life Society* v. *Pennsylvania,* 238 U.S. 143, 146; cf. *International Harvester Co.* v. *Department of Taxation,* 322 U.S. 435, 442, *et seq.; Hoopeston Canning Co.* v. *Cullen,* [*322] *supra,* 316-319; see *General Trading Co.* v. *Tax Comm'n,* 322 U.S. 335.

Affirmed.

MR. JUSTICE JACKSON took no part in the consideration or decision of this case.

MR. JUSTICE BLACK delivered the following opinion.

Congress, pursuant to its constitutional power to regulate commerce, has expressly provided that a State shall not be prohibited from levying the kind of unemployment compensation tax here challenged. 26 U. S. C. 1600. We have twice decided that this Congressional consent is an adequate answer to a claim that imposition of the tax violates the Commerce Clause. *Perkins* [***106] v. *Pennsylvania,* 314 U.S. 586, affirming 342 Pa. 529; *Standard Dredging Corp.* v. *Murphy,* 319 U.S. 306, 308. Two determinations by this Court of an issue so palpably without merit are sufficient. Consequently that part of this appeal which again seeks to raise the question seems so patently frivolous as to make the case a fit candidate for dismissal. *Fay* v. *Crozer,* 217 U.S. 455. Nor is the further ground advanced on this appeal, that the State of Washington has denied appellant due process of law, any less devoid of substance. It is my view, therefore, that we should dismiss the appeal as unsubstantial, [1] *Seaboard Air Line R. Co.* v. *Watson,* 287 U.S. 86, 90, 92, and decline the invitation to formulate broad rules as to the meaning of due process, which here would amount to deciding a constitutional question "in advance of the necessity for its decision." *Federation of Labor* v. *McAdory,* 325 U.S. 450, 461.

1 This Court has on several occasions pointed out the undesirable consequences of a failure to dismiss frivolous appeals. *Salinger* v. *United States,* 272 U.S. 542, 544; *United Surety Co.* v. *American Fruit Product Co.,* 238 U.S. 140; *De Bearn* v. *Safe Deposit & Trust Co.,* 233 U.S. 24, 33-34.

[*323] Certainly appellant cannot in the light of our past decisions meritoriously claim that notice by registered mail and by personal service on its sales solicitors in Washington did not meet the requirements of procedural due process. And the due process clause is not brought in issue any more by appellant's further conceptualistic contention that Washington could not levy a tax or bring suit against the corporation because it did not honor that State with its mystical "presence." For it is unthinkable that the vague due process clause was ever intended to prohibit a State from regulating or taxing a business carried on within its boundaries simply because this is done by agents of a corporation organized and having its headquarters elsewhere. [**162] To read this into the due process clause would in fact result in depriving a State's citizens of due process by taking from the State the power to protect them in their business dealings within its boundaries with representatives of a foreign corporation. Nothing could be more irrational or more designed to defeat the function of our federative system of government. Certainly a State, at the very least, has power to tax and sue those dealing with its citizens within its boundaries, as we

357 U.S. 235, *; 78 S. Ct. 1228, **;
2 L. Ed. 2d 1283, ***; 1958 U.S. LEXIS 752

HANSON, EXECUTRIX, ET AL. v. DENCKLA ET AL.

No. 107

SUPREME COURT OF THE UNITED STATES

357 U.S. 235; 78 S. Ct. 1228; 2 L. Ed. 2d 1283; 1958 U.S. LEXIS 752

March 10-11, 1958, Argued
June 23, 1958, Decided *

* Together with No. 117, Lewis et al. v. Hanson, Executrix and Trustee, et al., on certiorari to the Supreme Court of Delaware.

OPINION

[*238] [***1288] [**1231] MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

This controversy concerns the right to $ 400,000, part of the corpus of a trust established in Delaware by a settlor who later became domiciled in Florida. One group of claimants, "legatees," urge that this property passed under the residuary [***1289] clause of the settlor's will, which was admitted to probate in Florida. The Florida courts have sustained this position. 100 So. 2d 378. Other claimants, "appointees" and "beneficiaries," contend that the property passed pursuant to the settlor's exercise of the *inter vivos* power of appointment created in the deed of trust. The Delaware courts adopted this position and refused to accord full faith and credit to the Florida determination because the Florida court had not acquired jurisdiction over an indispensable party, the Delaware trustee. Del. , 128 A. 2d 819. We postponed the question of jurisdiction in the Florida appeal, No. 107, 354 U.S. 919, and granted certiorari to the Delaware Supreme Court, No. 117, 354 U.S. 920.

The trust whose validity is contested here was created in 1935. Dora Browning Donner, then a domiciliary of Pennsylvania, executed a trust instrument in Delaware naming the Wilmington Trust Co., of Wilmington, Delaware, as trustee. The corpus was composed of securities. Mrs. Donner reserved the income for life, and stated that the remainder should be paid to such persons or upon such trusts as she should appoint by *inter vivos* or testamentary instrument. The trust agreement provided that Mrs. Donner could change the trustee, and that she could amend, alter or revoke the agreement at any time. A measure of control over trust administration was assured by the provision that only with the consent of a trust "advisor" appointed by the settlor could the trustee (1) sell trust assets, (2) make investments, and (3) participate in any plan, proceeding, reorganization or merger [*239] involving securities [**1232] held in the trust. A few days after the trust was established Mrs. Donner exercised her power of appointment. That appointment was replaced by another in 1939. Thereafter she left Pennsylvania, and in 1944 became domiciled in Florida, where she remained until her death in 1952. Mrs. Donner's will was executed Dec. 3, 1949. On that same day she executed the *inter vivos* power of appointment whose terms are at issue here. [1] After making modest appointments in favor of a hospital and certain family retainers (the "appointees"), [2] she appointed the sum of $ 200,000 to each of two trusts previously established with another Delaware trustee, the Delaware Trust Co. The balance of the trust corpus, over $ 1,000,000 at the date of her death, was appointed to her executrix. That amount passed under the residuary clause of her will and is not at issue here.

1 The appointment was partially revoked July 7, 1950 in a respect not material to the instant controversy.

2 The hospital received $ 10,000. Six servants qualified for appointments totalling $ 7,000.

The two trusts with the Delaware Trust Co. were created in 1948 by Mrs. Donner's daughter, Elizabeth Donner Hanson, for the benefit of Elizabeth's children, Donner Hanson and Joseph Donner Winsor. In identical terms they provide that the income not required for the beneficiary's support should be accumulated to age 25, when the beneficiary should be paid 1/4 of the corpus and receive the income from the balance for life. Upon the death of the beneficiary the remainder was to go to such of the beneficiary's issue or Elizabeth Donner Hanson's issue as the beneficiary should appoint by *inter vivos* or testamentary instrument; in default of appointment to the beneficiary's issue alive at the time of his death, and if none to the issue of Elizabeth Donner Hanson.

[***1290] Mrs. Donner died Nov. 20, 1952. Her will, which was admitted to probate in Florida, named Elizabeth Donner [*240] Hanson as executrix. She was instructed to pay all debts and taxes, including any which might be payable by reason of the

property appointed under the power of appointment in the trust agreement with the Wilmington Trust Co. After disposing of personal and household effects, Mrs. Donner's will directed that the balance of her property (the $ 1,000,000 appointed from the Delaware trust) be paid in equal parts to two trusts for the benefit of her daughters Katherine N. R. Denckla and Dorothy B. R. Stewart.

This controversy grows out of the residuary clause that created the last-mentioned trusts. It begins:

"All the rest, residue and remainder of my estate, real, personal and mixed, whatsoever and wheresoever the same may be at the time of my death, including any and all property, rights and interest over which I may have power of appointment which prior to my death has not been effectively exercised by me or has been exercised by me in favor of my Executrix, I direct my Executrix to deal with as follows . . . ."

Residuary legatees Denckla and Stewart, already the recipients of over $ 500,000 each, urge that the power of appointment over the $ 400,000 appointed to sister Elizabeth's children was not "effectively exercised" and that the property should accordingly pass to them. Fourteen months after Mrs. Donner's death these parties petitioned a Florida chancery court for a declaratory judgment "concerning what property passes under the residuary clause" of the will. Personal service was had upon the following defendants: (1) executrix Elizabeth Donner Hanson, (2) beneficiaries Donner Hanson and Joseph Donner Winsor, and (3) potential beneficiary William Donner Roosevelt, also one of Elizabeth's children. Curtin Winsor, Jr., another of Elizabeth's children and [*241] also a potential beneficiary of the Delaware trusts, was [**1233] not named as a party and was not served. About a dozen other defendants were nonresidents and could not be personally served. These included the Wilmington Trust Co. ("trustee"), the Delaware Trust Co. (to whom the $ 400,000 had been paid shortly after Mrs. Donner's death), certain individuals who were potential successors in interest to complainants Denckla and Stewart, and most of the named appointees in Mrs. Donner's 1949 appointment. A copy of the pleadings and a "Notice to Appear and Defend" were sent to each of these defendants by ordinary mail, and notice was published locally as required by the Florida statutes dealing with constructive service. [3] With the exception of two individuals whose interests coincided with [***1291] complainants Denckla and Stewart, none of the nonresident defendants made any appearance.

3 Fla. Stat., 1957, c. 48, § 48.01: "Service of process by publication may be had, in any of the several courts of this state, and upon any of the parties mentioned in § 48.02 in any suit or proceeding:

"(1) To enforce any legal or equitable lien upon or claim to any title or interest in real or personal property within the jurisdiction of the court or any fund held or debt owing by any party upon whom process can be served within this state.

. . . .

"(5) For the construction of any will, deed, contract or other written instrument and for a judicial declaration or enforcement of any legal or equitable right, title, claim, lien or interest thereunder."

§ 48.02: "Where personal service of process cannot be had, service of process by publication may be had upon any party, natural or corporate, known or unknown, including: (1) Any known or unknown natural person . . . (2) Any corporation or other legal entity, whether its domicile be foreign, domestic or unknown . . . ."

The appearing defendants (Elizabeth Donner Hanson and her children) moved to dismiss the suit because the exercise of jurisdiction over indispensable parties, the Delaware trustees, would offend Section 1 of the [*242] Fourteenth Amendment. The Chancellor ruled that he lacked jurisdiction over these nonresident defendants because no personal service was had and because the trust corpus was outside the territorial jurisdiction of the court. The cause was dismissed as to them. As far as parties before the court were concerned, however, he ruled that the power of appointment was testamentary and void under the applicable Florida law. In a decree dated Jan. 14, 1955, he ruled that the $ 400,000 passed under the residuary clause of the will.

After the Florida litigation began, but before entry of the decree, the executrix instituted a declaratory judgment action in Delaware to determine who was entitled to participate in the trust assets held in that State. Except for the addition of beneficiary Winsor and several appointees, the parties were substantially the same as in the Florida litigation. Nonresident defendants were notified by registered mail. All of the trust companies, beneficiaries, and legatees except Katherine N. R. Denckla, appeared and participated in the litigation. After the Florida court enjoined executrix Hanson from further participation, her children pursued their own interests. When the Florida decree was entered the legatees unsuccessfully urged it as *res judicata* of the Delaware dispute. In a decree dated Jan. 13, 1956, the Delaware Chancellor ruled that the trust and power of appointment were valid under the applicable Delaware law, and that the trust corpus had properly been paid to the Delaware Trust Co. and the other appointees. Del. Ch. , 119 A. 2d 901.

Alleging that she would be bound by the Delaware decree, the executrix moved the Florida Supreme Court to remand with instructions to dismiss the Florida suit then pending on appeal. No full faith and credit question was raised. [**1234] The motion was denied. The Florida Supreme Court affirmed its Chancellor's conclusion that Florida law applied to determine the validity of the trust [*243] and power of appointment. Under that law the trust was invalid because the settlor had reserved too much power over the trustee and trust corpus, and the power of appointment was not independently effective to pass the property because it was a testamentary act not accompanied by the requisite formalities. The Chancellor's conclusion that there was no jurisdiction over the trust companies and other absent defendants was reversed. The court ruled that jurisdiction to construe the will carried with it "substantive" jurisdiction "over the persons of the absent defendants" even though the trust assets were not "physically in this state." Whether this meant jurisdiction over the person of the defendants or jurisdiction over the trust assets is open to doubt. In a motion for rehearing the beneficiaries and appointees urged for the first time that Florida should have given full faith and credit to the decision of the Delaware Chancellor. The motion was denied without opinion, Nov. 28, 1956.

The full faith and credit question was first raised in the Delaware litigation by an unsuccessful motion for new trial filed with the Chancellor Jan. 20, 1956. After the Florida [***1292] Supreme Court decision the matter was renewed by a motion to remand filed with the Delaware Supreme Court. In a decision of Jan. 14, 1957, that court denied the motion and affirmed its Chancellor in all respects. The Florida decree was held not binding for purposes of full faith and credit because the Florida court had no personal jurisdiction over the trust companies and no jurisdiction over the trust *res*.

[***LEdHR1] [1]The issues for our decision are, *first*, whether Florida erred in holding that it had jurisdiction over the nonresident defendants, and *second*, whether Delaware erred in refusing full faith and credit to the Florida decree. We need not determine whether Florida was bound to give full faith and credit to the decree of the Delaware Chancellor [*244] since the question was not seasonably presented to the Florida court. *Radio Station WOW* v. *Johnson*, 326 U.S. 120, 128.

[***LEdHR2] [2]No. 107, The Florida Appeal. The question of our jurisdiction was postponed until the hearing of the merits. The appeal is predicated upon the contention that as applied to the facts of this case the Florida statute providing for constructive service is contrary to the Federal Constitution. 28 U. S. C. § 1257 (2). But in the state court appellants (the "beneficiaries") did not object that the statute was invalid as applied, but rather that the effect of the state court's exercise of jurisdiction in the circumstances of this case deprived them of a right under the Federal Constitution. [4] Accordingly, we are without jurisdiction of the appeal and it must be dismissed. *Wilson* v. *Cook*, 327 U.S. 474, 482; *Charleston Fed. Sav. & L. Assn.* v. *Alderson*, 324 U.S. 182. Treating the papers whereon appeal was taken as a petition for certiorari, 28 U. S. C. § 2103, certiorari is granted.

4 The record discloses no mention of the state statute until the petition for rehearing in the Florida Supreme Court. In the trial court, appellant's motion to dismiss raised the federal question in this manner: "The exercise by this Court of the jurisdiction sought to be invoked by the plaintiffs herein would contravene the Constitution and Laws of the State of Florida and the Constitution of the United States, and, in particular, Section 1 of the Fourteenth Amendment to the United States Constitution." No. 107, R. 41.

[***LEdHR3] [3] [***LEdHR4] [4] [***LEdHR5] [5]Relying upon the principle that a person cannot invoke the jurisdiction of this Court to vindicate the right of a [**1235] third party, [5] appellees urge that appellants lack standing to complain of a defect in jurisdiction over the nonresident [*245] trust companies, who have made no appearance in this action. Florida adheres to the general rule that a trustee is an indispensable party to litigation involving the validity of the trust. [6] In the absence of such a party a Florida court may not proceed to adjudicate the controversy. [7] Since state law required the acquisition of jurisdiction [***1293] over the nonresident trust company [8] before the court was empowered to proceed with the action, any defendant affected by the court's judgment has that "direct and substantial personal interest in the outcome" that is necessary to challenge whether that jurisdiction was in fact acquired. *Chicago* v. *Atchison, T. & S. F. R. Co.*, 357 U.S. 77.

5 See *Liberty Warehouse Co.* v. *Burley T. G. Co-op. M. Assn.*, 276 U.S. 71, 88; *Smith* v. *Indiana*, 191 U.S. 138, 148; *Tyler* v. *Judges of the Court of Registration*, 179 U.S. 405; Robertson and Kirkham, Jurisdiction of the Supreme Court (Wolfson and Kurland ed.), § 298.

6 *Trueman Fertilizer Co.* v. *Allison*, 81 So. 2d 734, 738; *Winn* v. *Strickland*, 34 Fla. 610, 633, 16 So. 606, 613; *Wilson* v. *Russ*, 17 Fla. 691, 697; *McArthur* v. *Scott*, 113 U.S. 340, 396; *Sadler* v. *Industrial Trust Co.*, 327 Mass. 10, 97 N. E. 2d 169.

7 *Martinez* v. *Balbin*, 76 So. 2d 488, 490; *Florida Land Rock Phosphate Co.* v. *Anderson*, 50 Fla. 501, 512-513, 39 So. 392, 396.

8 Hereafter the terms "trust," "trust company" and "trustee" have reference to the trust established in 1935 with the Wilmington Trust Co., the validity of which is at issue here. It is unnecessary to determine whether the Delaware Trust Co., to which the $ 400,000 remainder interest was appointed and was paid after Mrs. Donner's death, is also an indispensable party to this proceeding.

[***LEdHR6] [6] [***LEdHR10] [10]Appellants charge that this judgment is offensive to the Due Process Clause of the Fourteenth Amendment because the Florida court was without jurisdiction. There is no suggestion that the court failed to employ a means of notice reasonably calculated to inform nonresident defendants of the pending proceedings, [9] or denied them an opportunity to be heard in defense of their interests. [10] The alleged defect is the absence of those [*246] "affiliating circumstances" [11] without which the courts of a State may not enter a judgment imposing obligations on persons (jurisdiction *in personam*) or affecting interests in property (jurisdiction *in rem* or *quasi in rem*). [12] While the *in rem* and *in personam* classifications do not exhaust all the situations that give rise to jurisdiction, [13] they are adequate to describe the [**1236] affiliating circumstances suggested here, and accordingly serve as a useful means of approach to this case.

9 *Walker* v. *City of Hutchinson*, 352 U.S. 112; *Mullane* v. *Central Hanover B. & T. Co.*, 339 U.S. 306; *McDonald* v. *Mabee*, 243 U.S. 90.

10 *Roller* v. *Holly*, 176 U.S. 398.

11 Sunderland, The Problem of Jurisdiction, Selected Essays on Constitutional Law, 1270, 1272.

[***LEdHR7] [7] [***LEdHR8] [8] [***LEdHR9] [9]

12 A judgment *in personam* imposes a personal liability or obligation on one person in favor of another. A judgment *in rem* affects the interests of all persons in designated property. A judgment *quasi in rem* affects the interests of particular persons in designated property. The latter is of two types. In one the plaintiff is seeking to secure a pre-existing claim in the subject property and to extinguish or establish the nonexistence of similar interests of particular persons. In the other the plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him. Restatement, Judgments, 5-9. For convenience of terminology this opinion will use "*in rem*" in lieu of "*in rem* and *quasi in rem*."

13 *E. g., Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 312; *Williams* v. *North Carolina*, 317 U.S. 287, 297. Fraser, Jurisdiction by Necessity, 100 U. of Pa. L. Rev. 305.

[***LEdHR11] [11] [***LEdHR12] [12]

[***LEdHR13] [13]In rem jurisdiction. Founded on physical power, *McDonald* v. *Mabee*, 243 U.S. 90, 91, the *in rem* jurisdiction of a state court is limited by the extent of its power and by the coordinate authority of sister States. [14] The basis of the jurisdiction is the presence of the subject property within the territorial jurisdiction of the forum State. *Rose* v. *Himely*, 4 Cranch 241, 277; *Overby* v. *Gordon*, [***1294] 177 U.S. 214, 221-222. Tangible property poses no problem for the application of this rule, but the situs of [*247] intangibles is often a matter of controversy. [15] In considering restrictions on the power to tax, this Court has concluded that "jurisdiction" over intangible property is not limited to a single State. *Tax Commission* v. *Aldrich*, 316 U.S. 174; *Curry* v. *McCanless*, 307 U.S. 357. Whether the type of "jurisdiction" with which this opinion deals may be exercised by more than one State we need not decide. The parties seem to assume that the trust assets that form the subject matter of this action [16] were located in Delaware and not in Florida. We can see nothing in the record contrary to that assumption, or sufficient to establish a situs in Florida. [17]

14 *Baker* v. *Baker, Eccles & Co.*, 242 U.S. 394, 400; *Riley* v. *New York Trust Co.*, 315 U.S. 343, 349; *Overby* v. *Gordon*, 177 U.S. 214, 221-222; *Pennoyer* v. *Neff*, 95 U.S. 714; *Rose* v. *Himely*, 4 Cranch 241, 277.

15 See Andrews, Situs of Intangibles in Suits against Non-Resident Claimants, 49 Yale L. J. 241.

16 This case does not concern the situs of a beneficial interest in trust property. These appellees were contesting the validity of the trust. Their concern was with the legal interest of the trustee or, if the trust was invalid, the settlor. Therefore, the relevant factor here is the situs of the stocks, bonds, and notes that

make up the corpus of the trust. Properly speaking such assets are intangibles that have no "physical" location. But their embodiment in documents treated for most purposes as the assets themselves makes them partake of the nature of tangibles. Cf. *Wheeler* v. *Sohmer*, 233 U.S. 434, 439.

17 The documents evidencing ownership of the trust property were held in Delaware, cf. *Bank of Jasper* v. *First Nat. Bank*, 258 U.S. 112, 119, by a Delaware trustee who was the obligee of the credit instruments and the record owner of the stock. The location of the obligors and the domicile of the corporations do not appear. The trust instrument was executed in Delaware by a settlor then domiciled in Pennsylvania. Without expressing any opinion on the significance of these or other factors unnamed, we note that none relates to Florida.

[***LEdHR14] [14] [***LEdHR15] [15] [***LEdHR16] [16] [***LEdHR17] [17]The Florida court held that the presence of the subject property was not essential to its jurisdiction. Authority over the probate and construction of its domiciliary's will, under which the assets might pass, was thought sufficient [*248] to confer the requisite jurisdiction. [18] [**1237] But jurisdiction cannot be predicated upon [***1295] the contingent role of this Florida will. Whatever the efficacy of a so-called "*in rem*" jurisdiction over assets admittedly passing under a local will, a State acquires no *in rem* jurisdiction to adjudicate the validity of *inter vivos* dispositions simply because its decision might augment an estate passing under a will probated in its courts. If such a basis of jurisdiction were sustained, probate courts would enjoy nationwide service of process to adjudicate interests in property with which [*249] neither the State nor the decedent could claim any affiliation. The settlor-decedent's Florida domicile is equally unavailing as a basis for jurisdiction over the trust assets. For the purpose of jurisdiction *in rem* the maxim that personalty has its situs at the domicile of its owner [19] is a fiction of limited utility. *Green* v. *Van Buskirk*, 7 Wall. 139, 150. The maxim is no less suspect when the domicile is that of a decedent. In analogous cases, this Court has rejected the suggestion that the probate decree of the State where decedent was domiciled has an *in rem* effect on personalty outside the forum State that could render it conclusive on the interests of nonresidents over whom there was no personal jurisdiction. *Riley* v. *New York Trust Co.*, 315 U.S. 343, 353; *Baker* v. *Baker, Eccles & Co.*, 242 U.S. 394, 401; *Overby* v. *Gordon*, 177 U.S. 214. [20] The fact that the owner is or was domiciled within the forum State is not a sufficient affiliation with the property upon which to base jurisdiction *in rem*. Having concluded that Florida had no *in rem* jurisdiction, we proceed to consider whether a judgment purporting to rest on that basis is invalid in Florida and must therefore be reversed.

18 The Florida Supreme Court's opinion states: "We held [in *Henderson* v. *Usher*, 118 Fla. 688, 160 So. 9] that constructive service was valid in that state of the record because substantive jurisdiction existed in the Florida court by virtue of construction of a will, which was also involved, the testator having been domiciled in Florida. We observed that it was not essential that the assets of the trust be physically in this state in order that constructive service be binding upon a non-resident where the problem presented to the court was to adjudicate, inter alia, the status of the securities incorporated in the trust estate and the rights of the non-resident therein. It is entirely consistent with the Henderson case to hold, as we do, that the court below erred in ruling that it lacked jurisdiction over the persons of the absent defendants." 100 So. 2d, at 385.

The foregoing leaves unclear whether the court was invoking *in personam* jurisdiction over the trustee, or *in rem* jurisdiction over the trust assets. *Henderson* v. *Usher, supra*, which was an action by testamentary trustees for a construction of the will establishing a trust whose assets were held in New York, found it unnecessary to decide the basis of the jurisdiction exercised. In response to the jurisdictional objections of a specially appearing nonresident defendant, the Florida Supreme Court ruled: "Since the interpretation of the will is the primary question with which we are confronted we are impelled to hold that the res is at least constructively in this state and that the Florida courts are empowered to advise the trustees how to proceed under it and what rights those affected have in it. For the immediate purpose of this suit the will is the res and when that is voluntarily brought into the courts of Florida to be construed the trust created by it is to all intents and purposes brought with it." 118 Fla., at 692, 160 So., at 10.

19 We assume *arguendo* for the purpose of this discussion that the trust was invalid so that Mrs. Donner was the "owner" of the subject property.

20 Though analogous, these cases are not squarely in point. They concerned the efficacy of such judgments in the courts of another sovereign, while the issue here is the validity of such an exercise of jurisdiction within the forum State.

[***LEdHR18] [18] [***LEdHR19] [19] [***LEdHR20] [20] [***LEdHR21] [21]Prior to the Fourteenth Amendment an exercise of jurisdiction over persons or property outside the forum State was thought to be an absolute nullity, [21] but the matter [*250] remained a question of state law over which this Court exercised no authority. [22]With the adoption of that Amendment, any judgment purporting to bind the person of a defendant over whom the court had not acquired *in personam* jurisdiction was [**1238] void within the State as well as without. *Pennoyer* v. *Neff*, 95 U.S. 714.Nearly a century has passed without this Court being called upon to apply that principle to an *in rem* judgment dealing with property outside the forum State. The invalidity of such a judgment within the forum State seems to have been assumed -- and with good reason. Since a State is forbidden to enter a judgment attempting to bind a person over whom it has no [***1296] jurisdiction, it has even less right to enter a judgment purporting to extinguish the interest of such a person in property over which the court has no jurisdiction. [23] Therefore, so far as it purports to rest upon jurisdiction over the trust assets, the judgment of the Florida court cannot be sustained. *Sadler* v. *Industrial Trust Co.*, 327 Mass. 10, 97 N. E. 2d 169.

21 See *Pennoyer* v. *Neff*, 95 U.S. 714, 720-728, 732; Story, Commentaries on the Conflict of Laws (6th ed. 1865), §§ 539, 550-551; Cooley, Constitutional Limitations (1st ed. 1868), 404-405; Rheinstein, The Constitutional Bases of Jurisdiction, 22 U. of Chi. L. Rev. 775, 792-793.

22 See *Baker* v. *Baker, Eccles & Co.*, 242 U.S. 394, 403.

23 This holding was forecast in *Pennoyer* v. *Neff, supra*. When considering the effect of the Fourteenth Amendment, this Court declared that in actions against nonresidents substituted service was permissible only where "*property in the State* is brought under the control of the court, and subjected to its disposition by process adapted to that purpose . . . ." (Emphasis supplied.) 95 U.S., at 733.

[***LEdHR22] [22] [***LEdHR23] [23]In personam jurisdiction. Appellees' stronger argument is for *in personam* jurisdiction over the Delaware trustee. They urge that the circumstances of this case amount to sufficient affiliation with the State of Florida to empower its courts to exercise personal jurisdiction over this nonresident defendant. Principal reliance is placed upon *McGee* v. *International Life Ins. Co.*, 355 U.S. 220. In *McGee* the Court noted the trend of expanding personal jurisdiction over nonresidents. As technological [*251] progress has increased the flow of commerce between States, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer* v. *Neff*, 95 U.S. 714, to the flexible standard of *International Shoe Co.* v. *Washington*, 326 U.S. 310. But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. See *Vanderbilt* v. *Vanderbilt*, 354 U.S. 416, 418. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the "minimal contacts" with that State that are a prerequisite to its exercise of power over him. See *International Shoe Co.* v. *Washington*, 326 U.S. 310, 319.

[***LEdHR24] [24]We fail to find such contacts in the circumstances of this case. The defendant trust company has no office in Florida, and transacts no business there. None of the trust assets has ever been held or administered in Florida, and the record discloses no solicitation of business in that State either in person or by mail. Cf. *International Shoe Co.* v. *Washington*, 326 U.S. 310; *McGee* v. *International Life Ins. Co.*, 355 U.S. 220; *Travelers Health Assn.* v. *Virginia*, 339 U.S. 643.

[***LEdHR25] [25]The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum State. In that respect, it differs from *McGee* v. *International Life Ins. Co.*, 355 U.S. 220, [**1239] and the cases there cited. In *McGee*, the nonresident defendant [***1297] solicited a reinsurance agreement with a resident of California. [*252] The offer was accepted in that State, and the insurance premiums were mailed from there until the insured's death. Noting the interest California has in providing effective redress for its residents when nonresident insurers refuse to pay claims on insurance they have solicited in that State, the Court upheld jurisdiction because the suit "was based on a contract which had substantial connection with that State." In contrast, this action involves the validity of an agreement that was entered without any connection with the forum State. The agreement was executed in Delaware by a trust company incorporated in that State and a settlor domiciled in Pennsylvania. The first relationship Florida had to the agreement was years later when the settlor became domiciled there, and the trustee remitted the trust income to her in that

State. From Florida Mrs. Donner carried on several bits of trust administration that may be compared to the mailing of premiums in *McGee*. [24] But the record discloses no instance in which the *trustee* performed any acts in Florida that bear the same relationship to the agreement as the solicitation in *McGee*. Consequently, this suit cannot be said to be one to enforce an obligation that arose from a privilege the defendant exercised in Florida. Cf. *International Shoe Co.* v. *Washington*, 326 U.S. 310, 319. This case is also different from *McGee* in that there the State had enacted special legislation (Unauthorized Insurers Process Act) to exercise what *McGee* called its "manifest interest" in providing effective redress for citizens who had been injured by nonresidents engaged in an activity that the State treats as exceptional and subjects to special regulation. Cf. *Travelers* [*253] *Health Assn.* v. *Virginia*, 339 U.S. 643, 647-649; *Doherty & Co.* v. *Goodman*, 294 U.S. 623, 627; *Hess* v. *Pawloski*, 274 U.S. 352.

24 By a letter dated Feb. 5, 1946, Mrs. Donner changed the compensation to be paid the trust advisor. April 2, 1947, she revoked the trust as to $ 75,000, returning that amount to the trustee December 22, 1947. To these acts may be added the execution of the two powers of appointment mentioned earlier.

[***LEdHR26] [26] [***LEdHR27] [27] [***LEdHR28] [28]The execution in Florida of the powers of appointment under which the beneficiaries and appointees claim does not give Florida a substantial connection with the contract on which this suit is based. It is the validity of the trust agreement, not the appointment, that is at issue here. [25] For the purpose of applying its rule that the validity of a trust is determined by the law of the State of its creation, Florida ruled that the appointment amounted to a "republication" of the original trust instrument in Florida. For choice-of-law purposes such a ruling may be justified, but we think it an insubstantial connection with the trust agreement for purposes of determining the [***1298] question of personal jurisdiction over a nonresident defendant. The unilateral activity of those who claim some relationship with a nonresident defendant [**1240] cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. *International Shoe Co.* v. *Washington*, 326 U.S. 310, 319. [*254] The settlor's execution in Florida of her power of appointment cannot remedy the absence of such an act in this case.

25 The Florida Supreme Court's opinion makes repeated references to the "invalidity" of the trust, and uses other language of like import. See 100 So. 2d, at 381, 382, 383, 384, 385. Its ruling that the 1949 and 1950 "appointments" were ineffective to pass title to the property (because lacking the requisite testamentary formalities) proceeded from this initial ruling that the trust agreement was "invalid," 100 So. 2d, at 383, or "illusory," 100 So. 2d, at 384, and therefore created no power of appointment. There was no suggestion that the appointment was ineffective as an exercise of whatever power was created by the trust agreement.

It is urged that because the settlor and most of the appointees and beneficiaries were domiciled in Florida the courts of that State should be able to exercise personal jurisdiction over the nonresident trustees. This is a non sequitur. With personal jurisdiction over the executor, legatees, and appointees, there is nothing in federal law to prevent Florida from adjudicating concerning the respective rights and liabilities of those parties. But Florida has not chosen to do so. As we understand its law, the trustee is an indispensable party over whom the court must acquire jurisdiction before it is empowered to enter judgment in a proceeding affecting the validity of a trust. [26] It does not acquire that jurisdiction by being the "center of gravity" of the controversy, or the most convenient location for litigation. The issue is personal jurisdiction, not choice of law. It is resolved in this case by considering the acts of the trustee. As we have indicated, they are insufficient to sustain the jurisdiction. [27]

26 See note 6, *supra*.

27 This conclusion makes unnecessary any consideration of appellants' contention that the contacts the trust agreement had with Florida were so slight that it was a denial of due process of law to determine its validity by Florida law. See *Home Insurance Co.* v. *Dick*, 281 U.S. 397.

[***LEdHR29] [29]Because it sustained jurisdiction over the nonresident trustees, the Florida Supreme Court found it unnecessary to determine whether Florida law made those defendants indispensable parties in the circumstances of this case. Our conclusion that Florida was without jurisdiction over the Delaware trustee, or over the trust corpus held in that State, requires that we make that determination in the first instance. As we have noted earlier, the Florida Supreme Court has repeatedly held that a trustee is an [*255] indispensable party without whom a Florida court has no power to adjudicate controversies affecting the validity of a trust. [28] For that reason the Florida judgment must be reversed not only

as to the nonresident trustees but also as to appellants, over whom the Florida court admittedly had jurisdiction.

28 See notes 6 and 7, *supra.*

[***LEdHR30] [30] No. 117, The Delaware Certiorari. The same reasons that compel reversal of the Florida judgment require affirmance of the Delaware one. Delaware is under no obligation to give full faith and credit to a Florida judgment invalid in Florida because offensive to the Due Process Clause of the Fourteenth Amendment. 28 U. S. C. § 1738. Even before passage of the Fourteenth Amendment this Court sustained state courts in refusing [***1299] full faith and credit to judgments entered by courts that were without jurisdiction over nonresident defendants. *D'Arcy* v. *Ketchum*, 11 How. 165; *Hall* v. *Lanning*, 91 U.S. 160. See *Baker* v. *Baker, Eccles & Co.*, 242 U.S. 394; *Riley* v. *New York Trust Co.*, 315 U.S. 343. Since Delaware was entitled to conclude that Florida law made the trust company an indispensable party, it was under no obligation to give the Florida judgment any faith and credit -- even against parties [**1241] over whom Florida's jurisdiction was unquestioned.

It is suggested that this disposition is improper -- that the Delaware case should be held while the Florida cause is remanded to give that court an opportunity to determine whether the trustee is an indispensable party in the circumstances of this case. But this is not a case like *Herb* v. *Pitcairn*, 324 U.S. 117, where it is appropriate to remand for the state court to clarify an ambiguity in its opinion that may reveal an adequate state ground that would deprive us of power to affect the result of the controversy. Nor is this a circumstance where the state [*256] court has never ruled on the question of state law that we are deciding. Although the question was left open in this case, there is ample Florida authority from which we may determine the appropriate answer.

[***LEdHR31] [31] [***LEdHR32] [32] [***LEdHR33] [33]The rule of primacy to the first final judgment is a necessary incident to the requirement of full faith and credit. Our only function is to determine whether judgments are consistent with the Federal Constitution. In determining the correctness of Delaware's judgment we look to what Delaware was entitled to conclude from the Florida authorities at the time the Delaware court's judgment was entered. To withhold affirmance of a correct Delaware judgment until Florida has had time to rule on another question would be participating in the litigation instead of adjudicating its outcome.

The judgment of the Delaware Supreme Court is affirmed, and the judgment of the Florida Supreme Court is reversed and the cause is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

DISSENT BY: BLACK; DOUGLAS

DISSENT

MR. JUSTICE BLACK, whom MR. JUSTICE BURTON and MR. JUSTICE BRENNAN join, dissenting.

I believe the courts of Florida had power to adjudicate the effectiveness of the appointment made in Florida by Mrs. Donner with respect to all those who were notified of the proceedings and given an opportunity to be heard without violating the Due Process Clause of the Fourteenth Amendment. [1] If this is correct, it follows that [*257] the Delaware courts erred in refusing to give the prior Florida judgment full faith and credit. U.S. Const., Art. IV, § 1; 28 U. S. C. § 1738.

. . .

22 Ill. 2d 432, *; 176 N.E.2d 761, **;
1961 Ill. LEXIS 414, ***

Phyllis Gray, Appellant, v. American Radiator and Standard Sanitary Corporation et al., Appellees

No. 35872

Supreme Court of Illinois

22 Ill. 2d 432; 176 N.E.2d 761; 1961 Ill. LEXIS 414

June 14, 1961.
June 14, 1961, Filed

SUBSEQUENT HISTORY: [***1] Rehearing Denied September 20, 1961.

PRIOR HISTORY: Appeal from the Circuit Court of Cook County; the Hon. Alan E. Ashcraft, Judge, Presiding.

DISPOSITION: Reversed and remanded, with directions.

JUDGES: Mr. Justice Klingbiel delivered the opinion of the court.

OPINION BY: KLINGBIEL

OPINION

[*434] [**762] Mr. Justice Klingbiel delivered the opinion of the court:

Phyllis Gray appeals from a judgment of the circuit court of Cook County dismissing her action for damages. The issues are concerned with the construction and validity of our statute providing for substituted service of process on nonresidents. Since a constitutional question is involved, the appeal is direct to this court.

The suit was brought against the Titan Valve Manufacturing Company and others, on the ground that a certain [***2] water heater had exploded and injured the plaintiff. The complaint charges, inter alia, that the Titan company, a foreign corporation, had negligently constructed the safety valve; and that the injuries were suffered as a proximate result thereof. Summons issued and was duly served on Titan's registered agent in Cleveland, Ohio. The corporation appeared specially, filing a motion to quash on the ground that it had not committed a tortious act in Illinois. Its affidavit stated that it does no business here; that it has no agent physically present in Illinois; and that it sells the completed valves to defendant, American Radiator & Standard Sanitary Corporation, outside Illinois. The American Radiator & Standard Sanitary Corporation (also made a defendant) filed an answer in which it set up a cross claim against Titan, alleging that Titan made certain warranties to American Radiator, and that if the latter is held liable to the plaintiff it should be indemnified and held harmless by Titan. The court granted Titan's motion, dismissing both the complaint and the cross claim.

[*435] Section 16 of the Civil Practice Act provides that summons may be personally served upon any [***3] party outside the State; and that as to nonresidents who have submitted to the jurisdiction of our courts, such service has the force and effect of personal service within Illinois. (Ill. Rev. Stat. 1959, chap. 110, par. 16.) Under section 17(1)(b) a nonresident who, either in person or through an agent, commits a tortious act within this State submits to jurisdiction. (Ill. Rev. Stat. 1959, chap. 110, par. 17.) The questions in this case are (1) whether a tortious act was committed here, within the meaning of the statute, despite the fact that the Titan corporation had no agent in Illinois; and (2) whether the statute, if so construed, violates due process of law.

The first aspect to which we must direct our attention is one of statutory construction. Under section 17(1)(b) jurisdiction is predicated on the committing of a tortious act in this State. It is not disputed, for the purpose of this appeal, that a tortious act was committed. The issue depends on whether it was committed in Illinois, so as to warrant the assertion of personal jurisdiction by service of summons in Ohio.

The wrong in the case at bar did not originate in the conduct of a servant physically present here, [***4] but arose instead from acts performed at the place of manufacture. Only the consequences occurred in Illinois. It is well established, however, that in law the place of a wrong is where the last event takes place which is necessary [**763] to render the actor liable. (Restatement, Conflict of Laws, sec. 377.) A second indication that the place of injury is the determining factor is found in rules governing the time within which an action must be brought. In applying statutes of limitation our court has computed the period from the time when the injury is done. (Madison v. Wedron Silica Co. 352 Ill. 60; Leroy v. City of Springfield, 81 Ill. 114.) We think it is clear that the alleged negligence in manufacturing the valve cannot

be separated from the resulting injury; [*436] and that for present purposes, like those of liability and limitations, the tort was committed in Illinois.

Titan seeks to avoid this result by arguing that instead of using the word "tort," the legislature employed the term "tortious act"; and that the latter refers only to the act or conduct, separate and apart from any consequences thereof. We cannot accept the argument. To be tortious an act [***5] must cause injury. The concept of injury is an inseparable part of the phrase. In determining legislative intention courts will read words in their ordinary and popularly understood sense. (Illinois State Toll Highway Com. v. Einfeldt, 12 Ill.2d 499; Farrand Coal Co. v. Halpin, 10 Ill.2d 507.) We think the intent should be determined less from technicalities of definition than from considerations of general purpose and effect. To adopt the criteria urged by defendant would tend to promote litigation over extraneous issues concerning the elements of a tort and the territorial incidence of each, whereas the test should be concerned more with those substantial elements of convenience and justice presumably contemplated by the legislature. As we observed in Nelson v. Miller, 11 Ill.2d 378, the statute contemplates the exertion of jurisdiction over nonresident defendants to the extent permitted by the due-process clause.

The Titan company contends that if the statute is applied so as to confer jurisdiction in this case it violates the requirement of due process of law. The precise constitutional question thus presented has not heretofore been considered by this court. In the Nelson [***6] case the validity of the statute was upheld in an action against a nonresident whose employee, while physically present in Illinois, allegedly caused the injury. The ratio decidendi was that Illinois has an interest in providing relief for injuries caused by persons having "substantial contacts within the State." A standard of fairness or reasonableness was announced, within the limitation that defendant be given a realistic opportunity to appear and be heard. The case at bar concerns the extent [*437] to which due process permits substituted service where defendant had no agent or employee in the State of the forum.

Under modern doctrine the power of a State court to enter a binding judgment against one not served with process within the State depends upon two questions: first, whether he has certain minimum contacts with the State (see International Shoe Co. v. Washington, 326 U.S. 310, 316, 90 L. ed. 95, 102), and second, whether there has been a reasonable method of notification. (See International Shoe Co. v. Washington, 326 U.S. 310, 320, 90 L. ed. 95, 104-105; Nelson v. Miller, 11 Ill.2d 378, 390.) In the case at bar there is no contention that section 16 provides for [***7] inadequate notice or that its provisions were not followed. Defendant's argument on constitutionality is confined to the proposition that applying section 17(1)(b), where the injury is defendant's only contact with the State, would exceed the limits of due process.

A proper determination of the question presented requires analysis of those cases which have dealt with the quantum of contact sufficient to warrant jurisdiction. Since the decision in Pennoyer v. Neff, 95 U.S. 714, 24 L. ed. 565, the power of a State to exert jurisdiction over nonresidents has been greatly expanded, particularly [**764] with respect to foreign corporations. (See Annotations, 2 L. ed. 2d 1664, 94 L. ed. 1167.) International Shoe Co. v. Washington, 326 U.S. 310, 90 L. ed. 95, was a proceeding to collect unpaid contributions to the unemployment compensation fund of the State of Washington. A statute purported to authorize such proceedings, where the employer was not found within the State, by sending notice by registered mail to its last known address. The defendant foreign corporation, a manufacturer of shoes, employed certain salesmen who resided in Washington and who solicited orders there. In [***8] holding that maintenance of the suit did not violate due process the court pointed out that the activities of the corporation in Washington were not only continuous and [*438] systematic but also gave rise to the liability sued on. It was observed that such operations, which resulted in a large volume of business, established "sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there." 326 U.S. at 320, 90 L. ed. at 104.

Where the business done by a foreign corporation in the State of the forum is of a sufficiently substantial nature, it has been held permissible for the State to entertain a suit against it even though the cause of action arose from activities entirely distinct from its conduct within the State. (Perkins v. Benguet Consolidated Mining Co. 342 U.S. 437, 96 L. ed. 485.) But where such business or other activity is not substantial, the particular act or transaction having no connection with the State of the forum, the requirement of "contact" is not satisfied. Hanson v. Denckla, [***9] 357 U.S. 235, 253, 2 L. ed. 2d 1283, 1298.

In the case at bar the defendant's only contact with this State is found in the fact that a product manufactured in Ohio was incorporated, in Pennsylvania, into a hot water heater which in the course of commerce was sold to an Illinois consumer. The record fails to disclose whether defendant has done any other business in Illinois, either directly or indirectly; and it is argued, in reliance on the International Shoe test, that since a course of business here has not been shown there are no "minimum contacts" sufficient to support jurisdiction. We do not think, however, that doing a given volume of

business is the only way in which a nonresident can form the required connection with this State. Since the International Shoe case was decided the requirements for jurisdiction have been further relaxed, so that at the present time it is sufficient if the act or transaction itself has a substantial connection with the State of the forum.

[*439] In McGee v. International Life Insurance Co. 355 U.S. 220, 2 L. ed. 2d 223, suit was brought in California against a foreign insurance company on a policy issued to a resident of California. The [***10] defendant was not served with process in that State but was notified by registered mail at its place of business in Texas, pursuant to a statute permitting such service in suits on insurance contracts. The contract in question was delivered in California, the premiums were mailed from there and the insured was a resident of that State when he died, but defendant had no office or agent in California nor did it solicit any business there apart from the policy sued on. After referring briefly to the International Shoe case the court held that "it is sufficient for purposes of due process that the suit was based on a contract which had substantial connection" with California. (Emphasis supplied.)

In Smyth v. Twin State Improvement Corp. 116 Vt. 569, 80 A.2d 664, a Vermont resident engaged a foreign corporation to re-roof his house. While doing the work the corporation negligently damaged the building, and an action was brought for damages. Service of process was made on the Secretary of State [**765] and a copy was forwarded to defendant by registered mail at its principal place of business in Massachusetts. A Vermont statute provided for such substituted service on foreign [***11] corporations committing a tort in Vermont against a resident of Vermont. In holding that the statute affords due process of law, the court discussed the principal authorities on the question and concluded, inter alia, that "continuous activity within the state is not necessary as a prerequisite to jurisdiction."

In Nelson v. Miller, 11 Ill.2d 378, the commission of a single tort within this State was held sufficient to sustain jurisdiction under the present statute. The defendant in that case, a resident of Wisconsin, was engaged in the business of selling appliances. It was alleged that in the process of delivering a stove in Illinois, an employee of the defendant $=440 [*440] negligently caused injury to the plaintiff. In holding that the defendant was not denied due process by being required to defend in Illinois, this court observed at page 390: "The defendant sent his employee into Illinois in the advancement of his own interests. While he was here, the employee and the defendant enjoyed the benefit and protection of the laws of Illinois, including the right to resort to our courts. In the course of his stay here the employee performed acts that gave rise to an injury. [***12] The law of Illinois will govern the substantive rights and duties stemming from the incident. Witnesses, other than the defendant's employee, are likely to be found here, and not in Wisconsin. In such circumstances, it is not unreasonable to require the defendant to make his defense here."

Whether the type of activity conducted within the State is adequate to satisfy the requirement depends upon the facts in the particular case. (Perkins v. Benguet Consolidated Mining Co. 342 U.S. 437, 445, 96 L. ed. 485, 492.) The question cannot be answered by applying a mechanical formula or rule of thumb but by ascertaining what is fair and reasonable in the circumstances. In the application of this flexible test the relevant inquiry is whether defendant engaged in some act or conduct by which he may be said to have invoked the benefits and protections of the law of the forum. (See Hanson v. Denckla, 357 U.S. 235, 253, 2 L. ed. 2d 1283, 1298; International Shoe Co. v. Washington, 326 U.S. 310, 319, 90 L. ed. 95, 104.) The relevant decisions since Pennoyer v. Neff show a development of the concept of personal jurisdiction from one which requires service of process within the State to one [***13] which is satisfied either if the act or transaction sued on occurs there or if defendant has engaged in a sufficiently substantial course of activity in the State, provided always that reasonable notice and opportunity to be heard are afforded. As the Vermont court recognized in the Smyth case, the [*441] trend in defining due process of law is away from the emphasis on territorial limitations and toward emphasis on providing adequate notice and opportunity to be heard: from the court with immediate power over the defendant, toward the court in which both parties can most conveniently settle their dispute.

In the McGee case the court commented on the trend toward expanding State jurisdiction over nonresidents, observing that: "In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for [***14] a party sued to defend himself in a State where he engages in economic activity."

It is true that courts cannot "assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of [**766] state courts." (Hanson v. Denckla, 357 U.S. 235, 251, 2 L. ed. 2d 1283, 1296.) An orderly and fair administration of the law throughout the nation requires protection against being compelled to answer claims brought in distant States with which the defendant has little or no association and in which he would be faced with an

undue burden or disadvantage in making his defense. It must be remembered that lawsuits can be brought on frivolous demands or groundless claims as well as on legitimate ones, and that procedural rules must be designed and appraised in the light of what is fair and just to both sides in the dispute. Interpretations of basic rights which consider only those of a claimant are not consonant with the fundamental requisites of due process.

In the case at bar defendant does not claim that the [*442] present use of its product in Illinois is an isolated instance. While the record does not disclose the volume of Titan's business or the [***15] territory in which applicances incorporating its valves are marketed, it is a reasonable inference that its commercial transactions, like those of other manufacturers, result in substantial use and consumption in this State. To the extent that its business may be directly affected by transactions occurring here it enjoys benefits from the laws of this State, and it has undoubtedly benefited, to a degree, from the protection which our law has given to the marketing of hot water heaters containing its valves. Where the alleged liability arises, as in this case, from the manufacture of products presumably sold in contemplation of use here, it should not matter that the purchase was made from an independent middleman or that someone other than the defendant shipped the product into this State.

With the increasing specialization of commercial activity and the growing interdependence of business enterprises it is seldom that a manufacturer deals directly with consumers in other States. The fact that the benefit he derives from its laws is an indirect one, however, does not make it any the less essential to the conduct of his business; and it is not unreasonable, where a cause of action [***16] arises from alleged defects in his product, to say that the use of such products in the ordinary course of commerce is sufficient contact with this State to justify a requirement that he defend here.

As a general proposition, if a corporation elects to sell its products for ultimate use in another State, it is not unjust to hold it answerable there for any damage caused by defects in those products. Advanced means of distribution and other commercial activity have made possible these modern methods of doing business, and have largely effaced the economic significance of State lines. By the same token, today's facilities for transportation and communication have removed much of the difficulty and inconvenience [*443] formerly encountered in defending lawsuits brought in other States.

Unless they are applied in recognition of the changes brought about by technological and economic progress, jurisdictional concepts which may have been reasonable enough in a simpler economy lose their relation to reality, and injustice rather than justice is promoted. Our unchanging principles of justice, whether procedural or substantive in nature, should be scrupulously observed by the courts. [***17] But the rules of law which grow and develop within those principles must do so in the light of the facts of economic life as it is lived today. Otherwise the need for adaptation may become so great that basic rights are sacrificed in the name of reform, and the principles themselves become impaired.

The principles of due process relevant to the issue in this case support jurisdiction in the court where both parties can most conveniently settle their dispute. The facts show that the plaintiff, an Illinois resident, was injured in Illinois. The law of Illinois will govern the substantive questions, and witnesses on the issues of injury, [**767] damages and other elements relating to the occurrence are most likely to be found here. Under such circumstances the courts of the place of injury usually provide the most convenient forum for trial. (See Watson v. Employers Liability Assurance Corp. 348 U.S. 66, 72, 99 L. ed. 74, 82.) In Travelers Health Association v. Virginia, 339 U.S. 643, 94 L. ed. 1154, a Nebraska insurance corporation was held subject to the jurisdiction of a Virginia regulatory commission although it had no paid agents within the State and its only contact there [***18] was a mail-order business operated from its Omaha office. The court observed, by way of dictum, that "suits on alleged losses can be more conveniently tried in Virginia where witnesses would most likely live and where claims for losses would presumably be investigated. Such factors have been given great weight in applying the doctrine [*444] of forum non conveniens. See Gulf Oil Co. v. Gilbert, 330 U.S. 501, 508, 91 L. ed. 1055, 1062, 67 S. Ct. 839. And prior decisions of this Court have referred to the unwisdom, unfairness and injustice of permitting policyholders to seek redress only in some distant state where the insurer is incorporated. The Due Process Clause does not forbid a state to protect its citizens from such injustice." (339 U.S. at 649, 94 L. ed. 1161-1162.) We think a similar conclusion must follow in the case at bar.

We are aware of decisions, cited by defendant, wherein the opposite result was reached on somewhat similar factual situations. (See Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc., 239 F.2d 502 (4th cir.); Hellriegel v. Sears Roebuck & Co. 157 F. Supp. 718 (N.D. Ill., E.D.); Johns v. Bay State Abrasive Products Co. 89 F. Supp. 654 (D. Md., Civ. [***19] D.).) Little purpose can be served, however, by discussing such cases in detail, since the existence of sufficient "contact" depends upon the particular facts in each case. In any event we think the better rule supports jurisdiction in cases of the present kind. We conclude accordingly that defendant's association with this State is sufficient to support the exercise of jurisdiction.

We construe section 17(1)(b) as providing for jurisdiction under the circumstances shown in this case, and we hold that as so construed the statute does not violate due process of law.

The trial court erred in quashing service of summons and in dismissing the complaint and cross claim. The judgment is reversed and the cause is remanded to the circuit court of Cook County, with directions to deny the motion to quash.

Reversed and remanded, with directions.

444 U.S. 286, *; 100 S. Ct. 559, **;
62 L. Ed. 2d 490, ***; 1980 U.S. LEXIS 65

WORLD-WIDE VOLKSWAGEN CORP. ET AL. v. WOODSON, DISTRICT JUDGE OF CREEK COUNTY, OKLAHOMA, ET AL.

No. 78-1078

SUPREME COURT OF THE UNITED STATES

444 U.S. 286; 100 S. Ct. 559; 62 L. Ed. 2d 490; 1980 U.S. LEXIS 65

October 3, 1979, Argued
January 21, 1980, Decided

PRIOR HISTORY: CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

DISPOSITION: 585 P. 2d 351, reversed.

SYLLABUS

A products-liability action was instituted in an Oklahoma state court by respondents husband and wife to recover for personal injuries sustained in Oklahoma in an accident involving an automobile that had been purchased by them in New York while they were New York residents and that was being driven through Oklahoma at the time of the accident. The defendants included the automobile retailer and its wholesaler (petitioners), New York corporations that did no business in Oklahoma. Petitioners entered special appearances, claiming that Oklahoma's exercise of jurisdiction over them would offend limitations on the State's jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment. The trial court rejected petitioners' claims, and they then sought, but were denied, a writ of prohibition in the Oklahoma Supreme Court to restrain respondent trial judge from exercising *in personam* jurisdiction over them.

Held: Consistently with the Due Process Clause, the Oklahoma trial court may not exercise *in personam* jurisdiction over petitioners. Pp. 291-299.

(a) A state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist "minimum contacts" between the defendant and the forum State. *International Shoe Co.* v. *Washington*, 326 U.S. 310. The defendant's contacts with the forum State must be such that maintenance of the suit does not offend traditional notions of fair play and substantial justice, *id.*, at 316, and the relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there," *id.*, at 317. The Due Process Clause "does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations." *Id.*, at 319. Pp. 291-294.

(b) Here, there is a total absence in the record of those affiliating circumstances that are a necessary predicate to any exercise of state-court jurisdiction. Petitioners carry on no activity whatsoever in Oklahoma; they close no sales and perform no services there, avail themselves of none of the benefits of Oklahoma law, and solicit no business there either through salespersons or through advertising reasonably calculated to reach that State. Nor does the record show that they regularly sell cars to Oklahoma residents or that they indirectly, through others, serve or seek to serve the Oklahoma market. Although it is foreseeable that automobiles sold by petitioners would travel to Oklahoma and that the automobile here might cause injury in Oklahoma, "foreseeability" alone is not a sufficient benchmark for personal jurisdiction under the Due Process Clause. The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State, but rather is that the defendant's conduct and connection with the forum are such that he should reasonably anticipate being haled into court there. Nor can jurisdiction be supported on the theory that petitioners earn substantial revenue from goods used in Oklahoma. Pp. 295-299.

COUNSEL: Herbert Rubin argued the cause for petitioners. With him on the briefs were Dan A. Rogers, Bernard J. Wald, and Ian Ceresney.

Jefferson G. Greer argued the cause for respondents. With him on the brief was Charles A. Whitebook.

JUDGES: WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, POWELL, REHNQUIST, and STEVENS, JJ., joined. BRENNAN, J., filed a dissenting opinion, post, p. 299. MARSHALL, J., filed a dissenting opinion, in which BLACKMUN, J., joined, post, p. 313. BLACKMUN, J., filed a dissenting opinion, post, p. 317.

OPINION BY: WHITE

OPINION

[*287] [***495] [**562] MR. JUSTICE WHITE delivered the opinion of the Court.

[***LEdHR1A] [1A]The issue before us is whether, consistently with the Due Process Clause of the Fourteenth Amendment, an Oklahoma court may exercise *in personam* jurisdiction over a nonresident automobile retailer and its wholesale distributor in a products-liability action, when the defendants' only connection with Oklahoma is the fact that an automobile sold in New York to New York residents became involved in an accident in Oklahoma.

[*288] I

Respondents Harry and Kay Robinson purchased a new Audi automobile from petitioner Seaway Volkswagen, Inc. (Seaway), in Massena, N. Y., in 1976. The following year the Robinson family, who resided in New York, left that State for a new home in Arizona. As they passed through the State of Oklahoma, another car struck their Audi in the rear, causing a fire which severely burned Kay Robinson and her two children. [1]

1 The driver of the other automobile does not figure in the present litigation.

The Robinsons [2] subsequently brought a products-liability action in the District Court for Creek County, Okla., claiming that their injuries resulted from defective design and placement of the Audi's gas tank and fuel system. They joined as defendants the automobile's manufacturer, Audi NSU Auto Union Aktiengesellschaft (Audi); its importer, [***496] Volkswagen of America, Inc. (Volkswagen); its regional distributor, petitioner World-Wide Volkswagen Corp. (World-Wide); and its retail dealer, petitioner Seaway. Seaway and World-Wide entered special appearances, [3] claiming [**563] that Oklahoma's exercise of jurisdiction over them would offend the limitations on the State's jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment. [4]

2 Kay Robinson sued on her own behalf. The two children sued through Harry Robinson as their father and next friend.

3 Volkswagen also entered a special appearance in the District Court, but unlike World-Wide and Seaway did not seek review in the Supreme Court of Oklahoma and is not a petitioner here. Both Volkswagen and Audi remain as defendants in the litigation pending before the District Court in Oklahoma.

4 The papers filed by the petitioners also claimed that the District Court lacked "venue of the subject matter," App. 9, or "venue over the subject matter," *id.*, at 11.

The facts presented to the District Court showed that World-Wide is incorporated and has its business office in New [*289] York. It distributes vehicles, parts, and accessories, under contract with Volkswagen, to retail dealers in New York, New Jersey, and Connecticut. Seaway, one of these retail dealers, is incorporated and has its place of business in New York. Insofar as the record reveals, Seaway and World-Wide are fully independent corporations whose relations with each other and with Volkswagen and Audi are contractual only. Respondents adduced no evidence that either World-Wide or Seaway does any business in Oklahoma, ships or sells any products to or in that State, has an agent to receive process there, or purchases advertisements in any media calculated to reach Oklahoma. In fact, as respondents' counsel conceded at oral argument, Tr. of Oral Arg. 32, there was no showing that any automobile sold by World-Wide or Seaway has ever entered Oklahoma with the single exception of the vehicle involved in the present case.

Despite the apparent paucity of contacts between petitioners and Oklahoma, the District Court rejected their constitutional claim and reaffirmed that ruling in denying petitioners' motion for reconsideration. [5] Petitioners then sought a writ of prohibition in the Supreme Court of Oklahoma to restrain the District Judge, respondent Charles S. Woodson, from exercising *in personam* jurisdiction over them. They renewed their contention that, because they had no "minimal contacts," App. 32, with the State of Oklahoma, the actions of the District Judge were in violation of their rights under the Due Process Clause.

5 The District Court's rulings are unreported, and appear at App. 13 and 20.

The Supreme Court of Oklahoma denied the writ, 585 P. 2d 351 (1978), [6] holding that personal jurisdiction over petitioners was authorized by Oklahoma's "long-arm" statute, [*290] Okla. Stat., Tit. 12, § 1701.03 (a)(4) (1971). [7] Although the court noted [***497] that the proper approach was to test jurisdiction against both statutory and constitutional standards, its analysis did not distinguish these questions, probably because § 1701.03 (a)(4) has been interpreted as conferring jurisdiction to the limits permitted by the United States Constitution. [8] The court's rationale was contained in the following paragraph, 585 P. 2d, at 354:

"In the case before us, the product being sold and distributed by the petitioners is by its very design and purpose so mobile that petitioners can foresee its possible use in Oklahoma. This is especially true of the distributor, who has the exclusive right to distribute such automobile in New York, New Jersey and Connecticut. The evidence presented below demonstrated that goods sold and distributed by the petitioners were used in the State of Oklahoma, and under the facts we believe it reasonable to infer, given [**564] the retail value of the automobile, that the

petitioners derive substantial income from automobiles which from time to time are used in the State of Oklahoma. This being the case, we hold that under the facts presented, the trial court was justified in concluding [*291] that the petitioners derive substantial revenue from goods used or consumed in this State."

6 Five judges joined in the opinion. Two concurred in the result, without opinion, and one concurred in part and dissented in part, also without opinion.

7 This subsection provides:

"A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's . . . causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state. . . ."

The State Supreme Court rejected jurisdiction based on § 1701.03 (a)(3), which authorizes jurisdiction over any person "causing tortious injury in this state by an act or omission in this state." Something in addition to the infliction of tortious injury was required.

8 *Fields* v. *Volkswagen of America, Inc.*, 555 P. 2d 48 (Okla. 1976); *Carmack* v. *Chemical Bank New York Trust Co.*, 536 P. 2d 897 (Okla. 1975); *Hines* v. *Clendenning*, 465 P. 2d 460 (Okla. 1970).

We granted certiorari, 440 U.S. 907 (1979), to consider an important constitutional question with respect to state-court jurisdiction and to resolve a conflict between the Supreme Court of Oklahoma and the highest courts of at least four other States. [9] We reverse.

9 Cf. *Tilley* v. *Keller Truck & Implement Corp.*, 200 Kan. 641, 438 P. 2d 128 (1968); *Granite States Volkswagen, Inc.* v. *District Court*, 177 Colo. 42, 492 P. 2d 624 (1972); *Pellegrini* v. *Sachs & Sons*, 522 P. 2d 704 (Utah 1974); *Oliver* v. *American Motors Corp.*, 70 Wash. 2d 875, 425 P. 2d 647 (1967).

II

[***LEdHR2] [2] [***LEdHR3] [3]The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a nonresident defendant. *Kulko* v. *California Superior Court*, 436 U.S. 84, 91 (1978). A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. *Pennoyer* v. *Neff*, 95 U.S. 714, 732-733 (1878). Due process requires that the defendant be given adequate notice of the suit, *Mullane* v. *Central Hanover Trust Co.*, 339 U.S. 306, 313-314 (1950), and be subject to the personal jurisdiction of the court, *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945). In the present case, it is not contended that notice was inadequate; the only question is whether these particular petitioners were subject to the jurisdiction of the Oklahoma courts.

[***LEdHR4] [4]As has long been settled, and [***498] as we reaffirm today, a state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist "minimum contacts" between the defendant and the forum State. *International Shoe Co.* v. *Washington, supra*, at 316.The concept of minimum contacts, in turn, can be seen to perform two related, but [*292] distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.

The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness." We have said that the defendant's contacts with the forum State must be such that maintenance of the suit "does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co* . v. *Washington, supra*, at 316, quoting *Milliken* v. *Meyer*, 311 U.S. 457, 463 (1940). The relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there." 326 U.S., at 317. Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see *McGee* v. *International Life Ins. Co.*, 355 U.S. 220, 223 (1957); the plaintiff's interest in obtaining convenient and effective relief, see *Kulko* v. *California Superior Court, supra*, at 92, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, cf. *Shaffer* v. *Heitner*, 433 U.S. 186, 211, n. 37 (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see *Kulko* v. *California Superior Court,* [**565] *supra*, at 93, 98.

The limits imposed on state jurisdiction by the Due Process Clause, in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years. As we noted in *McGee* v.

International Life Ins. Co., supra, at 222-223, [*293] this trend is largely attributable to a fundamental transformation in the American economy:

"Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity."

The historical developments noted in *McGee*, of course, have only accelerated [***499] in the generation since that case was decided.

Nevertheless, we have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution. The economic interdependence of the States was foreseen and desired by the Framers. In the Commerce Clause, they provided that the Nation was to be a common market, a "free trade unit" in which the States are debarred from acting as separable economic entities. *H. P. Hood & Sons, Inc.* v. *Du Mond*, 336 U.S. 525, 538 (1949). But the Framers also intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts. The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States -- a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.

Hence, even while abandoning the shibboleth that "[the] authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established, " *Pennoyer* v. *Neff, supra*, at 720, we emphasized that the reasonableness of asserting jurisdiction over the defendant must be assessed "in the context of our federal system of government," [*294] *International Shoe Co.* v. *Washington*, 326 U.S., at 317, and stressed that the Due Process Clause ensures not only fairness, but also the "orderly administration of the laws," *id.*, at 319. As we noted in *Hanson* v. *Denckla*, 357 U.S. 235, 250-251 (1958):

"As technological progress has increased the flow of commerce between the States, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer* v. *Neff*, 95 U.S. 714, to the flexible standard of *International Shoe Co.* v. *Washington*, 326 U.S. 310. But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. [Citation omitted.] Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States."

[***LEdHR5] [5]Thus, the Due Process Clause "does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations." *International Shoe Co.* v. *Washington, supra*, at 319.Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of [**566] another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient [***500] location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment. *Hanson* v. *Denckla, supra*, at 251, 254.

[*295] III

[***LEdHR1B] [1B]Applying these principles to the case at hand, [10] we find in the record before us a total absence of those affiliating circumstances that are a necessary predicate to any exercise of state-court jurisdiction. Petitioners carry on no activity whatsoever in Oklahoma. They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the State. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly, through others, serve or seek to serve the Oklahoma market. In short, respondents seek to base jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.

10 Respondents argue, as a threshold matter, that petitioners waived any objections to personal jurisdiction by (1) joining with their special appearances a challenge to the District Court's subject-matter jurisdiction, see n. 4, *supra*, and (2) taking depositions on the merits of the case in Oklahoma. The trial court, however, characterized the appearances as "special," and the Oklahoma Supreme Court, rather than finding jurisdiction waived, reached and decided the statutory and constitutional

questions. Cf. *Kulko* v. *California Superior Court*, 436 U.S. 84, 91, n. 5 (1978).

It is argued, however, that because an automobile is mobile by its very design and purpose it was "foreseeable" that the Robinsons' Audi would cause injury in Oklahoma. Yet "foreseeability" alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause. In *Hanson* v. *Denckla, supra*, it was no doubt foreseeable that the settlor of a Delaware trust would subsequently move to Florida and seek to exercise a power of appointment there; yet we held that Florida courts could not constitutionally [*296] exercise jurisdiction over a Delaware trustee that had no other contacts with the forum State. In *Kulko* v. *California Superior Court*, 436 U.S. 84 (1978), it was surely "foreseeable" that a divorced wife would move to California from New York, the domicile of the marriage, and that a minor daughter would live with the mother. Yet we held that California could not exercise jurisdiction in a child-support action over the former husband who had remained in New York.

If foreseeability were the criterion, a local California tire retailer could be forced to defend in Pennsylvania when a blowout occurs there, see *Erlanger Mills, Inc.* v. *Cohoes Fibre Mills, Inc.*, 239 F.2d 502, 507 (CA4 1956); a Wisconsin seller of a defective automobile jack could be haled before a distant court for damage caused in New Jersey, *Reilly* v. *Phil Tolkan Pontiac, Inc.*, 372 F.Supp. 1205 (NJ 1974); or a Florida soft-drink concessionaire could be summoned to Alaska to account for injuries [***501] happening there, see *Uppgren* v. *Executive Aviation Services, Inc.*, 304 F.Supp. 165, 170-171 (Minn. 1969). Every seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel. We recently abandoned the outworn rule of *Harris* v. *Balk*, 198 U.S. 215 (1905), that the interest of a creditor in a debt could be extinguished or otherwise affected by any State having transitory jurisdiction over the debtor. *Shaffer* v. *Heitner*, 433 U.S. 186 (1977). Having interred the mechanical rule that a creditor's amenability to a *quasi in rem* action travels [**567] with his debtor, we are unwilling to endorse an analogous principle in the present case. [11]

11 Respondents' counsel, at oral argument, see Tr. of Oral Arg. 19-22, 29, sought to limit the reach of the foreseeability standard by suggesting that there is something unique about automobiles. It is true that automobiles are uniquely mobile, see *Tyson* v. *Whitaker & Son, Inc.*, 407 A. 2d 1, 6, and n. 11 (Me. 1979) (McKusick, C. J.), that they did play a crucial role in the expansion of personal jurisdiction through the fiction of implied consent, *e. g.*, *Hess* v. *Pawloski*, 274 U.S. 352 (1927), and that some of the cases have treated the automobile as a "dangerous instrumentality." But today, under the regime of *International Shoe*, we see no difference for jurisdictional purposes between an automobile and any other chattel. The "dangerous instrumentality" concept apparently was never used to support personal jurisdiction; and to the extent it has relevance today it bears not on jurisdiction but on the possible desirability of imposing substantive principles of tort law such as strict liability.

[*297] [***LEdHR6] [6]This is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. See *Kulko* v. *California Superior Court, supra*, at 97-98; *Shaffer* v. *Heitner*, 433 U.S., at 216; and see *id.*, at 217-219 (STEVENS, J., concurring in judgment). The Due Process Clause, by ensuring the "orderly administration of the laws," *International Shoe Co.* v. *Washington*, 326 U.S., at 319, gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

[***LEdHR7] [7]When a corporation "purposefully avails itself of the privilege of conducting activities within the forum State," *Hanson* v. *Denckla*, 357 U.S., at 253, it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its [***502] owner or to others. The forum State does not [*298] exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. Cf. *Gray* v. *American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N. E. 2d 761 (1961).

[***LEdHR8] [8]But there is no such or similar basis for Oklahoma jurisdiction over World-Wide or Seaway in this case. Seaway's sales are made in

Massena, N. Y. World-Wide's market, although substantially larger, is limited to dealers in New York, New Jersey, and Connecticut. There is no evidence of record that any automobiles distributed by World-Wide are sold to retail customers outside this tristate area. It is foreseeable that the purchasers of automobiles sold by World-Wide and Seaway may take them to Oklahoma. But the mere "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Hanson* v. *Denckla, supra*, at 253.

In a variant on the previous argument, it is contended that jurisdiction can be supported by the fact that petitioners earn substantial revenue from goods used in Oklahoma. The Oklahoma Supreme Court so found, 585 P. 2d, at 354-355, drawing the [**568] inference that because one automobile sold by petitioners had been used in Oklahoma, others might have been used there also. While this inference seems less than compelling on the facts of the instant case, we need not question the court's factual findings in order to reject its reasoning.

[***LEdHR9] [9]This argument seems to make the point that the purchase of automobiles in New York, from which the petitioners earn substantial revenue, would not occur *but for* the fact that the automobiles are capable of use in distant States like Oklahoma. Respondents observe that the very purpose of an automobile is to travel, and that travel of automobiles sold by petitioners is facilitated by an extensive chain of Volkswagen service centers throughout the country, including some in Oklahoma. [*299] [12] However, financial benefits accruing to the defendant from a collateral relation to the forum State will not support jurisdiction if they do not stem from a constitutionally cognizable contact with that State. See *Kulko* v. *California Superior Court*, 436 U.S., at 94-95. In our view, whatever marginal revenues petitioners may receive by virtue of the fact that their products are capable of use in Oklahoma is far too attenuated a contact to justify that State's exercise of *in personam* jurisdiction over them.

12 As we have noted, petitioners earn no direct revenues from these service centers. See *supra*, at 289.

Because we find that petitioners have no "contacts, ties, or relations" with the State of Oklahoma, *International Shoe Co.* v. *Washington, supra*, at 319, the judgment of the Supreme Court of Oklahoma is

Reversed.

DISSENT BY: BRENNAN; MARSHALL; BLACKMUN

471 U.S. 462, *; 105 S. Ct. 2174, **;
85 L. Ed. 2d 528, ***; 1985 U.S. LEXIS 14

BURGER KING CORP. v. RUDZEWICZ

No. 83-2097

SUPREME COURT OF THE UNITED STATES

471 U.S. 462; 105 S. Ct. 2174; 85 L. Ed. 2d 528; 1985 U.S. LEXIS 14; 53 U.S.L.W. 4541

January 8, 1985, Argued
May 20, 1985, Decided

PRIOR HISTORY: APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.

DISPOSITION: 724 F.2d 1505, reversed and remanded.

SYLLABUS

Appellant is a Florida corporation whose principal offices are in Miami. It conducts most of its restaurant business through a franchise operation, under which franchisees are licensed to use appellant's trademarks and service marks in leased standardized restaurant facilities for a period of 20 years. The governing contracts provide that the franchise relationship is established in Miami and governed by Florida law, and call for payment of all required monthly fees and forwarding of all relevant notices to the Miami headquarters. The Miami headquarters sets policy and works directly with the franchisees in attempting to resolve major problems. Day-to-day monitoring of franchisees, however, is conducted through district offices that in turn report to the Miami headquarters. Appellee is a Michigan resident who, along with another Michigan resident, entered into a 20-year franchise contract with appellant to operate a restaurant in Michigan. Subsequently, when the restaurant's patronage declined, the franchisees fell behind in their monthly payments. After extended negotiations among the franchisees, the Michigan district office, and the Miami headquarters proved unsuccessful in solving the problem, headquarters terminated the franchise and ordered the franchisees to vacate the premises. They refused and continued to operate the restaurant. Appellant then brought a diversity action in Federal District Court in Florida, alleging that the franchisees had breached their franchise obligations and requesting damages and injunctive relief. The franchisees claimed that, because they were Michigan residents and because appellant's claim did not "arise" within Florida, the District Court lacked personal jurisdiction over them. But the court held that the franchisees were subject to personal jurisdiction pursuant to Florida's long-arm statute, which extends jurisdiction to any person, whether or not a citizen or resident of the State, who breaches a contract in the State by failing to perform acts that the contract requires to be performed there. Thereafter, the court entered judgment against the franchisees on the merits. The Court of Appeals reversed, holding that "[jurisdiction] under these circumstances would offend the fundamental fairness which is the touchstone of due process."

Held: The District Court's exercise of jurisdiction pursuant to Florida's long-arm statute did not violate the Due Process Clause of the Fourteenth Amendment. Pp. 471-487.

(a) A forum may assert specific jurisdiction over a nonresident defendant where an alleged injury arises out of or relates to actions by the defendant *himself* that are purposefully directed toward forum residents, and where jurisdiction would not otherwise offend "fair play and substantial justice." Jurisdiction in these circumstances may not be avoided merely because the defendant did not *physically* enter the forum. Pp. 471-478.

(b) An individual's contract with an out-of-state party cannot *alone* automatically establish sufficient minimum contacts in the other party's home forum. Instead, the prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing, must be evaluated to determine whether a defendant purposefully established minimum contacts within the forum. Pp. 478-479.

(c) Here, appellee established a substantial and continuing relationship with appellant's Miami headquarters, and received fair notice from the contract documents and the course of dealings that he might be subject to suit in Florida. The District Court found that appellee is an "experienced and sophisticated" businessman who did not act under economic duress or disadvantage imposed by appellant, and appellee has pointed to no other factors that would establish the *unconstitutionality* of Florida's assertion of jurisdiction. Pp. 479-487.

COUNSEL: Joel S. Perwin argued the cause and filed briefs for appellant.

Thomas H. Oehmke argued the cause and filed a brief for appellee.

JUDGES: BRENNAN, J., delivered the opinion of the Court, in which BURGER, C. J., and MARSHALL, BLACKMUN, REHNQUIST, and O'CONNOR, JJ., joined. STEVENS, J., filed a dissenting opinion, in which WHITE, J., joined, post, p. 487. POWELL, J., took no part in the consideration or decision of the case.

OPINION BY: BRENNAN

OPINION

[*463] [***535] [**2177] JUSTICE BRENNAN delivered the opinion of the Court.

[***LEdHR1A] [1A]The State of Florida's long-arm statute extends jurisdiction to "[any] person, whether or not a citizen or resident of this state," who, *inter alia*, "[breaches] a contract in this state by failing to perform acts required by the contract to be performed in this state," so long as the cause of action [*464] arises from the alleged contractual breach. Fla. Stat. § 48.193 (1)(g) (Supp. 1984). The United States District Court for the Southern District of Florida, sitting in diversity, relied on this provision in exercising personal jurisdiction over a Michigan resident who allegedly had breached a franchise agreement with a Florida corporation by failing to make required payments in Florida. The question presented is whether this exercise of long-arm jurisdiction offended "traditional [conceptions] of fair play and substantial justice" embodied in the Due Process Clause of the Fourteenth Amendment. *International Shoe Co.* v. [**2178] *Washington*, 326 U.S. 310, 320 (1945).

I

A

Burger King Corporation is a Florida corporation whose principal offices are in Miami. It is one of the world's largest restaurant organizations, with over 3,000 outlets in the 50 States, the Commonwealth of Puerto Rico, and 8 foreign nations. Burger King conducts approximately 80% of its business through a franchise operation that the company styles the "Burger King System" -- "a comprehensive restaurant format and operating system for the sale of uniform and quality food products." App. 46. [1] Burger King licenses its [***536] franchisees to use its trademarks and service marks for a period of 20 years and leases standardized restaurant facilities to them for the same term. In addition, franchisees acquire a variety of proprietary information concerning the "standards, specifications, procedures and methods for operating [*465] a Burger King Restaurant." *Id.*, at 52. They also receive market research and advertising assistance; ongoing training in restaurant management; [2] and accounting, cost-control, and inventory-control guidance. By permitting franchisees to tap into Burger King's established national reputation and to benefit from proven procedures for dispensing standardized fare, this system enables them to go into the restaurant business with significantly lowered barriers to entry. [3]

1 Burger King's standard Franchise Agreement further defines this system as "a restaurant format and operating system, including a recognized design, decor, color scheme and style of building, uniform standards, specifications and procedures of operation, quality and uniformity of products and services offered, and procedures for inventory and management control . . . ." App. 43.

2 Mandatory training seminars are conducted at Burger King University in Miami and at Whopper College Regional Training Centers around the country. See *id.*, at 39; 6 Record 540-541.

3 See App. 43-44. See generally H. Brown, Franchising Realities and Remedies 6-7, 16-17 (2d ed. 1978).

In exchange for these benefits, franchisees pay Burger King an initial $ 40,000 franchise fee and commit themselves to payment of monthly royalties, advertising and sales promotion fees, and rent computed in part from monthly gross sales. Franchisees also agree to submit to the national organization's exacting regulation of virtually every conceivable aspect of their operations. [4] Burger King imposes these standards and undertakes its rigid regulation out of conviction that "[uniformity] of service, appearance, and quality of product is essential to the preservation of the Burger King image and the benefits accruing therefrom to both Franchisee and Franchisor." *Id.*, at 31.

4 See, *e. g.*, App. 24-25, 26 (range, "quality, appearance, size, taste, and processing" of menu items), 31 ("standards of service and cleanliness"), 32 (hours of operation), 47 ("official mandatory restaurant operating standards, specifications and procedures"), 48-50 (building layout, displays, equipment, vending machines, service, hours of operation, uniforms, advertising, and promotion), 53 (employee training), 55-56 (accounting and auditing requirements), 59 (insurance requirements). Burger King also imposes extensive standards governing franchisee liability, assignments, defaults, and termination. See *id.*, at 61-74.

Burger King oversees its franchise system through a two-tiered administrative structure. The governing contracts [*466] provide that the franchise relationship is established in Miami and governed by Florida law, and call for payment of all required fees and forwarding of all relevant notices to the Miami headquarters. [5] The Miami headquarters sets policy and works directly with its franchisees in attempting to resolve major problems. See nn. 7, 9, *infra*. Day-to-day monitoring of franchisees, however, is conducted through a network of 10 district offices which in turn report to the Miami headquarters.

5 See *id.*, at 10-11, 37, 43, 72-73, 113. See *infra*, at 481.

The instant litigation grows out of Burger King's termination of one of its franchisees, [**2179] and is aptly described by the franchisee as "a divorce proceeding among commercial partners." 5 Record 4. The appellee John Rudzewicz, a Michigan citizen [***537] and resident, is the senior partner in a Detroit accounting firm. In 1978, he was approached by Brian MacShara, the son of a business acquaintance, who suggested that they jointly apply to Burger King for a franchise in the Detroit area. MacShara proposed to serve as the manager of the restaurant if Rudzewicz would put up the investment capital; in exchange, the two would evenly share the profits. Believing that MacShara's idea offered attractive investment and tax-deferral opportunities, Rudzewicz agreed to the venture. 6 *id.*, at 438-439, 444, 460.

Rudzewicz and MacShara jointly applied for a franchise to Burger King's Birmingham, Michigan, district office in the autumn of 1978. Their application was forwarded to Burger King's Miami headquarters, which entered into a preliminary agreement with them in February 1979. During the ensuing four months it was agreed that Rudzewicz and MacShara would assume operation of an existing facility in Drayton Plains, Michigan. MacShara attended the prescribed management courses in Miami during this period, see n. 2, *supra*, and the franchisees purchased $ 165,000 worth of restaurant equipment from Burger King's Davmor Industries division in [*467] Miami. Even before the final agreements were signed, however, the parties began to disagree over site-development fees, building design, computation of monthly rent, and whether the franchisees would be able to assign their liabilities to a corporation they had formed. [6] During these disputes Rudzewicz and MacShara negotiated both with the Birmingham district office and with the Miami headquarters. [7] With some misgivings, Rudzewicz and MacShara finally obtained limited concessions from the Miami headquarters, [8] signed the final agreements, and commenced operations in June 1979. By signing the final agreements, Rudzewicz obligated himself personally to payments exceeding $ 1 million over the 20-year franchise relationship.

6 The latter two matters were the major areas of disagreement. Notwithstanding that Burger King's franchise offering advised that minimum rent would be based on a percentage of "approximated capitalized site acquisition and construction costs," *id.*, at 23, Rudzewicz assumed that rent would be a function solely of renovation costs, and he thereby underestimated the minimum monthly rent by more than $ 2,000. The District Court found Rudzewicz' interpretation "incredible." 7 Record 649.

With respect to assignment, Rudzewicz and MacShara had formed RMBK Corp. with the intent of assigning to it all of their interest and liabilities in the franchise. Consistent with the contract documents, however, Burger King insisted that the two remain personally liable for their franchise obligations. See App. 62, 109. Although the franchisees contended that Burger King officials had given them oral assurances concerning assignment, the District Court found that pursuant to the parol evidence rule any such assurances "even if they had been made and were misleading were joined and merged" into the final agreement. 7 Record 648.

7 Although Rudzewicz and MacShara dealt with the Birmingham district office on a regular basis, they communicated directly with the Miami headquarters in forming the contracts; moreover, they learned that the district office had "very little" decisionmaking authority and accordingly turned directly to headquarters in seeking to resolve their disputes. 5 *id.*, at 292. See generally App. 5-6; 5 Record 167-168, 174-179, 182-184, 198-199, 217-218, 264-265, 292-294; 6 *id.*, at 314-316, 363, 373, 416, 463, 496.

8 They were able to secure a $ 10,439 reduction in rent for the third year. App. 82; 5 Record 222-223; 6 *id.*, at 500.

[*468] The Drayton Plains facility apparently enjoyed steady business during [***538] the summer of 1979, but patronage declined after a recession began later that year. Rudzewicz and MacShara soon fell far behind in their monthly payments to Miami. Headquarters sent notices of default, and an extended period of negotiations began among the franchisees, the Birmingham district office, and the Miami headquarters. After several Burger King officials in Miami had engaged in prolonged but ultimately unsuccessful negotiations with the franchisees [**2180] by mail and by telephone, [9] headquarters terminated the franchise and ordered Rudzewicz and MacShara to vacate the premises.

They refused and continued to occupy and operate the facility as a Burger King restaurant.

> 9 Miami's policy was to "deal directly" with franchisees when they began to encounter financial difficulties, and to involve district office personnel only when necessary. 5 *id.*, at 95. In the instant case, for example, the Miami office handled all credit problems, ordered cost-cutting measures, negotiated for a partial refinancing of the franchisees' debts, communicated directly with the franchisees in attempting to resolve the dispute, and was responsible for all termination matters. See 2 *id.*, at 59-69; 5 *id.*, at 84-89, 94-95, 97-98, 100-103, 116-128, 151-152, 158, 163; 6 *id.*, at 395-397, 436-438, 510-511, 524-525.

B

Burger King commenced the instant action in the United States District Court for the Southern District of Florida in May 1981, invoking that court's diversity jurisdiction pursuant to 28 U. S. C. § 1332(a) and its original jurisdiction over federal trademark disputes pursuant to § 1338(a). [10] Burger King alleged that Rudzewicz and MacShara had breached their franchise obligations "within [the jurisdiction of] this district court" by failing to make the required payments "at plaintiff's place of business in Miami, Dade County, Florida," para. 6, App. 121, and also charged that they were tortiously infringing [*469] its trademarks and service marks through their continued, unauthorized operation as a Burger King restaurant, paras. 35-53, App. 130-135. Burger King sought damages, injunctive relief, and costs and attorney's fees. Rudzewicz and MacShara entered special appearances and argued, *inter alia*, that because they were Michigan residents and because Burger King's claim did not "arise" within the Southern District of Florida, the District Court lacked personal jurisdiction over them. The District Court denied their motions after a hearing, holding that, pursuant to Florida's long-arm statute, "a non-resident Burger King franchisee is subject to the personal jurisdiction of this Court in actions arising out of its franchise agreements." *Id.*, at 138. Rudzewicz and MacShara then filed an answer and a counterclaim seeking damages for alleged violations by Burger King of Michigan's Franchise Investment Law, Mich. Comp. Laws § 445.1501 *et seq.* (1979).

> 10 Rudzewicz and MacShara were served in Michigan with summonses and copies of the complaint pursuant to Federal Rule of Civil Procedure 4. 2 *id.*, at 102-103.

After a 3-day bench trial, the court again concluded that it had "jurisdiction over the subject matter and the parties to this cause." App. 159. Finding that Rudzewicz and MacShara had breached their franchise agreements with Burger King and had infringed Burger King's trademarks and service marks, the court entered judgment against them, jointly and severally, for [***539] $ 228,875 in contract damages. The court also ordered them "to immediately close Burger King Restaurant Number 775 from continued operation or to immediately give the keys and possession of said restaurant to Burger King Corporation," *id.*, at 163, found that they had failed to prove any of the required elements of their counterclaim, and awarded costs and attorney's fees to Burger King.

Rudzewicz appealed to the Court of Appeals for the Eleventh Circuit. [11] A divided panel of that Circuit reversed the [*470] judgment, [**2181] concluding that the District Court could not properly exercise personal jurisdiction over Rudzewicz pursuant to Fla. Stat. § 48.193(1)(g) (Supp. 1984) because "the circumstances of the Drayton Plains franchise and the negotiations which led to it left Rudzewicz bereft of reasonable notice and financially unprepared for the prospect of franchise litigation in Florida." *Burger King Corp.* v. *MacShara*, 724 F.2d 1505, 1513 (1984). Accordingly, the panel majority concluded that "[jurisdiction] under these circumstances would offend the fundamental fairness which is the touchstone of due process." *Ibid.*

> 11 MacShara did not appeal his judgment. See *Burger King Corp.* v. *MacShara*, 724 F.2d 1505, 1506, n. 1 (CA11 1984). In addition, Rudzewicz entered into a compromise with Burger King and waived his right to appeal the District Court's finding of trademark infringement and its entry of injunctive relief. See 4 Record 804-816. Accordingly, we need not address the extent to which the tortious act provisions of Florida's long-arm statute, see Fla. Stat. § 48.193(1)(b) (Supp. 1984), may constitutionally extend to out-of-state trademark infringement. Cf. *Calder* v. *Jones*, 465 U.S. 783, 788-789 (1984) (tortious out-of-state conduct); *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 776 (1984) (same).

[***LEdHR2] [2] [***LEdHR3A] [3A]Burger King appealed the Eleventh Circuit's judgment to this Court pursuant to 28 U. S. C. § 1254(2), and we postponed probable jurisdiction. 469 U.S. 814 (1984). Because it is unclear whether the Eleventh Circuit actually held that Fla. Stat. § 48.193(1)(g) (Supp. 1984) *itself* is unconstitutional as applied to the circumstances of this case, we conclude that jurisdiction by appeal does not properly lie and therefore dismiss the appeal. [12] Treating [***540] the jurisdictional [*471] statement as a petition for

a writ of certiorari, see 28 U. S. C. § 2103, we grant the petition and now reverse.

[***LEdHR3B] [3B]

12 The District Court had found both that Rudzewicz fell within the reach of Florida's long-arm statute and that the exercise of jurisdiction was constitutional. The Court of Appeals did not consider the statutory question, however, because, as Burger King acknowledged at argument, that court "accepted the parties' stipulation" that § 48.193 reached Rudzewicz "in lieu of [making] a determination of what Florida law provides." Tr. of Oral Arg. 12. Burger King contends that an appeal is proper "on the basis of the Circuit Court's holding that *given that stipulation* the statute was unconstitutional as applied." *Id.*, at 13 (emphasis added). We disagree. Our "overriding policy, historically encouraged by Congress, of minimizing the mandatory docket of this Court in the interests of sound judicial administration," *Gonzalez* v. *Automatic Employees Credit Union*, 419 U.S. 90, 98 (1974) (construing 28 U. S. C. § 1253), would be threatened if litigants could obtain an appeal through the expedient of stipulating to a particular construction of state law where state law might in fact be in harmony with the Federal Constitution. Jurisdiction under 28 U. S. C. § 1254(2) is properly invoked only where a court of appeals *squarely* has "held" that a state statute is unconstitutional on its face or as applied; jurisdiction does not lie if the decision might rest on other grounds. *Public Service Comm'n* v. *Batesville Telephone Co.*, 284 U.S. 6, 7 (1931) *(per curiam)*. Consistent with "our practice of strict construction" of § 1254(2), *Fornaris* v. *Ridge Tool Co.*, 400 U.S. 41, 42, n. 1 (1970) *(per curiam)*, we believe that an appeal cannot lie where a court of appeals' judgment rests solely on the stipulated applicability of state law. Rather, it must be reasonably clear that the court independently concluded that the challenged statute governs the case and held the statute itself unconstitutional as so applied. The Court of Appeals did neither in this case, concluding simply that "[jurisdiction] under these circumstances would offend the fundamental fairness which is the touchstone of due process." 724 F.2d, at 1513.

Of course, if it were clear under Florida law that § 48.193(1)(g) governed every transaction falling within its literal terms, there could be no objection to a stipulation that merely recognized this established construction. But the Florida Supreme Court has not ruled on the breadth of § 48.193 (1)(g), and several state appellate courts have held that the provision extends only to the limits of the Due Process Clause. See, *e. g., Scordilis* v. *Drobnicki*, 443 So. 2d 411, 412-414 (Fla. App. 1984); *Lakewood Pipe of Texas, Inc.* v. *Rubaii*, 379 So. 2d 475, 477 (Fla. App. 1979), appeal dism'd, 383 So. 2d 1201 (Fla. 1980); *Osborn* v. *University Society, Inc.*, 378 So. 2d 873, 874 (Fla. App. 1979). If § 48.193(1)(g) is construed and applied in accordance with due process limitations as a matter of state law, then an appeal is improper because the statute cannot be "invalid as repugnant to the Constitution . . . of the United States," 28 U. S. C. § 1254(2), since its boundaries are defined by, rather than being in excess of, the Due Process Clause. See, *e. g., Calder* v. *Jones, supra*, at 787-788, n. 7; *Kulko* v. *California Superior Court*, 436 U.S. 84, 90, and n. 4 (1978).

II

A

[***LEdHR4] [4] [***LEdHR5] [5]The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a [*472] forum with which he has established no meaningful "contacts, ties, or relations." *International Shoe Co.* v. *Washington*, [**2182] 326 U.S., at 319.[13]By requiring that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," *Shaffer* v. *Heitner*, 433 U.S. 186, 218 (1977) (STEVENS, J., concurring in judgment), the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit," *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980).

13 Although this protection operates to restrict state power, it "must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause" rather than as a function "of federalism concerns." *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-703, n. 10 (1982).

[***LEdHR6] [6]Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, [14] this "fair [***541] warning" requirement is satisfied if the defendant has "purposefully directed" his activities at residents of the forum, *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984), and the litigation results from alleged

injuries that "arise out of or relate to" those activities, *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 (1984).[15] [*473] Thus "[the] forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State" and those products subsequently injure forum consumers. *World-Wide Volkswagen Corp.* v. *Woodson, supra*, at 297-298. Similarly, a publisher who distributes magazines in a distant State may fairly be held accountable in that forum for damages resulting there from an allegedly defamatory story. *Keeton* v. *Hustler Magazine, Inc., supra*; see also *Calder* v. *Jones*, 465 U.S. 783 (1984) (suit against author and editor). And with respect to interstate contractual obligations, we have emphasized that parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to regulation and sanctions in the other State for the consequences of their activities. *Travelers Health Assn.* v. *Virginia*, 339 U.S. 643, 647 (1950). See also *McGee* v. *International Life Insurance Co.*, 355 U.S. 220, 222-223 (1957).

14 We have noted that, because the personal jurisdiction requirement is a waivable right, there are a "variety of legal arrangements" by which a litigant may give "express or implied consent to the personal jurisdiction of the court." *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee, supra*, at 703. For example, particularly in the commercial context, parties frequently stipulate in advance to submit their controversies for resolution within a particular jurisdiction. See *National Equipment Rental, Ltd.* v. *Szukhent*, 375 U.S. 311 (1964). Where such forum-selection provisions have been obtained through "freely negotiated" agreements and are not "unreasonable and unjust," *The Bremen* v. *Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972), their enforcement does not offend due process.

15 "Specific" jurisdiction contrasts with "general" jurisdiction, pursuant to which "a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S., at 414, n. 9; see also *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).

We have noted several reasons why a forum legitimately may exercise personal jurisdiction over a nonresident who "purposefully directs" his activities toward forum residents. A State generally has a "manifest interest" in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors. [**2183] *Id.*, at 223; see also *Keeton* v. *Hustler Magazine, Inc., supra*, at 776. Moreover, where individuals "purposefully derive benefit" from their interstate activities, *Kulko* v. *California Superior Court*, 436 U.S. 84, 96 (1978), [*474] it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed. And because "modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity," it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity. *McGee* v. *International Life Insurance Co., supra*, at 223.

[***542] [***LEdHR7] [7]Notwithstanding these considerations, the constitutional touchstone remains whether the defendant purposefully established "minimum contacts" in the forum State. *International Shoe Co.* v. *Washington, supra*, at 316. Although it has been argued that foreseeability of causing *injury* in another State should be sufficient to establish such contacts there when policy considerations so require, [16] the Court has consistently held that this kind of foreseeability is not a "sufficient benchmark" for exercising personal jurisdiction. *World-Wide Volkswagen Corp* . v. *Woodson*, 444 U.S., at 295. Instead, "the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.*, at 297. In defining when it is that a potential defendant should "reasonably anticipate" out-of-state litigation, the Court frequently has drawn from the reasoning of *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958):

"The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application [*475] of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."

16 See, *e. g., World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 299 (1980) (BRENNAN, J., dissenting); *Shaffer* v. *Heitner*, 433 U.S. 186, 219 (1977) (BRENNAN, J., concurring in part and dissenting in part).

[***LEdHR8] [8]This "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts, *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S., at 774;*World-Wide Volkswagen Corp.* v. *Woodson, supra*, at 299, or of the "unilateral activity of another party or a third person," *Helicopteros Nacionales de Colombia, S.A.* v. *Hall, supra*, at 417.[17] Jurisdiction is proper, however, [**2184] where the contacts proximately result from actions by the defendant *himself* that create a "substantial connection" with the forum State. *McGee* v. *International Life Insurance Co., supra*, at 223; see also *Kulko* v. *California Superior Court, supra*, at 94, n. 7.[18] [***543] Thus where the defendant "deliberately" has [*476] engaged in significant activities within a State, *Keeton* v. *Hustler Magazine, Inc., supra*, at 781, or has created "continuing obligations" between himself and residents of the forum, *Travelers Health Assn.* v. *Virginia*, 339 U.S., at 648, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

17 Applying this principle, the Court has held that the Due Process Clause forbids the exercise of personal jurisdiction over an out-of-state automobile distributor whose only tie to the forum resulted from a customer's decision to drive there, *World-Wide Volkswagen Corp.* v. *Woodson, supra*; over a divorced husband sued for child-support payments whose only affiliation with the forum was created by his former spouse's decision to settle there, *Kulko* v. *California Superior Court*, 436 U.S. 84 (1978); and over a trustee whose only connection with the forum resulted from the settlor's decision to exercise her power of appointment there, *Hanson* v. *Denckla*, 357 U.S. 235 (1958). In such instances, the defendant has had no "clear notice that it is subject to suit" in the forum and thus no opportunity to "alleviate the risk of burdensome litigation" there. *World-Wide Volkswagen Corp.* v. *Woodson, supra*, at 297.

18 So long as it creates a "substantial connection" with the forum, even a single act can support jurisdiction. *McGee* v. *International Life Insurance Co.*, 355 U.S., at 223. The Court has noted, however, that "some single or occasional acts" related to the forum may not be sufficient to establish jurisdiction if "their nature and quality and the circumstances of their commission" create only an "attenuated" affiliation with the forum. *International Shoe Co.* v. *Washington*, 326 U.S. 310, 318 (1945); *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S., at 299. This distinction derives from the belief that, with respect to this category of "isolated" acts, *id.*, at 297, the reasonable foreseeability of litigation in the forum is substantially diminished.

Jurisdiction in these circumstances may not be avoided merely because the defendant did not *physically* enter the forum State. Although territorial presence frequently will enhance a potential defendant's affiliation with a State and reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there. *Keeton* v. *Hustler Magazine, Inc., supra*, at 774-775; see also *Calder* v. *Jones*, 465 U.S., at 788-790; *McGee* v. *International Life Insurance Co.*, 355 U.S., at 222-223. Cf. *Hoopeston Canning Co.* v. *Cullen*, 318 U.S. 313, 317 (1943).

[***LEdHR9] [9] [***LEdHR10] [10]Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with "fair play and substantial justice." *International Shoe Co.* v. *Washington*, 326 U.S., at 320.Thus [*477] courts in "appropriate [cases]" may evaluate "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S., at 292. These considerations sometimes serve to establish the reasonableness [***544] of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. See, *e. g., Keeton* v. *Hustler Magazine, Inc., supra*, at 780; *Calder* v. *Jones, supra*, at 788-789; *McGee* v. *International Life Insurance Co., supra*, at 223-224. On the other hand, where a defendant who purposefully has directed his activities at [**2185] forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable. Most such considerations usually may be accommodated through means short of finding jurisdiction unconstitutional. For example,

the potential clash of the forum's law with the "fundamental substantive social policies" of another State may be accommodated through application of the forum's choice-of-law rules. [19] Similarly, a defendant claiming substantial inconvenience may seek a change of venue. [20] Nevertheless, minimum requirements inherent in the concept of "fair play and substantial [*478] justice" may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities. *World-Wide Volkswagen Corp.* v. *Woodson, supra*, at 292; see also Restatement (Second) of Conflict of Laws §§ 36-37 (1971). As we previously have noted, jurisdictional rules may not be employed in such a way as to make litigation "so gravely difficult and inconvenient" that a party unfairly is at a "severe disadvantage" in comparison to his opponent. *The Bremen* v. *Zapata Off-Shore Co.*, 407 U.S. 1, 18 (1972) (*re* forum-selection provisions); *McGee* v. *International Life Insurance Co., supra*, at 223-224.

19 See *Allstate Insurance Co.* v. *Hague*, 449 U.S. 302, 307-313 (1981) (opinion of BRENNAN, J.). See generally Restatement (Second) of Conflict of Laws §§ 6, 9 (1971).

20 See, *e. g.*, 28 U. S. C. § 1404(a) ("For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought"). This provision embodies in an expanded version the common-law doctrine of *forum non conveniens*, under which a court in appropriate circumstances may decline to exercise its jurisdiction in the interest of the "easy, expeditious and inexpensive" resolution of a controversy in another forum. See *Gulf Oil Corp.* v. *Gilbert*, 330 U.S. 501, 508-509 (1947).

B

(1)

[***LEdHR1B] [1B] [***LEdHR11] [11]Applying these principles to the case at hand, we believe there is substantial record evidence supporting the District Court's conclusion that the assertion of personal jurisdiction over Rudzewicz in Florida for the alleged breach of his franchise agreement did not offend due process. At the outset, we note a continued division among lower courts respecting whether and to what extent a contract can constitute a "contact" for purposes of due process analysis. [21] If the question is [***545] whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. The Court long ago rejected the notion that personal jurisdiction might turn on "mechanical" tests, *International Shoe Co.* v. *Washington, supra*, at 319, or on "conceptualistic . . . theories of the place of contracting or of performance," *Hoopeston Canning Co.* v. *Cullen*, 318 U.S., at 316. [*479] Instead, we have emphasized the need for a "highly realistic" approach that recognizes that a "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." *Id.*, at 316-317. It is these factors -- prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing -- that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.

21 See, *e. g., Lakeside Bridge & Steel Co.* v. *Mountain State Construction Co.*, 445 U.S. 907, 909-910 (1980) (WHITE, J., dissenting from denial of certiorari) (collecting cases); Brewer, Jurisdiction in Single Contract Cases, 6 U. Ark. Little Rock L. J. 1, 7-11, 13 (1983); Note, Long-Arm Jurisdiction in Commercial Litigation: When is a Contract a Contact?, 61 B. U. L. Rev. 375, 384-388 (1981).

[**2186] In this case, no physical ties to Florida can be attributed to Rudzewicz other than MacShara's brief training course in Miami. [22] Rudzewicz did not maintain offices in Florida and, for all that appears from the record, has never even visited there. Yet this franchise dispute grew directly out of "a contract which had a *substantial* connection with that State." *McGee* v. *International Life Insurance Co.*, 355 U.S., at 223 (emphasis added). Eschewing the option of operating an independent local enterprise, Rudzewicz deliberately "[reached] out beyond" Michigan and negotiated with a Florida corporation for the purchase of a long-term franchise and [*480] the manifold benefits that would derive from affiliation with a nationwide organization. *Travelers Health Assn.* v. *Virginia*, 339 U.S., at 647. Upon approval, he entered into a carefully structured 20-year relationship that envisioned continuing and wide-reaching contacts with Burger King in Florida. In light of Rudzewicz' voluntary acceptance of the long-term and exacting regulation of his business from Burger King's Miami headquarters, the "quality and nature" of his relationship to the company in Florida can in no sense be viewed as "random," "fortuitous," or "attenuated." [***546] *Hanson* v. *Denckla*, 357 U.S., at 253; *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S., at 774; *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S., at 299. Rudzewicz' refusal to make the contractually required payments in Miami, and his continued use of Burger King's trademarks and confidential business information after his termination, caused foreseeable injuries to the corporation in Florida. For these reasons it was, at the very least, presumptively

reasonable for Rudzewicz to be called to account there for such injuries.

> 22 The Eleventh Circuit held that MacShara's presence in Florida was irrelevant to the question of Rudzewicz' minimum contacts with that forum, reasoning that "Rudzewicz and MacShara never formed a partnership" and "signed the agreements in their individual capacities." 724 F.2d, at 1513, n. 14. The two did jointly form a corporation through which they were seeking to conduct the franchise, however. See n. 6, *supra*. They were required to decide which one of them would travel to Florida to satisfy the training requirements so that they could commence business, and Rudzewicz participated in the decision that MacShara would go there. We have previously noted that when commercial activities are "carried on in behalf of" an out-of-state party those activities may sometimes be ascribed to the party, *International Shoe Co.* v. *Washington*, 326 U.S. 310, 320 (1945), at least where he is a "primary [participant]" in the enterprise and has acted purposefully in directing those activities, *Calder* v. *Jones*, 465 U.S., at 790. Because MacShara's matriculation at Burger King University is not pivotal to the disposition of this case, we need not resolve the permissible bounds of such attribution.

The Court of Appeals concluded, however, that in light of the supervision emanating from Burger King's district office in Birmingham, Rudzewicz reasonably believed that "the Michigan office was for all intents and purposes the embodiment of Burger King" and that he therefore had no "reason to anticipate a Burger King suit outside of Michigan." 724 F.2d, at 1511. See also *post*, at 488-489 (STEVENS, J., dissenting). This reasoning overlooks substantial record evidence indicating that Rudzewicz most certainly knew that he was affiliating himself with an enterprise based primarily in Florida. The contract documents themselves emphasize that Burger King's operations are conducted and supervised from the Miami headquarters, that all relevant notices and payments must be sent there, and that the agreements were made in and enforced from Miami. See n. 5, *supra*. Moreover, the parties' actual course of dealing repeatedly confirmed that decisionmaking authority was vested in the Miami headquarters [*481] and that the district office served largely as an intermediate link between the headquarters and the franchisees. When problems arose over building design, site-development fees, rent computation, and the defaulted payments, Rudzewicz and MacShara learned that the Michigan office was powerless to resolve their disputes and [**2187] could only channel their communications to Miami. Throughout these disputes, the Miami headquarters and the Michigan franchisees carried on a continuous course of direct communications by mail and by telephone, and it was the Miami headquarters that made the key negotiating decisions out of which the instant litigation arose. See nn. 7, 9, *supra*.

[***LEdHR12] [12]Moreover, we believe the Court of Appeals gave insufficient weight to provisions in the various franchise documents providing that all disputes would be governed by Florida law. The franchise agreement, for example, stated:

"This Agreement shall become valid when executed and accepted by BKC at Miami, Florida; it shall be deemed made and entered into in the State of Florida and shall be governed and construed under and in accordance with the laws of the State of Florida. The choice of law designation does not require that all suits concerning this Agreement be filed in Florida." App. 72.

See also n. 5, *supra*. The Court of Appeals reasoned that choice-of-law provisions are irrelevant to the question of personal jurisdiction, relying on *Hanson* v. *Denckla* for the proposition that "the center of gravity for choice-of-law purposes does not necessarily confer the sovereign prerogative to assert jurisdiction." 724 F.2d, at 1511-1512, n. 10, [***547] citing 357 U.S., at 254. This reasoning misperceives the import of the quoted proposition. The Court in *Hanson* and subsequent cases has emphasized that choice-of-law *analysis* -- which focuses on all elements of a transaction, and not simply on the defendant's conduct -- is distinct from minimum-contacts jurisdictional analysis -- which focuses at the threshold [*482] solely on the defendant's purposeful connection to the forum. [23] Nothing in our cases, however, suggests that a choice-of-law *provision* should be ignored in considering whether a defendant has "purposefully invoked the benefits and protections of a State's laws" for jurisdictional purposes. Although such a provision standing alone would be insufficient to confer jurisdiction, we believe that, when combined with the 20-year interdependent relationship Rudzewicz established with Burger King's Miami headquarters, it reinforced his deliberate affiliation with the forum State and the reasonable foreseeability of possible litigation there. As Judge Johnson argued in his dissent below, Rudzewicz "purposefully availed himself of the benefits and protections of Florida's laws" by entering into contracts expressly providing that those laws would govern franchise disputes. 724 F.2d, at 1513. [24]

> 23 *Hanson* v. *Denckla*, 357 U.S., at 253-254. See also *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S., at 778; *Kulko* v. *California Superior Court*, 436 U.S., at 98; *Shaffer* v. *Heitner*, 433 U.S., at 215.

24 In addition, the franchise agreement's disclaimer that the "choice of law designation does not *require* that all suits concerning this Agreement be filed in Florida," App. 72 (emphasis added), reasonably should have suggested to Rudzewicz that by negative implication such suits *could* be filed there.

The lease also provided for binding arbitration in Miami of certain condemnation disputes, *id.*, at 113, and Rudzewicz conceded the validity of this provision at oral argument, Tr. of Oral Arg. 37. Although it does not govern the instant dispute, this provision also should have made it apparent to the franchisees that they were dealing directly with the Miami headquarters and that the Birmingham district office was *not* "for all intents and purposes the embodiment of Burger King." 724 F.2d, at 1511.

(2)

[***LEdHR13A] [13A]Nor has Rudzewicz pointed to other factors that can be said persuasively to outweigh the considerations discussed above and to establish the *unconstitutionality* of Florida's assertion of jurisdiction. We cannot conclude that Florida had no "legitimate interest in holding [Rudzewicz] answerable [*483] on a claim related to" the contacts he had established in that State. *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S., at 776; see also *McGee* v. *International Life Insurance* [**2188] *Co.*, 355 U.S., at 223 (noting that State frequently will have a "manifest interest in providing effective means of redress for its residents"). [25] Moreover, although Rudzewicz has argued at some length [***548] that Michigan's Franchise Investment Law, Mich. Comp. Laws § 445.1501 *et seq.* (1979), governs many aspects of this franchise relationship, he has not demonstrated how Michigan's acknowledged interest might possibly render jurisdiction in Florida *unconstitutional.* [26] Finally, the Court of Appeals' assertion that the Florida litigation "severely impaired [Rudzewicz'] ability to call Michigan witnesses who might be essential to his defense and counterclaim," 724 F.2d, at 1512-1513, is wholly without support in the record. [27] And even to the extent that it is inconvenient [*484] for a party who has minimum contacts with a forum to litigate there, such considerations most frequently can be accommodated through a change of venue. See n. 20, *supra.* Although the Court has suggested that inconvenience may at some point become so substantial as to achieve *constitutional* magnitude, *McGee* v. *International Life Insurance Co., supra*, at 223, this is not such a case.

[***LEdHR13B] [13B]

25 Complaining that "when Burger King is the plaintiff, you won't 'have it your way' because it sues all franchisees in Miami," Brief for Appellee 19, Rudzewicz contends that Florida's interest in providing a convenient forum is negligible given the company's size and ability to conduct litigation anywhere in the country. We disagree. Absent compelling considerations, cf. *McGee* v. *International Life Insurance Co.*, 355 U.S., at 223, a defendant who has purposefully derived commercial benefit from his affiliations in a forum may not defeat jurisdiction there simply because of his adversary's greater net wealth.

26 Rudzewicz has failed to show how the District Court's exercise of jurisdiction in this case might have been at all inconsistent with Michigan's interests. To the contrary, the court found that Burger King had fully complied with Michigan law, App. 159, and there is nothing in Michigan's franchise Act suggesting that Michigan would attempt to assert exclusive jurisdiction to resolve franchise disputes affecting its residents. In any event, minimum-contacts analysis presupposes that two or more States may be interested in the outcome of a dispute, and the process of resolving potentially conflicting "fundamental substantive social policies," *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S., at 292, can usually be accommodated through choice-of-law rules rather than through outright preclusion of jurisdiction in one forum. See n. 19, *supra.*

27 The only arguable instance of trial inconvenience occurred when Rudzewicz had difficulty in authenticating some corporate records; the court offered him as much time as would be necessary to secure the requisite authentication from the Birmingham district office, and Burger King ultimately stipulated to their authenticity rather than delay the trial. See 7 Record 574-575, 578-579, 582, 598-599.

The Court of Appeals also concluded, however, that the parties' dealings involved "a characteristic disparity of bargaining power" and "elements of surprise," and that Rudzewicz "lacked fair notice" of the potential for litigation in Florida because the contractual provisions suggesting to the contrary were merely "boilerplate declarations in a lengthy printed contract." 724 F.2d, at 1511-1512, and n. 10. See also *post*, at 489-490 (STEVENS, J., dissenting). Rudzewicz presented many of these arguments to the District Court, contending that Burger King was guilty of misrepresentation, fraud, and duress; that it gave insufficient notice in its dealings with him; and that the contract was one of adhesion. See 4 Record 687-691.

After a 3-day bench trial, the District Court found that Burger King had made no misrepresentations, that Rudzewicz and MacShara "were and are experienced and sophisticated businessmen," and that "at no time" did they "[act] under economic duress or disadvantage imposed by" Burger King. App. 157-158. See also 7 Record 648-649. Federal Rule of Civil Procedure 52(a) requires that "[findings] of fact shall not be set aside unless clearly erroneous," and neither Rudzewicz nor the Court of Appeals has pointed to record evidence that would support a "definite and firm conviction" that the District Court's findings are mistaken. *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 395 [***549] (1948). See also [*485] [**2189] *Anderson* v. *Bessemer City*, 470 U.S. 564, 573-576 (1985). To the contrary, Rudzewicz was represented by counsel throughout these complex transactions and, as Judge Johnson observed in dissent below, was himself an experienced accountant "who for five months conducted negotiations with Burger King over the terms of the franchise and lease agreements, and who obligated himself personally to contracts requiring over time payments that exceeded $ 1 million." 724 F.2d, at 1514. Rudzewicz was able to secure a modest reduction in rent and other concessions from Miami headquarters, see nn. 8, 9, *supra*; moreover, to the extent that Burger King's terms were inflexible, Rudzewicz presumably decided that the advantages of affiliating with a national organization provided sufficient commercial benefits to offset the detriments. [28]

28 We do not mean to suggest that the jurisdictional outcome will always be the same in franchise cases. Some franchises may be primarily intrastate in character or involve different decisionmaking structures, such that a franchisee should not reasonably anticipate out-of-state litigation. Moreover, commentators have argued that franchise relationships may sometimes involve unfair business practices in their inception and operation. See H. Brown, Franchising Realities and Remedies 4-5 (2d ed. 1978). For these reasons, we reject Burger King's suggestion for "a general rule, or at least a presumption, that participation in an interstate franchise relationship" represents consent to the jurisdiction of the franchisor's principal place of business. Brief for Appellant 46.

III

[***LEdHR14] [14]Notwithstanding these considerations, the Court of Appeals apparently believed that it was necessary to reject jurisdiction in this case as a prophylactic measure, reasoning that an affirmance of the District Court's judgment would result in the exercise of jurisdiction over "out-of-state consumers to collect payments due on modest personal purchases" and would "sow the seeds of default judgments against franchisees owing smaller debts." 724 F.2d, at 1511.We share the Court of Appeals' broader concerns and therefore reject any talismanic jurisdictional formulas; "the [*486] facts of each case must [always] be weighed" in determining whether personal jurisdiction would comport with "fair play and substantial justice." *Kulko* v. *California Superior Court*, 436 U.S., at 92. [29] The "quality and nature" of an interstate transaction may sometimes be so "random," "fortuitous," or "attenuated" [30] that it cannot fairly be said that the potential defendant "should reasonably anticipate being haled into court" in another jurisdiction. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S., at 297; see also n. 18, *supra*. We also have emphasized that jurisdiction may not be grounded on a contract whose terms have been obtained through "fraud, undue influence, or overweening bargaining power" and whose application would [***550] render litigation "so gravely difficult and inconvenient that [a party] will for all practical purposes be deprived of his day in court." *The Bremen* v. *Zapata Off-Shore Co.*, 407 U.S., at 12, 18. Cf. *Fuentes* v. *Shevin*, 407 U.S. 67, 94-96 (1972); *National Equipment Rental, Ltd.* v. *Szukhent*, 375 U.S. 311, 329 (1964) (Black, J., dissenting) (jurisdictional rules may not be employed against small consumers so as to "[cripple] their defense"). Just as the Due Process Clause allows flexibility in ensuring that commercial actors are not effectively [**2190] "judgment proof" for the consequences of obligations they voluntarily assume in other States, *McGee* v. *International Life Insurance Co.*, 355 U.S., at 223, so too does it prevent rules that would unfairly enable them to obtain default judgments against unwitting customers. Cf. *United States* v. *Rumely*, 345 U.S. 41, 44 (1953) (courts must not be "'blind'" to what "'[all] others can see and understand'").

29 This approach does, of course, preclude clear-cut jurisdictional rules. But any inquiry into "fair play and substantial justice" necessarily requires determinations "in which few answers will be written 'in black and white. The greys are dominant and even among them the shades are innumerable.'" *Kulko* v. *California Superior Court*, 436 U.S., at 92.

30 *Hanson* v. *Denckla*, 357 U.S., at 253; *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S., at 774; *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S., at 299.

[*487] [***LEdHR1C] [1C]For the reasons set forth above, however, these dangers are not present in the instant case. Because Rudzewicz established a substantial and continuing relationship with Burger King's Miami headquarters, received fair notice from the contract documents and the course of dealing that he might be subject to suit in Florida, and has failed

to demonstrate how jurisdiction in that forum would otherwise be fundamentally unfair, we conclude that the District Court's exercise of jurisdiction pursuant to Fla. Stat. § 48.193(1)(g) (Supp. 1984) did not offend due process. The judgment of the Court of Appeals is accordingly reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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

DISSENT BY: STEVENS

DISSENT

JUSTICE STEVENS, with whom JUSTICE WHITE joins, dissenting.

480 U.S. 102, *; 107 S. Ct. 1026, **;
94 L. Ed. 2d 92, ***; 1987 U.S. LEXIS 555

ASAHI METAL INDUSTRY CO., LTD. v. SUPERIOR COURT OF CALIFORNIA, SOLANO COUNTY (CHENG SHIN RUBBER INDUSTRIAL CO., LTD., REAL PARTY IN INTEREST)

No. 85-693

SUPREME COURT OF THE UNITED STATES

480 U.S. 102; 107 S. Ct. 1026; 94 L. Ed. 2d 92; 1987 U.S. LEXIS 555; 55 U.S.L.W. 4197; CCH Prod. Liab. Rep. P11,267

November 5, 1986, Argued
February 24, 1987, Decided

PRIOR HISTORY: CERTIORARI TO THE SUPREME COURT OF CALIFORNIA.

DISPOSITION: 39 Cal. 3d 35, 702 P. 2d 543, reversed and remanded.

SYLLABUS

Petitioner manufactures tire valve assemblies in Japan and sells them to several tire manufacturers, including Cheng Shin Rubber Industrial Co. (Cheng Shin). The sales to Cheng Shin, which amounted to at least 100,000 assemblies annually from 1978 to 1982, took place in Taiwan, to which the assemblies were shipped from Japan. Cheng Shin incorporates the assemblies into its finished tires, which it sells throughout the world, including the United States, where 20 percent of its sales take place in California. Affidavits indicated that petitioner was aware that tires incorporating its assemblies would end up in California, but, on the other hand, that it never contemplated that its sales to Cheng Shin in Taiwan would subject it to lawsuits in California. Nevertheless, in 1979, a product liability suit was brought in California Superior Court arising from a motorcycle accident allegedly caused by defects in a tire manufactured by Cheng Shin, which in turn filed a cross-complaint seeking indemnification from petitioner. Although the main suit was eventually settled and dismissed, the Superior Court denied petitioner's motion to quash the summons issued against it. The State Court of Appeal then ordered that the summons be quashed, but the State Supreme Court reversed, finding that petitioner's intentional act of placing its assemblies into the stream of commerce by delivering them to Cheng Shin in Taiwan, coupled with its awareness that some of them would eventually reach California, were sufficient to support state court jurisdiction under the Due Process Clause.

Held: The judgment is reversed, and the case is remanded.

JUSTICE O'CONNOR, delivered the opinion of the Court as to Parts I and II-B, concluding that the state court's exercise of personal jurisdiction over petitioner would be unreasonable and unfair in violation of the Due Process Clause. Pp. 113-116.

(a) The burden imposed on petitioner by the exercise of state court jurisdiction would be severe, since petitioner would be required not only to traverse the distance between Japan and California, but also to submit its dispute with Cheng Shin to a foreign judicial system. Such unique burdens should have significant weight in assessing the reasonableness of extending personal jurisdiction over national borders. Pp. 113-114.

(b) The interests of Cheng Shin and the forum State in the exercise of jurisdiction over petitioner would be slight, and would be insufficient to justify the heavy burdens placed on petitioner. The only surviving question is whether a Japanese corporation should indemnify a Taiwanese corporation on the bases of a sale made in Taiwan and a shipment of goods from Japan to Taiwan. The facts do not demonstrate that it would be more convenient for Cheng Shin to litigate its claim in California rather than in Taiwan or Japan, while California's interests are diminished by Cheng Shin's lack of a California residence and by the fact that the dispute is primarily about indemnity rather than the safety of consumers. While the possibility of being sued in California might create an additional deterrent to petitioner's manufacture of unsafe assemblies, the same effect would result from pressures placed on petitioner by Cheng Shin, whose California sales would subject it to state tort law. Pp. 114-115.

(c) The procedural and substantive policies of other nations whose interests are affected by the forum State's assertion of jurisdiction over an alien defendant must be taken into account, and great care must be exercised when considering personal jurisdiction in the international context. Although other nations' interests will differ from case to case, those interests, as well as the Federal Government's interest in its foreign relations policies, will always be best served by a careful inquiry into the reasonableness of the particular assertion of jurisdiction, and an

unwillingness to find an alien defendant's serious burdens outweighed where, as here, the interests of the plaintiff and the forum State are minimal. P. 115.

JUSTICE O'CONNOR, joined by THE CHIEF JUSTICE, JUSTICE POWELL, and JUSTICE SCALIA, concluded in Parts II-A and III that, even assuming, *arguendo*, that petitioner was aware that some of the assemblies it sold to Cheng Shin would be incorporated into tires sold in California, the facts do not establish minimum contacts sufficient to render the State's exercise of personal jurisdiction consistent with fair play and substantial justice as required by the Due Process Clause. Since petitioner does not do business, have an office, agents, employees, or property, or advertise or solicit business in California, and since it did not create, control, or employ the distribution system that brought its assemblies to, or design them in anticipation of sales in, California, it did not engage in any action to purposely avail itself of the California market. The "substantial connection" between a defendant and the forum State necessary for a finding of minimum contacts must derive from an action purposely directed toward the forum State, and the mere placement of a product into the stream of commerce is not such an act, even if done with an awareness that the stream will sweep the product into the forum State absent additional conduct indicating an intent to serve the forum state market. Pp. 108-113, 116.

JUSTICE BRENNAN, joined by JUSTICE WHITE, JUSTICE MARSHALL, and JUSTICE BLACKMUN, agreed with the Court's conclusion in Part II-B that the exercise of jurisdiction over petitioner would not comport with "fair play and substantial justice," but disagreed with Part II-A's interpretation of the stream-of-commerce theory, and with the conclusion that petitioner did not purposely avail itself of the California market. As long as a defendant is aware that the final product is being marketed in the forum State, jurisdiction premised on the placement of a product into the stream of commerce is consistent with the Due Process Clause, and no showing of additional conduct is required. Here, even though petitioner did not design or control the distribution system that carried its assemblies into California, its regular and extensive sales to a manufacturer it knew was making regular sales of the final product in California were sufficient to establish minimum contacts with California. Pp. 116-121.

JUSTICE STEVENS, joined by JUSTICE WHITE and JUSTICE BLACKMUN, agreed that the California Supreme Court's judgment should be reversed for the reasons stated in Part II-B of the Court's opinion, but did not join Part II-A, for the reasons that (1) the Court's holding that the State's exercise of jurisdiction over petitioner would be "unreasonable and unfair" alone requires reversal, and renders any examination of minimum contacts unnecessary; and (2) even assuming that the "purposeful availment" test should be formulated here, Part II-A misapplies it to the facts of this case since, in its dealings with Cheng Shin, petitioner has arguably engaged in a higher quantum of conduct than the mere placement of a product into the stream of commerce. Pp. 121-122.

COUNSEL: Graydon S. Staring argued the cause for petitioner. With him on the briefs was Richard D. Hoffman.

Ronald R. Haven argued the cause and filed a brief for respondent. *

* Briefs of amici curiae urging reversal were filed for Alcan Aluminio Do Brasil, S. A. by Lawrence A. Salibra II; for the American Chamber of Commerce in the United Kingdom et al. by Douglas E. Rosenthal, Donald I. Baker, and Andreas F. Lowenfeld; and for Cassiar Mining Corp. by David Booth Beers and Wendy S. White.

George E. Murphy filed a brief for the California Manufacturers Association as amicus curiae urging affirmance.

JUDGES: O'CONNOR, J., announced the judgment of the Court and delivered the opinion for a unanimous Court with respect to Part I, the opinion of the Court with respect to Part II-B, in which REHNQUIST, C. J., and BRENNAN, WHITE, MARSHALL, BLACKMUN, POWELL, and STEVENS, JJ., joined, and an opinion with respect to Parts II-A and III, in which REHNQUIST, C. J., and POWELL and SCALIA, JJ., joined. BRENNAN, J., filed an opinion concurring in part and concurring in the judgment, in which WHITE, MARSHALL, and BLACKMUN, JJ., joined, post, p. 116. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, in which WHITE and BLACKMUN, JJ., joined, post, p. 121.

OPINION BY: O'CONNOR

OPINION

[*105] [***100] [**1028] JUSTICE O'CONNOR announced the judgment of the Court and delivered the unanimous opinion of the Court with respect to Part I, the opinion of the Court with respect to Part II-B, in which THE CHIEF JUSTICE, JUSTICE BRENNAN, JUSTICE WHITE, JUSTICE MARSHALL, JUSTICE BLACKMUN, JUSTICE POWELL, and JUSTICE STEVENS join, and an opinion with respect to Parts II-A and III, in which THE CHIEF JUSTICE, JUSTICE POWELL, and JUSTICE SCALIA join.

[***LEdHR1A] [1A]This case presents the question whether the mere awareness on the part of a foreign defendant that the components it manufactured, sold, and delivered outside the United States would reach the forum State in the stream of commerce constitutes "minimum contacts" between the defendant and the forum State such that the exercise of jurisdiction "does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co.* [**1029] v. *Washington*, 326 U.S. 310, 316 (1945), quoting *Milliken* v. *Meyer*, 311 U.S. 457, 463 (1940).

I

On September 23, 1978, on Interstate Highway 80 in Solano County, California, Gary Zurcher lost control of his Honda motorcycle and collided with a tractor. Zurcher was severely injured, and his passenger and wife, Ruth Ann Moreno, was killed. In September 1979, Zurcher filed a product liability action in the Superior Court of the State of [*106] California in and for the County of Solano. Zurcher alleged that the 1978 accident was caused by a sudden loss of air and an explosion in the rear tire of the motorcycle, and alleged that the motorcycle tire, tube, and sealant were defective. Zurcher's complaint named, *inter alia*, Cheng Shin Rubber Industrial Co., Ltd. (Cheng Shin), the Taiwanese manufacturer of the tube. Cheng Shin in turn filed a cross-complaint seeking indemnification from its codefendants and from petitioner, Asahi Metal Industry Co., Ltd. (Asahi), the manufacturer of the tube's valve assembly. Zurcher's claims against Cheng Shin and the other defendants were eventually settled and dismissed, leaving only Cheng Shin's indemnity action against Asahi.

California's long-arm statute authorizes the exercise of jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." Cal. Civ. Proc. Code Ann. § 410.10 (West 1973). Asahi moved to quash Cheng Shin's service of summons, arguing the State could not exert jurisdiction over it consistent with the Due Process Clause of the Fourteenth Amendment.

In relation to the motion, the following information was submitted by Asahi and Cheng Shin. Asahi is a Japanese corporation. It manufactures tire valve assemblies in Japan and sells the assemblies to Cheng [***101] Shin, and to several other tire manufacturers, for use as components in finished tire tubes. Asahi's sales to Cheng Shin took place in Taiwan. The shipments from Asahi to Cheng Shin were sent from Japan to Taiwan. Cheng Shin bought and incorporated into its tire tubes 150,000 Asahi valve assemblies in 1978; 500,000 in 1979; 500,000 in 1980; 100,000 in 1981; and 100,000 in 1982. Sales to Cheng Shin accounted for 1.24 percent of Asahi's income in 1981 and 0.44 percent in 1982. Cheng Shin alleged that approximately 20 percent of its sales in the United States are in California. Cheng Shin purchases valve assemblies from other suppliers as well, and sells finished tubes throughout the world.

[*107] In 1983 an attorney for Cheng Shin conducted an informal examination of the valve stems of the tire tubes sold in one cycle store in Solano County. The attorney declared that of the approximately 115 tire tubes in the store, 97 were purportedly manufactured in Japan or Taiwan, and of those 97, 21 valve stems were marked with the circled letter "A", apparently Asahi's trademark. Of the 21 Asahi valve stems, 12 were incorporated into Cheng Shin tire tubes. The store contained 41 other Cheng Shin tubes that incorporated the valve assemblies of other manufacturers. Declaration of Kenneth B. Shepard in Opposition to Motion to Quash Subpoena, App. to Brief for Respondent 5-6. An affidavit of a manager of Cheng Shin whose duties included the purchasing of component parts stated: "'In discussions with Asahi regarding the purchase of valve stem assemblies the fact that my Company sells tubes throughout the world and specifically the United States has been discussed. I am informed and believe that Asahi was fully aware that valve stem assemblies sold to my Company and to others would end up throughout the United States and in California.'" 39 Cal. 3d 35, 48, n. 4, 702 P. 2d 543, 549-550, n. 4 (1985). An affidavit of the president of Asahi, on the other hand, declared that Asahi "'has never contemplated that its limited sales of tire valves to Cheng Shin in Taiwan would subject it to lawsuits in California.'" *Ibid.* The record does not include any contract between Cheng Shin and Asahi. Tr. of Oral Arg. 24.

[**1030] Primarily on the basis of the above information, the Superior Court denied the motion to quash summons, stating: "Asahi obviously does business on an international scale. It is not unreasonable that they defend claims of defect in their product on an international scale." Order Denying Motion to Quash Summons, *Zurcher* v. *Dunlop Tire & Rubber Co.*, No. 76180 (Super. Ct., Solano County, Cal., Apr. 20, 1983).

The Court of Appeal of the State of California issued a peremptory writ of mandate commanding the Superior Court to quash service of summons. The court concluded that "it [*108] would be unreasonable to require Asahi to respond in California solely on the basis of ultimately realized foreseeability that the product into which its component was embodied would be sold all over the world including California." App. to Pet. for Cert. B5-B6.

The Supreme Court of the State of California reversed and discharged the writ issued by the Court of Appeal. 39 Cal. 3d 35, 702 P. 2d 543 (1985). The court observed: "Asahi [***102] has no offices, property or agents in California. It solicits no business in California and has made no direct sales [in

California]." *Id.*, at 48, 702 P. 2d, at 549. Moreover, "Asahi did not design or control the system of distribution that carried its valve assemblies into California." *Id.*, at 49, 702 P. 2d, at 549. Nevertheless, the court found the exercise of jurisdiction over Asahi to be consistent with the Due Process Clause. It concluded that Asahi knew that some of the valve assemblies sold to Cheng Shin would be incorporated into tire tubes sold in California, and that Asahi benefited indirectly from the sale in California of products incorporating its components. The court considered Asahi's intentional act of placing its components into the stream of commerce -- that is, by delivering the components to Cheng Shin in Taiwan -- coupled with Asahi's awareness that some of the components would eventually find their way into California, sufficient to form the basis for state court jurisdiction under the Due Process Clause.

We granted certiorari, 475 U.S. 1044 (1986), and now reverse.

II

A

The Due Process Clause of the Fourteenth Amendment limits the power of a state court to exert personal jurisdiction over a nonresident defendant. "[The] constitutional touchstone" of the determination whether an exercise of personal jurisdiction comports with due process "remains whether the defendant purposefully established 'minimum contacts' in the [*109] forum State." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985), quoting *International Shoe Co. v. Washington*, 326 U.S., at 316. Most recently we have reaffirmed the oft-quoted reasoning of *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958), that minimum contacts must have a basis in "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Burger King*, 471 U.S., at 475. "Jurisdiction is proper . . . where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." *Ibid.*, quoting *McGee* v. *International Life Insurance Co.*, 355 U.S. 220, 223 (1957) (emphasis in original).

Applying the principle that minimum contacts must be based on an act of the defendant, the Court in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), rejected the assertion that a *consumer's* unilateral act of bringing the defendant's product into the forum State was a sufficient constitutional basis for personal jurisdiction over the defendant. It had been argued in *World-Wide Volkswagen* that because an automobile retailer and its wholesale distributor [**1031] sold a product mobile by design and purpose, they could foresee being haled into court in the distant States into which their customers might drive. The Court rejected this concept of foreseeability as an insufficient basis for jurisdiction under the Due Process Clause. [***103] *Id.*, at 295-296. The Court disclaimed, however, the idea that "foreseeability is wholly irrelevant" to personal jurisdiction, concluding that "[the] forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *Id.*, at 297-298 (citation omitted). The Court reasoned:

[*110] "When a corporation 'purposefully avails itself of the privilege of conducting activities within the forum State,' *Hanson* v. *Denckla*, 357 U.S. [235,] 253 [(1958)], it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owners or to others." *Id.*, at 297.

In *World-Wide Volkswagen* itself, the state court sought to base jurisdiction not on any act of the defendant, but on the foreseeable unilateral actions of the consumer. Since *World-Wide Volkswagen*, lower courts have been confronted with cases in which the defendant acted by placing a product in the stream of commerce, and the stream eventually swept defendant's product into the forum State, but the defendant did nothing else to purposefully avail itself of the market in the forum State. Some courts have understood the Due Process Clause, as interpreted in *World-Wide Volkswagen*, to allow an exercise of personal jurisdiction to be based on no more than the defendant's act of placing the product in the stream of commerce. Other courts have understood the Due Process Clause and the above-quoted language in *World-Wide Volkswagen* to require the action of the defendant to be more purposefully directed at the forum State than the mere act of placing a product in the stream of commerce.

The reasoning of the Supreme Court of California in the present case illustrates the former interpretation of *World-Wide Volkswagen*. The Supreme Court of California held that, because the stream of commerce eventually brought [*111] some valves Asahi sold Cheng Shin into California, Asahi's awareness that its valves would be sold in California was sufficient to permit California to exercise jurisdiction over Asahi consistent with the requirements of the Due Process Clause. The Supreme Court of California's position

was consistent with those courts that have held that mere foreseeability or awareness was a constitutionally sufficient basis for personal jurisdiction if the defendant's product made its way into the forum State while still in the stream of commerce. See *Bean Dredging Corp.* v. *Dredge Technology Corp.*, 744 F.2d 1081 (CA5 [***104] 1984); *Hendrick* v. *Daiko Shoji Co.*, 715 F.2d 1355 (CA9 1983).

Other courts, however, have understood the Due Process Clause to require something more than that the defendant was aware of its product's entry into the forum State through the stream of commerce in order for the State to exert jurisdiction over the defendant. In the present case, for example, the State Court of Appeal did not read the Due Process Clause, as interpreted by *World-Wide Volkswagen*, to allow "mere foreseeability that the product [**1032] will enter the forum state [to] be enough by itself to establish jurisdiction over the distributor and retailer." App. to Pet. for Cert. B5. In *Humble* v. *Toyota Motor Co.*, 727 F.2d 709 (CA8 1984), an injured car passenger brought suit against Arakawa Auto Body Company, a Japanese corporation that manufactured car seats for Toyota. Arakawa did no business in the United States; it had no office, affiliate, subsidiary, or agent in the United States; it manufactured its component parts outside the United States and delivered them to Toyota Motor Company in Japan. The Court of Appeals, adopting the reasoning of the District Court in that case, noted that although it "does not doubt that Arakawa could have foreseen that its product would find its way into the United States," it would be "manifestly unjust" to require Arakawa to defend itself in the United States. *Id.*, at 710-711, quoting 578 F.Supp. 530, 533 (ND Iowa 1982). See also *Hutson* v. *Fehr Bros.,* [*112] *Inc.*, 584 F.2d 833 (CA8 1978); see generally *Max Daetwyler Corp.* v. *R. Meyer*, 762 F.2d 290, 299 (CA3 1985) (collecting "stream of commerce" cases in which the "manufacturers involved had made deliberate decisions to market their products in the forum state").

We now find this latter position to be consonant with the requirements of due process. The "substantial connection," *Burger King*, 471 U.S., at 475; *McGee*, 355 U.S., at 223, between the defendant and the forum State necessary for a finding of minimum contacts must come about by *an action of the defendant purposefully directed toward the forum State. Burger King, supra*, at 476; *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984). The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.

Assuming, *arguendo*, that respondents have established Asahi's awareness that some of the valves sold to Cheng Shin would be incorporated into tire tubes sold in California, respondents have not demonstrated [***105] any action by Asahi to purposefully avail itself of the California market. Asahi does not do business in California. It has no office, agents, employees, or property in California. It does not advertise or otherwise solicit business in California. It did not create, control, or employ the distribution system that brought its valves to California. Cf. *Hicks* v. *Kawasaki Heavy Industries*, [*113] 452 F.Supp. 130 (MD Pa. 1978). There is no evidence that Asahi designed its product in anticipation of sales in California. Cf. *Rockwell International Corp.* v. *Costruzioni Aeronautiche Giovanni Agusta*, 553 F.Supp. 328 (ED Pa. 1982). On the basis of these facts, the exertion of personal jurisdiction over Asahi by the Superior Court of California * exceeds the limits of due process.

* We have no occasion here to determine whether Congress could, consistent with the Due Process Clause of the Fifth Amendment, authorize federal court personal jurisdiction over alien defendants based on the aggregate of *national* contacts, rather than on the contacts between the defendant and the State in which the federal court sits. See *Max Daetwyler Corp.* v. *R. Meyer*, 762 F.2d 290, 293-295 (CA3 1985); *DeJames* v. *Magnificence Carriers, Inc.*, 654 F.2d 280, 283 (CA3 1981); see also Born, Reflections on Judicial Jurisdiction in International Cases, to be published in 17 Ga. J. Int'l & Comp. L. 1 (1987); Lilly, Jurisdiction Over Domestic and Alien Defendants, 69 Va. L. Rev. 85, 127-145 (1983).

[**1033] B

[***LEdHR2] [2]The strictures of the Due Process Clause forbid a state court from exercising personal jurisdiction over Asahi under circumstances that would offend "'traditional notions of fair play and substantial justice.'" *International Shoe Co.* v. *Washington*, 326 U.S., at 316, quoting *Milliken* v. *Meyer*, 311 U.S., at 463.

[***LEdHR3] [3]We have previously explained that the determination of the reasonableness of the exercise of jurisdiction in each case will depend on an evaluation of several factors. A court must consider

the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. It must also weigh in its determination "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies." *World-Wide Volkswagen*, 444 U.S., at 292 (citations omitted).

[*114] [***LEdHR1B] [1B] A consideration of these factors in the present case clearly reveals the unreasonableness of the assertion of jurisdiction over Asahi, even apart from the question of the placement of goods in the stream of commerce.

Certainly the burden on the defendant in this case is severe. Asahi has been commanded by the Supreme Court of California not only to traverse the distance between Asahi's headquarters in Japan and the Superior Court of California in and for the County of Solano, but also to submit its dispute with Cheng Shin to a foreign nation's judicial system. The unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders.

When minimum contacts have been established, often the interests [***106] of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant. In the present case, however, the interests of the plaintiff and the forum in California's assertion of jurisdiction over Asahi are slight. All that remains is a claim for indemnification asserted by Cheng Shin, a Tawainese corporation, against Asahi. The transaction on which the indemnification claim is based took place in Taiwan; Asahi's components were shipped from Japan to Taiwan. Cheng Shin has not demonstrated that it is more convenient for it to litigate its indemnification claim against Asahi in California rather than in Taiwan or Japan.

Because the plaintiff is not a California resident, California's legitimate interests in the dispute have considerably diminished. The Supreme Court of California argued that the State had an interest in "protecting its consumers by ensuring that foreign manufacturers comply with the state's safety standards." 39 Cal. 3d, at 49, 702 P. 2d, at 550. The State Supreme Court's definition of California's interest, however, was overly broad. The dispute between Cheng Shin and Asahi is primarily about indemnification rather than safety [*115] standards. Moreover, it is not at all clear at this point that California law should govern the question whether a Japanese corporation should indemnify a Taiwanese corporation on the basis of a sale made in Taiwan and a shipment of goods from Japan to Taiwan. *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 821-822 (1985); *Allstate Insurance Co.* v. *Hague*, 449 U.S. 302, 312-313 (1981). The possibility of being haled into a California court as a result of an accident involving Asahi's components undoubtedly creates an additional deterrent to the manufacture of unsafe components; however, similar pressures will be placed on Asahi by the purchasers of its components as long as those who use Asahi components in their final products, and sell those products in California, are subject to the application of California tort law.

[**1034] *World-Wide Volkswagen* also admonished courts to take into consideration the interests of the "several States," in addition to the forum State, in the efficient judicial resolution of the dispute and the advancement of substantive policies. In the present case, this advice calls for a court to consider the procedural and substantive policies of other *nations* whose interests are affected by the assertion of jurisdiction by the California court. The procedural and substantive interests of other nations in a state court's assertion of jurisdiction over an alien defendant will differ from case to case. In every case, however, those interests, as well as the Federal Government's interest in its foreign relations policies, will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State. "Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field." *United States* v. *First National City Bank*, 379 U.S. 378, 404 (1965) (Harlan, J., dissenting). See Born, Reflections [***107] on Judicial Jurisdiction in International Cases, to be published in 17 Ga. J. Int'l & Comp. L. 1 (1987).

[*116] Considering the international context, the heavy burden on the alien defendant, and the slight interests of the plaintiff and the forum State, the exercise of personal jurisdiction by a California court over Asahi in this instance would be unreasonable and unfair.

III

Because the facts of this case do not establish minimum contacts such that the exercise of personal jurisdiction is consistent with fair play and substantial justice, the judgment of the Supreme Court of California is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

CONCUR BY: BRENNAN (In Part); STEVENS (In Part)

CONCUR

JUSTICE BRENNAN, with whom JUSTICE WHITE, JUSTICE MARSHALL, and JUSTICE

BLACKMUN join, concurring in part and concurring in the judgment.

[***LEdHR4A] [4A]I do not agree with the interpretation in Part II-A of the stream-of-commerce theory, nor with the conclusion that Asahi did not "purposely avail itself of the California market." *Ante*, at 112. I do agree, however, with the Court's conclusion in Part II-B that the exercise of personal jurisdiction over Asahi in this case would not comport with "fair play and substantial justice," *International Shoe Co.* v. *Washington*, 326 U.S. 310, 320 (1945). This is one of those rare cases in which "minimum requirements inherent in the concept of 'fair play and substantial justice' . . . defeat the reasonableness of jurisdiction even [though] the defendant has purposefully engaged in forum activities." *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 477-478 (1985). I therefore join Parts I and II-B of the Court's opinion, and write separately to explain my disagreement with Part II-A.

Part II-A states that "a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward [*117] the forum State." *Ante*, at 112. Under this view, a plaintiff would be required to show "[additional] conduct" directed toward the forum before finding the exercise of jurisdiction over the defendant to be consistent with the Due Process Clause. *Ibid.* I see no need for such a showing, however. The stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale. As long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise. Nor will the litigation present a burden for [**1035] which there is no corresponding benefit. A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity. These benefits accrue regardless of whether that participant directly conducts business in the forum State, or engages in additional conduct directed toward that State. Accordingly, most [***108] courts and commentators have found that jurisdiction premised on the placement of a product into the stream of commerce is consistent with the Due Process Clause, and have not required a showing of additional conduct. [1]

1 See, *e. g., Bean Dredging Corp.* v. *Dredge Technology Corp.*, 744 F.2d 1081 (CA5 1984); *Hedrick* v. *Daiko Shoji Co.*, 715 F.2d 1355 (CA9 1983); *Nelson* v. *Park Industries, Inc.*, 717 F.2d 1120, 1126 (CA7 1983), cert. denied, 465 U.S. 1024 (1984); *Stabilisierungsfonds fur Wein* v. *Kaiser Stuhl Wine Distributors Pty. Ltd.*, 207 U. S. App. D. C. 375, 378, 647 F.2d 200, 203 (1981); *Poyner* v. *Erma Werke Gmbh*, 618 F.2d 1186, 1190-1191 (CA6), cert. denied, 449 U.S. 841 (1980); cf. *Fidelity & Casualty Co. of New York* v. *Philadelphia Resins Corp.*, 766 F.2d 440 (CA10 1985) (endorsing stream-of-commerce theory but finding it inapplicable in instant case), cert. denied, 474 U.S. 1082 (1986); *Montalbano* v. *Easco Hand Tools, Inc.*, 766 F.2d 737 (CA2 1985) (noting potential applicability of stream-of-commerce theory, but remanding for further factual findings). See generally Currie, The Growth of the Long-Arm: Eight Years of Extended Jurisdiction in Illinois, 1963 U. Ill. Law Forum 533, 546-560 (approving and tracing development of the stream-of-commerce theory); C. Wright & A. Miller, Federal Practice and Procedure § 1069, pp. 259-261 (1969) (recommending in effect a stream-of-commerce approach); Von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv. L. Rev. 1121, 1168-1172 (1966) (same).

[*118] The endorsement in Part II-A of what appears to be the minority view among Federal Courts of Appeals [2] represents a marked retreat from the analysis in *World-Wide Volkswagen* v. *Woodson*, 444 U.S. 286 (1980). In that case, "respondents [sought] to base jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma." *Id.*, at 295. The Court held that the possibility of an accident in Oklahoma, while to some extent foreseeable in light of the inherent mobility of the automobile, was not enough to establish [*119] minimum contacts between the forum State and the retailer or distributor. *Id.*, at 295-296. The Court then carefully explained:

"[This] is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is [***109] not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with [**1036] the forum State are such that he should reasonably anticipate being haled into Court there." *Id.*, at 297.

The Court reasoned that when a corporation may reasonably anticipate litigation in a particular forum, it cannot claim that such litigation is unjust or unfair, because it "can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected

costs on to consumers, or, if the risks are too great, severing its connection with the State." *Ibid.*

> 2 The Court of Appeals for the Eighth Circuit appears to be the only Court of Appeals to have expressly adopted a narrow construction of the stream-of-commerce theory analogous to the one articulated in Part II-A today, although the Court of Appeals for the Eleventh Circuit has implicitly adopted it. See *Humble* v. *Toyota Motor Co., Ltd.*, 727 F.2d 709 (CA8 1984); *Banton Industries, Inc.* v. *Dimatic Die & Tool Co.*, 801 F.2d 1283 (CA11 1986). Two other Courts of Appeals have found the theory inapplicable when only a single sale occurred in the forum State, but do not appear committed to the interpretation of the theory that the Court adopts today. *E. g., Chung* v. *NANA Development Corp.*, 783 F.2d 1124 (CA4), cert. denied, 479 U.S. 948 (1986); *Dalmau Rodriguez* v. *Hughes Aircraft Co.*, 781 F.2d 9 (CA1 1986). Similarly, the Court of Appeals for the Third Circuit has not interpreted the theory as JUSTICE O'CONNOR's opinion has, but has rejected stream-of-commerce arguments for jurisdiction when the relationship between the distributor and the defendant "remains in dispute" and "evidence indicating that [defendant] could anticipate either use of its product or litigation in [the forum State] is totally lacking," *Max Daetwyler Corp.* v. *R. Meyer*, 762 F.2d 290, 298, 300, n. 13, cert. denied, 474 U.S. 980 (1985), and when the defendant's product was not sold in the forum State and the defendant "did not take advantage of an indirect marketing scheme," *DeJames* v. *Magnificence Carriers, Inc.*, 654 F.2d 280, 285, cert. denied, 454 U.S. 1085 (1981).

To illustrate the point, the Court contrasted the foreseeability of litigation in a State to which a consumer fortuitously transports a defendant's product (insufficient contacts) with the foreseeability of litigation in a State where the defendant's product was regularly *sold* (sufficient contacts). The Court stated:

"Hence if the *sale* of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, *directly or indirectly*, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce *with the expectation that they will be purchased* [*120] *by consumers* in the forum State." *Id.*, at 297-298 (emphasis added).

The Court concluded its illustration by referring to *Gray* v. *American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N. E. 2d 761 (1961), a well-known stream-of-commerce case in which the Illinois Supreme Court applied the theory to assert jurisdiction over a component-parts manufacturer that sold no components directly in Illinois, but did sell them to a manufacturer who incorporated them into a final product that was sold in Illinois. 444 U.S., at 297-298.

The Court in *World-Wide Volkswagen* thus took great care to distinguish "between a case involving goods which reach a distant State through a chain of distribution and a case involving goods which reach the same State because a consumer . . . took them there." *Id.*, at 306-307 (BRENNAN, J., dissenting). [3] The [***110] California Supreme Court took note of this distinction, and correctly concluded that our holding in *World-Wide Volkswagen* preserved the stream-of-commerce theory. See App. to Pet. for Cert. C-9, and n. 3, C-13-C-15; cf. Comment, Federalism, Due Process, and Minimum Contacts: *World-Wide Volkswagen Corp* v. *Woodson*, 80 Colum. L. Rev. 1341, 1359-1361, and nn. 140-146 (1980).

> 3 In dissent, I argued that the distinction was without constitutional significance, because in my view the foreseeability that a customer would use a product in a distant State was a sufficient basis for jurisdiction. 444 U.S., at 306-307, and nn. 11, 12. See also *id.*, at 315 (MARSHALL, J., dissenting) ("I cannot agree that jurisdiction is necessarily lacking if the product enters the State not through the channels of distribution but in the course of its intended use by the consumer"); *id.*, at 318-319 (BLACKMUN, J., dissenting) ("[Foreseeable] use in another State seems to me little different from foreseeable resale in another State"). But I do not read the decision in *World-Wide Volkswagen* to establish a *per se* rule against the exercise of jurisdiction where the contacts arise from a consumer's use of the product in a given State, but only a rule against jurisdiction in cases involving "one, isolated occurrence [of consumer use, amounting to] . . . the fortuitous circumstance. . . ." *Id.*, at 295. See *Hedrick* v. *Daiko Shoji Co.*, 715 F.2d, at 1358-1359.

[*121] [***LEdHR4B] [4B]In this case, the facts found by the California Supreme Court support its finding of minimum contacts. The court found that "[although] Asahi did not design or control the system of distribution that carried its valve assemblies into California, Asahi was aware of the distribution

system's operation, and it knew that it would [**1037] benefit economically from the sale in California of products incorporating its components." App. to Pet. for Cert. C-11. [4] Accordingly, I cannot join the determination in Part II-A that Asahi's regular and extensive sales of component parts to a manufacturer it knew was making regular sales of the final product in California is insufficient to establish minimum contacts with California.

4 Moreover, the Court found that "at least 18 percent of the tubes sold in a particular California motorcycle supply shop contained Asahi valve assemblies," App. to Pet. for Cert. C-11, n. 5, and that Asahi had an ongoing business relationship with Cheng Shin involving average annual sales of hundreds of thousands of valve assemblies, *id.*, at C-2.

JUSTICE STEVENS, with whom JUSTICE WHITE and JUSTICE BLACKMUN join, concurring in part and concurring in the judgment.

The judgment of the Supreme Court of California should be reversed for the reasons stated in Part II-B of the Court's opinion. While I join Parts I and II-B, I do not join Part II-A for two reasons. First, it is not necessary to the Court's decision. An examination of minimum contacts is not always necessary to determine whether a state court's assertion of personal jurisdiction is constitutional. See *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 476-478 (1985). Part II-B establishes, after considering the factors set forth in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980), that California's exercise of jurisdiction over Asahi in this case would be "unreasonable and unfair." *Ante*, at 116. This finding alone requires reversal; this case fits within the rule that "minimum requirements inherent in the concept of 'fair play and substantial justice' may defeat [*122] the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities." *Burger King*, 471 U.S., at 477-478 (quoting *International Shoe Co.* v. *Washington*, 326 U.S. 310, 320 (1945)). Accordingly, I see no reason in this case for the plurality to articulate "purposeful direction" or any other test as the nexus between an act of a defendant and the forum State that is necessary to establish minimum contacts.

[***LEdHR4C] [4C]Second, even assuming that the test ought to be formulated here, [***111] Part II-A misapplies it to the facts of this case. The plurality seems to assume that an unwavering line can be drawn between "mere awareness" that a component will find its way into the forum State and "purposeful availment" of the forum's market. *Ante*, at 112. Over the course of its dealings with Cheng Shin, Asahi has arguably engaged in a higher quantum of conduct than "[the] placement of a product into the stream of commerce, without more. . . ." *Ibid.* Whether or not this conduct rises to the level of purposeful availment requires a constitutional determination that is affected by the volume, the value, and the hazardous character of the components. In most circumstances I would be inclined to conclude that a regular course of dealing that results in deliveries of over 100,000 units annually over a period of several years would constitute "purposeful availment" even though the item delivered to the forum State was a standard product marketed throughout the world.

Examples of Long-Arm Statutes

NYCPLR § 302

§ 302. Personal jurisdiction by acts of non-domiciliaries

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or
2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or
3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he
(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or
(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or
4. owns, uses or possesses any real property situated within the state.

GENERAL LAWS OF RHODE ISLAND ANNOTATED

TITLE 9. COURTS AND CIVIL PROCEDURE-- PROCEDURE GENERALLY
CHAPTER 5. WRITS, SUMMONS AND PROCESS
9-5-33. Jurisdiction over foreign corporations and over nonresident individuals, partnerships, or associations. --

(a) Every foreign corporation, every individual not a resident of this state or his or her executor or administrator, and every partnership or association, composed of any person or persons not such residents, that shall have the necessary minimum contacts with the state of Rhode Island, shall be subject to the jurisdiction of the state of Rhode Island, and the courts of this state shall hold such foreign corporations and such nonresident individuals or their executors or administrators, and such partnerships or associations amenable to suit in Rhode Island in every case not contrary to the provisions of the constitution or laws of the United States.

(b) Service of process may be made on any such foreign corporation, nonresident individual or his or her executor or administrator, and such partnership or association within or without the state in the manner provided by any applicable procedural rule or in the manner prescribed by order of the court in which the action is brought.

(c) Nothing herein shall limit or affect the right to serve process upon the nonresident individual or his or her executor or administrator, or the partnership or association, or a foreign corporation within this state or without this state in any manner now or hereafter permitted by law.

Examples of Long-Arm Statutes

Cal Code Civ Proc § 410.10 (2008)

§ 410.10. Jurisdiction exercisable

A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

ILLINOIS COMPILED STATUTES ANNOTATED

735 ILCS 5/2-209 (2008)

735 ILCS 5/2-209. Act submitting to jurisdiction -- Process

Sec. 2-209. Act submitting to jurisdiction -- Process.

(a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:

(1) The transaction of any business within this State;

(2) The commission of a tortious act within this State;

(3) The ownership, use, or possession of any real estate situated in this State;

(4) Contracting to insure any person, property or risk located within this State at the time of contracting;

(5) With respect to actions of dissolution of marriage, declaration of invalidity of marriage and legal separation, the maintenance in this State of a matrimonial domicile at the time this cause of action arose or the commission in this State of any act giving rise to the cause of action;

(6) With respect to actions brought under the Illinois Parentage Act of 1984, as now or hereafter amended [750 ILCS 45/1 et seq.], the performance of an act of sexual intercourse within this State during the possible period of conception;

(7) The making or performance of any contract or promise substantially connected with this State;

(8) The performance of sexual intercourse within this State which is claimed to have resulted in the conception of a child who resides in this State;

(9) The failure to support a child, spouse or former spouse who has continued to reside in this State since the person either formerly resided with them in this State or directed them to reside in this State;

(10) The acquisition of ownership, possession or control of any asset or thing of value present within this State when ownership, possession or control was acquired;

(11) The breach of any fiduciary duty within this State;

(12) The performance of duties as a director or officer of a corporation organized under the laws of this State or having its principal place of business within this State;

(13) The ownership of an interest in any trust administered within this State; or

(14) The exercise of powers granted under the authority of this State as a fiduciary.

(b) A court may exercise jurisdiction in any action arising within or without this State against any person who:

(1) Is a natural person present within this State when served;

(2) Is a natural person domiciled or resident within this State when the cause of action arose, the action was commenced, or process was served;

(3) Is a corporation organized under the laws of this State; or

(4) Is a natural person or corporation doing business within this State.

(c) A court may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.

(d) Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this Section, may be made by personally serving the summons upon the defendant outside this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State.

(e) Service of process upon any person who resides or whose business address is outside the United States and who is subject to the jurisdiction of the courts of this State, as provided in this Section, in any action based upon product liability may be made by serving a copy of the summons with a copy of the complaint attached upon the Secretary of State. The summons shall be accompanied by a $ 5 fee payable to the Secretary of State. The plaintiff shall forthwith mail a copy of the summons, upon which the date of service upon the Secretary is clearly shown, together with a copy of the complaint to the defendant at his or her last known place of residence or business address. Plaintiff shall file with the circuit clerk an affidavit of the plaintiff or his or her attorney stating the last known place of residence or the last known business address of the defendant and a certificate of mailing a copy of the summons and complaint to the defendant at such address as required by this subsection (e). The certificate of mailing shall be prima facie evidence that the plaintiff or his or her attorney mailed a copy of the summons and complaint to the defendant as required. Service of the summons shall be deemed to have been made upon the defendant on the date it is served upon the Secretary and shall have the same force and effect as though summons had been personally served upon the defendant within this State.

(f) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon subsection (a).

(g) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law.