**1960-1980: Crisis in Confidence**

Democratic Platform of 1960

Democratic platform under presidential candidate and Senator John F. Kennedy.

Republican Platform of 1960

Republican plan for the future under presidential candidate and current Vice-President Richard M. Nixon.

Shelton v. Tucker, 364 U.S. 479 (1960)

The Court held that to compel a teacher to disclose his every associational tie is to impair his right of free association, a right closely allied to freedom of speech and protected by the Due Process Clause of the Fourteenth Amendment from invasion by state action.

Eisenhower's Farewell Address, January 17, 1961

Eisenhower's departure speech encouraging and warning the nation and coining the phrase "military-industrial complex," which has found place in our popular culture.

John F. Kennedy, Inaugural Address, January 20, 1961

Kennedy's optimistic appraisal of America and its place in the world using the famous phrase "ask not what your country can do for you—ask what you can do for your country."

Kennedy's Message to Congress on Education, February 20, 1961

A speech outlining the President's commitment to educating the nation. "Our progress as a nation can be no swifter than our progress in education."

Kennedy's Statement on Establishing the Peace Corps, March 1, 1961

The genesis of the organization proving "…that we have, in this country, an immense reservoir of such men and women—anxious to sacrifice their energies and time and toil to the cause of world peace and human progress."

Kennedy's Alliance for Freedom Proposal, March 13, 1961

Kennedy's outline for a ten year program of democratic expansion in the western hemisphere.

Kennedy's Statement on Crisis in Laos, News Conference, March 23, 1961

Concern over the Communist invasion of neutral Laos. Kennedy urges a peaceful reconciliation of the situation. "The security of all Southeast Asia will be endangered if Laos loses its neutral independence. Its own safety runs with the safety of us all."

Twenty-Third Amendment to the Constitution, March 29, 1961

The President's thoughts on the amendment allowing residents of the District of Columbia to vote in Presidential elections.

Kennedy's Report on the Berlin Crisis, July 25, 1961

A strong statement to affirm the will of the United States and NATO forces to maintain West Berlin as an "island of democracy" in a sea of Communism.

White House Statement on Resumption of Nuclear Testing by Soviets, August 30, 1961

Kennedy denounces the Soviet Union despite talks in Geneva to limit nuclear testing.

Kennedy's Address to United Nations on Nuclear Disarmament, September 25, 1961

Honoring deceased General-Secretary Hammarskjold and calling for extensive U.N. action against nuclear arsenals including test-ban treaties and destroying stockpiles.

Times Film Corp. v. City of Chicago, 365 U.S. 43 (1961)

"Although motion pictures are included within the free speech and free press guaranties of the First and Fourteenth Amendments, there is no absolute freedom to exhibit publicly, at least once, every kind of motion picture."

Gomillion v. Lightfoot, 364 U.S. 339 (1960)

In a case of boundary realignment in Tuskegee, Alabama the Supreme Court ruled that "even the broad power of a State to fix the boundaries of its municipalities is limited by the Fifteenth Amendment, which forbids a State to deprive any citizen of the right to vote because of his race."

Garner v. Louisiana, 368 U.S. 157 (1961)

Reversal of a decision convicting black patrons of a diner of disturbing the peace for sitting in an area typically reserved for white customers. "The convictions were so totally devoid of evidentiary support as to violate the Due Process Clause of the Fourteenth Amendment."

Joint Message with Prime Minister Macmillan to Premiere Khrushchev, February 12, 1962

Efforts by the President and the Prime Minister to try to include the Soviet Union in nuclear arms control talks in Geneva.

Kennedy's Address to Nation on Resumption of Nuclear Testing by U.S., March 2, 1962

In order to protect the country from nuclear confrontation it becomes necessary to keep up in the arms race and match Soviet tests.

Baker v. Carr, 369 U.S. 186 (1962)

Landmark case establishing voters' right to go to court to complain about improper legislative apportionment

Kennedy's Announcement of Soviet Arms Buildup in Cuba, October 22, 1962

"The 1930's taught us a clear lesson: aggressive conduct, if allowed to go unchecked and unchallenged, ultimately leads to war." Kennedy responds to Soviet placement of offensive weapons in Cuba and states any action taken by Cuba will cause retaliation on the Soviet Union.

Kennedy's Proclamation 3504, October 24, 1962

The President's order to interdict any transport of missiles and military equipment to Cuba.

Kennedy's Speech at American University, June 10, 1963

An opportunity for the President to expound on his view of world peace and the place of the United States and nuclear weapons in the world of the future.

Kennedy's National Address on Civil Rights, June 11, 1963

The President explains actions that resulted in the Alabama National Guard being called out to enforce desegregation at the University of Alabama.

Kennedy's Address at the Berlin Wall, June 26, 1963

"Ich bin ein Berliner."

Kennedy Address on the Nuclear Test Ban Treaty, July 26, 1963

Announcement of an agreement banning atmospheric, above ground and underwater nuclear testing.

School Dist. of Abington Tp. v. Schempp, 374 U.S. 203 (1963)

A decision affirming that no state law or school board may require that passages from the Bible be read or that the Lord's Prayer be recited in the public schools of a State at the beginning of each school day.

The Nuclear Test Ban Treaty, September 24, 1963

Brief presidential response to the Senate's passage of the treaty.

Johnson Message to Congress, March 16, 1964

"War on Poverty"

Johnson's Address to University of Michigan ("Great Society"), May 22, 1964

Johnson details plans for taking his Great Society to the cities, the countryside, and in our classrooms.

Reynolds v. Sims, 377 U.S. 533 (1964)

The Equal Protection Clause requires substantially equal legislative representation for all citizens in a State regardless of where they reside. "Legislators represent people, not areas."

Bell v. Maryland, 378 U.S. 226 (1964)

Reversal of decisions which had convicted patrons at a diner for trespass on account of their race. In the intervening time, Baltimore had changed its "public accommodation" laws which allowed for mixed race patronage.

Escobedo v. Illinois, 378 U.S. 478 (1964)

Landmark decision holding that police interrogation without notification of the right to counsel is a violation of the Sixth Amendment.

Signing of Civil Rights Act of 1964 During National Radio and Television Broadcast

"This Civil Rights Act is a challenge to all of us to go to work in our communities and our States, in our homes and in our hearts, to eliminate the last vestiges of injustice in our beloved country."

Democratic Platform of 1964

The Democratic Party plan under candidate and incumbent Lyndon B. Johnson.

Republican Platform of 1964

Republican challenge to Johnson and the Great Society under presidential candidate Barry M. Goldwater.

The Tonkin Gulf Incident, 1964

Report of the attack on the U.S.S. Maddox by North Vietnamese vessels in the Gulf of Tonkin resulting in U.S. military expansion in Southeast Asia.

Johnson's Address to Congress, August 5, 1964

The President's strong statement asking for retaliatory action in Vietnam.

Joint Resolution of Congress, August 7, 1964

A joint resolution "to promote the maintenance of international peace and security in southeast Asia."

Economic Opportunity Act of 1964, August 20, 1964

"Today for the first time in all the history of the human race, a great nation is able to make and is willing to make a commitment to eradicate poverty among its people."

The Warren Report, September 24, 1964

President Johnson's formal receipt of the Warren Commission report investigating the assassination of President Kennedy.

Johnson Speech on Voting Rights, March 15, 1965

"There is no cause for self-satisfaction in the long denial of equal rights of millions of Americans."

Johnson's Speech on Vietnam, Johns Hopkins University, April 7, 1965

"Peace Without Conquest"

Johnson's Statement on American Intervention in the Dominican Republic, May 2, 1965

"There are times in the affairs of nations when great principles are tested in an ordeal of conflict and danger. This is such a time for the American nations." Johnson explains sending troops to stabilize a country in revolution.

Johnson's Commencement Address, Howard University, June 4, 1965

The reaffirmation of the national goal of racial equality and justice through executive efforts, "To Fulfill These Rights."

Griswold v. Connecticut, 381 U.S. 479 (1965)

The Court ruled that prohibition of the sale of birth control devises by the state is contrary to the right of personal privacy.

Social Security Amendments of 1965 (Medicare), July 30, 1965

Extension of medical benefits to the needy under the broad brush of Social Security

United States v. Seeger, 380 U.S. 163 (1965)

Decided at the beginning of the escalation of U.S. involvement in the Vietnam War, the Court helped define the parameters for "conscientious objection" to compulsory military service.

Voting Rights Act of 1965, August 6, 1965

"Until every qualified person regardless of…the color of his skin has the right, unquestioned and unrestrained, to go in and cast his ballot in every precinct in this great land of ours, I am not going to be satisfied."

South Carolina v. Katzenbach, 383 U.S. 301 (1966)

Affirming the Voting Rights Act as a means of protecting rights under the Fifteenth Amendment.

Miranda v. Arizona, 384 U.S. 436 (1966)

Landmark case extending due process requirements to require police to explain to suspects their "Miranda" rights upon arrest and failing to do this, any confession can be ruled inadmissible in court.

Johnson's Address on Answering Aggression in Vietnam, September 29, 1967

Johnson attempts to answer his own question. "Why should three Presidents and the elected representatives of our people have chosen to defend this Asian nation more than 10,000 miles from American shores?"

Afroyim v. Rusk, 387 U.S. 253 (1967)

A reversal of Perez v. Brownell redefining Congressional powers stating that Congress cannot take U.S. citizenship away from a person for voting in a foreign election.

Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968)

The Court held that the Civil Rights Act covered discrimination on the basis of race in renting or selling homes to private individuals claiming authority under the Thirteenth Amendment in eliminating as many of the "badges of slavery" as possible.

Johnson's Address on a New Step Toward Peace, March 31, 1968

After the Tet Offensive, Johnson invites the leaders of North and South Vietnam to negotiate a settlement of the conflict and closes with the words, "I shall not seek, and I will not accept, the nomination of my party for another term as your President."

Civil Rights Act of 1968, April 11, 1968

"In the Civil Rights Act of 1964, we affirmed through law that men equal under God are also equal when they seek a job, when they go to get a meal in a restaurant, or when they seek lodging for the night in any State in the Union."

Omnibus Crime Control and Safe Street Act, June 19, 1968

Johnson's large-scale appropriation for sweeping programs battling urban crime.

Democratic Platform of 1968

The Democratic Party plan with Hubert Humphrey as presidential candidate following Johnson's announcement he will not seek another term as President.

Republican Platform of 1968

Republican plans under presidential candidate Richard M. Nixon.

Johnson Economic Report, January 16, 1969

Johnson recounts the achievements of the Great Society and his proposals to expand economic prosperity during the escalation of the Vietnam War.

Nixon Inaugural Address, January 20, 1969

"I ask you to share with me today the majesty of this moment. In the orderly transfer of power, we celebrate the unity that keeps us free."

Nixon's Statement on the Antiballistic Missile Defense System, March 14, 1969

Expansion and modification of existing missile plans in order to avoid surprise Communist attack and provide proper deterrent effect.

Nixon's Address on Vietnamizing the War, November 3, 1969

Nixon initiates the process of turning the bulk of the responsibility for fighting the war back to the South Vietnamese.

Nixon's Statement on Chemical and Biological Weapons, November 25, 1969

Nixon declares a moratorium on the use and production of biological weapons as well as beginning the process of eliminating existing stockpiles.

Nixon's Statement on the Invasion of Cambodia, April 30, 1970

"In cooperation with the armed forces of South Vietnam, attacks are being launched this week to clean out major enemy sanctuaries on the Cambodian-Vietnam border."

Nixon's Message to the Senate on the Geneva Protocol, August 19, 1970

Nixon forwards the 1925 Protocol for formal ratification even though the country has been following it since it was issued.

Statement About the Report of the Commission on Obscenity and Pornography, October 24, 1970

"So long as I am in the White House, there will be no relaxation of the national effort to control and eliminate smut from our national life."

The SALT Negotiations: ABM Limitations Agreement, May 20, 1971

Announcement of U.S. Soviet agreements on reduction of anti-ballistic missiles following years of negotiations.

Nixon's Announcement on China, July 15, 1971

Nixon announces acceptance of the invitation to go to China to improve U.S. Chinese relations.

Nixon's Report on the Economy, August 15, 1971

Entitled "The Challenge of Peace," the President lays out plans for the U.S. economy as the country extracts itself from Vietnam.

Gillette v. United States, 401 U.S. 437 (1971)

Narrowing the definition of "conscientious objector" status as a person religiously opposed to all war and not just wars of their choosing. The ruling upheld Selective Service laws.

Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971)

In an effort to further end segregation, the Court upholds the use of busing students to other schools in order to meet racial quotas.

New York Times Co. v. United States, 403 U.S. 713 (1971)

The Court rendered a decision affirming the U.S. did not present compelling evidence to meet the standard for prior restraint against the New York Times and the Washington Post in publishing certain classified materials known as the "Pentagon Papers."

Joint Chinese-United States Communiqué Issued at Shanghai, February 27, 1972

Statement following meetings between President Nixon and Chairman Mao Tse-tung.

Nixon's Response to North Vietnam's Spring Offensive, May 8, 1972

With 60,000 Americans still threatened by increased North Vietnamese attacks, Nixon calls for Hanoi to come back and negotiate a cease-fire or additional bombing and mining of harbors will result.

Johnson v. Louisiana, 406 U.S. 356 (1972)

In a case of a conviction for various robberies the Court upheld a sentencing ruling that allowed for nine of twelve jurors to be sufficient number to agree to sentence to hard labor declaring it not a violation of due process rights under the Fourteenth Amendment.

Joint Communiqué Following Discussions With Soviet Leaders. May 29, 1972

Strategic Arms Limitations Agreements, May 29, 1972

Nixon Address to Congress on the Moscow Summit, June 1, 1972

"The foundation has been laid for a new relationship between the two most powerful nations in the world. Now it is up to us—to all of us here in this Chamber, to all of us across America—to join with other nations in building a new house upon that foundation, one that can be a home for the hopes of mankind and a shelter against the storms of conflict."

Democratic Platform of 1972

The Democratic Party plan under presidential candidate George S. McGovern.

Republican Platform of 1972

The Republican party plan for Nixon's second term.

Lloyd Corp., Ltd. v. Tanner, 407 U.S. 551 (1972)

The Court held that anti-war handbills could not be distributed in a shopping mall because though it has areas that are called public areas, they are privately held and are not subject to public rights.

United States v. United States Dist. Ct., 407 U.S. 297 (1972)

This important decision during the Watergate era held that the Omnibus Crime Control Act and Safe Streets Act do not give the President the power for domestic surveillance and wiretapping at will. Those action still require the proper warrant.

Furman v. Georgia, 408 U.S. 238 (1972)

In a split decision (5-4), the Court nullified all state death penalties as a violation of due process because of the lack of consistent application of the penalty.

Agreement on Ending the War and Restoring the Peace, January 24, 1973

Formal announcement of a unilateral cease-fire and U.S. withdrawal from Vietnam

Roe v. Wade, 410 U.S. 113 (1973)

Landmark decision regarding abortion.

Miller v. California, 413 U.S. 15 (1973)

The Court further defined pornography and ruled that the First Amendment did not preclude states from regulating material deemed obscene. The decision allowed states to enact legislation to restrict this material.

Address to the Nation on the Energy Crisis, November 7, 1973

Nixon details the effects of Middle East conflicts and the shortage of importable oil. "We are heading toward the most acute shortages of energy since World War II. "

State of the Union Address, January 30, 1974

"Tonight, for the first time in 12 years, a President of the United States can report to the Congress on the state of a Union at peace with every nation of the world."

Address to the Nation Announcing Decision to Resign Presidency, August 8, 1974

"By taking this action, I hope that I [p.628] will have hastened the start of that process of healing which is so desperately needed in America."

Letter Resigning the Office of President, August 9, 1974

Nixon's brief, formal resignation

Ford's Address on the Pardon of Richard M. Nixon, September 8, 1974

President Ford's rationale for pardoning the former president

State of the Union Address, January 15, 1975

Ford's assessment and goals for the next two years

Annual Message to Congress: The Economic Report of the President

The President's plan to combat an "economy…in a severe recession," including a tax on crude oil to encourage conservation.

Evacuation of U.S. Personnel from Republic of Vietnam, April 29, 1975

The final order to evacuate the last remaining Americans from Saigon before its fall to the North Vietnamese.

Telephone Conversation with Astronauts of the Apollo-Soyuz Test Project, July 24, 1975

The End of the Apollo Missions

Extension of Voting Rights Act of 1965, August 6, 1975

The bill extends and broadens provisions to bar discrimination against Spanish-speaking Americans, American Indians, Alaskan natives, and Asian Americans.

Message on the Observance of Women's Equality Day, August 26, 1975

Ford's statement on observing the International Women's Year and Women's Equality Day.

Statement Following Announcement on Oil Price Increase by the Organization of Petroleum Exporting Countries, September 27, 1975

Ford's criticism of OPEC for raising oil prices and the U.S. Congress for doing nothing to protect Americans against the effects of those increases.

Veto of Tobacco Subsidy Bill, October 1, 1975

The President's justification of his veto for economic reasons

State of the Union Address, January 19, 1976

"We have not remade paradise on Earth. We know perfection will not be found here. But think for a minute how far we have come in 200 years." Fords' accounting to Congress in the Bicentennial year.

Special Message to Congress on Older Americans, February 9, 1976

The President's efforts to bolster Social Security

Special Message to Congress Proposing Elementary and Secondary Education Reform Legislation, March 1, 1976

Ford proposes a block grant program for schools recognizing that, "It is time that we reconcile our good intentions with the recognition that we at the Federal level cannot know what is best for every school child in every classroom in the country."

Remark Aboard U.S.S. Forrestal During Operation Sail in New York Harbor, July 4, 1976

"As we close the log of our second century, we begin an uncharted voyage toward the future." Ford's Bicentennial comments.

Telephone Conversation With National Aeronautics and Space Administration Officials on the Mars Landing of the Viking I Spacecraft, July 20, 1976

The U.S. successfully lands a spacecraft on Mars.

Democratic Platform of 1976

Democratic Party plans under presidential challenger Jimmy Carter.

Republican Platform of 1976

The Republican plan with incumbent Gerald Ford.

Carter's Inaugural Address, January 20, 1977

"The American dream endures. We must once again have full faith in our country—and in one another. I believe America can be better. We can be even stronger than before." Carter sets the tone for his administration.

Presidential Pardon of Selective Service Violations During Vietnam Era, January 21, 1977

Carter's pardon of those who broke the law in evading the draft during the Vietnam War.

Creation of Department of Energy, August 4, 1977

The President creates a new cabinet level position nominating James R. Schlesinger of Virginia to be Secretary of Energy.

Carter's State of the Union Address, January 19, 1978

"Militarily, politically, economically, and in spirit, the state of our Union is sound."

Remarks on the Senate Ratification of the Panama Canal Treaty, April 18, 1978

The Presidential response on turning control of the Panama Canal over to Panama after years of debate on the issue.

Regents of the University of California v. Bakke, 438 U.S. 265

5-4 decision that race cannot be taken into account as a factor in College admissions decisions, June 28, 1978

Carter's Address Before a Joint Session of Congress on the Camp David [Middle East] Accords, September 18, 1978

"The world prayed for the success of our efforts, and I am glad to announce to you that these prayers have been answered." The President's report after negotiations with Sadat and Begin.

Carter's Remarks on Signing the Full Employment Act, October 27, 1978

The President honors Hubert Humphrey and reaffirms his administration's goal of lowering unemployment.

Carter's Remarks on Establishing a Commission to Investigate the Three-Mile Island Accident, April 11, 1979

The President creates a commission to investigate what happened in the nuclear power plant accident.

Carter's National Broadcast Address, "Crisis of Confidence," July 15, 1979

The President details his personal feelings about the nation's energy problems and cynicism about government.

White House Statement Regarding American Hostages in Iran, November 9, 1979

Presidential statement read by Press Secretary Jody Powell regarding the takeover of the U.S. Embassy in Tehran and the taking of 60 hostages.

Carter's Address to the Nation on Soviet Invasion of Afghanistan, January 4, 1980

The President denounces Soviet military aggression and calls for a halt to SALT II negotiations with the Soviets.

Carter's Report to Congress on the Failed Hostage Rescue Mission to Iran, April 26, 1980

A Presidential description of the difficulties which resulted in aborting the proposed rescue of American hostages in Iran.

Democratic Platform of 1960

Title: Democratic Platform of 1960

Author: Democratic Party

Date: 1960

Source: National Party Platforms, pp.574-600

Democratic Platform of 1960, p.574

In 1796, in America's first contested national election, our Party, under the leadership of Thomas Jefferson, campaigned on the principles of "The Rights of Man."

Democratic Platform of 1960, p.574

Ever since, these four words have underscored our identity with the plain people of America and the world.

Democratic Platform of 1960, p.574

In periods of national crisis, we Democrats have returned to these words for renewed strength. We return to them today.

Democratic Platform of 1960, p.574

In 1960, "The Rights of Man" are still the issue. It is our continuing responsibility to provide an effective instrument of political action for every American who seeks to strengthen these rights-everywhere here in America, and everywhere in our 20th Century world.

Democratic Platform of 1960, p.574

The common danger of mankind is war and the threat of war. Today, three billion human beings live in fear that some rash act or blunder may plunge us all into a nuclear holocaust which will leave only ruined cities, blasted homes, and a poisoned earth and sky.

Democratic Platform of 1960, p.574

Our objective, however, is not the right to coexist in armed camps on the same planet with totalitarian ideologies; it is the creation of an enduring peace in which the universal values of human dignity, truth, and justice under law are finally secured for all men everywhere on earth.

Democratic Platform of 1960, p.574

If America is to work effectively for such a peace, we must first restore our national strength-military, political, economic, and moral.

National Defense

Democratic Platform of 1960, p.574

The new Democratic Administration will recast our military capacity in order to provide forces and weapons of a diversity, balance, and mobility sufficient in quantity and quality to deter both limited and general aggressions.

Democratic Platform of 1960, p.574

When the Democratic Administration left office in 1953, the United States was the pre-eminent power in the world. Most free nations had confidence [p.575] in our will and our ability to carry out our commitments to the common defense.

Democratic Platform of 1960, p.575

Even those who wished us ill respected our power and influence.

Democratic Platform of 1960, p.575

The Republican Administration has lost that position of pre-eminence. Over the past 7 1/2 years, our military power has steadily declined relative to that of the Russians and the Chinese and their satellites.

Democratic Platform of 1960, p.575

This is not a partisan election-year charge. It has been persistently made by high officials of the Republican Administration itself. Before Congressional committees they have testified that the Communists will have a dangerous lead in intercontinental missiles through 1963—and that the Republican Administration has no plans to catch up.

Democratic Platform of 1960, p.575

They have admitted that the Soviet Union leads in the space race—and that they have no plans to catch up.

Democratic Platform of 1960, p.575

They have also admitted that our conventional military forces, on which we depend for defense in any non-nuclear war, have been dangerously slashed for reasons of "economy"—and that they have no plans to reverse this trend.

Democratic Platform of 1960, p.575

As a result, our military position today is measured in terms of gaps—missile gap, space gap, limited-war gap.

Democratic Platform of 1960, p.575

To recover from the errors of the past 7 1/2 years will not be easy.

Democratic Platform of 1960, p.575

This is the strength that must be erected:

Democratic Platform of 1960, p.575

1. Deterrent military power such that the Soviet and Chinese leaders will have no doubt that an attack on the United States would surely be followed by their own destruction.

Democratic Platform of 1960, p.575

2. Balanced conventional military forces which will permit a response graded to the intensity of any threats of aggressive force.

Democratic Platform of 1960, p.575

3. Continuous modernization of these forces through intensified research and development, including essential programs now slowed down, terminated, suspended, or neglected for lack of budgetary support.

Democratic Platform of 1960, p.575

A first order of business of a Democratic Administration will be a complete re-examination of the organization of our armed forces.

Democratic Platform of 1960, p.575

A military organization structure, conceived before the revolution in weapons technology, cannot be suitable for the strategic deterrent, continental defense, limited war, and military alliance requirements of the 1960s.

Democratic Platform of 1960, p.575

We believe that our armed forces should be organized more nearly on the basis of function, not only to produce greater military strength, but also to eliminate duplication and save substantial sums.

Democratic Platform of 1960, p.575

We pledge our will, energies, and resources to oppose Communist aggression.

Democratic Platform of 1960, p.575

Since World War II, it has been clear that our own security must be pursued in concert with that of many other nations.

Democratic Platform of 1960, p.575

The Democratic Administrations which, in World War II, led in forging a mighty and victorious alliance, took the initiative after the war in creating the North Atlantic Treaty Organization, the greatest peacetime alliance in history.

Democratic Platform of 1960, p.575

This alliance has made it possible to keep Western Europe and the Atlantic Community secure against Communist pressures.

Democratic Platform of 1960, p.575

Our present system of alliances was begun in a time of an earlier weapons technology when our ability to retaliate against Communist attack required bases all around the periphery of the Soviet Union. Today, because of our continuing weakness in mobile weapons systems and intercontinental missiles, our defenses still depend in part on bases beyond our borders for planes and shorter-range missiles.

Democratic Platform of 1960, p.575

If an alliance is to be maintained in vigor, its unity must be reflected in shared purposes. Some of our allies have contributed neither devotion to the cause of freedom nor any real military strength.

Democratic Platform of 1960, p.575

The new Democratic Administration will review our system of pacts and alliances. We shall continue to adhere to our treaty obligations, including the commitment of the UN Charter to resist aggression. But we shall also seek to shift the emphasis of our cooperation from military aid to economic development, wherever this is possible.

Civil Defense

Democratic Platform of 1960, p.575

We commend the work of the civil defense groups throughout the nation. A strong and effective civil defense is an essential element in our nation's defense.

Democratic Platform of 1960, p.575

The new Democratic Administration will undertake a full review and analysis of the programs that should be adopted if the protection possible [p.576] is to be provided to the civilian population of our nation.

Arms Control

Democratic Platform of 1960, p.576

A fragile power balance sustained by mutual nuclear terror does not, however, constitute peace. We must regain the initiative on the entire international front with effective new policies to create the conditions for peace.

Democratic Platform of 1960, p.576

There are no simple solutions to the infinitely complex challenges which face us. Mankind's eternal dream, a world of peace, can only be built slowly and patiently.

Democratic Platform of 1960, p.576

A primary task is to develop responsible proposals that will help break the deadlock on arms control.

Democratic Platform of 1960, p.576

Such proposals should include means for ending nuclear tests under workable safeguards, cutting back nuclear weapons, reducing conventional forces, preserving outer space for peaceful purposes, preventing surprise attack, and limiting the risk of accidental war.

Democratic Platform of 1960, p.576

This requires a national peace agency for disarmament planning and research to muster the scientific ingenuity, coordination, continuity, and seriousness of purpose which are now lacking in our arms control efforts.

Democratic Platform of 1960, p.576

The national peace agency would develop the technical and scientific data necessary for serious disarmament negotiations, would conduct research in cooperation with the Defense Department and Atomic Energy Commission on methods of inspection and monitoring arms control agreements, particularly agreements to control nuclear testing, and would provide continuous technical advice to our disarmament negotiators.

Democratic Platform of 1960, p.576

As with armaments, so with disarmament, the Republican Administration has provided us with much talk but little constructive action. Representatives of the United States have gone to conferences without plans or preparation. The Administration has played opportunistic politics, both at home and abroad.

Democratic Platform of 1960, p.576

Even during the recent important negotiations at Geneva and Paris, only a handful of people were devoting full time to work on the highly complex problem of disarmament.

Democratic Platform of 1960, p.576

More than $100 billion of the world's production now goes each year into armaments. To the extent that we can secure the adoption of effective arms control agreements, vast resources will be freed for peaceful use.

Democratic Platform of 1960, p.576

The new Democratic Administration will plan for an orderly shift of our expenditures. Long-delayed reductions in excise, corporation, and individual income taxes will then be possible. We can also step up the pace in meeting our backlog of public needs and in pursuing the promise of atomic and space science in a peaceful age.

Democratic Platform of 1960, p.576

As world-wide disarmament proceeds, it will free vast resources for a new international attack on the problem of world poverty.

The Instruments of Foreign Policy

Democratic Platform of 1960, p.576

American foreign policy in all its aspects must be attuned to our world of change.

Democratic Platform of 1960, p.576

We will recruit officials whose experience, humanity, and dedication fit them for the task of effectively representing America abroad.

Democratic Platform of 1960, p.576

We will provide a more sensitive and creative direction to our overseas information program. And we will overhaul our administrative machinery so that America may avoid diplomatic embarrassments and at long last speak with a single confident voice in world affairs.

The "Image" of America

Democratic Platform of 1960, p.576

First, those men and women selected to represent us abroad must be chosen for their sensitive understanding of the peoples with whom they will live. We can no longer afford representatives who are ignorant of the language and culture and politics of the nations in which they represent us.

Democratic Platform of 1960, p.576

Our information programs must be more than news broadcasts and boastful recitals of our accomplishments and our material riches. We must find ways to show the people of the world that we share the same goals—dignity, health, freedom, schools for children, a place in the sun—and that we will work together to achieve them.

Democratic Platform of 1960, p.576

Our program of visits between Americans and people of other nations will be expanded, with special emphasis upon students and younger leaders. We will encourage study of foreign languages. We favor continued support and extension of such programs as the East-West cultural center established at the University of Hawaii. We shall study a similar center for Latin America, with due [p.577] consideration of the existing facilities now available in the Canal Zone.

National Policy Machinery

Democratic Platform of 1960, p.577

In the present Administration, the National Security Council has been used not to focus issues for decision by the responsible leaders of Government, but to paper over problems of policy with "agreed solutions" which avoid decisions.

Democratic Platform of 1960, p.577

The mishandling of the U-2 espionage flights—the sorry spectacle of official denial, retraction, and contradiction—and the admitted misjudging of Japanese public opinion are only two recent examples of the breakdown of the Administration's machinery for assembling facts, making decisions, and coordinating action.

Democratic Platform of 1960, p.577

The Democratic Party welcomes the study now being made by the Senate Subcommittee on National Policy Machinery. The new Democratic Administration will revamp and simplify this cumbersome machinery.

World Trade

Democratic Platform of 1960, p.577

World trade is more than ever essential to world peace. In the tradition of Cordell Hull, we shall expand world trade in every responsible way.

Democratic Platform of 1960, p.577

Since all Americans share the benefits of this policy, its costs should not be the burden of a few. We shall support practical measures to case the necessary adjustments of industries and communities which may be unavoidably hurt by increases in imports.

Democratic Platform of 1960, p.577

World trade raises living standards, widens markets, reduces costs, increases profits, and builds political stability and international economic cooperation.

Democratic Platform of 1960, p.577

However, the increase in foreign imports involves costly adjustment and damage to some domestic industries and communities. The burden has been heavier recently because of the Republican failure to maintain an adequate rate of economic growth, and the refusal to use public programs to ease necessary adjustments.

Democratic Platform of 1960, p.577

The Democratic Administration will help industries affected by foreign trade with measures favorable to economic growth, orderly transition, fair competition, and the long-run economic strength of all parts of our nation.

Democratic Platform of 1960, p.577

Industries and communities affected by foreign trade need and deserve appropriate help through trade adjustment measures such as direct loans, tax incentives, defense contracts priority, and re-training assistance.

Democratic Platform of 1960, p.577

Our Government should press for reduction of foreign barriers to the sale of the products of American industry and agriculture. These are particularly severe in the case of fruit products. The present balance-of-payments situation provides a favorable opportunity for such action.

Democratic Platform of 1960, p.577

The new Democratic Administration will seek international agreements to assure fair competition and fair labor standards to protect our own workers and to improve the lot of workers elsewhere.

Democratic Platform of 1960, p.577

Our domestic economic policies and our essential foreign policies must be harmonious.

Democratic Platform of 1960, p.577

To sell, we must buy. We therefore must resist the temptation to accept remedies that deny American producers and consumers access to world markets and destroy the prosperity of our friends in the non-Communist world.

Immigration

Democratic Platform of 1960, p.577

We shall adjust our immigration, nationality and refugee policies to eliminate discrimination and to enable members of scattered families abroad to be united with relatives already in our midst.

Democratic Platform of 1960, p.577

The national-origins quota system of limiting immigration contradicts the rounding principles of this nation. It is inconsistent with our belief in the rights of man. This system was instituted after World War I as a policy of deliberate discrimination by a Republican Administration and Congress.

Democratic Platform of 1960, p.577

The revision of immigration and nationality laws we seek will implement our belief that enlightened immigration, naturalization and refugee policies and humane administration of them are important aspects of our foreign policy.

Democratic Platform of 1960, p.577

These laws will bring greater skills to our land, reunite families, permit the United States to meet its fair share of world programs of rescue and rehabilitation, and take advantage of immigration as an important factor in the growth of the American economy.

Democratic Platform of 1960, p.577

In this World Refugee Year it is our hope to achieve admission of our fair share of refugees. We will institute policies to alleviate suffering [p.578] among the homeless wherever we are able to extend our aid.

Democratic Platform of 1960, p.578

We must remove the distinctions between native-born and naturalized citizens to assure full protection of our laws to all. There is no place in the United States for "second-class citizenship."

Democratic Platform of 1960, p.578

The protections provided by due process, right of appeal, and statutes of limitation, can be extended to non-citizens without hampering the security of our nation.

Democratic Platform of 1960, p.578

We commend the Democratic Congress for the initial steps that have recently been taken toward liberalizing changes in immigration law. However, this should not be a piecemeal project and we are confident that a Democratic President in cooperation with Democratic Congresses will again implant a humanitarian and liberal spirit in our nation's immigration and citizenship policies.

Democratic Platform of 1960, p.578

To the peoples and governments beyond our shores we offer the following pledges:

The Underdeveloped World

Democratic Platform of 1960, p.578

To the non-Communist nations of Asia, Africa, and Latin America: We shall create with you working partnerships, based on mutual respect and understanding.

Democratic Platform of 1960, p.578

In the Jeffersonian tradition, we recognize and welcome the irresistible momentum of the world revolution of rising expectations for a better life. We shall identify American policy with the values and objectives of this revolution.

Democratic Platform of 1960, p.578

To this end the new Democratic Administration will revamp and refocus the objectives, emphasis and allocation of our foreign assistance programs.

Democratic Platform of 1960, p.578

The proper purpose of these programs is not to buy gratitude or to recruit mercenaries, but to enable the peoples of these awakening, developing nations to make their own free choices.

Democratic Platform of 1960, p.578

As they achieve a sense of belonging, of dignity, and of justice, freedom will become meaningful for them, and therefore worth defending.

Democratic Platform of 1960, p.578

Where military assistance remains essential for the common defense, we shall see that the requirements are fully met. But as rapidly as security considerations permit, we will replace tanks with tractors, bombers with bulldozers, and tacticians with technicians.

Democratic Platform of 1960, p.578

We shall place our programs of international cooperation on a long-term basis to permit more effective planning. We shall seek to associate other capital-exporting countries with us in promoting the orderly economic growth of the underdeveloped world.

Democratic Platform of 1960, p.578

We recognize India and Pakistan as major tests of the capacity of free men in a difficult environment to master the age-old problems of illiteracy, poverty, and disease. We will support their efforts in every practical way.

Democratic Platform of 1960, p.578

We welcome the emerging new nations of Africa to the world community. Here again we shall strive to write a new chapter of fruitful cooperation.

Democratic Platform of 1960, p.578

In Latin America we shall restore the Good Neighbor Policy based on far closer economic cooperation and increased respect and understanding.

Democratic Platform of 1960, p.578

In the Middle East we will work for guarantees to insure independence for all states. We will encourage direct Arab-Israeli peace negotiations, the resettlement of Arab refugees in lands where there is room and opportunity for them, an end to boycotts and blockades, and unrestricted use of the Suez Canal by all nations.

Democratic Platform of 1960, p.578

A billion and a half people in Asia, Africa and Latin America are engaged in an unprecedented attempt to propel themselves into the 20th Century. They are striving to create or reaffirm their national identity.

Democratic Platform of 1960, p.578

But they want much more than independence. They want an end to grinding poverty. They want more food, health for themselves and their children, and other benefits that a modern industrial civilization can provide.

Democratic Platform of 1960, p.578

Communist strategy has sought to divert these aspirations into narrowly nationalistic channels, or external troublemaking, or authoritarianism. The Republican Administration has played into the hands of this strategy by concerning itself almost exclusively with the military problem of Communist invasion.

Democratic Platform of 1960, p.578

The Democratic programs of economic cooperation will be aimed at making it as easy as possible for the political leadership in these countries to turn the energy, talent and resources of their peoples to orderly economic growth.

Democratic Platform of 1960, p.578

History and current experience show that an annual per capita growth rate of at least 2% is feasible in these countries. The Democratic Administration's assistance program, in concert with [p.579] the aid forthcoming from our partners in Western Europe, Japan, and the British Commonwealth, will be geared to facilitating this objective.

Democratic Platform of 1960, p.579

The Democratic Administration will recognize that assistance to these countries is not an emergency or short-term matter. Through the Development Loan Fund and otherwise, we shall seek to assure continuity in our aid programs for periods of at least five years, in order to permit more effective allocation on our part and better planning by the governments of the countries receiving aid.

Democratic Platform of 1960, p.579

More effective use of aid and a greater confidence in us and our motives will be the result.

Democratic Platform of 1960, p.579

We shall establish priorities for foreign aid which will channel it to those countries abroad which, by their own willingness to help themselves, show themselves most capable of using it effectively.

Democratic Platform of 1960, p.579

We shall use our own agricultural productivity as an effective tool of foreign aid, and also as a vital form of working capital for economic development. We shall seek new approaches which will provide assistance without disrupting normal world markets for food and fiber.

Democratic Platform of 1960, p.579

We shall give attention to the problem of stabilizing world prices of agricultural commodities and basic raw materials on which many underdeveloped countries depend for needed foreign exchange.

Democratic Platform of 1960, p.579

We shall explore the feasibility of shipping and storing a substantial part of our food abundance in a system of "food banks" located at distribution centers in the underdeveloped world.

Democratic Platform of 1960, p.579

Such a system would be an effective means of alleviating famine and suffering in times of natural disaster, and of cushioning the effect of bad harvests. It would also have a helpful anti-inflationary influence as economic development gets under way.

Democratic Platform of 1960, p.579

Although basic development requirements like transport, housing, schools, and river development may be financed by Government, these projects are usually built and sometimes managed by private enterprise. Moreover, outside this public sector a large and increasing role remains for private investment.

Democratic Platform of 1960, p.579

The Republican Administration has done little to summon American business to play its part in this, one of the most creative tasks of our generation. The Democratic Administration will take

Democratic Platform of 1960, p.579

steps to recruit and organize effectively the best business talent in America for foreign economic development.

Democratic Platform of 1960, p.579

We urge continued economic assistance to Israel and the Arab peoples to help them raise their living standards. We pledge our best efforts for peace in the Middle East by seeking to prevent an arms race while guarding against the dangers of a military imbalance resulting from Soviet arms shipments.

The Atlantic Community

Democratic Platform of 1960, p.579

To our friends and associates in the Atlantic Community: We propose a broader partnership that goes beyond our common fears to recognize the depth and sweep of our common political, economic, and cultural interests.

Democratic Platform of 1960, p.579

We welcome the recent heartening advances toward European unity. In every appropriate way, we shall encourage their further growth within the broader framework of the Atlantic Community.

Democratic Platform of 1960, p.579

After World War II, Democratic statesmen saw that an orderly, peaceful world was impossible with Europe shattered and exhausted.

Democratic Platform of 1960, p.579

They fashioned the great programs which bear their names—the Truman Doctrine and the Marshall Plan—by which the economies of Europe were revived. Then in NATO they renewed for the common defense the ties of alliance forged in war.

Democratic Platform of 1960, p.579

In these endeavors, the Democratic Administrations invited leading Republicans to full participation as equal partners. But the Republican Administration has rejected this principle of bi-partisanship.

Democratic Platform of 1960, p.579

We have already seen how the mutual trust and confidence created abroad under Democratic leadership have been eroded by arrogance, clumsiness, and lack of understanding in the Republican Administration.

Democratic Platform of 1960, p.579

The new Democratic Administration will restore the former high levels of cooperation within the Atlantic Community envisaged from the beginning by the NATO treaty in political and economic spheres as well as military affairs.

Democratic Platform of 1960, p.579

We welcome the progress towards European unity expressed in the Coal and Steel Community, Euratom, the European Economic Community, the European Free Trade Association, and the European Assembly.

Democratic Platform of 1960, p.580

[p.580] We shall conduct our relations with the nations of the Common Market so as to encourage the opportunities for freer and more expanded trade, and to avert the possibilities of discrimination that are inherent in it.

Democratic Platform of 1960, p.580

We shall encourage adjustment with the so-called "Outer Seven" nations so as to enlarge further the area of freer trade.

The Communist World

Democratic Platform of 1960, p.580

To the rulers of the Communist World: We confidently accept your challenge to competition in every field of human effort.

Democratic Platform of 1960, p.580

We recognize this contest as one between two radically different approaches to the meaning of life—our open society which places its highest value upon individual dignity, and your closed society in which the rights of men are sacrificed to the state.

Democratic Platform of 1960, p.580

We believe your Communist ideology to be sterile, unsound, and doomed to failure. We believe that your children will reject the intellectual prison in which you seek to confine them, and that ultimately they will choose the eternal principles of freedom.

Democratic Platform of 1960, p.580

In the meantime, we are prepared to negotiate with you whenever and wherever there is a realistic possibility of progress without sacrifice of principle.

Democratic Platform of 1960, p.580

If negotiations through diplomatic channels provide opportunities, we will negotiate.

Democratic Platform of 1960, p.580

If debate before the United Nations holds promise, we will debate.

Democratic Platform of 1960, p.580

If meetings at high level offer prospects of success, we will be there.

Democratic Platform of 1960, p.580

But we will use all the power, resources, and energy at our command to resist the further encroachment of Communism on freedom—whether at Berlin, Formosa, or new points of pressure as yet undisclosed.

Democratic Platform of 1960, p.580

We will keep open the lines of communication with our opponents. Despite difficulties in the way of peaceful agreement, every useful avenue will be energetically explored and pursued.

Democratic Platform of 1960, p.580

However, we will never surrender positions which are essential to the defense of freedom, nor will we abandon peoples who are now behind the Iron Curtain through any formal approval of the status quo.

Democratic Platform of 1960, p.580

Everyone proclaims "firmness" in support of Berlin. The issue is not the desire to be firm, but the capability to be firm. This the Democratic Party will provide as it has done before.

Democratic Platform of 1960, p.580

The ultimate solution of the situation in Berlin must be approached in the broader context of settlement of the tensions and divisions of Europe.

Democratic Platform of 1960, p.580

The good faith of the United States is pledged likewise to defending Formosa. We will carry out that pledge.

Democratic Platform of 1960, p.580

The new Democratic Administration will also reaffirm our historic policy of opposition to the establishment anywhere in the Americas of governments dominated by foreign powers, a policy now being undermined by Soviet threats to the freedom and independence of Cuba. The Government of the United States under a Democratic Administration will not be deterred from fulfilling its obligations and solemn responsibilities under its treaties and agreements with the nations of the Western Hemisphere. Nor will the United States, in conformity with its treaty obligations, permit the establishment of a regime dominated by international, atheistic Communism in the Western Hemisphere.

Democratic Platform of 1960, p.580

To the people who live in the Communist World and its captive nations: We proclaim an enduring friendship which goes beyond governments and ideologies to our common human interest in a better world.

Democratic Platform of 1960, p.580

Through exchanges of persons, cultural contacts, trade in non-strategic areas, and other non-governmental activities, we will endeavor to preserve and improve opportunities for human relationships which no Iron Curtain can permanently sever.

Democratic Platform of 1960, p.580

No political platform promise in history was more cruelly cynical than the Republican effort to buy votes in 1952 with false promises of painless liberation for the captive nations.

Democratic Platform of 1960, p.580

The blood of heroic freedom fighters in Hungary tragically proved this promise a fraud. We Democrats will never be party to such cruel cultivation of false hopes.

Democratic Platform of 1960, p.580

We look forward to the day when the men and women of Albania, Bulgaria, Czechoslovakia, East Germany, Estonia, Hungary, Latvia, Lithuania, Poland, Rumania, and the other captive nations will stand again in freedom and justice. We will [p.581] hasten, by every honorable and responsible means, the arrival of the day.

Democratic Platform of 1960, p.581

We shall never accept any deal or arrangement which acquiesces in the present subjugation of these peoples.

Democratic Platform of 1960, p.581

We deeply regret that the policies and actions of the Government of Communist China have interrupted the generations of friendship between the Chinese and American peoples.

Democratic Platform of 1960, p.581

We reaffirm our pledge of determined opposition to the present admission of Communist China to the United Nations.

Democratic Platform of 1960, p.581

Although normal diplomatic relations between our Governments are impossible under present conditions, we shall welcome any evidence that the Chinese Communist Government is genuinely prepared to create a new relationship based on respect for international obligations, including the release of American prisoners.

Democratic Platform of 1960, p.581

We will continue to make every effort to effect the release of American citizens and servicemen now unjustly imprisoned in Communist China and elsewhere in the Communist empire.

The United Nations

Democratic Platform of 1960, p.581

To all our fellow members of the United Nations: We shall strengthen our commitments in this, our great continuing institution for conciliation and the growth of a world community.

Democratic Platform of 1960, p.581

Through the machinery of the United Nations, we shall work for disarmament, the establishment of an international police force, the strengthening of the World Court, and the establishment of world law.

Democratic Platform of 1960, p.581

We shall propose the bolder and more effective use of the specialized agencies to promote the world's economic and social development.

Democratic Platform of 1960, p.581

Great Democratic Presidents have taken the lead in the effort to unite the nations of the world in an international organization to assure world peace with justice under law.

Democratic Platform of 1960, p.581

The League of Nations, conceived by Woodrow Wilson, was doomed by Republican defeat of United States participation.

Democratic Platform of 1960, p.581

The United Nations, sponsored by Franklin Roosevelt, has become the one place where representatives of the rival systems and interests which divide the world can and do maintain continuous contact.

Democratic Platform of 1960, p.581

The United States' adherence to the World Court contains a so-called "self-judging reservation" which, in effect, permits us to prevent a Court decision in any particular case in which we are involved. The Democratic Party proposes its repeal.

Democratic Platform of 1960, p.581

To all these endeavors so essential to world peace, we, the members of the Democratic Party, will bring a new urgency, persistence, and determination, born of the conviction that in our thermonuclear century all of the other Rights of Man hinge on our ability to assure man's right to peace.

Democratic Platform of 1960, p.581

The pursuit of peace, our contribution to the stability of the new nations of the world, our hopes for progress and well-being at home, all these depend in large measure on our ability to release the full potential of our American economy for employment, production, and growth.

Democratic Platform of 1960, p.581

Our generation of Americans has achieved a historic technological breakthrough. Today we are capable of creating an abundance in goods and services beyond the dreams of our parents. Yet on the threshold of plenty the Republican Administration hesitates, confused and afraid.

Democratic Platform of 1960, p.581

As a result, massive human needs now exist side by side with idle workers, idle capital, and idle machines.

Democratic Platform of 1960, p.581

The Republican failure in the economic field has been virtually complete.

Democratic Platform of 1960, p.581

Their years of power have consisted of two recessions, in 1953-54 and 1957-60, separated by the most severe peacetime inflation in history.

Democratic Platform of 1960, p.581

They have shown themselves incapable of checking inflation. In their efforts to do so, they have brought on recessions that have thrown millions of Americans out of work. Yet even in these slumps, the cost of living has continued to climb, and it is now at an all-time high.

Democratic Platform of 1960, p.581

They have slowed down the rate of growth of the economy to about one-third the rate of the Soviet Union.

Democratic Platform of 1960, p.581

Over the past 7 1/2-year period, the Republicans have failed to balance the budget or reduce the national debt. Responsible fiscal policy requires surpluses in good times to more than offset the deficits which may occur in recessions, in order to reduce the national debt over the long run. The Republican Administration has produced the deficits— [p.582] in fact, the greatest deficit in any peace-time year in history, in 1958-59—but only occasional and meager surpluses. Their first seven years produced a total deficit of nearly $19 billion.

Democratic Platform of 1960, p.582

While reducing outlays for essential public services which directly benefit our people, they have raised the annual interest charge on the national debt to a level $3 billion higher than when they took office. In the eight fiscal years of the Republican Administration, these useless higher interest payments will have cost the taxpayers $9 billion.

Democratic Platform of 1960, p.582

They have mismanaged the public debt not only by increasing interest rates, but also by failing to lengthen the average maturity of Government obligations when they had a clear opportunity to do so.

Economic Growth

Democratic Platform of 1960, p.582

The new Democratic Administration will confidently proceed to unshackle American enterprise and to free American labor, industrial leadership, and capital, to create an abundance that will outstrip any other system.

Democratic Platform of 1960, p.582

Free competitive enterprise is the most creative and productive form of economic order that the world has seen. The recent slow pace of American growth is due not to the failure of our free economy but to the failure of our national leadership.

Democratic Platform of 1960, p.582

We Democrats believe that our economy can and must grow at an average rate of 5% annually, almost twice as fast as our average annual rate since 1953. We pledge ourselves to policies that will achieve this goal without inflation.

Democratic Platform of 1960, p.582

Economic growth is the means whereby we improve the American standard of living and produce added tax resources for national security and essential public services.

Democratic Platform of 1960, p.582

Our economy must grow more swiftly in order to absorb two groups of workers: the much larger number of young people who will be reaching working age in the 1960s, and the workers displaced by the rapid pace of technological advances, including automation. Republican policies which have stifled growth could only mean increasingly severe unemployment, particularly of youth and older workers.

An End to Tight Money

Democratic Platform of 1960, p.582

As the first step in speeding economic growth, a Democratic president will put an end to the present high-interest, tight-money policy.

Democratic Platform of 1960, p.582

This policy has failed in its stated purpose—to keep prices down. It has given us two recessions within five years, bankrupted many of our farmers, produced a record number of business failures, and added billions of dollars in unnecessary higher interest charges to Government budgets and the cost of living.

Democratic Platform of 1960, p.582

A new Democratic Administration will reject this philosophy of economic slowdown. We are committed to maximum employment, at decent wages and with fair profits, in a far more productive, expanding economy.

Democratic Platform of 1960, p.582

The Republican high-interest policy has extracted a costly toll from every American who has financed a home, an automobile, a refrigerator, or a television set.

Democratic Platform of 1960, p.582

It has foisted added burdens on taxpayers of state and local governments which must borrow for schools and other public services.

Democratic Platform of 1960, p.582

It has added to the cost of many goods and services, and hence has been itself a factor in inflation.

Democratic Platform of 1960, p.582

It has created windfalls for many financial institutions.

Democratic Platform of 1960, p.582

The $9 billion of added interest charges on the national debt would have been even higher but for the prudent insistence of the Democratic Congress that the ceiling on interest rates for long-term Government bonds be maintained.

Control of Inflation

Democratic Platform of 1960, p.582

The American consumer has a right to fair prices. We are determined to secure that right.

Democratic Platform of 1960, p.582

Inflation has its roots in a variety of causes; its cure lies in a variety of remedies. Among those remedies are monetary and credit policies properly applied, budget surpluses in times of full employment, and action to restrain "administered price" increases in industries where economic power rests in the hands of a few.

Democratic Platform of 1960, p.582

A fair share of the gains from increasing productivity in many industries should he passed on to the consumer through price reductions.

Democratic Platform of 1960, p.582

The agenda which a new Democratic Administration will face next January is crowded with urgent needs on which action has been delayed, deferred, or denied by the present Administration.

Democratic Platform of 1960, p.583

[p.583] A new Democratic Administration will undertake to meet those needs.

Democratic Platform of 1960, p.583

It will reaffirm the Economic Bill of Rights which Franklin Roosevelt wrote into our national conscience sixteen years ago. It will reaffirm these rights for all Americans of whatever race, place of residence, or station in life:

Democratic Platform of 1960, p.583

1. "The right to a useful and remunerative job in the industries or shops or farms or mines of the nation."

Full Employment

Democratic Platform of 1960, p.583

The Democratic Party reaffirms its support of full employment as a paramount objective of national policy.

Democratic Platform of 1960, p.583

For nearly 30 months the rate of unemployment has been between 5 and 7.5% of the labor force. A pool of three to four million citizens, able and willing to work but unable to find jobs, has been written off by the Republican Administration as a "normal" readjustment of the economic system.

Democratic Platform of 1960, p.583

The policies of a Democratic Administration to restore economic growth will reduce current unemployment to a minimum.

Democratic Platform of 1960, p.583

Thereafter, if recessionary trends appear, we will act promptly with counter-measures, such as public works or temporary tax cuts. We will not stand idly by and permit recessions to run their course as the Republican Administration has done.

Aid to Depressed Areas

Democratic Platform of 1960, p.583

The right to a job requires action to create new industry in America's depressed areas of chronic unemployment.

Democratic Platform of 1960, p.583

General economic measures will not alone solve the problems of localities which suffer some special disadvantage. To bring prosperity to these depressed areas and to enable them to make their full contribution to the national welfare, specially directed action is needed.

Democratic Platform of 1960, p.583

Areas of heavy and persistent unemployment result from depletion of natural resources, technological change, shifting defense requirements, or trade imbalances which have caused the decline of major industries. Whole communities, urban and rural, have been left stranded in distress and despair, through no fault of their own.

Democratic Platform of 1960, p.583

These communities have undertaken valiant efforts of self-help. But mutual aid, as well as self-help, is part of the American tradition. Stricken communities deserve the help of the whole nation.

Democratic Platform of 1960, p.583

The Democratic Congress twice passed bills to provide this help. The Republican President twice vetoed them.

Democratic Platform of 1960, p.583

These bills proposed low-interest loans to private enterprise to create new industry and new jobs in depressed communities, assistance to the communities to provide public facilities necessary to encourage the new industry, and retraining of workers for the new jobs.

Democratic Platform of 1960, p.583

The Democratic Congress will again pass, and the Democratic President will sign, such a bill.

Discrimination in Employment

Democratic Platform of 1960, p.583

The right to a job requires action to break down artificial and arbitrary barriers to employment based on age, race, sex, religion, or national origin.

Democratic Platform of 1960, p.583

Unemployment strikes hardest at workers over 40, minority groups, young people, and women. We will not achieve full employment until prejudice against these workers is wiped out.

Collective Bargaining

Democratic Platform of 1960, p.583

The right to a job requires the restoration of full support for collective bargaining and the repeal of the anti-labor excesses which have been written into our labor laws.

Democratic Platform of 1960, p.583

Under Democratic leadership a sound national policy was developed, expressed particularly by the Wagner National Labor Relations Act, which guaranteed the rights of workers to organize and to bargain collectively. But the Republican Administration has replaced this sound policy with a national anti-labor policy.

Democratic Platform of 1960, p.583

The Republican Taft-Hartley Act seriously weakened unions in their efforts to bring economic justice to the millions of American workers who remain unorganized.

Democratic Platform of 1960, p.583

By administrative action, anti-labor personnel appointed by the Republicans to the National Labor Relations Board have made the Taft-Hartley Act even more restrictive in its application than in its language.

Democratic Platform of 1960, p.583

Thus the traditional goal of the Democratic Party—to give all workers the right to organize and bargain collectively—has still not been achieved.

Democratic Platform of 1960, p.584

[p.584] We pledge the enactment of an affirmative labor policy which will encourage free collective bargaining through the growth and development of free and responsible unions.

Democratic Platform of 1960, p.584

Millions of workers just now seeking to organize are blocked by Federally authorized "right-to-work" laws, unreasonable limitations on the right to picket, and other hampering legislative and administrative provisions.

Democratic Platform of 1960, p.584

Again, in the new Labor-Management Reporting and Disclosure Act, the Republican Administration perverted the constructive effort of the Democratic Congress to deal with improper activities of a few in labor and management by turning that Act into a means of restricting the legitimate rights of the vast majority of working men and women in honest labor unions. This law likewise strikes hardest at the weak or poorly organized, and it fails to deal with abuses of management as vigorously as with those of labor.

Democratic Platform of 1960, p.584

We will repeal the authorization for "right-to-work" laws, limitations on the rights to strike, to picket peacefully and to tell the public the facts of a labor dispute, and other anti-labor features of the Taft-Hartley Act and the 1959 Act. This unequivocal pledge for the repeal of the anti-labor and restrictive provisions of those laws will encourage collective bargaining and strengthen and support the free and honest labor movement.

Democratic Platform of 1960, p.584

The Railroad Retirement Act and the Railroad Unemployment Insurance Act are in need of improvement. We strongly oppose Republican attempts to weaken the Railway Labor Act.

Democratic Platform of 1960, p.584

We shall strengthen and modernize the Walsh-Healey and Davis-Bacon Acts, which protect the wage standards of workers employed by Government contractors.

Democratic Platform of 1960, p.584

Basic to the achievement of stable labor-management relations is leadership from the White House. The Republican Administration has failed to provide such leadership.

Democratic Platform of 1960, p.584

It failed to foresee the deterioration of labor-management relations in the steel industry last year. When a national emergency was obviously developing, it failed to forestall it. When the emergency came, the Administration's only solution was government-by-injunction.

Democratic Platform of 1960, p.584

A Democratic President, through his leadership and concern, will produce a better climate for continuing constructive relationships between labor and management. He will have periodic White House conferences between labor and management to consider their mutual problems before they reach the critical stage.

Democratic Platform of 1960, p.584

A Democratic President will use the vast fact-finding facilities that are available to inform himself, and the public, in exercising his leadership in labor disputes for the benefit of the nation as a whole.

Democratic Platform of 1960, p.584

If he needs more such facilities, or authority, we will provide them.

Democratic Platform of 1960, p.584

We further pledge that in the administration of all labor legislation we will restore the level of integrity, competence and sympathetic understanding required to carry out the intent of such legislation.

Planning for Automation

Democratic Platform of 1960, p.584

The right to a job requires planning for automation, so that men and women will be trained and available to meet shifting employment needs.

Democratic Platform of 1960, p.584

We will conduct a continuing analysis of the nation's manpower resources and of measures which may be required to assure their fullest development and use.

Democratic Platform of 1960, p.584

We will provide the Government leadership necessary to insure that the blessings of automation do not become burdens of widespread unemployment. For the young and the technologically displaced workers, we will provide the opportunity for training and retraining that equips them for jobs to be filled.

Minimum Wages

Democratic Platform of 1960, p.584

2. "The right to earn enough to provide adequate food and clothing and recreation."

Democratic Platform of 1960, p.584

At the bottom of the income scale are some eight million families whose earnings are too low to provide even basic necessities of food, shelter, and clothing.

Democratic Platform of 1960, p.584

We pledge to raise the minimum wage to $1.25 an hour and to extend coverage to several million workers not now protected.

Democratic Platform of 1960, p.584

We pledge further improvements in the wage, hour and coverage standards of the Fair Labor Standards Act so as to extend its benefits to all workers employed in industries engaged in or affecting interstate commerce and to raise its [p.585] standards to keep up with our general economic progress and needs.

Democratic Platform of 1960, p.585

We shall seek to bring the two million men, women and children who work for wages on the farms of the United States under the protection of existing labor and social legislation; and to assure migrant labor, perhaps the most underprivileged of all, of a comprehensive program to bring them not only decent wages but also adequate standards of health, housing, Social Security protection, education and welfare services.

Agriculture

Democratic Platform of 1960, p.585

3. "The right of every farmer to raise and sell his products at a return which will give him and his family a decent living."

Democratic Platform of 1960, p.585

We shall take positive action to raise farm income to full parity levels and to preserve family farming as a way of life.

Democratic Platform of 1960, p.585

We shall put behind us once and for all the timidity with which our Government has viewed our abundance of food and fiber.

Democratic Platform of 1960, p.585

We will set new high levels of food consumption both at home and abroad.

Democratic Platform of 1960, p.585

As long as many Americans and hundreds of millions of people in other countries remain underfed, we shall regard these agricultural riches, and the family farmers who produce them, not as a liability but as a national asset.

Using Our Abundance

Democratic Platform of 1960, p.585

The Democratic Administration will inaugurate a national food and fiber policy for expanded use of our agricultural abundance. We will no longer view food stockpiles with alarm but will use them as powerful instruments for peace and plenty.

Democratic Platform of 1960, p.585

We will increase consumption at home. A vigorous, expanding economy will enable many American families to eat more and better food.

Democratic Platform of 1960, p.585

We will use the food stamp programs authorized to feed needy children, the aged and the unemployed. We will expand and improve the school lunch and milk programs.

Democratic Platform of 1960, p.585

We will establish and maintain food reserves for national defense purposes near important population centers in order to preserve lives in event of national disaster, and will operate them so as not to depress farm prices. We will expand research into new industrial uses of agricultural products.

Democratic Platform of 1960, p.585

We will increase consumption abroad. The Democratic Party believes our nation's capacity to produce food and fiber is one of the great weapons for waging war against hunger and want throughout the world. With wise management of our food abundance we will expand trade between nations, support economic and human development programs, and combat famine.

Democratic Platform of 1960, p.585

Unimaginative, outmoded Republican policies which fail to use these productive capacities of our farms have been immensely costly to our nation. They can and will be changed.

Achieving Income Parity

Democratic Platform of 1960, p.585

While farmers have raised their productive efficiency to record levels, Republican farm policies have forced their income to drop by 30%.

Democratic Platform of 1960, p.585

Tens of thousands of farm families have been bankrupted and forced off the land. This has happened despite the fact that the Secretary of Agriculture has spent more on farm programs than all previous Secretaries in history combined.

Democratic Platform of 1960, p.585

Farmers acting individually or in small groups are helpless to protect their incomes from sharp declines. Their only recourse is to produce more, throwing production still further out of balance with demand and driving prices down further.

Democratic Platform of 1960, p.585

This disastrous downward cycle can be stopped only by effective farm programs sympathetically administered with the assistance of democratically elected farmer committees.

Democratic Platform of 1960, p.585

The Democratic Administration will work to bring about full parity income for farmers in all segments of agriculture by helping them to balance farm production with the expanding needs of the nation and the world.

Democratic Platform of 1960, p.585

Measures to this end include production and marketing quotas measured in terms of barrels, bushels and bales, loans on basic commodities at not less than 90% of parity, production payments, commodity purchases, and marketing orders and agreements.

Democratic Platform of 1960, p.585

We repudiate the Republican administration of the Soil Bank Program, which has emphasized the retirement of whole farm units, and we pledge an orderly land retirement and conservation program.

Democratic Platform of 1960, p.585

We are convinced that a successful combination of these approaches will cost considerably less than present Republican programs which have failed.

Democratic Platform of 1960, p.586

[p.586] We will encourage agricultural cooperatives by expanding and liberalizing existing credit facilities and developing new facilities if necessary to assist them in extending their marketing and purchasing activities, and we will protect cooperatives from punitive taxation.

Democratic Platform of 1960, p.586

The Democratic Administration will improve the marketing practices of the family-type dairy farm to reduce risk of loss.

Democratic Platform of 1960, p.586

To protect farmers' incomes in times of natural disaster, the Federal Crop Insurance Program, created and developed experimentally under Democratic Administrations, should be invigorated and expanded nationwide.

Improving Working and Living on Farms

Democratic Platform of 1960, p.586

Farm families have been among those victimized most severely by Republican tight-money policies.

Democratic Platform of 1960, p.586

Young people have been barred from entering agriculture. Giant corporations and other non-farmers, with readier access to credit and through vertical integration methods, have supplanted hundreds of farm families and caused the bankruptcy of many others.

Democratic Platform of 1960, p.586

The Democratic Party is committed by tradition and conviction to preservation of family agriculture.

Democratic Platform of 1960, p.586

To this end, we will expand and liberalize farm credit facilities, especially to meet the needs of family-farm agriculture and to assist beginning farmers.

Democratic Platform of 1960, p.586

Many families in America's rural counties are still living in poverty because of inadequate resources and opportunity. This blight and personal desperation should have received national priority attention long ago.

Democratic Platform of 1960, p.586

The new Democratic Administration will begin at once to eradicate long-neglected rural blight. We will help people help themselves with extended and supervised credit for farm improvement, local industrial development, improved vocational training and other assistance to those wishing to change to non-farm employment, and with the fullest development of commercial and recreational possibilities. This is one of the major objectives of the area redevelopment program, twice vetoed by the Republican President.

Democratic Platform of 1960, p.586

The rural electric cooperatives celebrate this year the twenty-fifth anniversary of the creation of the Rural Electrification Administration under President Franklin D. Roosevelt.

Democratic Platform of 1960, p.586

The Democratic Congress has successfully fought the efforts of the Republican Administration to cut off REA loans and force high-interest-rate policies on this great rural enterprise.

Democratic Platform of 1960, p.586

We will maintain interest rates for REA co-ops and public power districts at the levels provided in present law.

Democratic Platform of 1960, p.586

We deplore the Administration's failure to provide the dynamic leadership necessary for encouraging loans to rural users for generation of power where necessary.

Democratic Platform of 1960, p.586

We promise the co-ops active support in meeting the ever-growing demand for electric power and telephone service, to be filled on a complete area-coverage basis without requiring benefits for special-interest power groups.

Democratic Platform of 1960, p.586

In every way we will seek to help the men, women, and children whose livelihood comes from the soil to achieve better housing, education, health, and decent earnings and working conditions.

Democratic Platform of 1960, p.586

All these goals demand the leadership of a Secretary of Agriculture who is conversant with the technological and economic aspects of farm problems, and who is sympathetic with the objectives of effective farm legislation not only for farmers but for the best interest of the nation as a whole.

Small Business

Democratic Platform of 1960, p.586

4. "The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home and abroad."

Democratic Platform of 1960, p.586

The new Democratic Administration will act to make our free economy really free—free from the oppression of monopolistic power, and free from the suffocating impact of high interest rates. We will help create an economy in which small businesses can take root, grow, and flourish. We Democrats pledge:

Democratic Platform of 1960, p.586

1. Action to aid small business in obtaining credit and equity capital at reasonable rates. Small business which must borrow to stay alive has been a particular victim of the high-interest policies of the Republican administration.

Democratic Platform of 1960, p.586

The loan program of the Small Business Administration should be accelerated, and the independence of that agency preserved. The Small Business [p.587] Investment Act of 1958 must be administered with a greater sense of its importance and possibilities.

Democratic Platform of 1960, p.587

2. Protection of the public against the growth of monopoly.

Democratic Platform of 1960, p.587

The last 7 1/2 years of Republican government has been the greatest period of merger and amalgamation in industry and banking in American history. Democratic Congresses have enacted numerous important measures to strengthen our anti-trust laws. Since 1950 the four Democratic Congresses have enacted laws like the Celler-Kefauver Anti-Merger Act, and improved the laws against price discriminations and tie-in sales.

Democratic Platform of 1960, p.587

When the Republicans were in control of the 80th and 83rd Congresses they failed to enact a single measure to strengthen or improve the antitrust laws.

Democratic Platform of 1960, p.587

The Democratic Party opposes this trend to monopoly.

Democratic Platform of 1960, p.587

We pledge vigorous enforcement of the antitrust laws.

Democratic Platform of 1960, p.587

We favor requiring corporations to file advance notice of mergers with the anti-trust enforcement agencies.

Democratic Platform of 1960, p.587

We favor permitting all firms to have access at reasonable rates to patented inventions resulting from Government-financed research and development contracts.

Democratic Platform of 1960, p.587

We favor strengthening the Robinson-Patman Act to protect small business against price discrimination.

Democratic Platform of 1960, p.587

We favor authorizing the Federal Trade Commission to obtain temporary injunctions during the pendency of administrative proceedings.

Democratic Platform of 1960, p.587

3. A more equitable share of Government contracts to small and independent business.

Democratic Platform of 1960, p.587

We will move from almost complete reliance on negotiation in the award of Government contracts toward open, competitive bidding.

Housing

Democratic Platform of 1960, p.587

5. "The right of every family to a decent home." Today our rate of home building is less than that of ten years ago. A healthy, expanding economy will enable us to build two million homes a year, in wholesome neighborhoods, for people of all incomes.

Democratic Platform of 1960, p.587

At this rate, within a single decade we can clear away our slums and assure every American family a decent place to live.

Democratic Platform of 1960, p.587

Republican policies have led to a decline of the home building industry and the production of fewer homes. Republican high-interest policies have forced the cost of decent housing beyond the range of many families. Republican indifference has perpetuated slums.

Democratic Platform of 1960, p.587

We record the unpleasant fact that in 1960 at least 40 million Americans live in substandard housing.

Democratic Platform of 1960, p.587

One million new families are formed each year and need housing, and 300,000 existing homes are lost through demolition or other causes and need to be replaced. At present, construction does not even meet these requirements, much less permit reduction of the backlog of slum units.

Democratic Platform of 1960, p.587

We support a housing construction goal of more than two million homes a year. Most of the increased construction will be priced to meet the housing needs of middle—and low-income families who now live in substandard housing and are priced out of the market for decent homes.

Democratic Platform of 1960, p.587

Our housing programs will provide for rental as well as sales housing. They will permit expanded cooperative housing programs and sharply stepped-up rehabilitation of existing homes.

Democratic Platform of 1960, p.587

To make possible the building of two million homes a year in wholesome neighborhoods, the home building industry should be aided by special mortgage assistance, with low interest rates, long-term mortgage periods and reduced down payments. Where necessary, direct Government loans should be provided.

Democratic Platform of 1960, p.587

Even with this new and flexible approach, there will still be need for a substantial low-rent public housing program authorizing as many units as local communities require and are prepared to build.

Health

Democratic Platform of 1960, p.587

6. "The right to adequate medical care and the opportunity to achieve and enjoy good health."

Democratic Platform of 1960, p.587

Illness is expensive. Many Americans have neither incomes nor insurance protection to enable them to pay for modern health care. The problem is particularly acute with our older citizens, among whom serious illness strikes most often.

Democratic Platform of 1960, p.587

We shall provide medical care benefits for the aged as part of the time-tested Social Security insurance system. We reject any proposal which [p.588] would require such citizens to submit to the indignity of a means test—a "pauper's oath."

Democratic Platform of 1960, p.588

For young and old alike, we need more medical schools, more hospitals, more research laboratories to speed the final conquest of major killers.

Medical Care for Older Persons

Democratic Platform of 1960, p.588

Fifty million Americans—more than a fourth of our people—have no insurance protection against the high cost of illness. For the rest, private health insurance pays, on the average, only about one-third of the cost of medical care.

Democratic Platform of 1960, p.588

The problem is particularly acute among the 16 million Americans over 65 years old, and among disabled workers, widows and orphans.

Democratic Platform of 1960, p.588

Most of these have low incomes and the elderly among them suffer two to three times as much illness as the rest of the population.

Democratic Platform of 1960, p.588

The Republican Administration refused to acknowledge any national responsibility for health care for elder citizens until forced to do so by an increasingly outraged demand. Then, its belated proposal was a cynical sham built around a degrading test based on means or income—a "pauper's oath."

Democratic Platform of 1960, p.588

The most practicable way to provide health protection for older people is to use the contributory machinery of the Social Security system for insurance covering hospital bills and other high-cost medical services. For those relatively few of our older people who have never been eligible for Social Security coverage, we shall provide corresponding benefits by appropriations from the general revenue.

Research

Democratic Platform of 1960, p.588

We will step up medical research on the major killers and crippling diseases—cancer, heart disease, arthritis, mental illness. Expenditures for these purposes should be limited only by the availability of personnel and promising lines of research. Today such illness costs us $35 billion annually, much of which could be avoided. Federal appropriations for medical research are barely 1% of this amount.

Democratic Platform of 1960, p.588

Heart disease and cancer together account for two out of every three deaths in this country. The Democratic President will summon to a White House conference the nation's most distinguished scientists in these fields to map a coordinated long-run program for the prevention and control of these diseases.

Democratic Platform of 1960, p.588

We will also support a cooperative program with other nations on international health research.

Hospitals

Democratic Platform of 1960, p.588

We will expand and improve the Hill-Burton hospital construction program.

Health Manpower

Democratic Platform of 1960, p.588

To ease the growing shortage of doctors and other medical personnel we propose Federal aid for constructing, expanding and modernizing schools of medicine, dentistry, nursing and public health.

Democratic Platform of 1960, p.588

We are deeply concerned that the high cost of medical education is putting this profession beyond the means of most American families. We will provide scholarships and other assistance to break through the financial barriers to medical education.

Mental Health

Democratic Platform of 1960, p.588

Mental patients fill more than half the hospital beds in the country today. We will provide greatly increased Federal support for psychiatric research and training, and community mental health programs, to help bring back thousands of our hospitalized mentally ill to full and useful lives in the community.

Democratic Platform of 1960, p.588

7. "The right to adequate protection from the economic fears of old age, sickness, accidents, and unemployment."

A Program for the Aging

Democratic Platform of 1960, p.588

The Democratic Administration will end the neglect of our older citizens. They deserve lives of usefulness, dignity, independence, and participation. We shall assure them not only health care but employment for those who want work, decent housing, and recreation.

Democratic Platform of 1960, p.588

Already 16 million Americans—about one in ten—are over 65, with the prospect of 26 million by 1980.

Health

Democratic Platform of 1960, p.588

As stated, we will provide an effective system for paid-up medical insurance upon retirement, financed during working years through the Social Security mechanism and available to all retired [p.589] persons without a means test. This has first priority.

Income

Democratic Platform of 1960, p.589

Half of the people over 65 have incomes inadequate for basic nutrition, decent housing, minimum recreation and medical care. Older people who do not want to retire need employment opportunity and those of retirement age who no longer wish to or cannot work need better retirement benefits.

Democratic Platform of 1960, p.589

We pledge a campaign to eliminate discrimination in employment due to age. As a first step we will prohibit such discrimination by Government contractors and subcontractors.

Democratic Platform of 1960, p.589

We will amend the Social Security Act to increase the retirement benefit for each additional year of work after 65, thus encouraging workers to continue on the job full time.

Democratic Platform of 1960, p.589

To encourage part-time work by others, we favor raising the $1200-a-year ceiling on what a worker may earn while still drawing Social Security benefits.

Democratic Platform of 1960, p.589

Retirement benefits must be increased generally, and minimum benefits raised from $33 a month to $50.

Housing

Democratic Platform of 1960, p.589

We shall provide decent and suitable housing which older persons can afford. Specifically we shall move ahead with the program of direct Government loans for housing for older people initiated in the Housing Act of 1959, a program which the Republican Administration has sought to kill.

Special Services

Democratic Platform of 1960, p.589

We shall take Federal action in support of state efforts to bring standards of care in nursing homes and other institutions for the aged up to desirable minimums.

Democratic Platform of 1960, p.589

We shall support demonstration and training programs to translate proven research into action in such fields as health, nutritional guidance, home care, counseling, recreational activity.

Democratic Platform of 1960, p.589

Taken together, these measures will affirm a new charter of rights for the older citizens among us—the right to a life of usefulness, health, dignity, independence and participation.

Welfare

Disability Insurance

Democratic Platform of 1960, p.589

We shall permit workers who are totally and permanently disabled to retire at any age, removing the arbitrary requirement that the worker be 50 years of age.

Democratic Platform of 1960, p.589

We shall also amend the law so that after six months of total disability, a worker will be eligible for disability benefits, with restorative services to enable him to return to work.

Physically Handicapped

Democratic Platform of 1960, p.589

We pledge continued support of legislation for the rehabilitation of physically handicapped persons and improvement of employment opportunities for them.

Public Assistance

Democratic Platform of 1960, p.589

Persons in need who are inadequately protected by social insurance are cared for by the states and local communities under public assistance programs.

Democratic Platform of 1960, p.589

The Federal Government, which now shares the cost of aid to some of these, should share in all, and benefits should be made available without regard to residence.

Unemployment Benefits

Democratic Platform of 1960, p.589

We will establish uniform minimum standards throughout the nation for coverage, duration, and amount of unemployment insurance benefits.

Equality for Women

Democratic Platform of 1960, p.589

We support legislation which will guarantee to women equality of rights under the law, including equal pay for equal work.

Child Welfare

Democratic Platform of 1960, p.589

The Child Welfare Program and other services already established under the Social Security Act should be expanded. Federal leadership is required in the nationwide campaign to prevent and control juvenile delinquency.

Intergroup Relations

Democratic Platform of 1960, p.589

We propose a Federal bureau of intergroup relations to help solve problems of discrimination in housing, education, employment, and community opportunities in general. The bureau would assist in the solution of problems arising from the re [p.590] settlement of immigrants and migrants within our own country, and in resolving religious, social and other tensions where they arise.

Education

Democratic Platform of 1960, p.590

8. "The right to a good education."

Democratic Platform of 1960, p.590

America's young people are our greatest resource for the future. Each of them deserves the education which will best develop his potentialities.

Democratic Platform of 1960, p.590

We shall act at once to help in building the classrooms and employing the teachers that are essential if the right to a good education is to have genuine meaning for all the youth of America in the decade ahead.

Democratic Platform of 1960, p.590

As a national investment in our future we propose a program of loans and scholarship grants to assure that qualified young Americans will have full opportunity for higher education, at the institutions of their choice, regardless of the income of their parents.

Democratic Platform of 1960, p.590

The new Democratic Administration will end eight years of official neglect of our educational system.

Democratic Platform of 1960, p.590

America's education faces a financial crisis. The tremendous increase in the number of children of school and college age has far outrun the available supply of educational facilities and qualified teachers. The classroom shortage alone is interfering with the education of 10 million students.

Democratic Platform of 1960, p.590

America's teachers, parents and school administrators have striven courageously to keep up with the increased challenge of education.

Democratic Platform of 1960, p.590

So have states and local communities. Education absorbs two-fifths of all their revenue. With limited resources, private educational institutions have shouldered their share of the burden.

Democratic Platform of 1960, p.590

Only the Federal Government is not doing its part. For eight years, measures for the relief of the educational crisis have been held up by the cynical maneuvers of the Republican Party in Congress and the White House.

Democratic Platform of 1960, p.590

We believe that America can meet its educational obligations only with generous Federal financial support, within the traditional framework of local control. The assistance will take the form of Federal grants to states for educational purposes they deem most pressing, including classroom construction and teachers' salaries. It will include aid for the construction of academic facilities as well as dormitories at colleges and universities.

Democratic Platform of 1960, p.590

We pledge further Federal support for all phases of vocational education for youth and adults; for libraries and adult education; for realizing the potential of educational television; and for exchange of students and teachers with other nations.

Democratic Platform of 1960, p.590

As part of a broader concern for young people we recommend establishment of a Youth Conservation Corps, to give underprivileged young people a rewarding experience in a healthful environment.

Democratic Platform of 1960, p.590

The pledges contained in this Economic Bill of Rights point the way to a better life for every family in America.

Democratic Platform of 1960, p.590

They are the means to a goal that is now within our reach—the final eradication in America of the age-old evil of poverty.

Democratic Platform of 1960, p.590

Yet there are other pressing needs on our national agenda.

Natural Resources

Democratic Platform of 1960, p.590

A thin layer of earth, a few inches of rain, and a blanket of air make human life possible on our planet.

Democratic Platform of 1960, p.590

Sound public policy must assure that these essential resources will be available to provide the good life for our children and future generations.

Democratic Platform of 1960, p.590

Water, timber and grazing lands, recreational areas in our parks, shores, forests and wildernesses, energy, minerals, even pure air—all are feeling the press of enormously increased demands of a rapidly growing population.

Democratic Platform of 1960, p.590

Natural resources are the birthright of all the people.

Democratic Platform of 1960, p.590

The new Democratic Administration, with the vision that built a TVA and a Grand Coulee, will develop and conserve that heritage for the use of this and future generations. We will reverse Republican policies under which America's resources have been wasted, depleted, underdeveloped, and recklessly given away.

Democratic Platform of 1960, p.590

We favor the best use of our natural resources, which generally means adoption of the multiple-purpose principle to achieve full development for all the many functions they can serve.

Water and Soil

Democratic Platform of 1960, p.590

An abundant supply of pure water is essential to our economy. This is a national problem.

Democratic Platform of 1960, p.591

[p.591] Water must serve domestic, industrial and irrigation needs and inland navigation. It must provide habitat for fish and wildlife, supply the base for much outdoor recreation, and generate electricity. Water must also be controlled to prevent floods, pollution, salinity and silt.

Democratic Platform of 1960, p.591

The new Democratic Administration will develop a comprehensive national water resource policy. In cooperation with state and local governments, and interested private groups, the Democratic Administration will develop a balanced, multiple-purpose plan for each major river basin, to be revised periodically to meet changing needs. We will erase the Republican slogan of "no new starts" and will begin again to build multiple-purpose dams, hydroelectric facilities, flood-control works, navigation facilities, and reclamation projects to meet mounting and urgent needs.

Democratic Platform of 1960, p.591

We will renew the drive to protect every acre of farm land under a soil and water conservation plan, and we will speed up the small-watershed program.

Democratic Platform of 1960, p.591

We will support and intensify the research effort to find an economical way to convert salt and brackish water. The Republicans discouraged this research, which holds untold possibilities for the whole world.

Water and Air Pollution

Democratic Platform of 1960, p.591

America can no longer take pure water and air for granted. Polluted rivers carry their dangers to everyone living along their courses; impure air does not respect boundaries.

Democratic Platform of 1960, p.591

Federal action is needed in planning, coordinating and helping to finance pollution control. The states and local communities cannot go it alone. Yet President Eisenhower vetoed a Democratic bill to give them more financial help in building sewage treatment plants.

Democratic Platform of 1960, p.591

A Democratic President will sign such a bill.

Democratic Platform of 1960, p.591

Democrats will step up research on pollution control, giving special attention to:

Democratic Platform of 1960, p.591

1. the rapidly growing problem of air pollution from industrial plants, automobile exhausts, and other sources, and

Democratic Platform of 1960, p.591

2. disposal of chemical and radioactive wastes, some of which are now being dumped off our coasts without adequate knowledge of the potential consequences.

Outdoor Recreation

Democratic Platform of 1960, p.591

As population grows and the work week shortens and transportation becomes easier and speedier, the need for outdoor recreation facilities mounts.

Democratic Platform of 1960, p.591

We must act quickly to retain public access to the oceans, gulfs, rivers, streams, lakes and reservoirs, and their shorelines, and to reserve adequate camping and recreational areas while there is yet time. Areas near major population centers are particularly needed.

Democratic Platform of 1960, p.591

The new Democratic Administration will work to improve and extend recreation opportunities in national parks and monuments, forests, and river development projects, and near metropolitan areas. Emphasis will be on attractive, low-cost facilities for all the people and on preventing undue commercialization.

Democratic Platform of 1960, p.591

The National Park System is still incomplete; in particular, the few remaining suitable shorelines must be included in it. A national wilderness system should be created for areas already set aside as wildernesses. The system should be extended but only after careful consideration by the Congress of the value of areas for competing uses.

Democratic Platform of 1960, p.591

Recreational needs of the surrounding area should be given important consideration in disposing of Federally owned lands.

Democratic Platform of 1960, p.591

We will protect fish and game habitats from commercial exploitation and require military installations to conform to sound conservation practices.

Energy

Democratic Platform of 1960, p.591

The Republican Administration would turn the clock back to the days before the New Deal, in an effort to divert the benefits of the great natural energy resources from all the people to a favored few. It has followed for many years a "no new starts" policy.

Democratic Platform of 1960, p.591

It has stalled atomic energy development; it has sought to cripple rural electrification.

Democratic Platform of 1960, p.591

It has closed the pilot plant on getting oil from shale.

Democratic Platform of 1960, p.591

It has harassed and hampered the TVA.

Democratic Platform of 1960, p.591

We reject this philosophy and these policies. The people are entitled to use profitably what they already own.

Democratic Platform of 1960, p.591

The Democratic Administration instead will foster the development of efficient regional giant power systems from all sources, including water, [p.592] tidal, and nuclear power, to supply low-cost electricity to all retail electric systems, public, private, and cooperative.

Democratic Platform of 1960, p.592

The Democratic Administration will continue to develop "yardsticks" for measuring the rates of private utility systems. This means meeting the needs of rural electric cooperatives for low-interest loans for distribution, transmission and generation facilities; Federal transmission facilities, where appropriate, to provide efficient low-cost power supply; and strict enforcement of the public-preference clause in power marketing.

Democratic Platform of 1960, p.592

The Democratic Administration will support continued study and research on energy fuel resources, including new sources in wind and sun. It will push forward with the Passamaquoddy tidal power project with its great promise of cheaper power and expanded prosperity for the people of New England.

Democratic Platform of 1960, p.592

We support the establishment of a national fuels policy.

Democratic Platform of 1960, p.592

The $15 billion national investment in atomic energy should be protected as a part of the public domain.

Federal Lands and Forests

Democratic Platform of 1960, p.592

The record of the Republican Administration in handling the public domain is one of complete lethargy. It has failed to secure existing assets. In some cases, it has given away priceless resources for plunder by private corporations, as in the A1 Sarena mining incident and the secret leasing of game refuges to favored oil interests.

Democratic Platform of 1960, p.592

The new Democratic Administration will develop balanced land and forest policies suited to the needs of a growing America.

Democratic Platform of 1960, p.592

This means intensive forest management on a multiple-use and sustained-yield basis, reforestation of burnt-over lands, building public access roads, range reseeding and improvement, intensive work in watershed management, concern for small business operations, and insuring free public access to public lands for recreational uses.

Minerals

Democratic Platform of 1960, p.592

America uses half the minerals produced in the entire Free World. Yet our mining industry is in what may be the initial phase of a serious long-term depression. Sound policy requires that we strengthen the domestic mining industry without interfering with adequate supplies of needed materials at reasonable costs.

Democratic Platform of 1960, p.592

We pledge immediate efforts toward the establishment of a realistic long-range minerals policy.

Democratic Platform of 1960, p.592

The new Democratic Administration will begin intensive research on scientific prospecting for mineral deposits.

Democratic Platform of 1960, p.592

We will speed up the geologic mapping of the country, with emphasis on Alaska.

Democratic Platform of 1960, p.592

We will resume research and development work on use of low-grade mineral reserves, especially oil shale, lignites, iron ore taconite, and radioactive minerals. These efforts have been halted or cut back by the Republican Administration.

Democratic Platform of 1960, p.592

The Democratic Party favors a study of the problem of non-uniform seaward boundaries of the coastal states.

Government Machinery for Managing Resources

Democratic Platform of 1960, p.592

Long-range programming of the nation's resource development is essential. We favor creation of a council of advisers on resources and conservation, which will evaluate and report annually upon our resource needs and progress.

Democratic Platform of 1960, p.592

We shall put budgeting for resources on a businesslike basis, distinguishing between operating expense and capital investment, so that the country can have an accurate picture of the costs and returns. We propose the incremental method in determining the economic justification of our river basin programs. Charges for commercial use of public lands will be brought into line with benefits received.

Cities and Their Suburbs

Democratic Platform of 1960, p.592

A new Democratic Administration will expand Federal programs to help urban communities clear their slums, dispose of their sewage, educate their children, transport suburban commuters to and from their jobs, and combat juvenile delinquency.

Democratic Platform of 1960, p.592

We will give the city dweller a voice at the Cabinet table by bringing together within a single department programs concerned with urban and metropolitan problems.

Democratic Platform of 1960, p.592

The United States is now predominantly an urban nation.

Democratic Platform of 1960, p.592

The efficiency, comfort, and beauty of our cities and suburbs influence the lives of all Americans.

Democratic Platform of 1960, p.592

Local governments have found increasing difficulty in coping with such fundamental public [p.593] problems as urban renewal, slum clearance, water supply, mass transportation, recreation, health, welfare, education and metropolitan planning. These problems are, in many cases, interstate and regional in scope.

Democratic Platform of 1960, p.593

Yet the Republican Administration has turned its back on urban and suburban America. The list of Republican vetoes includes housing, urban renewal and slum clearance, area redevelopment, public works, airports and stream pollution control. It has proposed severe cutbacks in aid for hospital construction, public assistance, vocational education, community facilities and sewage disposal.

Democratic Platform of 1960, p.593

The result has been to force communities to thrust an ever-greater tax load upon the already overburdened property taxpayer and to forgo needed public services.

Democratic Platform of 1960, p.593

The Democratic Party believes that state and local governments are strengthened—not weakened—by financial assistance from the Federal Government. We will extend such aid without impairing local administration through unnecessary Federal interference or red tape.

Democratic Platform of 1960, p.593

We propose a ten-year action program to restore our cities and provide for balanced suburban development, including the following:

Democratic Platform of 1960, p.593

1. The elimination of slums and blight and the restoration of cities and depressed areas within the next ten years.

Democratic Platform of 1960, p.593

2. Federal aid for metropolitan area planning and community facility programs.

Democratic Platform of 1960, p.593

3. Federal aid for comprehensive metropolitan transportation programs, including bus and rail mass transit, commuter railroads as well as highway programs, and construction of civil airports.

Democratic Platform of 1960, p.593

4. Federal aid in combating air and water pollution.

Democratic Platform of 1960, p.593

5. Expansion of park systems to meet the recreation needs of our growing population.

Democratic Platform of 1960, p.593

The Federal Government must recognize the financial burdens placed on local governments, urban and rural alike, by Federal installations and land holdings.

Transportation

Democratic Platform of 1960, p.593

Over the past seven years, we have watched the steady weakening of the nation's transportation system. Railroads are in distress. Highways are congested. Airports and airways lag far behind the needs of the jet age.

Democratic Platform of 1960, p.593

To meet this challenge we will establish a national transportation policy, designed to coordinate and modernize our facilities for transportation by road, rail, water, and air.

Air

Democratic Platform of 1960, p.593

The jet age has made rapid improvement in air safety imperative. Rather than "an orderly withdrawal" from the airport grant programs as proposed by the Republican Administration, we pledge to expand the program to accommodate growing air traffic.

Water

Democratic Platform of 1960, p.593

Development of our inland waterways, our harbors, and Great Lakes commerce has been held back by the Republican President.

Democratic Platform of 1960, p.593

We pledge the improvement of our rivers and harbors by new starts and adequate maintenance.

Democratic Platform of 1960, p.593

A strong and efficient American-flag merchant marine is essential to peacetime commerce and defense emergencies. Continued aid for ship construction and operation to offset cost differentials favoring foreign shipping is essential to these goals.

Roads

Democratic Platform of 1960, p.593

The Republican Administration has slowed down, stretched out and greatly increased the costs of the interstate highway program.

Democratic Platform of 1960, p.593

The Democratic Party supports the highway program embodied in the Acts of 1956 and 1958 and the principle of Federal-state partnership in highway construction.

Democratic Platform of 1960, p.593

We commend the Democratic Congress for establishing a special committee which has launched an extensive investigation of this highway program. Continued scrutiny of this multi-billion-dollar highway program can prevent waste, inefficiency and graft and maintain the public's confidence.

Rail

Democratic Platform of 1960, p.593

The nation's railroads are in particular need of freedom from burdensome regulation to enable them to compete effectively with other forms of transportation. We also support Federal assistance in meeting certain capital needs, particularly for urban mass transportation.[p.594]

Science

Democratic Platform of 1960, p.594

We will recognize the special role of our Federal Government in support of basic and applied research.

Space

Democratic Platform of 1960, p.594

The Republican Administration has remained incredibly blind to the prospects of space exploration. It has failed to pursue space programs with a sense of urgency at all close to their importance to the future of the world.

Democratic Platform of 1960, p.594

It has allowed the Communists to hit the moon first, and to launch substantially greater payloads. The Republican program is a catchall of assorted projects with no clearly defined, long-range plan of research.

Democratic Platform of 1960, p.594

The new Democratic Administration will press forward with our national space program in full realization of the importance of space accomplishments to our national security and our international prestige. We shall reorganize the program to achieve both efficiency and speedy execution. We shall bring top scientists into positions of responsibility. We shall undertake long-term basic research in space science and propulsion.

Democratic Platform of 1960, p.594

We shall initiate negotiations leading toward the international regulation of space.

Atomic Energy

Democratic Platform of 1960, p.594

The United States became pre-eminent in the development of atomic energy under Democratic Administrations.

Democratic Platform of 1960, p.594

The Republican Administration, despite its glowing promises of "Atoms for Peace," has permitted the gradual deterioration of United States leadership in atomic development both at home and abroad.

Democratic Platform of 1960, p.594

In order to restore United States leadership in atomic development, the new Democratic Administration will:

Democratic Platform of 1960, p.594

1. Restore truly nonpartisan and vigorous administration of the vital atomic energy program.

Democratic Platform of 1960, p.594

2. Continue the development of the various promising experimental and prototype atomic power plants which show promise, and provide increasing support for longer-range projects at the frontiers of atomic energy application.

Democratic Platform of 1960, p.594

3. Continue to preserve and support national laboratories and other Federal atomic installations as the foundation of technical progress and a bulwark of national defense.

Democratic Platform of 1960, p.594

4. Accelerate the Rover nuclear rocket project and auxiliary power facilities so as to achieve world leadership in peaceful outer space exploration.

Democratic Platform of 1960, p.594

5. Give reality to the United States international atoms-for-peace programs, and continue and expand technological assistance to underdeveloped countries.

Democratic Platform of 1960, p.594

6. Consider measures for improved organization and procedure for radiation protection and reactor safety, including a strengthening of the role of the Federal Radiation Council, and the separation of quasi-judicial functions in reactor safety regulations.

Democratic Platform of 1960, p.594

7. Provide a balanced and flexible nuclear defense capability, including the augmentation of the nuclear submarine fleet.

Oceanography

Democratic Platform of 1960, p.594

Oceanographic research is needed to advance such important programs as food and minerals from our Great Lakes and the sea. The present Administration has neglected this new scientific frontier.

Government Operations

Democratic Platform of 1960, p.594

We shall reform the processes of Government in all branches—Executive, Legislative, and Judicial. We will clean out corruption and conflicts of interest, and improve Government services.

The Federal Service

Democratic Platform of 1960, p.594

Two weeks before this Platform was adopted, the difference between the Democratic and Republican attitudes toward Government employees was dramatically illustrated. The Democratic Congress passed a fully justified pay increase to bring Government pay scales more nearly into line with those of private industry.

Democratic Platform of 1960, p.594

The Republican President vetoed the pay raise.

Democratic Platform of 1960, p.594

The Democratic Congress decisively overrode the veto.

Democratic Platform of 1960, p.594

The heavy responsibilities of modern government require a Federal service characterized by devotion to duty, honesty of purpose and highest competence. We pledge the modernization and strengthening of our Civil Service system.

Democratic Platform of 1960, p.594

We shall extend and improve the employees' appeals system and improve programs for recognizing [p.595] the outstanding merits of individual employees.

Ethics in Government

Democratic Platform of 1960, p.595

We reject totally the concept of dual or triple loyalty on the part of Federal officials in high places.

Democratic Platform of 1960, p.595

The conflict-of-interest statutes should be revised and strengthened to assure the Federal service of maximum security against unethical practices on the part of public officials.

Democratic Platform of 1960, p.595

The Democratic Administration will establish and enforce a Code of Ethics to maintain the full dignity and integrity of the Federal service and to make it more attractive to the ablest men and women.

Regulatory Agencies

Democratic Platform of 1960, p.595

The Democratic Party promises to clean up the Federal regulatory agencies. The acceptance by Republican appointees to these agencies of gifts, hospitality, and bribes from interests under their jurisdiction has been a particularly flagrant abuse of public trust.

Democratic Platform of 1960, p.595

We shall bring all contacts with commissioners into the open, and will protect them from any form of improper pressure.

Democratic Platform of 1960, p.595

We shall appoint to these agencies men of ability and independent judgment who understand that their function is to regulate these industries in the public interest.

Democratic Platform of 1960, p.595

We promise a thorough review of existing agency practices, with an eye toward speedier decisions, and a clearer definition of what constitutes the public interest.

Democratic Platform of 1960, p.595

The Democratic Party condemns the usurpation by the Executive of the powers and functions of any of the independent agencies and pledges the restoration of the independence of such agencies and the protection of their integrity of action,

The Postal Service

Democratic Platform of 1960, p.595

The Republican policy has been to treat the United States postal service as a liability instead of a great investment in national enlightenment, social efficiency and economic betterment.

Democratic Platform of 1960, p.595

Constant curtailment of service has inconvenienced every citizen.

Democratic Platform of 1960, p.595

A program must be undertaken to establish the Post Office Department as a model of efficiency and service. We pledge ourselves to:

Democratic Platform of 1960, p.595

1. Restore the principle that the postal service is a public service.

Democratic Platform of 1960, p.595

2. Separate the public service costs from those to be borne by the users of the mails.

Democratic Platform of 1960, p.595

3. Continue steady improvement in working conditions and wage scales, reflecting increasing productivity.

Democratic Platform of 1960, p.595

4. Establish a long-range program for research and capital improvements compatible with the highest standards of business efficiency.

Law Enforcement

Democratic Platform of 1960, p.595

In recent years, we have been faced with a shocking increase in crimes of all kinds. Organized criminals have even infiltrated into legitimate business enterprises and labor unions.

Democratic Platform of 1960, p.595

The Republican Administration, particularly the Attorney General's office, has failed lamentably to deal with this problem despite the growing power of the underworld. The new Democratic Administration will take vigorous corrective action.

Freedom of Information

Democratic Platform of 1960, p.595

We reject the Republican contention that the workings of Government are the special private preserve of the Executive.

Democratic Platform of 1960, p.595

The massive wall of secrecy erected between the Executive branch and the Congress as well as the citizen must be torn down. Information must flow freely, save in those areas in which the national security is involved.

Clean Elections

Democratic Platform of 1960, p.595

The Democratic Party favors realistic and effective limitations on contributions and expenditures, and full disclosure of campaign financing in Federal elections.

Democratic Platform of 1960, p.595

We further propose a tax credit to encourage small contributions to political parties. The Democratic Party affirms that every candidate for public office has a moral obligation to observe and uphold traditional American principles of decency, honesty and fair play in his campaign for election.

Democratic Platform of 1960, p.595

We deplore efforts to divide the United States into regional, religious and ethnic groups.

Democratic Platform of 1960, p.595

We denounce and repudiate campaign tactics that substitute smear and slander, bigotry and false accusations of bigotry, for truth and reasoned argument.[p.596]

District of Columbia

Democratic Platform of 1960, p.596

The capital city of our nation should be a symbol of democracy to people throughout the world. The Democratic Party reaffirms its long-standing support of home rule for the District of Columbia, and pledges to enact legislation permitting voters of the District to elect their own local government.

Democratic Platform of 1960, p.596

We urge the legislatures of the 50 states to ratify the 23rd Amendment, passed by the Democratic Congress, to give District citizens the right to participate in Presidential elections.

Democratic Platform of 1960, p.596

We also support a Constitutional amendment giving the District voting representation in Congress.

Virgin Islands

Democratic Platform of 1960, p.596

We believe that the voters of the Virgin Islands should have the right to elect their own Governor, to have a delegate in the Congress of the United States and to have the right to vote in national elections for a President and Vice President of the United States.

Puerto Rico

Democratic Platform of 1960, p.596

The social, economic, and political progress of the Commonwealth of Puerto Rico is a testimonial to the sound enabling legislation, and to the sincerity and understanding with which the people of the 50 states and Puerto Rico are meeting their joint problems.

Democratic Platform of 1960, p.596

The Democratic Party, under whose administration the Commonwealth status was established, is entitled to great credit for providing the opportunity which the people of Puerto Rico have used so successfully.

Democratic Platform of 1960, p.596

Puerto Rico has become a show place of world-wide interest, a tribute to the benefits of the principles of self-determination. Further benefits for Puerto Rico under these principles are certain to follow.

Congressional Procedures

Democratic Platform of 1960, p.596

In order that the will of the American people may be expressed upon all legislative proposals, we urge that action be taken at the beginning of the 87th Congress to improve Congressional procedures so that majority rule prevails and decisions can be made after reasonable debate without being blocked by a minority in either House.

Democratic Platform of 1960, p.596

The rules of the House of Representatives should be so amended as to make sure that bills reported by legislative committees reach the floor for consideration without undue delay.

Consumers

Democratic Platform of 1960, p.596

In an age of mass production, distribution, and advertising, consumers require effective Government representation and protection.

Democratic Platform of 1960, p.596

The Republican Administration has allowed the Food and Drug Administration to be weakened. Recent Senate hearings on the drug industry have revealed how flagrant profiteering can be when essential facts on costs, prices, and profits are hidden from scrutiny. The new Democratic Administration will provide the money and the authority to strengthen this agency for its task.

Democratic Platform of 1960, p.596

We propose a consumer counsel, backed by a suitable staff, to speak for consumers in the formulation of Government policies and represent consumers in administrative proceedings.

Democratic Platform of 1960, p.596

The consumer also has a right to know the cost of credit when he borrows money. We shall enact Federal legislation requiring the vendors of credit to provide a statement of specific credit charges and what these charges cost in terms of true annual interest.

Veterans Affairs

Democratic Platform of 1960, p.596

We adhere to the American tradition dating from the Plymouth Colony in New England in 1636:

Democratic Platform of 1960, p.596

"…any soldier injured in defense of the colony shall be maintained completely by the colony for the remainder of his life."

Democratic Platform of 1960, p.596

We pledge adequate compensation for those with service-connected disabilities and for the survivors of those who died in service or from service-connected disabilities. We pledge pensions adequate for a full and dignified life for disabled and distressed veterans and for needy survivors of deceased veterans.

Democratic Platform of 1960, p.596

Veterans of World War I, whose Federal benefits have not matched those of veterans of subsequent service, will receive the special attention of the Democratic Party looking toward equitable adjustments.

Democratic Platform of 1960, p.596

We endorse expanded programs of vocational rehabilitation for disabled veterans, and education for orphans of servicemen.

Democratic Platform of 1960, p.597

[p.597] The quality of medical care furnished to the disabled veterans has deteriorated under the Republican Administration. We shall work for an increased availability of facilities for all veterans in need and we shall move with particular urgency to fulfill the need for expanded domiciliary and nursing-home facilities.

Democratic Platform of 1960, p.597

We shall continue the veterans home loan guarantee and direct loan programs and educational benefits patterned after the G.I. Bill of Rights.

American Indians

Democratic Platform of 1960, p.597

We recognize the unique legal and moral responsibility of the Federal Government for Indians in restitution for the injustice that has sometimes been done them. We therefore pledge prompt adoption of a program to assist Indian tribes in the full development of their human and natural resources and to advance the health, education, and economic well-being of Indian citizens while preserving their cultural heritage.

Democratic Platform of 1960, p.597

Free consent of the Indian tribes concerned shall be required before the Federal Government makes any change in any Federal-Indian treaty or other contractual relationship.

Democratic Platform of 1960, p.597

The new Democratic Administration will bring competent, sympathetic, and dedicated leadership to the administration of Indian affairs which will end practices that have eroded Indian rights and resources, reduced the Indians' land base and repudiated Federal responsibility. Indian claims against the United States can and will he settled promptly, whether by negotiation or other means, in the best interests of both parties.

The Arts

Democratic Platform of 1960, p.597

The arts flourish where there is freedom and where individual initiative and imagination are encouraged. We enjoy the blessings of such an atmosphere.

Democratic Platform of 1960, p.597

The nation should begin to evaluate the possibilities for encouraging and expanding participation in and appreciation of our cultural life.

Democratic Platform of 1960, p.597

We propose a Federal advisory agency to assist in the evaluation, development, and expansion of cultural resources of the United States. We shall support legislation needed to provide incentives for those endowed with extraordinary talent, as a worthy supplement to existing scholarship programs.

Civil Liberties

Democratic Platform of 1960, p.597

With democratic values threatened today by Communist tyranny, we reaffirm our dedication to the Bill of Rights. Freedom and civil liberties, far from being incompatible with security, are vital to our national strength. Unfortunately, those high in the Republican Administration have all too often sullied the name and honor of loyal and faithful American citizens in and out of Government.

Democratic Platform of 1960, p.597

The Democratic Party will strive to improve Congressional investigating and hearing procedures. We shall abolish useless disclaimer affidavits such as those for student educational loans. We shall provide a full and fair hearing, including confrontation of the accuser, to any person whose public or private employment or reputation is jeopardized by a loyalty or security proceeding.

Democratic Platform of 1960, p.597

Protection of rights of American citizens to travel, to pursue lawful trade and to engage in other lawful activities abroad without distinction as to race or religion is a cardinal function of the national sovereignty.

Democratic Platform of 1960, p.597

We will oppose any international agreement or treaty which by its terms or practices differentiates among American citizens on grounds of race or religion.

Democratic Platform of 1960, p.597

The list of unfinished business for America is long. The accumulated neglect of nearly a decade cannot be wiped out overnight. Many of the objectives which we seek will require our best efforts over a period of years.

Democratic Platform of 1960, p.597

Although the task is far-reaching, we will tackle it with vigor and confidence. We will substitute planning for confusion, purpose for indifference, direction for drift and apathy.

Democratic Platform of 1960, p.597

We will organize the policy-making machinery of the Executive branch to provide vigor and leadership in establishing our national goals and achieving them.

Democratic Platform of 1960, p.597

The new Democratic President will sign, not veto, the efforts of a Democratic Congress to create more jobs, to build more homes, to save family farms, to clean up polluted streams and rivers, to help depressed areas, and to provide full employment for our people.

Fiscal Responsibility

Democratic Platform of 1960, p.597

We vigorously reject the notion that America, with a half-trillion-dollar gross national product, [p.598] and nearly half of the world's industrial resources, cannot afford to meet our needs at home and in our world relationships.

Democratic Platform of 1960, p.598

We believe, moreover, that except in periods of recession or national emergency, these needs can be met with a balanced budget, with no increase in present tax rates, and with some surplus for the gradual reduction of our national debt.

Democratic Platform of 1960, p.598

To assure such a balance we shall pursue a four-point program of fiscal responsibility.

Democratic Platform of 1960, p.598

First, we shall end the gross waste in Federal expenditures which needlessly raises the budgets of many Government agencies.

Democratic Platform of 1960, p.598

The most conspicuous unnecessary item is, of course, the excessive cost of interest on the national debt. Courageous action to end duplication and competition among the armed services will achieve large savings. The cost of the agricultural program can be reduced while at the same time prosperity is being restored to the nation's farmers.

Democratic Platform of 1960, p.598

Second, we shall collect the billions in taxes which are owed to the Federal Government but not now collected.

Democratic Platform of 1960, p.598

The Internal Revenue Service is still suffering from the cuts inflicted upon its enforcement staff by the Republican Administration and the Republican Congress in 1953.

Democratic Platform of 1960, p.598

The Administration's own Commissioner of Internal Revenue has testified that billions of dollars in revenue are lost each year because the Service does not have sufficient agents to follow up on tax evasion.

Democratic Platform of 1960, p.598

We will add enforcement personnel, and develop new techniques of enforcement, to collect tax revenue which is now being lost through evasion.

Democratic Platform of 1960, p.598

Third, we shall close the loopholes in the tax laws by which certain privileged groups legally escape their fair share of taxation.

Democratic Platform of 1960, p.598

Among the more conspicuous loopholes are depletion allowances which are inequitable, special consideration for recipients of dividend income, and deductions for extravagant "business expenses" which have reached scandalous proportions.

Democratic Platform of 1960, p.598

Tax reform can raise additional revenue and at the same time increase legitimate incentives for growth, and make it possible to ease the burden on the general taxpayer who now pays an unfair share of taxes because of special favors to the few.

Democratic Platform of 1960, p.598

Fourth, we shall bring in added Federal tax revenues by expanding the economy itself. Each dollar of additional production puts an additional 18 cents in tax revenue in the national treasury. A 5% growth rate, therefore, will mean that at the end of four years the Federal Government will have had a total of nearly $50 billion in additional tax revenues above those presently received.

Democratic Platform of 1960, p.598

By these four methods we can sharply increase the Government funds available for needed services, for correction of tax inequities, and for debt or tax reduction.

Democratic Platform of 1960, p.598

Much of the challenge of the 1960s, however, remains unforeseen and unforeseeable. If, therefore, the unfolding demands of the new decade at home or abroad should impose clear national responsibilities that cannot be fulfilled without higher taxes, we will not allow political disadvantage to deter us from doing what is required.

Democratic Platform of 1960, p.598

As we proceed with the urgent task of restoring America's productivity, confidence, and power, we will never forget that our national interest is more than the sum total of all the group interests in America.

Democratic Platform of 1960, p.598

When group interests conflict with the national interest, it will be the national interest which we serve.

Democratic Platform of 1960, p.598

On its values and goals the quality of American life depends. Here above all our national interest and our devotion to the Rights of Man coincide.

Democratic Platform of 1960, p.598

Democratic Administrations under Wilson, Roosevelt, and Truman led the way in pressing for economic justice for all Americans.

Democratic Platform of 1960, p.598

But man does not live by bread alone. A new Democratic Administration, like its predecessors, will once again look beyond material goals to the spiritual meaning of American society.

Democratic Platform of 1960, p.598

We have drifted into a national mood that accepts payola and quiz scandals, tax evasion and false expense accounts, soaring crime rates, influence peddling in high Government circles, and the exploitation of sadistic violence as popular entertainment.

Democratic Platform of 1960, p.598

For eight long critical years our present national leadership has made no effective effort to reverse this mood.

Democratic Platform of 1960, p.599

[p.599] The new Democratic Administration will help create a sense of national purpose and higher standards of public behavior.

Civil Rights

Democratic Platform of 1960, p.599

We shall also seek to create an affirmative new atmosphere in which to deal with racial divisions and inequalities which threaten both the integrity of our democratic faith and the proposition on which our nation was founded—that all men are created equal. It is our faith in human dignity that distinguishes our open free society from the closed totalitarian society of the Communists.

Democratic Platform of 1960, p.599

The Constitution of the United States rejects the notion that the Rights of Man means the rights of some men only. We reject it too.

Democratic Platform of 1960, p.599

The right to vote is the first principle of self-government. The Constitution also guarantees to all Americans the equal protection of the laws.

Democratic Platform of 1960, p.599

It is the duty of the Congress to enact the laws necessary and proper to protect and promote these constitutional rights. The Supreme Court has the power to interpret these rights and the laws thus enacted.

Democratic Platform of 1960, p.599

It is the duty of the President to see that these rights are respected and that the Constitution and laws as interpreted by the Supreme Court are faithfully executed.

Democratic Platform of 1960, p.599

What is now required is effective moral and political leadership by the whole Executive branch of our Government to make equal opportunity a living reality for all Americans.

Democratic Platform of 1960, p.599

As the party of Jefferson, we shall provide that leadership.

Democratic Platform of 1960, p.599

In every city and state in greater or lesser degree there is discrimination based on color, race, religion, or national origin.

Democratic Platform of 1960, p.599

If discrimination in voting, education, the administration of justice or segregated lunch counters are the issues in one area, discrimination in housing and employment may be pressing questions elsewhere.

Democratic Platform of 1960, p.599

The peaceful demonstrations for first-class citizenship which have recently taken place in many parts of this country are a signal to all of us to make good at long last the guarantees of our Constitution.

Democratic Platform of 1960, p.599

The time has come to assure equal access for all Americans to all areas of community life, including voting booths, schoolrooms, jobs, housing, and public facilities.

Democratic Platform of 1960, p.599

The Democratic Administration which takes office next January will therefore use the full powers provided in the Civil Rights Acts of 1957 and 1960 to secure for all Americans the right to vote.

Democratic Platform of 1960, p.599

If these powers, vigorously invoked by a new Attorney General and backed by a strong and imaginative Democratic President, prove inadequate, further powers will be sought.

Democratic Platform of 1960, p.599

We will support whatever action is necessary to eliminate literacy tests and the payment of poll taxes as requirements for voting.

Democratic Platform of 1960, p.599

A new Democratic Administration will also use its full powers—legal and moral—to ensure the beginning of good-faith compliance with the Constitutional requirement that racial discrimination be ended in public education.

Democratic Platform of 1960, p.599

We believe that every school district affected by the Supreme Court's school desegregation decision should submit a plan providing for at least first-step compliance by 1963, the 100th anniversary of the Emancipation Proclamation.

Democratic Platform of 1960, p.599

To facilitate compliance, technical and financial assistance should be given to school districts facing special problems of transition.

Democratic Platform of 1960, p.599

For this and for the protection of all other Constitutional rights of Americans, the Attorney General should be empowered and directed to file civil injunction suits in Federal courts to prevent the denial of any civil right on grounds of race, creed, or color.

Democratic Platform of 1960, p.599

The new Democratic Administration will support Federal legislation establishing a Fair Employment Practices Commission to secure effectively for everyone the right to equal opportunity for employment.

Democratic Platform of 1960, p.599

In 1949 the President's Committee on Civil Rights recommended a permanent Commission on Civil Rights. The new Democratic Administration will broaden the scope and strengthen the powers of the present commission and make it permanent.

Democratic Platform of 1960, p.599

Its functions will be to provide, assistance to communities, industries, or individuals in the implementation of Constitutional rights in education, housing, employment, transportation, and the administration of justice.

Democratic Platform of 1960, p.599

In addition, the Democratic Administration will use its full executive powers to assure equal employment [p.600] opportunities and to terminate racial segregation throughout Federal services and institutions, and on all Government contracts, The successful desegregation of the armed services took place through such decisive executive action under President Truman.

Democratic Platform of 1960, p.600

Similarly the new Democratic Administration will take action to end discrimination in Federal housing programs, including Federally assisted housing.

Democratic Platform of 1960, p.600

To accomplish these goals will require executive orders, legal actions brought by the Attorney General, legislation, and improved Congressional procedures to safeguard majority rule.

Democratic Platform of 1960, p.600

Above all, it will require the strong, active, persuasive, and inventive leadership of the President of the United States.

Democratic Platform of 1960, p.600

The Democratic President who takes office next January will face unprecedented challenges. His Administration will present a new face to the world.

Democratic Platform of 1960, p.600

It will be a bold, confident, affirmative face. We will draw new strength from the universal truths which the founder of our Party asserted in the Declaration of Independence to be "self-evident."

Democratic Platform of 1960, p.600

Emerson once spoke of an unending contest in human affairs, a contest between the Party of Hope and the Party of Memory.

Democratic Platform of 1960, p.600

For 7 1/2 years America, governed by the Party of Memory, has taken a holiday from history.

Democratic Platform of 1960, p.600

As the Party of Hope it is our responsibility and opportunity to call forth the greatness of the American people.

Democratic Platform of 1960, p.600

In this spirit, we hereby rededicate ourselves to the continuing service of the Rights of Man-everywhere in America and everywhere else on God's earth.

Republican Platform of 1960

Title: Republican Platform of 1960

Author: Republican Party

Date: 1960

Source: National Party Platforms, pp.604-621

Preamble

Republican Platform of 1960, p.604

The United States is living in an age of profoundest revolution. The lives of men and of nations are undergoing such transformations as history has rarely recorded. The birth of new nations, the impact of new machines, the threat of new weapons, the stirring of new ideas, the ascent into a new dimension of the universe—everywhere the accent falls on the new.

Republican Platform of 1960, p.604

At such a time of world upheaval, great perils match great opportunities—and hopes, as well as fears, rise in all areas of human life. Such a force as nuclear power symbolizes the greatness of the choice before the United States and mankind. The energy of the atom could bring devastation to humanity. Or it could be made to serve men's hopes for peace and progress—to make for all [p.605] peoples a more healthy and secure and prosperous life than man has ever known.

Republican Platform of 1960, p.605

One fact darkens the reasonable hopes of free men: the growing vigor and thrust of Communist imperialism. Everywhere across the earth, this force challenges us to prove our strength and wisdom, our capacity for sacrifice, our faith in ourselves and in our institutions.

Republican Platform of 1960, p.605

Free men look to us for leadership and support, which we dedicate ourselves to give out of the abundance of our national strength.

Republican Platform of 1960, p.605

The fate of the world will be deeply affected, perhaps determined, by the quality of American leadership. American leadership means both how we govern ourselves and how we help to influence others. We deliberate the choice of national leadership and policy, mindful that in some measure our proposals involve the fate of mankind.

Republican Platform of 1960, p.605

The leadership of the United States must be responsible and mature; its promises must be rational and practical, soberly pledged and faithfully undertaken. Its purposes and its aspirations must ascend to that high ground of right and freedom upon which mankind may dwell and progress in decent security.

Republican Platform of 1960, p.605

We are impressed, but not dismayed, by the revolutionary turbulence that is wracking the world. In the midst of violence and change, we draw strength and confidence from the changeless principles of our free Constitution. Free men are invincible when the power and courage, the patience and the fortitude latent in them are drawn forth by reasonable appeal.

Republican Platform of 1960, p.605

In this Republican Platform we offer to the United States our program—our call to service, our pledge of leadership, our proposal of measures in the public interest. We call upon God, in whose hand is every blessing, to favor our deliberations with wisdom, our nation with endurance, and troubled mankind everywhere with a righteous peace.

Foreign Policy

Republican Platform of 1960, p.605

The Republican Party asserts that the sovereign purpose of our foreign policy is to secure the free institutions of our nation against every peril, to hearten and fortify the love of freedom everywhere in the world, and to achieve a just peace for all of anxious humanity.

Republican Platform of 1960, p.605

The pre-eminence of this Republic requires of us a vigorous, resolute foreign policy—inflexible against every tyrannical encroachment, and mighty in its advance toward our own affirmative goals.

Republican Platform of 1960, p.605

The Government of the United States, under the administration of President Eisenhower and Vice President Nixon, has demonstrated that firmness in the face of threatened aggression is the most dependable safeguard of peace. We now reaffirm our determination to defend the security and the freedom of our country, to honor our commitments to our allies at whatever cost or sacrifice, and never to submit to force or threats. Our determination to stand fast has forestalled aggression before Berlin, in the Formosa Straits, and in Lebanon. Since 1954 no free nation has fallen victim behind the Iron Curtain. We mean to adhere to the policy of firmness that has served us so well.

Republican Platform of 1960, p.605

We are unalterably committed to maintaining the security, freedom and solidarity of the Western Hemisphere. We support President Eisenhower's reaffirmation of the Monroe Doctrine in all its vitality. Faithful to our treaty commitments, we shall join the Republics of the Americas against any intervention in our hemisphere, and in refusing to tolerate the establishment in this hemisphere of any government dominated by the foreign rule of communism.

Republican Platform of 1960, p.605

In the Middle East, we shall continue to support the integrity and independence of all the states of that area including Israel and the Arab States.

Republican Platform of 1960, p.605

With specific reference to Israel and the Arab Nations we urge them to undertake negotiations for a mutually acceptable settlement of the causes of tension between them. We pledge continued efforts:

Republican Platform of 1960, p.605

To eliminate the obstacles to a lasting peace in the area, including the human problem of the Arab refugees.

Republican Platform of 1960, p.605

To seek an end to transit and trade restrictions, blockades and boycotts.

Republican Platform of 1960, p.605

To secure freedom of navigation in international waterways, the cessation of discrimination against Americans on the basis of religious beliefs, and an end to the wasteful and dangerous arms race and to the threat of an arms imbalance in the area.

Republican Platform of 1960, p.605

Recognition of Communist China and its admission to the United Nations have been firmly opposed by the Republican Administration. We will continue in this opposition because of compelling [p.606] evidence that to do otherwise would weaken the cause of freedom and endanger the future of the free peoples of Asia and the world. The brutal suppression of the human rights and the religious traditions of the Tibetan people is an unhappy evidence of the need to persist in our policy.

Republican Platform of 1960, p.606

The countries of the free world have been benefited, reinforced and drawn closer together by the vigor of American support of the United Nations, and by our participation in such regional organizations as NATO, SEATO, CENTO, the Organization of American States and other collective security alliances. We assert our intention steadfastly to uphold the action and principles of these bodies.

Republican Platform of 1960, p.606

We believe military assistance to our allies under the mutual security program should be continued with all the vigor and funds needed to maintain the strength of our alliances at levels essential to our common safety.

Republican Platform of 1960, p.606

The firm diplomacy of the Eisenhower-Nixon Administration has been supported by a military power superior to any in the history of our nation or in the world. As long as world tensions menace us with war, we are resolved to maintain an armed power exceeded by no other.

Republican Platform of 1960, p.606

Under Republican administration, the Government has developed original and constructive programs in many fields—open skies, atoms for peace, cultural and technical exchanges, the peaceful uses of outer space and Antarctica—to make known to men everywhere our desire to advance the cause of peace. We mean, as a Party, to continue in the same course.

Republican Platform of 1960, p.606

We recognize and freely acknowledge the support given to these principles and policies by all Americans, irrespective of party. Standing as they do above partisan challenge, such principles and policies will, we earnestly hope, continue to have bipartisan support.

Republican Platform of 1960, p.606

We established a new independent agency, the United States Information Agency, fully recognizing the tremendous importance of the struggle for men's minds. Today, our information program throughout the world is a greatly improved medium for explaining our policies and actions to audiences overseas, answering Communist propaganda, and projecting a true image of American life.

Republican Platform of 1960, p.606

This is the Republican record. We rededicate ourselves to the principles that have animated it; and we pledge ourselves to persist in those principles, and to apply them to the problems, the occasions, and the opportunities to be faced by the new Administration.

Republican Platform of 1960, p.606

We confront today the global offensive of Communism, increasingly aggressive and violent in its enterprises. The agency of that offensive is Soviet policy, aimed at the subversion of the world.

Republican Platform of 1960, p.606

Recently we have noted Soviet Union pretexts to intervene in the affairs of newly independent countries, accompanied by threats of the use of nuclear weapons. Such interventions constitute a form of subversion against the sovereignty of these new nations and a direct challenge to the United Nations.

Republican Platform of 1960, p.606

The immediate strategy of the Soviet imperialists is to destroy the world's confidence in America's desire for peace, to threaten with violence our mutual security arrangements, and to sever the bonds of amity and respect among the free nations. To nullify the Soviet conspiracy is our greatest task. The United States faces this challenge and resolves to meet it with courage and confidence.

Republican Platform of 1960, p.606

To this end we will continue to support and strengthen the United Nations as an instrument for peace, for international cooperation, and for the advancement of the fundamental freedoms and humane interests of mankind.

Republican Platform of 1960, p.606

Under the United Nations we will work for the peaceful settlement of international disputes and the extension of the rule of law in the world.

Republican Platform of 1960, p.606

And, in furtherance of President Eisenhower's proposals for the peaceful use of space, we suggest that the United Nations take the initiative to develop a body of law applicable thereto.

Republican Platform of 1960, p.606

Through all the calculated shifts of Soviet tactics and mood, the Eisenhower-Nixon Administration has demonstrated its willingness to negotiate in earnest with the Soviet Union to arrive at just settlements for the reduction of world tensions. We pledge the new Administration to continue in the same course.

Republican Platform of 1960, p.606

We are similarly ready to negotiate and to institute realistic methods and safeguards for disarmament, and for the suspension of nuclear tests. We advocate an early agreement by all nations to forego nuclear tests in the atmosphere, and the suspension of other tests as verification techniques permit. We support the President in any decision [p.607] he may make to re-evaluate the question of resumption of underground nuclear explosions testing, if the Geneva Conference fails to produce a satisfactory agreement. We have deep concern about the mounting nuclear arms race. This concern leads us to seek disarmament and nuclear agreements. And an equal concern to protect all peoples from nuclear danger, leads us to insist that such agreements have adequate safeguards.

Republican Platform of 1960, p.607

We recognize that firm political and military policies, while imperative for our security, cannot in themselves build peace in the world.

Republican Platform of 1960, p.607

In Latin America, Asia, Africa and the Middle East, peoples of ancient and recent independence, have shown their determination to improve their standards of living, and to enjoy an equality with the rest of mankind in the enjoyment of the fruits of civilization. This determination has become a primary fact of their political life. We declare ourselves to be in sympathy with their aspirations.

Republican Platform of 1960, p.607

We have already created unprecedented dimensions of diplomacy for these purposes. We recognize that upon our support of well-conceived programs of economic cooperation among nations rest the best hopes of hundreds of millions of friendly people for a decent future for themselves and their children. Our mutual security program of economic help and technical assistance; the Development Loan Fund, the Inter-American Bank, the International Development Association and the Food for Peace Program, which create the conditions for progress in less-developed countries; our leadership in international efforts to help children, eliminate pestilence and disease and aid refugees—these are programs wise in concept and generous in purpose. We mean to continue in support of them.

Republican Platform of 1960, p.607

Now we propose to further evolution of our programs for assistance to and cooperation with other nations, suitable to the emerging needs of the future.

Republican Platform of 1960, p.607

We will encourage the countries of Latin America, Africa, the Middle East and Asia, to initiate appropriate regional groupings to work out plans for economic and educational development. We anticipate that the United Nations Special Fund would be of assistance in developing such plans. The United States would offer its cooperation in planning, and the provision of technical personnel for this purpose. Agreeable to the developing nations, we would join with them in inviting countries with advanced economies to share with us a proportionate part of the capital and technical aid required. We would emphasize the increasing use of private capital and government loans, rather than outright grants, as a means of fostering independence and mutual respect. The President's recent initiative of a joint partnership program for Latin America opens the way to this approach.

Republican Platform of 1960, p.607

We would propose that such groupings adopt means to attain viable economies following such examples as the European Common Market. And if from these institutions, there should follow stronger economic and political unions, we would welcome them with our support.

Republican Platform of 1960, p.607

Despite the counterdrive of international Communism, relentless against individual freedom and subversive of the sovereignty of nations, a powerful drive for freedom has swept the world since World War II and many heroic episodes in the Communist countries have demonstrated anew that freedom will not die.

Republican Platform of 1960, p.607

The Republican Party reaffirms its determination to use every peaceful means to help the captive nations toward their independence, and thus their freedom to live and worship according to conscience. We do not condone the subjugation of the peoples of Hungary, Poland, East Germany, Czechoslovakia, Rumania, Albania, Bulgaria, Latvia, Lithuania, Estonia, and other once-free nations. We are not shaken in our hope and belief that once again they will rule themselves.

Republican Platform of 1960, p.607

Our time surges with change and challenge, peril and great opportunities. It calls us to great tasks and efforts—for free men can hope to guard freedom only if they prove capable of historic acts of wisdom and courage.

Republican Platform of 1960, p.607

Dwight David Eisenhower stands today throughout the world as the greatest champion of peace and justice and good.

Republican Platform of 1960, p.607

The Republican Party brings to the days ahead trained, experienced, mature and courageous leadership.

Republican Platform of 1960, p.607

Our Party was born for freedom's sake. It is still the Party of full freedom in our country. As in Lincoln's time, our Party and its leaders will meet the challenges and opportunities of our time and keep our country the best and enduring hope of freedom for the world.[p.608]

National Defense

Republican Platform of 1960, p.608

The future of freedom depends heavily upon America's military might and that of her allies. Under the Eisenhower-Nixon Administration, our military might has been forged into a power second to none. This strength, tailored to serve the needs of national policy, has deterred and must continue to deter aggression and encourage the growth of freedom in the world. This is the only sure way to a world at peace.

Republican Platform of 1960, p.608

We have checked aggression. We ended the war in Korea. We have joined with free nations in creating strong defenses. Swift technological change and the warning signs of Soviet aggressiveness make clear that intensified and courageous efforts are necessary, for the new problems of the 1960's will of course demand new efforts on the part of our entire nation. The Republican Party is pledged to making certain that our arms, and our will to use them, remain superior to all threats. We have, and will continue to have, the defenses we need to protect our freedom.

Republican Platform of 1960, p.608

The strategic imperatives of our national defense policy are these:

Republican Platform of 1960, p.608

A second-strike capability, that is, a nuclear retaliatory power that can survive surprise attack, strike back, and destroy any possible enemy.

Republican Platform of 1960, p.608

Highly mobile and versatile forces, including forces deployed, to deter or check local aggressions and "brush fire wars" which might bring on all-out nuclear war.

Republican Platform of 1960, p.608

National determination to employ all necessary military capabilities so as to render any level of aggression unprofitable. Deterrence of war since Korea, specifically, has been the result of our firm statement that we will never again permit a potential aggressor to set the ground rules for his aggression; that we will respond to aggression with the full means and weapons best suited to the situation.

Republican Platform of 1960, p.608

Maintenance of these imperatives requires these actions:

Republican Platform of 1960, p.608

Unremitting modernization of our retaliatory forces, continued development of the manned bomber well into the missile age, with necessary numbers of these bombers protected through dispersal and airborne alert.

Republican Platform of 1960, p.608

Development and production of new strategic weapons, such as the Polaris submarine and ballistic missile. Never again will they be neglected, as intercontinental missile development was neglected between the end of World War II and 1953.

Republican Platform of 1960, p.608

Accelerate as necessary, development of hardening, mobility, dispersal, and production programs for long-range missiles and the speedy perfection of new and advanced generations of missiles and anti-missile missiles.

Republican Platform of 1960, p.608

Intensified development of active civil defense to enable our people to protect themselves against the deadly hazards of atomic attack, particularly fallout; and to develop a new program to build a reserve of storable food, adequate to the needs of the population after an atomic attack.

Republican Platform of 1960, p.608

Constant intelligence operations regarding Communist military preparations to prevent another Pearl Harbor.

Republican Platform of 1960, p.608

A military establishment organized in accord with a national strategy which enables the unified commands in Europe, the Pacific, and this continent to continue to respond promptly to any kind of aggression.

Republican Platform of 1960, p.608

Strengthening of the military might of the free-world nations in such ways as to encourage them to assume increasing responsibility for regional security.

Republican Platform of 1960, p.608

Continuation of the "long pull" preparedness policies which, as inaugurated under the Eisenhower-Nixon Administration, have avoided the perilous peaks and slumps of defense spending and planning which marked earlier administrations.

Republican Platform of 1960, p.608

There is no price ceiling on America's security. The United States can and must provide whatever is necessary to insure its own security and that of the free world and to provide any necessary increased expenditures to meet new situations, to guarantee the opportunity to fulfill the hopes of men of good will everywhere. To provide more would be wasteful. To provide less would be catastrophic. Our defense posture must remain steadfast, confident, and superior to all potential foes.

Economic Growth and Business

Republican Platform of 1960, p.608

To provide the means to a better life for individual Americans and to strengthen the forces of freedom in the world, we count on the proved productivity of our free economy.

Republican Platform of 1960, p.608

Despite the lamentations of the opposition in viewing the economic scene today, the plain fact is that our 500 billion dollar economy finds more [p.609] Americans at work, earning more, spending more, saving more, investing more, building more than ever before in history. The well-being of our people, by virtually every yardstick, has greatly advanced under this Republican Administration.

Republican Platform of 1960, p.609

But we can and must do better. We must raise employment to even higher levels and utilize even more fully our expanding, overall capacity to produce. We must quicken the pace of our economic growth to prove the power of American free enterprise to meet growing and urgent demands: to sustain our military posture, to provide jobs for a growing labor force in a time of rapid technological change, to improve living standards, to serve all the needs of an expanding population.

Republican Platform of 1960, p.609

We therefore accord high priority to vigorous economic growth and recognize that its mainspring lies in the private sector of the economy. We must continue to foster a healthy climate in that sector. We reject the concept of artificial growth forced by massive new federal spending and loose money policies. The only effective way to accelerate economic growth is to increase the traditional strengths of our free economy—initiative and investment, productivity and efficiency. To that end we favor:

Republican Platform of 1960, p.609

Broadly-based tax reform to foster job-making and growth-making investment for modernization and expansion, including realistic incentive depreciation schedules.

Republican Platform of 1960, p.609

Use of the full powers of government to prevent the scourges of depression and inflation.

Republican Platform of 1960, p.609

Elimination of featherbedding practices by labor and business.

Republican Platform of 1960, p.609

Maintenance of a stable dollar as an indispensable means to progress.

Republican Platform of 1960, p.609

Relating wage and other payments in production to productivity—except when necessary to correct inequalities—in order to help us stay competitive at home and abroad.

Republican Platform of 1960, p.609

Spurring the economy by advancing the successful Eisenhower-Nixon program fostering new and small business, by continued active enforcement of the anti-trust laws, by protecting consumers and investors against the hazard and economic waste of fraudulent and criminal practices in the market place, and by keeping the federal government from unjustly competing with private enterprise upon which Americans mainly depend for their livelihood.

Republican Platform of 1960, p.609

Continued improvement of our vital transportation network, carrying forward rapidly the vast Eisenhower-Nixon national highway program and promoting safe, efficient, competitive and integrated transport by air, road, rail and water under equitable, impartial and minimal regulation directed to those ends.

Republican Platform of 1960, p.609

Carrying forward, under the Trade Agreements Act, the policy of gradual selective—and truly reciprocal—reduction of unjustifiable barriers to trade among free nations. We advocate effective administration of the Act's escape clause and peril point provisions to safeguard American jobs and domestic industries against serious injury. In support of our national trade policy we should continue the Eisenhower-Nixon program of using this government's negotiating powers to open markets abroad and to eliminate remaining discrimination against our goods. We should also encourage the development of fair labor standards in exporting countries in the interest of fair competition in international trade. We should, too, expand the Administration's export drive, encourage tourists to come from abroad, and protect U.S. investors against arbitrary confiscations and expropriations by foreign governments. Through these and other constructive policies, we will better our international balance of payments.

Republican Platform of 1960, p.609

Discharge by government of responsibility for those activities which the private sector cannot do or cannot so well do, such as constructive federal-local action to aid areas of chronic high unemployment, a sensible farm policy, development and wise use of natural resources, suitable support of education and research, and equality of job opportunity for all Americans.

Republican Platform of 1960, p.609

Action on these fronts, designed to release the strongest productive force in human affairs—the spirit of individual enterprise-can contribute greatly to our goal of a steady, strongly growing economy.

Labor

Republican Platform of 1960, p.609

America's growth cannot be compartmentalized. Labor and management cannot prosper without each other. They cannot ignore their mutual public obligation.

Republican Platform of 1960, p.609

Industrial harmony, expressing these mutual interests, can best be achieved in a climate of free [p.610] collective bargaining, with minimal government intervention except by mediation and conciliation.

Republican Platform of 1960, p.610

Even in dealing with emergency situations imperiling the national safety, ways of solution must be found to enhance and not impede the processes of free collective bargaining—carefully considered ways that are in keeping with the policies of national labor relations legislation and with the need to strengthen the hand of the President in dealing with such emergencies.

Republican Platform of 1960, p.610

In the same spirit, Republican leadership will continue to encourage discussions, away from the bargaining table, between labor and management to consider the mutual interest of all Americans in maintaining industrial peace.

Republican Platform of 1960, p.610

Republican policy firmly supports the right of employers and unions freely to enter into agreements providing for the union shop and other forms of union security as authorized by the Labor-Management Relations Act of 1947 (the Taft-Hartley Act ).

Republican Platform of 1960, p.610

Republican-sponsored legislation has supported the right of union members to full participation in the affairs of their union and their right to freedom from racketeering and gangster interference whether by labor or management in labor-management relations.

Republican Platform of 1960, p.610

Republican action has given to millions of American working men and women new or expanded protection and benefits, such as: Increased federal minimum wage;

Republican Platform of 1960, p.610

Extended coverage of unemployment insurance and the payment of additional temporary benefits provided in 1958-59;

Republican Platform of 1960, p.610

Improvement of veterans' re-employment rights;

Republican Platform of 1960, p.610

Extension of federal workman's compensation coverage and increase of benefits;

Republican Platform of 1960, p.610

Legislative assurance of safety standards for longshore and harbor workers and for the transportation of migratory workers;

Republican Platform of 1960, p.610

An increase of railroad workers' retirement and disability benefits.

Republican Platform of 1960, p.610

Seven past years of accomplishments, however, are but a base to build upon in fostering, promoting and improving the welfare of America's working men and women, both organized and unorganized. We pledge, therefore, action on these constructive lines:

Republican Platform of 1960, p.610

Diligent administration of the amended Labor-Management Relations Act of 1947 (Taft-Hartley Act) and the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act) with recommendations for improvements which experience shows are needed to make them more effective or remove any inequities.

Republican Platform of 1960, p.610

Correction of defects in the Welfare and Pension Plans Disclosure Act to protect employees' and beneficiaries' interests.

Republican Platform of 1960, p.610

Upward revision in amount and extended coverage of the minimum wage to several million more workers.

Republican Platform of 1960, p.610

Strengthening the unemployment insurance system and extension of its benefits.

Republican Platform of 1960, p.610

Improvement of the eight-hour laws relating to hours and overtime compensation on federal and federally-assisted construction, and continued vigorous enforcement and improvement of minimum wage laws for federal supply and construction contracts.

Republican Platform of 1960, p.610

Continued improvement of manpower skills and training to meet a new era of challenges, including action programs to aid older workers, women, youth, and the physically handicapped.

Republican Platform of 1960, p.610

Encouragement of training programs by labor, industry and government to aid in finding new jobs for persons dislocated by automation or other economic changes.

Republican Platform of 1960, p.610

Improvement of job opportunities and working conditions of migratory farm workers.

Republican Platform of 1960, p.610

Assurance of equal pay for equal work regardless of sex; encouragement of programs to insure on-the-job safety, and encouragement of the States to improve their labor standards legislation, and to improve veterans' employment rights and benefits.

Republican Platform of 1960, p.610

Encouragement abroad of free democratic institutions, higher living standards and higher wages through such agencies as the International Labor Organization, and cooperation with the free trade union movement in strengthening free labor throughout the world.

Agriculture

Republican Platform of 1960, p.610

Americans are the best-fed and the best-clothed people in the world. Our challenge fortunately is one of dealing with abundance, not overcoming shortage. The fullness of our fields, forests and grazing lands is an important advantage in our struggle against worldwide tyranny and our crusade against poverty. Our farmers have provided [p.611] us with a powerful weapon in the ideological and economic struggle in which we are now engaged.

Republican Platform of 1960, p.611

Yet, far too many of our farm families, the source of this strength, have not received a fair return for their labors. For too long, Democratic-controlled Congresses have stalemated progress by clinging to obsolete programs conceived for different times and different problems.

Republican Platform of 1960, p.611

Promises of specific levels of price support or a single type of program for all agriculture are cruel deceptions based upon the pessimistic pretense that only with rigid controls can farm families be aided. The Republican Party will provide within the framework of individual freedom a greater bargaining power to assure an equitable return for the work and capital supplied by farmers.

Republican Platform of 1960, p.611

The Republican Party pledges itself to develop new programs to improve and stabilize farm family income. It recognizes two main challenges: the immediate one of utilizing income-depressing surpluses, and the long-range one of steady balanced growth and development with a minimum of federal interference and control.

Republican Platform of 1960, p.611

To utilize immediately surpluses in an orderly manner, with a minimum impact on domestic and foreign markets, we pledge:

Republican Platform of 1960, p.611

Intensification of the Food for Peace program, including new cooperative efforts among food-surplus nations to assist the hungry peoples in less favored areas of the world.

Republican Platform of 1960, p.611

Payment-in-kind, out of existing surpluses, as part of our land retirement program.

Republican Platform of 1960, p.611

Creation of a Strategic Food Reserve properly dispersed in forms which can be preserved for long periods against the contingency of grave national emergency.

Republican Platform of 1960, p.611

Strengthened efforts to distribute surpluses to schools and low-income and needy citizens of our own country.

Republican Platform of 1960, p.611

A reorganization of Commodity Credit Corporation's inventory management operations to reduce competition with the marketings of farmers.

Republican Platform of 1960, p.611

To assure steady balanced growth and agricultural progress, we pledge:

Republican Platform of 1960, p.611

A crash research program to develop industrial and other uses of farm products.

Republican Platform of 1960, p.611

Use of price supports at levels best fitted to specific commodities, in order to widen markets, ease production controls, and help achieve increased farm family income.

Republican Platform of 1960, p.611

Acceleration of production adjustments, including a large scale land conservation reserve program on a voluntary and equitable rental basis, with full consideration of the impact on local communities.

Republican Platform of 1960, p.611

Continued progress in the wise use and conservation of water and soil resources.

Republican Platform of 1960, p.611

Use of marketing agreements and orders, and other marketing devices, when approved by producers, to assist in the orderly marketing of crops, thus enabling farmers to strengthen their bargaining power.

Republican Platform of 1960, p.611

Stepped-up research to reduce production costs and to cut distribution costs.

Republican Platform of 1960, p.611

Strengthening of the educational programs of the U.S. Department of Agriculture and the Land-Grant institutions.

Republican Platform of 1960, p.611

Improvement of credit facilities for financing the capital needs of modern farming.

Republican Platform of 1960, p.611

Encouragement of farmer owned and operated cooperatives including rural electric and telephone facilities.

Republican Platform of 1960, p.611

Expansion of the Rural Development Program to help low-income farm families not only through better farming methods, but also through opportunities for vocational training, more effective employment services, and creation of job opportunities through encouragement of local industrialization.

Republican Platform of 1960, p.611

Continuation and further improvement of the Great Plains Program.

Republican Platform of 1960, p.611

Legislative action for programs now scheduled to expire for the school milk program, wool, and sugar, including increased sugar acreage to domestic areas.

Republican Platform of 1960, p.611

Free movement in interstate commerce of agricultural commodities meeting federal health standards.

Republican Platform of 1960, p.611

To prevent dumping of agricultural imports upon domestic markets.

Republican Platform of 1960, p.611

To assure the American farmer a more direct voice in his own destiny, we pledge:

Republican Platform of 1960, p.611

To select an official committee of farmers and ranchers, on a regional basis, broadly representative of American agriculture, whose function will be to recommend to the President guidelines for improving the operation of government farm programs.

Natural Resources

Republican Platform of 1960, p.612

A strong and growing economy requires vigorous [p.612] and persistent attention to wise conservation and sound development of all our resources. Teamwork between federal, state and private entities is essential and should be continued. It has resulted in sustained conservation and resource development programs on a scale unmatched in our history.

Republican Platform of 1960, p.612

The past seven years of Republican leadership have seen the development of more power capacity, flood control, irrigation, fish and wildlife projects, recreational facilities, and associated multi-purpose benefits than during any previous administration in history. The proof is visible in the forests and waters of the land and in Republican initiation of and support for the Upper Watershed Program and the Small Reclamation Projects Act. It is clear, also, in the results of continuing administration-encouraged forest management practices which have brought, for the first time, a favorable balance between the growth and cutting of America's trees.

Republican Platform of 1960, p.612

Our objective is for further growth, greater strength, and increased utilization in each great area of resource use and development.

Republican Platform of 1960, p.612

We pledge:

Republican Platform of 1960, p.612

Use of the community watershed as the basic natural unit through which water resource, soil, and forest management programs may best be developed, with interstate compacts encouraged to handle regional aspects without federal domination.

Republican Platform of 1960, p.612

Development of new water resource projects throughout the nation.

Republican Platform of 1960, p.612

Support of the historic policy of Congress in preserving the integrity of the several States to govern water rights.

Republican Platform of 1960, p.612

Continued federal support for Republican-initiated research and demonstration projects which will supply fresh water from salt and brackish water sources.

Republican Platform of 1960, p.612

Necessary measures for preservation of our domestic fisheries.

Republican Platform of 1960, p.612

Continued forestry conservation with appropriate sustained yield harvesting, thus increasing jobs for people and increasing revenue.

Republican Platform of 1960, p.612

To observe the "preference clause" in marketing federal power.

Republican Platform of 1960, p.612

Support of the basic principles of reclamation.

Republican Platform of 1960, p.612

Recognition of urban and industrial demands by making available to states and local governments.

Republican Platform of 1960, p.612

federal lands not needed for national programs.

Republican Platform of 1960, p.612

Full use and preservation of our great outdoors are pledged in:

Republican Platform of 1960, p.612

Completion of the "Mission 66" for the improvement of National Park areas as well as sponsorship of a new "Mission 76" program to encourage establishment and rehabilitation of local, state, and regional parks, to provide adequate recreational facilities for our expanding population.

Republican Platform of 1960, p.612

Continued support of the effort to keep our great out-of-doors beautiful, green, and clean.

Republican Platform of 1960, p.612

Establishment of a citizens board of conservation, resource and land management experts to inventory those federal lands now set aside for a particular purpose; to study the future needs of the nation for parks, seashores, and wildlife and other recreational areas; and to study the possibility of restoring lands not needed for a federal program.

Republican Platform of 1960, p.612

Minerals, metals, fuels, also call for carefully considered actions in view of the repeated failure of Democratic-controlled Congresses to enact any long-range minerals legislation. Republicans, therefore, pledge:

Republican Platform of 1960, p.612

Long-range minerals and fuels planning and programming, including increased coal research.

Republican Platform of 1960, p.612

Assistance to mining industries in bridging the gap between peak defense demands and anticipated peacetime demands.

Republican Platform of 1960, p.612

Continued support for federal financial assistance and incentives under our tax laws to encourage exploration for domestic sources of minerals and metals, with reasonable depletion allowances.

Republican Platform of 1960, p.612

To preserve our fish and wildlife heritage, we pledge:

Republican Platform of 1960, p.612

Legislation to authorize exchange of lands between state and federal governments to adapt programs to changing uses and habits.

Republican Platform of 1960, p.612

Vigorous implementation of long-range programs for fish and wildlife.

Government Finance

Republican Platform of 1960, p.612

To build a better America with broad national purposes such as high employment, vigorous and steady economic growth, and a dependable currency, responsible management of our federal finances is essential. Even more important, a sound economy is vital to national security. While leading [p.613] Democrats charge us with a "budget balancing" mentality, their taunts really reflect their frustration over the people's recognition that as a nation we must live within our means. Government that is careless with the money of its citizens is careless with their future.

Republican Platform of 1960, p.613

Because we are concerned about the well-being of people, we are concerned about protecting the value of their money. To this end, we Republicans believe that:

Republican Platform of 1960, p.613

Every government expenditure must be tested by its contribution to the general welfare, not to any narrow interest group.

Republican Platform of 1960, p.613

Except in times of war or economic adversity, expenditures should be covered by revenues.

Republican Platform of 1960, p.613

We must work persistently to reduce, not to increase, the national debt, which imposes a heavy economic burden on every citizen.

Republican Platform of 1960, p.613

Our tax structure should be improved to provide greater incentives to economic progress, to make it fair and equitable, and to maintain and deserve public acceptance.

Republican Platform of 1960, p.613

We must resist assaults upon the independence of the Federal Reserve System; we must strengthen, not weaken, the ability of the Federal Reserve System and the Treasury Department to exercise effective control over money and credit in order better to combat both deflation and inflation that retard economic growth and shrink people's savings and earnings.

Republican Platform of 1960, p.613

In order of priority, federal revenues should be used: first, to meet the needs of national security; second, to fulfill the legitimate and urgent needs of the nation that cannot be met by the States, local governments or private action; third, to pay down on the national debt in good times; finally, to improve our tax structure.

Republican Platform of 1960, p.613

National security and other essential needs will continue to make enormous demands upon public revenues. It is therefore imperative that we weigh carefully each demand for a new federal expenditure. The federal government should undertake not the most things nor the least things, but the right things.

Republican Platform of 1960, p.613

Achieving this vital purpose demands:

Republican Platform of 1960, p.613

That Congress, in acting on new spending bills, have figures before it showing the cumulative effect of its actions on the total budget.

Republican Platform of 1960, p.613

That spending commitments for future years be clearly listed in each budget, so that the effect of built-in expenditure programs may be recognized and evaluated.

Republican Platform of 1960, p.613

That the President be empowered to veto individual items in authorization and appropriation bills.

Republican Platform of 1960, p.613

That increasing efforts be made to extend business-like methods to government operations, particularly in purchasing and supply activities, and in personnel.

Government Administration

Republican Platform of 1960, p.613

The challenges of our time test the very organization of democracy. They put on trial the capacity of free government to act quickly, wisely, resolutely. To meet these challenges:

Republican Platform of 1960, p.613

The President must continue to be able to reorganize and streamline executive operations to keep the executive branch capable of responding effectively to rapidly changing conditions in both foreign and domestic fields. The Eisenhower-Nixon Administration did so by creating a new Department of Health, Education and Welfare, by establishing the National Aeronautics and Space Agency and the Federal Aviation Agency, and by reorganizations of the Defense Department.

Republican Platform of 1960, p.613

Two top positions should be established to assist the President in, (1) the entire field of National Security and international Affairs, and, (2) Governmental Planning and Management, particularly in domestic affairs.

Republican Platform of 1960, p.613

We must undertake further reorganization of the Defense Department to achieve the most effective unification of defense planning and command.

Republican Platform of 1960, p.613

Improved conflict-of-interest laws should be enacted for vigilant protection of the public interest and to remove deterrents to governmental service by our most able citizens.

Republican Platform of 1960, p.613

The federal government must constantly strengthen its career service and must be truly progressive as an employer. Government employment must be a vocation deserving of high public respect. Common sense demands continued improvements in employment, training and promotion practices based on merit, effective procedures for dealing with employment grievances, and salaries which are comparable to those offered by private employers.

Republican Platform of 1960, p.613

As already practiced by the Republican membership, responsible Policy Committees should be elected by each party in each house of Congress. [p.614] This would provide a mechanism for meetings of party Congressional leaders with the President when circumstances demand.

Republican Platform of 1960, p.614

Needed federal judgeships, appointed on the basis of the highest qualifications and without limitation to a single political party, should be created to expedite administration of justice in federal courts.

Republican Platform of 1960, p.614

The remarkable growth of the Post Office since 1952 to serve an additional 9 million urban and l 1/2 million farm families must be continued. The Post Office must be continually improved and placed on a self-sustaining basis. Progressive Republican policies of the past seven years have resulted in reduced costs, decentralization of postal operations, liberal pay, fringe benefits, improved working conditions, streamlined management, and improved service.

Republican Platform of 1960, p.614

Vigorous state and local governments are a vital part of our federal union. The federal government should leave to state and local governments those programs and problems which they can best handle and tax sources adequate to finance them. We must continue to improve liaison between federal, state and local governments. We believe that the federal government, when appropriate, should render significant assistance in dealing with our urgent problems of urban growth and change. No vast new bureaucracy is needed to achieve this objective.

Republican Platform of 1960, p.614

We favor a change in the Electoral College system to give every voter a fair voice in presidential elections.

Republican Platform of 1960, p.614

We condemn bigotry, smear and other unfair tactics in political campaigns. We favor realistic and effective safeguards against diverting non-political funds to partisan political purposes.

Republican Platform of 1960, p.614

Republicans will continue to work for Congressional representation and self-government for the District of Columbia and also support the constitutional amendment granting suffrage in national elections.

Republican Platform of 1960, p.614

We support the right of the Puerto Rican people to achieve statehood, whenever they freely so determine. We support the right of the people of the Virgin Islands to an elected Governor, national representation and suffrage, looking toward eventual statehood, when qualified. We also support the right of the people of Guam to an elected Governor and national representation. These pledges are meaningful from the Republican leadership under which Alaska and Hawaii have newly entered the Union.

Republican Platform of 1960, p.614

Congress should submit a constitutional amendment providing equal rights for women.

Education

Republican Platform of 1960, p.614

The rapid pace of international developments serves to re-emphasize dramatically the challenge which generations of Americans will face in the years ahead. We are reminded daily of the crucial importance of strengthening our system of education to prepare our youth for understanding and shaping the powerful emerging forces of the modern world and to permit the fullest possible development of individual capacities and potentialities.

Republican Platform of 1960, p.614

We express our gratefulness and we praise the countless thousands of teachers who have devoted themselves in an inspired way towards the development of our greatest heritage—our own children—the youth of the country.

Republican Platform of 1960, p.614

Education is not a luxury, nor a gift to be bestowed upon ourselves and our children. Education is an investment; our schools cannot become second best. Each person possesses the right to education—it is his birthright in a free Republic.

Republican Platform of 1960, p.614

Primary responsibility for education must remain with the local community and state. The federal government should assist selectively in strengthening education without interfering with full local control of schools. One objective of such federal assistance should be to help equalize educational opportunities. Under the Eisenhower-Nixon Administration, the federal government will spend more than a billion dollars in 1960 to strengthen American education.

Republican Platform of 1960, p.614

We commend the objective of the Republican Administration in sponsoring the National Defense Education Act to stimulate improvement of study and teaching in selected fields at the local level.

Republican Platform of 1960, p.614

Toward the goal of fullest possible educational opportunity for every American, we pledge these actions:

Republican Platform of 1960, p.614

Federal support to the primary and secondary schools by a program of federal aid for school construction—pacing it to the real needs of individual school districts in states and territories, and requiring state approval and participation.

Republican Platform of 1960, p.615

[p.615] Stimulation of actions designed to update and strengthen vocational education for both youth and adults.

Republican Platform of 1960, p.615

Support of efforts to make adequate library facilities available to all our citizens.

Republican Platform of 1960, p.615

Continued support of programs to strengthen basic research in education; to discover the best methods for helping handicapped, retarded, and gifted children to realize their highest potential.

Republican Platform of 1960, p.615

The federal government can also play a part in stimulating higher education. Constructive action would include:

Republican Platform of 1960, p.615

The federal program to assist in construction of college housing.

Republican Platform of 1960, p.615

Extension of the federal student loan program and graduate fellowship program.

Republican Platform of 1960, p.615

Consideration of means through tax laws to help offset tuition costs.

Republican Platform of 1960, p.615

Continued support of the East-West Center for cultural and technical interchange in Hawaii for the purpose of strengthening our relationship with the peoples of the Pacific world.

Republican Platform of 1960, p.615

Federal matching grants to help states finance the cost of state surveys and inventories of the status and needs of their school systems.

Republican Platform of 1960, p.615

Provision should be made for continuous attention to education at all levels by the creation of a permanent, top-level commission to advise the President and the Secretary of Health, Education and Welfare, constantly striving to focus the interest of each citizen on the quality of our education at every level, from primary through postgraduate, and for every age group from children to adults.

Republican Platform of 1960, p.615

We are aware of the fact that there is a temporary shortage of classrooms for our elementary and secondary schools in a limited number of states. But this shortage, due to the vigilant action of state legislatures and local school boards, is not increasing, but is decreasing.

Republican Platform of 1960, p.615

We shall use our full efforts in all the states of the Union to have these legislatures and school boards augment their present efforts to the end that this temporary shortage may be eliminated and that every child in this country shall have the opportunity to obtain a good education. The respective states as a permanent program can shoulder this long-standing and cherished responsibility easier than can the federal government with its heavy indebtedness.

Republican Platform of 1960, p.615

We believe moreover that any large plan of federal aid to education, such as direct contributions to or grants for teachers salaries can only lead ultimately to federal domination and control of our schools to which we are unalterably opposed. In the words of President Eisenhower, "Education best fulfills its high purpose when responsibility for education is kept close to the people it serves—when it is rooted in the homes, nurtured in the community and sustained by a rich variety of public, private and individual resources. The bond linking home and school and community—the responsiveness of each to the needs of the others—is a precious asset of American education."

Science and Technology

Republican Platform of 1960, p.615

Much of America's future depends upon the inquisitive mind, freely searching nature for ways to conquer disease, poverty and grinding physical demands, and for knowledge of space and the atom.

Republican Platform of 1960, p.615

We Republicans express our profound gratitude to the great scientists and engineers of our country, both in and out of government, for the remarkable progress they have made. Reliable evidence indicates, all areas of scientific knowledge considered, that our country has been, is, and under our system of free inquiry, will continue to be the greatest arsenal and reservoir of effective scientific knowledge in the world.

Republican Platform of 1960, p.615

We pledge our continued leadership in every field of science and technology, earthbound as well as spacial, to assure a citadel of liberty from which the fruits of freedom may be carried to all people.

Republican Platform of 1960, p.615

Our continuing and great national need is for basic research—a wellspring of knowledge and progress. Government must continue to take a responsible role in science to assure that worth-while endeavors of national significance are not retarded by practical limitations of private and local support. This demands from all Americans the intellectual leadership and understanding so necessary for these creative endeavors and an equal understanding by our scientists and technicians of the needs and hopes of mankind.

Republican Platform of 1960, p.615

We believe the federal roles in research to be in the area of ( 1 ) basic research which industry cannot be reasonably expected to pursue, and (2) applied research in fields of prime national concern such as national defense, exploration and use of [p.616] space, public health, and better common use of all natural resources, both human and physical. We endorse the contracting by government agencies for research and urge allowance for reasonable charges for overhead and management in connection therewith.

Republican Platform of 1960, p.616

The vigor of American science and technology may best be inspired by:

Republican Platform of 1960, p.616

An environment of freedom and public understanding in which intellectual achievement and scientific research may flourish.

Republican Platform of 1960, p.616

A decentralization of research into as many centers of creativity as possible.

Republican Platform of 1960, p.616

The encouragement of colleges and universities, private enterprise, and foundations as a growing source of new ideas and new applications.

Republican Platform of 1960, p.616

Opportunity for scientists and engineers, in and out of government, to pursue their search with utmost aggressiveness.

Republican Platform of 1960, p.616

Continuation of the advisory committee to represent the views of the scientific community to the President and of the Federal Council for Science and Technology to foster coordination in planning and execution.

Republican Platform of 1960, p.616

Continued expansion of the Eisenhower-Nixon Atoms-for-Peace program and a constant striving, backed by scientific advice, for international agreement for peaceful and cooperative exploration and use of space.

Human Needs

Republican Platform of 1960, p.616

The ultimate objective of our free society and of an ever-growing economy is to enable the individual to pursue a life of dignity and to develop his own capacities to his maximum potential.

Republican Platform of 1960, p.616

Government's primary role is to help provide the environment within which the individual can seek his own goals. In some areas this requires federal action to supplement individual, local and state initiative. The Republican Party has acted and will act decisively, compassionately, and with deep human understanding in approaching such problems as those of the aged, the infirm, the mentally ill, and the needy.

Republican Platform of 1960, p.616

This is demonstrated by the significant increase in social security coverage and benefits as a result of recommendations made by the Eisenhower-Nixon Administration. As a result of these recommendations and normal growth, 14 million persons are receiving benefits today compared to five million in 1952, and benefit payments total $10.3 billion as compared to $2.5 billion in 1952. In addition, there have been increases in payments to those on public assistance, both for their basic needs and for their health and medical care; and a broad expansion in our federal-state program for restoring disabled persons to useful lives—an expansion which has accomplished the rehabilitation of over half a million persons during this Administration.

Republican Platform of 1960, p.616

New needs, however, are constantly arising in our highly complex, interdependent, and urbanized society.

Older Citizens

Republican Platform of 1960, p.616

To meet the needs of the aging, we pledge: Expansion of coverage, and liberalization of selected social security benefits on a basis which would maintain the fiscal integrity of the system.

Republican Platform of 1960, p.616

Support of federal-state grant programs to improve health, welfare and rehabilitation services for the handicapped older persons and to improve standards of nursing home care and care and treatment facilities for the chronically and mentally ill.

Republican Platform of 1960, p.616

Federal leadership to encourage policies that will make retirement at a fixed age voluntary and not compulsory.

Republican Platform of 1960, p.616

Support of programs that will persuade and encourage the nation to utilize fully the skills, wisdom and experience of older citizens.

Republican Platform of 1960, p.616

Prompt consideration of recommendations by the White House Conference on Aging called by the President for January, 1961.

Health Aid

Republican Platform of 1960, p.616

Development of a health program that will provide the aged needing it, on a sound fiscal basis and through a contributory system, protection against burdensome costs of health care. Such a program should:

Republican Platform of 1960, p.616

Provide the beneficiaries with the option of purchasing private health insurance—a vital distinction between our approach and Democratic proposals in that it would encourage commercial carriers and voluntary insurance organizations to continue their efforts to develop sound coverage plans for the senior population.

Republican Platform of 1960, p.616

Protect the personal relationship of patient and physician.

Republican Platform of 1960, p.617

[p.617] Include state participation.

Republican Platform of 1960, p.617

For the needs which individuals of all age groups cannot meet by themselves, we propose:

Republican Platform of 1960, p.617

Removing the arbitrary 50-year age requirement under the disability insurance program while amending the law also to provide incentives for rehabilitated persons to return to useful work.

Republican Platform of 1960, p.617

A single, federal assistance grant to each state for aid to needy persons rather than dividing such grants into specific categories.

Republican Platform of 1960, p.617

A strengthened federal-state program to rehabilitate the estimated 200,000 persons who annually could become independent after proper medical services and occupational training.

Republican Platform of 1960, p.617

A new federal-state program, for handicapped persons completely dependent on others, to help them meet their needs for personal care.

Juvenile Delinquency

Republican Platform of 1960, p.617

The Federal Government can and should help state and local communities combat juvenile delinquency by inaugurating a grant program for research, demonstration, and training projects and by placing greater emphasis on strengthening family life in all welfare programs for which it shares responsibility.

Veterans

Republican Platform of 1960, p.617

We believe that military service in the defense of our Republic against aggressors who have sought to destroy the freedom and dignity of man imposes upon the nation a special responsibility to those who have served. To meet this responsibility, we pledge:

Republican Platform of 1960, p.617

Continuance of the Veterans Administration as an independent agency.

Republican Platform of 1960, p.617

The highest possible standard of medical care with increasing emphasis on rehabilitation.

Indian Affairs

Republican Platform of 1960, p.617

As recently as 1953, thirty per cent of Indian school-age children were unable to obtain an education. Through Republican efforts, this fall, for the first time in history, every eligible Indian child will be able to attend an elementary school. Having accomplished this, we will now accelerate our efforts to open up both secondary and higher education opportunities for every qualified Indian youth.

Republican Platform of 1960, p.617

As a result of a stepped-up health program there has been a marked decrease in death rates from tuberculosis and in the infant mortality rate. Also substantial progress has been made in the modernization of health facilities. We pledge continued progress in this area.

Republican Platform of 1960, p.617

We are opposed to precipitous termination of the federal Indian trusteeship responsibility, and pledge not to support any termination plan for any tribe which has not approved such action.

Housing

Republican Platform of 1960, p.617

Despite noteworthy accomplishments, stubborn and deep-seated problems stand in the way of achieving the national objective of a decent home in a suitable environment for every American. Recognizing that the federal government must help provide the economic climate and incentives which make this objective obtainable, the Republican Party will vigorously support the following steps, all designed to supplement and not supplant private initiative.

Republican Platform of 1960, p.617

Continued effort to clear slums, and promote rebuilding, rehabilitation, and conservation of our cities.

Republican Platform of 1960, p.617

New programs to stimulate development of specialized types of housing, such as those for the elderly and for nursing homes.

Republican Platform of 1960, p.617

A program of research and demonstration aimed at finding ways to reduce housing costs, including support of efforts to modernize and improve local building codes.

Republican Platform of 1960, p.617

Adequate authority for the federal housing agencies to assist the flow of mortgage credit into private housing, with emphasis on homes for middle- and lower-income families and including assistance in urban residential areas.

Republican Platform of 1960, p.617

A stepped-up program to assist in urban planning, designed to assure far-sighted and wise use of land and to coordinate mass transportation and other vital facilities in our metropolitan areas.

Health

Republican Platform of 1960, p.617

There has been a five-fold increase in government-assisted medical research during the last six years, We pledge:

Republican Platform of 1960, p.617

Continued federal support for a sound research program aimed at both the prevention and cure of diseases, and intensified efforts to secure prompt [p.618] and effective application of the results of research. This will include emphasis on mental illness.

Republican Platform of 1960, p.618

Support of international health research programs.

Republican Platform of 1960, p.618

We face serious personnel shortages in the health and medical fields. We pledge:

Republican Platform of 1960, p.618

Federal help in new programs to build schools of medicine, dentistry, and public health and nursing, and financial aid to students in those fields.

Republican Platform of 1960, p.618

We are confronted with major problems in the field of environmental health. We pledge:

Republican Platform of 1960, p.618

Strengthened federal enforcement powers in combatting water pollution and additional resources for research and demonstration projects. Federal grants for the construction of waste disposal plants should be made only when they make an identifiable contribution to clearing up polluted streams.

Republican Platform of 1960, p.618

Federal authority to identify, after appropriate hearings, air pollution problems and to recommend proposed solutions.

Republican Platform of 1960, p.618

Additional resources for research and training in the field of radiological medicine.

Protection of Consumers

Republican Platform of 1960, p.618

In safeguarding the health of the nation the Eisenhower-Nixon Administration's initiative has resulted in doubling the resources of the Food and Drug Administration and in giving it new legal weapons. More progress has been made during this period in protecting consumers against harmful food, drugs, and cosmetics than in any other time in our history. We will continue to give strong support to this consumer-protection program.

Civil Rights

Republican Platform of 1960, p.618

This nation was created to give expression, validity and purpose to our spiritual heritage—the supreme worth of the individual. In such a nation—a nation dedicated to the proposition that all men are created equal—racial discrimination has no place. It can hardly be reconciled with a Constitution that guarantees equal protection under law to all persons. In a deeper sense, too, it is immoral and unjust. As to those matters within reach of political action and leadership, we pledge ourselves unreservedly to its eradication.

Republican Platform of 1960, p.618

Equality under law promises more than the equal right to vote and transcends mere relief from discrimination by government. It becomes a reality only when all persons have equal opportunity, without distinction of race, religion, color or national origin, to acquire the essentials of life—housing, education and employment. The Republican Party—the party of Abraham Lincoln—from its very beginning has striven to make this promise a reality. It is today, as it was then, unequivocally dedicated to making the greatest amount of progress toward the objective.

Republican Platform of 1960, p.618

We recognize that discrimination is not a problem localized in one area of the country, but rather a problem that must be faced by North and South alike. Nor is discrimination confined to the discrimination against Negroes. Discrimination in many, if not all, areas of the country on the basis of creed or national origin is equally insidious. Further we recognize that in many communities in which a century of custom and tradition must be overcome heartening and commendable progress has been made.

Republican Platform of 1960, p.618

The Republican Party is proud of the civil rights record of the Eisenhower Administration. More progress has been made during the past eight years than in the preceding 80 years. We acted promptly to end discrimination in our nation's capital. Vigorous executive action was taken to complete swiftly the desegregation of the armed forces, veterans' hospitals, navy yards, and other federal establishments.

Republican Platform of 1960, p.618

We supported the position of the Negro school children before the Supreme Court. We believe the Supreme Court school decision should be carried out in accordance with the mandate of the Court.

Republican Platform of 1960, p.618

Although the Democratic-controlled Congress watered them down, the Republican Administration's recommendations resulted in significant and effective civil rights legislation in both 1957 and 1960—the first civil rights statutes to be passed in more than 80 years.

Republican Platform of 1960, p.618

Hundreds of Negroes have already been registered to vote as a result of Department of Justice action, some in counties where Negroes did not vote before. The new law will soon make it possible for thousands and thousands of Negroes previously disenfranchised to vote.

Republican Platform of 1960, p.618

By executive order, a committee for the elimination of discrimination in government employment has been reestablished with broadened [p.619] authority. Today, nearly one-fourth of all federal employees are Negro.

Republican Platform of 1960, p.619

The President's Committee on Government Contracts, under the chairmanship of Vice President Nixon, has become an impressive force for the elimination of discriminatory employment practices of private companies that do business with the government.

Republican Platform of 1960, p.619

Other important achievements include initial steps toward the elimination of segregation in federally-aided housing; the establishment of the Civil Rights Division of the Department of Justice, which enforces federal civil rights laws; and the appointment of the bi-partisan Civil Rights Commission, which has prepared a significant report that lays the groundwork for further legislative action and progress.

Republican Platform of 1960, p.619

The Republican record is a record of progress—not merely promises. Nevertheless, we recognize that much remains to be done.

Republican Platform of 1960, p.619

Each of the following pledges is practical and within realistic reach of accomplishment. They are serious—not cynical—pledges made to result in maximum progress.

1. Voting. We pledge:

Republican Platform of 1960, p.619

Continued vigorous enforcement of the civil rights laws to guarantee the right to vote to all citizens in all areas of the country.

Republican Platform of 1960, p.619

Legislation to provide that the completion of six primary grades in a state accredited school is conclusive evidence of literacy for voting purposes.

2. Public Schools. We pledge:

Republican Platform of 1960, p.619

The Department of Justice will continue its vigorous support of court orders for school desegregation. Desegregation suits now pending involve at least 39 school districts. Those suits and others already concluded will affect most major cities in which school segregation is being practiced.

Republican Platform of 1960, p.619

It will use the new authority provided by the Civil Rights Act of 1960 to prevent obstruction of court orders.

Republican Platform of 1960, p.619

We will propose legislation to authorize the Attorney General to bring actions for school desegregation in the name of the United States in appropriate cases, as when economic coercion or threat of physical harm is used to deter persons from going to court to establish their rights.

Republican Platform of 1960, p.619

Our continuing support of the President's proposal, to extend federal aid and technical assistance to schools which in good faith attempted to desegregate.

Republican Platform of 1960, p.619

We oppose the pretense of fixing a target date 3 years from now for the mere submission of plans for school desegregation. Slow-moving school districts would construe it as a three-year moratorium during which progress would cease, postponing until 1963 the legal process to enforce compliance. We believe that each of the pending court actions should proceed as the Supreme Court has directed and that in no district should there be any such delay.

3. Employment. We pledge:

Republican Platform of 1960, p.619

Continued support for legislation to establish a Commission on Equal Job Opportunity to make permanent and to expand with legislative backing the excellent work being performed by the President's Committee on Government Contracts.

Republican Platform of 1960, p.619

Appropriate legislation to end the discriminatory membership practices of some labor union locals, unless such practices are eradicated promptly by the labor unions themselves.

Republican Platform of 1960, p.619

Use of the full-scale review of existing state laws, and of prior proposals for federal legislation, to eliminate discrimination in employment now being conducted by the Civil Rights Commission, for guidance in our objective of developing a Federal-State program in the employment area.

Republican Platform of 1960, p.619

Special consideration of training programs aimed at developing the skills of those now working in marginal agricultural employment so that they can obtain employment in industry, notably in the new industries moving into the South.

4. Housing. We pledge:

Republican Platform of 1960, p.619

Action to prohibit discrimination in housing constructed with the aid of federal subsidies.

5. Public Facilities and Services. We pledge:

Republican Platform of 1960, p.619

Removal of any vestige of discrimination in the operation of federal facilities or procedures which may at any time be found.

Republican Platform of 1960, p.619

Opposition to the use of federal funds for the construction of segregated community facilities.

Republican Platform of 1960, p.619

Action to ensure that public transportation and other government authorized services shall be free from segregation.

6. Legislative Procedure. We pledge:

Republican Platform of 1960, p.619

Our best efforts to change present Rule 22 of the Senate and other appropriate Congressional procedures that often make unattainable proper [p.620] legislative implementation of constitutional guarantees.

Republican Platform of 1960, p.620

We reaffirm the constitutional right to peaceable assembly to protest discrimination in private business establishments. We applaud the action of the businessmen who have abandoned discriminatory practices in retail establishments, and we urge others to follow their example.

Republican Platform of 1960, p.620

Finally we recognize that civil rights is a responsibility not only of states and localities; it is a national problem and a national responsibility. The federal government should take the initiative in promoting inter-group conferences among those who, in their communities, are earnestly seeking solutions of the complex problems of desegregation—to the end that closed channels of communication may be opened, tensions eased, and a cooperative solution of local problems may be sought.

Republican Platform of 1960, p.620

In summary, we pledge the full use of the power, resources and leadership of the federal government to eliminate discrimination based on race, color, religion or national origin and to encourage understanding and good will among all races and creeds.

Immigration

Republican Platform of 1960, p.620

Immigration has historically been a great factor in the growth of the United States, not only in numbers but in the enrichment of ideas that immigrants have brought with them. This Republican Administration has given refuge to over 32,000 victims of Communist tyranny from Hungary, ended needless delay in processing applications for naturalization, and has urged other enlightened legislation to liberalize existing restrictions.

Republican Platform of 1960, p.620

Immigration has been reduced to the point where it does not provide the stimulus to growth that it should, nor are we fulfilling our obligation as a haven for the oppressed. Republican conscience and Republican policy require that:

Republican Platform of 1960, p.620

The annual number of immigrants we accept be at least doubled.

Republican Platform of 1960, p.620

Obsolete immigration laws be amended by abandoning the outdated 1920 census data as a base and substituting the 1960 census.

Republican Platform of 1960, p.620

The guidelines of our immigration policy be based upon judgment of the individual merit of each applicant for admission and citizenship.

Conclusion

Republican Platform of 1960, p.620

We have set forth the program of the Republican Party for the government of the United States. We have written a Party document, as is our duty, but we have tried to refrain from writing a merely partisan document. We have no wish to exaggerate differences between ourselves and the Democratic Party; nor can we, in conscience, obscure the differences that do exist. We believe that the Republican program is based upon a sounder understanding of the action and scope of government. There are many things a free government cannot do for its people as well as they can do them for themselves. There are some things no government should promise or attempt to do. The functions of government are so great as to bear no needless enlargement. We limit our proposals and our pledges to those areas for which the government of a great republic can reasonably be made responsible. To the best of our ability we have avoided advocating measures that would go against the grain of a free people.

Republican Platform of 1960, p.620

The history and composition of the Republican Party make it the natural instrument for eradicating the injustice and discrimination in this country. We Republicans are fortunate in being able to contend against these evils, without having to contend against each other for the principle.

Republican Platform of 1960, p.620

We believe that we see, so far as men can see through the obscurity of time and trouble, the prudent course for the nation in its hour of trial. The Soviet Union has created another of the new situations of peril which has been the Communist record from the beginning and will continue to be until our strategy for victory has succeeded. The speed of technological change makes it imperative that we measure the new situations by their special requirements and accelerate as appropriate our efforts in every direction, economic and military and political to deal with them.

Republican Platform of 1960, p.620

As rapidly as we perfect the new generations of weapons we must arm ourselves effectively and without delay. In this respect the nation stands now at one of the new points of departure. We must never allow our technology, particularly in nuclear and propulsion fields, to lag for any reason until such time as we have dependable and honest safeguards of inspection and control. We must take steps at once to secure our position in this regard and at the same time we must intensify our efforts to develop better safeguards in the field of disarmament.

Republican Platform of 1960, p.621

[p.621] The free nations of the world must ever be rallied to the cause and be encouraged to join together in more effective alliances and unions strong enough to meet all challenges and sustain the common effort. It is urgent that we innovate to keep the initiative for our free cause.

Republican Platform of 1960, p.621

We offer toil and sweat, to ward off blood and tears. We advocate an immovable resistance against every Communist aggression. We argue for a military might commensurate with our universal tasks. We end by declaring our faith in the Republic and in its people, and in the deathless principles of right from which it draws its moral force.

Shelton v. Tucker, 1960

Title: Shelton v. Tucker

Author: U.S. Supreme Court

Date: December 12, 1960

Source: 364 U.S. 479

This case was argued November 7, 1960, and was decided December 12, 1960, together with No. 83, Carr et al. v. Young et al., on certiorari to the Supreme Court of Arkansas.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF ARKANSAS

Syllabus

1960, Shelton v. Tucker, 364 U.S. 479

An Arkansas statute requires every teacher, as a condition of employment in a state supported school or college, to file annually an affidavit listing without limitation every organization to which he has belonged or regularly contributed within the preceding five years. Teachers in state supported schools and colleges are not covered by a civil service system, they are hired on a year-to-year basis, and they have no job security beyond the end of each school year. The contracts of the teachers here involved were not renewed, because they refused to file the required affidavits.

1960, Shelton v. Tucker, 364 U.S. 479

Held: The statute is invalid, because it deprives teachers of their right of associational freedom protected by the Due Process Clause of the Fourteenth Amendment from invasion by state action. Pp. 480-490.

1960, Shelton v. Tucker, 364 U.S. 479

(a) There can be no doubt of the right of a State to investigate the competence and fitness of those whom it hires to teach in its schools. P. 485.

1960, Shelton v. Tucker, 364 U.S. 479

(b) To compel a teacher to disclose his every associational tie is to impair his right of free association, a right closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society. Pp. 485-487.

1960, Shelton v. Tucker, 364 U.S. 479

(c) The unlimited and indiscriminate sweep of the statute here involved and its comprehensive interference with associational freedom go far beyond what might be justified in the exercise of the State's legitimate inquiry into the fitness and competence of its teachers. Pp. 487-490.

1960, Shelton v. Tucker, 364 U.S. 479

174 F.Supp. 351 and 231 Ark. 641, 331 S.W.2d 701, reversed. [364 U.S. 480]

STEWART, J., lead opinion

1960, Shelton v. Tucker, 364 U.S. 480

MR. JUSTICE STEWART delivered the opinion of the Court.

1960, Shelton v. Tucker, 364 U.S. 480

An Arkansas statute compels every teacher, as a condition of employment in a state-supported school or college, to file annually an affidavit listing without limitation every organization to which he has belonged or regularly contributed within the preceding five years. At issue in these two cases is the validity of that statute under the Fourteenth Amendment to the Constitution. No. 14 is an appeal from the judgment of a three-judge Federal District Court upholding the statute's validity, 174 F.Supp. 351. No. 83 is here on writ of certiorari to the Supreme Court of Arkansas, which also held the statute constitutionally valid. 231 Ark. 641, 331 S.W.2d 701.

1960, Shelton v. Tucker, 364 U.S. 480

The statute in question is Act 10 of the Second Extraordinary Session of the Arkansas General Assembly of 1958. The provisions of the Act are summarized in the opinion of the District Court as follows:

1960, Shelton v. Tucker, 364 U.S. 480

Act 10 provides in substance that no person shall be employed or elected to employment as a superintendent, principal or teacher in any public school in Arkansas, or as an instructor, professor or teacher in any public institution of higher learning in that State until such person shall have submitted to the appropriate [364 U.S. 481] hiring authority an affidavit listing all organizations to which he at the time belongs and to which he has belonged during the past five years, and also listing all organizations to which he at the time is paying regular dues or is making regular contributions, or to which within the past five years he has paid such dues or made such contributions. The Act further provides, among other things, that any contract entered into with any person who has not filed the prescribed affidavit shall be void; that no public moneys shall be paid to such person as compensation for his services, and that any such funds so paid may be recovered back either from the person receiving such funds or from the board of trustees or other governing body making the payment. The filing of a false affidavit is denounced as perjury, punishable by a fine of not less than five hundred nor more than one thousand dollars, and, in addition, the person filing the false affidavit is to lose his teaching license.

1960, Shelton v. Tucker, 364 U.S. 481

174 F.Supp. 353-354. 1 [364 U.S. 482]

1960, Shelton v. Tucker, 364 U.S. 482

These provisions must be considered against the existing system of teacher employment required by Arkansas law. Teachers there are hired on a year-to-year basis. They are not covered by a civil service system, and they have no job security beyond the end of each school year. The closest approach to tenure is a statutory provision for the automatic renewal of a teacher's contract if he is not notified within ten days after the end of a school year that the contract has not been renewed. Ark.1947 Stat.Ann. § 80-1304(b) (1960); Wabbaseka School District No. 7 v. Johnson, 225 Ark. 982, 286 S.W.2d 841.

1960, Shelton v. Tucker, 364 U.S. 482

The plaintiffs in the Federal District Court (appellants here) were B. T. Shelton, a teacher employed in the Little Rock Public School System, suing for himself and others similarly situated, together with the Arkansas Teachers Association and its Executive Secretary, suing for the benefit of members of the Association. Shelton had been [364 U.S. 483] employed in the Little Rock Special School District for twenty-five years. In the spring of 1959, he was notified that, before he could be employed for the 1959-1960 school year, he must file the affidavit required by Act 10, listing all his organizational connections over the previous five years. He declined to file the affidavit, and his contract for the ensuing school year was not renewed. At the trial, the evidence showed that he was not a member of the Communist Party or of any organization advocating the overthrow of the Government by force, and that he was a member of the National Association for the Advancement of Colored People. The court upheld Act 10, finding the information it required was "relevant," and relying on several decisions of this Court, particularly Garner v. Board of Public Works of Los Angeles, 341 U.S. 716; Adler v. Board of Education, 342 U.S. 485; Beilan v. [364 U.S. 484] Board of Education, 357 U.S. 399, and Lerner v. Casey, 357 U.S. 468. 2

1960, Shelton v. Tucker, 364 U.S. 484

The plaintiffs in the state court proceedings (petitioners here) were Max Carr, an associate professor at the University of Arkansas, and Ernest T. Gephardt, a teacher at Central High School in Little Rock, each suing for himself and others similarly situated. Each refused to execute and file the affidavit required by Act 10. Carr executed an affirmation 3 in which he listed his membership in professional organizations, denied ever having been a member of any subversive organization, and offered to answer any questions which the University authorities might constitutionally ask touching upon his qualifications as a teacher. Gephardt filed an affidavit stating that he had never belonged to a subversive organization, disclosing his membership in the Arkansas Education Association and the American Legion, and also offering to answer any questions which the school authorities might constitutionally ask touching upon his qualifications as a teacher. Both were advised that their failure to comply with the requirements of Act 10 would make impossible their reemployment as teachers for the following school year. The Supreme Court of Arkansas upheld the constitutionality of Act 10, on its face and as applied to the petitioners. 231 Ark. 641, 331 S.W.2d 701.

I

1960, Shelton v. Tucker, 364 U.S. 484

It is urged here, as it was unsuccessfully urged throughout the proceedings in both the federal and state courts, that Act 10 deprives teachers in Arkansas of their [364 U.S. 485] rights to personal, associational, and academic liberty, protected by the Due Process Clause of the Fourteenth Amendment from invasion by state action. In considering this contention, we deal with two basic postulates.

1960, Shelton v. Tucker, 364 U.S. 485

First. There can be no doubt of the right of a State to investigate the competence and fitness of those whom it hires to teach in its schools, as this Court before now has had occasion to recognize.

1960, Shelton v. Tucker, 364 U.S. 485

A teacher works in a sensitive area in a school room. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern.

1960, Shelton v. Tucker, 364 U.S. 485

Adler v. Board of Education, 342 U.S. 485, 493. There is

1960, Shelton v. Tucker, 364 U.S. 485

no requirement in the Federal Constitution that a teacher's classroom conduct be the sole basis for determining his fitness. Fitness for teaching depends on a broad range of factors.

1960, Shelton v. Tucker, 364 U.S. 485

Beilan v. Board of Education, 357 U.S. 399, 406. 4

1960, Shelton v. Tucker, 364 U.S. 485

This controversy is thus not of a pattern with such cases as NAACP v. Alabama, 357 U.S. 449, and Bates v. Little Rock, 361 U.S. 516. In those cases, the Court held that there was no substantially relevant correlation between the governmental interest asserted and the State's effort to compel disclosure of the membership lists involved. Here, by contrast, there can be no question of the relevance of a State's inquiry into the fitness and competence of its teachers. 5

1960, Shelton v. Tucker, 364 U.S. 485

Second. It is not disputed that to compel a teacher to disclose his every associational tie is to impair [364 U.S. 486] that teacher's right of free association, a right closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society. De Jonge v. Oregon, 299 U.S. 353, 364; Bates v. Little Rock, supra, at 361 U.S. 2-5522-523. Such interference with personal freedom is conspicuously accented when the teacher serves at the absolute will of those to whom the disclosure must be made—those who any year can terminate the teacher's employment without bringing charges, without notice, without a hearing, without affording an opportunity to explain.

1960, Shelton v. Tucker, 364 U.S. 486

The statute does not provide that the information it requires be kept confidential. Each school board is left free to deal with the information as it wishes. 6 The record contains evidence to indicate that fear of public disclosure is neither theoretical nor groundless. 7 Even if there were no disclosure to the general public, the pressure upon a teacher to avoid any ties which might displease those who control his professional destiny would be constant and heavy. Public exposure, bringing with it the possibility of public pressures upon school boards to discharge teachers who belong to unpopular or minority [364 U.S. 487] organizations, would simply operate to widen and aggravate the impairment of constitutional liberty.

1960, Shelton v. Tucker, 364 U.S. 487

The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.

1960, Shelton v. Tucker, 364 U.S. 487

By limiting the power of the States to interfere with freedom of speech and freedom of inquiry and freedom of association, the Fourteenth Amendment protects all persons, no matter what their calling. But, in view of the nature of the teacher's relation to the effective exercise of the rights which are safeguarded by the Bill of Rights and by the Fourteenth Amendment, inhibition of freedom of thought, and of action upon thought, in the case of teachers brings the safeguards of those amendments vividly into operation. Such unwarranted inhibition upon the free spirit of teachers…has an unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice; it makes for caution and timidity in their associations by potential teachers.

1960, Shelton v. Tucker, 364 U.S. 487

Wieman v. Updegraff, 344 U.S. 183, 195 (concurring opinion).

1960, Shelton v. Tucker, 364 U.S. 487

Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate….

1960, Shelton v. Tucker, 364 U.S. 487

Sweezy v. New Hampshire, 354 U.S. 234, 250.

II

1960, Shelton v. Tucker, 364 U.S. 487

The question to be decided here is not whether the State of Arkansas can ask certain of its teachers about all their organizational relationships. It is not whether the State can ask all of its teachers about certain of their associational ties. It is not whether teachers can be asked how many organizations they belong to, or how much time they spend in organizational activity. The question is whether the State can ask every one of its teachers to disclose every single organization with which he has [364 U.S. 488] been associated over a five-year period. The scope of the inquiry required by Act 10 is completely unlimited. The statute requires a teacher to reveal the church to which he belongs, or to which he has given financial support. It requires him to disclose his political party, and every political organization to which he may have contributed over a five-year period. It requires him to list, without number, every conceivable kind of associational tie—social, professional, political, avocational, or religious. Many such relationships could have no possible bearing upon the teacher's occupational competence or fitness.

1960, Shelton v. Tucker, 364 U.S. 488

In a series of decisions, this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. 8 The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose. 9

1960, Shelton v. Tucker, 364 U.S. 488

In Lovell v. Griffin, 303 U.S. 444, the Court invalidated an ordinance prohibiting all distribution of literature at any time or place in Griffin, Georgia, without a license, pointing out that so broad an interference was unnecessary to accomplish legitimate municipal aims. In [364 U.S. 489] Schneider v. State, 308 U.S. 147, the Court dealt with ordinances of four different municipalities which either banned or imposed prior restraints upon the distribution of handbills. In holding the ordinances invalid, the Court noted that, where legislative abridgment of "fundamental personal rights and liberties" is asserted,

1960, Shelton v. Tucker, 364 U.S. 489

the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.

1960, Shelton v. Tucker, 364 U.S. 489

308 U.S. at 161. In Cantwell v. Connecticut, 310 U.S. 296, the Court said that

1960, Shelton v. Tucker, 364 U.S. 489

[c]onduct remains subject to regulation for the protection of society," but pointed out that, in each case, "the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom.

1960, Shelton v. Tucker, 364 U.S. 489

310 U.S. at 304. Illustrations of the same constitutional principle are to be found in many other decisions of the Court, among them Martin v. Struthers, 319 U.S. 141; Saia v. New York, 334 U.S. 558, and Kunz v. New York, 340 U.S. 290.

1960, Shelton v. Tucker, 364 U.S. 489

As recently as last Term, we held invalid an ordinance prohibiting the distribution of handbills because the breadth of its application went far beyond what was necessary to achieve a legitimate governmental purpose. Talley v. California, 362 U.S. 60. In that case, the Court noted that it had been

1960, Shelton v. Tucker, 364 U.S. 489

urged that this ordinance is aimed at providing a way to identify those responsible for fraud, false advertising and libel. Yet the ordinance is in no manner so limited…. Therefore we do not pass on the validity of an ordinance limited to prevent these or any other supposed evils. This ordinance simply bars all handbills under all circumstances anywhere that do not have the names and addresses printed on them in the place the ordinance requires.

1960, Shelton v. Tucker, 364 U.S. 489

362 U.S. at 64. [364 U.S. 490]

1960, Shelton v. Tucker, 364 U.S. 490

The unlimited and indiscriminate sweep of the statute now before us brings it within the ban of our prior cases. The statute's comprehensive interference with associational freedom goes far beyond what might be justified in the exercise of the State's legitimate inquiry into the fitness and competency of its teachers. The judgments in both cases must be reversed.

1960, Shelton v. Tucker, 364 U.S. 490

It is so ordered.

FRANKFURTER, J., dissenting

1960, Shelton v. Tucker, 364 U.S. 490

MR. JUSTICE FRANKFURTER, dissenting.

1960, Shelton v. Tucker, 364 U.S. 490

As one who has strong views against crude intrusions by the state into the atmosphere of creative freedom in which alone the spirit and mind of a teacher can fruitfully function, I may find displeasure with the Arkansas legislation now under review. But, in maintaining the distinction between private views and constitutional restrictions, I am constrained to find that it does not exceed the permissible range of state action limited by the Fourteenth Amendment. By way of emphasis, I therefore add a few words to the dissent of MR. JUSTICE HARLAN, in which I concur.

1960, Shelton v. Tucker, 364 U.S. 490

It is essential, at the outset, to establish what is not involved in this litigation:

1960, Shelton v. Tucker, 364 U.S. 490

(1) As the Court recognizes, this is not a case where, as in NAACP v. Alabama, 357 U.S. 449, and Bates v. Little Rock, 361 U.S. 516, a State, asserting the power to compel disclosure of organizational affiliations, can show no rational relation between disclosure and a governmental interest justifying it. Those cases are relevant here only because of their recognition that an interest in privacy, in nondisclosure, may, under appropriate circumstances, claim constitutional protection. The question here is whether that interest is overborne by a countervailing public interest. To this concrete, limited question—whether the State's interest in knowing the nature [364 U.S. 491] of the organizational activities of teachers employed by it or by institutions which it supports, as a basis for appraising the fitness of those teachers for the positions which they hold, outweighs the interest recognized in NAACP and Bates—those earlier decisions themselves give no answer.

1960, Shelton v. Tucker, 364 U.S. 491

(2) The Court's holding that the Arkansas statute is unconstitutional does not, apparently, rest upon the threat that the information which it requires of teachers will be revealed to the public. In view of the opinion of the Supreme Court of Arkansas, decision here could not, I believe, turn on a claim that the teachers' affidavits will not remain confidential. That court has expressly said that,

1960, Shelton v. Tucker, 364 U.S. 491

[i]nasmuch as the validity of the act depends upon its being construed as a bona fide legislative effort to provide school boards with needed information, it necessarily follows that the affidavits need not be opened to public inspection, for the permissible purpose of the statute is to enlighten the school board alone.

1960, Shelton v. Tucker, 364 U.S. 491

231 Ark. 641, 646, 331 S.W.2d 701, 704. If the validity of the statute depended on this matter, the pronouncement of the State's highest judicial organ would have to be read as establishing—the earlier view of the State Attorney General notwithstanding—that the statute does not authorize the making public of the affidavits. Even were the Arkansas court's language far more ambiguous than it is, it would be our duty so to understand its opinion, in accordance with the principle that, "[s]o far as statutes fairly may be construed in such a way as to avoid doubtful constitutional questions, they should be so construed." Fox v. Washington, 236 U.S. 273, 277.

1960, Shelton v. Tucker, 364 U.S. 491

(3) This is not a case in which Lovell v. Griffin, 303 U.S. 444; Cantwell v. Connecticut, 310 U.S. 296; Saia v. New York, 334 U.S. 558, and Kunz v. New York, 340 U.S. 290, call for condemnation of the "breadth" of the statute. Those decisions struck down licensing laws [364 U.S. 492] which vested in administrative officials a power of censorship over communications not confined within standards designed to curb the dangers of arbitrary or discriminatory official action. The "breadth" with which the cases were concerned was the breadth of unrestricted discretion left to a censor, which permitted him to make his own subjective opinions the practically unreviewable measure of permissible speech. 1 Nor is this a case of the nature of Thornhill v. Alabama, 310 U.S. 88, and Herndon v. Lowry, 301 U.S. 242, 2 involving penal statutes which the Court found impermissibly "broad" in quite another sense. Prohibiting, indiscriminately, activity within and without the sphere of the Fourteenth Amendment's protection of free expression, those statutes had the double vice of deterring the exercise of constitutional freedoms by making the uncertain line of the Amendment's application determinative of criminality, and of prescribing indefinite standards of guilt, thereby allowing the potential vagaries and prejudices of juries, effectively insulated against control by reviewing courts, the power to intrude upon the protected sphere. The statute challenged in the present cases involves neither administrative discretion to censor nor vague, overreaching tests of criminal responsibility. [364 U.S. 493]

1960, Shelton v. Tucker, 364 U.S. 493

Where state assertions of authority are attacked as impermissibly restrictive upon thought, expression, or association, the existence vel non of other possible less restrictive means of achieving the object which the State seeks is, of course, a constitutionally relevant consideration. This is not because some novel, particular rule of law obtains in cases of this kind. Whenever the reasonableness and fairness of a measure are at issue—as they are in every case in which this Court must apply the standards of reason and fairness, with the appropriate scope to be given those concepts, in enforcing the Due Process Clause of the Fourteenth Amendment as a limitation upon state action—the availability or unavailability of alternative methods of proceeding is germane. Thus, a State may not prohibit the distribution of literature on its cities' streets as a means of preventing littering when the same end might be achieved with only slightly greater inconvenience by applying the sanctions of the penal law not to the pamphleteer who distributes the paper, but to the recipient who crumples it and throws it away. Hague v. C.I.O., 307 U.S. 496; Schneider v. State, 308 U.S. 147; Jamison v. Texas, 318 U.S. 413. Nor may a State protect its population from the dangers and incitements of salacious books by restricting the reading matter of adults to that which would be harmless to the susceptible mind of a child. Butler v. Michigan, 352 U.S. 380. And see De Jonge v. Oregon, 299 U.S. 353; Talley v. California, 362 U.S. 60. 3 But the consideration [364 U.S. 494] of feasible alternative modes of regulation in these cases did not imply that the Court might substitute its own choice among alternatives for that of a state legislature, or that the States were to be restricted to the "narrowest" workable means of accomplishing an end. See Prince v. Massachusetts, 321 U.S. 158, 169-170. Consideration of alternatives may focus the precise exercise of state legislative authority which is tested in this Court by the standard of reasonableness, but it does not alter or displace that standard. The issue remains whether, in light of the particular kind of restriction upon individual liberty which a regulation entails, it is reasonable for a legislature to choose that form of regulation, rather than others less restrictive. To that determination, the range of judgment easily open to a legislature in considering the relative degrees of efficiency of alternative means in achieving the end it seeks is pertinent.

1960, Shelton v. Tucker, 364 U.S. 494

In the present case, the Court strikes down an Arkansas statute requiring that teachers disclose to school officials all of their organizational relationships on the ground that "Many such relationships could have no possible bearing upon the teacher's occupational competence or fitness." Granted that a given teacher's membership in the First Street Congregation is, standing alone, of little relevance to what may rightly be expected of a teacher, is that membership equally irrelevant when it is discovered that the teacher is, in fact, a member of the First Street Congregation and the Second Street Congregation and the Third Street Congregation and the 4-H Club and the 3-H Club and half a dozen other groups? Presumably, a teacher may have so many divers associations, so many divers commitments, that they consume his time and energy and interest at the expense of his work or even of his professional dedication. Unlike wholly individual interests, organizational connections—because they involve obligations undertaken with relation to other persons [364 U.S. 495] —may become inescapably demanding and distracting. Surely, a school board is entitled to inquire whether any of its teachers has placed himself, or is placing himself, in a condition where his work may suffer. Of course, the State might ask: "To how many organizations do you belong?" or "How much time do you expend at organizational activity?" But the answer to such questions could reasonably be regarded by a state legislature as insufficient, both because the veracity of the answer is more difficult to test in cases where doubts as to veracity may arise than in the case of the answers required by the Arkansas statute, and because an estimate of time presently spent in organizational activity reveals nothing as to the quality and nature of that activity, upon the basis of which, necessarily, judgment or prophesy of the extent of future involvement must be based. A teacher's answers to the questions which Arkansas asks, moreover, may serve the purpose of making known to school authorities persons who come into contact with the teacher in all of the phases of his activity in the community, and who can be questioned, if need be, concerning the teacher's conduct in matters which this Court can certainly not now say are lacking in any pertinence to professional fitness. It is difficult to understand how these particular ends could be achieved by asking "certain of [the State's] teachers about all their organizational relationships," or "all of its teachers about certain of their associational ties," or all of its teachers how many associations currently involve them, or during how many hours, and difficult, therefore, to appreciate why the Court deems unreasonable and forbids what Arkansas does ask.

1960, Shelton v. Tucker, 364 U.S. 495

If I dissent from the Court's disposition in these cases, it is not that I put a low value on academic freedom. See Wieman v. Updegraff, 344 U.S. 183, 194 (concurring opinion); Sweezy v. New Hampshire, 354 U.S. 234, 255 (concurring opinion). It is because that very freedom, [364 U.S. 496] in its most creative reaches, is dependent in no small part upon the careful and discriminating selection of teachers. This process of selection is an intricate affair, a matter of fine judgment, and, if it is to be informed, it must be based upon a comprehensive range of information. I am unable to say, on the face of this statute, that Arkansas could not reasonably find that the information which the statute requires—and which may not be otherwise acquired than by asking the question which it asks—is germane to that selection. Nor, on this record, can I attribute to the State a purpose to employ the enactment as a device for the accomplishment of what is constitutionally forbidden. Of course, if the information gathered by the required affidavits is used to further a scheme of terminating the employment of teachers solely because of their membership in unpopular organizations, that use will run afoul of the Fourteenth Amendment. It will be time enough, if such use is made, to hold the application of the statute unconstitutional. See Yick Wo v. Hopkins, 118 U.S. 356. Because I do not find that the disclosure of teachers' associations to their school boards is, without more, such a restriction upon their liberty, or upon that of the community, as to overbalance the State's interest in asking the question, I would affirm the judgments below.

1960, Shelton v. Tucker, 364 U.S. 496

I am authorized to say that MR. JUSTICE CLARK, MR. JUSTICE HARLAN and MR. JUSTICE WHITAKER agree with this opinion.

HARLAN, J., dissenting

1960, Shelton v. Tucker, 364 U.S. 496

MR. JUSTICE HARLAN, whom MR. JUSTICE FRANKFURTER, MR. JUSTICE CLARK and MR. JUSTICE WHITAKER join, dissenting.

1960, Shelton v. Tucker, 364 U.S. 496

Of course, this decision has a natural tendency to enlist support, involving as it does an unusual statute that touches constitutional rights whose protection in the context of the racial situation in various parts of the country [364 U.S. 497] demands the unremitting vigilance of the courts. Yet that very circumstance also serves to remind of the restraints that attend constitutional adjudication. It must be emphasized that neither of these cases actually presents an issue of racial discrimination. The statute, on its face, applies to all Arkansas teachers, irrespective of race, and there is no showing that it has been discriminatorily administered.

1960, Shelton v. Tucker, 364 U.S. 497

The issue is whether, consistently with the Fourteenth Amendment, a State may require teachers in its public schools or colleges to disclose, as a condition precedent to their initial or continued employment, all organizations to which they have belonged, paid dues, or contributed within the past five years. Since I believe that such a requirement cannot be said to transgress the constitutional limits of a State's conceded authority to determine the qualifications of those serving it as teachers, I am bound to consider that Arkansas had the right to pass the statute in question, and therefore conceive it my duty to dissent.

1960, Shelton v. Tucker, 364 U.S. 497

The legal framework in which the issue must be judged is clear. The rights of free speech and association embodied in the "liberty" assured against state action by the Fourteenth Amendment (see De Jonge v. Oregon, 299 U.S. 353, 364; Gitlow v. New York, 268 U.S. 652, 672, dissenting opinion of Holmes, J.) are not absolute. Near v. Minnesota, 283 U.S. 697, 708; Whitney v. California, 274 U.S. 357, 373 (concurring opinion of Brandeis, J.). Where official action is claimed to invade these rights, the controlling inquiry is whether such action is justifiable on the basis of a superior governmental interest to which such individual rights must yield. When the action complained of pertains to the realm of investigation, our inquiry has a double aspect: first, whether the investigation relates to a legitimate governmental purpose; second, whether, judged in the light of that purpose, the questioned [364 U.S. 498] action has substantial relevance thereto. See Barenblatt v. United States, 360 U.S. 109; Uphaus v. Wyman, 360 U.S. 72.

1960, Shelton v. Tucker, 364 U.S. 498

In the two cases at hand, I think both factors are satisfied. It is surely indisputable that a State has the right to choose its teachers on the basis of fitness. And I think it equally clear, as the Court appears to recognize, that information about a teacher's associations may be useful to school authorities in determining the moral, professional, and social qualifications of the teacher, as well as in determining the type of service for which he will be best suited in the educational system. See Adler v. Board of Education, 342 U.S. 485; Beilan v. Board of Public Education, 357 U.S. 399; see also Slochower v. Board of Education, 350 U.S. 551. Furthermore, I take the Court to acknowledge that, agreeably to our previous decisions, the State may enquire into associations to the extent that the resulting information may be in aid of that legitimate purpose. These cases therefore do not present a situation such as we had in NAACP v. Alabama, 357 U.S. 449, and Bates v. Little Rock, 361 U.S. 516, where the required disclosure bears no substantial relevance to a legitimate state interest.

1960, Shelton v. Tucker, 364 U.S. 498

Despite these considerations, this statute is stricken down because, in the Court's view, it is too broad, because it asks more than may be necessary to effectuate the State's legitimate interest. Such a statute, it is said, cannot justify the inhibition on freedom of association which so blanket an inquiry may entail. Cf. NAACP v. Alabama, supra; Bates v. Little Rock, supra.

1960, Shelton v. Tucker, 364 U.S. 498

I am unable to subscribe to this view, because I believe it impossible to determine a priori the place where the line should be drawn between what would be permissible inquiry and overbroad inquiry in a situation like this. Certainly the Court does not point that place out. There can be little doubt that much of the associational information [364 U.S. 499] called for by the statute will be of little or no use whatever to the school authorities, but I do not understand how those authorities can be expected to fix in advance the terms of their enquiry so that it will yield only relevant information.

1960, Shelton v. Tucker, 364 U.S. 499

I do not mean to say that alternatives such as an enquiry limited to the names of organizations of whose character the State is presently aware, or to a class of organizations defined by their purposes, would not be more consonant with a decent respect for the privacy of the teacher, nor that such alternatives would be utterly unworkable. I do see, however, that these alternatives suffer from deficiencies so obvious where a State is bent upon discovering everything which would be relevant to its proper purposes, that I cannot say that it must, as a matter of constitutional compulsion, adopt some such means instead of those which have been chosen here.

1960, Shelton v. Tucker, 364 U.S. 499

Finally, I need hardly say that, if it turns out that this statute is abused, either by an unwarranted publicizing of the required associational disclosures or otherwise, we would have a different kind of case than those presently before us. See Lassiter v. Northampton Elections Board, 360 U.S. 45, 53-54. All that is now here is the validity of the statute on its face, and I am unable to agree that, in this posture of things, the enactment can be said to be unconstitutional.

1960, Shelton v. Tucker, 364 U.S. 499

I would affirm in both cases.

Footnotes

STEWART, J., lead opinion (Footnotes)

1960, Shelton v. Tucker, 364 U.S. 499

1. The statute is in seven sections. Section 1 provides:

1960, Shelton v. Tucker, 364 U.S. 499

It is hereby declared that the purpose of this act is to provide assistance in the administration and financing of the public schools of Arkansas, and institutions of higher learning supported wholly or in part by public funds, and it is hereby determined that it will be beneficial to the public schools and institutions of higher learning and the State of Arkansas, if certain affidavits of membership are required as hereinafter provided.

1960, Shelton v. Tucker, 364 U.S. 499

Section 2 provides:

1960, Shelton v. Tucker, 364 U.S. 499

No superintendent, principal, or teacher shall be employed or elected in any elementary or secondary school by the district operating such school, and no instructor, professor, or other teacher shall be employed or elected in any institution of higher learning, or other educational institution supported wholly or in part by public funds, by the trustees or governing authority thereof, until, as a condition precedent to such employment, such superintendent, principal, teacher, instructor or professor shall have filed with such board of trustees or governing authority an affidavit as to the names and addresses of all incorporated and/or unincorporated associations and organizations that such superintendent, principal, teacher, instructor or professor is or within the past five years has been a member of, or to which organization or association such superintendent, principal, teacher, instructor, professor, or other teacher is presently paying, or within the past five years has paid regular dues, or to which the same is making or within the past five years has made regular contributions.

1960, Shelton v. Tucker, 364 U.S. 499

Section 3 sets out the form of affidavit to be used.

1960, Shelton v. Tucker, 364 U.S. 499

Section 4 provides:

1960, Shelton v. Tucker, 364 U.S. 499

Any contract entered into by any board of any school district, board of trustees of any institution of higher learning, or other educational institution supported wholly or in part by public funds, or by any governing authority thereof, with any superintendent, principal, teacher, instructor, professor, or other instructional personnel, who shall not have filed the affidavit required in Section 2 hereof prior to the employment or election of such person and prior to the making of such contracts, shall be null and void and no funds shall be paid under said contract to such superintendent, principal, teacher, instructor, professor, or other instructional personnel; any funds so paid under said contract to such superintendent, principal, teacher, instructor, professor, or other instructional personnel, may be recovered from the person receiving the same and/or from the board of trustees or other governing authority by suit filed in the circuit court of the county in which such contract was made, and any judgment entered by such court in such cause of action shall be a personal judgment against the defendant therein and upon the official bonds made by such defendants, if any such bonds be in existence.

1960, Shelton v. Tucker, 364 U.S. 499

Section 5 provides that a teacher filing a false affidavit shall be guilty of perjury, punishable by a fine, and shall forfeit his license to teach in any school or other institution of learning supported wholly or in part by public funds.

1960, Shelton v. Tucker, 364 U.S. 499

Section 6 is a separability provision.

1960, Shelton v. Tucker, 364 U.S. 499

Section 7 is an emergency clause, reading in part as follows:

1960, Shelton v. Tucker, 364 U.S. 499

It is hereby determined that the decisions of the United States Supreme Court in the school segregation cases require solution of a great variety of local public school problems of considerable complexity immediately and which involve the health, safety and general welfare of the people of the State of Arkansas, and that the purpose of this act is to assist in the solution of these problems and to provide for the more efficient administration of public education.

1960, Shelton v. Tucker, 364 U.S. 499

2. In the same proceeding, the court held constitutionally invalid an Arkansas statute making it unlawful for any member of the National Association for the Advancement of Colored People to be employed by the State of Arkansas or any of its subdivisions. 174 F.Supp. 351.

1960, Shelton v. Tucker, 364 U.S. 499

3. The affirmation recited that Carr was "conscientiously opposed to taking an oath or swearing in any form…. "

1960, Shelton v. Tucker, 364 U.S. 499

4. The actual holdings in Adler and Beilan, involving the validity of teachers' discharges, are not relevant to the present case.

1960, Shelton v. Tucker, 364 U.S. 499

5. The declared purpose of Act 10 is "to provide assistance in the administration and financing of the public schools…. " The declared justification for the emergency clause is "to assist in the solution" of problems raised by "the decisions of the United States Supreme Court in the school segregation cases." See note 1. But neither the breadth and generality of the declared purpose nor the possible irrelevance of the emergency provision detracts from the existence of an actual relevant state interest in the inquiry.

1960, Shelton v. Tucker, 364 U.S. 499

6. The record contains an opinion of the State Attorney General that

1960, Shelton v. Tucker, 364 U.S. 499

it is an administrative determination, to be made by the respective Boards, as to the disclosure of information contained in the affidavits.

1960, Shelton v. Tucker, 364 U.S. 499

The Supreme Court of Arkansas has held only that "the affidavits need not be opened to public inspection…. " 231 Ark. 641, 646, 331 S.W.2d 701, 704. (Emphasis added.)

1960, Shelton v. Tucker, 364 U.S. 499

7. In the state court proceedings, a witness who was a member of the Capital Citizens Council testified that his group intended to gain access to some of the Act 10 affidavits with a view to eliminating from the school system persons who supported organizations unpopular with the group. Among such organizations, he named the American Civil Liberties Union, the Urban League, the American Association of University Professors, and the Women's Emergency Committee to Open Our Schools.

1960, Shelton v. Tucker, 364 U.S. 499

8. In other areas, involving different constitutional issues, more administrative leeway has been thought allowable in the interest of increased efficiency in accomplishing a clearly constitutional central purpose. See Purity Extract Co. v. Lynch, 226 U.S. 192; Jacob Ruppert v. Caffey, 251 U.S. 264; Schlesinger v. Wisconsin, 270 U.S. 230, 241 (dissenting opinion); Queenside Hills Co. v. Saxl, 328 U.S. 80, 83. But cf. Dean Milk Co. v. Madison, 340 U.S. 349.

1960, Shelton v. Tucker, 364 U.S. 499

9. See Freund, Competing Freedoms in American Constitutional Law, 13 U. of Chicago Conference Series 26, 32-33; Richardson, Freedom of Expression and the Function of Courts, 65 Harv.L.Rev. 1, 6, 23-24; Comment, Legislative Inquiry into Political Activity: First Amendment Immunity From Committee Interrogation, 65 Yale L.J. 1159, 1173-1175.

FRANKFURTER, J., dissenting (Footnotes)

1960, Shelton v. Tucker, 364 U.S. 499

1. See also Hague v. C.I.O., 307 U.S. 496; Schneider v. State, 308 U.S. 147 (the Irvington ordinance); Largent v. Texas, 318 U.S. 418; Jones v. Opelika, 319 U.S. 103, vacating 316 U.S. 584 (the Opelika ordinance); Niemotko v. Maryland, 340 U.S. 268; Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495; Gellin v. Texas, 343 U.S. 960; Superior Films, Inc. v. Department of Education, 346 U.S. 587; Staub v. Baxley, 355 U.S. 313; cf. Marsh v. Alabama, 326 U.S. 501; Tucker v. Texas, 326 U.S. 517. The common law count in the Cantwell case involved considerations similar to those which were determinative of the decisions cited in text and note, at note 2, infra.

1960, Shelton v. Tucker, 364 U.S. 499

2. See also Stromberg v. California, 283 U.S. 359; Winters v. New York, 333 U.S. 507.

1960, Shelton v. Tucker, 364 U.S. 499

3. Language characterizing state statutes as overly broad has sometimes been found in opinions where it was unnecessary to the result, and merely meant to express the idea that whatever state interest was there asserted as underlying a regulation was insufficient to justify the regulation's application to particular circumstances fairly within the Fourteenth Amendment's protection. Compare Thomas v. Collins, 323 U.S. 516, with Fiske v. Kansas, 274 U.S. 380. Compare Martin v. Struthers, 319 U.S. 141, with Breard v. Alexandria, 341 U.S. 622.

Dwight D. Eisenhower, Farewell Address, 17 January 1961

President Eisenhower's Farewell Address, 1961

Title: President Eisenhower's Farewell Address

Author: Dwight D. Eisenhower

Date: January 17, 1961

Source: Public Papers of the Presidents, Eisenhower, 1960-1961, pp.1035-1040

[Delivered by radio and television from the President's Office at 8:30 p.m.]

Public Papers of Eisenhower, 1960-1961, p.1035

My fellow Americans:

Public Papers of Eisenhower, 1960-1961, p.1035

Three days from now, after half a century in the service of our country, I shall lay down the responsibilities of office as, in traditional and solemn ceremony, the authority of the Presidency is vested in my successor.

Public Papers of Eisenhower, 1960-1961, p.1036

This evening I come to you with a message of leave-taking and farewell, and to share a few final thoughts with you, my countrymen.

Public Papers of Eisenhower, 1960-1961, p.1036

Like every other citizen, I wish the new President, and all who will labor with him, Godspeed. I pray that the coming years will be blessed with peace and prosperity for all.

Public Papers of Eisenhower, 1960-1961, p.1036

Our people expect their President and the Congress to find essential agreement on issues of great moment, the wise resolution of which will better shape the future of the Nation.

Public Papers of Eisenhower, 1960-1961, p.1036

My own relations with the Congress, which began on a remote and tenuous basis when, long ago, a member of the Senate appointed me to West Point, have since ranged to the intimate during the war and immediate post-war period, and, finally, to the mutually interdependent during these past eight years.

Public Papers of Eisenhower, 1960-1961, p.1036

In this final relationship, the Congress and the Administration have, on most vital issues, cooperated well, to serve the national good rather than mere partisanship, and so have assured that the business of the Nation should go forward. So, my official relationship with the Congress ends in a feeling, on my part, of gratitude that we have been able to do so much together.

II.

Public Papers of Eisenhower, 1960-1961, p.1036

We now stand ten years past the midpoint of a century that has witnessed four major wars among great nations. Three of these involved our own country. Despite these holocausts America is today the strongest, the most influential and most productive nation in the world. Understandably proud of this pre-eminence, we yet realize that America's leadership and prestige depend, not merely upon our unmatched material progress, riches and military strength, but on how we use our power in the interests of world peace and human betterment.

III.

Public Papers of Eisenhower, 1960-1961, p.1036

Throughout America's adventure in free government, our basic purposes have been to keep the peace; to foster progress in human achievement, and to enhance liberty, dignity and integrity among people and among nations. To strive for less would be unworthy of a free and religious people. Any failure traceable to arrogance, or our lack of comprehension or readiness to sacrifice would inflict upon us grievous hurt both at home and abroad.

Public Papers of Eisenhower, 1960-1961, p.1037

Progress toward these noble goals is persistently threatened by the conflict now engulfing the world. It commands our whole attention, absorbs our very beings. We face a hostile ideology—global in scope, atheistic in character, ruthless in purpose, and insidious in method. Unhappily the danger it poses promises to be of indefinite duration. To meet it successfully, there is called for, not so much the emotional and transitory sacrifices of crisis, but rather those which enable us to carry forward steadily, surely, and without complaint the burdens of a prolonged and complex struggle—with liberty the stake. Only thus shall we remain, despite every provocation, on our charted course toward permanent peace and human betterment.

Public Papers of Eisenhower, 1960-1961, p.1037

Crises there will continue to be. In meeting them, whether foreign or domestic, great or small, there is a recurring temptation to feel that some spectacular and costly action could become the miraculous solution to all current difficulties. A huge increase in newer elements of our defense; development of unrealistic programs to cure every ill in agriculture; a dramatic expansion in basic and applied research—these and many other possibilities, each possibly promising in itself, may be suggested as the only way to the road we wish to travel.

Public Papers of Eisenhower, 1960-1961, p.1037

But each proposal must be weighed in the light of a broader consideration: the need to maintain balance in and among national programs—balance between the private and the public economy, balance between cost and hoped for advantage—balance between the clearly necessary and the comfortably desirable; balance between our essential requirements as a nation and the duties imposed by the nation upon the individual; balance between actions of the moment and the national welfare of the future. Good judgment seeks balance and progress; lack of it eventually finds imbalance and frustration.

Public Papers of Eisenhower, 1960-1961, p.1037

The record of many decades stands as proof that our people and their government have, in the main, understood these truths and have responded to them well, in the face of stress and threat. But threats, new in kind or degree, constantly arise. I mention two only.

IV.

Public Papers of Eisenhower, 1960-1961, p.1037

A vital element in keeping the peace is our military establishment. Our arms must be mighty, ready for instant action, so that no potential aggressor may be tempted to risk his own destruction.

Public Papers of Eisenhower, 1960-1961, p.1037–p.1038

Our military organization today bears little relation to that known [p.1038] by any of my predecessors in peacetime, or indeed by the fighting men of World War II or Korea.

Public Papers of Eisenhower, 1960-1961, p.1038

Until the latest of our world conflicts, the United States had no armaments industry. American makers of plowshares could, with time and as required, make swords as well. But now we can no longer risk emergency improvisation of national defense; we have been compelled to create a permanent armaments industry of vast proportions. Added to this, three and a half million men and women are directly engaged in the defense establishment. We annually spend on military security more than the net income of all United States corporations.

Public Papers of Eisenhower, 1960-1961, p.1038

This conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence-economic, political, even spiritual—is felt in every city, every State house, every office of the Federal government. We recognize the imperative need for this development. Yet we must not fail to comprehend its grave implications. Our toil, resources and livelihood are all involved; so is the very structure of our society.

Public Papers of Eisenhower, 1960-1961, p.1038

In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist.

Public Papers of Eisenhower, 1960-1961, p.1038

We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals, so that security and liberty may prosper together.

Public Papers of Eisenhower, 1960-1961, p.1038

Akin to, and largely responsible for the sweeping changes in our industrial-military posture, has been the technological revolution during recent decades.

Public Papers of Eisenhower, 1960-1961, p.1038

In this revolution, research has become central; it also becomes more formalized, complex, and costly. A steadily increasing share is conducted for, by, or at the direction of, the Federal government.

Public Papers of Eisenhower, 1960-1961, p.1038–p.1039

Today, the solitary inventor, tinkering in his shop, has been overshadowed by task forces of scientists in laboratories and testing fields. In the same fashion, the free university, historically the fountainhead of free ideas and scientific discovery, has experienced a revolution in the conduct of research. Partly because of the huge costs involved, a government contract becomes virtually a substitute for intellectual curiosity. For every [p.1039] old blackboard there are now hundreds of new electronic computers.

Public Papers of Eisenhower, 1960-1961, p.1039

The prospect of domination of the nation's scholars by Federal employment, project allocations, and the power of money is ever present—and is gravely to be regarded.

Public Papers of Eisenhower, 1960-1961, p.1039

Yet, in holding scientific research and discovery in respect, as we should, we must also be alert to the equal and opposite danger that public policy could itself become the captive of a scientific-technological elite.

Public Papers of Eisenhower, 1960-1961, p.1039

It is the task of statesmanship to mold, to balance, and to integrate these and other forces, new and old, within the principles of our democratic system—ever aiming toward the supreme goals of our free society.

V.

Public Papers of Eisenhower, 1960-1961, p.1039

Another factor in maintaining balance involves the element of time. As we peer into society's future, we—you and I, and our government-must avoid the impulse to live only for today, plundering, for our own ease and convenience, the precious resources of tomorrow. We cannot mortgage the material assets of our grandchildren without risking the loss also of their political and spiritual heritage. We want democracy to survive for all generations to come, not to become the insolvent phantom of tomorrow.

VI.

Public Papers of Eisenhower, 1960-1961, p.1039

Down the long lane of the history yet to be written America knows that this world of ours, ever growing smaller, must avoid becoming a community of dreadful fear and hate, and be, instead, a proud confederation of mutual trust and respect.

Public Papers of Eisenhower, 1960-1961, p.1039

Such a confederation must be one of equals. The weakest must come to the conference table with the same confidence as do we, protected as we are by our moral, economic, and military strength. That table, though scarred by many past frustrations, cannot be abandoned for the certain agony of the battlefield.

Public Papers of Eisenhower, 1960-1961, p.1039–p.1040

Disarmament, with mutual honor and confidence, is a continuing imperative. Together we must learn how to compose differences, not with arms, but with intellect and decent purpose. Because this need is so sharp and apparent I confess that I lay down my official responsibilities in this field with a definite sense of disappointment. As one who has witnessed the horror and the lingering sadness of war—as one who knows that another war could utterly destroy this civilization which has been so slowly and painfully built over thousands of years—I wish I [p.1040] could say tonight that a lasting peace is in sight.

Public Papers of Eisenhower, 1960-1961, p.1040

Happily, I can say that war has been avoided. Steady progress toward our ultimate goal has been made. But, so much remains to be done. As a private citizen, I shall never cease to do what little I can to help the world advance along that road.

VII.

Public Papers of Eisenhower, 1960-1961, p.1040

So—in this my last good night to you as your President—I thank you for the many opportunities you have given me for public service in war and peace. I trust that in that service you find some things worthy; as for the rest of it, I know you will find ways to improve performance in the future.

Public Papers of Eisenhower, 1960-1961, p.1040

You and I—my fellow citizens—need to be strong in our faith that all nations, under God, will reach the goal of peace with justice. May we be ever unswerving in devotion to principle, confident but humble with power, diligent in pursuit of the Nation's great goals.

Public Papers of Eisenhower, 1960-1961, p.1040

To all the peoples of the world, I once more give expression to America's prayerful and continuing aspiration:

Public Papers of Eisenhower, 1960-1961, p.1040

We pray that peoples of all faiths, all races, all nations, may have their great human needs satisfied; that those now denied opportunity shall come to enjoy it to the full; that all who yearn for freedom may experience its spiritual blessings; that those who have freedom will understand, also, its heavy responsibilities; that all who are insensitive to the needs of others will learn charity; that the scourges of poverty, disease and ignorance will be made to disappear from the earth, and that, in the goodness of time, all peoples will come to live together in a peace guaranteed by the binding force of mutual respect and love.

John F. Kennedy, Inaugural Address, 20 January 1961

John F. Kennedy's Inaugural Address, 1961

Title: John F. Kennedy's Inaugural Address

Author: John F. Kennedy

Date: January 20, 1961

Source: Public Papers of the Presidents, J. F. Kennedy, 1961, pp.1-3

[Delivered in person at the Capitol]

Public Papers of JFK, 1961, p.1

Vice President Johnson, Mr. Speaker, Mr. Chief Justice, President Eisenhower, Vice president Nixon, President Truman, Reverend Clergy, fellow citizens:

Public Papers of JFK, 1961, p.1

We observe today not a victory of party but a celebration of freedom—symbolizing an end as well as a beginning—signifying renewal as well as change. For I have sworn before you and Almighty God the same solemn oath our forebears prescribed nearly a century and three quarters ago.

Public Papers of JFK, 1961, p.1

The world is very different now. For man holds in his mortal hands the power to abolish all forms of human poverty and all forms of human life. And yet the same revolutionary beliefs for which our forebears fought are still at issue around the globe-the belief that the rights of man come not from the generosity of the state but from the hand of God.

Public Papers of JFK, 1961, p.1

We dare not forget today that we are the heirs of that first revolution. Let the word go forth from this time and place, to friend and foe alike, that the torch has been passed to a new generation of Americans—born in this century, tempered by war, disciplined by a hard and bitter peace, proud of our ancient heritage—and unwilling to witness or permit the slow undoing of those human rights to which this nation has always been committed, and to which we are committed today at home and around the world.

Public Papers of JFK, 1961, p.1

Let every nation know, whether it wishes us well or ill, that we shall pay any price, bear any burden, meet any hardship, support any friend, oppose any foe to assure the survival and the success of liberty.

Public Papers of JFK, 1961, p.1

This much we pledge—and more.

Public Papers of JFK, 1961, p.1

To those old allies whose cultural and spiritual origins we share, we pledge the loyalty of faithful friends. United, there is little we cannot do in a host of cooperative ventures. Divided, there is little we can do—for we dare not meet a powerful challenge at odds and split asunder.

Public Papers of JFK, 1961, p.1

To those new states whom we welcome to the ranks of the free, we pledge our word that one form of colonial control shall not have passed away merely to be replaced by a far more iron tyranny. We shall not always expect to find them supporting our view. But we shall always hope to find them strongly supporting their own freedom—and to remember that, in the past, those who foolishly sought power by riding the back of the tiger ended up inside.

Public Papers of JFK, 1961, p.1

To those peoples in the huts and villages of half the globe struggling to break the bonds of mass misery, we pledge our best efforts to help them help themselves, for whatever period is required—not because the communists may be doing it, not because we seek their votes, but because it is right. If a free society cannot help the many who are poor, it cannot save the few who are rich.

Public Papers of JFK, 1961, p.1

To our sister republics south of our border, we offer a special pledge—to convert our good words into good deeds—in a new alliance for progress—to assist free men and free governments in casting off the chains of poverty. But this peaceful revolution of hope cannot become the prey of hostile powers. Let all our neighbors know that we shall join with them to oppose aggression or subversion anywhere in the Americas. And let every other power know that this Hemisphere intends to remain the master of its own house.

Public Papers of JFK, 1961, p.2

To that world assembly of sovereign states, the United Nations, our last best hope in an age where the instruments of war have far outpaced the instruments of peace, we renew our pledge of support—to prevent it from becoming merely a forum for invective—to strengthen its shield of the new and the weak—and to enlarge the area in which its writ may run.

Public Papers of JFK, 1961, p.2

Finally, to those nations who would make themselves our adversary, we offer not a pledge but a request: that both sides begin anew the quest for peace, before the dark powers of destruction unleashed by science engulf all humanity in planned or accidental self-destruction.

Public Papers of JFK, 1961, p.2

We dare not tempt them with weakness. For only when our arms are sufficient, beyond doubt can we be certain beyond doubt that they will never be employed.

Public Papers of JFK, 1961, p.2

But neither can two great and powerful groups of nations take comfort from our present course—both sides overburdened by the cost of modern weapons, both rightly alarmed by the steady spread of the deadly atom, yet both racing to alter that uncertain balance of terror that stays the hand of mankind's final war.

Public Papers of JFK, 1961, p.2

So let us begin anew—remembering on both sides that civility is not a sign of weakness, and sincerity is always subject to proof. Let us never negotiate out of fear. But let us never fear to negotiate.

Public Papers of JFK, 1961, p.2

Let both sides explore what problems unite us instead of belaboring those problems which divide us.

Public Papers of JFK, 1961, p.2

Let both sides, for the first time, formulate serious and precise proposals for the inspection and control of arms—and bring the absolute power to destroy other nations under the absolute control of all nations.

Public Papers of JFK, 1961, p.2

Let both sides seek to invoke the wonders of science instead of its terrors. Together let us explore the stars, conquer the deserts, eradicate disease, tap the ocean depths and encourage the arts and commerce.

Public Papers of JFK, 1961, p.2

Let both sides unite to heed in all corners of the earth the command of Isaiah—to "undo the heavy burdens…(and) let the oppressed go free."

Public Papers of JFK, 1961, p.2

And if a beach-head of cooperation may push back the jungle of suspicion, let both sides join in creating a new endeavor, not a new balance of power, but a new world of law, where the strong are just and the weak secure and the peace preserved.

Public Papers of JFK, 1961, p.2

All this will not be finished in the first one hundred days. Nor will it be finished in the first one thousand days, nor in the life of this Administration, nor even perhaps in our lifetime on this planet. But let us begin.

Public Papers of JFK, 1961, p.2

In your hands, my fellow citizens, more than mine, will rest the final success or failure of our course. Since this country was rounded, each generation of Americans has been summoned to give testimony to its national loyalty. The graves of young Americans who answered the call to service surround the globe.

Public Papers of JFK, 1961, p.2

Now the trumpet summons us again-not as a call to bear arms, though arms we need—not as a call to battle, though embattled we are—but a call to bear the burden of a long twilight struggle, year in and year out, "rejoicing in hope, patient in tribulation"—a struggle against the common enemies of man: tyranny, poverty, disease and war itself.

Public Papers of JFK, 1961, p.2

Can we forge against these enemies a grand and global alliance, North and South, East and West, that can assure a more fruitful life for all mankind? Will you join in that historic effort?

Public Papers of JFK, 1961, p.2–p.3

In the long history of the world, only a few generations have been granted the role of defending freedom in its hour of maximum danger. I do not shrink from this [p.3] responsibility—I welcome it. I do not believe that any of us would exchange places with any other people or any other generation. The energy, the faith, the devotion which we bring to this endeavor will light our country and all who serve it—and the glow from that fire can truly light the world.

Public Papers of JFK, 1961, p.3

And so, my fellow Americans: ask not what your country can do for you—ask what you can do for your country.

Public Papers of JFK, 1961, p.3

My fellow citizens of the world: ask not what America will do for you, but what together we can do for the freedom of man.

Public Papers of JFK, 1961, p.3

Finally, whether you are citizens of America or citizens of the world, ask of us here the same high standards of strength and sacrifice which we ask of you. With a good conscience our only sure reward, with history the final judge of our deeds, let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth God's work must truly be our own.

Public Papers of JFK, 1961, p.3

NOTE: The President spoke at 12:52 p.m. from a platform erected at the east front of the Capitol. Immediately before the address the oath of office was administered by Chief Justice Warren.

Public Papers of JFK, 1961, p.3

The President's opening words "Reverend Clergy" referred to His Eminence Richard Cardinal Cushing, Archbishop of Boston; His Eminence Archbishop Iakovos, head of the Greek Archdiocese of North and South America; the Reverend Dr. John Barclay, pastor of the Central Christian Church, Austin, Tex.; and Rabbi Dr. Nelson Glueck, President of the Hebrew Union College, Cincinnati, Ohio.

President Kennedy's Special Message to the Congress on Education, 1961

Title: President Kennedy's Special Message to the Congress on Education

Author: John F. Kennedy

Date: February 20, 1961

Source: Public Papers of the Presidents, J. F. Kennedy, 1961, pp.107-111

Public Papers of JFK, 1961, p.107

To the Congress of the United States:

Public Papers of JFK, 1961, p.107

Our progress as a nation can be no swifter than our progress in education. Our requirements for world leadership, our hopes for economic growth, and the demands of citizenship itself in an era such as this all require the maximum development of every young American's capacity.

Public Papers of JFK, 1961, p.107

The human mind is our fundamental resource. A balanced Federal program must go well beyond incentives for investment in plant and equipment. It must include equally determined measures to invest in human beings—both in their basic education and training and in their more advanced preparation for professional work. Without such measures, the Federal Government will not be carrying out its responsibilities for expanding the base of our economic and military strength.

Public Papers of JFK, 1961, p.107

Our progress in education over the last generation has been substantial. We are educating a greater proportion of our youth to a higher degree of competency than any other country on earth. One-fourth of our total population is enrolled in our schools and colleges. This year 26 billion dollars will be spent on education alone.

Public Papers of JFK, 1961, p.107

But the needs of the next generation—the needs of the next decade and the next school year—will not be met at this level of effort. More effort will be required—on the part of students, teachers, schools, colleges and all 50 states—and on the part of the Federal Government.

Public Papers of JFK, 1961, p.107

Education must remain a matter of state and local control, and higher education a matter of individual choice. But education is increasingly expensive. Too many state and local governments lack the resources to assure an adequate education for every child. Too many classrooms are overcrowded. Too many teachers are underpaid. Too many talented individuals cannot afford the benefits of higher education. Too many academic institutions cannot afford the cost of, or find room for, the growing numbers of students seeking admission in the 60's.

Public Papers of JFK, 1961, p.107

Our twin goals must be: a new standard of excellence in education—and the availability of such excellence to all who are willing and able to pursue it.

I. ASSISTANCE TO PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

Public Papers of JFK, 1961, p.107

A successful educational system requires the proper balance, in terms of both quality and quantity, of three elements: students, teachers and facilities. The quality of the students depends in large measure on both the quality and the relative quantity of teachers and facilities.

Public Papers of JFK, 1961, p.107–p.108

Throughout the 1960's there will be no lack in the quantity of students. An average net gain of nearly one million pupils a [p.108] year during the next ten years will overburden a school system already strained by well over a half-million pupils in curtailed or half-day sessions, a school system financed largely by a property tax incapable of bearing such an increased load in most communities.

Public Papers of JFK, 1961, p.108

But providing the quality and quantity of teachers and facilities to meet this demand will be major problems. Even today, there are some 90,000 teachers who fall short of full certification standards. Tens of thousands of others must attempt to cope with classes of unwieldy size because there are insufficient teachers available.

Public Papers of JFK, 1961, p.108

We cannot obtain more and better teachers—and our children should have the best—unless steps are taken to increase teachers' salaries. At present salary levels, the classroom cannot compete in financial rewards with other professional work that requires similar academic background.

Public Papers of JFK, 1961, p.108

It is equally clear that we do not have enough classrooms. In order to meet current needs and accommodate increasing enrollments, if every child is to have the opportunity of a full-day education in an adequate classroom, a total of 600,000 classrooms must be constructed during the next ten years.

Public Papers of JFK, 1961, p.108

These problems are common to all states. They are particularly severe in those states which lack the financial resources to provide a better education, regardless of their own efforts. Additional difficulties, too often overlooked, are encountered in areas of special educational need, where economic or social circumstances impose special burdens and opportunities on the public school. These areas of special educational need include our depressed areas of chronic unemployment and the slum neighborhoods of our larger cities, where underprivileged children are overcrowded into substandard housing. A recent survey of a very large elementary school in one of our major cities, for example, found 91% of the children coming to class with poor diets, 87% in need of dental care, 21% in need of visual correction and 19% with speech disorders. In some depressed areas roughly one-third of the children must rely on surplus foods for their basic sustenance. Older pupils in these schools lack proper recreational and job guidance. The proportion of drop-outs, delinquency and classroom disorders in such areas in alarmingly high.

Public Papers of JFK, 1961, p.108

I recommend to the Congress a three-year program of general Federal assistance for public elementary and secondary classroom construction and teachers' salaries.

Public Papers of JFK, 1961, p.108

Based essentially on the bill which passed the Senate last year (S. 8), although beginning at a more modest level of expenditures, this program would assure every state of no less than $15 for every public school student in average daily attendance, with the total amount appropriated (666 million dollars being authorized in the first year, rising to $866 million over a three-year period) distributed according to the equalization formula contained in the last year's Senate bill, and already familiar to the Congress by virtue of its similarity to the formulas contained in the Hill-Burton Hospital Construction and other acts. Ten percent of the funds allocated to each state in the first year, and an equal amount thereafter, is to be used to help meet the unique problems of each state's "areas of special educational need"—depressed areas, slum neighborhoods and others.

Public Papers of JFK, 1961, p.108–p.109

This is a modest program with ambitious goals. The sums involved are relatively small when we think in terms of more than 36 million public school children, and the billions of dollars necessary to educate them properly. Nevertheless, a limited beginning now—consistent with our obligations in [p.109] other areas of responsibility—will encourage all states to expand their facilities to meet the increasing demand and enrich the quality of education offered, and gradually assist our relatively low-income states in the elevation of their educational standards to a national level.

Public Papers of JFK, 1961, p.109

The bill which will follow this message has been carefully drawn to eliminate disproportionately large or small inequities, and to make the maximum use of a limited number of dollars. In accordance with the clear prohibition of the Constitution, no elementary or secondary school funds are allocated for constructing church schools or paying church school teachers' salaries; and thus non-public school children are rightfully not counted in determining the funds each state will receive for its public schools. Each state will be expected to maintain its own effort or contribution; and every state whose effort is below the national average will be expected to increase that proportion of its income which is devoted to public elementary and secondary education.

Public Papers of JFK, 1961, p.109

This investment will pay rich dividends in the years ahead—in increased economic growth, in enlightened citizens, in national excellence. For some 40 years, the Congress has wrestled with this problem and searched for a workable solution. I believe that we now have such a solution; and that this Congress in this year will make a land-mark contribution to American education.

II. CONSTRUCTION OF COLLEGE AND UNIVERSITY FACILITIES

Public Papers of JFK, 1961, p.109

Our colleges and universities represent our ultimate educational resource. In these institutions are produced the leaders and other trained persons whom we need to carry forward our highly developed civilization. If the colleges and universities fail to do their job, there is no substitute to fulfill their responsibility. The threat of opposing military and ideological forces in the world lends urgency to their task. But that task would exist in any case.

Public Papers of JFK, 1961, p.109

The burden of increased enrollments—imposed upon our elementary and secondary schools already in the fifties—will fall heavily upon our colleges and universities during the sixties. By the autumn of 1966, an estimated one million more students will be in attendance at institutions of higher learning than enrolled last fall—for a total more than twice as high as the total college enrollment of 1950. Our colleges, already hard-pressed to meet rising enrollments since 1950 during a period of rising costs, will be in critical straits merely to provide the necessary facilities, much less the cost of quality education.

Public Papers of JFK, 1961, p.109

The country as a whole is already spending nearly $1 billion a year on academic and residential facilities for higher education-some 20 percent of the total spent for higher education. Even with increased contributions from state, local and private sources, a gap of $2.9 billion between aggregate needs and expenditures is anticipated by 1965, and a gap of $5.2 billion by 1970.

Public Papers of JFK, 1961, p.109

The national interest requires an educational system on the college level sufficiently financed and equipped to provide every student with adequate physical facilities to meet his instructional, research, and residential needs.

Public Papers of JFK, 1961, p.109

I therefore recommend legislation which will:

Public Papers of JFK, 1961, p.109–p.110

(1) Extend the current College Housing Loan Program with a five year $250 million a year program designed to meet the Federal Government's appropriate share of [p.110] residential housing for students and faculty. As a start, additional lending authority is necessary to speed action during fiscal 1961 on approvable loan applications already at hand.

Public Papers of JFK, 1961, p.110

(2) Establish a new, though similar, long-term, low-interest rate loan program for academic facilities, authorizing $300 million in loans each year for five years to assist in the construction of classrooms, laboratories, libraries, and related structures-sufficient to enable public and private higher institutions to accommodate the expanding enrollments they anticipate over the next five years; and also to assist in the renovation, rehabilitation, and modernization of such facilities.

III. ASSISTANCE TO COLLEGE AND UNIVERSITY STUDENTS

Public Papers of JFK, 1961, p.110

This nation a century or so ago established as a basic objective the provision of a good elementary and secondary school education to every child, regardless of means.In 1961, patterns of occupation, citizenship and world affairs have so changed that we must set a higher goal. We must assure ourselves that every talented young person who has the ability to pursue a program of higher education will be able to do so if he chooses, regardless of his financial means.

Public Papers of JFK, 1961, p.110

Today private and public scholarship and loan programs established by numerous states, private sources, and the Student Loan Program under the National Defense Education Act are making substantial contributions to the financial needs of many who attend our colleges. But they still fall short of doing the job that must be done. An estimated one-third of our brightest high school graduates are unable to go on to college principally for financial reasons.

Public Papers of JFK, 1961, p.110

While I shall subsequently ask the Congress to amend and expand the Student Loan and other provisions of the National Defense Education Act, it is dear that even with this program many talented but needy students are unable to assume further indebtedness in order to continue their education.

Public Papers of JFK, 1961, p.110

I therefore recommend the establishment of a five-year program with an initial authorization of $26,250,000 Of state-administered scholarships for talented and needy young people which will supplement but not supplant those programs of financial assistance to students which are now in operation.

Public Papers of JFK, 1961, p.110

Funds would be allocated to the states during the first year for a total of twenty-five thousand scholarships averaging $700 each, 37,500 scholarships the second year, and 50,000 for each succeeding year thereafter. These scholarships, which would range according to need up to a maximum stipend of $1000, would be open to all young persons, without regard to sex, race, creed, or color, solely on the basis of their ability—as determined on a competitive basis—and their financial need. They would be permitted to attend the college of their choice, and free to select their own program of study. Inasmuch as tuition and fees do not normally cover the institution's actual expenses in educating the student, additional allowances to the college or university attended should accompany each scholarship to enable these institutions to accept the additional students without charging an undue increase in fees or suffering an undue financial loss.

IV. VOCATIONAL EDUCATION

Public Papers of JFK, 1961, p.110–p.111

The National Vocational Education Acts, first enacted by the Congress in 1917 and [p.111] subsequently amended, have provided a program of training for industry, agriculture, and other occupational areas. The basic purpose of our vocational education effort is sound and sufficiently broad to provide a basis for meeting future needs. However, the technological changes which have occurred in all occupations call for a review and re-evaluation of these Acts, with a view toward their modernization.

Public Papers of JFK, 1961, p.111

To that end, I am requesting the Secretary of Health, Education, and Welfare to convene an advisory body drawn from the educational profession, labor-industry, and agriculture as well as the lay public, together with representation from the Departments of Agriculture and Labor, to be charged with the responsibility of reviewing and evaluating the current National Vocational Education Acts, and making recommendations for improving and redirecting the program.

CONCLUSION

Public Papers of JFK, 1961, p.111

These stimulatory measures represent an essential though modest contribution which the Federal Government must make to American education at every level. One-sided aid is not enough. We must give attention to both teachers' salaries and classrooms, both college academic facilities and dormitories, both scholarships and loans, both vocational and general education.

Public Papers of JFK, 1961, p.111

We do not undertake to meet our growing educational problems merely to compare our achievements with those of our adversaries. These measures are justified on their own merits—in times of peace as well as peril, to educate better citizens as well as better scientists and soldiers. The Federal Government's responsibility in this area has been established since the earliest days of the Republic—it is time now to act decisively to fulfill that responsibility for the sixties.

JOHN F. KENNEDY

Statement by President Kennedy Upon Signing Order Establishing the Peace Corps, 1961

Title: Statement by President Kennedy Upon Signing Order Establishing the Peace Corps

Author: John F. Kennedy

Date: March 1, 1961

Source: Public Papers of the Presidents, J. F. Kennedy, 1961, pp.134-135

Public Papers of JFK, 1961, p.134

I HAVE TODAY signed an Executive Order 1 providing for the establishment of a Peace Corps on a temporary pilot basis. I am also sending to Congress a message proposing authorization of a permanent Peace Corps. This Corps will be a pool of trained American men and women sent overseas by the U.S. Government or through private institutions and organizations to help foreign countries meet their urgent needs for skilled manpower.

Public Papers of JFK, 1961, p.135

It is our hope to have 500 or more people in the field by the end of the year. The initial reactions to the Peace Corps proposal are convincing proof that we have, in this country, an immense reservoir of such men and women—anxious to sacrifice their energies and time and toil to the cause of world peace and human progress.

Public Papers of JFK, 1961, p.135

In establishing our Peace Corps we intend to make full use of the resources and talents of private institutions and groups. Universities, voluntary agencies, labor unions and industry will be asked to share in this effort—contributing diverse sources of energy and imagination—making it clear that the responsibility for peace is the responsibility of our entire society.

Public Papers of JFK, 1961, p.135

We will only send abroad Americans who are wanted by the host country—who have a real job to do—and who are qualified to do that job. Programs will be developed with care, and after full negotiation, in order to make sure that the Peace Corps is wanted and will contribute to the welfare of other people. Our Peace Corps is not designed as an instrument of diplomacy or propaganda or ideological conflict. It is designed to permit our people to exercise more fully their responsibilities in the great common cause of world development.

Public Papers of JFK, 1961, p.135

Life in the Peace Corps will not be easy. There will be no salary and allowances will be at a level sufficient only to maintain health and meet basic needs. Men and women will be expected to work and live alongside the nationals of the country in which they are stationed—doing the same work, eating the same food, talking the same language.

Public Papers of JFK, 1961, p.135

But if the life will not be easy, it will be rich and satisfying. For every young American who participates in the Peace Corps—who works in a foreign land—will know that he or she is sharing in the great common task of bringing to man that decent way of life which is the foundation of freedom and a condition of peace.

President Kennedy's Address at a White House Reception for Members of Congress and for the Diplomatic Corps of the Latin American Republics, 1961

Title: President Kennedy's Address at a White House Reception for Members of Congress and for the Diplomatic Corps of the Latin American Republics

Author: John F. Kennedy

Date: March 13, 1961

Source: Public Papers of the Presidents, J. F. Kennedy, 1961, pp.170-175

Public Papers of JFK, 1961, p.170–p.171

IT IS A GREAT PLEASURE for Mrs. Kennedy and for me, for the Vice President and Mrs. Johnson, and for the Members of Congress, to welcome the Ambassadorial Corps of our Hemisphere, our long time friends, to the White House today. One hundred and thirty-nine years ago this week the United States, stirred by the heroic [p.171] struggle of its fellow Americans, urged the independence and recognition of the new Latin American Republics. It was then, at the dawn of freedom throughout this hemisphere, that Bolivar spoke of his desire to see the Americas fashioned into the greatest region in the world, "greatest," he said, "not so much by virtue of her area and her wealth, as by her freedom and her glory."

Public Papers of JFK, 1961, p.171

Never in the long history of our hemisphere has this dream been nearer to fulfillment, and never has it been in greater danger.

Public Papers of JFK, 1961, p.171

The genius of our scientists has given us the tools to bring abundance to our land, strength to our industry, and knowledge to our people. For the first time we have the capacity to strike off the remaining bonds of poverty and ignorance—to free our people for the spiritual and intellectual fulfillment which has always been the goal of our civilization.

Public Papers of JFK, 1961, p.171

Yet at this very moment of maximum opportunity, we confront the same forces which have imperiled America throughout its history—the alien forces which once again seek to impose the despotisms of the Old World on the people of the New.

Public Papers of JFK, 1961, p.171

I have asked you to come here today so that I might discuss these challenges and these dangers.

Public Papers of JFK, 1961, p.171

We meet together as firm and ancient friends, united by history and experience and by our determination to advance the values of American civilization. For this New World of ours is not a mere accident of geography. Our continents are bound together by a common history, the endless exploration of new frontiers. Our nations are the product of a common struggle, the revolt from colonial rule. And our people share a common heritage, the quest for the dignity and the freedom of man.

Public Papers of JFK, 1961, p.171

The revolutions which gave us birth ignited, in the words of Thomas Paine, "a spark never to be extinguished." And across vast, turbulent continents these American ideals still stir man's struggle for national independence and individual freedom. But as we welcome the spread of the American revolution to other lands, we must also remember that our own struggle—the revolution which began in Philadelphia in 1776, and in Caracas in 1811—is not yet finished. Our hemisphere's mission is not yet completed. For our unfulfilled task is to demonstrate to the entire world that man's unsatisfied aspiration for economic progress and social justice can best be achieved by free men working within a framework of democratic institutions. If we can do this in our own hemisphere, and for our own people, we may yet realize the prophecy of the great Mexican patriot, Benito Juarez, that "democracy is the destiny of future humanity."

Public Papers of JFK, 1961, p.171

As a citizen of the United States let me be the first to admit that we North Americans have not always grasped the significance of this common mission, just as it is also true that many in your own countries have not fully understood the urgency of the need to lift people from poverty and ignorance and despair. But we must turn from these mistakes from the failures and the misunderstandings of the past to a future full of peril, but bright with hope.

Public Papers of JFK, 1961, p.171–p.172

Throughout Latin America, a continent rich in resources and in the spiritual and cultural achievements of its people, millions of men and women suffer the daily degradations of poverty and hunger. They lack decent shelter or protection from disease. Their children are deprived of the education or the jobs which are the gateway to a better life. And each day the problems grow more [p.172] urgent. Population growth is outpacing economic growth—low living standards are further endangered—and discontent—the discontent of a people who know that abundance and the tools of progress are at last within their reach—that discontent is growing. In the words of Jose Figueres, "once dormant peoples are struggling upward toward the sun, toward a better life."

Public Papers of JFK, 1961, p.172

If we are to meet a problem so staggering in its dimensions, our approach must itself be equally bold—an approach consistent with the majestic concept of Operation Pan America. Therefore I have called on all people of the hemisphere to join in a new Alliance for Progress—Alianza para Progreso—a vast cooperative effort, unparalleled in magnitude and nobility of purpose, to satisfy the basic needs of the American people for homes, work and land, health and schools—techo, trabajo y tierra, salud y escuela,

Public Papers of JFK, 1961, p.172

First, I propose that the American Republics begin on a vast new Ten Year Plan for the Americas, a plan to transform the 1960's into a historic decade of democratic progress.

Public Papers of JFK, 1961, p.172

These 10 years will be the years of maximum progress-maximum effort, the years when the greatest obstacles must be overcome, the years when the need for assistance will be the greatest.

Public Papers of JFK, 1961, p.172

And if we are successful, if our effort is bold enough and determined enough, then the close of this decade will mark the beginning of a new era in the American experience. The living standards of every American family will be on the rise, basic education will be available to all, hunger will be a forgotten experience, the need for massive outside help will have passed, most nations will have entered a period of self-sustaining growth, and though there will be still much to do, every American Republic will be the master of its own revolution and its own hope and progress.

Public Papers of JFK, 1961, p.172

Let me stress that only the most determined efforts of the American nations themselves can bring success to this effort. They, and they alone, can mobilize their resources, enlist the energies of their people, and modify their social patterns so that all, and not just a privileged few, share in the fruits of growth. If this effort is made, then outside assistance will give vital impetus to progress; without it, no amount of help will advance the welfare of the people.

Public Papers of JFK, 1961, p.172

Thus if the countries of Latin America are ready to do their part, and I am sure they are, then I believe the United States, for its part, should help provide resources of a scope and magnitude sufficient to make this bold development plan a success—just as we helped to provide, against equal odds nearly, the resources adequate to help rebuild the economies of Western Europe. For only an effort of towering dimensions can ensure fulfillment of our plan for a decade of progress.

Public Papers of JFK, 1961, p.172

Secondly, I will shortly request a ministerial meeting of the Inter-American Economic and Social Council, a meeting at which we can begin the massive planning effort which will be at the heart of the Alliance for Progress.

Public Papers of JFK, 1961, p.172

For if our Alliance is to succeed, each Latin nation must formulate long-range plans for its own development, plans which establish targets and priorities, ensure monetary stability, establish the machinery for vital social change, stimulate private activity and initiative, and provide for a maximum national effort. These plans will be the foundation of our development effort, and the basis for the allocation of outside resources.

Public Papers of JFK, 1961, p.173

A greatly strengthened IA-ECOSOC, working with the Economic Commission for Latin America and the Inter-American Development Bank, can assemble the leading economists and experts of the hemisphere to help each country develop its own development plan—and provide a continuing review of economic progress in this hemisphere.

Public Papers of JFK, 1961, p.173

Third, I have this evening signed a request to the Congress for $500 million as a first step in fulfilling the Act of Bogota. This is the first large-scale Inter-American effort, instituted by my predecessor President Eisenhower, to attack the social barriers which block economic progress. The money will be used to combat illiteracy, improve the productivity and use of their land, wipe out disease, attack archaic tax and land tenure structures, provide educational opportunities, and offer a broad range of projects designed to make the benefits of increasing abundance available to all. We will begin to commit these funds as soon as they are appropriated.

Public Papers of JFK, 1961, p.173

Fourth, we must support all economic integration which is a genuine step toward larger markets and greater competitive opportunity. The fragmentation of Latin American economies is a serious barrier to industrial growth. Projects such as the Central American common market and free trade areas in South America can help to remove these obstacles.

Public Papers of JFK, 1961, p.173

Fifth, the United States is ready to cooperate in serious, case-by-case examinations of commodity market problems. Frequent violent change in commodity prices seriously injure the economies of many Latin American countries, draining their resources and stultifying their growth. Together we must find practical methods of bringing an end to this pattern.

Public Papers of JFK, 1961, p.173

Sixth, we will immediately step up our Food for Peace emergency program, help establish food reserves in areas of recurrent drought, help provide school lunches for children, and offer feed grains for use in rural development. For hungry men and women cannot wait for economic discussions or diplomatic meetings—their need is urgent—and their hunger rests heavily on the conscience of their fellow men.

Public Papers of JFK, 1961, p.173

Seventh, all the people of the hemisphere must be allowed to share in the expanding wonders of science—wonders which have captured man's imagination, challenged the powers of his mind, and given him the tools for rapid progress. I invite Latin American scientists to work with us in new projects in fields such as medicine and agriculture, physics and astronomy, and desalinization, to help plan for regional research laboratories in these and other fields, and to strengthen cooperation between American universities and laboratories.

Public Papers of JFK, 1961, p.173

We also intend to expand our science teacher training programs to include Latin American instructors, to assist in establishing such programs in other American countries, and translate and make available revolutionary new teaching materials in physics, chemistry, biology, and mathematics, so that the young of all nations may contribute their skills to the advance of science.

Public Papers of JFK, 1961, p.173

Eighth, we must rapidly expand the training of those needed to man the economies of rapidly developing countries. This means expanded technical training programs, for which the Peace Corps, for example, will be available when needed. It also means assistance to Latin American universities, graduate schools, and research institutes.

Public Papers of JFK, 1961, p.173–p.174

We welcome proposals in Central America for intimate cooperation in higher education—cooperation which can achieve a [p.174] regional effort of increased effectiveness and excellence. We are ready to help fill the gap in trained manpower, realizing that our ultimate goal must be a basic education for all who wish to learn.

Public Papers of JFK, 1961, p.174

Ninth, we reaffirm our pledge to come to the defense of any American nation whose independence is endangered. As its confidence in the collective security system of the OAS spreads, it will be possible to devote to constructive use a major share of those resources now spent on the instruments of war. Even now, as the government of Chile has said, the time has come to take the first steps toward sensible limitations of arms. And the new generation of military leaders has shown an increasing awareness that armies cannot only defend their countries—they can, as we have learned through our own Corps of Engineers, they can help to build them.

Public Papers of JFK, 1961, p.174

Tenth, we invite our friends in Latin America to contribute to the enrichment of life and culture in the United States. We need teachers of your literature and history and tradition, opportunities for our young people to study in your universities, access to your music, your art, and the thought of your great philosophers. For we know we have much to learn.

Public Papers of JFK, 1961, p.174

In this way you can help bring a fuller spiritual and intellectual life to the people of the United States—and contribute to understanding and mutual respect among the nations of the hemisphere.

Public Papers of JFK, 1961, p.174

With steps such as these, we propose to complete the revolution of the Americas, to build a hemisphere where all men can hope for a suitable standard of living, and all can live out their lives in dignity and in freedom.

Public Papers of JFK, 1961, p.174

To achieve this goal political freedom must accompany material progress. Our Alliance for Progress is an alliance of free governments, and it must work to eliminate tyranny from a hemisphere in which it has no rightful place. Therefore let us express our special friendship to the people of Cuba and the Dominican Republic—and the hope they will soon rejoin the society of free men, uniting with us in common effort.

Public Papers of JFK, 1961, p.174

This political freedom must be accompanied by social change. For unless necessary social reforms, including land and tax reform, are freely made—unless we broaden the opportunity for all of our people—unless the great mass of Americans share in increasing prosperity—then our alliance, our revolution, our dream, and our freedom will fail. But we call for social change by free men-change in the spirit of Washington and Jefferson, of Bolivar and San Martin and Martin—not change which seeks to impose on men tyrannies which we cast out a century and a half ago. Our motto is what it has always been—progress yes, tyranny no-progreso si, tirania no!

Public Papers of JFK, 1961, p.174

But our greatest challenge comes from within—the task of creating an American civilization where spiritual and cultural values are strengthened by an ever-broadening base of material advance—where, within the rich diversity of its own traditions, each nation is free to follow its own path towards progress.

Public Papers of JFK, 1961, p.174

The completion of our task will, of course, require the efforts of all governments of our hemisphere. But the efforts of governments alone will never be enough. In the end, the people must choose and the people must help themselves.

Public Papers of JFK, 1961, p.174–p.175

And so I say to the men and women of the Americas—to the campesino in the fields, to the obrero in the cities, to the estudiante in the schools—prepare your mind and heart for the task ahead—call forth your strength and let each devote his energies to the betterment [p.175] of all, so that your children and our children in this hemisphere can find an ever richer and a freer life.

Public Papers of JFK, 1961, p.175

Let us once again transform the American continent into a vast crucible of revolutionary ideas and efforts—a tribute to the power of the creative energies of free men and women—an example to all the world that liberty and progress walk hand in hand. Let us once again awaken our American revolution until it guides the struggle of people everywhere—not with an imperialism of force or fear—but the rule of courage and freedom and hope for the future of man.

Public Papers of JFK, 1961, p.175

NOTE: The President spoke in the East Room at the White House. Immediately following his speech, the President's words were translated and broadcast in Spanish, Portuguese, and French, as well as in English, to the nations of the South by the Voice of America.

Public Papers of JFK, 1961, p.175

The text of the Act of Bogota, adopted September 13, 1960, by a Special Committee to Study the Formulation of New Measures for Economic Cooperation, is published in the Department of State Bulletin (vol. 43, P. 537).

President Kennedy's News Conference on Laos, 1961

Title: President Kennedy's News Conference on Laos

Author: John F. Kennedy

Date: March 23, 1961

Source: Public Papers of the Presidents, J. F. Kennedy, 1961, pp.213-220

Public Papers of JFK, 1961, p.213

THE PRESIDENT. [1.] I want to make a brief statement about Laos. It is, I think, important for all Americans to understand this difficult and potentially dangerous problem. In my last conversation with General Eisenhower, the day before the inauguration on January 19, we spent more time on this hard matter than on any other thing. And since then it has been steadily before the administration as the most immediate of the problems that we found upon taking office. Our special concern with the problem in Laos goes back to 1954. That year at Geneva a large group of powers agreed to a settlement of the struggle for Indochina. Laos was one of the new states which had recently emerged from the French union and it was the clear premise of the 1954 settlement that this new country would be neutral-free of external domination by anyone. The new country contained contending factions, but in its first years real progress was made towards a unified and neutral status. But the efforts of a Communist-dominated group to destroy this neutrality never ceased.

Public Papers of JFK, 1961, p.213

In the last half of 1960 a series of sudden maneuvers occurred and the Communists and their supporters turned to a new and greatly intensified military effort to take over. These three maps [indicating] show the area of effective Communist domination as it was last August, with the colored portions up on the right-hand corner being the areas held and dominated by the Communists at that time; and now next, in December of 1960, 3 months ago, the red area having expanded; and now from December 20 to the present date near the end of March the Communists control a much wider section of the country.

Public Papers of JFK, 1961, p.213

In this military advance the local Communist forces, known as the Pathet Lao, have had increasing support and direction from outside. Soviet planes, I regret to say, have been conspicuous in a large-scale airlift into the battle area—over 100—1,000 sorties since last December 13th, plus a whole supporting set of combat specialists, mainly from Communist North Viet-Nam, and heavier weapons have been provided from outside, all with the clear object of destroying by military action the agreed neutrality of Laos.

Public Papers of JFK, 1961, p.213–p.214

It is this new dimension of externally supported [p.214] warfare that creates the present grave problem. The position of this administration has been carefully considered and we have sought to make it just as clear as we know how to the governments concerned.

Public Papers of JFK, 1961, p.214

First, we strongly and unreservedly sup, port the goal of a neutral and independent Laos, tied to no outside power or group of powers, threatening no one, and free from any domination. Our support for the present duly constituted government is aimed entirely and exclusively at that result. And if in the past there has been any possible ground for misunderstanding of our desire for a truly neutral Laos, there should be none now,

Public Papers of JFK, 1961, p.214

Secondly, if there is to be a peaceful solution, there must be a cessation of the present armed attacks by externally supported Communists. If these attacks do not stop, those who support a truly neutral Laos will have to consider their response. The shape of this necessary response will, of course, be carefully considered, not only here in Washington, but in the SEATO conference with our allies, which begins next Monday.

Public Papers of JFK, 1961, p.214

SEATO—the Southeast Asia Treaty Organization—was organized in 1954, with strong leadership from our last administration, and all members of SEATO have undertaken special treaty responsibilities towards an aggression in Laos.

Public Papers of JFK, 1961, p.214

No one should doubt our resolutions on this point. We are faced with a clear and one-sided threat of a change in the internationally agreed position of Laos. This threat runs counter to the will of the Laotian people, who wish only to be independent and neutral. It is posed rather by the military operations of internal dissident elements directed from outside the country. This is what must end if peace is to be achieved in Southeast Asia.

Public Papers of JFK, 1961, p.214

Thirdly, we are earnestly in favor of constructive negotiation among the nations concerned and among the leaders of Laos which can help Laos back to the pathway of independence and genuine neutrality. We strongly support the present British proposal of a prompt end of hostilities and prompt negotiation. We are always conscious of the obligation which rests upon all members of the United Nations to seek peaceful solutions to problems of this sort. We hope that others may be equally aware of this responsibility.

Public Papers of JFK, 1961, p.214

My fellow Americans, Laos is far away from America, but the world is small. Its two million people live in a country 3 times the size of Austria. The security of all Southeast Asia will be endangered if Laos loses its neutral independence. Its own safety runs with the safety of us all—in real neutrality observed by all.

Public Papers of JFK, 1961, p.214

I want to make it clear to the American people and to all of the world that all we want in Laos is peace, not war; a truly neutral government, not a cold war pawn; a settlement concluded at the conference table and not on the battlefield.

Public Papers of JFK, 1961, p.214

Our response will be made in close cooperation with our allies and the wishes of the Laotian Government. We will not be provoked, trapped, or drawn into this or any other situation; but I know that every American will want his country to honor its obligations to the point that freedom and security of the free world and ourselves may be achieved.

Public Papers of JFK, 1961, p.214–p.215

Careful negotiations are being conducted with many countries at the present time in order to see that we have taken every possible course to insure a peaceful solution. Yesterday the Secretary of State informed the members and leaders of the Congress-the House and Senate—in both parties, of the situation and brought them up to date. We will continue to keep them and the [p.215] country fully informed as the situation develops.

Public Papers of JFK, 1961, p.215

Q. Mr. President, can you tell us what reaction you may have had from the Russians, either directly or indirectly, perhaps through the British, with respect to the approach you suggest on this problem?

Public Papers of JFK, 1961, p.215

THE PRESIDENT. The British have had a conversation with the Russians, but I think that it's impossible at the present time to make any clear judgment as to what the nature of the response will be. We are hopeful that it will be favorable to the 'suggestion that we have made—the suggestion that the British have made for a cease-fire and for negotiations of the matter.

Public Papers of JFK, 1961, p.215

[2.] Q. Mr. President, a number—or several, rather—relatively highly placed economists in Government have said recently that the state of the economy is improving and that an upturn may be expected in April or May. How do you, sir, view the current state of the economy?

Public Papers of JFK, 1961, p.215

THE PRESIDENT. Well, I think that there are evidences of some improvement in the economy. The question, of course, is whether the upturn which usually comes in the spring will be sufficient to reduce the unemployment percentage, which is high today, to a figure which is more in accordance with a full employment in our society.

Public Papers of JFK, 1961, p.215

We also have to consider whether the upturn will bring us to the use of our national capacity and whether that upturn will be the beginning of a sustained economic growth this year and in the immediate years to come. It is impossible to make any judgment at this time in March on these factors with any precision.

Public Papers of JFK, 1961, p.215

[3.] Q. Mr. President, there have been reports that some portions of our Navy, some portions of our Marines, have been alerted and are moving toward that area. Could you tell us something of that, sir, and would it be safe to assume that we are preparing to back up our words as you have outlined them here?

Public Papers of JFK, 1961, p.215

THE PRESIDENT. I think that my statement is clear and represents the views I wish to express at the present time, and I'm hopeful that it will be possible for us to see a peaceful solution arrive in a difficult matter, and I would let the matter rest at this point with that.

Public Papers of JFK, 1961, p.215

Q. Is there any kind of indicated deadline or time limit by which this Government will consider that further action is necessary unless hostilities have ceased in Laos?

Public Papers of JFK, 1961, p.215

THE PRESIDENT. No time limit has been given, but quite obviously we are anxious to see an end to overt hostilities as soon as possible so that some form of negotiations can be carried on. And we are—but there has been no precise time limit set.

Public Papers of JFK, 1961, p.215

Q. Sir, I did not mean an ultimatum. I did mean in terms of an indicated time limit in our own minds if this drags on for a week or two weeks or three weeks, is there some time in there?

Public Papers of JFK, 1961, p.215

THE PRESIDENT. Well, I think the matter, of course, becomes increasingly serious as the days go by, and that's why we're anxious to see if it's possible at the present time to reach an agreement on a cease-fire. The longer it goes on, the less satisfactory it is.

Public Papers of JFK, 1961, p.215

Q. Mr. President, that map would indicate that the Communists have taken over a good part of Laos. Have your advisers told you what the—how dangerous the military situation is there? Is there a real danger that the Communists will take over the whole kingdom?

Public Papers of JFK, 1961, p.215–p.216

THE PRESIDENT. Well, quite obviously progress has been made on the—substantial progress has been made by the Communists towards that objective in recent weeks. And the capital—royal capital of Luang Prabang—has been in danger, and progress has [p.216] been made southward towards the administrative capital of Vientiane. So that it is for this reason that we are so concerned and have felt the situation to be so critical.

Public Papers of JFK, 1961, p.216

Q. Yes, sir. Is there any—do you know how much time the supporters of the Laos Government might have for diplomacy? In other words, is there a danger of a quick takeover by the Communists in a matter of—

Public Papers of JFK, 1961, p.216

THE PRESIDENT. I would say that we are hopeful that we can get a quick judgment as to what the prospects are going to be there. I think that every day is important.

Public Papers of JFK, 1961, p.216

Q. Mr. President, you mentioned earlier in your statement that there were dissident elements in Viet-Nam who were carrying on this warfare. There have been many reports of North Vietnamese troops involved. Do we have any intelligence or information that would bear out these reports?

Public Papers of JFK, 1961, p.216

THE PRESIDENT. The phrase "dissident elements,'' I believe, referred to the internal group, and I also stated that there have been, has been evidence of groups from Viet Minh or North Viet-Nam who have been involved.

Public Papers of JFK, 1961, p.216

[4.] Q. Mr. President, have the events of the past week changed your view on the advisability of a meeting between you and Mr. Khrushchev?

Public Papers of JFK, 1961, p.216

THE PRESIDENT. No.

Public Papers of JFK, 1961, p.216

[5.] Q. Mr. President, we're getting conflicting reports in the Capitol as to your willingness to accept a compromise on this minimum wage bill, particularly in regard to coverage. Can you give us a little information on what your position is on this?

Public Papers of JFK, 1961, p.216

THE PRESIDENT. Well, I'm anxious—I've supported the bill that came out of the committee for $1.25 with the expanded coverage over a period of time and also expanded coverage of nearly 4 million. I'm hopeful that that bill will pass, or a bill as close as possible to it would pass.

Public Papers of JFK, 1961, p.216

I find it difficult to know why anyone would oppose seeing somebody, by 1963, paid $1.25 in interstate commerce. And in the new coverage we're talking about businesses which make over $1 million a year. And I find it difficult to understand how anybody could object to paying somebody who works in a business which makes over $1 million a year, by 1963, $50 a week. I think that anyone who is paid less than that must find it extremely difficult to maintain themselves and their family.

Public Papers of JFK, 1961, p.216

I consider it to be a very minimum wage. So that I'm hopeful that the House will pass legislation as close to the bill that came out of the committee as possible, and—because I must say we are talking about a standard for fellow Americans, and millions of them—and I must say I think that it is in the public interest to pass' that bill as closely as possible to the House committee bill.

Public Papers of JFK, 1961, p.216

[6.] Q. Mr. President, there appears to be some national unawareness of the importance of a free Laos to the security of the United States and to the individual American. Could you spell out your views on that a little further?

Public Papers of JFK, 1961, p.216–p.217

THE PRESIDENT. Well, quite obviously, geographically Laos borders on Thailand, to which the United States has treaty obligations under the SEATO Agreement of 1954, it borders on South Viet-Nam—or borders on Viet-Nam to which the United States has very close ties, and also which is a signatory of the SEATO Pact. The aggression against Laos itself was referred to in the SEATO Agreement. So that, given this, the nature of the geography, its location, the commitments which the United States and obligations which the United States has assumed toward Laos as well as the surrounding countries—as well as other signatories of the SEATO Pact, it's quite obvious [p.217] that if the Communists were able to move in and dominate this country, it would endanger the security of all, and the peace of all, of Southeast Asia. And as a member of the United Nations and as a signatory of the SEATO Pact, and as a country which is concerned with the strength of the cause of freedom around the world, that quite obviously affects the security of the United States.

Public Papers of JFK, 1961, p.217

Q. Mr. President, the United States has made the position all the way through on this that we want a neutral Laos. But isn't it true that Laos has a nonviable economy and it can't exist as an independent country?

Public Papers of JFK, 1961, p.217

THE PRESIDENT. Well, I think it can exist. That was the premise under which the 1954 agreements were signed. It may require economic assistance, but there are many countries which are neutral which have received economic assistance from one side or the other and many of those countries are in Southeast Asia and some of them are geographically quite close to Laos, so that I don't think that the final test of a neutral country is completely the state of its economy. The test of a neutral country is whether one side or another dominates it and uses it, a phrase I referred to, as a pawn in the cold war. We would like it to occupy a neutral category as does Cambodia.

Public Papers of JFK, 1961, p.217

Q. Mr. President, what is your evaluation of the theory that perhaps the Russians are so active in Laos to keep the Chinese Communists out?

THE PRESIDENT. Well, I wouldn't attempt to make a judgment about a matter on which we have incomplete information. I think that the facts of the matter are that there has been external activity and that it has helped produce the result you see on the map, and this is of concern to us. I'm hopeful that those countries which have been supporting this effort will recognize that this is a matter of great concern to us and that they will be agreeable to the kind of proposals which we have made in the interests of peace.

Public Papers of JFK, 1961, p.217

[7.] Q. Mr. President, are you planning a visit to Venezuela or any other areas of Latin America within the next several months?

THE PRESIDENT. To Latin America?

Public Papers of JFK, 1961, p.217

Q. Yes, sir.

THE PRESIDENT. No, I'm not.

Public Papers of JFK, 1961, p.217

Q. Caracas?

THE PRESIDENT. No, I have no plans for a trip.

Public Papers of JFK, 1961, p.217

[8.] Q. Mr. President, the Civil War Commission has decided it has no authority to provide hotel rooms for Negroes who attend sessions in the South. What is your reaction to that decision?

THE PRESIDENT. Well, the Centennial is an official body of the United States Government, Federal funds are contributed to sustaining it, there have been appointments made by the Federal Government to the Commission, and it's my strong belief that any program of this kind in which the United States is engaged should provide facilities and meeting places which may—do not discriminate on the grounds of race or color. I have received the response to my original letter to General Grant, and I am in contact, going to be in contact again with General Grant to see if we can work out a solution which recognizes the principle that I've just enunciated, because we cannot leave the situation as it is today.

Public Papers of JFK, 1961, p.217

[9.] Q. Mr. President, in the event that your strong efforts to reach a neutral Laos go unheeded, would you possibly consider it necessary then for SEATO to intervene, or would you spell out a little more clearly what would have to take place?

THE. PRESIDENT. I think a careful reading of my statement makes clear what the various prospects are and the critical nature of them.

Public Papers of JFK, 1961, p.217

[10.] Q. Mr. President, your foreign aid message, particularly the provision for long-term borrowing, has had a rather mixed reception on the Hill. I wonder, sir, could you tell us, in view of the traditional congressional abhorrence of long-term commitments, what steps you are planning to persuade the country that this is necessary?

THE PRESIDENT. Well, I think that it provides far more effective use of the funds that are available. It's very hard for us to say to x country that "We are prepared to join you in economic development if you will make the following contributions towards your own development: investment, tax changes, and all the rest," if we are only able to say that we can do this only on a 12-month basis. If we could say "We will join on a 5-month—over a 5-year period of development for the economy of this country which will give you some hope of improving the standard of living of your people and maintaining freedom," it seems to me that's a far more effective use of our money.

Public Papers of JFK, 1961, p.217–p.218

One of the reasons why so much money, I think, has been wasted in mutual security programs in recent years has been because they are financed on a year-to-year basis and no evident progress is made within the countries towards a viable economy. So that I must say that I recognize that the Congress has clear responsibilities for annual appropriations. We are only talking about long-term funding for loans. The Congress would still continue to have its annual appropriations for any other funds, including those which involve military grants. And I would feel that the kind of program we suggested offers the best use of the dollar in these areas. I think progress can be made this way. If we don't get it, I think we'll [p.218] continue to see some of the drift we've seen in these programs in the past.

Public Papers of JFK, 1961, p.218

[11.] Q. Mr. President, what are your plans for coordinating our transportation to save the railroads and keep them running, especially to move missiles?

THE PRESIDENT. I think—I've seen no evidences that the missile, the movement of missiles has been—is endangered at the present time or in prospect. The problem of commuters, the problem of the financial integrity of the railroads and their movement is in danger—is in critical position in some areas. It's a matter of concern to the Congress and this administration and we are examining what we can usefully do.

Public Papers of JFK, 1961, p.218

[12.] Q. Mr. President, during the campaign you made a pledge, I believe, that if you became President you would issue an Executive order to ban segregation in Federal housing projects. I wondered if you had any plans to implement that pledge anytime in the near future?

THE PRESIDENT. We are considering those areas. We've already, as you know, in one area, the area of employment by Government contractors, issued an extremely strong, the strongest Federal order that's ever been issued, with detailed facilities for implementation. We are considering other Executive orders that could be usefully issued. In addition, we are—the Department of Justice is moving ahead in carrying out the congressional mandate in regard to voting. So this matter of use of Executive authority in order to establish equality of opportunity in all areas is a matter which will have the continuing attention of this administration.

Public Papers of JFK, 1961, p.218–p.219

[13.] Q. Mr. President, taking the aggressive Communist attitude on Laos together with the negative Russian posture at the opening, the reopening of negotiations in Geneva on test ban, does this combination [p.219] of circumstances disappoint you about the prospect of really improved relations with the Soviet Union?

Public Papers of JFK, 1961, p.219

THE PRESIDENT. I am hopeful that it will be possible for the United States to make progress towards lessening tension in our relations with the Soviet Union. Quite obviously this is a critical area, and I think the kind of response that we get to our efforts for peace in this area will tell us something about what kind of a future our world is going to have. We'll have to wait and see what that response will be, and then I could perhaps give you a better answer as to what our long-range prospects will be after we see what happens here.

Public Papers of JFK, 1961, p.219

Q. Mr. President, if these responses aren't forthcoming and aren't favorable on your proposals here, would you—and we have to shoot—would you use your Executive orders and authority, or is the purpose of Mr. Rusk going to the Senators in preparation of asking for a declaration of war in case it really becomes a shooting matter out there?

THE PRESIDENT. I think that it would be best to consider it as I stated it in my statement. The prospects, alternative responsibilities-I've stated them, I think, as clearly as today they can be stated. We will know a good deal more in the coming days.

Public Papers of JFK, 1961, p.219

[14.] Q. Mr. President, concerning another aspect of this Communist threat, Russia and Red China publish an estimated 3 to 4 billion books a year, sending a large proportion to the noncommitted nations, and an AP story says that our USIA was able to send only a trifling fraction to these countries—last year, I guess less than 5 million. Does this book gap—doesn't this present a tremendous obstacle to our winning the minds of the uncommitted peoples, and does our administration plan to close this gap?

THE PRESIDENT. Well, I agree that both the Chinese Communists and the Russians have poured large sums of money into subsidizing cheap book publications which have poured into many sections of the world and is a matter of concern. I think the point is excellent. Mr. Murrow has been considering what we could do in an expanded way in this area. There are other areas where they've also made a greater effort, radio broadcasts to Africa and so on as well as exchanges. So that we have the whole problem, of which books is a part, in this struggle between freedom and control.

Public Papers of JFK, 1961, p.219

[15.] Q. Mr. President, I have a question about conventional forces in relation to the Laos situation. You have been reviewing the recommendations of your Secretary of Defense on conventional forces. Have you come to any decision on building them up, and have you found them adequate to deal with the Laos situation in case of—

THE PRESIDENT. We will be sending a message on Monday or Tuesday on those changes we are going to make in defense and at that time we'll give, I think, a more adequate response than I could give here to your question, because we're going to discuss the entire military budget. Quite obviously, we are stretched around the world with commitments to dozens of countries and it does raise the question of our-whether a greater effort should not be made.

Public Papers of JFK, 1961, p.219

Q. Mr. President, could you tell us what in your opinion this country has obtained out of its roughly $310 million worth of aid sent in the past 6 or 7 years to Laos?

THE PRESIDENT. Well, Laos is not yet a Communist country and it's my hope that it will not be.

Public Papers of JFK, 1961, p.219–p.220

[16.] Q. Mr. President, are you contemplating a further—a meeting with Soviet Foreign Minister Gromyko within the next week or have you one scheduled with him?

THE PRESIDENT. A further meeting? I've [p.220] not seen Mr. Gromyko.

Public Papers of JFK, 1961, p.220

Q.A meeting.

THE PRESIDENT. No, I have no plans for a meeting.

Public Papers of JFK, 1961, p.220

[17] Q. Mr. President, because it was such an obvious move, could you tell us what Mr. Salinger handed you just then? [Laughter]

THE PRESIDENT. Well, he handed me—I will not draw the cloak of Executive privilege around it. The point was made that Viet-Nam—these are the sort of things he knows—that Viet-Nam is not a signatory of the SEATO Pact, but is a protocol country of—under the SEATO Pact. [Laughter]

Public Papers of JFK, 1961, p.220

[18.] Q. Mr. President, do you agree with Secretary Dillon's estimate that the corporate profits for fiscal '62 will be about $3 billion under President Eisenhower's estimate, and, if so, will your budget take these lower revenue estimates into account?

Public Papers of JFK, 1961, p.220

THE. PRESIDENT. The budget estimates will be lower than were estimated in January, substantially lower than they were last October, and a good deal lower than they were estimated to be a year ago. We are sending a budget message up tomorrow which gives our opinion on what those receipts will be. But the economy, as it has slowed down, of course, the profit squeeze has been on, and the returns to the Government have been lessened, which have affected the budget picture.

Public Papers of JFK, 1961, p.220

Reporter: Thank you, Mr. President.

Public Papers of JFK, 1961, p.220

NOTE: President Kennedy's eighth news conference was held in the State Department Auditorium at 6 o'clock on Thursday evening, March 23, 1961.

Statement by President Kennedy Following Ratification of the 23d Amendment to the Constitution, 1961

Title: Statement by President Kennedy Following Ratification of the 23d Amendment to the Constitution

Author: John F. Kennedy

Date: March 29, 1961

Source: Public Papers of the Presidents, J. F. Kennedy, 1961, pp.245-246

Public Papers of JFK, 1961, p.245

RATIFICATION of the 23d amendment giving the residents of the District of Columbia the right to vote in Presidential elections by the required 38 States is a major step in the right direction. The speed with which this Constitutional amendment was approved by the required number of States demonstrates the interest of the nation at large in providing to all American citizens the most valuable of human rights—the right to share in the election of those who govern us. Hearings on enabling legislation to implement the amendment will be held shortly by the District of Columbia Commissioners and a legislative proposal will be submitted to the Congress at the earliest possible time.

Public Papers of JFK, 1961, p.245–p.246

It is equally important that residents of the District of Columbia have the right to select the officials who govern the District. [p.246] I am hopeful that the Congress, spurred by the adoption of the 23d amendment, will act favorably on legislative proposals to be recommended by the Administration providing the District of Columbia the right of home rule.

President Kennedy's Report to the American People on the Berlin Crisis, 1961

Title: President Kennedy's Report to the American People on the Berlin Crisis

Author: John F. Kennedy

Date: July 25, 1961

Source: Public Papers of the Presidents, J. F. Kennedy, 1961, pp.533-540

[Delivered by radio and television from the President's Office at 10 p.m.]

Public Papers of JFK, 1961, p.533

Good evening:

Public Papers of JFK, 1961, p.533

Seven weeks ago tonight I returned from Europe to report on my meeting with Premier Khrushchev and the others. His grim warnings about the future of the world, his aide memoire on Berlin, his subsequent speeches and threats which he and his agents have launched, and the increase in the Soviet military budget that he has announced, have all prompted a series of decisions by the Administration and a series of consultations with the members of the NATO organization. In Berlin, as you recall, he intends to bring to an end, through a stroke of the pen, first our legal rights to be in West Berlin—and secondly our ability to make good on our commitment to the two million free people of that city. That we cannot permit.

Public Papers of JFK, 1961, p.533

We are clear about what must be done—and we intend to do it. I want to talk frankly with you tonight about the first steps that we shall take. These actions will require sacrifice on the part of many of our citizens. More will be required in the future. They will require, from all of us, courage and perseverance in the years to come. But if we and our allies act out of strength and unity of purpose—with calm determination and steady nerves—using restraint in our words as well as our weapons, I am hopeful that both peace and freedom will be sustained.

Public Papers of JFK, 1961, p.533

The immediate threat to free men is in West Berlin. But that isolated outpost is not an isolated problem. The threat is worldwide. Our effort must be equally wide and strong, and not be obsessed by any single manufactured crisis. We face a challenge in Berlin, but there is also a challenge in Southeast Asia, where the borders are less guarded, the enemy harder to find, and the dangers of communism less apparent to those who have so little. We face a challenge in our own hemisphere, and indeed wherever else the freedom of human beings is at stake.

Public Papers of JFK, 1961, p.533

Let me remind you that the fortunes of war and diplomacy left the free people of West Berlin, in 1945, 110 miles behind the Iron Curtain.

Public Papers of JFK, 1961, p.533

This map makes very dear the problem that we face. The white is West Germany-the East is the area controlled by the Soviet Union, and as you can see from the chart, West Berlin is 110 miles within the area which the Soviets now dominate-which is immediately controlled by the so-called East German regime.

Public Papers of JFK, 1961, p.533

We are there as a result of our victory over Nazi Germany—and our basic rights to be there, deriving from that victory, include both our presence in West Berlin and the enjoyment of access across East Germany. These rights have been repeatedly confirmed and recognized in special agreements with the Soviet Union. Berlin is not a part of East Germany, but a separate territory under the control of the allied powers. Thus our rights there are clear and deep-rooted. But in addition to those rights is our commitment to sustain—and defend, if need be—the opportunity for more than two million people to determine their own future and choose their own way of life.

II

Public Papers of JFK, 1961, p.534

Thus, our presence in West Berlin, and our access thereto, cannot be ended by any act of the Soviet government. The NATO shield was long ago extended to cover West Berlin—and we have given our word that an attack upon that city will be regarded as an attack upon us all.

Public Papers of JFK, 1961, p.534

For West Berlin lying exposed 110 miles inside East Germany, surrounded by Soviet troops and close to Soviet supply lines, has many roles. It is more than a showcase of liberty, a symbol, an island of freedom in a Communist sea. It is even more than a link with the Free World, a beacon of hope behind the Iron Curtain, an escape hatch for refugees.

Public Papers of JFK, 1961, p.534

West Berlin is all of that. But above all it has now become—as never before—the great testing place of Western courage and will, a focal point where our solemn commitments stretching back over the years since 1945, and Soviet ambitions now meet in basic confrontation.

Public Papers of JFK, 1961, p.534

It would be a mistake for others to look upon Berlin, because of its location, as a tempting target. The United States is there; the United Kingdom and France are there; the pledge of NATO is there—and the people of Berlin are there. It is as secure, in that sense, as the rest of us—for we cannot separate its safety from our own.

Public Papers of JFK, 1961, p.534

I hear it said that West Berlin is militarily untenable. And so was Bastogne. And so, in fact, was Stalingrad. Any dangerous spot is tenable if men—brave men—will make it so.

Public Papers of JFK, 1961, p.534

We do not want to fight—but we have fought before. And others in earlier times have made the same dangerous mistake of assuming that the West was too selfish and too soft and too divided to resist invasions of freedom in other lands. Those who threaten to unleash the forces of war on a dispute over West Berlin should recall the words of the ancient philosopher: "A man who causes fear cannot be free from fear."

Public Papers of JFK, 1961, p.534

We cannot and will not permit the Communists to drive us out of Berlin, either gradually or by force. For the fulfillment of our pledge to that city is essential to the morale and security of Western Germany, to the unity of Western Europe, and to the faith of the entire Free World. Soviet strategy has long been aimed, not merely at Berlin, but at dividing and neutralizing all of Europe, forcing us back on our own shores. We must meet our oft-stated pledge to the free peoples of West Berlin-and maintain our rights and their safety, even in the face of force—in order to maintain the confidence of other free peoples in our word and our resolve. The strength of the alliance on which our security depends is dependent in turn on our willingness to meet our commitments to them.

III.

Public Papers of JFK, 1961, p.534

So long as the Communists insist that they are preparing to end by themselves unilaterally our rights in West Berlin and our commitments to its people, we must be prepared to defend those rights and those commitments. We will at all times be ready to talk, if talk will help. But we must also be ready to resist with force, if force is used upon us. Either alone would fail. Together, they can serve the cause of freedom and peace.

Public Papers of JFK, 1961, p.534–p.535

The new preparations that we shall make to defend the peace are part of the long-term build-up in our strength which has been underway since January. They are based on our needs to meet a world-wide [p.535] threat, on a basis which stretches far beyond the present Berlin crisis. Our primary purpose is neither propaganda nor provocation—but preparation.

Public Papers of JFK, 1961, p.535

A first need is to hasten progress toward the military goals which the North Atlantic allies have set for themselves. In Europe today nothing less will suffice. We will put even greater resources into fulfilling those goals, and we look to our allies to do the same.

Public Papers of JFK, 1961, p.535

The supplementary defense build-ups that I asked from the Congress in March and May have already started moving us toward these and our other defense goals. They included an increase in the size of the Marine Corps, improved readiness of our reserves, expansion of our air and sea lift, and stepped-up procurement of needed weapons, ammunition, and other items. To insure a continuing invulnerable capacity to deter or destroy any aggressor, they provided for the strengthening of our missile power and for putting 50% of our B-52 and B-47 bombers on a ground alert which would send them on their way with 15 minutes' warning.

Public Papers of JFK, 1961, p.535

These measures must be speeded up, and still others must now be taken. We must have sea and air lift capable of moving our forces quickly and in large numbers to any part of the world.

Public Papers of JFK, 1961, p.535

But even more importantly, we need the capability of placing in any critical area at the appropriate time a force which, combined with those of our allies, is large enough to make clear our determination and our ability to defend our rights at all costs—and to meet all levels of aggressor pressure with whatever levels of force are required. We intend to have a wider choice than humiliation or all-out nuclear action. While it is unwise at this time either to call up or send abroad excessive numbers of these troops before they are needed, let me make it clear that I intend to take, as time goes on, whatever steps are necessary to make certain that such forces can be deployed at the appropriate time without lessening our ability to meet our commitments elsewhere.

Public Papers of JFK, 1961, p.535

Thus, in the days and months ahead, I shall not hesitate to ask the Congress for additional measures, or exercise any of the executive powers that I possess to meet this threat to peace. Everything essential to the security of freedom must be done; and if that should require more men, or more taxes, or more controls, or other new powers, I shall not hesitate to ask them. The measures proposed today will be constantly studied, and altered as necessary. But while we will not let panic shape our policy, neither will we permit timidity to direct our program.

Public Papers of JFK, 1961, p.535

Accordingly, I am now taking the following steps:

Public Papers of JFK, 1961, p.535

(1) I am tomorrow requesting the Congress for the current fiscal year an additional $3,247,000,000 of appropriations for the Armed Forces. 1

1 A letter to the President of the Senate transmitting amendments to the Department of Defense budget was released by the White House on July 26. On August 17 the President approved the Department of Defense Appropriation Act, 1962 (Public Law 87-144; 75 Stat. 365).

Public Papers of JFK, 1961, p.535

(2) To fill out our present Army Divisions, and to make more men available for prompt deployment, I am requesting an increase in the Army's total authorized strength from 875,000 to approximately 1 million men.

Public Papers of JFK, 1961, p.535

(3) I am requesting an increase of 29,000 and 63,000 men respectively in the active duty strength of the Navy and the Air Force.

Public Papers of JFK, 1961, p.535–p.536

(4) To fulfill these manpower needs, I am ordering that our draft calls be doubled [p.536] and tripled in the coming months; I am asking the Congress for authority to order to active duty certain ready reserve units and individual reservists, and to extend tours of duty;2 and, under that authority, I am planning to order to active duty a number of air transport squadrons and Air National Guard tactical air squadrons, to give us the airlift capacity and protection that we need. Other reserve forces will be called up when needed.

2 On July 26 the White House released the text of identical letters to the President of the Senate and to the Speaker of the House of Representatives transmitting a request for authority to call reservists and to extend tours of duty. Also released was the text of a proposed joint resolution granting such authority, which was enacted on August 1, 1961 (Public Law S7-117; 75 Stat 242).

Public Papers of JFK, 1961, p.536

(5) Many ships and planes once headed for retirement are to be retained or reactivated, increasing our airpower tactically and our sealift, airlift, and anti-submarine warfare capability. In addition, our strategic air power will be increased by delaying the deactivation of B-47 bombers.

Public Papers of JFK, 1961, p.536

(6) Finally, some $1.8 billion—about half of the total sum—is needed for the procurement of non-nuclear weapons, ammunition and equipment.

Public Papers of JFK, 1961, p.536

The details on all these requests will be presented to the Congress tomorrow. Subsequent steps will be taken to suit subsequent needs. Comparable efforts for the common defense are being discussed with our NATO allies. For their commitment and interest are as precise as our own.

Public Papers of JFK, 1961, p.536

And let me add that I am well aware of the fact that many American families will bear the burden of these requests. Studies or careers will be interrupted; husbands and sons will be called away; incomes in some cases will be reduced. But these are burdens which must be borne if freedom is to be defended—Americans have willingly borne them before—and they will not flinch from the task now.

IV.

Public Papers of JFK, 1961, p.536

We have another sober responsibility. To recognize the possibilities of nuclear war in the missile age, without our citizens knowing what they should do and where they should go if bombs begin to fall, would be a failure of responsibility. In May, I pledged a new start on Civil Defense. Last week, I assigned, on the recommendation of the Civil Defense Director, basic responsibility for this program to the Secretary of Defense, to make certain it is administered and coordinated with our continental defense efforts at the highest civilian level. Tomorrow, I am requesting of the Congress new funds for the following immediate objectives: to identify and mark space in existing structures—public and private—that could be used for fall-out shelters in case of attack; to stock those shelters with food, water, first-aid kits and other minimum essentials for survival; to increase their capacity; to improve our air-raid warning and fall-out detection systems, including a new household warning system which is now under development; and to take other measures that will be effective at an early date to save millions of lives if needed.

Public Papers of JFK, 1961, p.536–p.537

In the event of an attack, the lives of those families which are not hit in a nuclear blast and fire can still be saved—if they can be warned to take shelter and if that shelter is available. We owe that kind of insurance to our families—and to our country. In contrast to our friends in Europe, the need for this kind of protection is new to our shores. But the time to start is now. In the coming months, I hope to let every citizen know what steps he can take without [p.537] delay to protect his family in case of attack. I know that you will want to do no less.

V.

Public Papers of JFK, 1961, p.537

The addition of $207 million in Civil Defense appropriations brings our total new defense budget requests to $3.454 billion, and a total of $47-5 billion for the year. This is an increase in the defense budget of $6 billion since January, and has resulted in official estimates of a budget deficit of over $5 billion. The Secretary of the Treasury and other economic advisers assure me, however, that our economy has the capacity to bear this new request.

Public Papers of JFK, 1961, p.537

We are recovering strongly from this year's recession. The increase in this last quarter of our year of our total national output was greater than that for any postwar period of initial recovery. And yet, wholesale prices are actually lower than they were during the recession, and consumer prices are only 1/4 of 1% higher than they were last October. In fact, this last quarter was the first in eight years in which our production has increased without an increase in the overall-price index. And for the first time since the fall of 1959, our gold position has improved and the dollar is more respected abroad. These gains, it should be stressed, are being accomplished with Budget deficits far smaller than those of the 1958 recession.

Public Papers of JFK, 1961, p.537

This improved business outlook means improved revenues; and I intend to submit to the Congress in January a budget for the next fiscal year which will be strictly in balance. Nevertheless, should an increase in taxes be needed—because of events in the next few months—to achieve that balance, or because of subsequent defense rises, those increased taxes will be requested in January.

Public Papers of JFK, 1961, p.537

Meanwhile, to help make certain that the current deficit is held to a safe level, we must keep down all expenditures not thoroughly justified in budget requests. The luxury of our current post-office deficit must be ended. Costs in military procurement will be closely scrutinized—and in this effort I welcome the cooperation of the Congress. The tax loopholes I have specified—on expense accounts, overseas income, dividends, interest, coo operatives and others—must be closed.

Public Papers of JFK, 1961, p.537

I realize that no public revenue measure is welcomed by everyone. But I am certain that every American wants to pay his fair share, and not leave the burden of defending freedom entirely to those who bear arms. For we have mortgaged our very future on this defense—and we cannot fail to meet our responsibilities.

VI.

Public Papers of JFK, 1961, p.537

But I must emphasize again that the choice is not merely between resistance and retreat, between atomic holocaust and surrender. Our peace-time military posture is traditionally defensive; but our diplomatic posture need not be. Our response to the Berlin crisis will not be merely military or negative. It will be more than merely standing firm. For we do not intend to leave it to others to choose and monopolize the forum and the framework of discussion. We do not intend to abandon our duty to mankind to seek a peaceful solution.

Public Papers of JFK, 1961, p.537–p.538

As signers of the UN Charter, we shall always be prepared to discuss international problems with any and all nations that are willing to talk—and listen—with reason. If they have proposals—not demands—we shall hear them. If they seek genuine understanding-not concessions of our rights-we shall meet with them. We have previously indicated our readiness to remove any actual irritants in West Berlin, but the freedom of that city is not negotiable. We [p.538] cannot negotiate with those who say "What's mine is mine and what's yours is negotiable." But we are willing to consider any arrangement or treaty in Germany consistent with the maintenance of peace and freedom, and with the legitimate security interests of all nations.

Public Papers of JFK, 1961, p.538

We recognize the Soviet Union's historical concern about their security in Central and Eastern Europe, after a series of ravaging invasions, and we believe arrangements can be worked out which will help to meet those concerns, and make it possible for both security and freedom to exist in this troubled area.

Public Papers of JFK, 1961, p.538

For it is not the freedom of West Berlin which is "abnormal" in Germany today, but the situation in that entire divided country. If anyone doubts the legality of our rights in Berlin, we are ready to have it submitted to international adjudication. If anyone doubts the extent to which our presence is desired by the people of West Berlin, compared to East German feelings about their regime, we are ready to have that question submitted to a free vote in Berlin and, if possible, among all the German people. And let us hear at that time from the two and one-half million refugees who have fled the Communist regime in East Germany-voting for Western-type freedom with their feet.

Public Papers of JFK, 1961, p.538

The world is not deceived by the Communist attempt to label Berlin as a hot-bed of war. There is peace in Berlin today. The source of world trouble and tension is Moscow, not Berlin. And if war begins, it will have begun in Moscow and not Berlin.

Public Papers of JFK, 1961, p.538

For the choice of peace or war is largely theirs, not ours. It is the Soviets who have stirred up this crisis. It is they who are trying to force a change. It is they who have opposed free elections. It is they who have rejected an all-German peace treaty, and the rulings of international law. And as Americans know from our history on our own old frontier, gun battles are caused by outlaws, and not by officers of the peace.

Public Papers of JFK, 1961, p.538

In short, while we are ready to defend our interests, we shall also be ready to search for peace—in quiet exploratory talks—in formal or informal meetings. We do not want military considerations to dominate the thinking of either East or West. And Mr. Khrushchev may find that his invitation to other nations to join in a meaningless treaty may lead to their inviting him to join in the community of peaceful men, in abandoning the use of force, and in respecting the sanctity of agreements.

VII.

Public Papers of JFK, 1961, p.538

While all of these efforts go on, we must not be diverted from our total responsibilities, from other dangers, from other tasks. If new threats in Berlin or elsewhere should cause us to weaken our program of assistance to the developing nations who are also under heavy pressure from the same source, or to halt our efforts for realistic disarmament, or to disrupt or slow down our economy, or to neglect the education of our children, then those threats will surely be the most successful and least costly maneuver in Communist history. For we can afford all these efforts, and more but we cannot afford not to meet this challenge.

Public Papers of JFK, 1961, p.538

And the challenge is not to us alone. It is a challenge to every nation which asserts its sovereignty under a system of liberty. It is a challenge to all those who want a world of free choice. It is a special challenge to the Atlantic Community—the heartland of human freedom.

Public Papers of JFK, 1961, p.538–p.539

We in the West must move together in [p.539] building military strength. We must consult one another more closely than ever before. We must together design our proposals for peace, and labor together as they are pressed at the conference table. And together we must share the burdens and the risks of this effort.

Public Papers of JFK, 1961, p.539

The Atlantic Community, as we know it, has been built in response to challenge: the challenge of European chaos in 1947, of the Berlin blockade in 1948, the challenge of Communist aggression in Korea in 1950. Now, standing strong and prosperous, after an unprecedented decade of progress, the Atlantic Community will not forget either its history or the principles which gave it meaning.

Public Papers of JFK, 1961, p.539

The solemn vow each of us gave to West Berlin in time of peace will not be broken in time of danger. If we do not meet our commitments to Berlin, where will we later stand? If we are not true to our word there, all that we have achieved in collective security, which relies on these words, will mean nothing. And if there is one path above all others to war, it is the path of weakness and disunity.

Public Papers of JFK, 1961, p.539

Today, the endangered frontier of freedom runs through divided Berlin. We want it to remain a frontier of peace. This is the hope of every citizen of the Atlantic Community; every citizen of Eastern Europe; and, I am confident, every citizen of the Soviet Union. For I cannot believe that the Russian people—who bravely suffered enormous losses in the Second World War-would now wish to see the peace upset once more in Germany. The Soviet government alone can convert Berlin's frontier of peace into a pretext for war.

Public Papers of JFK, 1961, p.539

The steps I have indicated tonight are aimed at avoiding that war. To sum it all up: we seek peace—but we shall not surrender. That is the central meaning of this crisis, and the meaning of your government's policy.

Public Papers of JFK, 1961, p.539

With your help, and the help of other free men, this crisis can be surmounted. Freedom can prevail—and peace can endure.

Public Papers of JFK, 1961, p.539

I would like to close with a personal word. When I ran for the Presidency of the United States, I knew that this country faced serious challenges, but I could not realize—nor could any man realize who does not bear the burdens of this office—how heavy and constant would be those burdens.

Public Papers of JFK, 1961, p.539

Three times in my life-time our country and Europe have been involved in major wars. In each case serious misjudgments were made on both sides of the intentions of others, which brought about great devastation.

Public Papers of JFK, 1961, p.539

Now, in the thermonuclear age, any misjudgment on either side about the intentions of the other could rain more devastation in several hours than has been wrought in all the wars of human history.

Public Papers of JFK, 1961, p.539

Therefore I, as President and Commander-in-Chief, and all of us as Americans, are moving through serious days. I shall bear this responsibility under our Constitution for the next three and one-half years, but I am sure that we all, regardless of our occupations, will do our very best for our country, and for our cause. For all of us want to see our children grow up in a country at peace, and in a world where freedom endures.

Public Papers of JFK, 1961, p.539

I know that sometimes we get impatient, we wish for some immediate action that would end our perils. But I must tell you that there is no quick and easy solution. The Communists control over a billion people, and they recognize that if we should falter, their success would be imminent.

Public Papers of JFK, 1961, p.540

We must look to long days ahead, which if we are courageous and persevering can bring us what we all desire.

Public Papers of JFK, 1961, p.540

In these days and weeks I ask for your help, and your advice. I ask for your suggestions, when you think we could do better.

Public Papers of JFK, 1961, p.540

All of us, I know, love our country, and we shall all do our best to serve it.

Public Papers of JFK, 1961, p.540

In meeting my responsibilities in these coming months as President, I need your good will, and your support—and above all, your prayers.

Public Papers of JFK, 1961, p.540

Thank you, and good night.

White House Statement on Soviet Resumption of Nuclear Weapons Tests, 1961

Title: White House Statement on Soviet Resumption of Nuclear Weapons Tests

Author: Kennedy Administration

Date: August 30, 1961

Source: Public Papers of the Presidents, J. F. Kennedy, 1961, pp.580-581

Public Papers of JFK, 1961, p.580–p.581

THE SOVIET government's decision to resume nuclear weapons testing will be met with deepest concern and resentment throughout the world. The Soviet government's decision to resume nuclear weapons testing presents a hazard to every human being throughout the world by increasing the dangers of nuclear fallout. The Soviet [p.581] government's decision to resume nuclear weapons testing is in utter disregard of the desire of mankind for a decrease in the arms race. The Soviet government's decision to resume nuclear weapons testing presents a threat to the entire world by increasing the dangers of a thermo-nuclear holocaust. The Soviet government's decision to resume nuclear weapons testing indicates the complete hypocrisy of its professions about general and complete disarmament.

Public Papers of JFK, 1961, p.581

For three years world attention has centered on the negotiations in Geneva for a treaty to secure an end to nuclear testing. Until last March it appeared that slow but encouraging progress had been made. At that time, the Soviet Union reversed its own earlier positions on key issues, refused to discuss seriously the genuine efforts made by the United States and the United Kingdom to meet known Soviet views, and blocked the path toward a nuclear test ban treaty. In order to avoid missing any possible opportunity to arrive at an agreement, the United States and the United Kingdom remained at the negotiating table. Only this week Ambassador Dean has made additional proposals in the hope of moving toward a test ban under effective international control. Urgent discussion of this issue had been scheduled at United States initiative at the forthcoming session of the General Assembly in the hopes that constructive debate could show the way to surmount the impasse at Geneva..

Public Papers of JFK, 1961, p.581

The pretext offered by the announcement for Soviet resumption of weapons testing is the very crisis which they themselves have created by threatening to disturb the peace which has existed in Germany and Berlin. It is not the first time they have made such charges against those who have dared to stand in the way of Soviet aggression. In addition, the announcement links the Soviet resumption of testing with threats of massive weapons which it must know cannot intimidate the rest of the world.

Public Papers of JFK, 1961, p.581

The purpose and motivation of this Soviet behavior now seems apparent: The Soviet Government wished to abandon serious negotiations in order to free its hand to resume nuclear weapons testing.

Public Papers of JFK, 1961, p.581

The United States continues to share the view of the people of the world as to the importance of an agreement to end nuclear weapons tests under effective safeguards. Such an agreement would represent a major breakthrough in the search for an end to the arms race. It would stop the accumulation of stock piles of even more powerful weapons. It would inhibit the spread of nuclear weapons to other countries with its increased risks of nuclear war.

Public Papers of JFK, 1961, p.581

These results, with their prospects for reducing the possibility of a nuclear war, have been blocked by the Soviet unilateral decision to resume nuclear testing. The Soviet Union bears a heavy responsibility before all humanity for this decision, a decision which was made in complete disregard of the United Nations. The termination of the moratorium on nuclear testing by the Soviet unilateral decision leaves the United States under the necessity of deciding what its own national interests require.

Public Papers of JFK, 1961, p.581

Under these circumstances, Ambassador Arthur Dean is being recalled immediately from Geneva.

President Kennedy's Address Before the General Assembly of the United Nations, 1961

Title: President Kennedy's Address Before the General Assembly of the United Nations

Author: John F. Kennedy

Date: September 25, 1961

Source: Public Papers of the Presidents, J. F. Kennedy, 1961, pp.618-626

Public Papers of JFK, 1961, p.618

Mr. President, honored delegates, ladies and gentlemen:

Public Papers of JFK, 1961, p.618

We meet in an hour of grief and challenge. Dag Hammarskjold is dead. But the United Nations lives. His tragedy is deep in our hearts, but the task for which he died is at the top of our agenda. A noble servant of peace is gone. But the quest for peace lies before us.

Public Papers of JFK, 1961, p.618

The problem is not the death of one man—the problem is the life of this organization. It will either grow to meet the challenges of our age, or it will be gone with the wind, without influence, without force, without respect. Were we to let it die, to enfeeble its vigor, to cripple its powers, we would condemn our future.

Public Papers of JFK, 1961, p.618–p.619

For in the development of this organization rests the only true alternative to war—and war appeals no longer as a rational alternative. Unconditional war can no longer lead to unconditional victory. It can no longer serve to settle disputes. It can no longer concern the great powers [p.619] alone. For a nuclear disaster, spread by wind and water and fear, could well engulf the great and the small, the rich and the poor, the committed and the uncommitted alike. Mankind must put an end to war—or war will put an end to mankind.

Public Papers of JFK, 1961, p.619

So let us here resolve that Dag Hammarskjold did not live, or die, in vain. Let us call a truce to terror. Let us invoke the blessings of peace. And, as we build an international capacity to keep peace, let us join in dismantling the national capacity to wage war.

II.

Public Papers of JFK, 1961, p.619

This will require new strength and new roles for the United Nations. For disarmament without checks is but a shadow-and a community without law is but a shell. Already the United Nations has become both the measure and the vehicle of man's most generous impulses. Already it has provided—in the Middle East, in Asia, in Africa this year in the Congo—a means of holding man's violence within bounds.

Public Papers of JFK, 1961, p.619

But the great question which confronted this body in 1945 is still before us: whether man's cherished hopes for progress and peace are to be destroyed by terror and disruption, whether the "foul winds of war" can be tamed in time to free the cooling winds of reason, and whether the pledges of our Charter are to be fulfilled or defied-pledges to secure peace, progress, human rights and world law.

Public Papers of JFK, 1961, p.619

In this Hall, there are not three forces, but two. One is composed of those who are trying to build the kind of world described in Articles I and II of the Charter. The other, seeking a far different world, would undermine this organization in the process.

Public Papers of JFK, 1961, p.619

Today of all days our dedication to the Charter must be maintained. It must be strengthened first of all by the selection of an outstanding civil servant to carry forward the responsibilities of the Secretary General—a man endowed with both the wisdom and the power to make meaningful the moral force of the world community. The late Secretary General nurtured and sharpened the United Nations' obligation to act. But he did not invent it. It was there in the Charter. It is still there in the Charter.

Public Papers of JFK, 1961, p.619

However difficult it may be to fill Mr. Hammarskjold's place, it can better be filled by one man rather than by three. Even the three horses of the Troika did not have three drivers, all going in different directions. They had only one—and so must the United Nations executive. To install a triumvirate, or any panel, or any rotating authority, in the United Nations administrative offices would replace order with anarchy, action with paralysis, confidence with confusion.

Public Papers of JFK, 1961, p.619

The Secretary General, in a very real sense, is the servant of the General Assembly. Diminish his authority and you diminish the authority of the only body where all nations, regardless of power, are equal and sovereign. Until all the powerful are just, the weak will be secure only in the strength of this Assembly.

Public Papers of JFK, 1961, p.619

Effective and independent executive action is not the same question as balanced representation. In view of the enormous change in membership in this body since its founding, the American delegation will join in any effort for the prompt review and revision of the composition of United Nations bodies.

Public Papers of JFK, 1961, p.619–p.620

But to give this organization three drivers—to permit each great power to decide its own case, would entrench the Cold War in the headquarters of peace. Whatever advantages such a plan may hold out to my own country, as one of the great powers, we [p.620] reject it. For we far prefer world law, in the age of self-determination, to world war, in the age of mass extermination.

III.

Public Papers of JFK, 1961, p.620

Today, every inhabitant of this planet must contemplate the day when this planet may no longer be habitable. Every man, woman and child lives under a nuclear sword of Damocles, hanging by the slenderest of threads, capable of being cut at any moment by accident or miscalculation or by madness. The weapons of war must be abolished before they abolish us.

Public Papers of JFK, 1961, p.620

Men no longer debate whether armaments are a symptom or a cause of tension. The mere existence of modern weapons—ten million times more powerful than any that the world has ever seen, and only minutes away from any target on earth—is a source of horror, and discord and distrust. Men no longer maintain that disarmament must await the settlement of all disputes—for disarmament must be a part of any permanent settlement. And men may no longer pretend that the quest for disarmament is a sign of weakness—for in a spiraling arms race, a nation's security may well be shrinking even as its arms increase.

Public Papers of JFK, 1961, p.620

For 15 years this organization has sought the reduction and destruction of arms. Now that goal is no longer a dream—it is a practical matter of life or death. The risks inherent in disarmament pale in comparison to the risks inherent in an unlimited arms race.

Public Papers of JFK, 1961, p.620

It is in this spirit that the recent Belgrade Conference—recognizing that this is no longer a Soviet problem or an American problem, but a human problem—endorsed a program of "general, complete and strictly an internationally controlled disarmament." It is in this same spirit that we in the United States have labored this year, with a new urgency, and with a new, now statutory agency fully endorsed by the Congress, to find an approach to disarmament which would be so far-reaching yet realistic, so mutually balanced and beneficial, that it could be accepted by every nation. And it is in this spirit that we have presented with the agreement of the Soviet Union—under the label both nations now accept of "general and complete disarmament"—a new statement of newly-agreed principles for negotiation.

Public Papers of JFK, 1961, p.620

But we are well aware that all issues of principle are not settled, and that principles alone are not enough. It is therefore our intention to challenge the Soviet Union, not to an arms race, but to a peace race—to advance together step by step, stage by stage, until general and complete disarmament has been achieved. We invite them now to go beyond agreement in principle to reach agreement on actual plans.

Public Papers of JFK, 1961, p.620–p.621

The program to be presented to this assembly—for general and complete disarmament under effective international control-moves to bridge the gap between those who insist on a gradual approach and those who talk only of the final and total achievement. It would create machinery to keep the peace as it destroys the machinery Of war. It would proceed through balanced and safeguarded stages designed to give no state a military advantage over another. It would place the final responsibility for verification and control where it belongs, not with the big powers alone, not with one's adversary or one's self, but in an international organization within the framework of the United Nations. It would assure that indispensable condition of disarmament-true inspection—and apply it in [p.621] stages proportionate to the stage of disarmament. It would cover delivery systems as well as weapons. It would ultimately halt their production as well as their testing, 'their transfer as well as their possession. It would achieve, under the eyes of an international disarmament organization, a steady reduction in force, both nuclear and conventional, until it has abolished all armies and all weapons except those needed for internal order and a new United Nations Peace Force. And it starts that process now, today, even as the talks begin.

Public Papers of JFK, 1961, p.621

In short, general and complete disarmament must no longer be a slogan, used to resist the first steps. It is no longer to be a goal without means of achieving it, without means of verifying its progress, without means of keeping the peace. It is now a realistic plan, and a test—a test of those only willing to talk and a test of those willing to act.

Public Papers of JFK, 1961, p.621

Such a plan would not bring a world free from conflict and greed—but it would bring a world free from the terrors of mass destruction It would not usher in the era of the super state—but it would usher in an era in which no state could annihilate or be annihilated by another.

Public Papers of JFK, 1961, p.621

In 1945, this Nation proposed the Baruch Plan to internationalize the atom before other nations even possessed the bomb or demilitarized their troops. We proposed with our allies the Disarmament Plan of 1951 while still at war in Korea. And we make our proposals today, while building up our defenses over Berlin, not because we are inconsistent or insincere or intimidated, but because we know the rights of free men will prevail—because while we are compelled against our will to rearm, we look confidently beyond Berlin to the kind of disarmed world we all prefer.

Public Papers of JFK, 1961, p.621

I therefore propose, on the basis of this Plan, that disarmament negotiations resume promptly, and continue without interruption until an entire program for general and complete disarmament has not only been agreed but has been actually achieved.

IV.

Public Papers of JFK, 1961, p.621

The logical place to begin is a treaty assuring the end of nuclear tests of all kinds, in every environment, under workable controls. The United States and the United Kingdom have proposed such a treaty that is both reasonable, effective and ready for signature. We are still prepared to sign that treaty today.

Public Papers of JFK, 1961, p.621

We also proposed a mutual ban on atmospheric testing, without inspection or controls, in order to save the human race from the poison of radioactive fallout. We regret that that offer has not been accepted.

Public Papers of JFK, 1961, p.621

For 15 years we have sought to make the atom an instrument of peaceful growth rather than of war. But for 15 years our concessions have been matched by obstruction, our patience by intransigence. And the pleas of mankind for peace have met with disregard.

Public Papers of JFK, 1961, p.621

Finally, as the explosions of others beclouded the skies, my country was left with no alternative but to act in the interests of its own and the free world's security. We cannot endanger that security by refraining from testing while others improve their arsenals. Nor can we endanger it by another long, un-inspected ban on testing. For three years we accepted those risks in our open society while seeking agreement on inspection. But this year, while we were negotiating in good faith in Geneva, others were secretly preparing new experiments in destruction.

Public Papers of JFK, 1961, p.622

Our tests are not polluting the atmosphere. Our deterrent weapons are guarded against accidental explosion or use. Our doctors and scientists stand ready to help any nation measure and meet the hazards to health which inevitably result from the tests in the atmosphere.

Public Papers of JFK, 1961, p.622

But to halt the spread of these terrible weapons, to halt the contamination of the air, to halt the spiraling nuclear arms race, we remain ready to seek new avenues of agreement, our new Disarmament Program thus includes the following proposals:

Public Papers of JFK, 1961, p.622

—First, signing the test-ban treaty by all nations. This can be done now. Test ban negotiations need not and should not await general disarmament.

—Second, stopping the production of fissionable materials for use in weapons, and preventing their transfer to any nation now lacking in nuclear weapons.

Public Papers of JFK, 1961, p.622

—Third, prohibiting the transfer of control over nuclear weapons to states that do not own them.

—Fourth, keeping nuclear weapons from seeding new battlegrounds in outer space.

Public Papers of JFK, 1961, p.622

—Fifth, gradually destroying existing nuclear weapons and converting their materials to peaceful uses; and

Public Papers of JFK, 1961, p.622

—Finally, halting the unlimited testing and production of strategic nuclear delivery vehicles, and gradually destroying them as well.

V.

Public Papers of JFK, 1961, p.622

To destroy arms, however, is not enough. We must create even as we destroy—creating worldwide law and law enforcement as we outlaw worldwide war and weapons. In the world we seek, the United Nations Emergency Forces which have been hastily assembled, uncertainly supplied, and inadequately financed, will never be enough.

Public Papers of JFK, 1961, p.622

Therefore, the United States recommends the Presidents that all member nations earmark special peace-keeping units in their armed forces-to be on call of the United Nations, to be specially trained and quickly available, and with advance provision for financial and logistic support.

Public Papers of JFK, 1961, p.622

In addition, the American delegation will suggest a series of steps to improve the United Nations' machinery for the peaceful settlement of disputes—for on-the-spot fact-finding, mediation and adjudication—for extending the rule of international law. For peace is not solely a matter of military or technical problems—it is primarily a problem of politics and people. And unless man can match his strides in weaponry and technology with equal strides in social and political development, our great strength, like that of the dinosaur, will become incapable of proper control—and like the dinosaur vanish from the earth.

VI.

Public Papers of JFK, 1961, p.622

As we extend the rule of law on earth, so must we also extend it to man's new domain—outer space.

Public Papers of JFK, 1961, p.622

All of us salute the brave cosmonauts of the Soviet Union. The new horizons of outer space must not be driven by the old bitter concepts of imperialism and sovereign claims. The cold reaches of the universe must not become the new arena of an even colder war.

Public Papers of JFK, 1961, p.622–p.623

To this end, we shall urge proposals extending the United Nations Charter to the limits of man's exploration in the universe, reserving outer space for peaceful use, prohibiting weapons of mass destruction in space or on celestial bodies, and opening the mysteries and benefits of space to every nation. We shall propose further cooperative efforts between all nations in weather prediction and eventually in weather control. [p.623] We shall propose, finally, a global system of communications satellites linking the whole world in telegraph and telephone and radio and television. The day need not be fat away when such a system will televise the proceedings of this body to every corner of the world for the benefit of peace.

VII.

Public Papers of JFK, 1961, p.623

But the mysteries of outer space must not divert our eyes or our energies from the harsh realities that face our fellow men. Political sovereignty is but a mockery without the means of meeting poverty and literacy and disease. Self-determination is but a slogan if the future holds no hope.

Public Papers of JFK, 1961, p.623

That is why my Nation, which has freely shared its capital and its technology to help others help themselves, now proposes officially designating this decade of the 1960's as the United Nations Decade of Development. Under the framework of that Resolution, the United Nations' existing efforts in promoting economic growth can be expanded and coordinated. Regional surveys and training institutes can now pool the talents of many. New research, technical assistance and pilot projects can unlock the wealth of less developed lands and untapped waters. And development can become a cooperative and not a competitive enterprise-to enable all nations, however diverse in their systems and beliefs, to become in fact as well as in law free and equal nations.

VIII.

Public Papers of JFK, 1961, p.623

My Country favors a world of free and equal states. We agree with those who say that colonialism is a key issue in this Assembly But let the full facts of that issue be discussed in full.

Public Papers of JFK, 1961, p.623

On the one hand is the fact that, since the close of World War II, a worldwide declaration of independence has transformed nearly 1 billion people and 9 million square miles into 42 free and independent states. Less than 2 percent of the world's population now lives in "dependent" territories.

Public Papers of JFK, 1961, p.623

I do not ignore the remaining problems of traditional colonialism which still confront this body. Those problems will be solved, with patience, good will, and determination. Within the limits of our responsibility in such matters, my Country intends to be a participant and not merely an observer, in the peaceful, expeditious movement of nations from the status of colonies to the partnership of equals. That continuing tide of self-determination, which runs so strong, has our sympathy and our support.

Public Papers of JFK, 1961, p.623

But colonialism in its harshest forms is not only the exploitation of new nations by old, of dark skins by light, or the subjugation of the poor by the rich. My Nation was once a colony, and we know what colonialism means; the exploitation and subjugation of the weak by the powerful, of the many by the few, of the governed who have given no consent to be governed, whatever their continent, their class, or their color.

Public Papers of JFK, 1961, p.623–p.624

And that is why there is no ignoring the fact that the tide of self-determination has not reached the Communist empire where a population far larger than that officially termed "dependent" lives under governments installed by foreign troops instead of free institutions—under a system which knows only one party and one belief—which suppresses free debate, and free elections, and free newspapers, and free books and free trade unions—and which builds a wall to keep truth a stranger and its own citizens prisoners. Let us debate colonialism in full—and apply the principle of free choice [p.624] and the practice of free plebiscites in every corner of the globe.

IX.

Public Papers of JFK, 1961, p.624

Finally, as President of the United States, I consider it my duty to report to this Assembly on two threats to the peace which are not on your crowded agenda, but which causes us, and most of you, the deepest concern.

Public Papers of JFK, 1961, p.624

The first threat on which I wish to report is widely misunderstood: the smoldering coals of war in Southeast Asia. South Viet-Nam is already under attack—sometimes by a single assassin, sometimes by a band of guerrillas, recently by full battalions. The peaceful borders of Burma, Cambodia, and India have been repeatedly violated. And the peaceful people of Laos are in danger of losing the independence they gained not so long ago.

Public Papers of JFK, 1961, p.624

No one can call these "wars of liberation." For these are free countries living under their own governments. Nor are these aggressions any less real because men are knifed in their homes and not shot in the fields of battle.

Public Papers of JFK, 1961, p.624

The very simple question confronting the world community is whether measures can be devised to protect the small and the weak from such tactics. For if they are successful in Laos and South Viet-Nam, the gates will be opened wide.

Public Papers of JFK, 1961, p.624

The United States seeks for itself no base, no territory, no special position in this area of any kind. We support a truly neutral and independent Laos, its people free from outside interference, living at peace with themselves and with their neighbors, assured that their territory will not be used for attacks on others, and under a government comparable (as Mr. Khrushchev and I agreed at Vienna) to Cambodia and Burma.

Public Papers of JFK, 1961, p.624

But now the negotiations over Laos are reaching a crucial stage. The cease-fire is at best precarious. The rainy season is coming to an end. Laotian territory is being used to infiltrate South Viet-Nam. The world community must recognize—and all those who are involved—that this potent threat to Laotian peace and freedom is indivisible from all other threats to their own.

Public Papers of JFK, 1961, p.624

Secondly, I wish to report to you on the crisis over Germany and Berlin. This is not the time or the place for immoderate tones, but the world community is entitled to know the very simple issues as we see them. If there is a crisis' it is because an existing peace is under threat, because an existing island of free people is under pressure, because solemn agreements are being treated with indifference. Established international rights are being threatened with unilateral usurpation. Peaceful circulation has been interrupted by barbed wire and concrete blocks.

Public Papers of JFK, 1961, p.624

One recalls the order of the Czar in Pushkin's "Boris Godunov": "Take steps at this very hour that our frontiers be fenced in by barriers…. That not a single soul pass o'er the border, that not a hare be able to run or a crow to fly."

Public Papers of JFK, 1961, p.624

It is absurd to allege that we are threatening a war merely to prevent the Soviet Union and East Germany from signing a so-called "treaty" of peace. The Western Allies are not concerned with any paper arrangement the Soviets may wish to make with a regime of their own creation, on territory occupied by their own troops and governed by their own agents. No such action can affect either our rights or our responsibilities.

Public Papers of JFK, 1961, p.624–p.625

If there is a dangerous crisis in Berlin-and there is—it is because of threats against the vital interests and the deep commitments of the Western Powers, and the freedom [p.625] of West Berlin. We cannot yield these interests. We cannot fail these commitments. We cannot surrender the freedom of these people for whom we are responsible. A "peace treaty" which carried with it the provisions which destroy the peace would be a fraud. A "free city" which was not genuinely free would suffocate freedom and would be an infamy.

Public Papers of JFK, 1961, p.625

For a city or a people to be truly free, they must have the secure right, without economic, political or police pressure, to make their own choice and to live their own lives. And as I have said before, if anyone doubts the extent to which our presence is desired by the people of West Berlin, we are ready to have that question submitted to a free vote in all Berlin and, if possible, among all the German people.

Public Papers of JFK, 1961, p.625

The elementary fact about this crisis is that it is unnecessary. The elementary tools for a peaceful settlement are to be found in the charter. Under its law, agreements are to be kept, unless changed by all those who made them. Established rights are to be respected. The political disposition of peoples should rest upon their own wishes, freely expressed in plebiscites or free elections. If there are legal problems, they can be solved by legal means. If there is a threat of force, it must be rejected. If there is desire for change, it must be a subject for negotiation and if there is negotiation, it must be rooted in mutual respect and concern for the rights of others.

Public Papers of JFK, 1961, p.625

The Western Powers have calmly resolved to defend, by whatever means are forced upon them, their obligations and their access to the free citizens of West Berlin and the self-determination of those citizens. This generation learned from bitter experience that either brandishing or yielding to threats can only lead to war. But firmness and reason can lead to the kind of peaceful solution in which my country profoundly believes.

Public Papers of JFK, 1961, p.625

We are committed to no rigid formula. We see no perfect solution. We recognize that troops and tanks can, for a time, keep a nation divided against its will, however unwise that policy may seem to us. But we believe a peaceful agreement is possible which protects the freedom of West Berlin and allied presence and access, while recognizing the historic and legitimate interests of others in assuring European security.

Public Papers of JFK, 1961, p.625

The possibilities of negotiation are now being explored; it is too early to report what the prospects may be. For our part, we would be glad to report at the appropriate time that a solution has been found. For there is no need for a crisis over Berlin, threatening the peace—and if those who created this crisis desire peace, there will be peace and freedom in Berlin.

X.

Public Papers of JFK, 1961, p.625

The events and decisions of the next ten months may well decide the fate of man for the next ten thousand years. There will be no avoiding those events. There will be no appeal from these decisions. And we in this hall shall be remembered either as part of the generation that turned this planet into a flaming funeral pyre or the generation that met its vow "to save succeeding generations from the scourge of war."

Public Papers of JFK, 1961, p.625

In the endeavor to meet that vow, I pledge you every effort this Nation possesses. I pledge you that we shall neither commit nor provoke aggression, that we shall neither flee nor invoke the threat of force, that we shall never negotiate out of fear, we shall never fear to negotiate.

Public Papers of JFK, 1961, p.625–p.626

Terror is not a new weapon. Throughout history it has been used by those who could not prevail, either by persuasion or [p.626] example. But inevitably they fail, either because men are not afraid to die for a life worth living, or because the terrorists themselves came to realize that free men cannot be frightened by threats, and that aggression would meet its own response. And it is in the light of that history that every nation today should know, be he friend or foe, that the United States has both the will and the weapons to join free men in standing up to their responsibilities.

Public Papers of JFK, 1961, p.626

But I come here today to look across this world of threats to a world of peace. In that search we cannot expect any final triumph-for new problems will always arise. We cannot expect that all nations will adopt like systems—for conformity is the jailer of freedom, and the enemy of growth. Nor can we expect to reach our goal by contrivance, by fiat or even by the wishes of all. But however close we sometimes seem to that dark and final abyss, let no man of peace and freedom despair. For he does not stand alone. If we all can persevere, if we can in every land and office look beyond our own shores and ambitions, then surely the age will dawn in which the strong are just and the weak secure and the peace preserved.

Public Papers of JFK, 1961, p.626

Ladies and gentlemen of this Assembly, the decision is ours. Never have the nations of the world had so much to lose, or so much to gain. Together we shall save our planet, or together we shall perish in its flames. Save it we can—and save it we must—and then shall we earn the eternal thanks of mankind and, as peacemakers, the eternal blessing of God.

Public Papers of JFK, 1961, p.626

NOTE: The President spoke at 11:30 a.m. His opening words "Mr. President" referred to Mongi Slim, President of the General Assembly and U.N. Representative from Tunisia.

Times Film Corp. v. City of Chicago, 1961

Title: Times Film Corp. v. City of Chicago

Author: U.S. Supreme Court

Date: January 23, 1961

Source: 365 U.S. 43

This case was argued October 19-20, 1960, and was decided January 23, 1961.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Syllabus

1961, Times Film Corp. v. City of Chicago, 365 U.S. 43

The Municipal Code of Chicago, § 155-4, requires submission of all motion pictures for examination or censorship prior to their public exhibition and forbids their exhibition unless they meet certain standards. Petitioner applied for a permit to exhibit a certain motion picture and tendered the required license fee, but the permit was denied solely because petitioner refused to submit the film for examination. Petitioner sued in a Federal District Court for injunctive relief ordering issuance of the permit without submission of the film and restraining the city officials from interfering with its exhibition. It did not submit the film to the court or offer any evidence as to its content. The District Court dismissed the complaint on the ground, inter alia, that neither a substantial federal question nor a justiciable controversy was presented.

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Held: the provision requiring submission of motion pictures for examination or censorship prior to their public exhibition is not void on its face as violative of the First and Fourteenth Amendments, and the judgment of dismissal is affirmed. Pp. 44-50.

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(a) This case presents a justiciable controversy. Pp. 45-46.

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(b) Petitioner's narrow attack on the ordinance does not require that any consideration be given to the validity of the standards set out therein, since they are not challenged and are not before this Court. Pp. 46-47.

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(c) It has never been held that liberty of speech is absolute, or that all prior restraints on speech are invalid. Pp. 47-49.

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(d) Although motion pictures are included within the free speech and free press guaranties of the First and Fourteenth Amendments, there is no absolute freedom to exhibit publicly, at least once, every kind of motion picture. Pp. 46, 49-50.

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272 F.2d 90 affirmed. [365 U.S. 44]

CLARK, J., lead opinion

1961, Times Film Corp. v. City of Chicago, 365 U.S. 44

MR. JUSTICE CLARK delivered the opinion of the Court.

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Petitioner challenges on constitutional grounds the validity on its face of that portion of § 155-4 1 of the Municipal Code of the City of Chicago which requires submission of all motion pictures for examination prior to their public exhibition. Petitioner is a New York corporation owning the exclusive right to publicly exhibit in Chicago the film known as "Don Juan." It applied for a permit, as Chicago's ordinance required, and tendered the license fee, but refused to submit the film for examination. The appropriate city official refused to issue the permit, and his order was made final on appeal to the Mayor. The sole ground for denial was petitioner's refusal to submit the film for examination as required. Petitioner then brought this suit seeking injunctive relief ordering the issuance of the permit without submission of the film and restraining the city officials from interfering with the exhibition of the picture. Its sole ground is that the provision of the ordinance requiring submission of the film constitutes, on its face, a prior restraint within the prohibition of the First and Fourteenth Amendments. The District Court dismissed the complaint on the grounds, inter alia, that neither a substantial federal question nor even a justiciable controversy was presented. 180 F.Supp. 843. The Court of Appeals affirmed, finding that the case presented merely an abstract question of law, since neither the film nor evidence of its content was submitted. 272 F.2d 90. The precise question at issue here never having [365 U.S. 45] been specifically decided by this Court, we granted certiorari, 362 U.S. 917 (1960).

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We are satisfied that a justiciable controversy exists. The section of Chicago's ordinance in controversy specifically provides that a permit for the public exhibition of a motion picture must be obtained; that such

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permit shall be granted only after the motion picture film for which said permit is requested has been produced at the office of the commissioner of police for examination;

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that the commissioner shall refuse the permit if the picture does not meet certain standards; 2 and that, in the event of such refusal, the applicant may appeal to the mayor for a de novo hearing, and his action shall be final. Violation of the ordinance carries certain punishments. The petitioner complied with the requirements of the ordinance, save for the production of the film for examination. The claim is that this concrete and specific statutory requirement, [365 U.S. 46] the production of the film at the office of the commissioner for examination, is invalid as a previous restraint on freedom of speech. In Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 502 (1952), we held that motion pictures are included "within the free speech and free press guaranty of the First and Fourteenth Amendments." Admittedly, the challenged section of the ordinance imposes a previous restraint, and the broad justiciable issue is therefore present as to whether the ambit of constitutional protection includes complete and absolute freedom to exhibit, at least once, any and every kind of motion picture. It is that question alone which we decide. We have concluded that § 155-4 of Chicago's ordinance requiring the submission of films prior to their public exhibition is not, on the grounds set forth, void on its face.

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Petitioner's narrow attack upon the ordinance does not require that any consideration be given to the validity of the standards set out therein. They are not challenged, and are not before us. Prior motion picture censorship cases which reached this Court involved questions of standards. 3 The films had all been submitted to the authorities, and permits for their exhibition were refused because of their content. Obviously, whether a particular statute is "clearly drawn," or "vague," or "indefinite," or whether a clear standard is in fact met by a film are different questions involving other constitutional challenges to be tested by considerations not here involved.

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Moreover, there is not a word in the record as to the nature and content of "Don Juan." We are left entirely [365 U.S. 47] in the dark in this regard, as were the city officials and the other reviewing courts. Petitioner claims that the nature of the film is irrelevant, and that even if this film contains the basest type of pornography, or incitement to riot, or forceful overthrow of orderly government, it may nonetheless be shown without prior submission for examination. The challenge here is to the censor's basic authority; it does not go to any statutory standards employed by the censor or procedural requirements as to the submission of the film.

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In this perspective, we consider the prior decisions of this Court touching on the problem. Beginning over a third of a century ago, in Gitlow v. New York, 268 U.S. 652 (1925), they have consistently reserved for future decision possible situations in which the claimed First Amendment privilege might have to give way to the necessities of the public welfare. It has never been held that liberty of speech is absolute. Nor has it been suggested that all previous restraints on speech are invalid. On the contrary, in Near v. Minnesota, 283 U.S. 697, 715-716 (1931), Chief Justice Hughes, in discussing the classic legal statements concerning the immunity of the press from censorship, observed that the principle forbidding previous restraint

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is stated too broadly, if every such restraint is deemed to be prohibited…. [T]he protection even as to previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases.

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These included, the Chief Justice found, utterances creating "a hindrance" to the Government's war effort, and "actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops." In addition, the Court said that "the primary requirements of decency may be enforced against obscene publications" and the

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security of the community life may be protected against incitements to acts of violence and the overthrow by force [365 U.S. 48] of orderly government.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 48

Some years later, a unanimous Court, speaking through Mr. Justice Murphy, in Chaplinsky v. New Hampshire, 315 U.S. 568, 571-572 (1942), held that there were

1961, Times Film Corp. v. City of Chicago, 365 U.S. 48

certain well defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words—those which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 48

Thereafter, as we have mentioned, in Joseph Burstyn, Inc. v. Wilson, supra, we found motion pictures to be within the guarantees of the First and Fourteenth Amendments, but we added that this was

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not the end of our problem. It does not follow that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times and all places.

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At p. 502. Five years later, in Roth v. United States, 354 U.S. 476, 483 (1957), we held that "in light of…history, it is apparent that the unconditional phrasing of the First Amendment was not intended to protect every utterance." Even those in dissent there found that

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Freedom of expression can be suppressed if, and to the extent that, it is so closely brigaded with illegal action as to be an inseparable part of it.

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Id. at 514. And, during the same Term, in Kingsley Books, Inc. v. Brown, 354 U.S. 436, 441 (1957), after characterizing Near v. Minnesota, supra, as "one of the landmark opinions" in its area, we took notice that Near

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left no doubts that "Liberty of speech, and of the press, is also not an absolute right…the protection even as to previous restraint is not absolutely unlimited."…The judicial angle of vision,

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we said there,

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in testing the validity of a statute like § 22-a [New York's injunctive remedy against certain forms of obscenity] is "the operation and effect of the statute in substance."

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And as if to emphasize the point involved [365 U.S. 49] here, we added that "The phrase `prior restraint' is not a self-wielding sword. Nor can it serve as a talismanic test." Even as recently as our last Term, we again observed the principle, albeit in an allied area, that the State possesses some measure of power "to prevent the distribution of obscene matter." Smith v. California, 361 U.S. 147, 155 (1959).

1961, Times Film Corp. v. City of Chicago, 365 U.S. 49

Petitioner would have us hold that the public exhibition of motion pictures must be allowed under any circumstances. The State's sole remedy, it says, is the invocation of criminal process under the Illinois pornography statute, Ill.Rev.Stat. (1959), c. 38, § 470, and then only after a transgression. But this position, as we have seen, is founded upon the claim of absolute privilege against prior restraint under the First Amendment—a claim without sanction in our cases. To illustrate its fallacy, we need only point to one of the "exceptional cases" which Chief Justice Hughes enumerated in Near v. Minnesota, supra, namely, "the primary requirements of decency [that] may be enforced against obscene publications." Moreover, we later held specifically "that obscenity is not within the area of constitutionally protected speech or press." Roth v. United States, 354 U.S. 476, 485 (1957). Chicago emphasizes here its duty to protect its people against the dangers of obscenity in the public exhibition of motion pictures. To this argument petitioner's only answer is that, regardless of the capacity for, or extent of, such an evil, previous restraint cannot be justified. With this we cannot agree. We recognized in Burstyn, supra, that "capacity for evil…may be relevant in determining the permissible scope of community control," 343 U.S. at 502, and that motion pictures were not "necessarily subject to the precise rules governing any other particular method of expression. Each method," we said, "tends to present its own peculiar problems." At p. 503. Certainly petitioner's broadside [365 U.S. 50] attack does not warrant, nor could it justify on the record here, our saying that—aside from any consideration of the other "exceptional cases" mentioned in our decisions—the State is stripped of all constitutional power to prevent, in the most effective fashion, the utterance of this class of speech. It is not for this Court to limit the State in its selection of the remedy it deems most effective to cope with such a problem, absent, of course, a showing of unreasonable strictures on individual liberty resulting from its application in particular circumstances. Kingsley Books, Inc. v. Brown, supra, at 441. We, of course, are not holding that city officials may be granted the power to prevent the showing of any motion picture they deem unworthy of a license. Joseph Burstyn, Inc. v. Wilson, supra, at 504-505.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 50

As to what may be decided when a concrete case involving a specific standard provided by this ordinance is presented, we intimate no opinion. The petitioner has not challenged all—or, for that matter, any—of the ordinance's standards. Naturally we could not say that every one of the standards, including those which Illinois' highest court has found sufficient, is so vague on its face that the entire ordinance is void. At this time, we say no more than this—that we are dealing only with motion pictures, and, even as to them, only in the context of the broadside attack presented on this record.

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Affirmed.

WARREN, J., dissenting

1961, Times Film Corp. v. City of Chicago, 365 U.S. 50

MR. CHIEF JUSTICE WARREN, with whom MR. JUSTICE BLACK, MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN join, dissenting.

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I cannot agree either with the conclusion reached by the Court or with the reasons advanced for its support. To me, this case clearly presents the question of our approval of unlimited censorship of motion pictures before exhibition through a system of administrative [365 U.S. 51] licensing. Moreover, the decision presents a real danger of eventual censorship for every form of communication, be it newspapers, journals, books, magazines, television, radio or public speeches. The Court purports to leave these questions for another day, but I am aware of no constitutional principle which permits us to hold that the communication of ideas through one medium may be censored while other media are immune. Of course, each medium presents its own peculiar problems, but they are not of the kind which would authorize the censorship of one form of communication and not others. I submit that, in arriving at its decision, the Court has interpreted our cases contrary to the intention at the time of their rendition and, in exalting the censor of motion pictures, has endangered the First and Fourteenth Amendment rights of all others engaged in the dissemination of ideas.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 51

Near v. Minnesota, 283 U.S. 697, was a landmark opinion in this area. It was there that Chief Justice Hughes said for the Court

1961, Times Film Corp. v. City of Chicago, 365 U.S. 51

that liberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally although not exclusively, immunity from previous restraints or censorship.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 51

Id. at 716. The dissenters in Near sought to uphold the Minnesota statute, struck down by the Court, on the ground that the statute did "not authorize administrative control in advance such as was formerly exercised by the licensers and censors…. " Id. at 735. Thus, three decades ago, the Constitution's abhorrence of licensing or censorship was first clearly articulated by this Court.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 51

This was not a tenet seldom considered or soon forgotten. Five years later, a unanimous Court observed:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 51

As early as 1644, John Milton, in an "Appeal for the Liberty of Unlicensed Printing," assailed an act of Parliament which had just been passed providing for censorship of the press previous to publication. He vigorously defended the right of every man to [365 U.S. 52] make public his honest views "without previous censure," and declared the impossibility of finding any man base enough to accept the office of censor and at the same time good enough to be allowed to perform it duties.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 52

Grosjean v. American Press Co., 297 U.S. 233, 245-246.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 52

Shortly thereafter, a unanimous Court once more recalled that the "struggle for the freedom of the press was primarily directed against the power of the licensor." Lovell v. Griffin, 303 U.S. 444, 451. And two years after this, the Court firmly announced in Schneider v. New Jersey, 308 U.S. 147:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 52

[T]he ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 52

Id. at 164.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 52

Just twenty years ago, in the oft-cited case of Cantwell v. Connecticut, 310 U.S. 296, the Court, again without dissent, decided:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 52

[T]he availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 52

Id. at 306.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 52

This doctrine, which was fully explored and which was the focus of this Court's attention on numerous occasions, had become an established principle of constitutional law. [365 U.S. 53] It is not to be disputed that this Court has stated that the protection afforded First Amendment liberties from previous restraint is not absolutely unlimited. Near v. Minnesota, supra. But licensing or censorship was not at any point considered within the "exceptional cases" discussed in the opinion in Near. Id. at 715-716. And, only a few Terms ago, the Court, speaking through MR. JUSTICE FRANKFURTER in Kingsley Books, Inc. v. Brown, 354 U.S. 436, reaffirmed that "the limitation is the exception; it is to be closely confined so as to preclude what may fairly be deemed licensing or censorship." Id. at 441. (Emphasis added.)

1961, Times Film Corp. v. City of Chicago, 365 U.S. 53

The vice of censorship through licensing and, more generally, the particular evil of previous restraint on the right of free speech, have many times been recognized when this Court has carefully distinguished between laws establishing sundry systems of previous restraint on the right of free speech and penal laws imposing subsequent punishment on utterances and activities not within the ambit of the First Amendment's protection. See Near v. Minnesota, supra, at pp. 718-719; Schneider v. New Jersey, supra, at p. 164; Cantwell v. Connecticut, supra, at p. 306; Niemotko v. Maryland, 340 U.S. 268, 282 (concurring opinion); Kunz v. New York, 340 U.S. 290, 294-295.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 53

Examination of the background and circumstances leading to the adoption of the First Amendment reveals the basis for the Court's steadfast observance of the proscription of licensing, censorship and previous restraint of speech. Such inquiry often begins with Blackstone's assertion:

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The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraint upon publications, and not in freedom from censure for criminal matter when published.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 53

4 Bl.Comm. (Cooley, 4th Ed. 1899) 151. Blackstone probably here referred to the common law's definition of freedom [365 U.S. 54] of the press; 1 he probably spoke of the situation existing in England after the disappearance of the licensing systems, but during the existence of the law of crown libels. There has been general criticism of the theory that Blackstone's statement was embodied in the First Amendment, the objection being

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"that the mere exemption from previous restraints cannot be all that is secured by the constitutional provisions," and that "the liberty of the press might be rendered a mockery and a delusion, and the phrase itself a by-word, if, while every man was at liberty to publish what he pleased, the public authorities might nevertheless punish him for harmless publications." 2 Cooley, Const.Lim. (8th Ed.), p. 885.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 54

Near v. Minnesota, supra, at p. 715; Grosjean v. American Press Co., supra, at p. 248. The objection has been that Blackstone's definition is too narrow; it had been generally conceded that the protection of the First Amendment extends at least to the interdiction of licensing and censorship and to the previous restraint of free speech. Near v. Minnesota, supra, at p. 715; Grosjean v. American Press Co., supra, at p. 246; Chafee, Free Speech in the United States, 18.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 54

On June 24, 1957, in Kingsley Books, Inc. v. Brown, supra, the Court turned a corner from the landmark opinion in Near and from one of the bases of the First Amendment. Today it falls into full retreat.

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I hesitate to disagree with the Court's formulation of the issue before us, but, with all deference, I must insist [365 U.S. 55] that the question presented in this case is not whether a motion picture exhibitor has a constitutionally protected, "complete and absolute freedom to exhibit at least once, any and every kind of motion picture." Ante, p. 46. Surely, the Court is not bound by the petitioner's conception of the issue or by the more extreme positions that petitioner may have argued at one time in the case. The question here presented is whether the City of Chicago—or, for that matter, any city, any State or the Federal Government—may require all motion picture exhibitors to submit all films to a police chief, mayor or other administrative official, for licensing and censorship prior to public exhibition within the jurisdiction.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 55

The Court does not even have before it an attempt by the city to restrain the exhibition of an allegedly "obscene" film, see Roth v. United States, 354 U.S. 476. Nor does the city contend that it is seeking to prohibit the showing of a film which will impair the "security of the community life" because it acts as an incitement to "violence and the overthrow by force of orderly government." See Near v. Minnesota, supra, at p. 716. The problem before us is not whether the city may forbid the exhibition of a motion picture, which, by its very showing, might in some way "inflict injury or tend to incite an immediate breach of the peace." See Chaplinsky v. New Hampshire, 315 U.S. 568, 572.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 55

Let it be completely clear what the Court's decision does. It gives official license to the censor, approving a grant of power to city officials to prevent the showing of any moving picture these officials deem unworthy of a license. It thus gives formal sanction to censorship in its purest and most far-reaching form, 2 to a classical plan of [365 U.S. 56] licensing that, in our country, most closely approaches the English licensing laws of the seventeenth century which were commonly used to suppress dissent in the mother country and in the colonies. Emerson, The Doctrine of Prior Restraint, 20 Law & Contemp.Prob., 648, 667. The Court treats motion pictures, food for the mind, held to be within the shield of the First Amendment, Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, little differently than it would treat edibles. See Smith v. California, 361 U.S. 147, 152. 3 Only a few days ago, the Court, speaking through MR. JUSTICE STEWART, noted in Shelton v. Tucker, 364 U.S. 479, 488:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 56

In a series of decisions, this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 56

Here, the Court ignores this considered principle and indiscriminately casts the net of control too broadly. See [365 U.S. 57] Niemotko v. Maryland, supra, at p. 282 (concurring opinion). By its decision, the Court gives its assent to unlimited censorship of moving pictures through a licensing system, despite the fact that Chicago has chosen this most objectionable course to attain its goals without any apparent attempt to devise other means so as not to intrude on the constitutionally protected liberties of speech and press.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 57

Perhaps the most striking demonstration of how far the Court departs from its holdings in Near and subsequent cases may be made by examining the various schemes that it has previously determined to be violative of the First and Fourteenth Amendments' guaranty.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 57

A remarkable parallel to the censorship plan now before the Court, although one less offensive to the First Amendment, is found in the Near case itself. The Minnesota statute there under attack did not require that all publications be approved before distribution. That statute only provided that a person may be enjoined by a court from publishing a newspaper which was "malicious, scandalous and defamatory." Id. at 702. The injunction in that case was issued only after Near had allegedly published nine such newspapers. The statute permitted issuance of an injunction only on proof that, within the prior three months, such an offensive newspaper had already been published. Near was not prevented "from operating a newspaper in harmony with the public welfare." Ibid. If the state court found that Near's subsequent publication conformed to this standard, Near would not have been held in contempt. But the Court there found that this system of censorship by a state court, used only after it had already been determined that the publisher had previously violated the standard, had to fall before the First and the Fourteenth Amendments. It would seem that, a fortiori, the present system must also fall. [365 U.S. 58]

1961, Times Film Corp. v. City of Chicago, 365 U.S. 58

The case of Grosjean v. American Press Co., supra, provides another forceful illustration. The Court held there that a license tax of two percent on the gross receipts from advertising of newspapers and periodicals having a circulation of over 20,000 a week was a form of prior restraint, and therefore invalid. Certainly this would seem much less an infringement on the liberties of speech and press protected by the First and Fourteenth Amendments than the classic system of censorship we now have before us. It was held in Grosjean that the imposition of the tax would curtail the amount of revenue realized from advertising, and therefore operate as a restraint on publication. The license tax in Grosjean is analogous to the license fee in the case at bar, a fee to which petitioner raises no objection. It was also held in Grosjean that the tax had a "direct tendency…to restrict circulation," id. at 244-245 (emphasis added), because it was imposed only on publications with a weekly circulation of 20,000 or more; that, "if it were increased to a high degree…, it might well result in destroying both advertising and circulation." Id. at 245. (Emphasis added.) These were the evils calling for reversal in Grosjean. I should think that these evils are of minor import in comparison to the evils consequent to the licensing system which the Court here approves.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 58

In Hague v. CIO, 307 U.S. 496, a city ordinance required that a permit be obtained for public parades or public assembly. The permit could "only be refused for the purpose of preventing riots, disturbances or disorderly assemblage." Id. at 502. Mr. Justice Roberts' opinion said of the ordinance:

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It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent "riots, disturbances or disorderly assemblage." It can thus, as the record discloses, be made the instrument [365 U.S. 59] of arbitrary suppression of free expression of views on national affairs, for the prohibition of all speaking will undoubtedly "prevent" such eventualities.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 59

Id. at 516. May anything less be said of Chicago's movie censorship plan?

1961, Times Film Corp. v. City of Chicago, 365 U.S. 59

The question before the Court in Schneider v. New Jersey, supra, concerned the constitutional validity of a town ordinance requiring a license for the distribution of circulars. The police chief was permitted to refuse the license if the application for it or further investigation showed "that the canvasser is not of good character or is canvassing for a project not free from fraud…. " Id. at 158. The Court said of that ordinance:

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It bans unlicensed communication of any views or the advocacy of any cause from door to door, and permits canvassing only subject to the power of a police officer to determine, as a censor, what literature may be distributed from house to house and who may distribute it. The applicant must submit to that officer's judgment evidence as to his good character and as to the absence of fraud in the "project" he proposes to promote or the literature he intends to distribute, and must undergo a burdensome and inquisitorial examination, including photographing and fingerprinting. In the end, his liberty to communicate with the residents of the town at their homes depends upon the exercise of the officer's discretion.

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Id. at 163-164. I believe that the licensing plan at bar is fatally defective because of this precise objection.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 59

A study of the opinion in Cantwell v. Connecticut, supra, further reveals the Court's sharp divergence today from seriously deliberated precedent. The statute in [365 U.S. 60] Cantwell forbade solicitation for any alleged religious, charitable or philanthropic cause unless the secretary of the public welfare council determined that the

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cause [was] a religious one or [was] a bona fide object of charity or philanthropy and conform[ed] to reasonable standards of efficiency and integrity….

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Id. at 302. Speaking of the secretary of the public welfare council, the Court held:

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If he finds that the cause is not that of religion, to solicit for it becomes a crime. He is not to issue a certificate as a matter of course. His decision to issue or refuse it involves appraisal of facts, the exercise of judgment, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth.

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Id. at 305.

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Does the Court today wish to distinguish between the protection accorded to religion by the First and Fourteenth Amendments and the protection accorded to speech by those same provisions? I cannot perceive the distinction between this case and Cantwell. Chicago says that it faces a problem—obscene and incendious films. Connecticut faced the problem of fraudulent solicitation. Constitutionally, is there a difference? See also Largent v. Texas, 318 U.S. 418.

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In Thomas v. Collins, 323 U.S. 516, this Court held that a state statute requiring a labor union organizer to obtain an organizer's card was incompatible with the free speech and free assembly mandates of the First and Fourteenth Amendments. The statute demanded nothing more than that the labor union organizer register, stating his name, [365 U.S. 61] his union affiliations, and describing his credentials. This information having been filed, the issuance of the organizer's card was subject to no further conditions. The State's obvious interest in acquiring this pertinent information was felt not to constitute an exceptional circumstance to justify the restraint imposed by the statute. It seems clear to me that the Chicago ordinance in this case presents a greater danger of stifling speech.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 61

The two sound truck cases are further poignant examples of what had been this Court's steadfast adherence to the opposition of previous restraints on First Amendment liberties. In Saia v. New York, 334 U.S. 558, it was held that a city ordinance which forbade the use of sound amplification devices in public places without the permission of the Chief of Police was unconstitutionally void on its face, since it imposed a previous restraint on public speech. Two years later, the Court upheld a different city's ordinance making unlawful the use of

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any instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicle operated or standing upon…streets or public places….

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Kovacs v. Cooper, 336 U.S. 77, 78. One of the grounds by which the opinion of Mr. Justice Reed distinguished Saia was that the Kovacs ordinance imposed no previous restraint. Id. at 82. Mr. Justice Jackson chose to differentiate sound trucks from the "moving picture screen, the radio, the newspaper, the handbill…and the street corner orator…. " Id. at 97 (concurring opinion). (Emphasis added.) He further stated that

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No violation of the Due Process Clause of the Fourteenth Amendment by reason of infringement of free speech arises unless such regulation or prohibition undertakes to censor the contents of the broadcasting.

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Ibid. Needless to repeat, this is the violation the Court sanctions today. [365 U.S. 62]

1961, Times Film Corp. v. City of Chicago, 365 U.S. 62

Another extremely similar, but again less objectionable, situation was brought to the Court in Kunz v. New York, 340 U.S. 290. There, a city ordinance proscribed the right of citizens to speak on religious matters in the city streets without an annual permit. Kunz had previously had his permit revoked because "he had ridiculed and denounced other religious beliefs in his meetings." Id. at 292. 4 Kunz was arrested for subsequently speaking in the city streets without a permit. The Court reversed Kunz' conviction, holding:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 62

We have here, then, an ordinance which gives an administrative official discretionary power to control in advance the right of citizens to speak on religious matters on the streets of New York. As such, the ordinance is clearly invalid as a prior restraint on the exercise of First Amendment rights.

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Id. at 293. The Chicago censorship and licensing plan is effectively no different. The only meaningful distinction between Kunz and the case at bar appears to be in the disposition of them by the Court.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 62

The ordinance before us in Staub v. City of Baxley, 355 U.S. 313, made unlawful the solicitation, without a permit, of members for an organization which requires the payment of membership dues. The ordinance stated that,

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In passing upon such application, the Mayor and Council shall consider the character of the applicant, the nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens of the City of Baxley.

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Id. at 315. MR. JUSTICE WHITTAKER, speaking for the Court, stated

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that the ordinance is invalid on its face because it makes enjoyment of the constitutionally guaranteed freedom of speech contingent upon the will of the Mayor [365 U.S. 63] and Council of the City, and thereby constitutes a prior restraint upon, and abridges, that freedom.

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Id. at 321. In Staub, the ordinance required a permit for solicitation; in the case decided today, the ordinance requires a permit for the exhibition of movies. If this is a valid distinction, it has not been so revealed. In Staub, the permit was to be granted on the basis of certain indefinite standards; in the case decided today, nothing different may be said.

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As the Court recalls, in Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 502, it was held that motion pictures come "within the free speech and free press guaranty of the First and Fourteenth Amendments." Although the Court found it unnecessary to decide

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whether a state may censor motion pictures under a clearly drawn statute designed and applied to prevent the showing of obscene films,

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id. at 506, MR. JUSTICE CLARK stated, in the Court's opinion, quite accurately:

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But the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this Court, make freedom of expression the rule. There is no justification in this case for making an exception to that rule.

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The statute involved here does not seek to punish, as a past offense, speech or writing falling within the permissible scope of subsequent punishment. On the contrary, New York requires that permission to communicate ideas be obtained in advance from state officials who judge the content of the words and picture sought to be communicated. This Court recognized many years ago that such a previous restraint is a form of infringement upon freedom of expression to be especially condemned. Near v. Minnesota ex rel. Olson, 283 U.S. 697 (1931). The Court there recounted the history which indicates that a major purpose of the First Amendment [365 U.S. 64] guaranty of a free press was to prevent prior restraints upon publication, although it was carefully pointed out that the liberty of the press is not limited to that protection. It was further stated that

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the protection even as to previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases.

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Id. at 716. In the light of the First Amendment's history and of the Near decision, the State has a heavy burden to demonstrate that the limitation challenged here presents such an exceptional case.

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Id. at 503-504. Here, once more, the Court recognized that the First Amendment's rejection of prior censorship through licensing and previous restraint is an inherent and basic principle of freedom of speech and press. Now the Court strays from that principle; it strikes down that tenet without requiring any demonstration that this is an "exceptional case," whatever that might be, and without any indication that Chicago has sustained the "heavy burden" which was supposed to have been placed upon it. Clearly, this is neither an exceptional case nor has Chicago sustained any burden.

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Perhaps today's surrender was forecast by Kingsley Books, Inc. v. Brown, supra. But that was obviously not this case, and accepting arguendo the correctness of that decision, I believe that it leads to a result contrary to that reached today. The statute in Kingsley authorized

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the chief executive, or legal officer, of a municipality to invoke a "limited injunctive remedy," under closely defined procedural safeguards, against the sale and distribution of written and printed matter found after due trial [by a court] to be obscene….

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Id. at 437. The Chicago scheme has no procedural safeguards; there is no trial of the issue before the blanket injunction against exhibition becomes effective. In Kingsley, the grounds for the restraint were that the written or printed matter was [365 U.S. 65] "obscene, lewd, lascivious, filthy, indecent, or disgusting…or immoral…. " Id. at 438. The Chicago objective is to capture much more. The Kingsley statute required the existence of some cause to believe that the publication was obscene before the publication was put on trial. The Chicago ordinance requires no such showing.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 65

The booklets enjoined from distribution in Kingsley were concededly obscene. 5 There is no indication that this is true of the moving picture here. This was treated as a particularly crucial distinction. Thus, the Court has suggested that, in times of national emergency, the Government might impose a prior restraint upon "the publication of the sailing dates of transports or the number and location of troops." Near v. Minnesota, supra, p. 716; cf. Ex parte Milligan, 4 Wall. 2. But surely this is not to suggest that the Government might require that all newspapers be submitted to a censor in order to assist it in preventing such information from reaching print. Yet, in this case, the Court gives its blessing to the censorship of all motion pictures in order to prevent the exhibition of those it feels to be constitutionally unprotected.

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The statute in Kingsley specified that the person sought to be enjoined was to be entitled to a trial of the issues within one day after joinder and a decision was to be rendered by the court within two days of the conclusion of the trial. The Chicago plan makes no provision [365 U.S. 66] for prompt judicial determination. In Kingsley, the person enjoined had available the defense that the written or printed matter was not obscene if an attempt was made to punish him for disobedience of the injunction. The Chicago ordinance admits no defense in a prosecution for failure to procure a license of other than that the motion picture was submitted to the censor and a license was obtained.

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Finally, the Court in Kingsley painstakingly attempted to establish that that statute, in its effective operation, was no more a previous restraint on, or interference with, the liberty of speech and press than a statute imposing criminal punishment for the publication of pornography. In each situation, it contended, the publication may have passed into the hands of the public. Of course this argument is inadmissible in this case, and the Court does not purport to advance it.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 66

It would seem idle to suppose that the Court today is unaware of the evils of the censor's basic authority, of the mischief of the system against which so many great men have waged stubborn and often precarious warfare for centuries, see Grosjean v. American Press Co., supra, at 247, of the scheme that impedes all communication by hanging threateningly over creative thought. 6 But the Court dismisses all of this simply by opining that "the phrase `prior restraint' is not a self-wielding sword. Nor can it serve as a talismanic test." Ante, p. 49. I must insist that "a pragmatic assessment of its operation," [365 U.S. 67] Kingsley Books, Inc. v. Brown, supra, at p. 442, lucidly portrays that the system that the Court sanctions today is inherently bad. One need not disagree with the Court that Chicago has chosen the most effective means of suppressing obscenity. Censorship has been so recognized for centuries. But this is not to say that the Chicago plan, the old, abhorrent English system of censorship through licensing, is a permissible form of prohibiting unprotected speech. The inquiry, as stated by the Court but never resolved, is whether this form of prohibition results in "unreasonable strictures on individual liberty," ante, p. 50; 7 whether licensing, as a prerequisite to exhibition, is barred by the First and Fourteenth Amendments.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 67

A most distinguished antagonist of censorship, in "a plea for unlicensed printing," has said:

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If he [the censor] be of such worth as behooves him, there cannot be a more tedious and unpleasing Journey-work, a greater loss of time levied upon his head, than to be made the perpetuall reader of unchosen books and pamphlets…we may easily forsee what kind of licensers we are to expect hereafter, either ignorant, imperious, and remisse, or basely pecuniary.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 67

Areopagitica, in the Complete Poetry and Selected Prose of John Milton (Modern Library College Ed. 1950), 677 at 700. There is no sign that Milton's fear of the censor would be dispelled in twentieth century America. The censor is beholden to those who sponsored the creation of his office, [365 U.S. 68] to those who are most radically preoccupied with the suppression of communication. The censor's function is to restrict and to restrain; his decisions are insulated from the pressures that might be brought to bear by public sentiment if the public were given an opportunity to see that which the censor has curbed.

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The censor performs free from all of the procedural safeguards afforded litigants in a court of law. See Kingsley Books, Inc. v. Brown, supra, at 437; cf. Near v. Minnesota, supra, at p. 713; Cantwell v. Connecticut, supra, at p. 306. The likelihood of a fair and impartial trial disappears when the censor is both prosecutor and judge. There is a complete absence of rules of evidence; the fact is that there is usually no evidence at all, as the system at bar vividly illustrates. 8 How different from a judicial proceeding, where a full case is presented by the litigants. The inexistence of a jury to determine contemporary [365 U.S. 69] community standards is a vital flaw. 9 See Kingsley Books, Inc. v. Brown, supra, at pp. 447-448 (dissenting opinion).

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A revelation of the extent to which censorship has recently been used in this country is indeed astonishing. The Chicago licensors have banned newsreel films of Chicago policemen shooting at labor pickets, and have ordered the deletion of a scene depicting the birth of a buffalo in Walt Disney's Vanishing Prairie. Gavzer, Who Censors Our Movies? Chicago Magazine, Feb. 1956, pp. 35, 39. Before World War II, the Chicago censor denied licenses to a number of films portraying and criticizing life in Nazi Germany including the March of Time's Inside Nazi Germany. Editorials, Chicago Daily Times, Jan. 20, Nov. 18, 1938. Recently, Chicago refused to issue a permit for the exhibition of the motion picture Anatomy of a Murder based upon the best-selling novel of the same title, because it found the use of the words "rape" and "contraceptive" to be objectionable. Columbia Pictures Corp. v. City of Chicago (D.C.N.D.Ill.) 59 C. 1058 (1959) (unreported). The Chicago censor bureau excised a scene in Street With No Name in which a girl was slapped, [365 U.S. 70] because this was thought to be a "too violent" episode. Life, Oct. 25, 1948, p. 60. It Happened in Europe was severely cut by the Ohio censors, who deleted scenes of war orphans resorting to violence. The moral theme of the picture was that such children could even then be saved by love, affection and satisfaction of their basic needs for food. Levy, Case Against Film Censorship, Films in Review, Apr. 1950, p. 40 (published by National Board of Review of Motion Pictures, Inc.). The Memphis censors banned The Southerner, which dealt with poverty among tenant farmers, because "it reflects on the south." Brewster's Millions, an innocuous comedy of fifty years ago, was recently forbidden in Memphis because the radio and film character Rochester, a Negro, was deemed "too familiar." See Velie, You Can't See That Movie: Censorship in Action, Collier's, May 6, 1950, pp. 11, 66. Maryland censors restricted a Polish documentary film on the basis that it failed to present a true picture of modern Poland. Levy, Case Against Film Censorship, Films in Review, supra, p. 41. No Way Out, the story of a Negro doctor's struggle against race prejudice, was banned by the Chicago censor on the ground that "there's a possibility it could cause trouble." The principal objection to the film was that the conclusion showed no reconciliation between blacks and whites. The ban was lifted after a storm of protest and later deletion of a scene showing Negroes and whites arming for a gang fight. N.Y. Times, Aug. 24, 1950, p. 31, col. 3; Aug. 31, 1950, p. 20, col. 8. Memphis banned Curley because it contained scenes of white and Negro children in school together. Kupferman and O'Brien, Motion Picture Censorship—The Memphis Blues, 36 Cornell L.J. 273, 276-278. Atlanta barred Lost Boundaries, the story of a Negro physician and his family who "passed" for white, on the ground that the exhibition of said picture "will adversely affect the peace, morals and good order" in the [365 U.S. 71] city. N.Y. Times, Feb. 5, 1950, § 2, p. 5, col. 7. See generally Kupferman and O'Brien, supra; Note, 60 Yale L.J. 696 et seq.; Brief for American Civil Liberties Union as amicus curiae, pp. 14-15. Witchcraft, a study of superstition through the ages, was suppressed for years because it depicted the devil as a genial rake with amorous leanings, and because it was feared that certain historical scenes, portraying the excesses of religious fanatics, might offend religion. Scarface, thought by some as the best of the gangster films, was held up for months; then it was so badly mutilated that retakes costing a hundred thousand dollars were required to preserve continuity. The New York censors banned Damaged Lives, a film dealing with venereal disease, although it treated a difficult theme with dignity and had the sponsorship of the American Social Hygiene Society. The picture of Lenin's tomb bearing the inscription "Religion is the opiate of the people" was excised from Potemkin. From Joan of Arc the Maryland board eliminated Joan's exclamation as she stood at the stake: "Oh, God, why hast thou forsaken me?", and from Idiot's Delight, the sentence: "We, the workers of the world, will take care of that." Professor Mamlock was produced in Russia, and portrayed the persecution of the Jews by Nazis. The Ohio censors condemned it as "harmful" and calculated to "stir up hatred and ill will, and gain nothing." It was released only after substantial deletions were made. The police refused to permit its showing in Providence, Rhode Island, on the ground that it was communistic propaganda. Millions of Us, a strong union propaganda film, encountered trouble in a number of jurisdictions. Spanish Earth, a pro-Loyalist documentary picture, was banned by the board in Pennsylvania. Ernst and Lindey, The Censor Marches On, 96-97, 102-103, 108-111. During the year ending June 30, 1938, the New York board censored, in one way or another, over five percent of the [365 U.S. 72] moving pictures it reviewed. Id. at 81. Charlie Chaplin's satire on Hitler, The Great Dictator, was banned in Chicago, apparently out of deference to its large German population. Chafee, supra, at p. 541. Ohio and Kansas banned newsreels considered pro-labor. Kansas ordered a speech by Senator Wheeler opposing the bill for enlarging the Supreme Court to be cut from the March of Time as "partisan and biased." Id. at 542. An early version of Carmen was condemned on several different grounds. The Ohio censor objected because cigarette girls smoked cigarettes in public. The Pennsylvania censor disapproved the duration of a kiss. Id. at 543. The New York censors forbade the discussion in films of pregnancy, venereal disease, eugenics, birth control, abortion, illegitimacy, prostitution, miscegenation and divorce. Ernst and Lindey, supra, at p. 83. A member of the Chicago censor board explained that she rejected a film because "it was immoral, corrupt, indecent, against my…religious principles." Transcript of Record, p. 172. Times Film Corp. v. City of Chicago, 244 F.2d 432. A police sergeant attached to the censor board explained, "Coarse language or anything that would be derogatory to the government—propaganda" is ruled out of foreign films. "Nothing pink or red is allowed," he added. Chicago Daily News, Apr. 7, 1959, p. 3, cols. 7-8. The police sergeant in charge of the censor unit has said: "Children should be allowed to see any movie that plays in Chicago. If a picture is objectionable for a child, it is objectionable period." Chicago Tribune, May 24, 1959, p. 8, col. 3. And this is but a smattering produced from limited research. Perhaps the most powerful indictment of Chicago's licensing device is found in the fact that, between the Court's decision in 1952 in Joseph Burstyn, Inc. v. Wilson, supra, and the filing of the petition for certiorari in 1960 in the present case, not once have the state courts upheld the censor [365 U.S. 73] when the exhibitor elected to appeal. Brief of American Civil Liberties Union as amicus curiae, pp. 13-14.

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This is the regimen to which the Court holds that all films must be submitted. It officially unleashes the censor and permits him to roam at will, limited only by an ordinance which contains some standards that, although concededly not before us in this case, are patently imprecise. The Chicago ordinance commands the censor to reject films that are "immoral," see Commercial Pictures Corp. v. Regents, 346 U.S. 587; Kingsley International Pictures Corp. v. Regents, 360 U.S. 684; or those that portray

1961, Times Film Corp. v. City of Chicago, 365 U.S. 73

depravity, criminality, or lack of virtue of a class of citizens of any race, color, creed, or religion and [expose] them to contempt, derision, or obloquy, or [tend] to produce a breach of the peace or riots, or [purport] to represent any hanging, lynching, or burning of a human being.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 73

May it not be said that almost every censored motion picture that was cited above could also be rejected, under the ordinance, by the Chicago censors? It does not require an active imagination to conceive of the quantum of ideas that will surely be suppressed.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 73

If the censor denies rights protected by the First and Fourteenth Amendments, the courts might be called upon to correct the abuse if the exhibitor decides to pursue judicial remedies. But this is not a satisfactory answer, as emphasized by this very case. The delays in adjudication may well result in irreparable damage both to the litigants and to the public. Vindication by the courts of The Miracle was not had until five years after the Chicago censor refused to license it. And then the picture was never shown in Chicago. Brief for Petitioner, p. 17. The instant litigation has now consumed almost three years. This is the delay occasioned by the censor; this is the injury done to the free communication of ideas. This damage is not inflicted by the ordinary criminal penalties. [365 U.S. 74] The threat of these penalties, intelligently applied, will ordinarily be sufficient to deter the exhibition of obscenity. However, if the exhibitor believes that his film is constitutionally protected, he will show the film, and, if prosecuted under criminal statute, will have ready that defense. The perniciousness of a system of censorship is that the exhibitor's belief that his film is constitutionally protected is irrelevant. Once the censor has made his estimation that the film is "bad" and has refused to issue a permit, there is ordinarily no defense to a prosecution 10 for showing the film without a license. 11 Thus, the film is not shown, perhaps not for years, and sometimes not ever. Simply a talismanic test or self-wielding sword? I think not.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 74

Moreover, more likely than not, the exhibitor will not pursue judicial remedies. See Schneider v. New Jersey, supra, at p. 164; Ernst and Lindey, supra, at p. 80. His inclination may well be simply to capitulate, rather than initiate a lengthy and costly litigation. 12 In such case, the liberty [365 U.S. 75] of speech and press, and the public, which benefits from the shielding of that liberty, are, in effect at the mercy of the censor's whim. This powerful tendency to restrict the free dissemination of ideas calls for reversal. See Grosjean v. American Press Co., supra, at 245.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 75

Freedom of speech and freedom of the press are further endangered by this "most effective" means for confinement of ideas. It is axiomatic that the stroke of the censor's pen or the cut of his scissors will be a less contemplated decision than will be the prosecutor's determination to prepare a criminal indictment. The standards of proof, the judicial safeguards afforded a criminal defendant, and the consequences of bringing such charges will all provoke the mature deliberation of the prosecutor. None of these hinder the quick judgment of the censor, the speedy determination to suppress. Finally, the fear of the censor by the composer of ideas acts as a substantial deterrent to the creation of new thoughts. See Tolstoy's declaration, note 6, supra. This is especially true of motion pictures, due to the large financial burden that must be assumed by their producers. The censor's sword pierces deeply into the heart of free expression.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 75

It seems to me that the Court's opinion comes perilously close to holding that not only may motion pictures be censored, but that a licensing scheme may also be applied to newspapers, books and periodicals, radio, television, public speeches, and every other medium of expression. The Court suggests that its decision today is limited to motion pictures by asserting that they are not

1961, Times Film Corp. v. City of Chicago, 365 U.S. 75

necessarily subject to the precise rules governing any other particular method of expression. Each method…[365 U.S. 76] tends to present its own peculiar problems.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 76

Ante, p. 49. But this, I believe, is the invocation of a talismanic phrase. The Court in no way explains why moving pictures should be treated differently than any other form of expression, why moving pictures should be denied the protection against censorship—"a form of infringement upon freedom of expression to be especially condemned." Joseph Burstyn, Inc. v. Wilson, supra, at p. 503. (Emphasis added.) When pressed during oral argument, counsel for the city could make no meaningful distinction between the censorship of newspapers and motion pictures. In fact, the percentage of motion pictures dealing with social and political issues is steadily rising. 13 The Chicago ordinance makes no exception for newsreels, documentaries, instructional and educational films or the like. All must undergo the censor's inquisition. Nor may it be suggested that motion pictures may be treated differently from newspapers because many movies are produced essentially for purposes of entertainment. As the Court said in Winters v. New York, 333 U.S. 507, 510:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 76

We do not accede to appellee's suggestion that the constitutional protection for a free press applies only to the exposition of ideas. The line between the informing and the entertaining is too elusive for the protection of that basic right. Everyone is familiar with instances of propaganda through fiction. What is one man's amusement teaches another's doctrine.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 76

See Thomas v. Collins, supra, 323 U.S. at p. 531. 14 [365 U.S. 77]

1961, Times Film Corp. v. City of Chicago, 365 U.S. 77

The contention may be advanced that the impact of motion pictures is such that a licensing system of prior censorship is permissible. There are several answers to this, the first of which I think is the Constitution itself. Although it is an open question whether the impact of motion pictures is greater or less than that of other media, there is not much doubt that the exposure of television far exceeds that of the motion picture. See S.Rep. No. 1466, 84th Cong., 2d Sess. 5. But even if the impact of the motion picture is greater than that of some other media, that fact constitutes no basis for the argument that motion pictures should be subject to greater suppression. This is the traditional argument made in the censor's behalf; this is the argument advanced against newspapers at the time of the invention of the printing press. The argument was ultimately rejected in England, and has consistently been held to be contrary to our Constitution. No compelling reason has been predicated for accepting the contention now.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 77

It is true that "each method [of expression] tends to present its own peculiar problems." Joseph Burstyn, Inc. v. Wilson, supra, at p. 503. The Court has addressed itself on several occasions to these problems. In Schneider v. New Jersey, supra, at pp. 160-161, the Court stated, in reference to speaking in public, that

1961, Times Film Corp. v. City of Chicago, 365 U.S. 77

a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 77

The Court recognized that sound trucks call for particularized [365 U.S. 78] consideration when it said in Saia v. New York, supra, at p. 562,

1961, Times Film Corp. v. City of Chicago, 365 U.S. 78

Noise can be regulated by regulating decibels. The hours and place of public discussion can be controlled…. Any abuses which loudspeakers create can be controlled by narrowly drawn statutes.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 78

But the Court's decision today does not follow from this. Our prior decisions do not deal with the content of the speech; they deal only with the conditions surrounding its delivery. These conditions "tend to present the problems peculiar to each method of expression." Here, the Court uses this magical phrase to cripple a basic principle of the Constitution.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 78

The Court, not the petitioner, makes the "broadside attack." I would reverse the decision below.

DOUGLAS, J., dissenting

1961, Times Film Corp. v. City of Chicago, 365 U.S. 78

MR. JUSTICE DOUGLAS, with whom THE CHIEF JUSTICE and MR. JUSTICE BLACK concur, dissenting.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 78

My view that censorship of movies is unconstitutional because it is a prior restraint and violative of the First Amendment has been expressed on prior occasions. Superior Films, Inc. v. Department of Education, 346 U.S. 587, 588-589 (concurring opinion); Kingsley International Pictures Corp. v. Regents. 360 U.S. 684, 697 (concurring opinion).

1961, Times Film Corp. v. City of Chicago, 365 U.S. 78

While the problem of movie censorship is relatively new, the censorship device is an ancient one. It was recently stated,

1961, Times Film Corp. v. City of Chicago, 365 U.S. 78

There is a law of action and reaction in the decline and resurgence of censorship and control. Whenever liberty is in the ascendant, a social group will begin to resist it; and when the reverse is true, a similar resistance in favor of liberty will occur.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 78

Haney, Comstockery in America (1960) pp. 11-12.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 78

Whether or not that statement of history is accurate, censorship has had many champions throughout time.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 78

Socrates: And shall we just carelessly allow children to hear any casual tales which may be devised by casual persons, [365 U.S. 79] and to receive into their minds ideas for the most part the very opposite of those which we should wish them to have when they are grown up?

1961, Times Film Corp. v. City of Chicago, 365 U.S. 79

Glaucon: We cannot.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 79

Socrates: Then the first thing will be to establish a censorship of the writers of fiction, and let the censors receive any tale of fiction which is good, and reject the bad; and we will desire mothers and nurses to tell their children the authorized ones only. Let them fashion the mind with such tales, even more fondly than they mould the body with their hands; but most of those which are now in use must be discarded.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 79

Plato, Republic (The Dialogues of Plato, Jowett trans., Ox. Univ. Press 1953) vol. 2, p. 221.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 79

Hobbes was the censor's proponent:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 79

…it is annexed to the sovereignty to be judge of what opinions and doctrines are averse and what conducing to peace, and consequently, on what occasions, how far, and what men are to be trusted withal in speaking to multitudes of people, and who shall examine the doctrines of all books before they be published. For the actions of men proceed from their opinions, and in the well governing of opinions consisteth the well governing of men's actions in order to their peace and concord.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 79

Leviathan (Oakeshott ed. 1947), p. 116.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 79

Regimes of censorship are common in the world today. Every dictator has one; every Communist regime finds it indispensable. 1 One shield against world opinion that colonial powers have used was the censor, as dramatized by France in North Africa. Even England has a vestige of censorship in the Lord Chamberlain (32 Halsbury's Laws of England (2d ed. 1939), p. 68) who presides over the stage—a system that in origin was concerned with the [365 U.S. 80] barbs of political satire. 2 But the concern with political satire shifted to a concern with atheism and with sexual morality—the last being the concern evident in Chicago's system now before us.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 80

The problems of the wayward mind concern the clerics, the psychiatrists, and the philosophers. Few groups have hesitated to create the political pressures that translate into secular law their notions of morality. Pfeffer, Creeds in Competition (1958), pp. 103-109. No more powerful weapon for sectarian control can be imagined than governmental censorship. Yet, in this country, the state is not the secular arm of any religious school of thought, as in some nations; nor is the church an instrument of the state. Whether—as here—city officials or—as in Russia—a political party lays claim to the power of governmental censorship, whether the pressures are for a conformist moral code or for a conformist political ideology, no such regime is permitted by the First Amendment. [365 U.S. 81]

1961, Times Film Corp. v. City of Chicago, 365 U.S. 81

The forces that build up demands for censorship are heterogeneous.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 81

The comstocks are not merely people with intellectual theories who might be convinced by more persuasive theories; nor are they pragmatists who will be guided by the balance of power among pressure groups. Many of them are so emotionally involved in the condemnation of what they find objectionable that they find rational arguments irrelevant. They must suppress what is offensive in order to stabilize their own tremulous values and consciences. Panic rules them, and they cannot be calmed by discussions of legal rights, literary integrity, or artistic merit.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 81

Haney, op. cit. supra, pp. 176-177.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 81

Yet, as long as the First Amendment survives, the censor, no matter how respectable his cause, cannot have the support of government. It is not for government to pick and choose according to the standards of any religious, political, or philosophical group. It is not permissible, as I read the Constitution, for government to release one movie and refuse to release another because of an official's concept of the prevailing need or the public good. The Court in Near v. Minnesota, 283 U.S. 697, 713, said that the "chief purpose" of the First Amendment's guarantee of freedom of press was "to prevent previous restraints upon publication."

1961, Times Film Corp. v. City of Chicago, 365 U.S. 81

A noted Jesuit has recently stated one reason against government censorship:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 81

The freedom toward which the American people are fundamentally orientated is a freedom under God, a freedom that knows itself to be bound by the imperatives of the moral law. Antecedently, it is presumed that a man will make morally and socially responsible use of his freedom of expression; hence, there is to be no prior restraint on it. However, if [365 U.S. 82] his use of freedom is irresponsible, he is summoned after the fact to responsibility before the judgment of the law. There are indeed other reasons why prior restraint on communications is outlawed, but none is more fundamental than this.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 82

Murray, We Hold These Truths (1960), pp. 164-165.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 82

Experience shows other evils of "prior restraint." The regime of the censor is deadening. One who writes cannot afford entanglements with the man whose pencil can keep his production from the market. The result is a pattern of conformity. Milton made the point long ago:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 82

For, though a licenser should happen to be judicious more than ordinarily, which will be a great jeopardy of the next succession, yet his very office and his commission enjoins him to let pass nothing but what is vulgarly received already.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 82

Areopagitica, 3 Harvard Classics (1909), p. 212.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 82

Another evil of censorship is the ease with which the censor can erode liberty of expression. One stroke of the pen is all that is needed. Under a censor's regime, the weights are cast against freedom. 3 If, however, government [365 U.S. 83] must proceed against an illegal publication in a prosecution, then the advantages are on the other side. All the protections of the Bill of Rights come into play. The presumption of innocence, the right to jury trial, proof of guilt beyond a reasonable doubt—these become barriers in the path of officials who want to impose their standard of morality on the author or producer. The advantage a censor enjoys while working as a supreme bureaucracy disappears. The public trial to which a person is entitled who violates the law gives a hearing on the merits, airs the grievance, and brings the community judgment to bear upon it. If a court sits in review of a censor's ruling, its function is limited. There is leeway left the censor, who, like any agency and its expertise, is given a presumption of being correct. 4 That advantage [365 U.S. 84] disappears when the government must wait until a publication is made, and then prove its case in the accepted manner before a jury in a public trial. All of this is anathema to the censor, who prefers to work in secret, perhaps because, as Milton said, he is "either ignorant, imperious, and remiss, or basely pecuniary." Areopagitica, supra, p. 210.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

The First Amendment was designed to enlarge, not to limit, freedom in literature and in the arts, as well as in politics, economics, law, and other fields. Hannegan v. Esquire, Inc., 327 U.S. 146, 151-159; Kingsley International Pictures Corp. v. Regents, supra. Its aim was to unlock all ideas for argument, debate, and dissemination. No more potent force in defeat of that freedom could be designed than censorship. It is a weapon that no minority or majority group, acting through government, should be allowed to wield over any of us. 5

Footnotes

CLARK, J., lead opinion (Footnotes)

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

1. The portion of the section here under attack is as follows:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Such permit shall be granted only after the motion picture film for which said permit is requested has been produced at the office of the commissioner of police for examination or censorship…

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

2. That portion of § 155-4 of the Code providing standards is as follows:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

If a picture or series of pictures, for the showing or exhibition of which an application for a permit is made, is immoral or obscene, or portrays, depravity, criminality, or lack of virtue of a class of citizens of any race, color, creed, or religion and exposes them to contempt, derision, or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching, or burning of a human being, it shall be the duty of the commissioner of police to refuse such permit; otherwise it shall be his duty to grant such permit.

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In case the commissioner of police shall refuse to grant a permit as hereinbefore provided, the applicant for the same may appeal to the mayor. Such appeal shall be presented in the same manner as the original application to the commissioner of police. The action of the mayor on any application for a permit shall be final.

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It should be noted that the Supreme Court of Illinois, in an opinion by Schaefer, C.J., has already considered and rejected an argument against the same Chicago ordinance, similar to the claim advanced here by petitioner. The same court also sustained certain of the standards set out above. American Civil Liberties Union v. City of Chicago, 3 Ill.2d 334, 121 N.E.2d 585 (1954).

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

3. Joseph Burstyn, Inc. v. Wilson, supra ("sacrilegious"); Gelling v. State of Texas, 343 U.S. 960 (1952) ("prejudicial to the best interests of the people of said City"); Commercial Pictures Corp. v. Regents, 346 U.S. 587 (1954) ("immoral"); Superior Films, Inc. v. Department of Education, 346 U.S. 587 (1954) ("harmful"); Kingsley International Pictures Corp. v. Regents, 360 U.S. 684 (1959) ("sexual immorality").

WARREN, J., dissenting (Footnotes)

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

1. The following charge to the grand jury by Chief Justice Hutchinson of Massachusetts in 1767 defines the common law notion of freedom of the press:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

The Liberty of the Press is doubtless a very great Blessing; but this Liberty means no more than a Freedom for every Thing to pass from the Press without a License.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Quincy, Reports of Cases Argued and Adjudged in the Superior Court of Judicature of the Province of Massachusetts Bay, Between 1761 and 1772, 244.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

2. Professor Thomas I. Emerson has stated:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

There is at present, no common understanding as to what constitutes "prior restraint." The term is used loosely to embrace a variety of different situations. Upon analysis, certain broad categories seem to be discernible:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

The clearest form of prior restraint arises in those situations where the government limitation, expressed in statute, regulation, or otherwise, undertakes to prevent future publication or other communication without advance approval of an executive official.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Emerson, The Doctrine of Prior Restraint, 20 Law & Contemp. Prob., 648, 655. See also Brattle Films, Inc. v. Commissioner of Public Safety, 333 Mass. 58, 127 N.E.2d 891.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

3. In Smith, we pointed out that, although a "strict liability penal ordinance" which does not require scienter may be valid when applied to the distributors of food or drugs, it is invalid when applied to booksellers, distributors of ideas. Id. at 152-153.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

4. For the particularly provocative statements made by Kunz, see the dissent of Mr. Justice Jackson. Id. at 296-297.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

5. Judge Stanley H. Fuld rightly observed:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Whatever might be said of a scheme of advance censorship directed against all possibly obscene writings, the case before us concerns a regulatory measure of far narrower impact, of a kind neither entailing the grave dangers of general censorship nor productive of the abuses which gave rise to the constitutional guarantees. (Cf. Pound, Equitable Relief Against Defamation and Injuries to Personality, 29 Harv.L.Rev. 640, 650-51.)

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Brown v. Kingsley Books, Inc., 1 N.Y.2d 177, 185, 151 N.Y.S.2d 639, 645, 134 N.E.2d 461, 465.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

6. Tolstoy once wrote:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

You would not believe how, from the very commencement of my activity, that horrible Censor question has tormented me! I wanted to write what I felt; but all the same time, it occurred to me that what I wrote would not be permitted, and involuntarily I had to abandon the work. I abandoned, and went on abandoning, and meanwhile the years passed away.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Quoted by Chafee, supra, at p. 241.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

7. In Smith v. California, supra, we noted that

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Our decisions furnish examples of legal devices and doctrines in most applications consistent with the Constitution, which cannot be applied in settings where they have the collateral effect of inhibiting the freedom of expression, by making the individual the more reluctant to exercise it.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Id. at 150-151. See Shelton v. Tucker, supra. Forty-six of our States currently see fit to rely on traditional criminal punishment for the protection of their citizens.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

8. Although the Chicago ordinance designates the Commissioner of Police as the censor, counsel for the city explained that the task is delegated to a group of people, often women. The procedure before Chicago's censor board was found to be as follows according to the testimony of the "commanding officer of the censor unit:"

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Q. Am I to understand that the procedure is that only these six people are in the room, and perhaps you at the time the film is shown?

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

A. Yes.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Q. Does the distributor ever get a chance to present his views on the picture?

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

A. No, sir.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Q. Are other people's views invited, such as drama critics or movie reviewers or writers or artists of some kind; or are they ever asked to comment on the film before the censor board makes its decision?

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

A. No, sir.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Q. In other words, it is these six people plus yourself in a relationship that we have not as yet defined who decide whether the picture conforms to the standards set up in the ordinance?

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

A. yes, sir.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Transcript of Record, p. 51, Times Film Corp. v. City of Chicago, 244 F.2d 432.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

9. Cf. Chafee, supra:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

A jury is none too well fitted to pass on the injurious nature of opinions, but at least it consists of twelve men who represent the general views and the common sense of the community, and often appreciate the motives of the speaker or writer whose punishment is sought. A censor, on the contrary, is a single individual with a professionalized and partisan point of view. His interest lies in perpetuating the power of the group which employs him, and any bitter criticism of the group smacks to him of incitement to bloody revolution.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Id. at 314.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

On the other hand, a mayor and a police commissioner are not ordinarily selected on the basis of wide reading and literary judgment. They have other duties, which require other qualities. They may lack the training of the permanent censor, and yet run the same risk of being arbitrary and bureaucratic.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Id. at 533.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

10. That portion of the Chicago ordinance dealing with penalties is as follows:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Any person exhibiting any pictures or series of pictures without a permit's having been obtained therefor shall be fined not less than fifty dollars nor more than one hundred dollars for each offense. A separate and distinct offense shall be regarded as having been committed for each day's exhibition of each picture or series of pictures without a permit.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

11. Professor Paul A. Freund has affirmed that this situation "does indeed have a chilling effect [on freedom of communication] beyond that of a criminal statute." Freund, The Supreme Court and Civil Liberties, 4 Vand.L.Rev. 533, 539.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

12. A particularly frightening illustration is found in the operation of a Detroit book censorship plan. One publisher simply submitted his unprinted manuscripts to the censor and deleted everything "objectionable" before publication. From 1950 to 1952, more than 100 titles of books were disapproved by the censor board. Every book banned was withheld from circulation. The censor board, in addition to finding books "objectionable," listed a group of books not suitable for criminal prosecution as "partially objectionable." Most booksellers were also afraid to handle these. Lockhart and McClure, Literature, The Law of Obscenity, and the Constitution, 38 Minn.L.Rev. 295, 314-316.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

13. See Note, 60 Yale L.J. 696, 706, n. 25.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

14.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

The evils to be prevented were not the censorship of the press merely, but any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

2 Cooley, Const.Lim. (8th ed.), p. 886.

DOUGLAS, J., dissenting (Footnotes)

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

1.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Nowhere have the Communists become simply a vote-getting party. They are organized around ideas and they care about ideas. They are the great heresy hunters of the modern world.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Ways, Beyond Survival (1959), p. 199.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

2. Ivor Brown, in a recent summary of the work of the Lord Chamberlain, states:

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The licensing of plays was imposed not to protect the morals of the British public, but to safeguard the reputation of politicians. This happened in 1737, when the Prime Minister, Sir Robert Walpole, infuriated by the stage lampoons of Henry Fielding and others, determined to silence these much enjoyed exposures of his alleged corruption and incompetence. This had the curiously beneficial result of driving Fielding away from the stage. He then became an excellent magistrate and a major creator of the English novel. But, in the puritanical atmosphere of the nineteenth century, the discipline was applied to the moral content of plays, and applied so rigorously that the dramatists were barred from serious treatment of "straight sex," as well as the abnormalities. The prissiness of respectable Victorian society was such that legs were hardly to be mentioned, let alone seen, and Charles Dickens wrote cumbrously of "unmentionables" when he meant trousers.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

N.Y. Times, Jan. 1, 1961, § 2, p. X3. And see Knowles, The Censor, The Drama, and The Film (1934). As to British censorship of movies, see 15 & 16 Geo. 6 & 1 Eliz. 2, c. 68.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

3. John Galsworthy wrote in opposition to the British censorship of plays:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

In this country, the tongue and pen are subject to the law; so may it ever be! But in this country, neither tongue nor pen are in any other instance subject to the despotic judgments of a single man. The protest is not aimed at the single man who holds this office. He may be the wisest man in England, the best fitted for his despotic office. It is not he; it is the office that offends. It offends the decent pride and self-respect of an entire profession. To those who are surprised that dramatic authors should take themselves so seriously, we say, What workman worthy of his tools does not believe in the honour of his craft? In this appeal for common justice, we dramatists, one little branch of the sacred tree of letters, appeal to our brother branches. We appeal to the whole knighthood of the pen-scientists, historians, novelists, journalists. The history of the health of nations is the history of the freedom—not the license—of the tongue and pen. We are claiming the freedom—not the license—of our pens. Let those hold back in helping us who would tamely suffer their own pens to be warped and split as ours are before we take them up.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

London Times, Nov. 1, 1907, p. 7. And see the testimony of George Bernard Shaw in Report, Joint Select Committee of the House of Lords and the House of Commons on the Stage Plays (Censorship) (1909), p. 46 et seq. Shaw, three of whose plays had been suppressed, caused a contemporary sensation by asking, and being refused, permission to file with the Committee and attack on censorship that he had prepared. Shaw's version of the story and the rejected statement can be found as his preface to The Shewing-Up of Blanco Posnet. He says in his statement:

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Any journalist may publish an article, any demagogue may deliver a speech without giving notice to the government or obtaining its license. The risk of such freedom is great, but, as it is the price of our political liberty, we think it worth paying. We may abrogate it in emergencies…, just as we stop the traffic in a street during a fire or shoot thieves on sight after an earthquake. But when the emergency is past, liberty is restored everywhere except in the theatre. [Censorship is] a permanent proclamation of martial law with a single official substituted for a court martial.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

The Shewing-Up of Blanco Posnet (Brentano's, 1913), p. 36.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

4. See Note, 71 Harv.L.Rev. 326, 331. Cf. Glanzman v. Christenberry, 175 F.Supp. 485, with Grove Press, Inc. v. Christenberry, 175 F.Supp. 488, as to the weight given to post-office determinations of nonmailability.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

5.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

First, within the larger pluralist society, each minority group has the right to censor for its own members, if it so chooses, the content of the various media of communication, and to protect them, by means of its own choosing, from materials considered harmful according to its own standards.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Second, in a pluralist society, no minority group has the right to demand that government should impose a general censorship, affecting all the citizenry, upon any medium of communication, with a view to punishing the communication of materials that are judged to be harmful according to the special standards held within one group.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Third, any minority group has the right to work toward the elevation of standards of public morality in the pluralist society, through the use of the methods of persuasion and pacific argument.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Fourth, in a pluralist society, no minority group has the right to impose its own religious or moral views on other groups through the use of the methods of force, coercion, or violence.

1961, Times Film Corp. v. City of Chicago, 365 U.S. 84

Murray, We Hold These Truths (1960), p. 168.

Gomillion v. Lightfoot, 1960

Title: Gomillion v. Lightfoot

Author: U.S. Supreme Court

Date: November 14, 1960

Source: 364 U.S. 339

This case was argued October 18-19, 1960, and was decided November 14, 1960.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Syllabus

1960, Gomillion v. Lightfoot, 364 U.S. 339

Negro citizens sued in a Federal District Court in Alabama for a declaratory judgment that an Act of the State Legislature changing the boundaries of the City of Tuskegee is unconstitutional and for an injunction against its enforcement. They alleged that the Act alters the shape of Tuskegee from a square to an irregular 28-sided figure; that it would eliminate from the City all but four or five of its 400 Negro voters without eliminating any white voter; and that its effect was to deprive Negroes of their right to vote in Tuskegee elections on account of their race. The District Court dismissed the complaint on the ground that it had no authority to declare the Act invalid or to change any boundaries of municipal corporations fixed by the State Legislature.

1960, Gomillion v. Lightfoot, 364 U.S. 339

Held: It erred in doing so, since the allegations, if proven, would establish that the inevitable effect of the Act would be to deprive Negroes of their right to vote on account of their race, contrary to the Fifteenth Amendment. Pp. 340-348.

1960, Gomillion v. Lightfoot, 364 U.S. 339

(a) Even the broad power of a State to fix the boundaries of its municipalities is limited by the Fifteenth Amendment, which forbids a State to deprive any citizen of the right to vote because of his race. Hunter v. Pittsburgh, 207 U.S. 161, and related cases distinguished. Pp. 342-345.

1960, Gomillion v. Lightfoot, 364 U.S. 339

(b) A state statute which is alleged to have the inevitable effect of depriving Negroes of their right to vote in Tuskegee because of their race is not immune to attack simply because the mechanism employed by the Legislature is a "political" redefinition of municipal boundaries. Colegrove v. Green, 328 U.S. 549, distinguished. Pp. 346-348.

1960, Gomillion v. Lightfoot, 364 U.S. 339

270 F. 2d 594, reversed. [364 U.S. 340]

FRANKFURTER, J., lead opinion

1960, Gomillion v. Lightfoot, 364 U.S. 340

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

1960, Gomillion v. Lightfoot, 364 U.S. 340

This litigation challenges the validity, under the United States Constitution, of Local Act No. 140, passed by the Legislature of Alabama in 1957, redefining the boundaries of the City of Tuskegee. Petitioners, Negro citizens of Alabama who were, at the time of this redistricting measure, residents of the City of Tuskegee, brought an action in the United States District Court for the Middle District of Alabama for a declaratory judgment that Act 140 is unconstitutional, and for an injunction to restrain the Mayor and officers of Tuskegee and the officials of Macon County, Alabama, from enforcing the Act against them and other Negroes similarly situated. Petitioners' claim is that enforcement of the statute, which alters the shape of Tuskegee from a square to an uncouth twenty-eight-sided figure, will constitute a discrimination against them in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution and will deny them the right to vote in defiance of the Fifteenth Amendment.

1960, Gomillion v. Lightfoot, 364 U.S. 340

The respondents moved for dismissal of the action for failure to state a claim upon which relief could be granted and for lack of jurisdiction of the District Court. The court granted the motion, stating,

1960, Gomillion v. Lightfoot, 364 U.S. 340

This Court has no control over, no supervision over, and no power to change any boundaries of municipal corporations fixed by a duly [364 U.S. 341] convened and elected legislative body, acting for the people in the State of Alabama.

1960, Gomillion v. Lightfoot, 364 U.S. 341

167 F.Supp. 405, 410. On appeal, the Court of Appeals for the Fifth Circuit, affirmed the judgment, one judge dissenting. 270 F.2d 594. We brought the case here, since serious questions were raised concerning the power of a State over its municipalities in relation to the Fourteenth and Fifteenth Amendments. 362 U.S. 916.

1960, Gomillion v. Lightfoot, 364 U.S. 341

At this stage of the litigation, we are not concerned with the truth of the allegations, that is, the ability of petitioners to sustain their allegations by proof. The sole question is whether the allegations entitle them to make good on their claim that they are being denied rights under the United States Constitution. The complaint, charging that Act 140 is a device to disenfranchise Negro citizens, alleges the following facts: prior to Act 140, the City of Tuskegee was square in shape; the Act transformed it into a strangely irregular twenty-eight-sided figure as indicated in the diagram appended to this opinion. The essential inevitable effect of this redefinition of Tuskegee's boundaries is to remove from the city all save four or five of its 400 Negro voters while not removing a single white voter or resident. The result of the Act is to deprive the Negro petitioners discriminatorily of the benefits of residence in Tuskegee, including, inter alia, the right to vote in municipal elections.

1960, Gomillion v. Lightfoot, 364 U.S. 341

These allegations, if proven, would abundantly establish that Act 140 was not an ordinary geographic redistricting measure, even within familiar abuses of gerrymandering. If these allegations, upon a trial, remained uncontradicted or unqualified, the conclusion would be irresistible, tantamount for all practical purposes to a mathematical demonstration, that the legislation is solely concerned with segregating white and colored voters by fencing Negro citizens out of town so as to deprive them of their pre-existing municipal vote. [364 U.S. 342]

1960, Gomillion v. Lightfoot, 364 U.S. 342

It is difficult to appreciate what stands in the way of adjudging a statute having this inevitable effect invalid in light of the principles by which this Court must judge, and uniformly has judged, statutes that, howsoever speciously defined, obviously discriminate against colored citizens. "The [Fifteenth] Amendment nullifies sophisticated as well as simple-minded modes of discrimination." Lane v. Wilson, 307 U.S. 268, 275.

1960, Gomillion v. Lightfoot, 364 U.S. 342

The complaint amply alleges a claim of racial discrimination. Against this claim the respondents have never suggested, either in their brief or in oral argument, any countervailing municipal function which Act 140 is designed to serve. The respondents invoke generalities expressing the State's unrestricted power—unlimited, that is, by the United States Constitution—to establish, destroy, or reorganize by contraction or expansion its political subdivisions, to-wit, cities, counties, and other local units. We freely recognize the breadth and importance of this aspect of the State's political power. To exalt this power into an absolute is to misconceive the reach and rule of this Court's decisions in the leading case of Hunter v. Pittsburgh, 207 U.S. 161, and related cases relied upon by respondents.

1960, Gomillion v. Lightfoot, 364 U.S. 342

The Hunter case involved a claim by citizens of Allegheny, Pennsylvania, that the General Assembly of that State could not direct a consolidation of their city and Pittsburgh over the objection of a majority of the Allegheny voters. It was alleged that, while Allegheny already had made numerous civic improvements, Pittsburgh was only then planning to undertake such improvements, and that the annexation would therefore greatly increase the tax burden on Allegheny residents. All that the case held was (1) that there is no implied contract between a city and its residents that their taxes will be spent solely for the benefit of that city, and (2) that a citizen of one municipality is not deprived [364 U.S. 343] of property without due process of law by being subjected to increased tax burdens as a result of the consolidation of his city with another. Related cases upon which the respondents also rely, such as Trenton v. New Jersey, 262 U.S. 182; Pawhuska v. Pawhuska Oil & Gas Co., 250 U.S. 394, and Laramie County v. Albany County, 92 U.S. 307, are far off the mark. They are authority only for the principle that no constitutionally protected contractual obligation arises between a State and its subordinate governmental entities solely as a result of their relationship.

1960, Gomillion v. Lightfoot, 364 U.S. 343

In short, the cases that have come before this Court regarding legislation by States dealing with their political subdivisions fall into two classes: (1) those in which it is claimed that the State, by virtue of the prohibition against impairment of the obligation of contract (Art. I, § 10) and of the Due Process Clause of the Fourteenth Amendment, is without power to extinguish, or alter the boundaries of, an existing municipality; and (2) in which it is claimed that the State has no power to change the identity of a municipality whereby citizens of a preexisting municipality suffer serious economic disadvantage.

1960, Gomillion v. Lightfoot, 364 U.S. 343

Neither of these claims is supported by such a specific limitation upon State power as confines the States under the Fifteenth Amendment. As to the first category, it is obvious that the creation of municipalities—clearly a political act—does not come within the conception of a contract under the Dartmouth College Case, 4 Wheat. 518. As to the second, if one principle clearly emerges from the numerous decisions of this Court dealing with taxation, it is that the Due Process Clause affords no immunity against mere inequalities in tax burdens, nor does it afford protection against their increase as an indirect consequence of a State's exercise of its political powers.

1960, Gomillion v. Lightfoot, 364 U.S. 343

Particularly in dealing with claims under broad provisions of the Constitution, which derive content by an [364 U.S. 344] interpretive process of inclusion and exclusion, it is imperative that generalizations, based on and qualified by the concrete situations that gave rise to them, must not be applied out of context in disregard of variant controlling facts. Thus, a correct reading of the seemingly unconfined dicta of Hunter and kindred cases is not that the State has plenary power to manipulate in every conceivable way, for every conceivable purpose, the affairs of its municipal corporations, but rather that the State's authority is unrestrained by the particular prohibitions of the Constitution considered in those cases.

1960, Gomillion v. Lightfoot, 364 U.S. 344

The Hunter opinion itself intimates that a state legislature may not be omnipotent even as to the disposition of some types of property owned by municipal corporations, 207 U.S. at 178-181. Further, other cases in this Court have refused to allow a State to abolish a municipality, or alter its boundaries, or merge it with another city, without preserving to the creditors of the old city some effective recourse for the collection of debts owed them. Shapleigh v. San Angelo, 167 U.S. 646; Mobile v. Watson, 116 U.S. 289; Mount Pleasant v. Beckwith, 100 U.S. 514; Broughton v. Pensacola, 93 U.S. 266. For example, in Mobile v. Watson, the Court said:

1960, Gomillion v. Lightfoot, 364 U.S. 344

Where the resource for the payment of the bonds of a municipal corporation is the power of taxation existing when the bonds were issued, any law which withdraws or limits the taxing power, and leaves no adequate means for the payment of the bonds, is forbidden by the constitution of the United States, and is null and void.

1960, Gomillion v. Lightfoot, 364 U.S. 344

Mobile v. Watson, supra, at 305.

1960, Gomillion v. Lightfoot, 364 U.S. 344

This line of authority conclusively shows that the Court has never acknowledged that the States have power to do as they will with municipal corporations regardless of consequences. Legislative control of municipalities, no less than other state power, lies within the scope of relevant [364 U.S. 345] limitations imposed by the United States Constitution. The observation in Graham v. Folsom, 200 U.S. 248, 253, becomes relevant: "The power of the state to alter or destroy its corporations is not greater than the power of the state to repeal its legislation." In that case, which involved the attempt by state officials to evade the collection of taxes to discharge the obligations of an extinguished township, Mr. Justice McKenna, writing for the Court, went on to point out, with reference to the Mount Pleasant and Mobile cases:

1960, Gomillion v. Lightfoot, 364 U.S. 345

It was argued in those cases, as it is argued in this, that such alteration or destruction of the subordinate governmental divisions was a proper exercise of legislative power, to which creditors had to submit. The argument did not prevail. It was answered, as we now answer it, that such power, extensive though it is, is met and overcome by the provision of the Constitution of the United States which forbids a state from passing any law impairing the obligation of contracts….

1960, Gomillion v. Lightfoot, 364 U.S. 345

200 U.S. at 253-254.

1960, Gomillion v. Lightfoot, 364 U.S. 345

If all this is so in regard to the constitutional protection of contracts, it should be equally true that, to paraphrase, such power, extensive though it is, is met and overcome by the Fifteenth Amendment to the Constitution of the United States, which forbids a State from passing any law which deprives a citizen of his vote because of his race. The opposite conclusion, urged upon us by respondents, would sanction the achievement by a State of any impairment of voting rights whatever, so long as it was cloaked in the garb of the realignment of political subdivisions. "It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence." Frost & Frost Trucking Co. v. Railroad Commission of California, 271 U.S. 583, 594. [364 U.S. 346]

1960, Gomillion v. Lightfoot, 364 U.S. 346

The respondents find another barrier to the trial of this case in Colegrove v. Green, 328 U.S. 549. In that case, the Court passed on an Illinois law governing the arrangement of congressional districts within that State. The complaint rested upon the disparity of population between the different districts which rendered the effectiveness of each individual's vote in some districts far less than in others. This disparity came to pass solely through shifts in population between 1901, when Illinois organized its congressional districts, and 1946, when the complaint was lodged. During this entire period, elections were held under the districting scheme devised in 1901. The Court affirmed the dismissal of the complaint on the ground that it presented a subject not meet for adjudication.\* The decisive facts in this case, which at this stage must be taken as proved, are wholly different from the considerations found controlling in Colegrove.

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That case involved a complaint of discriminatory apportionment of congressional districts. The appellants in Colegrove complained only of a dilution of the strength of their votes as a result of legislative inaction over a course of many years. The petitioners here complain that affirmative legislative action deprives them of their votes and the consequent advantages that the ballot affords. When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment. In no case involving unequal weight in voting distribution that has come before the Court did the decision sanction a differentiation on racial lines whereby approval was given to unequivocal withdrawal of the vote solely from colored citizens. Apart from all else, these considerations lift this [364 U.S. 347] controversy out of the so-called "political" arena and into the conventional sphere of constitutional litigation.

1960, Gomillion v. Lightfoot, 364 U.S. 347

In sum, as Mr. Justice Holmes remarked when dealing with a related situation in Nixon v. Herndon, 273 U.S. 536, 540, "Of course the petition concerns political action," but "[t]he objection that the subject matter of the suit is political is little more than a play upon words." A statute which is alleged to have worked unconstitutional deprivations of petitioners' rights is not immune to attack simply because the mechanism employed by the legislature is a redefinition of municipal boundaries. According to the allegations here made, the Alabama Legislature has not merely redrawn the Tuskegee city limits with incidental inconvenience to the petitioners; it is more accurate to say that it has deprived the petitioners of the municipal franchise and consequent rights, and, to that end, it has incidentally changed the city's boundaries. While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of their theretofore enjoyed voting rights. That was no Colegrove v. Green.

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When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right. This principle has had many applications. It has long been recognized in cases which have prohibited a State from exploiting a power acknowledged to be absolute in an isolated context to justify the imposition of an "unconstitutional condition." What the Court has said in those cases is equally applicable here, viz., that

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Acts generally lawful may become unlawful when done to accomplish an unlawful end, United States v. Reading Co., 226 U.S. 324, 357, and a constitutional power cannot be used by way of condition to attain an [364 U.S. 348] unconstitutional result.

1960, Gomillion v. Lightfoot, 364 U.S. 348

Western Union Telegraph Co. v. Foster, 247 U.S. 105, 114. The petitioners are entitled to prove their allegations at trial.

1960, Gomillion v. Lightfoot, 364 U.S. 348

For these reasons, the principal conclusions of the District Court and the Court of Appeals are clearly erroneous, and the decision below must be reversed.

1960, Gomillion v. Lightfoot, 364 U.S. 348

Reversed.

1960, Gomillion v. Lightfoot, 364 U.S. 348

MR. JUSTICE DOUGLAS, while joining the opinion of the Court, adheres to the dissents in Colegrove v. Green, 328 U.S. 549, and South v. Peters, 339 U.S. 276.

[364 U.S. 349]

APPENDIX TO OPINION OF THE COURT.

CHART SHOWING TUSKEGGEE, ALABAMA,

BEFORE AND AFTER ACT 140

1960, Gomillion v. Lightfoot, 364 U.S. 349

1960, Gomillion v. Lightfoot, 364 U.S. 349

(The entire area of the square comprised of the City prior to Act 140. The irregular black-bordered figure within the square represents the post-enactment city.)

WHITTAKER, J., concurring

1960, Gomillion v. Lightfoot, 364 U.S. 349

MR. JUSTICE WHITTAKER, concurring.

1960, Gomillion v. Lightfoot, 364 U.S. 349

I concur in the Court's judgment, but not in the whole of its opinion. It seems to me that the decision should be rested not on the Fifteenth Amendment, but rather on the Equal Protection Clause of the Fourteenth Amendment to the Constitution. I am doubtful that the averments of the complaint, taken for present purposes to be true, show a purpose by Act No. 140 to abridge petitioners' "right…to vote" in the Fifteenth Amendment sense. It seems to me that the "right…to vote" that is guaranteed by the Fifteenth Amendment is but the same right to vote as is enjoyed by all others within the same election precinct, ward or other political division. And, inasmuch as no one has the right to vote in a political division, or in a local election concerning only an area in which he does not reside, it would seem to follow that one's right to vote in Division A is not abridged by a redistricting that places his residence in Division B if he there enjoys the same voting privileges as all others in that Division, even though the redistricting was done by the State for the purpose of placing a racial group of citizens in Division B, rather than A.

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But it does seem clear to me that accomplishment of a State's purpose—to use the Court's phrase—of "fencing Negro citizens out of" Division A and into Division B is an unlawful segregation of races of citizens, in violation of the Equal Protection Clause of the Fourteenth Amendment, Brown v. Board of Education, 347 U.S. 483; Cooper v. Aaron, 358 U.S. 1, and, as stated, I would think the decision should be rested on that ground—which, incidentally, clearly would not involve, just as the cited cases did not involve, the Colegrove problem.

Footnotes

FRANKFURTER, J., lead opinion (Footnotes)

1960, Gomillion v. Lightfoot, 364 U.S. 349

\* Soon after the decision in the Colegrove case, Governor Dwight H. Green of Illinois, in his 1947 biennial message to the legislature, recommended a reapportionment. The legislature immediately responded, Ill.Sess.Laws 1947, p. 879, and, in 1951, redistricted again. Ill.Sess.Laws 1951, p. 1924.

Garner v. Louisiana, 1961

Title: Garner v. Louisiana

Author: U.S. Supreme Court

Date: December 11, 1961

Source: 368 U.S. 157

This case was argued October 18-19, 1961, and was decided December 11, 1961, together with No. 27, Briscoe et al. v. Louisiana, and No. 28, Hoston et al. v. Louisiana, also on certiorari to the same Court.

CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Syllabus

1961, Garner v. Louisiana, 368 U.S. 157

In Louisiana places of business catering to both white and Negro patrons, petitioners, who are Negroes, took seats at lunch counters where only white persons customarily were served, and they remained quietly in their seats after being told that they could not be served there. They made no speeches, carried no placards, and did nothing else to attract attention to themselves except to sit at the lunch counters. They were not asked to leave by the proprietors or their agents, but they were asked to leave by police officers. Upon failing to do so, they were arrested and charged with "disturbing the peace." They were convicted in a state court under a state statute which defines "disturbing the peace" as the doing of specified violent, boisterous or disruptive acts and "any other act in such a manner as to unreasonably disturb or alarm the public." They were denied relief by the State Supreme Court. The records contained no evidence to support a finding that petitioners had disturbed the peace, either by outwardly boisterous conduct or by passive conduct likely to cause a public disturbance.

1961, Garner v. Louisiana, 368 U.S. 157

Held: The convictions were so totally devoid of evidentiary support as to violate the Due Process Clause of the Fourteenth Amendment. Thompson v. Louisville, 362 U.S. 199. Pp. 158-174.

1961, Garner v. Louisiana, 368 U.S. 157

(a) There being nothing in the record to indicate that the trial judge took judicial notice of anything, these convictions cannot be sustained on the theory that he took judicial notice of the general situation, including the local custom of racial segregation in eating places, and concluded that petitioners' presence at the lunch counters might cause a disturbance which it was the duty of the police to prevent. P. 173.

1961, Garner v. Louisiana, 368 U.S. 157

(b) In the circumstances of these cases, merely sitting peacefully in places where custom decreed that petitioners should not sit was not evidence of any crime, and it cannot be so considered either by the police or by the courts. P. 174.

1961, Garner v. Louisiana, 368 U.S. 157

Reversed. [368 U.S. 158]

WARREN, J., lead opinion

1961, Garner v. Louisiana, 368 U.S. 158

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

1961, Garner v. Louisiana, 368 U.S. 158

These cases come to us from the Supreme Court of Louisiana, and draw in question the constitutionality of the petitioners' convictions in the 19th Judicial District Court, Parish of East Baton Rouge, Louisiana, for the crime of disturbing the peace. The petitioners 1 were brought to trial and convicted on informations charging them with violating Title 14, Article 103(7), of the Louisiana Criminal Code, 1942, in that

1961, Garner v. Louisiana, 368 U.S. 158

they refused to move from a cafe counter seat…after having been ordered to do so by the agent [of the establishment], said conduct being in such manner as to unreasonably and foreseeably disturb the public….

1961, Garner v. Louisiana, 368 U.S. 158

In accordance with state procedure, petitioners sought post-conviction review in the Supreme Court of Louisiana through writs of certiorari, mandamus and prohibition. They contended that the [368 U.S. 159] State had presented no evidence to support the findings of statutory violation, and that their convictions were invalid on other constitutional grounds, both state and federal. Relief was denied. Federal questions were properly raised and preserved throughout the proceedings, and timely petitions for certiorari filed in this Court were granted. 365 U.S. 840. The United States Government appeared as amicus curiae urging, on various grounds, that the convictions be reversed. An amicus brief also urging reversal was filed by the Committee on the Bill of Rights of the Association of the Bar of the City of New York.

1961, Garner v. Louisiana, 368 U.S. 159

In our view of these cases, and for our disposition of them, the slight variance in the facts of the three cases is immaterial. Although the alleged offenses did not occur on the same day or in the same establishment, the petitioners were all arrested by the same officers, charged with commission of the same acts, represented by the same counsel, tried and convicted by the same judge, and given identical sentences. Because of this factual similarity and the identical nature of the problems involved in granting certiorari, we ordered the cases consolidated for argument, and now deem it sufficient to file one opinion. In addition, as the facts are simple, we think it sufficient to recite but one of the cases in detail, noting whatever slight variations exist in the others.

1961, Garner v. Louisiana, 368 U.S. 159

In No. 28, Hoston et al. v. Louisiana, Jannette Hoston, a student at Southern University, and six of her colleagues took seats at a lunch counter in Kress' Department Store in Baton Rouge, Louisiana, on March 29, 1960. 2 In Kress', as in Sitman's Drug Store in No. 26, [368 U.S. 160] where Negroes are considered "very good customers," a segregation policy is maintained only with regard to the service of food. 3 Hence, although both stores solicit business from white and Negro patrons, and the latter as well as the former may make purchases in the general merchandise sections without discrimination, 4 the stores do not provide integrated service at their lunch counters.

1961, Garner v. Louisiana, 368 U.S. 160

The manager at Kress' store, who was also seated at the lunch counter, told the waitress to advise the students that they could be served at the counter across the aisle, which she did. The petitioners made no response, and remained quietly in their seats. After the manager had finished his lunch, he telephoned the police and told them that "[some Negroes] were seated at the counter reserved for whites." The police arrived at the store and ordered the students to leave. The arresting officer testified that the petitioners did and said nothing, except that one of them stated that she would like a glass of iced tea, but that he believed they were disturbing the peace "by sitting there." When none of the petitioners showed signs of leaving their seats, they were placed under arrest and taken to the police station. They were then charged with violating Title 14, Article 103(7), of the Louisiana Criminal Code, a section of the Louisiana disturbance of the peace statute.

1961, Garner v. Louisiana, 368 U.S. 160

Before trial, the petitioners moved for a bill of particulars as to the details of their allegedly disruptive behavior, and to quash the informations for failure to state any unlawful acts of which they could be constitutionally convicted. The motions were denied, and the [368 U.S. 161] petitioners applied to the Supreme Court of Louisiana for writs of certiorari, prohibition and mandamus to review the rulings. The Supreme Court denied the writs on the ground that an adequate remedy was available through resort to its supervisory jurisdiction in the event of a conviction. The petitioners were then tried and convicted, 5 and sentenced to imprisonment for four months, three months of which would be suspended upon the payment of a fine of $100. Subsequent to their convictions, the Supreme Court, in denying relief on appeal, issued the following oral opinion in each case.

1961, Garner v. Louisiana, 368 U.S. 161

Writs refused.

1961, Garner v. Louisiana, 368 U.S. 161

This court is without jurisdiction to review facts in criminal cases. See Art. 7, Sec. 10, La. Constitution of 1921.

1961, Garner v. Louisiana, 368 U.S. 161

The rulings of the district judge on matters of law are not erroneous. See Town of Ponchatoula v. Bates, 173 La., 824, 138 So., 851. 6 [368 U.S. 162]

1961, Garner v. Louisiana, 368 U.S. 162

Before this Court, petitioners and the amici have presented a number of questions claiming deprivation of rights guaranteed to petitioners by the First and Fourteenth Amendments to the United States Constitution. 7 The petitioners contend:

1961, Garner v. Louisiana, 368 U.S. 162

(a) The decision below affirms a criminal conviction based upon no evidence of guilt and, therefore, deprives them of due process of law as defined in Thompson v. Louisville, 362 U.S. 199.

1961, Garner v. Louisiana, 368 U.S. 162

(b) The petitioners were convicted of a crime under the provisions of a state statute which, as applied to their acts, is so vague, indefinite and uncertain as to offend the Due Process Clause of the Fourteenth Amendment.

1961, Garner v. Louisiana, 368 U.S. 162

(c) The decisions below conflict with the Fourteenth Amendment's guarantee of freedom of expression.

1961, Garner v. Louisiana, 368 U.S. 162

(d) The decision below conflicts with prior decisions of this Court which condemn racially discriminatory [368 U.S. 163] administration of State criminal laws in contravention of the Equal Protection Clause of the Fourteenth Amendment.

1961, Garner v. Louisiana, 368 U.S. 163

With regard to argument (d), the petitioners and the New York Committee on the Bill of Rights contend that the participation of the police and the judiciary to enforce a state custom of segregation resulted in the use of "state action," and was therefore plainly violative of the Fourteenth Amendment. The petitioners also urge that, even if these cases contain a relevant component of "private action," that action is substantially infected with state, power and thereby remains state action for purposes of the Fourteenth Amendment. 8

1961, Garner v. Louisiana, 368 U.S. 163

In the view we take of the cases, we find it unnecessary to reach the broader constitutional questions presented, and, in accordance with our practice not to formulate a rule of constitutional law broader than is required by the precise facts presented in the record, for the reasons hereinafter stated, we hold that the convictions in these cases are so totally devoid of evidentiary support as to render them unconstitutional under the Due Process Clause of the Fourteenth Amendment. 9 As in Thompson v. Louisville, 362 U.S. 199, our inquiry does not turn on a question of sufficiency of evidence to support a conviction, but on whether these convictions rest upon any evidence which would support a finding that the petitioners' [368 U.S. 164] acts caused a disturbance of the peace. In addition, we cannot be concerned with whether the evidence proves the commission of some other crime, for it is as much a denial of due process to send an accused to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there is no evidence to support that conviction. 10

1961, Garner v. Louisiana, 368 U.S. 164

The respondent, in both its brief and its argument to this Court, implied that the evidence proves the elements of a criminal trespass. In oral argument, it contended that the real question here

1961, Garner v. Louisiana, 368 U.S. 164

is whether or not a private property owner and proprietor of a private establishment has the right to serve only those whom he chooses and to refuse to serve those whom he desires not to serve for whatever reason he may determine. 11

1961, Garner v. Louisiana, 368 U.S. 164

That this is not a question presented by the records in these cases seems too apparent for debate. Even assuming it were the question, however, which it clearly is not, these convictions could not stand for the reason stated in Cole v. Arkansas, 333 U.S. 196,. 12 [368 U.S. 165]

1961, Garner v. Louisiana, 368 U.S. 165

Under our view of these cases, our task is to determine whether there is any evidence in the records to show that the petitioners, by their actions at the lunch counters in the business establishments involved, violated Title 14, Article 103(7), of the Louisiana Criminal Code. At the time of petitioners' acts, Article 103 provided:

1961, Garner v. Louisiana, 368 U.S. 165

Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

1961, Garner v. Louisiana, 368 U.S. 165

(1) Engaging in a fistic encounter; or

1961, Garner v. Louisiana, 368 U.S. 165

(2) Using of any unnecessarily loud, offensive, or insulting language; or

1961, Garner v. Louisiana, 368 U.S. 165

(3) Appearing in an intoxicated condition; or

1961, Garner v. Louisiana, 368 U.S. 165

(4) Engaging in any act in a violent and tumultuous manner by any three or more persons; or

1961, Garner v. Louisiana, 368 U.S. 165

(5) Holding of an unlawful assembly; or

1961, Garner v. Louisiana, 368 U.S. 165

(6) Interruption of any lawful assembly of people; or

1961, Garner v. Louisiana, 368 U.S. 165

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

I

1961, Garner v. Louisiana, 368 U.S. 165

Our initial inquiry is necessarily to determine the type of conduct proscribed by this statute and the elements of guilt which the evidence must prove to support a criminal conviction thereunder. First, it is evident from a reading of the statute that the accused must conduct himself in a manner that would "foreseeably disturb or alarm the public." In addition, when a person is charged with a violation of Paragraph 7, an earlier version of which was aptly described by the Supreme Court of Louisiana as "the general portion of the statute which does not define the `conduct or acts' the members of the Legislature had in mind" (State v. Sanford, 203 La. 961, 967, 14 So.2d [368 U.S. 166] 778, 780), 13 it would also seem apparent from the words of the statute that the acts, whatever they might be, must be done "in such a manner as to [actually] unreasonably disturb or alarm the public." However, because we find the records barren of any evidence that would support a finding that the petitioners' conduct would even "foreseeably" have disturbed the public, we need not consider whether the statute also requires the acts to be done in a manner as actually to disturb the peace.

1961, Garner v. Louisiana, 368 U.S. 166

We, of course, are bound by a State's interpretation of its own statute, and will not substitute our judgment for that of the State's when it becomes necessary to analyze the evidence for the purpose of determining whether that evidence supports the findings of a state court. Hence, we must look to Louisiana for guidance in the meaning of the phrase "foreseeably disturb or alarm the public" in order to determine the type of conduct proscribed by La.Rev.Stat., 1950, § 14:103(7).

1961, Garner v. Louisiana, 368 U.S. 166

The Supreme Court of Louisiana has had occasion in the past, in interpreting the predecessor of Article 103, 14 to give content to these words, and it is evident from the court's prior treatment of them that they were not [368 U.S. 167] intended to embrace peaceful conduct. On the contrary, it is plain that, under the court's application of the statute, these words encompass only conduct which is violent or boisterous in itself, or which is provocative in the sense that it induces a foreseeable physical disturbance. 15 In State v. Sanford, 203 La. 961, 14 So.2d 778, the evidence showed that thirty Jehovah's Witnesses approached a Louisiana town for the purpose of distributing religious tracts and persuading the public to make contributions to their cause. The Witnesses were warned by the mayor and police officers that "their presence and activities would cause trouble among the population, and asked them to stay away from the town…. " 203 La. at 964, 14 So.2d at 779. The Witnesses failed to yield to the warning, and proceeded on their mission. The trial court found that the acts of the Witnesses in entering the town and stopping passersby in the crowded street "might or would tend to incite riotous and disorderly conduct." 203 La. at 965, 14 So.2d at 779. The Supreme Court of Louisiana set aside convictions for breach of the peace, holding that the defendants did not commit any unlawful act or pursue any disorderly course of conduct which would tend to disturb the peace—thus, in effect, that peaceful conduct, even though conceivably offensive to another class of the public, is not conduct which may be proscribed by Louisiana's disturbance of the peace statute without evidence that the actor conducted himself in some outwardly unruly manner.

1961, Garner v. Louisiana, 368 U.S. 167

The conclusion of the highest Louisiana court that the breach of the peace statute does not reach peaceful and orderly conduct is substantiated by the conclusion drawn from reading the statute as a whole. The catch-all provision under which the petitioners were tried and convicted [368 U.S. 168] follows an enumeration of six specific offenses, each of which describes overtly tumultuous or disruptive behavior. It would therefore normally be interpreted in the light of the preceding sections as an effort to cover other forms of violence or loud and boisterous conduct not already listed. 16 We do not mean to imply that an ejusdem generis reading of the statute is constitutionally compelled to the exclusion of other reasonable interpretations, 17 but we do note that here such a reading is consistent with the Louisiana Supreme Court's application in Sanford. 18

1961, Garner v. Louisiana, 368 U.S. 168

Further evidence that Article 103(7) was not designed to encompass the petitioners' conduct in these cases has been supplied by the Louisiana Legislature. Shortly after the events for which the petitioners were arrested took place, the legislature amended its disturbance of the peace statute in an obvious attempt to reach the type of activity involved in these cases. 19 The contrast between the language of the present statute and the one under which the petitioners were convicted confirms the interpretation [368 U.S. 169] given the general terms of the latter by the Supreme Court in State v. Sanford and the natural meaning of the words used in Article 103.

1961, Garner v. Louisiana, 368 U.S. 169

We are aware that the Louisiana courts have the final authority to interpret and, where they see fit, to reinterpret that State's legislation. However, we have seen no indication that the Louisiana Supreme Court has changed its Sanford interpretation of La.Rev.Stat., 1950, § 14:103(7), and we will not infer that an inferior Louisiana court intended to overrule a longstanding and reasonable interpretation of a state statute by that State's highest court. Our reluctance so to infer is supported, moreover, by the fact that State v. Sanford was argued by the petitioners to both the trial court and the Supreme Court, and that neither court mentioned in its opinion that Sanford was no longer to be the law in Louisiana.

1961, Garner v. Louisiana, 368 U.S. 169

We think that the above discussion would given ample support to a conclusion that Louisiana law requires a finding of outwardly boisterous or unruly conduct in order to charge a defendant with "foreseeably" disturbing or alarming the public. However, because this case comes to us from a state court and necessitates a delicate involvement in federal-state relations, we are willing to assume with the respondent that the Louisiana courts might construe the statute more broadly to encompass the traditional common law concept of disturbing the peace. Thus construed, it might permit the police to prevent an imminent public commotion even though caused by peaceful and orderly conduct on the part of the accused. Cf. Cantwell v. Connecticut, 310 U.S. 296, 308. We therefore treat these cases as though evidence of such imminent danger, as well as evidence of a defendant's active conduct which is outwardly provocative, could support a finding that the acts might "foreseeably disturb or alarm the public" under the Louisiana statute. [368 U.S. 170]

II

1961, Garner v. Louisiana, 368 U.S. 170

Having determined what evidence is necessary to support a finding of disturbing the peace under Louisiana law, the ultimate question, as in Thompson v. Louisville, supra, is whether the records in these cases contain any such evidence. With appropriate notations to the slight differences in testimony in the other two cases, we again turn to the record in No. 28. 20 The manager of the department store in which the lunch counter was located testified that, after the students had taken their seats at the "white lunch counter" where he was also occupying a seat, he advised the waitress on duty to offer the petitioners service at the counter across the aisle, which served Negroes. The petitioners, however, after being "advised that they would be served at the other counter," remained in their seats, and the manager continued eating his lunch at the same counter. In No. 26, where there were no facilities to serve colored persons, the petitioners were merely told that they couldn't be served, but were never even asked to move. In No. 27, a waitress testified that the petitioners were merely told that they would have to go "to the other side to be served." The petitioners not only made no speeches, they did not even speak to anyone except to order food; they carried no placards, and did nothing, beyond their mere presence at the lunch counter, to attract attention to themselves or to others. In none of the cases was there any testimony that the petitioners were told that their mere presence was causing, or was likely to cause, a disturbance of the peace, nor that the petitioners were ever asked to leave the counters or the establishments by anyone connected with the stores. [368 U.S. 171]

1961, Garner v. Louisiana, 368 U.S. 171

The manager in No. 28 testified that, after finishing his meal, he went to the telephone and called the police department, advising them that Negroes were in his store sitting at the lunch counter reserved for whites. This is the only case in which "the owner or his agent" notified the police of the petitioners' presence at the lunch counter, and even, here the manager gave no indication to the officers that he feared any disturbance or that he had received any complaint concerning the petitioners' presence. In No. 27, a waitress testified that a bus driver sitting in the restaurant notified the police that "there were several colored people sitting at the lunch counter." 21 In No. 26, the arresting officers were not summoned to the drugstore by anyone even remotely connected with Sitman's but, rather, by a call from an officer on his "beat" who had observed the petitioners sitting quietly at the lunch counter.

1961, Garner v. Louisiana, 368 U.S. 171

Although the manager of Kress' Department Store testified that the only conduct which he considered disruptive was the petitioners' mere presence at the counter, he did state that he called the police because he "feared that some disturbance might occur." 22 However, his fear is completely unsubstantiated by the record. The manager continued eating his lunch in an apparently leisurely manner at the same counter at which the petitioners were sitting before calling the police. Moreover, not only did he fail to give the petitioners any warning of his alleged [368 U.S. 172] "fear," 23 but he specifically testified to the fact that the petitioners were never asked to move or to leave the store. Nor did the witness elaborate on the basis of his fear except to state that "it isn't customary for the two races to sit together and eat together." 24 In addition, there is no evidence that this alleged fear was ever communicated to the arresting officers, either at the time the manager made the initial call to police headquarters or when the police arrived at the store. Under these circumstances, the manager's general statement gives no support for the convictions within the meaning of Thompson v. Louisville, supra.

1961, Garner v. Louisiana, 368 U.S. 172

Subsequent to the manager's notification, the police arrived at the store and, without consulting the manager or anyone else on the premises, went directly to confront the petitioners. An officer asked the petitioners to leave the counter because "they were disturbing the peace and violating the law by sitting there." One of the students stated that she wished to get a glass of iced tea, but she and her friends were told, again by the police, that they were disturbing the peace by sitting at a counter reserved for whites, and that they would have to leave. When the petitioners continued to occupy the seats, they were arrested, as the officer testified, for disturbing the peace "[b]y sitting there" "because that place was reserved for white people." The same officer testified that the petitioners had done nothing other than take seats at that particular lunch counter, which he considered to be a breach of the peace. 25 [368 U.S. 173]

1961, Garner v. Louisiana, 368 U.S. 173

The respondent discusses at length the history of race relations and the high degree of racial segregation which exists throughout the South. Although there is no reference to such facts in the records, the respondent argues that the trial court took judicial notice of the general situation, as he may do under Louisiana law, 26 and that it therefore became apparent to the court that the petitioners' presence at the lunch counters might cause a disturbance which it was the duty of the police to prevent. There is nothing in the records to indicate that the trial judge did in fact take judicial notice of anything. To extend the doctrine of judicial notice to the length pressed by the respondent would require us to allow the prosecution to do, through argument to this Court, what it is required by due process to do at the trial, and would be "to turn the doctrine into a pretext for dispensing with a trial." Ohio Bell Telephone Co. v. Public Utilities Comm., 301 U.S. 292, 302. Furthermore, unless an accused is informed at the trial of the facts of which the court is taking judicial notice, not only does he not know upon what evidence he is being convicted, but, in addition, he is deprived of any opportunity to challenge the deductions drawn from such notice or to dispute the notoriety or truth of the facts allegedly relied upon. Moreover, there is no way by which an appellate court may review the facts and law of a case and intelligently decide whether the findings of the lower court are supported by the evidence where that evidence is unknown. Such an assumption would be a denial of due process. Ohio Bell, supra.

1961, Garner v. Louisiana, 368 U.S. 173

Thus, having shown that these records contain no evidence to support a finding that petitioners disturbed the peace, either by outwardly boisterous conduct or by passive [368 U.S. 174] conduct likely to cause a public disturbance, we hold that these convictions violated petitioners' rights to due process of law guaranteed them by the Fourteenth Amendment to the United States Constitution. The undisputed evidence shows that the police who arrested the petitioners were left with nothing to support their actions except their own opinions that it was a breach of the peace for the petitioners to sit peacefully in a place where custom decreed they should not sit. 27 Such activity, in the circumstances of these cases, is not evidence of any crime, and cannot be so considered either by the police or by the courts.

1961, Garner v. Louisiana, 368 U.S. 174

The judgments are reversed.

FRANKFURTER, J., concurring

1961, Garner v. Louisiana, 368 U.S. 174

MR. JUSTICE FRANKFURTER, concurring in the judgment.

1961, Garner v. Louisiana, 368 U.S. 174

Whether state statutes are to be construed one way or another is a question of state law, final decision of which rests, of course, with the courts of the State. When, as here, those courts have not spelled out the meaning of a statute, this Court must extrapolate its allowable meaning and attribute that to the highest court of the State. We must do so in a manner that affords the widest latitude to state legislative power consistent with the United States Constitution.

1961, Garner v. Louisiana, 368 U.S. 174

Since La.Rev.Stat., 1950, § 14:103, is concededly a statute aimed at "disturbing the peace," we begin with the breadth of meaning derived from that phrase in Town of Ponchatoula v. Bates, 173 La. 824, 138 So. 851, 852 (1931). To be sure, that amounted to an abstract discussion and in the limited circumstances considered by the Louisiana Supreme Court in State v. Sanford, 203 La. 961, 14 So.2d 778 (1943), the allowable scope of the statutory prohibition was not fully explored. But construction of the statute to prohibit nonviolent, nonreligious behavior in a private shop when that behavior has a tendency to disturb [368 U.S. 175] or alarm the public is fairly derivable from a reading of the Sanford opinion.

1961, Garner v. Louisiana, 368 U.S. 175

The action of the Louisiana Legislature in amending its statutes after the events now under review took place is not a safe, or even relevant, guide to the scope of the prior statute. Legislatures not uncommonly seek to make prior law more explicit or reiterate a prohibition by more emphatic concreteness. The rule of evidence that excludes proof of post-injury repairs offers a useful analogy here. See II Wigmore, Evidence, § 283 (Third ed. 1940). It is not our province to limit the meaning of a state statute beyond its confinement by reasonably read state court rulings.

1961, Garner v. Louisiana, 368 U.S. 175

Assuming for present purposes the constitutionality of a statute prohibiting nonviolent activity that tends to provoke public alarm or disturbance, such a tendency, as a crucial element of a criminal offense, must be established by evidence disclosed in the record to sustain a conviction. A judge's private knowledge, or even "knowledge by notoriety," to use Dean Wigmore's phrase, IX Evidence, § 2569 (Third ed. 1940), not presented as part of the prosecution's case capable of being met by a defendant, is not an adequate basis, as a matter of due process, to establish an essential element of what is punished as crime. Thompson v. City of Louisville, 362 U.S. 199.

1961, Garner v. Louisiana, 368 U.S. 175

It may be unnecessary to require formal proof, even as to an issue crucial in determining guilt in a criminal prosecution, of what is incontestably obvious. But some showing cannot be dispensed with when an inference is at all doubtful. And it begs the whole question on the answer to which the validity of these convictions turns to assume that the "public" tended to be alarmed by the conduct of the petitioners here disclosed. See Devlin, L.J., in Dingle v. Associated Newspapers, [1961] 2 Q.B. 162, 198. Conviction under this Louisiana statute cannot be sustained by reliance merely upon likely consequences in the generality of cases. Since particular persons [368 U.S. 176] are being sent to jail for conduct allegedly having a particular effect on a particular occasion under particular circumstances, it becomes necessary to appraise that conduct and effect by the particularity of evidence adduced.

1961, Garner v. Louisiana, 368 U.S. 176

The records in these cases, whatever variance in unimportant details they may show, contain no evidence of disturbance or alarm in the behavior of the cafe employees or customers or even passers-by, the relevant "public" fairly in contemplation of these charges. What they do show was aptly summarized both in the testimony of the arresting police and in the recitation of the trial judge as the "mere presence" of the petitioners.

1961, Garner v. Louisiana, 368 U.S. 176

Silent persistence in sitting after service is refused could no doubt conceivably exacerbate feelings to the boiling point. It is not fanciful speculation, however, that a proprietor who invites trade in most parts of his establishment and restricts it in another may change his policy when nonviolently challenged.\* With records as barren as these of evidence from which a tendency to disturb or alarm the public immediately involved can be drawn, there is nothing before us on which to sustain such an inference from what may be hypothetically lodged in the unopened bosom of the local court.

1961, Garner v. Louisiana, 368 U.S. 176

Since the "mere presence" that these records prove has, in any event, not been made a crime by the Louisiana statute under which these petitioners were charged, their convictions must be reversed.

DOUGLAS, J., concurring

1961, Garner v. Louisiana, 368 U.S. 176

MR. JUSTICE DOUGLAS, concurring.

1961, Garner v. Louisiana, 368 U.S. 176

If these cases had arisen in the Pacific Northwest—the area I know best—I could agree with the opinion of the Court. For while many communities north and south, east and west, at times have racial problems, those areas which have never known segregation would not be [368 U.S. 177] inflamed or aroused by the presence of a member of a minority race in a restaurant. But in Louisiana, racial problems have agitated the people since the days of slavery. The landmark case of Plessy v. Ferguson, 163 U.S. 537—the decision that announced in 1896 the now-repudiated doctrine of "separate but equal" facilities for whites and blacks—came from Louisiana, which had enacted in 1890 a statute requiring segregation of the races on railroad trains. In the environment of a segregated community, I can understand how the mere presence of a Negro at a white lunch counter might inflame some people as much as fisticuffs would in other places. For the reasons stated by MR. JUSTICE HARLAN in these cases, I read the Louisiana opinions as meaning that this law includes "peaceful conduct of a kind that foreseeably may lead to public disturbance"—a kind of "generally known condition" that may be "judicially noticed" even in a criminal case.

1961, Garner v. Louisiana, 368 U.S. 177

This does not mean that the police were justified in making these arrests. For the police are supposed to be on the side of the Constitution, not on the side of discrimination. Yet, if all constitutional questions are to be put aside and the problem treated merely in terms of disturbing the peace, I would have difficulty in reversing these judgments. I think, however, the constitutional questions must be reached, and that they make reversal necessary.

1961, Garner v. Louisiana, 368 U.S. 177

Restaurants, whether in a drugstore, department store, or bus terminal, are a part of the public life of most of our communities. Though they are private enterprises, they are public facilities in which the States may not enforce a policy of racial segregation.

I

1961, Garner v. Louisiana, 368 U.S. 177

It is, of course, state action that is prohibited by the Fourteenth Amendment, not the actions of individuals. So far as the Fourteenth Amendment is concerned, individuals [368 U.S. 178] can be as prejudiced and intolerant as they like. They may, as a consequence, subject themselves to suits for assault, battery, or trespass. But those actions have no footing in the Federal Constitution. The line of forbidden conduct marked by the Equal Protection Clause of the Fourteenth Amendment is crossed only when a State makes prejudice or intolerance its policy and enforces it, as held in the Civil Rights Cases, 109 U.S. 3. Mr. Justice Bradley, speaking for the Court, said:

1961, Garner v. Louisiana, 368 U.S. 178

…civil rights, such as are guaranteed by the Constitution against state aggression, cannot be impaired by the wrongful acts of individuals, unsupported by state authority in the shape of laws, customs, or judicial or executive proceedings.

1961, Garner v. Louisiana, 368 U.S. 178

Id. at 17. (Italics added.)

1961, Garner v. Louisiana, 368 U.S. 178

State policy violative of the Fourteenth Amendment may be expressed in legislative enactments that permit or require segregation of the races in public places or public facilities (Brown v. Board of Education, 347 U.S. 483) or in residential areas. Buchanan v. Warley, 245 U.S. 60.

1961, Garner v. Louisiana, 368 U.S. 178

It may be expressed through executive action, as where the police or other law enforcement officials act pursuant to, or under color of, state law. See, e.g., Screws v. United States, 325 U.S. 91; Monroe v. Pape, 365 U.S. 167.

1961, Garner v. Louisiana, 368 U.S. 178

It may be expressed through the administrative action of state agencies in leasing public facilities. Burton v. Wilmington Parking Authority, 365 U.S. 715.

1961, Garner v. Louisiana, 368 U.S. 178

It may result from judicial action, as where members of a race are systematically excluded from juries (Hernandez v. Texas, 347 U.S. 475), or where restrictive covenants based on race are enforced by the judiciary (Barrows v. Jackson, 346 U.S. 249), or where a state court fines or imprisons a person for asserting his federal right to use the facilities of an interstate bus terminal, Boynton v. Virginia, 364 U.S. 454.

1961, Garner v. Louisiana, 368 U.S. 178

As noted, Mr. Justice Bradley suggested in the Civil Rights Cases, supra, that state policy may be as effectively [368 U.S. 179] expressed in customs as informal legislative, executive, or judicial action.

1961, Garner v. Louisiana, 368 U.S. 179

It was indeed held in Baldwin v. Morgan, 287 F.2d 750, 756, that the "custom, practice and usage" of a city and its police in arresting four Negroes for using "white" waiting rooms was state action in violation of the Fourteenth Amendment, even though no ordinance was promulgated and no order issued. In the instant cases, such an inference can be drawn from the totality of circumstances permeating the environment where the arrests were made—not an isolated arrest, but three arrests; not arrests on account of fisticuffs, but arrests because the defendants were Negroes seeking restaurant service at counters and tables reserved for "whites."

1961, Garner v. Louisiana, 368 U.S. 179

There is a deep-seated pattern of segregation of the races in Louisiana, 1 going back at least to Plessy v. Ferguson, supra. It was restated in 1960—the year in which petitioners were arrested and charged for sitting in white restaurants—by Act No. 630, which, in its preamble, states:

1961, Garner v. Louisiana, 368 U.S. 179

WHEREAS, Louisiana has always maintained a policy of segregation of the races, and [368 U.S. 180]

1961, Garner v. Louisiana, 368 U.S. 180

WHEREAS, it is the intention of the citizens of this sovereign state that such a policy be continued.

1961, Garner v. Louisiana, 368 U.S. 180

La.Acts 1960, p. 1200.

1961, Garner v. Louisiana, 368 U.S. 180

Louisiana requires that all circuses, shows, and tent exhibitions to which the public is invited have one entrance for whites and one for Negroes. La.Rev.Stat., 1950, c. 4, § 5. No dancing, social functions, entertainment, athletic training, games, sports, contests "and other such activities involving personal and social contacts" may be open to both races. La.Rev.Stat., 1950, c. 4, § 451. Any public entertainment or athletic contest must provide separate seating arrangements and separate sanitary drinking water and "any other facilities" for the two races. La.Rev.Stat., 1950, c. 4, § 452. Marriage between members of the two races is banned. La.Rev.Stat., 1950, c. 14, § 79. Segregation by race is required in prisons. La.Rev.Stat., 1950, c. 15, § 752. The blind must be segregated. La.Rev.Stat., 1950,. c. 17, § 10. Teachers in public schools are barred from advocating desegregation of the races in the public school system. La.Rev.Stat., 1950, c. 17, §§ 443, 462. So are other state employees. La.Rev.Stat., 1950, c. 17, § 523. Segregation on trains is required. La.Rev.Stat., 1950, c. 45, §§ 528-532. Common carriers of passengers must provide separate waiting rooms and reception room facilities for the two races (La.Rev.Stat., 1950, c. 45, § 1301) and separate toilets and separate facilities for drinking water as well. La.Rev.Stat., 1950, c. 45, § 1303. Employers must provide separate sanitary facilities for the two races. La.Rev.Stat., 1950, 23:971. Employers must also provide separate eating places in separate rooms and separate eating and drinking utensils for members of the two races. La.Rev.Stat., 1950, c. 23, § 972. Persons of one race may not establish their residence in a community of another race without approval of the majority of the other race. La.Rev.Stat., 1950, c. 33, § 5066. Court dockets must reveal the race of the parties in divorce actions. La.Rev.Stat., 1950, c. 13, § 917. And all public parks, recreation centers, playgrounds, community centers and "other such facilities at which swimming, dancing, golfing, skating or other recreational activities are [368 U.S. 181] conducted" must be segregated. La.Rev.Stat., 1950, c. 33, § 4558.1.

1961, Garner v. Louisiana, 368 U.S. 181

Though there may have been no state law or municipal ordinance that, in terms, required segregation of the races in restaurants, it is plain that the proprietors in the instant cases were segregating blacks from whites pursuant to Louisiana's custom. Segregation is basic to the structure of Louisiana as a community; the custom that maintains it is at least as powerful as any law. If these proprietors also choose segregation, their preference does not make the action "private," rather than "state," action. If it did, a minuscule of private prejudice would convert state into private action. Moreover, where the segregation policy is the policy of a State, it matters not that the agency to enforce it is a private enterprise. Baldwin v. Morgan, supra; Boman v. Birmingham Transit Co., 280 F.2d 531.

II

1961, Garner v. Louisiana, 368 U.S. 181

It is my view that a State may not constitutionally enforce a policy of segregation in restaurant facilities. Some of the argument assumed that restaurants are "private" property in the sense that one's home is "private" property. They are, of course, "private" property for many purposes of the Constitution. Yet so are street railways, power plants, warehouses, and other types of enterprises which have long been held to be affected with a public interest. Where constitutional rights are involved, the proprietary interests of individuals must give way. Towns, though wholly owned by private interests, perform municipal functions and are held to the same constitutional requirements as ordinary municipalities. Marsh v. Alabama, 326 U.S. 501. State regulation of private enterprise falls when it discriminates against interstate commerce. Port Richmond Ferry v. Hudson County, 234 U.S. 317. State regulation of private enterprise that results in impairment of other constitutional [368 U.S. 182] rights should stand on no firmer footing, at least in the area where facilities of a public nature are involved.

1961, Garner v. Louisiana, 368 U.S. 182

Long before Chief Justice Waite wrote the opinion in Munn v. Illinois, 94 U.S. 113, holding that the prices charged by grain warehouses could be regulated by the State, a long list of businesses had been held to be "affected with a public interest." Among these were ferries, common carriers, hackmen, bakers, millers, wharfingers, and innkeepers. Id. at 125. The test used in Munn v. Illinois was stated as follows:

1961, Garner v. Louisiana, 368 U.S. 182

Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large.

1961, Garner v. Louisiana, 368 U.S. 182

Id. at 126. In reply to the charge that price regulation deprived the warehousemen of property, Chief Justice Waite stated,

1961, Garner v. Louisiana, 368 U.S. 182

There is no attempt to compel these owners to grant the public an interest in their property, but to declare their obligations, if they use it in this particular manner.

1961, Garner v. Louisiana, 368 U.S. 182

Id. at 133.

1961, Garner v. Louisiana, 368 U.S. 182

There was a long span between Munn v. Illinois and Nebbia v. New York, 291 U.S. 502, which upheld the power of a State to fix the price of milk. A business may have a "public interest" even though it is not a "public utility" in the accepted sense, even though it enjoys no franchise from the State, and even though it enjoys no monopoly. Id. at 534. The examples cover a wide range from price control to prohibition of certain types of business. Id. at 525-529. Various systems or devices designed by States or municipalities to protect the wholesomeness of food in the interests of health are deep-seated as any exercise of the police power. Adams v. Milwaukee, 228 U.S. 572.

1961, Garner v. Louisiana, 368 U.S. 182

Years ago, Lord Chief Justice Hale stated in De Portibus Maris, 1 Harg. Law Tracts 78, "…if a man set out a street in new building on his own land, it is now no longer bare private interest, but is affected with a public interest." Those who run a retail establishment under permit [368 U.S. 183] from a municipality operate, in my view, a public facility in which there can be no more discrimination based on race than is constitutionally permissible in the more customary types of public facility.

1961, Garner v. Louisiana, 368 U.S. 183

Under Louisiana law, restaurants are a form of private property affected with a public interest. Local boards of health are given broad powers. La.Rev.Stat., 1950, c. 40, § 35; La.Rev.Stat., 1950, c. 33, § 621. The City of Baton Rouge, in its City Code, requires all restaurants to have a permit. Tit. 6, c. 7, § 601. The Director of Public Health is given broad powers of inspection, and permits issued can be suspended. Id., § 603. Permits are not transferable. Id., § 606. One who operates without a permit commits a separate offense each day a violation occurs. Id., § 604. Moreover, detailed provisions are made concerning the equipment that restaurants must have, the protection of ready-to-eat foods and drink, and the storage of food. Id., § 609.

1961, Garner v. Louisiana, 368 U.S. 183

Restaurants, though a species of private property, are in the public domain. Or, to paraphrase the opinion in Nebbia v. New York, supra, restaurants in Louisiana have a "public consequence," and "affect the community at large." 291 U.S. 502, 533.

1961, Garner v. Louisiana, 368 U.S. 183

While the concept of a business "affected with a public interest" normally is used as a measure of a State's police power over it, it also has other consequences. A State may not require segregation of the races in conventional public utilities any more than it can segregate them in ordinary public facilities. 2 As stated by the court in [368 U.S. 184] Boman v. Birmingham Transit Co., 280 F.2d 531, 535, a public utility "is doing something the state deems useful for the public necessity or convenience." It was this idea that the first Mr. Justice Harlan, dissenting in Plessy v. Ferguson, supra, advanced. Though a common carrier is private enterprise, "its work," he maintained, is public. Id., at 554. And there can be no difference, in my view, between one kind of business that is regulated in the public interest and another kind so far as the problem of racial segregation is concerned. I do not believe that a State that licenses a business can license it to serve only whites or only blacks or only yellows or only browns. Race is an impermissible classification when it comes to parks or other municipal facilities by reason of the Equal Protection Clause of the Fourteenth Amendment. By the same token, I do not see how a State can constitutionally exercise its licensing power over business either in terms or in effect to segregate the races in the licensed premises. The authority to license a business for public use is derived from the public. Negroes are as much a part of that public as are whites. A municipality granting a license to operate a business for the public represents Negroes as well as all other races who live there. A license to establish a restaurant is a license to establish a public facility and necessarily imports, in law, equality of use for all members of the public. I see no way whereby licenses issued by a State to serve the public can be distinguished from leases of public facilities (Burton v. Wilmington Parking Authority, supra) for that end.

1961, Garner v. Louisiana, 368 U.S. 184

One can close the doors of his home to anyone he desires. But one who operates an enterprise under a [368 U.S. 185] license from the government enjoys a privilege that derives from the people. Whether retail stores, not licensed by the municipality, stand on a different footing is not presented here. But the necessity of a license shows that the public has rights in respect to those premises. The business is not a matter of mere private concern. Those who license enterprises for public use should not have under our Constitution the power to license it for the use of only one race. For there is the overriding constitutional requirement that all state power be exercised so as not to deny equal protection to any group. As the first Mr. Justice Harlan stated in dissent in Plessy v. Ferguson, supra, at 559,

1961, Garner v. Louisiana, 368 U.S. 185

…in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind….

HARLAN, J., concurring

1961, Garner v. Louisiana, 368 U.S. 185

MR. JUSTICE HARLAN, concurring in the judgment.

1961, Garner v. Louisiana, 368 U.S. 185

I agree that these convictions are unconstitutional, but not for the reasons given by the Court. Relying on Thompson v. City of Louisville, 362 U.S. 199, the Court strikes down the convictions on the ground that there is no evidence whatever to support them. In my opinion, the Thompson doctrine does not fit these cases. However, I believe the convictions are vulnerable under the Fourteenth Amendment on other grounds: (1) the kind of conduct revealed in Garner, No. 26, and in Hoston, No. 28, could not be punished under a generalized breach of the peace provision, such as Art. 103(7), La.Crim. Code; 1 (2) Art. 103(7) as applied in Briscoe, No. 27 (as [368 U.S. 186] well as in the Garner and Hoston cases) is unconstitutionally vague and uncertain.

1961, Garner v. Louisiana, 368 U.S. 186

The Court's reversal for lack of evidence rests on two different views of Art. 103(7). First, it is said that the statute, as construed by the Louisiana courts, reaches at most only "violent," "boisterous," or "outwardly provocative" conduct that may foreseeably induce a public disturbance. On this view, these cases are found evidentially wanting because the petitioners' conduct, being entirely peaceful, was not of the character proscribed by the statute so construed. Alternatively, it is recognized that the statute is susceptible of a construction that would embrace as well other kinds of conduct having the above effect. On that view, the convictions are also found evidentially deficient in that petitioners' conduct, so it is said, could not property be taken as having any tendency to cause a public disturbance. In my opinion, the first of these holdings cannot withstand analysis with appropriate regard for the limitations upon our powers of review over state criminal cases; the second holding rests on untenable postulates as to the law of evidence.

I

1961, Garner v. Louisiana, 368 U.S. 186

Turning to the first holding, it goes without saying that we are not at liberty to determine for ourselves the scope [368 U.S. 187] of this Louisiana statute. That was a function belonging exclusively to the state courts, and their interpretation is binding on us. E.g., Appleyard v. Massachusetts, 203 U.S. 222, 227; Hebert v. Louisiana, 272 U.S. 312, 316; Williams v. Oklahoma, 358 U.S. 576, 583. For me, the Court's view that the statute covers only nonpeaceful conduct is unacceptable, since I believe that the Louisiana Supreme Court decided the opposite in these very cases. I think the State Supreme Court's refusal to review these convictions, taken in light of its assertion that the "rulings of the district judge on matters of law are not erroneous," must be accepted as an authoritative and binding state determination that the petitioners' activities, as revealed in these records, did violate the statute; in other words that, contrary to what this Court now says in Part I of its opinion, the enactment does cover peaceful conduct of a kind that foreseeably may lead to public disturbance. 2

1961, Garner v. Louisiana, 368 U.S. 187

This Court's view of the statute rests primarily, if not entirely, on an earlier Louisiana case, State v. Sanford, 203 La. 961, 14 So.2d 778, involving a different, but comparable, breach of the peace statute. That case is regarded as establishing that breaches of the peace under Louisiana law are confined to nonpeaceful conduct. While I do not find the Sanford case as "plan" as the Court does (infra, pp. 191-192), that earlier holding cannot in any event be deemed controlling on the significance to be attributed to the action of the State Supreme Court in [368 U.S. 188] these cases. There can be no doubt that Louisiana had to follow the principles of Sanford only to the extent that it felt bound by stare decisis. A departure from precedent may have been wrong, unwise, or even unjust, but it was not unconstitutional. Patterson v. Colorado, 205 U.S. 454, 461. 3 See also Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 680, and cases there cited; cf. Great Northern R. Co. v. Sunburst Oil & Refining Co., 287 U.S. 358, 364.

1961, Garner v. Louisiana, 368 U.S. 188

More basically, established principles of constitutional adjudication require us to consider that the Louisiana Supreme Court's refusal to review these cases signifies a holding that the breach of the peace statute which controls these cases does embrace the conduct of the petitioners, peaceful though it was.

1961, Garner v. Louisiana, 368 U.S. 188

These state judgments come to us armored with a presumption that they are not founded "otherwise than is required by the fundamental law of the land," Ex parte Royall, 117 U.S. 241, 252 (see also Darr v. Burford, 339 U.S. 200, 205), comparable to the presumption which has always attached to state legislative enactments. See, e.g., Butler v. Pennsylvania, 10 How. 402, 415. That presumption should render impermissible an interpretation of these judgments as resting on the view that the relevant breach of the peace statute reaches only unruly [368 U.S. 189] behavior. For, on the Court's premise that there is no evidence of that kind of behavior, such an interpretation, in effect, attributes to the Louisiana Supreme Court a deliberately unconstitutional decision, under principles established by Thompson v. City of Louisville, supra, which had already been decided at the time these cases came before the Louisiana courts.

1961, Garner v. Louisiana, 368 U.S. 189

Moreover, the kind of speculation in which the Court has indulged as to the meaning of the Louisiana statute is surely out of keeping with the principle that federal courts should abstain from constitutional decision involving doubtful state law questions until a clarifying adjudication on them has first been obtained from the state courts. See Railroad Comm'n v. Pullman Co., 312 U.S. 496, 500; Harrison v. NAACP, 360 U.S. 167. Cf. Glenn v. Field Packing Co., 290 U.S. 177; Leiter Minerals, Inc., v. United States, 352 U.S. 220, 228-229; Louisiana Power & Light Co. v. Thibodaux, 360 U.S. 25. If there be doubt as to how the statute was construed in this respect, the cases should be returned to the Louisiana Supreme Court for clarification of its judgments. See Herb v. Pitcairn, 324 U.S. 117.

1961, Garner v. Louisiana, 368 U.S. 189

Our recent decision in Thompson v. City of Louisville, 362 U.S. 199, cannot well be taken as justification for considering the judgments under review as other than a holding by Louisiana's highest court that breach of the peace under then existing state law may include conduct that in itself is peaceful. In Thompson, the petitioner was convicted of two offenses defined by ordinances of the City of Louisville. One of these ordinances, prohibiting loitering, expressly enumerated three elements of the offense. The prosecution introduced no evidence to establish any of these definitely prescribed components, which were not suggested to have, by virtue of state judicial interpretation, any other than their plain meaning. We held that, "[u]nder the words of the ordinance itself," there was no evidence to support the conviction. [368 U.S. 190]

1961, Garner v. Louisiana, 368 U.S. 190

The other offense of which the petitioner in Thompson was convicted was "disorderly conduct," not at all defined in the ordinance. The only evidence in the record relating to conduct which might conceivably have come within the prohibited scope indicated was that the petitioner was "argumentative" with the arresting officers. We said of this conviction (362 U.S. at 206):

1961, Garner v. Louisiana, 368 U.S. 190

We assume, for we are justified in assuming, that merely "arguing" with a policeman is not, because it could not be, "disorderly conduct" as a matter of the substantive law of Kentucky. See Lanzetta v. New Jersey, 306 U.S. 451.

1961, Garner v. Louisiana, 368 U.S. 190

In other words, we held that the ordinance could not, for want of adequate notice, constitutionally be construed by the Kentucky courts to cover the activity for which the city sought to punish the petitioner.

1961, Garner v. Louisiana, 368 U.S. 190

Where, as was true of the disorderly conduct charge in Thompson, application of a generally drawn state statute or municipal ordinance to the conduct of a defendant would require a constitutionally impermissible construction of the enactment, we are not bound by the state court's finding that the conduct was criminal. In the cases now before us, however, the Court does not suggest that Louisiana's disturbance of the peace statute was too vague to be constitutionally applied to the conduct of the petitioners. I think we are obliged, because of the state courts' dispositions of these cases, to hold that there was presented at petitioners' trials evidence of criminal conduct under Louisiana law. Herndon v. Lowry, 301 U.S. 242, 255.

1961, Garner v. Louisiana, 368 U.S. 190

Thompson v. City of Louisville should be recognized for what it is, a case involving a situation which, I think it fair to say, was unique in the annals of the Court. The case is bound to lead us into treacherous territory unless we apply its teaching with the utmost circumspection, and with due sense of the limitations upon our reviewing authority. [368 U.S. 191]

1961, Garner v. Louisiana, 368 U.S. 191

The Court's holding on this phase of the matter also suffers from additional infirmities. I do not think that State v. Sanford, the cornerstone of this branch of the Court's opinion, is as revealing upon the meaning of breach of the peace under Louisiana law as the Court would make it seem. In that case, the Louisiana Supreme Court reversed the convictions, under the then breach of the peace statute, of four Jehovah's Witnesses who had solicited contributions and distributed pamphlets in a Louisiana town, with an opinion which cited, inter alia, Cantwell v. Connecticut, 310 U.S. 296, and Martin v. Struthers, 319 U.S. 141. Reference was made to "the provisions of the Constitution of the United States guaranteeing freedom of religion, of the press and of speech." 203 La. at 968, 14 So.2d at 780. The court said, most clearly,

1961, Garner v. Louisiana, 368 U.S. 191

The application of the statute by the trial judge to the facts of this case and his construction thereof would render it unconstitutional under the above Federal authorities.

1961, Garner v. Louisiana, 368 U.S. 191

203 La. at 970, 14 So.2d at 780-781. In addition, the opinion noted, conviction under the statute might violate the Louisiana Constitution

1961, Garner v. Louisiana, 368 U.S. 191

because it is well settled that no act or conduct, however reprehensible, is a crime in Louisiana, unless it is defined and made a crime clearly and unmistakably by statute.

1961, Garner v. Louisiana, 368 U.S. 191

203 La. at 970, 14 So.2d at 781. In the concluding part of its opinion, the Louisiana Supreme Court also said what this Court now considers to be the sole ground of its decision:

1961, Garner v. Louisiana, 368 U.S. 191

It is our opinion that the statute is inapplicable to this case because it appears that the defendants did not commit any unlawful act or pursue an unlawful or disorderly course of conduct which would tend to disturb the peace.

1961, Garner v. Louisiana, 368 U.S. 191

203 La. at 970, 14 So.2d at 781.

1961, Garner v. Louisiana, 368 U.S. 191

Thus, a full reading of Sanford will disclose that there were at least three considerations which led to the result: (1) the likelihood that a contrary holding would violate provisions of the Federal Constitution relating to religion, [368 U.S. 192] speech, and press under the principles declared in then-recent decisions of this Court; (2) the possibility that the statute was too vague and unclear under the Louisiana Constitution adequately to define the bounds of the conduct being declared criminal; (3) the unfairness of convicting under a general breach of the peace statute persons engaged in such peaceable religious activity.

1961, Garner v. Louisiana, 368 U.S. 192

The Court now isolates this last factor from this multifaceted opinion, and, using it as an immutable measures of what Louisiana law requires, declares that the present convictions must fall because the standard so unclearly set out in Sanford has not been met. Apart from other considerations already discussed, I am not prepared to rest a constitutional decision on so insecure a foundation.

1961, Garner v. Louisiana, 368 U.S. 192

It is further significant that the State Supreme Court's order refusing to review the present cases does not cite State v. Sanford, but rather relies on another earlier case, Town of Ponchatoula v. Bates, 173 La. 824, 138 So. 851. The Bates decision, upholding the constitutionality of an ordinance making it a crime "to engage in a fight or in any manner disturb the peace," defined disturbance of the peace as

1961, Garner v. Louisiana, 368 U.S. 192

any act or conduct of a person which molests the inhabitants in the enjoyment of that peace and quiet to which they are entitled, or which throws into confusion things settled, or which causes excitement, unrest, disquietude, or fear among persons of ordinary, normal temperament.

1961, Garner v. Louisiana, 368 U.S. 192

173 La. at 828, 138 So. at 852. Such a definition would, of course, bring within the compass of the statute even peaceful activity, so long as it threw "into confusion things settled," or caused disquietude among ordinary members of the community. I think it was that construction which the Louisiana Supreme Court placed upon the breach of the peace statute involved in the cases now before us. [368 U.S. 193]

II

1961, Garner v. Louisiana, 368 U.S. 193

The alternative holding of the Court in Part II of its opinion also stands on unsolid foundations. Conceding that this breach of the peace statute "might" be construed to cover peaceful conduct carried on "in such a manner as would foreseeably disturb or alarm the public," the Court holds that there was no evidence that petitioners' conduct tended to disturb or alarm those who witnessed their activity.

1961, Garner v. Louisiana, 368 U.S. 193

There is, however, more to these cases than what physically appears in the record. It is an undisputed fact that the "sit-in" program, of which petitioners' demonstrations were a part, had caused considerable racial tension in various States, including Louisiana. Under Louisiana law, La.Rev.Stat., 1950, § 15:422, Louisiana courts may take judicial notice of "the political, social and racial conditions prevailing in this state." State v. Bessa, 115 La. 259, 38 So. 985. This Court holds, nonetheless, that the Louisiana courts could not, consistently with the procedural guarantees of the Fourteenth Amendment, judicially notice the undisputed fact that there was racial tension in and around Baton Rouge on March 28 and 29, 1960 (the dates of these "sit-in"), without informing the parties that such notice was being taken, and without spreading the source of the information on the record.

1961, Garner v. Louisiana, 368 U.S. 193

Support for this constitutional proposition is found in Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U.S. 292, 302-303. The Court there held that it was repugnant to the Fourteenth Amendment for a state agency to deprive the telephone company of property on the basis of rates set by a precise mathematical computation derived from undisclosed statistics. This was because the procedure afforded no opportunity for rebuttal with respect to the underlying data, and for possible demonstration [368 U.S. 194] that the figures should not be judicially noticed, since their source was unknown and the statistics were not disclosed to any reviewing court. See Morgan, Some Problems of Proof (1956) 56.

1961, Garner v. Louisiana, 368 U.S. 194

The situation we have here is quite different. The existence of racial tensions, of which the Louisiana courts must have taken judicial notice in order to find that petitioners' conduct alarmed or disturbed the public, was notorious throughout the community, and, indeed, throughout that part of the United States. The truth of that proposition is not challenged, nor is any particular authority required to confirm it. This kind of generally known condition may be judicially noticed by trial and appellate courts without prior warning to the parties, since it does not require any foundation establishing the accuracy of a specific source of information. See Uniform Rules of Evidence, 9(2)(c); ALI, Model Code of Evidence, Rule 802(c); 1 Morgan, Basic Problems of Evidence (1954), 9-10. Cf. Mills v. Denver Tramway Corp., 155 F.2d 808 (C.A.10th Cir.). I perceive no reason why that principle should be considered as applying only in civil cases, and I am not aware of any American authority which so holds.

1961, Garner v. Louisiana, 368 U.S. 194

Indeed, the fact of which I think we must consider judicial notice was taken in this instance was so notorious throughout the country that, far from its being unconstitutional for a court to take it into consideration, it would be quite amiss for us not to deem that the Louisiana courts did so on their own initiative. See, e.g., Uniform Rule of Evidence, 9(1); cf. Note, 12 Va.L.Rev. 154 (1925), and cases there cited. It might have been procedurally preferable had the trial judge announced to the parties that he was taking judicial notice, as is suggested in Model Code of Evidence, Rule 804. But we would be exalting the sheerest of technicalities were we to hold that a conviction is constitutionally [368 U.S. 195] void because of a judge's failure to declare that he has noticed a common proposition when at no stage in the proceeding is it suggested that the proposition may be untrue. Whether a trial judge need notify the parties of his intention to take judicial notice of "routine matters of common knowledge which…[he] would notice as a matter of course" is best left to his "reasonable discretion." McCormick, Evidence (1954), 708. Appellate courts have always reserved the authority to notice such commonly known propositions as are needed to support the judgment of a lower court, even if no express reference has been made below. See Comment, 42 Mich.L.Rev. 509, 512-513 (1943).

1961, Garner v. Louisiana, 368 U.S. 195

Moreover, in this instance, the fact that the trial court had taken judicial notice of the impact of petitioners' conduct, which indeed had obviously been engaged in for the very purpose of producing an impact on others in this field of racial relations, albeit, I shall assume, with the best of motives, could hardly have failed to cross the minds of petitioners' counsel before the trial had ended. They however neither sought to introduce countervailing evidence on that issue nor have they undertaken at any stage of these proceedings, including that in this Court, to question the availability of judicial notice on this aspect of the State's case.

1961, Garner v. Louisiana, 368 U.S. 195

Were we to follow the reasoning of the majority opinion where it would logically lead, this Court would be violating due process every time it noticed a generally known fact without first calling in the parties to apprise them of its intention. Yet, without any such notification, this Court has many times taken judicial notice of well known economic and social facts, e.g., Atchison, Topeka & S.F. R. Co. v. United States, 284 U.S. 248, 260; West Coast Hotel Co. v. Parrish, 300 U.S. 379, 398-400; Hoyt v. Florida, 368 U.S. 57 at p. 62, and even of the tendency of [368 U.S. 196] particular epithets to cause a breach of the peace. Chaplinsky v. New Hampshire, 315 U.S. 568, 574.

1961, Garner v. Louisiana, 368 U.S. 196

It is no answer to say in these cases that, while it was permissible for the Louisiana courts to take judicial notice of racial conditions generally, they could not take notice of the particular conditions on the premises involved in these prosecutions. In the absence of contrary evidence, it was certainly not constitutionally impermissible for the Louisiana courts to consider that the racial conditions in Baton Rouge and in the establishments where petitioners sat were not dissimilar to those existing throughout the State. Judicial notice of racial conditions in a State has sufficient probative value in determining what were the racial conditions at a particular location within the State to withstand constitutional attack. Reversing these convictions for want of evidence of racial tension would, in effect, be putting this Court into the realm of reviewing the sufficiency of the evidence to support these convictions, something which both Thompson v. City of Louisville, supra, 199, and the Court's opinion in the present cases, ante, 163, recognize is not properly within our purview.

1961, Garner v. Louisiana, 368 U.S. 196

In my opinion, skimpy though these records are, the convictions do not fall for want of evidence, in the constitutional sense.

III

1961, Garner v. Louisiana, 368 U.S. 196

Were there no more to these cases, I should have to vote to affirm. But, in light of principles established by Cantwell v. Connecticut, 310 U.S. 296, and consistently since recognized, I think the convictions are subject to other constitutional infirmities.

1961, Garner v. Louisiana, 368 U.S. 196

At the outset, it is important to focus on the precise factual situation in each of these cases. Common to all three are the circumstances that petitioners were given the invitation, extended to the public at large, to patronize [368 U.S. 197] these establishments; that they were told that they could be served food only at the Negro lunch counters; that their conduct was not unruly or offensive; and that none of them was ever asked by the owners or their agents to leave the establishments. While, in Briscoe, No. 27, there was some very slight, but in my view constitutionally adequate, evidence that those petitioners were expressly asked "to move" from the "white" lunch counter, 4 and undisputed evidence that they did not do so, in Garner, No. 26, and Hoston, No. 28, there was no evidence whatever of any express request to the petitioners in those cases that they move from the "white" lunch counters where they were sitting.

1961, Garner v. Louisiana, 368 U.S. 197

Nor do I think that any such request is fairly to be implied from the fact that petitioners were told by the management that they could not be served food at such counters. The premises in both instances housed merchandising establishments, a drugstore in Garner, a department store in Hoston, which solicited business from all comers to the stores. I think the reasonable inference is that the management did not want to risk losing Negro patronage in the stores by requesting these petitioners to leave the "white" lunch counters, preferring to rely on the hope that the irritations of white customers or the [368 U.S. 198] force of custom would drive them away from the counters. 5 This view seems the more probable in circumstances when, as here, the "sitters" behavior was entirely quiet and courteous, and, for all we know, the counters may have been only sparsely, if to any extent, occupied by white persons. 6

1961, Garner v. Louisiana, 368 U.S. 198

In short, I believe that, in the Garner and Hoston cases, the records should be taken as indicating that the petitioners remained at the "white" lunch counters with the [368 U.S. 199] implied consent of the management, 7 even though a similar conclusion may not be warranted in the Briscoe case. Under these circumstances, applying principles announced in Cantwell, I would hold all these convictions offensive to the Fourteenth Amendment in that: (1) in Garner and Hoston, petitioners' conduct, occurring with the managements' implied consent, was a form of expression within the range of protections afforded by the Fourteenth Amendment which could in no event be punished by the State under a general breach of the peace statute; and (2) in Briscoe, while petitioners' "sitting" over the management's objection cannot be deemed to be within the reach of such protections, their convictions must nonetheless fall because the Louisiana statute, as there applied (and, a fortiori, as applied in the other two cases), was unconstitutionally vague and uncertain.

1961, Garner v. Louisiana, 368 U.S. 199

In the Cantwell case, a Jehovah's Witness had been convicted for breach of the peace under a Connecticut statute embracing what was considered to be the common law concept of that offense. 8

1961, Garner v. Louisiana, 368 U.S. 199

The facts which were held [368 U.S. 200] to support the conviction…were that he stopped two men in the street, asked, and received, permission to play a phonograph record, and played the record "Enemies," which attacked the religion and church of the two men, who were Catholics. Both were incensed by the contents of the record, and were tempted to strike Cantwell [the defendant] unless he went away. On being told to be on his way, he left their presence. There was no evidence that he was personally offensive, or entered into any argument with those he interviewed.

1961, Garner v. Louisiana, 368 U.S. 200

310 U.S. at 302-303.

1961, Garner v. Louisiana, 368 U.S. 200

Accepting the determination of the state courts that, although the defendant himself had not been disorderly or provocative, his conduct under Connecticut law nonetheless constituted a breach of the peace because of its tendency to inflame others, this Court reversed. Starting from the premise that the "fundamental concept of liberty embodied in [the Fourteenth] Amendment embraces the liberties guaranteed by the First Amendment," the Court found that the defendant's activities fell within the protection granted to the "free exercise" of religion. Then recognizing the danger to such liberties of "leaving to the executive and judicial branches too wide a discretion" in the application of a statute "sweeping in a great variety of conduct under a general and indefinite characterization," the Court held that the defendant's activities could not constitutionally be reached under a general breach of the peace statute, but only under one specifically and narrowly aimed at such conduct. 310 U.S. at 307-308. The Court stated:

1961, Garner v. Louisiana, 368 U.S. 200

Although the contents of the [phonograph] record not unnaturally aroused animosity, we think that, in [368 U.S. 201] the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question.

1961, Garner v. Louisiana, 368 U.S. 201

(Citing to such cases as Schenck v. United States, 249 U.S. 47.) 310 U.S. at 311.

1961, Garner v. Louisiana, 368 U.S. 201

I think these principles control the Garner and Hoston cases. There was more to the conduct of those petitioners than a bare desire to remain at the "white" lunch counter and their refusal of a police request to move from the counter. We would surely have to be blind not to recognize that petitioners were sitting at these counters, where they knew they would not be served, in order to demonstrate that their race was being segregated in dining facilities in this part of the country.

1961, Garner v. Louisiana, 368 U.S. 201

Such a demonstration, in the circumstances of these two cases, is as much a part of the "free trade in ideas," Abrams v. United States, 250 U.S. 616, 630 (Holmes, J., dissenting), as is verbal expression, more commonly thought of as "speech." It, like speech, appeals to good sense and to "the power of reason as applied through public discussion," Whitney v. California, 274 U.S. 357, 375 (Brandeis, J., concurring), just as much as, if not more than, a public oration delivered from a soapbox at a street corner. This Court has never limited the right to speak, a protected "liberty" under the Fourteenth Amendment, Gitlow v. New York, 268 U.S. 652, 666, to mere verbal expression. Stromberg v. California, 283 U.S. 359; Thornhill v. Alabama, 310 U.S. 88; West Virginia State Board of Education v. Barnette, 319 U.S. 624, 633-634. See also NAACP v. Alabama, 357 U.S. 449, 460. [368 U.S. 202] If the act of displaying a red flag as a symbol of opposition to organized government is a liberty encompassed within free speech as protected by the Fourteenth Amendment, Stromberg v. California, supra, the act of sitting at a privately owned lunch counter with the consent of the owner, as a demonstration of opposition to enforced segregation, is surely within the same range of protections. This is not to say, of course, that the Fourteenth Amendment reaches to demonstrations conducted on private property over the objection of the owner (as in Briscoe), just as it would surely not encompass verbal expression in a private home if the owner has not consented.

1961, Garner v. Louisiana, 368 U.S. 202

No one can deny the interest that a State has in preserving peace and harmony within its borders. Pursuant to this interest, a state legislature may enact a trespass statute, or a disturbance of the peace statute which either lists in detail the acts condemned by legitimate state policy or proscribes breaches of the peace generally, thus relating the offense to the already developed body of common law defining that crime. Or it may, as Louisiana has done, append to a specific enumeration in a breach of the peace statute a "catch-all" clause to provide for unforeseen but obviously disruptive and offensive behavior which cannot be justified, and which is not within the range of constitutional protection.

1961, Garner v. Louisiana, 368 U.S. 202

But when a State seeks to subject to criminal sanctions conduct which, except for a demonstrated paramount state interest, would be within the range of freedom of expression as assured by the Fourteenth Amendment, it cannot do so by means of a general and all-inclusive breach of the peace prohibition. It must bring the activity sought to be proscribed within the ambit of a statute or clause

1961, Garner v. Louisiana, 368 U.S. 202

narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State.

1961, Garner v. Louisiana, 368 U.S. 202

Cantwell v. Connecticut, supra, at 311; Thornhill v. Alabama, 310 [368 U.S. 203] U.S. 88, 105. 9 And, of course, that interest must be a legitimate one. A State may not "suppress free communication of views, religious or other, under the guise of conserving desirable conditions." Cantwell, supra, at 308.

1961, Garner v. Louisiana, 368 U.S. 203

These limitations exist not because control of such activity is beyond the power of the State, but because sound constitutional principles demand of the state legislature that it focus on the nature of the otherwise "protected" conduct it is prohibiting, and that it then make a legislative judgment as to whether that conduct presents so clear and present a danger to the welfare of the community that it may legitimately be criminally proscribed. 10 [368 U.S. 204]

1961, Garner v. Louisiana, 368 U.S. 204

The Louisiana Legislature made no such judgment before the petitioners in Garner and Hoston engaged in their "sit-in" activity. In light of the Cantwell case, whose reasoning, of course, cannot be deemed limited to "expression" taking place on the public streets, cf. Terminiello v. Chicago, 337 U.S. 1; Niemotko v. Maryland, 340 U.S. 268, 281 (concurring opinion), Louisiana could not, in my opinion, constitutionally reach those petitioners' conduct under subsection (7)—the "catch-all clause"—of its then-existing disturbance of the peace statute. 11 In so concluding, I intimate no view as to whether Louisiana could, by a specifically drawn statute, constitutionally proscribe conduct of the kind evinced in these two cases, or upon the constitutionality of the statute which the State has recently passed. 12 I deal here only with these two cases, and the statute that is before us now. [368 U.S. 205]

IV.

1961, Garner v. Louisiana, 368 U.S. 205

Finally, I believe that the principles of Cantwell lead to the conclusion that this general breach of the peace provision must also be deemed unconstitutional for vagueness and uncertainty, as applied in the circumstances of all these cases. As to Garner and Hoston, this affords an alternative ground for reversal. As to Briscoe, where the evidence falls short of establishing that those petitioners remained at the "white" lunch counter with the express or implied consent of the owner (notes 4, 5, supra), I would rest reversal solely on this ground. 13

1961, Garner v. Louisiana, 368 U.S. 205

While Cantwell was not explicitly founded on that premise, it seems to me implicit in the opinion that a statute which leaves the courts in uncertainty as to whether it was intended to reach otherwise constitutionally protected conduct must, by the same token, be deemed inadequate warning to a defendant that his conduct has [368 U.S. 206] been condemned by the State. See Chaplinsky v. New Hampshire, 315 U.S. 568, 573-574. Cf. Winters v. New York, 333 U.S. 507, 509-510; Smith v. California, 361 U.S. 147, 151; Thompson v. City of Louisville, 362 U.S. 199, 206. Such warning is, of course, a requirement of the Fourteenth Amendment. Lanzetta v. New Jersey, 306 U.S. 451, 453.

1961, Garner v. Louisiana, 368 U.S. 206

This conclusion finds added support in the cases requiring of state legislatures more specificity in statutes impinging on freedom of expression than might suffice for other criminal enactments. See Winters v. New York, supra, at 509-510; Smith v. California, supra, at 151; cf. Herndon v. Lowry, 301 U.S. 242, 261-264. To the extent that this Louisiana statute is explicit on the subject of expression it prohibits only that which is "unnecessarily loud, offensive, or insulting" or activity carried on "in a violent or tumultuous manner by any three or more persons" (note 1, supra). No charge was made or proved that petitioners' conduct met any of those criteria. Nor has the statute been elucidated in this respect before, or since, petitioners' conviction, by any decision of the Louisiana courts of which we have been advised. Cf. Winters v. New York, supra, at 514; Terminiello v. Chicago, 337 U.S. 1, 4. Lastly, it is worth observing that, in State v. Sanford, the Louisiana Supreme Court seriously questioned on the score of vagueness the validity of that earlier breach of the peace statute under the State Constitution, as there applied to conduct within the same range of constitutional protection. 14

1961, Garner v. Louisiana, 368 U.S. 206

In the absence of any Louisiana statute purporting to express the State's overriding interest in prohibiting petitioners' [368 U.S. 207] conduct as a clear and present danger to the welfare of the community, peaceful demonstration on public streets, and on private property with the consent of the owner, was constitutionally protected as a form of expression. Louisiana's breach of the peace statute drew no distinct line between presumably constitutionally protected activity and the conduct of the petitioners in Briscoe, as a criminal trespass statute might have done. 15 The fact that, in Briscoe, unlike Garner and Hoston, the management did not consent to the petitioners' remaining at the "white" lunch counter does not serve to permit the application of this general breach of the peace statute to the conduct shown in that case. For the statute, by its terms, appears to be as applicable to "incidents fairly within the protection of the guarantee of free speech," Winters v. New York, supra, at 509, as to that which is not within the range of such protection. Hence, such a law gives no warning as to what may fairly be deemed to be within its compass. See Note, 109 U. of Pa.L.Rev. 67, 75-76, 99-104 (1960).

1961, Garner v. Louisiana, 368 U.S. 207

For the foregoing reasons, I dissent from the opinion of the Court, but join in the judgment.

Footnotes

WARREN, J., lead opinion (Footnotes)

1961, Garner v. Louisiana, 368 U.S. 207

1. Unless otherwise indicated, the term "petitioners" refers to the petitioners in all three cases, Nos. 26, 27 and 28.

1961, Garner v. Louisiana, 368 U.S. 207

2. In No. 26, Garner et al. v. Louisiana, the petitioners, two Negro students at Southern University, took seats at the lunch counter of Sitman's Drug Store in Baton Rouge, and in No. 27, Briscoe et al. v. Louisiana, the lunch counter at which the seven Negro students sought service was in the restaurant section of the Greyhound Bus Terminal in Baton Rouge.

1961, Garner v. Louisiana, 368 U.S. 207

3. The same is true, of course, with regard to the bus terminal in No. 27. The terminal itself caters to both races, but separate facilities are maintained for the service of food.

1961, Garner v. Louisiana, 368 U.S. 207

4. In No. 26, one of the petitioners had purchased an umbrella in the drugstore just prior to taking his seat at the lunch counter, and had encountered no difficulty in making the purchase.

1961, Garner v. Louisiana, 368 U.S. 207

5. Although the problem was exactly the same in all three cases, the trial judge appeared to use different formulae for concluding petitioners' guilt in each opinion. In No. 26, the acts of the petitioners were said to be "an act done in a manner calculated to, and actually did, unreasonably disturb and alarm the public." In No. 27, the very same conduct was said to be "an act on their part as would unreasonably disturb and alarm the public." In No. 28, it was declared that the conduct "foreseeably could alarm and disturb the public." (Emphasis added.)

1961, Garner v. Louisiana, 368 U.S. 207

6. The opinions of the Supreme Court of Louisiana are not officially reported.

1961, Garner v. Louisiana, 368 U.S. 207

Under Art. 7, Sec. 10, of the Louisiana Constitution, the appellate jurisdiction of the Supreme Court over criminal cases extends only to questions of law, and then only where, inter alia, a fine exceeding three hundred dollars or imprisonment exceeding six months has been imposed. See State v. Di Vincenti, 232 La. 13, 93 So.2d 676; State v. Gaspard, 222 La. 222, 62 So.2d 281; State v. Price, 164 La. 376, 113 So. 882. The Louisiana Supreme Court has held that a question of law is presented, and that a case is thus reviewable, where the contention is that there is no evidence to support an element of the crime charged. State v. Daniels, 236 La. 998, 109 So.2d 896; State v. Brown, 224 La. 480, 70 So.2d 96; State v. Sbisa, 232 La. 961, 95 So.2d 619, and cases cited at n. 6, 232 La., at 969-970, 95 So.2d, at 622. See Comment, 19 La.L.Rev. 843 (1959). Despite the court's purported review of the questions of law in these cases, the degree of punishment inflicted would deprive the court of appellate jurisdiction under Art. 7, Sec. 10. However, the Supreme Court also has a general supervisory jurisdiction, exercised only in the sound discretion of the court (see State v. Morgan, 204 La. 499, 502, 15 So.2d 866, 867), over all inferior courts under Art. 7, Sec. 10; it appears that this is the provision which the petitioners attempted to invoke with their extraordinary writs in these cases. See also Art. 7, Sec. 2, of the Louisiana Constitution.

1961, Garner v. Louisiana, 368 U.S. 207

7. In addition to the petitioners' contentions, the United States argues that, in No. 27, the petitioners' arrests and convictions deprived them of their rights under the Interstate Commerce Act to service on a nondiscriminatory basis in a restaurant of a bus terminal operated as part of interstate commerce. Cf. Boynton v. Virginia, 364 U.S. 454.

1961, Garner v. Louisiana, 368 U.S. 207

8. The Government, as well as petitioners, point out that, in addition to state statutes requiring segregation in specific situations in Louisiana, the Louisiana Legislature in 1960 adopted the following preface to a joint resolution concerning the possible integration of any tax-supported facility in the State:

1961, Garner v. Louisiana, 368 U.S. 207

WHEREAS, Louisiana has always maintained a policy of segregation of the races, and

1961, Garner v. Louisiana, 368 U.S. 207

WHEREAS, it is the intention of the citizens of this sovereign state that such a policy be continued….

1961, Garner v. Louisiana, 368 U.S. 207

Act No. 630 of 1960, to amend Article X of the Louisiana Constitution.

1961, Garner v. Louisiana, 368 U.S. 207

9. See Thompson v. City of Louisville, 362 U.S. 199.

1961, Garner v. Louisiana, 368 U.S. 207

10. Cf. Cole v. Arkansas, 333 U.S. 196, 201. See Thompson v. City of Louisville, 362 U.S. 199, 206, and the cases cited at footnote 13.

1961, Garner v. Louisiana, 368 U.S. 207

11. Counsel for the respondent admitted on oral argument that the Louisiana trespass statute in force at the time of the petitioners' arrests would probably not have applied to these facts. Apparently, the Louisiana Legislature agreed, for, in 1960, subsequent to petitioners' acts, the legislature passed a new criminal trespass statute (La.Rev.Stat. 1950, § 14:63.3 (1960 Supp.)), which reads:

1961, Garner v. Louisiana, 368 U.S. 207

No person shall without authority of laws go into or upon…any structure…which belongs to another…after having been forbidden to do so…by any owner, lessee, or custodian of the property or by any other authorized person….

1961, Garner v. Louisiana, 368 U.S. 207

We express no opinion whether, on the facts of these cases, the petitioners' conduct would have been unlawful under this statute.

1961, Garner v. Louisiana, 368 U.S. 207

12. The Supreme Court of Louisiana has also held that an accused may not be convicted on pleadings which fail to state the specific crime with which he is charged. State v. Morgan, 204 La. 499, 15 So.2d 866 (1943).

1961, Garner v. Louisiana, 368 U.S. 207

13. We express no view as to the constitutionality of the petitioners' convictions as attacked by their argument that the statute (§ 103(7)) is so vague and uncertain, with its resulting lack of notice of what conduct the legislature intended to make criminal, as to violate due process. Cf. Lanzetta v. New Jersey, 306 U.S. 451; Musser v. Utah, 333 U.S. 95; Winters v. New York, 333 U.S. 507.

1961, Garner v. Louisiana, 368 U.S. 207

14. The predecessor of Title 14, Section 103, was Act No. 227 of 1934, which provided, inter alia,

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That any person who shall go into any public place, [or] into or near any private house…and who shall [shout, swear, expose himself, discharge a firearm]…or who shall do any other act, in a manner calculated to disturb or alarm the inhabitants thereof, or persons present…

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should be adjudged guilty of breaching the peace. In State v. Sanford, 203 La. 961, 14 So.2d 778, discussed immediately following in the text, the defendants were charged, as were the petitioners in the cases at bar, under the general, catch-all provision.

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15. See Town of Ponchatoula v. Bates, 173 La. 824, 138 So. 851 (dictum).

1961, Garner v. Louisiana, 368 U.S. 207

16. See 2 Sutherland, Statutes and Statutory Construction, §§ 4909-4910 (Horack ed. 1943).

1961, Garner v. Louisiana, 368 U.S. 207

17. Such an interpretation has not been made where there was evidence of a contrary legislative intent or judicial reading. United States v. Alpers, 338 U.S. 680, 682-683; Gooch v. United States, 297 U.S. 124, 128; Helvering v. Stockholms Enskilda Bank, 293 U.S. 84, 88-89.

1961, Garner v. Louisiana, 368 U.S. 207

18. See also Town of Ponchatoula v. Bates, supra, note 15.

1961, Garner v. Louisiana, 368 U.S. 207

19. La.Rev.Stat., 1950, § 14:103.1 (1960 Supp.), now reads, in pertinent part, as follows:

1961, Garner v. Louisiana, 368 U.S. 207

A. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

\* \* \* \*

1961, Garner v. Louisiana, 368 U.S. 207

(4) refuses to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof, shall be guilty of disturbing the peace.

1961, Garner v. Louisiana, 368 U.S. 207

20. In all three cases, the prosecution called as witnesses only the arresting officer and an employee from the restaurant in question. In none of the cases did the petitioners themselves testify or introduce any witnesses in their defense.

1961, Garner v. Louisiana, 368 U.S. 207

21. There is some inconsistency in the record, not material to our disposition of the case (see No. 28), as to who called the police; a police officer made a statement based on hearsay that the desk sergeant was called by "some woman."

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22. As noted previously, this is the only case in which a representative of the restaurant called the police. In addition, this is the only case in which there is anything in the record concerning the possibility of a disturbance, and, even here, it is limited to the manager's single statement noted above.

1961, Garner v. Louisiana, 368 U.S. 207

23. Of course, even such a warning was not sufficient evidence to support a finding of breach of the peace in State v. Sanford.

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24. Compare the basis for the state action in Buchanan v. Warley, 245 U.S. 60, and Cooper v. Aaron, 358 U.S. 1.

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25. The evidence in the records in Nos. 26 and 27 is similar. Each witness called by the State testified that the petitioners were arrested solely because they were Negroes sitting at a white lunch counter.

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26. La.Rev.Stat., 1950, § 15:422, provides that Louisiana courts may take judicial notice of "social and racial conditions prevailing in [the] state." See State v. Bessa et al., 115 La. 259, 38 So. 985.

1961, Garner v. Louisiana, 368 U.S. 207

27. Compare the evidence contained in the records in Terminiello v. Chicago, 337 U.S. 1, and in Feiner v. New York, 340 U.S. 315.

FRANKFURTER, J., concurring (Footnotes)

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\* If it were clear from these records that the proprietors involved had changed their policies and consented to the petitioners' remaining, we would, of course, have an entirely different case.

DOUGLAS, J., concurring (Footnotes)

1961, Garner v. Louisiana, 368 U.S. 207

1. Article 135 of Louisiana's 1868 Constitution forbade segregation of the races in public schools. But that prohibition was dropped from Louisiana's 1879 Constitution. The latter, by Article 231, authorized the establishment of a university for Negroes.

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Woodward, Strange Career of Jim Crow (1955), pp. 7-8:

1961, Garner v. Louisiana, 368 U.S. 207

…In bulk and detail, as well as in effectiveness of enforcement, the segregation codes were comparable with the black codes of the old regime, though the laxity that mitigated the harshness of the black codes was replaced by a rigidity that was more typical of the segregation code. That code lent the sanction of law to a racial ostracism that extended to churches and schools, to housing and jobs, to eating and drinking. Whether by law or by custom, that ostracism eventually extended to virtually all forms of public transportation, to sports and recreations, to hospitals, orphanages, prisons, and asylums, and ultimately to funeral homes, morgues, and cemeteries.

1961, Garner v. Louisiana, 368 U.S. 207

2. We have held on numerous occasions that the States may not use their powers to enforce racial segregation in public facilities. Mayor and City Council of Baltimore City v. Dawson, 350 U.S. 877 (1955) (public beaches and bathhouses); Holmes v. Atlanta, 350 U.S. 879 (1955) (municipal golf courses); Gayle v. Browder, 352 U.S. 903 (1956) (buses operated on city streets); New Orleans City Park Improvement Association v. Detiege, 358 U.S. 54 (1958) (golf course and city parks). For decisions of the lower federal courts holding racial segregation unconstitutional as applied to facilities open to public enjoyment and patronage, see Department of Conservation & Development, Division of Parks, of Virginia v. Tate, 231 F.2d 615 (state park); City of St. Petersburg v. Alsup, 238 F.2d 830 (municipal beach and swimming pool); Morrison v. Davis, 252 F.2d 102 (public transportation facilities).

HARLAN, J., concurring (Footnotes)

1961, Garner v. Louisiana, 368 U.S. 207

1. The Louisiana statute, La.Rev.Stat., 1950, § 14:103, then provided:

1961, Garner v. Louisiana, 368 U.S. 207

Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

1961, Garner v. Louisiana, 368 U.S. 207

(1) Engaging in a fistic encounter; or

1961, Garner v. Louisiana, 368 U.S. 207

(2) Using of any unnecessarily loud, offensive, or insulting language; or

1961, Garner v. Louisiana, 368 U.S. 207

(3) Appearing in an intoxicated condition; or

1961, Garner v. Louisiana, 368 U.S. 207

(4) Engaging in any act in a violent and tumultuous manner by any three or more persons; or

1961, Garner v. Louisiana, 368 U.S. 207

(5) Holding of an unlawful assembly; or

1961, Garner v. Louisiana, 368 U.S. 207

(6) Interruption of any lawful assembly of people; or

1961, Garner v. Louisiana, 368 U.S. 207

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

1961, Garner v. Louisiana, 368 U.S. 207

Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars, or imprisoned for not more than ninety days, or both.

1961, Garner v. Louisiana, 368 U.S. 207

2. As Mr. Justice Jackson put it in Gryger v. Burke, 334 U.S. 728, 731:

1961, Garner v. Louisiana, 368 U.S. 207

We are not at liberty to conjecture that the trial court acted under an interpretation of the state law different from that which we might adopt, and then set up our own interpretation as a basis for declaring that due process has been denied. We cannot treat a mere error of state law, if one occurred, as a denial of due process; otherwise, every erroneous decision by a state court on state law would come here as a federal constitutional question.

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3. There, Mr. Justice Holmes said of a claim that a state court was constitutionally obliged to follow its own precedents:

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Even if it be true, as the plaintiff in error says, that the Supreme Court of Colorado departed from earlier and well established precedents to meet the exigencies of this case, whatever might be thought of the justice or wisdom of such a step, the Constitution of the United States is not infringed. It is unnecessary to lay down an absolute rule beyond the possibility of exception. Exceptions have been held to exist. But, in general the decision of a court upon a question of law, however wrong and however contrary to previous decisions, is not an infraction of the Fourteenth Amendment merely because it is wrong, or because earlier decisions are reversed.

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4. In Briscoe, the waitress who had spoken to the defendants testified at the trial that she told them "they would have to go to the other side to be served." It was only when she responded affirmatively to a leading question, "And you told them you couldn't serve them and asked them to move, is that correct?" that she provided any evidence at all to support a finding that the defendants were even asked by the management to move from the "white" lunch counter. Contrary to what the trial court in Briscoe may have meant when it said that the defendants "were requested to leave, and they refused to leave" before the police appeared, the waitress' laconic reply furnished no evidence whatever that the defendants were requested to leave the establishments.

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5. The owner of the drugstore in Garner testified that his store provided eating "facilities for only one race, the white race," and that, when petitioners sat down at the lunch counter, he "advise[d] them that we couldn't serve them." He admitted that "negroes are very good customers" in the drugstore section of the establishment. In Hoston, the manager of the department store repeatedly insisted at the trial that the petitioners had not been "requested to move over to the counter reserved for colored people." When asked, "They weren't asked to go over there?" he replied, "They were advised that we would serve them over there." He denied that the petitioners had been "refused" service:

1961, Garner v. Louisiana, 368 U.S. 207

We did not refuse to serve them. I merely did not serve them, and told them that they would be served on the other side of the store…. As I stated before, we did not refuse to serve them. We merely advised them they would be served on the other side of the store.

1961, Garner v. Louisiana, 368 U.S. 207

In contrast to what appears in Garner and Hoston, the circumstances in Briscoe seem to me quite different. There is little reason to believe that the management of a restaurant in a Greyhound Bus Terminal would be nearly as concerned with offending Negro patrons because of their refusal to sit at the Negro counter as would the management of a merchandising establishment dependent on other trade than that available at its eating facilities. It may well have been assumed that pique at being asked to leave a "white" lunch counter would readily yield to the need of having to use the buses to get to one's destination. Further, for all that appears, the restaurant and bus companies, in this instance, may have been entirely separate enterprises, or these "sitters" may only have been "eaters" and not "travelers" as well.

1961, Garner v. Louisiana, 368 U.S. 207

6. In Garner, there was evidence that "a number of customers [were] seated at the counter." In Hoston, there was no evidence even of that kind.

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7. The manager of the department store in Hoston seemed particularly complacent. Although two Negro girls sat "adjoining" him while he was eating lunch at the counter, he finished his meal before calling the police. He instructed a waitress "to offer service at the counter across the aisle," but never approached the petitioners himself. He testified that his purpose in calling the police was that he "feared that some disturbance might occur."

1961, Garner v. Louisiana, 368 U.S. 207

8. The Connecticut statute, Cong.Gen.Stat. § 6194 (1930), provided:

1961, Garner v. Louisiana, 368 U.S. 207

Any person who shall disturb or break the peace by tumultuous and offensive carriage, noise or behavior, or by threatening, traducing, quarreling with, challenging, assaulting or striking another or shall disturb or break the peace, or provoke contention, by following or mocking any person, with abusive or indecent language, gestures or noise, or shall, by any writing, with intent to intimidate any person, threaten to commit any crime against him or his property or shall write or print and publicly exhibit or distribute, or shall publicly exhibit, post up or advertise, any offensive, indecent or abusive matter concerning any person, shall be fined not more than five hundred dollars or imprisoned in jail not more than one year or both.

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(Emphasis added.)

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9. Compare, for example, the statutes upheld in Beauharnais v. Illinois, 343 U.S. 250; Breard v. Alexandria, 341 U.S. 622; Kovacs v. Cooper, 336 U.S. 77; Valentine v. Chrestensen, 316 U.S. 52; Chaplinsky v. New Hampshire, 315 U.S. 568; Cox v. New Hampshire, 312 U.S. 569.

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10. Mr. Justice Roberts, speaking for a unanimous Court in Cantwell, stated (310 U.S. at 307-308):

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Conviction on the fifth count [disorderly conduct] was not pursuant to a statute evincing a legislative judgment that street discussion of religious affairs, because of its tendency to provoke disorder, should be regulated, or a judgment that the playing of a phonograph on the streets should in the interest of comfort or privacy be limited or prevented. Violation of an Act exhibiting such a legislative judgment and narrowly drawn to prevent the supposed evil, would pose a question differing from that we must here answer. Such a declaration of the State's policy would weigh heavily in any challenge of the law as infringing constitutional limitations. Here, however, the judgment is based on a common law concept of the most general and undefined nature. The court below has held that the petitioner's conduct constituted the commission of an offense under the State law, and we accept its decision as binding upon us to that extent.

1961, Garner v. Louisiana, 368 U.S. 207

The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts, but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot, or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious. Equally obvious is it that a State may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions. Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application.

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11. It follows, of course, that petitioners' refusal to accede to the request to leave made by police officers could also not constitutionally be punished under this general statute. Were it otherwise, the determination whether certain conduct constitutes a clear and present danger would be delegated to a police officer. Simply by ordering a defendant to cease his "protected" activity, the officer could turn a continuation of that activity into a breach of the peace.

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12. After the incidents which gave rise to these cases, the Louisiana Legislature passed a bill adding to the disturbance of the peace statute a second clause, La.Rev.Stat., 1950, § 14:103, subd. B, which provides:

1961, Garner v. Louisiana, 368 U.S. 207

B. Any person or persons…while in or on the premises of another…on which property any store, restaurant, drug store…or any other lawful business is operated which engages in selling articles of merchandise or services or accommodation to members of the public, or engages generally in business transactions with members of the public, who shall:

1961, Garner v. Louisiana, 368 U.S. 207

(1) prevent or seek to prevent, or interfere or seek to interfere with the owner or operator of such place of business, or his agents or employees, serving or selling food and drink…or

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(2) prevent or seek to prevent, or interfere or seek to interfere with other persons who are expressly or impliedly invited upon said premises, or with prospective customers coming into or frequenting such premises in the normal course of the operation of the business conducted and carried on upon said premises, shall be guilty of disorderly conduct and disturbing the peace….

1961, Garner v. Louisiana, 368 U.S. 207

1 La.Acts, 1960, pp. 235-236.

1961, Garner v. Louisiana, 368 U.S. 207

13. Because of the absence of any evidence in the Briscoe record regarding the legal relationship between the restaurant and the Greyhound Bus Terminal in Baton Rouge, on whose premises it was located, I would not pass in this case on the Solicitor General's suggestion, made as amicus curiae, that segregated facilities were prohibited by § 216(d) of Part II of the Interstate Commerce Act, 49 U.S.C. § 316(d). See Boynton v. Virginia, 364 U.S. 454.

1961, Garner v. Louisiana, 368 U.S. 207

14. I do not intend to suggest that the present Louisiana statute, either on its face or as it might be applied with respect to conduct not within the "liberty" assured by the Fourteenth Amendment, is or would be unconstitutional for vagueness. Cf. Winters v. New York, supra, at 524-526 (dissenting opinion).

1961, Garner v. Louisiana, 368 U.S. 207

15. The criminal trespass statute in force in Louisiana at the time of petitioners' acts prohibited only "unauthorized and intentional taking [of] possession" and "unauthorized and intentional entry" on another's property. La.Rev.Stat., 1950, § 14:63 (1950). No attempt was made to prosecute the petitioners under this law. The statute has since been amended to cover "remaining in places after being forbidden," 1 La.Acts, 1960, pp. 245-248, and an anti-trespass provision is now included in the disturbance of the peace statute, 1 La.Acts, 1960, p. 234.

President Kennedy's Message to Chairman Khrushchev on the Forthcoming Disarmament Negotiations in Geneva, 1962

Title: President Kennedy's Message to Chairman Khrushchev on the Forthcoming Disarmament Negotiations in Geneva

Author: John F. Kennedy

Date: February 12, 1962

Source: Public Papers of the Presidents, J. F. Kennedy, 1962, pp.128-129

[This joint message, issued by President Kennedy together with English Prime Minister Macmillan

was dated February 7, 1962, and released on February 12, 1962.]

Public Papers of JFK, 1962, p.128

Dear Mr. Chairman:

Public Papers of JFK, 1962, p.128

We are taking the unusual step of addressing this message to you in order to express our own views, as well as to solicit yours, on what we can jointly do to increase the prospects of success at the new disarmament negotiations which will begin in Geneva in March.

Public Papers of JFK, 1962, p.128

We are convinced that a supreme effort must be made and the three of us must accept a common measure of personal obligation to seek every avenue to restrain and reverse the mounting arms race. Unless some means can be found to make at least a start in controlling the quickening arms competition, events may take their own course and erupt in a disaster which will afflict all peoples, those of the Soviet Union as well as of the United Kingdom and the United States.

Public Papers of JFK, 1962, p.128

Disarmament negotiations in the past have been sporadic and frequently interrupted. [Indeed, there has been no sustained] effort to come to grips with this problem at the conference table since the three months of meetings ending in June of 1960, over a year and a half ago. Before that, no real negotiations on the problem of general disarmament had taken place since negotiations came to an end in September 1957.

Public Papers of JFK, 1962, p.128–p.129

It should be clear to all of us that we can no longer afford to take a passive view of these negotiations. They must not be allowed to drift into failure. Accordingly, we propose that we three accept a personal responsibility for directing the part to be [p.129] played by our representatives in the forthcoming talks, and that we agree beforehand that our representatives will remain at the conference table until concrete results have been achieved, however long this may take.

Public Papers of JFK, 1962, p.129

We propose that our negotiators seek progress on three levels. First, they should be instructed to work out a program of general and complete disarmament which could serve as the basis for the negotiation of an implementing treaty or treaties. Our negotiators could thus build upon the common ground which was found in the bilateral talks between the United States and the USSR which took place this summer, and which were reflected in the Statement of Agreed Principles of September 20, 1961. Secondly, our negotiators should attempt to ascertain the widest measure of disarmament which would be implemented at the earliest possible time while still continuing their maximum efforts to achieve agreement on those other aspects which present more difficulty. Thirdly, our negotiators should try to isolate and identify initial measures of disarmament which could, if put into effect .without delay, materially improve international security and the prospects for further disarmament progress. We do not believe that these triple objectives need conflict with one another and an equal measure of urgency should be attached to each.

Public Papers of JFK, 1962, p.129

As a symbol of the importance which we jointly attach to these negotiations, we propose that we be represented at the outset of the disarmament conference by the Foreign Ministers of our three countries, who would declare their readiness to return to participate personally in the negotiations as the progress made by our permanent representatives warrants. We assume, in this case, the foreign ministers of other states as well will wish to attend. The status and progress of the conference should, in addition, be the subject of more frequent communications among the three of us. In order to give impetus to the opening of the disarmament negotiations, we could consider having the Foreign Ministers of our three countries convene at Geneva in advance of the opening of the conference to concert our plans.

Public Papers of JFK, 1962, p.129

At this time in our history, disarmament is the most urgent and the most complex issue we face. The threatening nature of modern armaments is so appalling that we cannot regard this problem as a routine one or as an issue which may be useful primarily for the scoring of propaganda victories. The failure in the nuclear test conference, which looked so hopeful and to the success of which we attached such a high priority in the Spring of 1961, constitutes a discouraging background for our new efforts. However, we must be resolved to overcome this recent setback, with its immediate consequences, and forego fruitless attempts to apportion blame. Our renewed effort must be to seek and find ways in which the competition between us, which will surely persist for the foreseeable future, can be pursued on a less dangerous level. We must view the forthcoming disarmament meetings as an opportunity and a challenge which time and history may not once again allow us.

We would welcome an early expression of your views.

JOHN F. KENNEDY

HAROLD MACMILLIAN

[Nikita Khrushchev, Chairman, Council of Ministers, Union of Soviet Socialist Republics, The Kremlin, Moscow, U.S.S.R.]

President Kennedy's Address to the American People: "Nuclear Testing and Disarmament", 1962

Title: President Kennedy's Address to the American People: "Nuclear Testing and Disarmament"

Author: John F. Kennedy

Date: March 2, 1962

Source: Public Papers of the Presidents, J. F. Kennedy, 1962, pp.186-192

[Delivered by radio and television from the President's office at 7 p.m.]

Public Papers of JFK, 1962, p.186

Good evening:

Public Papers of JFK, 1962, p.186

Seventeen years ago man unleashed the power of the atom. He thereby took into his mortal hands the power of self-extinction. Throughout the years that have followed, under three successive Presidents, the United States has sought to banish this weapon from the arsenals of individual nations. For of all the awesome responsibilities entrusted to this office, none is more somber to contemplate than the special statutory authority to employ nuclear arms in the defense of our people and freedom.

Public Papers of JFK, 1962, p.186

But until mankind has banished both war and its instruments of destruction, the United States must maintain an effective quantity and quality of nuclear weapons, so deployed and protected as to be capable of surviving any surprise attack and devastating the attacker. Only through such strength can we be certain of deterring a nuclear strike, or an overwhelming ground attack, upon our forces and our allies. Only through such strength can we in the free world—should that deterrent fail—face the tragedy of another war with any hope of survival. And that deterrent strength, if it is to be effective and credible when compared with that of any other nation, must embody the most modern, the most reliable and the most versatile nuclear weapons our research and development can produce.

Public Papers of JFK, 1962, p.186

The testing of new weapons and their effects is necessarily a part of that research and development process. Without tests-to experiment and verify—progress is limited. A nation which is refraining from tests obviously cannot match the gains of a nation conducting tests. And when all nuclear powers refrain from testing, the nuclear arms race is held in check.

Public Papers of JFK, 1962, p.186

That is why this Nation has long urged an effective worldwide end to. nuclear tests. And this is why in 1958 we voluntarily subscribed, as did the Soviet Union, to a nuclear test moratorium, during which neither side would conduct new nuclear tests, and both East and West would seek concrete plans for their control.

Public Papers of JFK, 1962, p.186

But on September first of last year, while the United States and the United Kingdom were negotiating in good faith at Geneva, the Soviet Union callously broke its moratorium with a two month series of tests of more than 40 nuclear weapons. Preparations for these tests had been secretly underway for many months. Accompanied by new threats and new tactics of terror, these tests—conducted mostly in the atmosphere-represented a major Soviet effort to put nuclear weapons back into the arms race.

Public Papers of JFK, 1962, p.186

Once it was apparent that new appeals and proposals were to no avail, I authorized on September fifth a resumption of U.S. nuclear tests underground, and I announced on November second—before the close of the Soviet series—that preparations were being ordered for a resumption of atmospheric tests, and that we would make whatever tests our security required in the light of Soviet gains.

Public Papers of JFK, 1962, p.186–p.187

This week, the National Security Council of the United States has completed its review of this subject. The scope of the Soviet tests [p.187] has been carefully reviewed by the most competent scientists in the country. The scope and justification of proposed American tests have been carefully reviewed, determining which experiments can be safely deferred, which can be deleted, which can be combined or conducted underground, and which are essential to our military and scientific progress. Careful attention has been given to the limiting of radioactive fallout, to the future course of arms control diplomacy, and to our obligations to other nations.

Public Papers of JFK, 1962, p.187

Every alternative was examined. Every avenue of obtaining Soviet agreement was explored. We were determined not to rush into imitating their tests. And we were equally determined to do only what our own security required us to do. Although the complex preparations have continued at full speed while these facts were being uncovered, no single decision of this Administration has been more thoroughly or more thoughtfully weighed.

Public Papers of JFK, 1962, p.187

Having carefully considered these findings-having received the unanimous recommendations of the pertinent department and agency heads—and having observed the Soviet Union's refusal to accept any agreement which would inhibit its freedom to test extensively after preparing secretly—I have today authorized the Atomic Energy Commission and the Department of Defense to conduct a series of nuclear tests—beginning when our preparations are completed, in the latter part of April, and to be concluded as quickly as possible (within two or three months)—such series, involving only those tests which cannot be held underground, to take place in the atmosphere over the Pacific Ocean.

Public Papers of JFK, 1962, p.187

These tests are to be conducted under conditions which restrict the radioactive fallout to an absolute minimum, far less than the contamination created by last fall's Soviet series. By paying careful attention to location, wind and weather conditions, and by holding these tests over the open seas, we intend to rule out any problem of fallout in the immediate area of testing. Moreover, we will hold the increase in radiation in the Northern Hemisphere, where nearly all such fallout will occur, to a very low level.

Public Papers of JFK, 1962, p.187

Natural radioactivity, as everyone knows, has always been a part of the air around us, with certain long-range biological effects. By conservative estimate, the total effects from this test series will be roughly equal to only 1 percent of those due to this natural background. It has been estimated, in fact, that the exposure due to radioactivity from these tests will be less than 1/50 of the difference which can be experienced, due to variations in natural radioactivity, simply by living in different locations in our own country. This will obviously be well within the guides for general population health and safety, as set by the federal Radiation Council; and considerably less than 1/10 of 1 percent of the exposure guides set for adults who work with industrial radioactivity.

Public Papers of JFK, 1962, p.187

Nevertheless, I find it deeply regrettable that any radioactive material must be added to the atmosphere—that even one additional individual's health may be risked in the foreseeable future. And however remote and infinitesimal those hazards may be, I still exceedingly regret the necessity of balancing these hazards against the hazards to hundreds of millions of lives which would be created by any relative decline in our nuclear strength.

Public Papers of JFK, 1962, p.187

In the absence of any major shift in Soviet policies, no American President—responsible for the freedom and the safety of so many people—could in good faith make any other decision. But because our nuclear 'posture affects the security of all Americans and all free men-because this issue has aroused such widespread concern—I want to share with you and all the world, to the fullest extent our security permits, all of the facts and the thoughts which have gone into this decision.

Public Papers of JFK, 1962, p.188

Many of these facts are hard to explain in simple terms—many are hard to face in a peaceful world—but these are facts which must be faced and must be understood.

II.

Public Papers of JFK, 1962, p.188

Had the Soviet tests of last fall merely reflected a new effort in intimidation and bluff, our security would not have been affected. But in fact they also reflected a highly sophisticated technology, the trial of novel designs and techniques, and some substantial gains in weaponry. Many of these tests were aimed at improving their defenses against missiles—others were proof tests, trying out existing weapons systems—but over one-half emphasized the development of new weapons, particularly those of greater explosive power.

Public Papers of JFK, 1962, p.188

A primary purpose of these tests was the development of warheads which weigh very little compared to the destructive efficiency of their thermonuclear yield. One Soviet test weapon exploded with the force of 58 megatons—the equivalent of 58 million tons of TNT. This was a reduced-yield version of their much-publicized hundred-megaton bomb. Today, Soviet missiles do not appear able to carry so heavy a warhead. But there is no avoiding the fact that other Soviet tests, in the 1 to 5 megaton range and up, were aimed at unleashing increased destructive power in warheads actually capable of delivery by existing missiles.

Public Papers of JFK, 1962, p.188

Much has also been said about Soviet claims for an anti-missile missile. Some of the Soviet tests which measured the effects of high altitude nuclear explosion—in one case over 100 miles high were related to this problem. While apparently seeking information on the effects of nuclear blasts on radar and communication, which is important in developing an anti-missile defense system, these tests did not, in our judgment, reflect a developed system.

Public Papers of JFK, 1962, p.188

In short, last fall's tests, in and by themselves, did not give the Soviet Union superiority in nuclear power. They did, however, provide the Soviet laboratories with a mass of data and experience on which, over the next two or three years, they can base significant analyses, experiments and extrapolations, preparing for the next test series which would confirm and advance their findings.

Public Papers of JFK, 1962, p.188

And I must report to you in all candor that further Soviet tests, in the absence of further Western progress, could well provide the Soviet Union with a nuclear attack and defense capability so powerful as to encourage aggressive designs. Were we to stand still while the Soviets surpassed us-or even appeared to surpass us—the free World's ability to deter, to survive and to respond to an all-out attack would be seriously weakened.

III.

Public Papers of JFK, 1962, p.188

The fact of the matter is that we cannot make similar strides without testing in the atmosphere as well as underground. For, in many areas of nuclear weapons research, we have reached the point where our progress is stifled without experiments in every environment. The information from our last series of atmospheric tests in 1958 has all been analyzed and re-analyzed. It cannot tell us more without new data. And it is in these very areas of research—missile penetration and missile defense—that further major Soviet tests, in the absence of further Western tests, might endanger our deterrent.

Public Papers of JFK, 1962, p.188–p.189

In addition to proof tests of existing systems, two different types of tests have therefore been decided upon. The first and most important are called "effects tests"—determining what effect an enemy nuclear explosion would have upon our ability to survive and respond. We are spending great sums of money on radar to alert our defenses and to develop possible anti-missile systems—on the communications which enable our command and control centers to direct a response—on hardening our missiles sites, shielding our missiles and warheads from defensive action, and providing them with [p.189] electronic guidance systems to find their targets. But we cannot be certain how much of this preparation will turn out to be useless: blacked out, paralyzed or destroyed by the complex effects of a nuclear explosion.

Public Papers of JFK, 1962, p.189

We know enough from earlier tests to be concerned about such phenomena. We know that the Soviets conducted such tests last fall. But until we measure the effects of actual explosions in the atmosphere under realistic conditions, we will not know precisely how to prepare our future defenses, how best to equip our missiles for penetration of an anti-missile system, or whether it is possible to achieve such a system for ourselves.

Public Papers of JFK, 1962, p.189

Secondly, we must test in the atmosphere to permit the development of those more advanced concepts and more effective, efficient weapons which, in the light of Soviet tests, are deemed essential to our security. Nuclear weapons technology is a constantly changing field. If our weapons are to be more secure, more flexible in their use and more selective in their impact—if we are to be alert to new breakthroughs, to experiment with new designs—if we are to maintain our scientific momentum and leadership-then our weapons progress must not be limited to theory or to the confines of laboratories and caves.

Public Papers of JFK, 1962, p.189

This series is designed to lead to many important, if not always dramatic, results. Improving the nuclear yield per pound of weight in our weapons will make them easier to move, protect and fire—more likely to survive a surprise attack—and more adequate for effective retaliation. It will also, even more importantly, enable us to add to our missiles certain penetration aids and decoys, and to make those missiles effective at high altitude detonations, in order to render ineffective any anti-missile or interceptor system an enemy might some day develop.

Public Papers of JFK, 1962, p.189

Whenever possible, these development tests will be held underground. But the larger explosions can only be tested in the atmosphere. And while our technology in smaller weapons is unmatched, we now know that the Soviets have made major gains in developing larger weapons of low-weight and high explosive content—of 1 to 5 megatons and upward. Fourteen of their tests last fall were in this category, for a total of 30 such tests over the years. The United States, on the other hand, had conducted, prior to the moratorium, a total of only 20 tests within this megaton range.

IV.

Public Papers of JFK, 1962, p.189

While we will be conducting far fewer tests than the Soviets, with far less fallout, there will still be those in other countries who will urge us to refrain from testing at all. Perhaps they forget that this country long refrained from testing, and sought to ban all tests, while the Soviets were secretly preparing new explosions. Perhaps they forget the Soviet threats of last autumn and their arbitrary rejection of all appeals and proposals, from both the United States and the United Nations. But those free peoples who value their freedom and their security, and look to our relative strength to shield them from danger—those who know of our good faith in seeking an end to testing and an end to the arms race—will, I am confident, want the United States to do whatever it must do to deter the threat of aggression.

Public Papers of JFK, 1962, p.189–p.190

If they felt we could be swayed by threats or intimidation—if they thought we could permit a repetition of last summer's deception-then surely they would lose faith in our will and our wisdom as well as our weaponry. I have no doubt that most of our friends around the world have shared my own hope that we would never find it necessary to test again—and my own belief that, in the long run, the only real security in this age of nuclear peril rests not in armament but in disarmament. But I am equally certain that they would insist on our testing once that is deemed necessary to protect free world security. They know we are not deciding to test for political or psychological reasons—and they also know that we cannot [p.190] avoid such tests for political or psychological reasons.

Public Papers of JFK, 1962, p.190

The leaders of the Soviet Union are also watching this decision. Should we fail to follow the dictates of our own security, they will chalk it up, not to goodwill, but to a failure of will—not to our confidence in Western superiority, but to our fear of world opinion, the very world opinion for which they showed such contempt. They could well be encouraged by such signs of weakness to seek another period of no testing without controls—another opportunity for stifling our progress while secretly preparing, on the basis of last fall's experiments, for the new test series which might alter the balance of power. With such a one-sided advantage, why would they change their strategy, or refrain from testing, merely because we refrained? Why would they want to halt their drive to surpass us in nuclear technology? And why would they ever consider accepting a true test ban or mutual disarmament?

Public Papers of JFK, 1962, p.190

Our reasons for testing and our peaceful intentions are clear—so clear that even the Soviets could not objectively regard our resumption of tests, following their own resumption of tests, as provocative or preparatory for war. On the contrary, it is my hope that the prospects for peace may actually be strengthened by this decision—once the Soviet leaders realize that the West will no longer stand still, negotiating in good faith, while they reject inspection and are free to prepare for further tests. As new disarmament talks approach, the basic lesson of some three years and 353 negotiating sessions at Geneva is this—that the Soviets will not agree to an effective ban on nuclear tests as long as a new series of offers and prolonged negotiations, or a new uninspected moratorium, or a new agreement without controls, would enable them once again to prevent the West from testing while they prepare in secret.

Public Papers of JFK, 1962, p.190

But inasmuch as this choice is now no longer open to them, let us hope that they will take a different attitude on banning nuclear tests—that they will prefer to see the nuclear arms race checked instead of intensified, with all the dangers that that intensification brings: the spread of nuclear weapons to other nations; the constant increase in world tensions; the steady decrease in all prospects for disarmament; and, with it, a steady decrease in the security of us all.

VI.

Public Papers of JFK, 1962, p.190

If the Soviets should change their position, we will have an opportunity to learn it immediately. On the 14th of March, in Geneva, Switzerland, a new 18-power conference on disarmament will begin. A statement of agreed principles has been worked out with the Soviets and endorsed by the U.N. In the long run, it is the constructive possibilities of this conference-and not the testing of new destructive weapons—on which rest the hopes of all mankind. However dim those hopes may sometimes seem, they can never be abandoned. And however far-off most steps toward disarmament appear, there are some that can be taken at once.

Public Papers of JFK, 1962, p.190–p.191

The United States will offer at the Geneva conference—not in the advance expectation they will be rejected, and not merely for purposes of propaganda—a series of concrete plans for a major "breakthrough to peace." We hope and believe that they will appeal to all nations opposed to war. They will include specific proposals for fair and enforceable agreements: to halt the production of fissionable materials and nuclear weapons and their transfer to other nations—to convert them from weapon stockpiles to peaceable uses—to destroy the warheads and the delivery systems that threaten man's existence-to check the dangers of surprise and accidental attack—to reserve outer space for peaceful use—and progressively to reduce all armed forces in such a way as ultimately [p.191] to remove forever all threats and thoughts of War.

Public Papers of JFK, 1962, p.191

And of greatest importance to our discussion tonight, we shall, in association with the United Kingdom, present once again our proposals for a separate comprehensive treaty—with appropriate arrangements for detection and verification—to halt permanently the testing of all nuclear weapons, in every environment: in the air, in outer space, under ground and under water. New modifications will also be offered in the light of new experience.

Public Papers of JFK, 1962, p.191

The essential arguments and facts relating to such a treaty are well-known to the Soviet Union. There is no need for further repetition, propaganda or delay. The fact that both sides have decided to resume testing only emphasizes the need for new agreement, not new argument. And before charging that this decision shatters all hopes for agreement, the Soviets should recall that we were willing to work out with them, for joint submission to the United Nations, an agreed statement of disarmament principles at the very time their autumn tests were being conducted. And Mr. Khrushchev knows, as he said in 1960, that any nation which broke the moratorium could expect other nations to be "forced to take the same road."

Public Papers of JFK, 1962, p.191

Our negotiators will be ready to talk about this treaty even before the Conference begins on March 14th—and they will be ready to sign well before the date on which our tests are ready to begin. That date is still nearly two months away. If the Soviet Union should now be willing to accept such a treaty, to sign it before the latter part of April, and apply it immediately—if all testing can thus be actually halted—then the nuclear arms race would be slowed down at last—the security of the United States and its ability to meet its commitments would be safeguarded—and there would be no need for our tests to begin.

Public Papers of JFK, 1962, p.191

But this must be a fully effective treaty. We know now enough about broken negotiations, secret preparations, and the advantages gained from a long test series never to offer again an uninspected moratorium. Some may urge us to try it again, keeping our preparations to test in a constant state of readiness. But in actual practice, particularly in a society of free choice, we cannot keep top-flight scientists concentrating on the preparation of an experiment which may or may not take place on an uncertain date in the undefined future. Nor can large technical laboratories be kept fully alert on a stand-by basis waiting for some other nation to break an agreement. This is not merely difficult or inconvenient—we have explored this alternative thoroughly, and found it impossible of execution.

Public Papers of JFK, 1962, p.191

In short, in the absence of a firm agreement that would halt nuclear tests by the latter part of April, we shall go ahead with our talks—striving for some new avenue of agreement—but we shall also go ahead with our tests. If, on the other hand, the Soviet Union should accept such a treaty in the opening month of talks, that single step would be a monumental step toward peace-and both Prime Minister Macmillan and I would think it fitting to meet Chairman Khrushchev at Geneva to sign the final pact.

VII.

Public Papers of JFK, 1962, p.191

For our ultimate objective is not to test for the sake of testing. Our real objective is to make our own tests unnecessary, to prevent others from testing, to prevent the nuclear arms race from mushrooming out of control, to take the first steps toward general and complete disarmament. And that is why, in the last analysis, it is the leaders of the Soviet Union who must bear the heavy responsibility of choosing, in the weeks that lie ahead, whether we proceed with these steps—or proceed with new tests.

Public Papers of JFK, 1962, p.191–p.192

If they are convinced that their interests can no longer be served by the present course of events, then it is my fervent hope that they will agree to an effective treaty. But if they persist in rejecting all means of [p.192] true inspection, then we shall be left with no choice but to keep our own defensives arsenal adequate for the security of all free men.

Public Papers of JFK, 1962, p.192

It is our hope and prayer that these grim, unwelcome tests will never have to be made—that these deadly weapons will never have to be fired—and that our preparations for war will bring about the preservation of the Presidents peace. Our foremost aim is the control of force, not the pursuit of force, in a world made safe for mankind. But whatever the future brings, I am sworn to uphold and defend the freedom of the American people—and I intend to do whatever must be done to fulfill that solemn obligation.

Thank you—and good night.

Baker v. Carr, 1962

Title: Baker v. Carr

Author: U.S. Supreme Court

Date: March 26, 1962

Source: 369 U.S. 186

This case was argued April 19-20, 1961, and was reargued October 9, 1961. The case was decided March 26, 1962.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF TENNESSEE

Syllabus

1962, Baker v. Carr, 369 U.S. 186

Appellants are persons allegedly qualified to vote for members of the General Assembly of Tennessee representing the counties in which they reside. They brought suit in a Federal District Court in Tennessee under 42 U.S.C. §§ 1983 and 1988, on behalf of themselves and others similarly situated, to redress the alleged deprivation of their federal constitutional rights by legislation classifying voters with respect to representation in the General Assembly. They alleged that, by means of a 1901 statute of Tennessee arbitrarily and capriciously apportioning the seats in the General Assembly among the State's 95 counties, and a failure to reapportion them subsequently notwithstanding substantial growth and redistribution of the State's population, they suffer a "debasement of their votes," and were thereby denied the equal protection of the laws guaranteed them by the Fourteenth Amendment. They sought, inter alia, a declaratory judgment that the 1901 statute is unconstitutional and an injunction restraining certain state officers from conducting any further elections under it. The District Court dismissed the complaint on the grounds that it lacked jurisdiction of the subject matter and that no claim was stated upon which relief could be granted.

1962, Baker v. Carr, 369 U.S. 186

Held:

1962, Baker v. Carr, 369 U.S. 186

1. The District Court had jurisdiction of the subject matter of the federal constitutional claim asserted in the complaint. Pp. 198-204.

1962, Baker v. Carr, 369 U.S. 186

2. Appellants had standing to maintain this suit. Pp. 204-208.

1962, Baker v. Carr, 369 U.S. 186

3. The complaint's allegations of a denial of equal protection presented a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. Pp. 208-37.

1962, Baker v. Carr, 369 U.S. 186

179 F.Supp. 824, reversed and cause remanded [369 U.S. 187]

BRENNAN, J., lead opinion

1962, Baker v. Carr, 369 U.S. 187

MR. JUSTICE BRENNAN delivered the opinion of the Court.

1962, Baker v. Carr, 369 U.S. 187

This civil action was brought under 42 U.S.C. §§ 1983 and 1988 to redress the alleged deprivation of federal constitutional rights. The complaint, alleging that, by means of a 1901 statute of Tennessee apportioning the members of the General Assembly among the State's 95 counties, 1 "these plaintiffs and others similarly situated, [369 U.S. 188] are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes," was dismissed by a three-judge court convened under 28 U.S.C. § 2281 in the Middle District of Tennessee. 2 The court held that it lacked jurisdiction of the subject matter and also that no claim was stated upon which relief could be granted. 179 F.Supp. 824. We noted probable jurisdiction of the appeal. 364 U.S. 898. 3 We hold that the dismissal was error, and remand the cause to the District Court for trial and further proceedings consistent with this opinion.

1962, Baker v. Carr, 369 U.S. 188

The General Assembly of Tennessee consists of the Senate, with 33 members, and the House of Representatives, with 99 members. The Tennessee Constitution provides in Art. II as follows:

1962, Baker v. Carr, 369 U.S. 188

Sec. 3. Legislative authority—Term of office.—The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, both dependent on the people; who shall hold their offices for two years from the day of the general election.

1962, Baker v. Carr, 369 U.S. 188

Sec. 4. Census.—An enumeration of the qualified voters, and an apportionment of the Representatives in the General Assembly, shall be made in the year one thousand eight hundred and seventy-one and within every subsequent term of ten years.

1962, Baker v. Carr, 369 U.S. 188

Sec. 5. Apportionment of representatives.—The number of Representatives shall, at the several [369 U.S. 189] periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each, and shall not exceed seventy-five; until the population of the State shall be one million and a half, and shall never exceed ninety-nine; Provided, that any county having two-thirds of the ratio shall be entitled to one member.

1962, Baker v. Carr, 369 U.S. 189

Sec. 6. Apportionment of senators.—The number of Senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts according to the number of qualified electors in each, and shall not exceed one-third the number of representatives. In apportioning the Senators among the different counties, the fraction that may be lost by any county or counties in the apportionment of members to the House of Representatives shall be made up to such county or counties in the Senate, as near as may be practicable. When a district is composed of two or more counties, they shall be adjoining, and no county shall be divided in forming a district.

1962, Baker v. Carr, 369 U.S. 189

Thus, Tennessee's standard for allocating legislative representation among her counties is the total number of qualified voters resident in the respective counties, subject only to minor qualifications. 4 Decennial reapportionment [369 U.S. 190] in compliance with the constitutional scheme was effected by the General Assembly each decade from 1871 to 1901. The 1871 apportionment 5 was preceded by an 1870 statute requiring an enumeration. 6 The 1881 apportionment involved three statutes, the first authorizing an enumeration, the second enlarging the Senate from 25 to [369 U.S. 191] 33 members and the House from 75 to 99 members, and the third apportioning the membership of both Houses. 7 In 1891, there were both an enumeration and an apportionment. 8 In 1901, the General Assembly abandoned separate enumeration in favor of reliance upon the Federal Census, and passed the Apportionment Act here in controversy. 9 In the more than 60 years since that action, all proposals in both Houses of the General Assembly for reapportionment have failed to pass. 10 [369 U.S. 192]

1962, Baker v. Carr, 369 U.S. 192

Between 1901 and 1961, Tennessee has experienced substantial growth and redistribution of her population. In 1901, the population was 2,020,616, of whom 487,380 were eligible to vote. 11 The 1960 Federal Census reports the State's population at 3,567,089, of whom 2,092,891 are eligible to vote. 12 The relative standings of the counties in terms of qualified voters have changed significantly. It is primarily the continued application of the 1901 Apportionment Act to this shifted and enlarged voting population which gives rise to the present controversy.

1962, Baker v. Carr, 369 U.S. 192

Indeed, the complaint alleges that the 1901 statute, even as of the time of its passage,

1962, Baker v. Carr, 369 U.S. 192

made no apportionment of Representatives and Senators in accordance with the constitutional formula…, but instead arbitrarily and capriciously apportioned representatives in the Senate and House without reference…to any logical or reasonable formula whatever. 13

1962, Baker v. Carr, 369 U.S. 192

It is further alleged [369 U.S. 193] that, "because of the population changes since 1900, and the failure of the Legislature to reapportion itself since 1901," the 1901 statute became "unconstitutional and obsolete." Appellants also argue that, because of the composition of the legislature effected by the 1901 Apportionment Act, redress in the form of a state constitutional amendment to change the entire mechanism for reapportioning, or any other change short of that, is difficult or impossible. 14 The complaint concludes that

1962, Baker v. Carr, 369 U.S. 193

these plaintiffs [369 U.S. 194] and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes. 15

1962, Baker v. Carr, 369 U.S. 194

They seek a [369 U.S. 195] declaration that the 1901 statute is unconstitutional and an injunction restraining the appellees from acting to conduct any further elections under it. They also pray that, unless and until the General Assembly enacts a valid reapportionment, the District Court should either decree a reapportionment by mathematical application of the Tennessee constitutional formulae to the most recent Federal Census figures, or direct the appellees to conduct legislative elections, primary and general, at large. They also pray for such other and further relief as may be appropriate.

I

THE DISTRICT COURT's OPINION AND ORDER OF DISMISSAL

1962, Baker v. Carr, 369 U.S. 195

Because we deal with this case on appeal from an order of dismissal granted on appellees' motions, precise identification [369 U.S. 196] of the issues presently confronting us demands clear exposition of the grounds upon which the District Court rested in dismissing the case. The dismissal order recited that the court sustained the appellees' grounds "(1) that the Court lacks jurisdiction of the subject matter, and (2) that the complaint fails to state a claim upon which relief can be granted…. "

1962, Baker v. Carr, 369 U.S. 196

In the setting of a case such as this, the recited grounds embrace two possible reasons for dismissal:

1962, Baker v. Carr, 369 U.S. 196

First: That the facts and injury alleged, the legal bases invoked as creating the rights and duties relied upon, and the relief sought, fail to come within that language of Article III of the Constitution and of the jurisdictional statutes which define those matters concerning which United States District Courts are empowered to act;

1962, Baker v. Carr, 369 U.S. 196

Second: That, although the matter is cognizable and facts are alleged which establish infringement of appellants' rights as a result of state legislative action departing from a federal constitutional standard, the court will not proceed because the matter is considered unsuited to judicial inquiry or adjustment.

1962, Baker v. Carr, 369 U.S. 196

We treat the first ground of dismissal as "lack of jurisdiction of the subject matter." The second we consider to result in a failure to state a justiciable cause of action.

1962, Baker v. Carr, 369 U.S. 196

The District Court's dismissal order recited that it was issued in conformity with the court's per curiam opinion. The opinion reveals that the court rested its dismissal upon lack of subject matter jurisdiction and lack of a justiciable cause of action without attempting to distinguish between these grounds. After noting that the plaintiffs challenged the existing legislative apportionment in Tennessee under the Due Process and Equal Protection Clauses, and summarizing the supporting allegations and the relief requested, the court stated that

1962, Baker v. Carr, 369 U.S. 196

The action is presently before the Court upon the defendants' motion to dismiss predicated upon three [369 U.S. 197] grounds: first, that the Court lacks jurisdiction of the subject matter; second, that the complaints fail to state a claim upon which relief can be granted, and third, that indispensable party defendants are not before the Court.

1962, Baker v. Carr, 369 U.S. 197

179 F.Supp. at 826.

1962, Baker v. Carr, 369 U.S. 197

The court proceeded to explain its action as turning on the case's presenting a "question of the distribution of political strength for legislative purposes." For,

1962, Baker v. Carr, 369 U.S. 197

From a review of [numerous Supreme Court]…decisions, there can be no doubt that the federal rule, as enunciated and applied by the Supreme Court, is that the federal courts, whether from a lack of jurisdiction or from the inappropriateness of the subject matter for judicial consideration, will not intervene in cases of this type to compel legislative reapportionment.

1962, Baker v. Carr, 369 U.S. 197

179 F.Supp. at 826. The court went on to express doubts as to the feasibility of the various possible remedies sought by the plaintiffs. 179 F.Supp. at 827-828. Then it made clear that its dismissal reflected a view not of doubt that violation of constitutional rights was alleged, but of a court's impotence to correct that violation:

1962, Baker v. Carr, 369 U.S. 197

With the plaintiffs' argument that the legislature of Tennessee is guilty of a clear violation of the state constitution and of the rights of the plaintiffs the Court entirely agrees. It also agrees that the evil is a serious one which should be corrected without further delay. But even so, the remedy in this situation clearly does not lie with the courts. It has long been recognized and is accepted doctrine that there are indeed some rights guaranteed by the Constitution for the violation of which the courts cannot give redress.

1962, Baker v. Carr, 369 U.S. 197

179 F.Supp. at 828.

1962, Baker v. Carr, 369 U.S. 197

In light of the District Court's treatment of the case, we hold today only (a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of [369 U.S. 198] action is stated upon which appellants would be entitled to appropriate relief, and (c) because appellees raise the issue before this Court, that the appellants have standing to challenge the Tennessee apportionment statutes. 16 Beyond noting that we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what remedy would be most appropriate if appellants prevail at the trial.

II

JURISDICTION OF THE SUBJECT MATTER

1962, Baker v. Carr, 369 U.S. 198

The District Court was uncertain whether our cases withholding federal judicial relief rested upon a lack of federal jurisdiction or upon the inappropriateness of the subject matter for judicial consideration—what we have designated "nonjusticiability." The distinction between the two grounds is significant. In the instance of nonjusticiability, consideration of the cause is not wholly and immediately foreclosed; rather, the Court's inquiry necessarily proceeds to the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded. In the instance of lack of jurisdiction, the cause either does not "arise under" the Federal Constitution, laws or treaties (or fall within one of the other enumerated categories of Art. III, § 2); or is not a "case or controversy" within the meaning of that section; or the cause is not one described by any jurisdictional statute. Our conclusion, see pp. 208-237 infra, that this cause presents no nonjusticiable "political question" settles the only possible doubt that it is a case or controversy. Under the present heading of "Jurisdiction [369 U.S. 199] of the Subject Matter," we hold only that the matter set forth in the complaint does arise under the Constitution, and is within 28 U.S.C. § 1343.

1962, Baker v. Carr, 369 U.S. 199

Article III, 2, of the Federal Constitution provides that

1962, Baker v. Carr, 369 U.S. 199

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority….

1962, Baker v. Carr, 369 U.S. 199

It is clear that the cause of action is one which "arises under" the Federal Constitution. The complaint alleges that the 1901 statute effects an apportionment that deprives the appellants of the equal protection of the laws in violation of the Fourteenth Amendment. Dismissal of the complaint upon the ground of lack of jurisdiction of the subject matter would, therefore, be justified only if that claim were "so attenuated and unsubstantial as to be absolutely devoid of merit," Newburyport Water Co. v. Newburyport, 193 U.S. 561, 579, or "frivolous," Bell v. Hood, 327 U.S. 678, 683. 17 That the claim is unsubstantial must be "very plain." Hart v. Keith Vaudeville Exchange, 262 U.S. 271, 274. Since the District Court obviously and correctly did not deem the asserted federal constitutional claim unsubstantial and frivolous, it should not have dismissed the complaint for want of jurisdiction of the subject matter. And, of course, no further consideration of the merits of the claim is relevant to a determination of the court's jurisdiction of the subject matter. We said in an earlier voting case from Tennessee:

1962, Baker v. Carr, 369 U.S. 199

It is obvious…that the court, in dismissing for want of jurisdiction, was controlled by what it deemed to be the want of merit in the averments which were made in the complaint as to the violation of the Federal right. But as the very nature of the controversy was Federal, and, therefore, [369 U.S. 200] jurisdiction existed, whilst the opinion of the court as to the want of merit in the cause of action might have furnished ground for dismissing for that reason, it afforded no sufficient ground for deciding that the action was not one arising under the Constitution and laws of the United States.

1962, Baker v. Carr, 369 U.S. 200

Swafford v. Templeton, 185 U.S. 487, 493.

1962, Baker v. Carr, 369 U.S. 200

For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits, and not for a dismissal for want of jurisdiction.

1962, Baker v. Carr, 369 U.S. 200

Bell v. Hood, 327 U.S. 678, 682. See also Binderup v. Pathe Exchange, 263 U.S. 291, 305-308.

1962, Baker v. Carr, 369 U.S. 200

Since the complaint plainly sets forth a case arising under the Constitution, the subject matter is within the federal judicial power defined in Art. III, § 2, and so within the power of Congress to assign to the jurisdiction of the District Courts. Congress has exercised that power in 28 U.S.C. § 1343(3):

1962, Baker v. Carr, 369 U.S. 200

The district courts shall have original jurisdiction of any civil action authorized by law 18 to be commenced by any person…[t]o redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States…. 19 [369 U.S. 201]

1962, Baker v. Carr, 369 U.S. 201

An unbroken line of our precedents sustains the federal courts' jurisdiction of the subject matter of federal constitutional claims of this nature. The first cases involved the redistricting of States for the purpose of electing Representatives to the Federal Congress. When the Ohio Supreme Court sustained Ohio legislation against an attack for repugnancy to Art. I, § 4, of the Federal Constitution, we affirmed on the merits and expressly refused to dismiss for want of jurisdiction "In view…of the subject matter of the controversy and the Federal characteristics which inhere in it…. " Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565, 570. When the Minnesota Supreme Court affirmed the dismissal of a suit to enjoin the Secretary of State of Minnesota from acting under Minnesota redistricting legislation, we reviewed the constitutional merits of the legislation and reversed the State Supreme Court. Smiley v. Holm, 285 U.S. 355. And see companion cases from the New York Court of Appeals and the Missouri Supreme Court, Koenig v. Flynn, 285 U.S. 375; Carroll v. Becker, 285 U.S. 380. When a three-judge District Court, exercising jurisdiction under the predecessor of 28 U.S.C. § 1343(3), permanently enjoined officers of the State of Mississippi from conducting an election of Representatives under a Mississippi redistricting act, we reviewed the federal questions on the merits and reversed the District Court. Wood v. Broom, 287 U.S. 1, reversing 1 F.Supp. 134. A similar decree of a District Court, exercising jurisdiction under the same statute concerning a Kentucky redistricting act was [369 U.S. 202] reviewed and the decree reversed. Mahan v. Hume, 287 U.S. 575, reversing 1 F.Supp. 142. 20

1962, Baker v. Carr, 369 U.S. 202

The appellees refer to Colegrove v. Green, 328 U.S. 549, as authority that the District Court lacked jurisdiction of the subject matter. Appellees misconceive the holding of that case. The holding was precisely contrary to their reading of it. Seven members of the Court participated in the decision. Unlike many other cases in this field which have assumed without discussion that there was jurisdiction, all three opinions filed in Colegrove discussed the question. Two of the opinions expressing the views of four of the Justices, a majority, flatly held that there was jurisdiction of the subject matter. MR. JUSTICE BLACK, joined by MR. JUSTICE DOUGLAS and Mr. Justice Murphy, stated: "It is my judgment that the District Court had jurisdiction…," citing the predecessor of 28 U.S.C. § 1343(3), and Bell v. Hood, supra. 328 U.S. at 568. Mr. Justice Rutledge, writing separately, expressed agreement with this conclusion. 328 U.S. at 564, 565, n. 2. Indeed, it is even questionable that the opinion of MR. JUSTICE FRANKFURTER, joined by Justices Reed and Burton, doubted jurisdiction of the subject matter. Such doubt would have been inconsistent with the professed willingness to turn the decision on either the majority or concurring views in Wood v. Broom, supra. 328 U.S. at 551.

1962, Baker v. Carr, 369 U.S. 202

Several subsequent cases similar to Colegrove have been decided by the Court in summary per curiam statements. None was dismissed for want of jurisdiction of the subject matter. Cook v. Fortson, 329 U.S. 675; Turman v. [369 U.S. 203] Duckworth, ibid.; Colegrove v. Barrett, 330 U.S. 804; 21 Tedesco v. Board of Supervisors, 339 U.S. 940; Remmey v. Smith, 342 U.S. 916; Cox v. Peters, 342 U.S. 936; Anderson v. Jordan, 343 U.S. 912; Kidd v. McCanless, 352 U.S. 920; Radford v. Gary, 352 U.S. 991; Hartsfield v. Sloan, 357 U.S. 916; Matthews v. Handley, 361 U.S. 127. 22

1962, Baker v. Carr, 369 U.S. 203

Two cases decided with opinions after Colegrove likewise plainly imply that the subject matter of this suit is within District Court jurisdiction. In MacDougall v. Green, 335 U.S. 281, the District Court dismissed for want of jurisdiction, which had been invoked under 28 U.S.C. § 1343(3), a suit to enjoin enforcement of the requirement that nominees for statewide elections be supported by a petition signed by a minimum number of persons from at least 50 of the State's 102 counties. This Court's disagreement with that action is clear, since the Court affirmed the judgment after a review of the merits and concluded that the particular claim there was without merit. In South v. Peters, 339 U.S. 276, we affirmed the dismissal of an attack on the Georgia "county unit" system but founded our action on a ground that plainly would not have been reached if the lower court lacked jurisdiction of the subject matter, which allegedly existed under 28 U.S.C. § 1343(3). The express words of our holding were that

1962, Baker v. Carr, 369 U.S. 203

Federal courts consistently refuse to exercise their equity powers in cases posing [369 U.S. 204] political issues arising from a state's geographical distribution of electoral strength among its political subdivisions.

1962, Baker v. Carr, 369 U.S. 204

339 U.S. at 277.

1962, Baker v. Carr, 369 U.S. 204

We hold that the District Court has jurisdiction of the subject matter of the federal constitutional claim asserted in the complaint.

III

STANDING.

1962, Baker v. Carr, 369 U.S. 204

A federal court cannot

1962, Baker v. Carr, 369 U.S. 204

pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies.

1962, Baker v. Carr, 369 U.S. 204

Liverpool Steamship Co. v. Commissioners of Emigration, 113 U.S. 33, 39. Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing. It is, of course, a question of federal law.

1962, Baker v. Carr, 369 U.S. 204

The complaint was filed by residents of Davidson, Hamilton, Knox, Montgomery, and Shelby Counties. Each is a person allegedly qualified to vote for members of the General Assembly representing his county. 23 These appellants sued

1962, Baker v. Carr, 369 U.S. 204

on their own behalf and on behalf of all qualified voters of their respective counties, and further, on behalf of all voters of the State of Tennessee who [369 U.S. 205] are similarly situated…. 24

1962, Baker v. Carr, 369 U.S. 205

The appellees are the Tennessee Secretary of State, Attorney General, Coordinator of Elections, and members of the State Board of Elections; the members of the State Board are sued in their own right and also as representatives of the County Election Commissioners whom they appoint. 25 [369 U.S. 206]

1962, Baker v. Carr, 369 U.S. 206

We hold that the appellants do have standing to maintain this suit. Our decisions plainly support this conclusion. Many of the cases have assumed, rather than articulated, the premise in deciding the merits of similar claims. 26 And Colegrove v. Green, supra, squarely held that voters who allege facts showing disadvantage to themselves as individuals have standing to sue. 27 A number [369 U.S. 207] of cases decided after Colegrove recognized the standing of the voters there involved to bring those actions. 28

1962, Baker v. Carr, 369 U.S. 207

These appellants seek relief in order to protect or vindicate an interest of their own, and of those similarly situated. Their constitutional claim is, in substance, that the 1901 statute constitutes arbitrary and capricious state action, offensive to the Fourteenth Amendment in its irrational disregard of the standard of apportionment prescribed by the State's Constitution or of any standard, effecting a gross disproportion of representation to voting population. The injury which appellants assert is that this classification disfavors the voters in the counties in which they reside, placing them in a position of constitutionally unjustifiable inequality vis-a-vis voters [369 U.S. 208] in irrationally favored counties. A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution when such impairment resulted from dilution by a false tally, cf. United States v. Classic, 313 U.S. 299; or by a refusal to count votes from arbitrarily selected precincts, cf. United States v. Mosley, 238 U.S. 383, or by a stuffing of the ballot box, cf. Ex parte Siebold, 100 U.S. 371; United States v. Saylor, 322 U.S. 385.

1962, Baker v. Carr, 369 U.S. 208

It would not be necessary to decide whether appellants' allegations of impairment of their votes by the 1901 apportionment will ultimately entitle them to any relief in order to hold that they have standing to seek it. If such impairment does produce a legally cognizable injury, they are among those who have sustained it. They are asserting "a plain, direct and adequate interest in maintaining the effectiveness of their votes," Coleman v. Miller, 307 U.S. at 438, not merely a claim of "the right, possessed by every citizen, to require that the Government be administered according to law…. " Fairchild v. Hughes, 258 U.S. 126, 129; compare Leser v. Garnett, 258 U.S. 130. They are entitled to a hearing and to the District Court's decision on their claims.

1962, Baker v. Carr, 369 U.S. 208

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.

1962, Baker v. Carr, 369 U.S. 208

Marbury v. Madison, 1 Cranch. 137, 163.

IV

JUSTICIABILITY

1962, Baker v. Carr, 369 U.S. 208

In holding that the subject matter of this suit was not justiciable, the District Court relied on Colegrove v. Green, supra, and subsequent per curiam cases. 29 The [369 U.S. 209] court stated:

1962, Baker v. Carr, 369 U.S. 209

From a review of these decisions, there can be no doubt that the federal rule…is that the federal courts…will not intervene in cases of this type to compel legislative reapportionment.

1962, Baker v. Carr, 369 U.S. 209

179 F.Supp. at 826. We understand the District Court to have read the cited cases as compelling the conclusion that, since the appellants sought to have a legislative apportionment held unconstitutional, their suit presented a "political question," and was therefore nonjusticiable. We hold that this challenge to an apportionment presents no nonjusticiable "political question." The cited cases do not hold the contrary.

1962, Baker v. Carr, 369 U.S. 209

Of course, the mere fact that the suit seeks protection of a political right does not mean it presents a political question. Such an objection "is little more than a play upon words." Nixon v. Herndon, 273 U.S. 536, 540. Rather, it is argued that apportionment cases, whatever the actual wording of the complaint, can involve no federal constitutional right except one resting on the guaranty of a republican form of government, 30 and that complaints based on that clause have been held to present political questions which are nonjusticiable.

1962, Baker v. Carr, 369 U.S. 209

We hold that the claim pleaded here neither rests upon nor implicates the Guaranty Clause, and that its justiciability is therefore not foreclosed by our decisions of cases involving that clause. The District Court misinterpreted Colegrove v. Green and other decisions of this Court on which it relied. Appellants' claim that they are being denied equal protection is justiciable, and if [369 U.S. 210]

1962, Baker v. Carr, 369 U.S. 210

discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the fact that the discrimination relates to political rights.

1962, Baker v. Carr, 369 U.S. 210

Snowdell v. Hughes, 321 U.S. 1, 11. To show why we reject the argument based on the Guaranty Clause, we must examine the authorities under it. But because there appears to be some uncertainty as to why those cases did present political questions, and specifically as to whether this apportionment case is like those cases, we deem it necessary first to consider the contours of the "political question" doctrine.

1962, Baker v. Carr, 369 U.S. 210

Our discussion, even at the price of extending this opinion, requires review of a number of political question cases, in order to expose the attributes of the doctrine—attributes which, in various settings, diverge, combine, appear, and disappear in seeming disorderliness. Since that review is undertaken solely to demonstrate that neither singly nor collectively do these cases support a conclusion that this apportionment case is nonjusticiable, we, of course, do not explore their implications in other contexts. That review reveals that, in the Guaranty Clause cases and in the other "political question" cases, it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States, which gives rise to the "political question." We have said that,

1962, Baker v. Carr, 369 U.S. 210

In determining whether a question falls within [the political question] category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations.

1962, Baker v. Carr, 369 U.S. 210

Coleman v. Miller, 307 U.S. 433, 454-455. The nonjusticiability of a political question is primarily a function of the separation of powers. Much confusion results from the capacity of the "political question" label to obscure the need for [369 U.S. 211] case-by-case inquiry. Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution. To demonstrate this requires no less than to analyze representative cases and to infer from them the analytical threads that make up the political question doctrine. We shall then show that none of those threads catches this case.

1962, Baker v. Carr, 369 U.S. 211

Foreign relations: there are sweeping statements to the effect that all questions touching foreign relations are political questions. 31 Not only does resolution of such issues frequently turn on standards that defy judicial application, or involve the exercise of a discretion demonstrably committed to the executive or legislature, 32 but many such questions uniquely demand single-voiced statement of the Government's views. 33 Yet it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. Our cases in this field seem invariably to show a discriminating analysis of the particular question posed, in terms of the history of its management by the political branches, of its susceptibility to judicial handling in the light of its nature and posture in the specific case, and of the possible consequences [369 U.S. 212] of judicial action. For example, though a court will not ordinarily inquire whether a treaty has been terminated, since on that question, "governmental action…must be regarded as of controlling importance," if there has been no conclusive "governmental action," then a court can construe a treaty, and may find it provides the answer. Compare Terlinden v. Ames, 184 U.S. 270, 285, with Society for the Propagation of the Gospel in Foreign Parts v. New Haven, 8 Wheat. 464, 492-495. 34 Though a court will not undertake to construe a treaty in a manner inconsistent with a subsequent federal statute, no similar hesitancy obtains if the asserted clash is with state law. Compare Whitney v. Robertson, 124 U.S. 190, with Kolovrat v. Oregon, 366 U.S. 187.

1962, Baker v. Carr, 369 U.S. 212

While recognition of foreign governments so strongly defies judicial treatment that, without executive recognition, a foreign state has been called "a republic of whose existence we know nothing," 35 and the judiciary ordinarily follows the executive as to which nation has sovereignty over disputed territory, 36 once sovereignty over an area is politically determined and declared, courts may examine the resulting status and decide independently whether a statute applies to that area. 37 Similarly, recognition of belligerency abroad is an executive responsibility, but if the executive proclamations fall short of an explicit answer, a court may construe them seeking, for example, to determine whether the situation is such that statutes designed to assure American neutrality have [369 U.S. 213] become operative. The Three Friends, 166 U.S. 1, 63, 66. Still again, though it is the executive that determines a person's status as representative of a foreign government, Ex parte Hitz, 111 U.S. 766, the executive's statements will be construed where necessary to determine the court's jurisdiction, In re Baiz, 135 U.S. 403. Similar judicial action in the absence of a recognizedly authoritative executive declaration occurs in cases involving the immunity from seizure of vessels owned by friendly foreign governments. Compare Ex parte Peru, 318 U.S. 578, with Mexico v. Hoffman, 324 U.S. 30, 34-35.

1962, Baker v. Carr, 369 U.S. 213

Dates of duration of hostilities: though it has been stated broadly that "the power which declared the necessity is the power to declare its cessation, and what the cessation requires," Commercial Trust Co. v. Miller, 262 U.S. 51, 57, here too analysis reveals isolable reasons for the presence of political questions, underlying this Court's refusal to review the political departments' determination of when or whether a war has ended. Dominant is the need for finality in the political determination, for emergency's nature demands "[a] prompt and unhesitating obedience," Martin v. Mott, 12 Wheat. 19, 30 (calling up of militia). Moreover,

1962, Baker v. Carr, 369 U.S. 213

the cessation of hostilities does not necessarily end the war power. It was stated in Hamilton v. Kentucky Distilleries & W. Co., 251 U.S. 146, 161, that the war power includes the power "to remedy the evils which have arisen from its rise and progress," and continues during that emergency. Stewart v. Kahn, 11 Wall. 493, 507.

1962, Baker v. Carr, 369 U.S. 213

Fleming v. Mohawk Wrecking Co., 331 U.S. 111, 116. But deference rests on reason, not habit. 38 The question in a particular case may not seriously implicate considerations of finality—e.g., a public program of importance [369 U.S. 214] (rent control), yet not central to the emergency effort. 39 Further, clearly definable criteria for decision may be available. In such case, the political question barrier falls away:

1962, Baker v. Carr, 369 U.S. 214

[A] Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared…. [It can] inquire whether the exigency still existed upon which the continued operation of the law depended.

1962, Baker v. Carr, 369 U.S. 214

Chastleton Corp. v. Sinclair, 264 U.S. 543, 547-548. 40 Compare Woods v. Miller Co., 333 U.S. 138. On the other hand, even in private litigation which directly implicates no feature of separation of powers, lack of judicially discoverable standards and the drive for evenhanded application may impel reference to the political departments' determination of dates of hostilities' beginning and ending. The Protector, 12 Wall. 700.

1962, Baker v. Carr, 369 U.S. 214

Validity of enactments: in Coleman v. Miller, supra, this Court held that the questions of how long a proposed amendment to the Federal Constitution remained open to ratification, and what effect a prior rejection had on a subsequent ratification, were committed to congressional resolution and involved criteria of decision that necessarily escaped the judicial grasp. 41 Similar considerations apply to the enacting process: "[t]he respect due to coequal and independent departments," and the need for finality and certainty about the status of a statute contribute to judicial reluctance to inquire whether, as passed, it complied with all requisite formalities. Field v. Clark, 143 U.S. 649, 672, 676-677; see Leser v. Garnett, 258 U.S. 130, 137. But it is not true that courts will never delve [369 U.S. 215] into a legislature's records upon such a quest: if the enrolled statute lacks an effective date, a court will not hesitate to seek it in the legislative journals in order to preserve the enactment. Gardner v. The Collector, 6 Wall. 499. The political question doctrine, a tool for maintenance of governmental order, will not be so applied as to promote only disorder.

1962, Baker v. Carr, 369 U.S. 215

The status of Indian tribes: this Court's deference to the political departments in determining whether Indians are recognized as a tribe, while it reflects familiar attributes of political questions, 42 United States v. Holliday, 3 Wall. 407, 419, also has a unique element in that

1962, Baker v. Carr, 369 U.S. 215

the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist no where else…. [The Indians are] domestic dependent nations…in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.

1962, Baker v. Carr, 369 U.S. 215

The Cherokee Nation v. Georgia, 5 Pet. 1, 16, 17. 43 Yet here, too, there is no blanket rule. While [369 U.S. 216]

1962, Baker v. Carr, 369 U.S. 216

"It is for [Congress] . . and not for the courts, to determine when the true interests of the Indian require his release from [the] condition of tutelage,"…it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe….

1962, Baker v. Carr, 369 U.S. 216

United States v. Sandoval, 231 U.S. 28, 46. Able to discern what is "distinctly Indian," ibid., the courts will strike down [369 U.S. 217] any heedless extension of that label. They will not stand impotent before an obvious instance of a manifestly unauthorized exercise of power.

1962, Baker v. Carr, 369 U.S. 217

It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

1962, Baker v. Carr, 369 U.S. 217

Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for nonjusticiability on the ground of a political question's presence. The doctrine of which we treat is one of "political questions," not one of "political cases." The courts cannot reject as "no law suit" a bona fide controversy as to whether some action denominated "political" exceeds constitutional authority. The cases we have reviewed show the necessity for discriminating inquiry into the precise facts and posture of the particular case, and the impossibility of resolution by any semantic cataloguing.

1962, Baker v. Carr, 369 U.S. 217

But it is argued that this case shares the characteristics of decisions that constitute a category not yet considered, cases concerning the Constitution's guaranty, in Art. IV, [369 U.S. 218] § 4, of a republican form of government. A conclusion as to whether the case at bar does present a political question cannot be confidently reached until we have considered those cases with special care. We shall discover that Guaranty Clause claims involve those elements which define a "political question," and, for that reason and no other, they are nonjusticiable. In particular, we shall discover that the nonjusticiability of such claims has nothing to do with their touching upon matters of state governmental organization.

1962, Baker v. Carr, 369 U.S. 218

Republican form of government: Luther v. Borden, 7 How. 1, though in form simply an action for damages for trespass was, as Daniel Webster said in opening the argument for the defense, "an unusual case." 44 The defendants, admitting an otherwise tortious breaking and entering, sought to justify their action on the ground that they were agents of the established lawful government of Rhode Island, which State was then under martial law to defend itself from active insurrection; that the plaintiff was engaged in that insurrection, and that they entered under orders to arrest the plaintiff. The case arose "out of the unfortunate political differences which agitated the people of Rhode Island in 1841 and 1842," 7 How. at 34, and which had resulted in a situation wherein two groups laid competing claims to recognition as the lawful government. 45 The plaintiff's right to [369 U.S. 219] recover depended upon which of the two groups was entitled to such recognition; but the lower court's refusal to receive evidence or hear argument on that issue, its charge to the jury that the earlier established or "charter" government was lawful, and the verdict for the defendants were affirmed upon appeal to this Court.

1962, Baker v. Carr, 369 U.S. 219

Chief Justice Taney's opinion for the Court reasoned as follows: (1) If a court were to hold the defendants' acts unjustified because the charter government had no legal existence during the period in question, it would follow that all of that government's actions—laws enacted, taxes collected, salaries paid, accounts settled, sentences passed—were of no effect, and that "the officers who carried their decisions into operation [were] answerable as trespassers, if not in some cases as criminals." 46 There was, of course, no room for application of any doctrine of de facto status to uphold prior acts of an officer not authorized de jure, for such would have defeated the plaintiff's very action. A decision for the plaintiff would inevitably have produced some significant measure of chaos, a consequence to be avoided if it could be done without abnegation of the judicial duty to uphold the Constitution.

1962, Baker v. Carr, 369 U.S. 219

(2) No state court had recognized as a judicial responsibility settlement of the issue of the locus of state governmental authority. Indeed, the courts of Rhode Island had in several cases held that "it rested with the political power to decide whether the charter government had been displaced or not," and that that department had acknowledged no change. [369 U.S. 220]

1962, Baker v. Carr, 369 U.S. 220

(3) Since "[t]he question relates, altogether, to the constitution and laws of [the]…State," the courts of the United States had to follow the state courts' decisions unless there was a federal constitutional ground for overturning them. 47

1962, Baker v. Carr, 369 U.S. 220

(4) No provision of the Constitution could be or had been invoked for this purpose except Art. IV, § 4, the Guaranty Clause. Having already noted the absence of standards whereby the choice between governments could be made by a court acting independently, Chief Justice Taney now found further textual and practical reasons for concluding that, if any department of the United States was empowered by the Guaranty Clause to resolve the issue, it was not the judiciary:

1962, Baker v. Carr, 369 U.S. 220

Under this article of the Constitution, it rests with Congress to decide what government is the established one in a State. For, as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue, and…Congress was not called upon to decide the controversy. Yet the right to decide is placed there, and not in the courts. [369 U.S. 221]

1962, Baker v. Carr, 369 U.S. 221

So, too, as relates to the clause in the above-mentioned article of the Constitution, providing for cases of domestic violence. It rested with Congress, too, to determine upon the means proper to be adopted to fulfill this guarantee…. [B]y the act of February 28, 1795, [Congress] provided, that,

1962, Baker v. Carr, 369 U.S. 221

in case of an insurrection in any State against the government thereof, it shall be lawful for the President of the United States, on application of the legislature of such State or of the executive (when the legislature cannot be convened), to call forth such number of the militia of any other State or States, as may be applied for, as he may judge sufficient to suppress such insurrection.

1962, Baker v. Carr, 369 U.S. 221

By this act, the power of deciding whether the exigency had arisen upon which the government of the United States is bound to interfere is given to the President….

1962, Baker v. Carr, 369 U.S. 221

After the President has acted and called out the militia, is a Circuit Court of the United States authorized to inquire whether his decision was right?…If the judicial power extends so far, the guarantee contained in the Constitution of the United States is a guarantee of anarchy, and not of order.

1962, Baker v. Carr, 369 U.S. 221

It is true that, in this case, the militia were not called out by the President. But, upon the application of the governor under the charter government, the President recognized him as the executive power of the State and took measures to call out the militia to support his authority if it should be found necessary for the general government to interfere…. [C]ertainly no court of the United States, with a knowledge of this decision, would have been justified in recognizing the opposing party as the lawful government…. [369 U.S. 222] In the case of foreign nations, the government acknowledged by the President is always recognized in the courts of justice….

1962, Baker v. Carr, 369 U.S. 222

7 How. at 42-44.

1962, Baker v. Carr, 369 U.S. 222

Clearly, several factors were thought by the Court in Luther to make the question there "political": the commitment to the other branches of the decision as to which is the lawful state government; the unambiguous action by the President in recognizing the charter government as the lawful authority; the need for finality in the executive's decision, and the lack of criteria by which a court could determine which form of government was republican. 48 [369 U.S. 223]

1962, Baker v. Carr, 369 U.S. 223

But the only significance that Luther could have for our immediate purposes is in its holding that the Guaranty Clause is not a repository of judicially manageable standards which a court could utilize independently in order to identify a State's lawful government. The Court has since refused to resort to the Guaranty Clause—which alone had been invoked for the purpose as the source of a constitutional standard for invalidating state action. See Taylor & Marshall v. Beckham (No. 1), 178 U.S. 548 (claim that Kentucky's resolution of contested gubernatorial election deprived voters of republican government held nonjusticiable); Pacific States Tel. Co. v. Oregon, 223 U.S. 118 (claim that initiative and referendum negated republican government held nonjusticiable); Kiernan v. Portland, 223 U.S. 151 (claim that municipal charter amendment per municipal initiative and referendum negated republican government held nonjusticiable); [369 U.S. 224] Marshall v. Dye, 231 U.S. 250 (claim that Indiana's constitutional amendment procedure negated republican government held nonjusticiable); O'Neill v. Leamer, 239 U.S. 244 (claim that delegation to court of power to form drainage districts negated republican government held "futile"); Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565 (claim that invalidation of state reapportionment statute per referendum negates republican government held nonjusticiable); 49 Mountain Timber Co. v. Washington, 243 U.S. 219 (claim that workmen's compensation violates republican government held nonjusticiable); Ohio ex rel. Bryant v. Akron Metropolitan Park District, 281 U.S. 74 (claim that rule requiring invalidation of statute by all but one justice of state court negated republican government held nonjusticiable); Highland Farms Dairy v. Agnew, 300 U.S. 608 (claim that delegation to agency of power to control milk prices violated republican government rejected).

1962, Baker v. Carr, 369 U.S. 224

Just as the Court has consistently held that a challenge to state action based on the Guaranty Clause presents no justiciable question, so has it held, and for the same reasons, that challenges to congressional action on the ground of inconsistency with that clause present no justiciable question. In Georgia v. Stanton, 6 Wall. 50, the State sought by an original bill to enjoin execution of the Reconstruction Acts, claiming that it already possessed "A republican State, in every political, legal, constitutional, and juridical sense," and that enforcement of the new Acts,

1962, Baker v. Carr, 369 U.S. 224

[i]nstead of keeping the guaranty against a forcible overthrow of its government by foreign invaders or domestic insurgents,…is destroying that very government by force. 50

1962, Baker v. Carr, 369 U.S. 224

Congress had clearly refused to [369 U.S. 225] recognize the republican character of the government of the suing State. 51 It seemed to the Court that the only constitutional claim that could be presented was under the Guaranty Clause, and Congress having determined that the effects of the recent hostilities required extraordinary measures to restore governments of a republican form, this Court refused to interfere with Congress' action at the behest of a claimant relying on that very guaranty. 52

1962, Baker v. Carr, 369 U.S. 225

In only a few other cases has the Court considered Art. IV, § 4, in relation to congressional action. It has refused to pass on a claim relying on the Guaranty Clause to establish that Congress lacked power to allow the States to employ the referendum in passing on legislation redistricting for congressional seats. Ohio ex rel. Davis v. Hildebrant, supra. And it has pointed out that Congress is not required to establish republican government in the territories before they become States, and before they have attained a sufficient population to warrant a [369 U.S. 226] popularly elected legislature. Downes v. Bidwell, 182 U.S. 244, 278-279 (dictum). 53

1962, Baker v. Carr, 369 U.S. 226

We come, finally, to the ultimate inquiry whether our precedents as to what constitutes a nonjusticiable "political question" bring the case before us under the umbrella of that doctrine. A natural beginning is to note whether any of the common characteristics which we have been able to identify and label descriptively are present. We find none: the question here is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government coequal with this Court. Nor do we risk embarrassment of our government abroad, or grave disturbance at home 54 if we take issue with Tennessee as to the constitutionality of her action here challenged. Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if, on the particular facts, they must, that a discrimination reflects no policy, but simply arbitrary and capricious action.

1962, Baker v. Carr, 369 U.S. 226

This case does, in one sense, involve the allocation of political power within a State, and the appellants [369 U.S. 227] might conceivably have added a claim under the Guaranty Clause. Of course, as we have seen, any reliance on that clause would be futile. But because any reliance on the Guaranty Clause could not have succeeded, it does not follow that appellants may not be heard on the equal protection claim which, in fact, they tender. True, it must be clear that the Fourteenth Amendment claim is not so enmeshed with those political question elements which render Guaranty Clause claims nonjusticiable as actually to present a political question itself. But we have found that not to be the case here.

1962, Baker v. Carr, 369 U.S. 227

In this connection, special attention is due Pacific States Tel. Co. v. Oregon, 223 U.S. 118. In that case, a corporation tax statute enacted by the initiative was attacked ostensibly on three grounds: (1) due process; (2) equal protection, and (3) the Guaranty Clause. But it was clear that the first two grounds were invoked solely in aid of the contention that the tax was invalid by reason of its passage:

1962, Baker v. Carr, 369 U.S. 227

The defendant company does not contend here that it could not have been required to pay a license tax. It does not assert that it was denied an opportunity to be heard as to the amount for which it was taxed, or that there was anything inhering in the tax or involved intrinsically in the law which violated any of its constitutional rights. If such questions had been raised, they would have been justiciable, and therefore would have required the calling into operation of judicial power. Instead, however, of doing any of these things, the attack on the statute here made is of a wholly different character. Its essentially political nature is at once made manifest by understanding that the assault which the contention here advanced makes it [sic] not on the tax as a tax, but on the State as a State. It is addressed to the [369 U.S. 228] framework and political character of the government by which the statute levying the tax was passed. It is the government, the political entity, which (reducing the case to its essence) is called to the bar of this court not for the purpose of testing judicially some exercise of power assailed, on the ground that its exertion has injuriously affected the rights of an individual because of repugnancy to some constitutional limitation, but to demand of the State that it establish its right to exist as a State, republican in form.

1962, Baker v. Carr, 369 U.S. 228

223 U.S. at 150-151.

1962, Baker v. Carr, 369 U.S. 228

The due process and equal protection claims were held nonjusticiable in Pacific States not because they happened to be joined with a Guaranty Clause claim, or because they sought to place before the Court a subject matter which might conceivably have been dealt with through the Guaranty Clause, but because the Court believed that they were invoked merely in verbal aid of the resolution of issues which, in its view, entailed political questions. Pacific States may be compared with cases such as Mountain Timber Co. v. Washington, 243 U.S. 219, wherein the Court refused to consider whether a workmen's compensation act violated the Guaranty Clause but considered at length, and rejected, due process and equal protection arguments advanced against it, and O'Neill v. Leamer, 239 U.S. 244, wherein the Court refused to consider whether Nebraska's delegation of power to form drainage districts violated the Guaranty Clause, but went on to consider and reject the contention that the action against which an injunction was sought was not a taking for a public purpose.

1962, Baker v. Carr, 369 U.S. 228

We conclude, then, that the nonjusticiability of claims resting on the Guaranty Clause, which arises from their embodiment of questions that were thought "political," can have no bearing upon the justiciability of the equal protection claim presented in this case. Finally, we [369 U.S. 229] emphasize that it is the involvement in Guaranty Clause claims of the elements thought to define "political questions," and no other feature, which could render them nonjusticiable. Specifically, we have said that such claims are not held nonjusticiable because they touch matters of state governmental organization. Brief examination of a few cases demonstrates this.

1962, Baker v. Carr, 369 U.S. 229

When challenges to state action respecting matters of "the administration of the affairs of the State and the officers through whom they are conducted" 55 have rested on claims of constitutional deprivation which are amenable to judicial correction, this Court has acted upon its view of the merits of the claim. For example, in Boyd v. Nebraska ex rel. Thayer, 143 U.S. 135, we reversed the Nebraska Supreme Court's decision that Nebraska's Governor was not a citizen of the United States or of the State, and therefore could not continue in office. In Kennard v. Louisiana ex rel. Morgan, 92 U.S. 480, and Foster v. Kansas ex rel. Johnston, 112 U.S. 201, we considered whether persons had been removed from public office by procedures consistent with the Fourteenth Amendment's due process guaranty, and held on the merits that they had. And only last Term, in Gomillion v. Lightfoot, 364 U.S. 339, we applied the Fifteenth Amendment to strike down a redrafting of municipal boundaries which effected a discriminatory impairment of voting rights, in the face of what a majority of the Court of Appeals thought to be a sweeping commitment to state legislatures of the power to draw and redraw such boundaries. 56

1962, Baker v. Carr, 369 U.S. 229

Gomillion was brought by a Negro who had been a resident of the City of Tuskegee, Alabama, until the municipal boundaries were so recast by the State Legislature [369 U.S. 230] as to exclude practically all Negroes. The plaintiff claimed deprivation of the right to vote in municipal elections. The District Court's dismissal for want of jurisdiction and failure to state a claim upon which relief could be granted was affirmed by the Court of Appeals. This Court unanimously reversed. This Court's answer to the argument that States enjoyed unrestricted control over municipal boundaries was:

1962, Baker v. Carr, 369 U.S. 230

Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution…. The opposite conclusion, urged upon us by respondents, would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of the realignment of political subdivisions. "It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence."

1962, Baker v. Carr, 369 U.S. 230

364 U.S. at 344-345.

1962, Baker v. Carr, 369 U.S. 230

To a second argument, that Colegrove v. Green, supra, was a barrier to hearing the merits of the case, the Court responded that Gomillion was lifted "out of the so-called `political' arena and into the conventional sphere of constitutional litigation" because here was discriminatory treatment of a racial minority violating the Fifteenth Amendment.

1962, Baker v. Carr, 369 U.S. 230

A statute which is alleged to have worked unconstitutional deprivations of petitioners' rights is not immune to attack simply because the mechanism employed by the legislature is a redefinition of municipal boundaries…. While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of [369 U.S. 231] their theretofore enjoyed voting rights. That was not Colegrove v. Green.

1962, Baker v. Carr, 369 U.S. 231

When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.

1962, Baker v. Carr, 369 U.S. 231

364 U.S. at 347. 57

1962, Baker v. Carr, 369 U.S. 231

We have not overlooked such cases as In re Sawyer, 124 U.S. 200, and Walton v. House of Representatives, 265 U.S. 487, which held that federal equity power could not be exercised to enjoin a state proceeding to remove a public officer. But these decisions explicitly reflect only a traditional limit upon equity jurisdiction, and not upon federal courts' power to inquire into matters of state governmental organization. This is clear not only from the opinions in those cases, but also from White v. Berry, 171 U.S. 366, which, relying on Sawyer, withheld federal equity from staying removal of a federal officer. Wilson v. North Carolina, 169 U.S. 586, simply dismissed an appeal from an unsuccessful suit to upset a State's removal procedure, on the ground that the constitutional claim presented—that a jury trial was necessary if the removal procedure was to comport with due process requirements—was frivolous. Finally, in Taylor and Marshall v. Beckham (No. 1), 178 U.S. 548, where losing candidates attacked the constitutionality of Kentucky's resolution of a contested gubernatorial election, the Court refused to consider the merits of a claim posited upon [369 U.S. 232] the Guaranty Clause, holding it presented a political question, but also held on the merits that the ousted candidates had suffered no deprivation of property without due process of law. 58

1962, Baker v. Carr, 369 U.S. 232

Since, as has been established, the equal protection claim tendered in this case does not require decision of any political question, and since the presence of a matter affecting state government does not render the case nonjusticiable, it seems appropriate to examine again the reasoning by which the District Court reached its conclusion that the case was nonjusticiable.

1962, Baker v. Carr, 369 U.S. 232

We have already noted that the District Court's holding that the subject matter of this complaint was nonjusticiable relied upon Colegrove v. Green, supra, and later cases. Some of those concerned the choice of members of a state legislature, as in this case; others, like Colegrove itself and earlier precedents, Smiley v. Holm, 285 U.S. 355, Koenig v. Flynn, 285 U.S. 375, and Carroll v. Becker, 285 U.S. 380, concerned the choice of Representatives in the Federal Congress. Smiley, Koenig and Carroll settled the issue in favor of justiciability of questions of congressional redistricting. The Court followed these precedents in Colegrove, although over the dissent of three of the seven Justices who participated in that decision. On the issue of justiciability, all four Justices comprising a majority relied upon Smiley v. Holm, but, in two opinions, one for three Justices, 328 U.S. at 566, 568, and a separate one by Mr. Justice Rutledge, 328 U.S. at 564. The argument that congressional redistricting problems presented a "political question" the resolution of which was confided to Congress might have been rested upon Art. I, § 4, Art. I, § 5, Art. I, § 2, and Amendment [369 U.S. 233] XIV, § 2. Mr. Justice Rutledge said:

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But for the ruling in Smiley v. Holm, 285 U.S. 355, I should have supposed that the provisions of the Constitution, Art. I,§ 4, that "The Times, Places and Manner of holding Elections for…Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations…"; Art. I, § 2 [but see Amendment XIV, § 2], vesting in Congress the duty of apportionment of representatives among the several states "according to their respective Numbers," and Art. I, § 5, making each House the sole judge of the qualifications of its own members, would remove the issues in this case from justiciable cognizance. But, in my judgment, the Smiley case rules squarely to the contrary, save only in the matter of degree…. Assuming that that decision is to stand, I think…that its effect is to rule that this Court has power to afford relief in a case of this type as against the objection that the issues are not justiciable.

1962, Baker v. Carr, 369 U.S. 233

328 U.S. at 564-565. Accordingly, Mr. Justice Rutledge joined in the conclusion that the case as justiciable, although he held that the dismissal of the complaint should be affirmed. His view was that

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The shortness of the time remaining [before forthcoming elections] makes it doubtful whether action could, or would, be taken in time to secure for petitioners the effective relief they seek…. I think, therefore, the case is one in which the Court may properly, and should, decline to exercise its jurisdiction. Accordingly, the judgment should be affirmed, and I join in that disposition of the cause.

1962, Baker v. Carr, 369 U.S. 233

328 U.S. at 565-566. 59 [369 U.S. 234]

1962, Baker v. Carr, 369 U.S. 234

Article I, § § 2, 4, and 5, and Amendment XIV, § 2, relate only to congressional elections, and obviously do not govern apportionment of state legislatures. However, our decisions in favor of justiciability even in light of those provisions plainly afford no support for the District Court's conclusion that the subject matter of this controversy presents a political question. Indeed, the refusal to award relief in Colegrove resulted only from the controlling view of a want of equity. Nor is anything contrary to be found in those per curiams that came after Colegrove. This Court dismissed the appeals in Cook v. Fortson and Turman v. Duckworth, 329 U.S. 675, as moot. MacDougall v. Green, 335 U.S. 281, held only that, in that case, equity would not act to void the State's requirement that there be at least a minimum of support for nominees [369 U.S. 235] for statewide office, over at least a minimal area of the State. Problems of timing were critical in Remmey v. Smith, 342 U.S. 916, dismissing for want bf a substantial federal question a three-judge court's dismissal of the suit as prematurely brought, 102 F.Supp. 708, and in Hartsfield v. Sloan, 357 U.S. 916, denying mandamus sought to compel the convening of a three-judge court—movants urged the Court to advance consideration of their case,

1962, Baker v. Carr, 369 U.S. 235

[i]nasmuch as the mere lapse of time before this case can be reached in the normal course of…business may defeat the cause, and inasmuch as the time problem is due to the inherent nature of the case….

1962, Baker v. Carr, 369 U.S. 235

South v. Peters, 339 U.S. 276, like Colegrove, appears to be a refusal to exercise equity's powers; see the statement of the holding quoted, supra, p. 203. And Cox v. Peters, 342 U.S. 936, dismissed for want of a substantial federal question the appeal from the state court's holding that their primary elections implicated no "state action." See 208 Ga. 498, 67 S.E.2d 579. But compare Terry v. Adams, 345 U.S. 461.

1962, Baker v. Carr, 369 U.S. 235

Tedesco v. Board of Supervisors, 339 U.S. 940, indicates solely that no substantial federal question was raised by a state court's refusal to upset the districting of city council seats, especially as it was urged that there was a rational justification for the challenged districting. See 43 So.2d 514. Similarly, in Anderson v. Jordan, 343 U.S. 912, it was certain only that the state court had refused to issue a discretionary writ, original mandamus in the Supreme Court. That had been denied without opinion, and, of course, it was urged here that an adequate state ground barred this Court's review. And in Kidd v. McCanless, 200 Tenn. 273, 292 S.W.2d 40, the Supreme Court of Tennessee held that it could not invalidate the very statute at issue in the case at bar, but its holding rested on its state law of remedies, i.e., the state view of [369 U.S. 236] de facto officers, 60 and not on any view that the norm for legislative apportionment in Tennessee is not numbers of qualified voters resident in the several counties. Of course, this Court was there precluded by the adequate state ground, and, in dismissing the appeal, 352 U.S. 920, we cited Anderson, supra, as well as Colegrove. Nor does the Tennessee court's decision in that case bear upon this, for, just as in Smith v. Holm, 220 Minn. 486, 19 N.W.2d 914, and Magraw v. Donovan, 163 F.Supp. 184, 177 F.Supp. 803, a state court's inability to grant relief does not bar a federal court's assuming jurisdiction to inquire into alleged deprivation of federal constitutional rights. Problems of relief also controlled in Radford v. Gary, 352 U.S. 991, affirming the District Court's refusal to mandamus the Governor to call a session of the legislature, to mandamus the legislature then to apportion, and if they did not comply, to mandamus the State Supreme Court to do so. And Matthews v. Handley, 361 U.S. 127, affirmed a refusal to strike down the State's gross income tax statute—urged on the ground that the legislature was malapportioned—that had rested on the adequacy of available state legal remedies for suits involving that tax, including challenges to its constitutionality. Lastly, Colegrove v. Barrett, 330 U.S. 804, in which Mr. Justice Rutledge concurred in this Court's refusal to note the appeal from a dismissal for want of equity, is sufficiently explained by his statement in Cook v. Fortson, supra:

1962, Baker v. Carr, 369 U.S. 236

The discretionary exercise or nonexercise of equitable or declaratory judgment jurisdiction…in one case is not precedent in another case [369 U.S. 237] where the facts differ.

1962, Baker v. Carr, 369 U.S. 237

329 U.S. at 678, n. 8. (Citations omitted.)

1962, Baker v. Carr, 369 U.S. 237

We conclude that the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment.

1962, Baker v. Carr, 369 U.S. 237

The judgment of the District Court is reversed, and the cause is remanded for further proceedings consistent with this opinion.

1962, Baker v. Carr, 369 U.S. 237

Reversed and remanded.

1962, Baker v. Carr, 369 U.S. 237

MR. JUSTICE WHITAKER did not participate in the decision of this case.

APPENDIX TO OPINION OF THE COURT

1962, Baker v. Carr, 369 U.S. 237

The Tennessee Code Annotated provides for representation in the General Assembly as follows:

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3-101. Composition—Counties electing one representative each.—The general assembly of the state of Tennessee shall be composed of thirty-three (33) senators and ninety-nine (99) representatives, to be apportioned among the qualified voters of the state as follows: Until the next enumeration and apportionment of voters each of the following counties shall elect one (1) representative, to wit: Bedford, Blount, Cannon, Carroll, Chester, Cocke Claiborne, Coffee, Crockett, DeKalb, Dickson, Dyer, Fayette, Franklin, Giles, Greene, Hardeman, Hardin, Henry, Hickman, Hawkins, Haywood, Jackson, Lake, Lauderdale, Lawrence, Lincoln, Marion, Marshall, Maury, Monroe, Montgomery, Moore, McMinn, McNairy, Obion, Overton, Putnam, Roane, Robertson, Rutherford, Sevier, Smith, Stewart, Sullivan, Sumner, Tipton Warren, Washington, White, Weakley, Williamson [369 U.S. 238] and Wilson. [Acts 1881 (E.S.), ch. 5, § 1; 1881 (E.S.), ch. 6, § 1; 1901, ch. 122, § 2; 1907, ch. 178, §§ 1, 2; 1915, ch. 145; Shan., § 123; Acts 1919, ch. 147, § 1, 2; 1925 Private, ch. 472, § 1; Code 1932, § 140; Acts 1935, ch. 150, § 1; 1941, ch. 58, § 1; 1945, ch. 68, § 1; C. Supp. 1950, § 140.]

1962, Baker v. Carr, 369 U.S. 238

3-102. Counties electing two representatives each.—The following counties shall elect two (2) representatives each, to-wit: Gibson and Madison. [Acts 1901, ch. 122, § 3; Shan., § 124; mod.Code 1932, § 141.]

1962, Baker v. Carr, 369 U.S. 238

3-103. Counties electing three representatives each.—The following counties shall elect three (3) representatives each, to-wit: Knox and Hamilton. [Acts 1901, ch. 122, § 4; Shan., § 125; Code 1932, § 142.]

1962, Baker v. Carr, 369 U.S. 238

3-104. Davidson County.—Davidson county shall elect six (6) representatives. [Acts 1901, ch. 122, § 5; Shan., § 126; Code 1932, § 143.]

1962, Baker v. Carr, 369 U.S. 238

3-105. Shelby county.—Shelby county shall elect eight (8) representatives. Said county shall consist of eight (8) representative districts, numbered one (1) through eight (8), each district coextensive with the county, with one (1) representative to be elected from each district. [Acts 1901, ch. 122, § 6; Shan., § 126a1; Code 1932, § 144; Acts 1957, ch. 220, § 1; 1959, ch. 213, § 1.]

1962, Baker v. Carr, 369 U.S. 238

3-106. Joint representatives.—The following counties jointly, shall elect one representative, as follows, to-wit:

1962, Baker v. Carr, 369 U.S. 238

First district—Johnson and Carter.

1962, Baker v. Carr, 369 U.S. 238

Second district—Sullivan and Hawkins.

1962, Baker v. Carr, 369 U.S. 238

Third district—Washington, Greene and Unicoi.

1962, Baker v. Carr, 369 U.S. 238

Fourth district—Jefferson and Hamblen.

1962, Baker v. Carr, 369 U.S. 238

Fifth district—Hancock and Grainer.

1962, Baker v. Carr, 369 U.S. 238

Sixth district—Scott, Campbell, and Union.

1962, Baker v. Carr, 369 U.S. 238

Seventh district—Anderson and Morgan.

1962, Baker v. Carr, 369 U.S. 238

Eighth district—Knox and Loudon. [369 U.S. 239]

1962, Baker v. Carr, 369 U.S. 239

Ninth district—Polk and Bradley.

1962, Baker v. Carr, 369 U.S. 239

Tenth district—Meigs and Rhea.

1962, Baker v. Carr, 369 U.S. 239

Eleventh district Cumberland, Bledsoe, Saquatchie, Van Buren and Grundy.

1962, Baker v. Carr, 369 U.S. 239

Twelfth district—Fentress, Pickett, Overton, Clay and Putnam.

1962, Baker v. Carr, 369 U.S. 239

Fourteenth district—Sumner, Trousdale and Macon.

1962, Baker v. Carr, 369 U.S. 239

Fifteenth district—Davidson and Wilson.

1962, Baker v. Carr, 369 U.S. 239

Seventeenth district—Giles, Lewis, Maury and Wayne.

1962, Baker v. Carr, 369 U.S. 239

Eighteenth district—Williamson, Cheatham and Robertson.

1962, Baker v. Carr, 369 U.S. 239

Nineteenth district—Montgomery and Houston.

1962, Baker v. Carr, 369 U.S. 239

Twentieth district—Humphreys and Perry.

1962, Baker v. Carr, 369 U.S. 239

Twenty-first district—Benton and Decatur.

1962, Baker v. Carr, 369 U.S. 239

Twenty-second district—Henry, Weakley and Carroll.

1962, Baker v. Carr, 369 U.S. 239

Twenty-third district—Madison and Henderson.

1962, Baker v. Carr, 369 U.S. 239

Twenty-sixth district—Tipton and Lauderdale. [Acts 1901, ch. 122, § 7; 1907, ch. 178, §§ 1, 2; 1915, ch. 145, §§ 1, 2; Shan., § 127; Acts 1919, ch. 147, § 1; 1925 Private, ch. 472, § 2; Code 1932, § 145; Acts 1933, ch. 167, 1; 1935, ch. 150, § 2; 1941, ch. 58, § 2; 1945, ch. 68, § 2; C. Supp. 1950, § 145; Acts 1957, ch. 220, § 2.]

1962, Baker v. Carr, 369 U.S. 239

3-107. State senatorial districts.—Until the next enumeration and apportionment of voters, the following counties shall comprise the senatorial districts, to-wit:

1962, Baker v. Carr, 369 U.S. 239

First district—Johnson, Carter, Unicoi, Greene, and Washington.

1962, Baker v. Carr, 369 U.S. 239

Second district—Sullivan and Hawkins.

1962, Baker v. Carr, 369 U.S. 239

Third district—Hancock, Morgan, Grainer, Claiborne, Union, Campbell, and Scott.

1962, Baker v. Carr, 369 U.S. 239

Fourth district—Cocke, Hamblen, Jefferson, Sevier, and Blount.

1962, Baker v. Carr, 369 U.S. 239

Fifth district—Knox.

1962, Baker v. Carr, 369 U.S. 239

Sixth district—Knox, Loudon, Anderson, and Roane [369 U.S. 240]

1962, Baker v. Carr, 369 U.S. 240

Seventh district—McMinn, Bradley, Monroe, and Polk.

1962, Baker v. Carr, 369 U.S. 240

Eighth district—Hamilton.

1962, Baker v. Carr, 369 U.S. 240

Ninth district—Rhea, Meigs, Bledsoe, Sequatchie, Van Buren, White, and Cumberland.

1962, Baker v. Carr, 369 U.S. 240

Tenth district—Fentress, Pickett, Clay, Overton, Putnam, and Jackson.

1962, Baker v. Carr, 369 U.S. 240

Eleventh district—Marion, Franklin, Grundy and Warren.

1962, Baker v. Carr, 369 U.S. 240

Twelfth district—Rutherford, Cannon, and DeKalb.

1962, Baker v. Carr, 369 U.S. 240

Thirteenth district—Wilson and Smith.

1962, Baker v. Carr, 369 U.S. 240

Fourteenth district—Sumner, Trousdale and Macon.

1962, Baker v. Carr, 369 U.S. 240

Fifteenth district—Montgomery and Robertson.

1962, Baker v. Carr, 369 U.S. 240

Sixteenth district—Davidson.

1962, Baker v. Carr, 369 U.S. 240

Seventeenth district—Davidson.

1962, Baker v. Carr, 369 U.S. 240

Eighteenth district—Bedford, Coffee and Moore.

1962, Baker v. Carr, 369 U.S. 240

Nineteenth district—Lincoln and Marshall.

1962, Baker v. Carr, 369 U.S. 240

Twentieth district—Maury, Perry and Lewis.

1962, Baker v. Carr, 369 U.S. 240

Twenty-first district—Hickman, Williamson and Cheatham.

1962, Baker v. Carr, 369 U.S. 240

Twenty-second district—Giles, Lawrence and Wayne.

1962, Baker v. Carr, 369 U.S. 240

Twenty-third district—Dickson, Humphreys, Houston and Stewart.

1962, Baker v. Carr, 369 U.S. 240

Twenty-fourth district—Henry and Carroll.

1962, Baker v. Carr, 369 U.S. 240

Twenty-fifth district—Madison, Henderson and Chester.

1962, Baker v. Carr, 369 U.S. 240

Twenty-sixth district—Hardeman, McNairy, Hardin, Decatur and Benton.

1962, Baker v. Carr, 369 U.S. 240

Twenty-seventh district—Gibson.

1962, Baker v. Carr, 369 U.S. 240

Twenty-eighth district—Lake, Obion and Weakley.

1962, Baker v. Carr, 369 U.S. 240

Twenty-ninth district—Dyer, Lauderdale and Crockett.

1962, Baker v. Carr, 369 U.S. 240

Thirtieth district—Tipton and Shelby.

1962, Baker v. Carr, 369 U.S. 240

Thirty-first district—Haywood and Fayette.

1962, Baker v. Carr, 369 U.S. 240

Thirty-second district—Shelby [369 U.S. 241]

1962, Baker v. Carr, 369 U.S. 241

Thirty-third district—Shelby. [Acts 1901, ch. 122, § 1; 1907, ch. 3, § 1; Shan., § 128; Code 1932, § 146; Acts 1945, ch. 11, § 1; C. Supp. 1950, § 146.]

1962, Baker v. Carr, 369 U.S. 241

Today's apportionment statute is as enacted in 1901, with minor changes. For example:

1962, Baker v. Carr, 369 U.S. 241

(1) In 1957, Shelby County was raised from 7 1/2 to 8 representatives. Acts of 1957, C. 220. See also Acts of 1959, c. 213. The 1957 Act, § 2, abolished the Twenty-seventh Joint Representative District, which had included Shelby and Fayette Counties.

1962, Baker v. Carr, 369 U.S. 241

(2) In 1907, Marion County was given a whole House seat instead of sharing a joint seat with Franklin County. Acts of 1907, c. 178. Acts of 1915, c. 145, repealed that change, restoring the status quo ante. And that reversal was itself reversed, Acts of 1919, c. 147.

1962, Baker v. Carr, 369 U.S. 241

(3) James County was in 1901 one of five counties in the Seventh State Senate District and one of the three in the Ninth House District. It appears that James County no longer exists, but we are not advised when or how it was dissolved.

1962, Baker v. Carr, 369 U.S. 241

(4) In 1945, Anderson and Roane Counties were shifted to the Sixth State Senate District from the Seventh, and Monroe and Polk Counties were shifted to the Seventh from the Sixth. Acts of 1945, c. 11.

DOUGLAS, J., concurring

1962, Baker v. Carr, 369 U.S. 241

MR. JUSTICE DOUGLAS, concurring.

1962, Baker v. Carr, 369 U.S. 241

While I join the opinion of the Court and, like the Court, do not reach the merits, a word of explanation is necessary. 1 I put to one side the problems of "political" [369 U.S. 242] questions involving the distribution of power between this Court, the Congress, and the Chief Executive. We have here a phase of the recurring problem of the relation of the federal courts to state agencies. More particularly, the question is the extent to which a State may weight one person's vote more heavily than it does another's.

1962, Baker v. Carr, 369 U.S. 242

So far as voting rights are concerned, there are large gaps in the Constitution. Yet the right to vote is inherent in the republican form of government envisaged by Article IV, Section 4 of the Constitution. The House—and now the Senate—are chosen by the people. The time, manner, and place of elections of Senators and Representatives are left to the States (Article I, Section 4, Clause 1; Amendment XVII) subject to the regulatory power of Congress. A "republican form" of government is guaranteed each State by Article IV, Section 4, and each is likewise promised protection against invasion. 2 Ibid. [369 U.S. 243] That the States may specify the qualifications for voters is implicit in Article I, Section 2, Clause 1, which provides that the House of Representatives shall be chosen by the [369 U.S. 244] people and that

1962, Baker v. Carr, 369 U.S. 244

the Electors (voters) in each State shall have the Qualifications requisite for Electors (voters) of the most numerous Branch of the State Legislature.

1962, Baker v. Carr, 369 U.S. 244

The same provision, contained in the Seventeenth Amendment, governs the election of Senators. Within limits, those qualifications may be fixed by state law. See Lassiter v. Northampton Election Board, 360 U.S. 45, 50-51. Yet, as stated in Ex parte Yarbrough, 110 U.S. 651, 663-664, those who vote for members of Congress do not "owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State." The power of Congress to prescribe the qualifications for voters, and thus override state law, is not in issue here. It is, however, clear that, by reason of the commands of the Constitution, there are several qualifications that a State may not require.

1962, Baker v. Carr, 369 U.S. 244

Race, color, or previous condition of servitude is an impermissible standard by reason of the Fifteenth Amendment, and that alone is sufficient to explain Gomillion v. Lightfoot, 364 U.S. 339. See Taper, Gomillion versus Lightfoot (1962), pp.12-17.

1962, Baker v. Carr, 369 U.S. 244

Sex is another impermissible standard by reason of the Nineteenth Amendment.

1962, Baker v. Carr, 369 U.S. 244

There is a third barrier to a State's freedom in prescribing qualifications of voters, and that is the Equal Protection Clause of the Fourteenth Amendment, the provision invoked here. And so the question is, may a State weight the vote of one county or one district more heavily than it weights the vote in another?

1962, Baker v. Carr, 369 U.S. 244

The traditional test under the Equal Protection Clause has been whether a State has made "an invidious discrimination," as it does when it selects "a particular race or nationality for oppressive treatment." See Skinner v. Oklahoma, 316 U.S. 535, 541. Universal equality is not [369 U.S. 245] the test; there is room for weighting. As we stated in Williamson v. Lee Optical Co., 348 U.S. 483, 489, "The prohibition of the Equal Protection Clause goes no further than the invidious discrimination."

1962, Baker v. Carr, 369 U.S. 245

I agree with my Brother CLARK that, if the allegations in the complaint can be sustained, a case for relief is established. We are told that a single vote in Moore County, Tennessee, is worth 19 votes in Hamilton County, that one vote in Stewart or in Chester County is worth nearly eight times a single vote in Shelby or Knox County. The opportunity to prove that an "invidious discrimination" exists should therefore be given the appellants.

1962, Baker v. Carr, 369 U.S. 245

It is said that any decision in cases of this kind is beyond the competence of courts. Some make the same point as regards the problem of equal protection in cases involving racial segregation. Yet the legality of claims and conduct is a traditional subject for judicial determination. Adjudication is often perplexing and complicated. An example of the extreme complexity of the task can be seen in a decree apportioning water among the several States. Nebraska v. Wyoming, 325 U.S. 589, 665. The constitutional guide is often vague, as the decisions under the Due Process and Commerce Clauses show. The problem under the Equal Protection Clause is no more intricate. See Lewis, Legislative Apportionment and the Federal Courts, 71 Harv.L.Rev. 1057, 1083-1084.

1962, Baker v. Carr, 369 U.S. 245

There are, of course, some questions beyond judicial competence. Where the performance of a "duty" is left to the discretion and good judgment of an executive officer, the judiciary will not compel the exercise of his discretion one way or the other (Kentucky v. Dennison, 24 How. 66, 109), for to do so would be to take over the office. Cf. Federal Communications Comm'n. v. Broadcasting Co., 309 U.S. 134, 145. [369 U.S. 246]

1962, Baker v. Carr, 369 U.S. 246

Where the Constitution assigns a particular function wholly and indivisibly 3 to another department, the federal judiciary does not intervene. Oetjen v. Central Leather Co., 246 U.S. 297, 302. None of those cases is relevant here. [369 U.S. 247]

1962, Baker v. Carr, 369 U.S. 247

There is no doubt that the federal courts have jurisdiction of controversies concerning voting rights. The Civil Rights Act gives them authority to redress the deprivation "under color of any State law" of any "right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens…. " 28 U.S.C. § 1343(3). And 28 U.S.C. § 1343(4) gives the federal courts authority to award damages or issue an injunction to redress the violation of "any Act of Congress providing for the protection of civil rights, including the right to vote." (Italics added.) The element of state action covers a wide range. For, as stated in United States v. Classic, 313 U.S. 299, 326:

1962, Baker v. Carr, 369 U.S. 247

Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken "under color of" state law.

1962, Baker v. Carr, 369 U.S. 247

And see Monroe v. Pape, 365 U.S. 167.

1962, Baker v. Carr, 369 U.S. 247

The right to vote in both federal and state elections was protected by the judiciary long before that right received the explicit protection it is now accorded by § 1343(4). Discrimination against a voter on account of race has been penalized (Ex parte Yarbrough, 110 U.S. 651) or struck down. Nixon v. Herndon, 273 U.S. 536; Smith v. Allwright, 321 U.S. 649; Terry v. Adams, 345 U.S. 461. Fraudulent acts that dilute the votes of some [369 U.S. 248] have long been held to be within judicial cognizance. Ex parte Siebold, 100 U.S. 371. The "right to have one's vote counted" whatever his race or nationality or creed was held in United States v. Mosley, 238 U.S. 383, 386, to be "as open to protection by Congress as the right to put a ballot in a box." See also United States v. Classic, supra, 324-325; United States v. Saylor, 322 U.S. 385.

1962, Baker v. Carr, 369 U.S. 248

Chief Justice Holt stated in Ashby v. White, 2 Ld.Raym. 938, 956 (a suit in which damages were awarded against election officials for not accepting the plaintiff's vote, 3 Ld.Raym. 320) that:

1962, Baker v. Carr, 369 U.S. 248

To allow this action will make publick officers more careful to observe the constitution of cities and boroughs, and not to be so partial as they commonly are in all elections, which is indeed a great and growing mischief, and tends to the prejudice of the peace of the nation.

1962, Baker v. Carr, 369 U.S. 248

The same prophylactic effect will be produced here, as entrenched political regimes make other relief as illusory in this case as a petition to Parliament in Ashby v. White would have been. 4 [369 U.S. 249]

1962, Baker v. Carr, 369 U.S. 249

Intrusion of the Federal Government into the election machinery of the States has taken numerous forms—investigations (Hannah v. Larche, 363 U.S. 420); criminal proceedings (Ex parte Siebold, supra; Ex parte Yarbrough, supra; United States v. Mosley, supra; United States v. Classic, supra); collection of penalties (Smith v. Allwright, supra); suits for declaratory relief and for an injunction (Terry v. Adams, supra); suits by the United States under the Civil Rights Act to enjoin discriminatory practices. United States v. Raines, 362 U.S. 17.

1962, Baker v. Carr, 369 U.S. 249

As stated by Judge McLaughlin in Dyer v. Kazuhisa Abe, 138 F.Supp. 220, 236 (an apportionment case in Hawaii which was reversed and dismissed as moot, 256 F.2d 728):

1962, Baker v. Carr, 369 U.S. 249

The whole thrust of today's legal climate is to end unconstitutional discrimination. It is ludicrous to preclude judicial relief when a mainspring of representative government is impaired. Legislators have no immunity from the Constitution. The legislatures of our land should be made as responsive to the Constitution of the United States as are the citizens who elect the legislators.

1962, Baker v. Carr, 369 U.S. 249

With the exceptions of Colegrove v. Green, 328 U.S. 549; MacDougall v. Green, 335 U.S. 281; South v. Peters, 339 U.S. 276, and the decisions they spawned, the Court has never thought that protection of voting rights [369 U.S. 250] was beyond judicial cognizance. Today's treatment of those cases removes the only impediment to judicial cognizance of the claims stated in the present complaint.

1962, Baker v. Carr, 369 U.S. 250

The justiciability of the present claims being established, any relief accorded can be fashioned in the light of well known principles of equity. 5 [369 U.S. 251]

CLARK, J., concurring

1962, Baker v. Carr, 369 U.S. 251

MR. JUSTICE CLARK, concurring.

1962, Baker v. Carr, 369 U.S. 251

One emerging from the rash of opinions with their accompanying clashing of views may well find himself suffering a mental blindness. The Court holds that the appellants have alleged a cause of action. However, it refuses to award relief here—although the facts are undisputed—and fails to give the District Court any guidance whatever. One dissenting opinion, bursting with words that go through so much and conclude with so little, contemns the majority action as "a massive repudiation of the experience of our whole past." Another describes the complaint as merely asserting conclusory allegations that Tennessee's apportionment is "incorrect," "arbitrary," "obsolete," and "unconstitutional." I believe it can be shown that this case is distinguishable from earlier cases dealing with the distribution of political power by a State, that a patent violation of the Equal Protection Clause of the United States Constitution has been shown, and that an appropriate remedy may be formulated.

I

1962, Baker v. Carr, 369 U.S. 251

I take the law of the case from MacDougall v. Green, 335 U.S. 281 (1948), which involved an attack under the Equal Protection Clause upon an Illinois election statute. The Court decided that case on its merits without hindrance from the "political question" doctrine. Although the statute under attack was upheld, it is clear [369 U.S. 252] that the Court based its decision upon the determination that the statute represented a rational state policy. It stated:

1962, Baker v. Carr, 369 U.S. 252

It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former.

1962, Baker v. Carr, 369 U.S. 252

Id. at 284. (Emphasis supplied.)

1962, Baker v. Carr, 369 U.S. 252

The other cases upon which my Brethren dwell are all distinguishable or inapposite. The widely heralded case of Colegrove v. Green, 328 U.S. 549 (1946), was one not only in which the Court was bobtailed, but in which there was no majority opinion. Indeed, even the "political question point" in MR. JUSTICE FRANKFURTER's opinion was no more than an alternative ground. 1 Moreover, the appellants did not present an equal protection argument. 2 While it has served as a Mother Hubbard to most of the subsequent cases, I feel it was in that respect ill-cast, and, for all of these reasons, put it to one side. 3 Likewise, [369 U.S. 253] I do not consider the Guaranty Clause cases based on Art. I, 4, of the Constitution, because it is not invoked here and it involves different criteria, as the Court's opinion indicates. Cases resting on various other considerations not present here, such as Radford v. Gary, 352 U.S. 991 (1957) (lack of equity); Kidd v. McCanless, 352 U.S. 920 (1956) (adequate state grounds supporting the state judgment); Anderson v. Jordan, 343 U.S. 912 (1952) (adequate state grounds); Remmey v. Smith, 342 U.S. 916 (1952) (failure to exhaust state procedures), are, of course, not controlling. Finally, the Georgia county unit system cases, such as South v. Peters, 339 U.S. 276 (1950), reflect the viewpoint of MacDougall, i.e., to refrain from intervening where there is some rational policy behind the State's system. 4

II

1962, Baker v. Carr, 369 U.S. 253

The controlling facts cannot be disputed. It appears from the record that 37% of the voters of Tennessee elect 20 of the 33 Senators, while 40% of the voters elect 63 of the 99 members of the House. But this might not, on its face, be an "invidious discrimination," Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 489 (1955), for a "statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." McGowan v. Maryland, 366 U.S. 420, 426 (1961).

1962, Baker v. Carr, 369 U.S. 253

It is true that the apportionment policy incorporated in Tennessee's Constitution, i.e., statewide numerical equality of representation with certain minor qualifications, 5 is a rational one. On a county-by-county comparison [369 U.S. 254] a districting plan based thereon naturally will have disparities in representation due to the qualifications. But this, to my mind, does not raise constitutional problems, for the overall policy is reasonable. However, the root of the trouble is not in Tennessee's Constitution, for admittedly its policy has not been followed. The discrimination lies in the action of Tennessee's Assembly in allocating legislative seats to counties or districts created by it. Try as one may, Tennessee's apportionment just cannot be made to fit the pattern cut by its Constitution. This was the finding of the District Court. The policy of the Constitution referred to by the dissenters, therefore, is of no relevance here. We must examine what the Assembly has done. 6 The frequency and magnitude of the inequalities in the present districting admit of no policy whatever. An examination of Table I accompanying this opinion, post, p. 262, conclusively reveals that the apportionment picture in Tennessee is a topsy-turvical of gigantic proportions. This is not to say that some of the disparity cannot be explained, but, when the entire table is examined—comparing the voting strength of counties of like population as well as contrasting that of the smaller with the larger counties—it leaves but one conclusion, namely that Tennessee's apportionment is a crazy quilt without rational basis. At the risk of being accused of picking out a few of the horribles I shall allude to a series of examples that are taken from Table I.

1962, Baker v. Carr, 369 U.S. 254

As is admitted, there is a wide disparity of voting strength between the large and small counties. Some [369 U.S. 255] samples are: Moore County has a total representation of two 7 with a population (2,340) of only one-eleventh of Rutherford County (25,316) with the same representation; Decatur County (5,563) has the same representation as Carter (23,303) though the latter has four times the population; likewise, Loudon County (13,264), Houston (3,084), and Anderson County (33,990) have the same representation, i.e., 1.25 each. But it is said that, in this illustration all of the underrepresented counties contain municipalities of over 10,000 population, and they therefore should be included under the "urban" classification, rationalizing this disparity as an attempt to effect a rural-urban political balance. But in so doing, one is caught up in the backlash of his own bull whip, for many counties have municipalities with a population exceeding 10,000, yet the same invidious discrimination is present. For example:

1962, Baker v. Carr, 369 U.S. 255

County Population Representation

1962, Baker v. Carr, 369 U.S. 255

Carter..................23,303 1.10

1962, Baker v. Carr, 369 U.S. 255

Maury...................24,556 2.25

1962, Baker v. Carr, 369 U.S. 255

Washington..............36,967 1.93

1962, Baker v. Carr, 369 U.S. 255

Madison.................37,245 3.50

[369 U.S. 256]

1962, Baker v. Carr, 369 U.S. 256

Likewise, counties with no municipality of over 10,000 suffer a similar discrimination:

1962, Baker v. Carr, 369 U.S. 256

County Population Representation

1962, Baker v. Carr, 369 U.S. 256

Grundy...................6,540 O.95

1962, Baker v. Carr, 369 U.S. 256

Chester..................6,391 2.00

1962, Baker v. Carr, 369 U.S. 256

Cumberland...............9,593 O.63

1962, Baker v. Carr, 369 U.S. 256

Crockett.................9,676 2.00

1962, Baker v. Carr, 369 U.S. 256

Loudon..................13,264 1.25

1962, Baker v. Carr, 369 U.S. 256

Fayette.................13,577 2.50

1962, Baker v. Carr, 369 U.S. 256

This could not be an effort to attain political balance between rural and urban populations. Since discrimination is present among counties of like population, the plan is neither consistent nor rational. It discriminates horizontally creating gross disparities between rural areas themselves as well as between urban areas themselves, 8 still maintaining the wide vertical disparity already pointed out between rural and urban.

1962, Baker v. Carr, 369 U.S. 256

It is also insisted that the representation formula used above (see n. 7) is "patently deficient" because "it eliminates from consideration the relative voting power of the counties that are joined together in a single election district." This is a strange claim coming from those who rely on the proposition that "the voice of every voter" need not have "approximate equality." Indeed, representative government, as they say, is not necessarily one of "bare numbers." The use of floterial districts in our political system is not ordinarily based on the theory that the floterial representative is splintered among the counties of his district per relative population. His function is to represent the whole district. However, I shall meet the charge on its own ground and by use of its "adjusted [369 U.S. 257] 'total representation'" formula show that the present apportionment is loco. For example, compare some "urban" areas of like population, using the HARLAN formula:

1962, Baker v. Carr, 369 U.S. 257

County Population Representation

1962, Baker v. Carr, 369 U.S. 257

Washington..............36,967 2.65

1962, Baker v. Carr, 369 U.S. 257

Madison.................37,245 4.87

1962, Baker v. Carr, 369 U.S. 257

Carter..................23,303 1.48

1962, Baker v. Carr, 369 U.S. 257

Greene..................23,649 2.05

1962, Baker v. Carr, 369 U.S. 257

Maury...................24,556 3.81

1962, Baker v. Carr, 369 U.S. 257

Coffee..................13,406 2.32

1962, Baker v. Carr, 369 U.S. 257

Hamblen.................14,090 1.07

1962, Baker v. Carr, 369 U.S. 257

And now, using the same formula, compare some so-called "rural" areas of like population:

1962, Baker v. Carr, 369 U.S. 257

County Population Representation

1962, Baker v. Carr, 369 U.S. 257

Moore...................2,340 1.23

1962, Baker v. Carr, 369 U.S. 257

Pickett.................2,565 .22

1962, Baker v. Carr, 369 U.S. 257

Stewart.................5,238 1.60

1962, Baker v. Carr, 369 U.S. 257

Cheatham................5,263 .74

1962, Baker v. Carr, 369 U.S. 257

Chester.................6,391 1.36

1962, Baker v. Carr, 369 U.S. 257

Grundy..................6,540 .69

1962, Baker v. Carr, 369 U.S. 257

Smith...................8,731 2.04

1962, Baker v. Carr, 369 U.S. 257

Unicoi..................8,787 .40

1962, Baker v. Carr, 369 U.S. 257

And for counties with similar representation but with gross differences in population, take:

1962, Baker v. Carr, 369 U.S. 257

County Population Representation

1962, Baker v. Carr, 369 U.S. 257

Sullivan...............55,712 4.07

1962, Baker v. Carr, 369 U.S. 257

Maury..................24,556 3.81

1962, Baker v. Carr, 369 U.S. 257

Blount.................30,353 2.12

1962, Baker v. Carr, 369 U.S. 257

Coffee.................13,406 2.32

1962, Baker v. Carr, 369 U.S. 257

These cannot be "distorted effects," for here the same formula proposed by the dissenters is used and the result is even "a crazier" quilt. [369 U.S. 258]

1962, Baker v. Carr, 369 U.S. 258

The truth is that—although this case has been here for two years and has had over six hours' argument (three times the ordinary case) and has been most carefully considered over and over again by us in Conference and individually—no one, not even the State nor the dissenters, has come up with any rational basis for Tennessee's apportionment statute.

1962, Baker v. Carr, 369 U.S. 258

No one—except the dissenters advocating the HARLAN "adjusted `total representation'" formula—contends that mathematical equality among voters is required by the Equal Protection Clause. But certainly there must be some rational design to a State's districting. The discrimination here does not fit any pattern—as I have said, it is but a crazy quilt. My Brother HARLAN contends that other proposed apportionment plans contain disparities. Instead of chasing those rabbits, he should first pause long enough to meet appellants' proof of discrimination by showing that, in fact, the present plan follows a rational policy. Not being able to do this, he merely counters with such generalities as "classic legislative judgment," no "significant discrepancy," and "de minimis departures." I submit that even a casual glance at the present apportionment picture shows these conclusions to be entirely fanciful. If present representation has a policy at all, it is to maintain the status quo of invidious discrimination at any cost. Like the District Court, I conclude that appellants have met the burden of showing "Tennessee is guilty of a clear violation of the state constitution and of the [federal] rights of the plaintiffs…. "

III

1962, Baker v. Carr, 369 U.S. 258

Although I find the Tennessee apportionment statute offends the Equal Protection Clause, I would not consider intervention by this Court into so delicate a field if there were any other relief available to the people of Tennessee. But the majority of the people of Tennessee have no [369 U.S. 259] "practical opportunities for exerting their political weight at the polls" to correct the existing "invidious discrimination." Tennessee has no initiative and referendum. I have searched diligently for other "practical opportunities" present under the law. I find none other than through the federal courts. The majority of the voters have been caught up in a legislative strait jacket. Tennessee has an "informed, civically militant electorate" and "an aroused popular conscience," but it does not sear "the conscience of the people's representatives." This is because the legislative policy has riveted the present seats in the Assembly to their respective constituencies, and by the votes of their incumbents a reapportionment of any kind is prevented. The people have been rebuffed at the hands of the Assembly; they have tried the constitutional convention route, but since the call must originate in the Assembly it, too, has been fruitless. They have tried Tennessee courts with the same result, 9 and Governors have fought the tide only to flounder. It is said that there is recourse in Congress, and perhaps that may be, but, from a practical standpoint, this is without substance. To date, Congress has never undertaken such a task in any State. We therefore must conclude that the people of Tennessee are stymied, and, without judicial intervention, will be saddled with the present discrimination in the affairs of their state government.

IV

1962, Baker v. Carr, 369 U.S. 259

Finally, we must consider if there are any appropriate modes of effective judicial relief. The federal courts are, of course, not forums for political debate, nor should they [369 U.S. 260] resolve themselves into state constitutional conventions or legislative assemblies. Nor should their jurisdiction be exercised in the hope that such a declaration as is made today may have the direct effect of bringing on legislative action and relieving the courts of the problem of fashioning relief. To my mind, this would be nothing less than blackjacking the Assembly into reapportioning the State. If judicial competence were lacking to fashion an effective decree, I would dismiss this appeal. However, like the Solicitor General of the United States, I see no such difficulty in the position of this case. One plan might be to start with the existing assembly districts, consolidate some of them, and award the seats thus released to those counties suffering the most egregious discrimination. Other possibilities are present, and might be more effective. But the plan here suggested would at least release the strangle hold now on the Assembly and permit it to redistrict itself.

1962, Baker v. Carr, 369 U.S. 260

In this regard, the appellants have proposed a plan based on the rationale of statewide equal representation. Not believing that numerical equality of representation throughout a State is constitutionally required, I would not apply such a standard, albeit a permissive one. Nevertheless, the dissenters attack it by the application of the HARLAN "adjusted `total representation'" formula. The result is that some isolated inequalities are shown, but this, in itself, does not make the proposed plan irrational, or place it in the "crazy quilt" category. Such inequalities, as the dissenters point out in attempting to support the present apportionment as rational, are explainable. Moreover, there is no requirement that any plan have mathematical exactness in its application. Only where, as here, the total picture reveals incommensurables of both magnitude and frequency can it be said that there is present an invidious discrimination. [369 U.S. 261]

1962, Baker v. Carr, 369 U.S. 261

In view of the detailed study that the Court has given this problem, it is unfortunate that a decision is not reached on the merits. The majority appears to hold, at least sub silentio, that an invidious discrimination is present, but it remands to the three-judge court for it to make what is certain to be that formal determination. It is true that Tennessee has not filed a formal answer. However, it has filed voluminous papers and made extended arguments supporting its position. At no time has it been able to contradict the appellants' factual claims; it has offered no rational explanation for the present apportionment; indeed, it has indicated that there are none known to it. As I have emphasized, the case proceeded to the point before the three-judge court that it was able to find an invidious discrimination factually present, and the State has not contested that holding here. In view of all this background, I doubt if anything more can be offered or will be gained by the State on remand, other than time. Nevertheless, not being able to muster a court to dispose of the case on the merits, I concur in the opinion of the majority and acquiesce in the decision to remand. However, in fairness, I do think that Tennessee is entitled to have my idea of what it faces on the record before us, and the trial court some light as to how it might proceed.

1962, Baker v. Carr, 369 U.S. 261

As John Rutledge (later Chief Justice) said 175 years ago in the course of the Constitutional Convention, a chief function of the Court is to secure the national rights. 10 Its decision today supports the proposition for which our forebears fought and many died, namely that, to be fully conformable to the principle of right, the form of government must be representative. 11 That is the keystone upon which our government was founded [369 U.S. 262] and lacking which no republic can survive. It is well for this Court to practice self-restraint and discipline in constitutional adjudication, but never in its history have those principles received sanction where the national rights of so many have been so clearly infringed for so long a time. National respect for the courts is more enhanced through the forthright enforcement of those rights, rather than by rendering them nugatory through the interposition of subterfuges. In my view, the ultimate decision today is in the greatest tradition of this Court.

1962, Baker v. Carr, 369 U.S. 262

TABLE I

Present to Proposed to

Present total tal repre- tal represen-

representation sentation tation (appel-

using using J. lants' plan),

1950 voting J. Clark's Harlan's using J. Har-

County population formula formula lan's formula

Van Buren . . . . . . 2,039 .63 .23 .11

Moore . . . . . . . . 2,340 2.00 1.23 .18

Pickett . . . . . . . 2,565 .70 .22 .24

Sequatchie. . . . . . 2,904 .63 .33 .19

Meigs . . . . . . . . 3,039 .93 .48 .17

Houston . . . . . . . 3,084 1.25 .46 .24

Trousdale . . . . . . 3,351 1.33 .43 .12

Lewis . . . . . . . . 3,413 1.25 .39 .25

Perry . . . . . . . . 3,711 1.50 .71 .40

Bledsoe . . . . . . . 4,198 .63 .49 .24

Clay. . . . . . . . . 4,528 .70 .40 .42

Union . . . . . . . . 4,600 .76 .37 .45

Hancock . . . . . . . 4,710 .93 .62 .49

Stewart . . . . . . . 5,238 1.75 1.60 .41

Cheatham. . . . . . . 5,263 1.33 .72 .20

Cannon. . . . . . . . 5,341 2.00 1.43 .52

Decatur . . . . . . . 5,563 1.10 .79 .52

Lake. . . . . . . . . 6,252 2.00 1.44 .41

Chester . . . . . . . 6,391 2.00 1.36 .19

Grundy. . . . . . . . 6,540 .95 .69 .43

Humphreys . . . . . . 6,588 1.25 1.39 .72

Johnson . . . . . . . 6,649 1.10 .42 .43

Jackson . . . . . . . 6,719 1.50 1.43 .63

De Kalb . . . . . . . 6,984 2.00 1.56 .68

Benton. . . . . . . . 7,023 1.10 1.01 .66

Fentress. . . . . . . 7,057 .70 .62 .64

Grainer . . . . . . . 7,125 .93 .94 .65

Wayne . . . . . . . . 7,176 1.25 .69 .76

Polk. . . . . . . . . 7,330 1.25 .68 .73

Hickman . . . . . . . 7,598 2.00 1.85 .80

Macon . . . . . . . . 7,974 1.33 1.01 .61

Morgan. . . . . . . . 8,308 .93 .59 .75

Scott . . . . . . . . 8,417 .76 .68 .62

Smith . . . . . . . . 8,731 2.50 2.04 .67

Unicoi. . . . . . . . 8,787 .93 .40 .63

Rhea. . . . . . . . . 8,937 .93 1.42 .21

White . . . . . . . . 9,244 1.43 1.69 .90

Overton . . . . . . . 9,474 1.70 1.83 .89

Harding . . . . . . . 9,577 1.60 1.61 .93

Cumberland. . . . . . 9,593 .63 1.10 .87

Crockett. . . . . . . 9,676 2.00 1.66 .63

Henderson. . . . . . 10,199 1.50 .78 .96

Marion . . . . . . . 10,998 1.75 1.73 .72

Marshall . . . . . . 11,288 2.50 2.28 .84

Dickson. . . . . . . 11,294 1.75 2.29 1.23

Jefferson. . . . . . 11,359 1.10 .87 1.03

McNairy. . . . . . . 11,601 1.60 1.74 1.13

Cocke. . . . . . . . 12,572 1.60 1.46 .89

Sevier . . . . . . . 12,793 1.60 1.47 .69

Claiborne. . . . . . 12,799 1.43 1.61 .34

Monroe . . . . . . . 12,884 1.75 1.68 1.30

Loudon . . . . . . . 13,264 1.25 .28 .52

Warren . . . . . . . 13,337 1.75 1.89 1.68

Coffee . . . . . . . 13,406 2.00 2.32 1.68

Hardeman . . . . . . 13,565 1.60 1.86 1.11

Fayette. . . . . . . 13,577 2.50 2.48 1.11

Haywood. . . . . . . 13,934 2.50 2.52 1.69

Williamson . . . . . 14,064 2.33 2.96 1.71

Hamblen. . . . . . . 14,090 1.10 1.07 1.67

Franklin . . . . . . 14,297 1.75 1.95 1.73

Lauderdale . . . . . 14,413 2.50 2.45 1.73

Bedford. . . . . . . 14,732 2.00 1.45 1.74

Lincoln. . . . . . . 15,092 2.50 2.72 1.77

Henry. . . . . . . . 15,465 2.83 2.76 1.73

Lawrence . . . . . . 15,847 2.00 2.22 1.81

Giles. . . . . . . . 15,935 2.25 2.54 1.81

Tipton . . . . . . . 15,944 3.00 1.68 1.13

Robertson. . . . . . 16,456 2.83 2.62 1.85

Wilson . . . . . . . 16,459 3.00 3.03 1.21

Carroll. . . . . . . 16,472 2.83 2.88 1.82

Hawkins. . . . . . . 16,900 3.00 1.93 1.82

Putnam . . . . . . . 17,071 1.70 2.50 1.86

Campbell . . . . . . 17,477 .76 1.40 1.94

Roane. . . . . . . . 17,639 1.75 1.26 1.30

Weakley. . . . . . . 18,007 2.33 2.63 1.85

Bradley. . . . . . . 18,273 1.25 1.67 1.92

McMinn . . . . . . . 18,347 1.75 1.97 1.92

Obion. . . . . . . . 18,434 2.00 2.30 1.94

Dyer . . . . . . . . 20,062 2.00 2.36 2.32

Sumner . . . . . . . 20,143 2.33 3.56 2.54

Carter . . . . . . . 23,303 1.10 1.48 2.55

Greene . . . . . . . 23,649 1.93 2.05 2.68

Maury. . . . . . . . 24,556 2.25 3.81 2.85

Rutherford . . . . . 25,316 2.00 3.02 2.39

Montgomery . . . . . 26,284 3.00 3.73 3.06

Gibson . . . . . . . 29,832 5.00 5.00 2.86

Blount . . . . . . . 30,353 1.60 2.12 2.19

Anderson . . . . . . 33,990 1.25 1.30 3.62

Washington . . . . . 36,967 1.93 2.65 3.45

Madison. . . . . . . 37,245 3.50 4.87 3.69

Sullivan . . . . . . 55,712 3.00 4.07 5.57

Hamilton. . . . . . 131,971 6.00 6.00 15.09

Knox. . . . . . . . 140,559 7.25 8.96 15.21

Davidson. . . . . . 211,930 12.50 12.93 21.57

Shelby. . . . . . . 312,345 15.50 16.85 31.59

STEWART, J., concurring

1962, Baker v. Carr, 369 U.S. 262

MR. JUSTICE STEWART, concurring.

1962, Baker v. Carr, 369 U.S. 262

The separate writings of my dissenting and concurring Brothers stray so far from the subject of today's decision as to convey, I think, a distressingly inaccurate impression of what the Court decides. For that reason, I think it appropriate, in joining the opinion of the Court, to emphasize in a few words what the opinion does and does not say.

1962, Baker v. Carr, 369 U.S. 262

The Court today decides three things, and no more:

1962, Baker v. Carr, 369 U.S. 262

(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief, and (c)…that the appellants have standing to challenge the Tennessee apportionment statutes.

1962, Baker v. Carr, 369 U.S. 262

Ante, pp. 197-198.

1962, Baker v. Carr, 369 U.S. 262

The complaint in this case asserts that Tennessee's system of apportionment is utterly arbitrary—without any possible justification in rationality. The District Court did not reach the merits of that claim, and this Court quite properly expresses no view on the subject. Contrary to the suggestion of my Brother HARLAN, the Court does not say or imply that "state legislatures must be so structured as to reflect with approximate equality the voice of every voter." Post, p. 332. The Court does not say or imply that there is anything in the Federal Constitution

1962, Baker v. Carr, 369 U.S. 262

to prevent a State, acting not irrationally, from choosing any electoral legislative structure it thinks best suited to the interests, temper, and customs of its people.

1962, Baker v. Carr, 369 U.S. 262

Post p. 334. And, contrary to the suggestion of my Brother DOUGLAS, the Court most assuredly does not decide the question, "may a State weight the vote of one county or one district more heavily than it weights the vote in another?" Ante, p. 244.

1962, Baker v. Carr, 369 U.S. 262

In MacDougall v. Green, 335 U.S. 281, the Court held that the Equal Protection Clause does not

1962, Baker v. Carr, 369 U.S. 262

deny a State the power to assure a proper diffusion of political initiative [369 U.S. 266] as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former.

1962, Baker v. Carr, 369 U.S. 266

335 U.S. at 284. In case after case arising under the Equal Protection Clause, the Court has said what it said again only last Term—that

1962, Baker v. Carr, 369 U.S. 266

the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others.

1962, Baker v. Carr, 369 U.S. 266

McGowan v. Maryland, 366 U.S. 420, 425. In case after case arising under that Clause, we have also said that "the burden of establishing the unconstitutionality of a statute rests on him who assails it." Metropolitan Casualty Ins. Co. v. Brownell, 294 U.S. 580, 584.

1962, Baker v. Carr, 369 U.S. 266

Today's decision does not turn its back on these settled precedents. I repeat, the Court today decides only: (1) that the District Court possessed jurisdiction of the subject matter; (2) that the complaint presents a justiciable controversy; (3) that the appellants have standing. My Brother CLARK has made a convincing prima facie showing that Tennessee's system of apportionment is, in fact, utterly arbitrary—without any possible justification in rationality. My Brother HARLAN has, with imagination and ingenuity, hypothesized possibly rational bases for Tennessee's system. But the merits of this case are not before us now. The defendants have not yet had an opportunity to be heard in defense of the State's system of apportionment; indeed, they have not yet even filed an answer to the complaint. As in other cases, the proper place for the trial is in the trial court, not here.

FRANKFURTER, J., dissenting

1962, Baker v. Carr, 369 U.S. 266

MR. JUSTICE FRANKFURTER, whom MR. JUSTICE HARLAN joins, dissenting.

1962, Baker v. Carr, 369 U.S. 266

The Court today reverses a uniform course of decision established by a dozen cases, including one by which the very claim now sustained was unanimously rejected [369 U.S. 267] only five years ago. The impressive body of rulings thus cast aside reflected the equally uniform course of our political history regarding the relationship between population and legislative representation—a wholly different matter from denial of the franchise to individuals because of race, color, religion or sex. Such a massive repudiation of the experience of our whole past in asserting destructively novel judicial power demands a detailed analysis of the role of this Court in our constitutional scheme. Disregard of inherent limits in the effective exercise of the Court's "judicial Power" not only presages the futility of judicial intervention in the essentially political conflict of forces by which the relation between population and representation has time out of mind been, and now is, determined. It may well impair the Court's position as the ultimate organ of "the supreme Law of the Land" in that vast range of legal problems, often strongly entangled in popular feeling, on which this Court must pronounce. The Court's authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements.

1962, Baker v. Carr, 369 U.S. 267

A hypothetical claim resting on abstract assumptions is now for the first time made the basis for affording illusory relief for a particular evil even though it foreshadows deeper and more pervasive difficulties in consequence. The claim is hypothetical, and the assumptions are abstract, because the Court does not vouchsafe the lower courts—state and federal—guidelines for formulating specific, definite, wholly unprecedented remedies for the inevitable litigations that today's umbrageous disposition is bound to stimulate in connection with politically motivated reapportionments in so many States. In [369 U.S. 268] such a setting, to promulgate jurisdiction in the abstract is meaningless. It is as devoid of reality as "a brooding omnipresence in the sky," for it conveys no intimation what relief, if any, a District Court is capable of affording that would not invite legislatures to play ducks and drakes with the judiciary. For this Court to direct the District Court to enforce a claim to which the Court has over the years consistently found itself required to deny legal enforcement and, at the same time, to find it necessary to withhold any guidance to the lower court how to enforce this turnabout, new legal claim, manifests an odd—indeed an esoteric—conception of judicial propriety. One of the Court's supporting opinions, as elucidated by commentary, unwittingly affords a disheartening preview of the mathematical quagmire (apart from divers judicially inappropriate and elusive determinants) into which this Court today catapults the lower courts of the country without so much as adumbrating the basis for a legal calculus as a means of extrication. Even assuming the indispensable intellectual disinterestedness on the part of judges in such matters, they do not have accepted legal standards or criteria or even reliable analogies to draw upon for making judicial judgments. To charge courts with the task of accommodating the incommensurable factors of policy that underlie these mathematical puzzles is to attribute, however flatteringly, omnicompetence to judges. The Framers of the Constitution persistently rejected a proposal that embodied this assumption, and Thomas Jefferson never entertained it.

1962, Baker v. Carr, 369 U.S. 268

Recent legislation, creating a district appropriately described as "an atrocity of ingenuity," is not unique. Considering the gross inequality among legislative electoral units within almost every State, the Court naturally shrinks from asserting that, in districting, at least substantial equality is a constitutional requirement enforceable [369 U.S. 269] by courts.\* Room continues to be allowed for weighting. This, of course, implies that geography, economics, urban-rural conflict, and all the other non-legal factors which have throughout our history entered into political districting are to some extent not to be ruled out in the undefined vista now opened up by review in the federal courts of state reapportionments. To some extent—aye, there's the rub. In effect, today's decision empowers the courts of the country to devise what should constitute the proper composition of the legislatures of the fifty States. If state courts should for one reason or another find themselves unable to discharge this task, the duty of doing so is put on the federal courts or on this Court, if State views do not satisfy this Court's notion of what is proper districting.

1962, Baker v. Carr, 369 U.S. 269

We were soothingly told at the bar of this Court that we need not worry about the kind of remedy a court could effectively fashion once the abstract constitutional right to have courts pass on a statewide system of electoral districting is recognized as a matter of judicial rhetoric, because legislatures would heed the Court's admonition. This is not only a euphoric hope. It implies a sorry [369 U.S. 270] confession of judicial impotence in place of a frank acknowledgment that there is not under our Constitution a judicial remedy for every political mischief, for every undesirable exercise of legislative power. The Framers, carefully and with deliberate forethought, refused so to enthrone the judiciary. In this situation, as in others of like nature, appeal for relief does not belong here. Appeal must be to an informed, civically militant electorate. In a democratic society like ours, relief must come through an aroused popular conscience that sears the conscience of the people's representatives. In any event, there is nothing judicially more unseemly nor more self-defeating than for this Court to make in terrorem pronouncements, to indulge in merely empty rhetoric, sounding a word of promise to the ear sure to be disappointing to the hope.

1962, Baker v. Carr, 369 U.S. 270

This is the latest in the series of cases in which the Equal Protection and Due Process Clauses of the Fourteenth Amendment have been invoked in federal courts as restrictions upon the power of the States to allocate electoral weight among the voting populations of their various geographical subdivisions. 1 The present action, which [369 U.S. 271] comes here on appeal from an order of a statutory three-judge District Court dismissing amended complaints seeking declaratory and injunctive relief, challenges the provisions of Tenn.Code Ann., 1955, §§ 3-101 to 3-109, which apportion state representative and senatorial seats among Tennessee's ninety-five counties.

1962, Baker v. Carr, 369 U.S. 271

The original plaintiffs, citizens and qualified voters entitled to vote for members of the Tennessee Legislature in the several counties in which they respectively reside, bring this action in their own behalf and "on behalf of all other voters in the State of Tennessee," or, as they alternatively assert,

1962, Baker v. Carr, 369 U.S. 271

on behalf of all qualified voters of their respective counties, and further, on behalf of all voters of the State of Tennessee who are similarly situated.

1962, Baker v. Carr, 369 U.S. 271

The cities of Knoxville and Chattanooga, and the Mayor of Nashville—on his own behalf as a qualified voter and, pursuant to an authorizing resolution by the Nashville City Council, as a representative of all the city's residents—were permitted to intervene as parties plaintiff. 2 The defendants are executive officials charged with statutory duties in connection with state elections. 3 [369 U.S. 272]

1962, Baker v. Carr, 369 U.S. 272

The original plaintiffs' amended complaint avers, in substance, the following. 4 The Constitution of the State of Tennessee declares that "elections shall be free and equal," provides that no qualifications other than age, citizenship and specified residence requirements shall be attached to the right of suffrage, and prohibits denying to any person the suffrage to which he is entitled except upon conviction of an infamous crime. Art. I, § 5; Art. IV, § 1. It requires an enumeration of qualified voters within every term of ten years after 1871 and an apportionment of representatives and senators among the several counties or districts according to the number of qualified voters in each 5 at the time of each decennial [369 U.S. 273] enumeration. Art. II, §§ 4, 5, 6. Notwithstanding these provisions, the State Legislature has not reapportioned itself since 1901. The Reapportionment Act of that year, Tenn.Acts 1901, c. 122, now Tenn.Code Ann., 1955, §§ 3-101 to 3-109, 6 was unconstitutional when enacted, because not preceded by the required enumeration of qualified voters and because it allocated legislative seats arbitrarily, unequally and discriminatorily, as measured by the 1900 federal census. Moreover, irrespective of the question of its validity in 1901, it is asserted that the Act became "unconstitutional and obsolete" in 1911 by virtue of the decennial reapportionment requirement of the Tennessee Constitution. Continuing a "purposeful and systematic plan to discriminate against a geographical class of persons," recent Tennessee Legislatures have failed, as did their predecessors, to enact reapportionment legislation, although a number of bills providing for reapportionment have been introduced. Because of population shifts since 1901, the apportionment fixed by the Act of that year and still in effect is not proportionate to population, denies to the counties in which the plaintiffs [369 U.S. 274] live an additional number of representatives to which they are entitled, and renders plaintiffs' votes "not as effective as the votes of the voters residing in other senatorial and representative districts…. " Plaintiffs

1962, Baker v. Carr, 369 U.S. 274

suffer a debasement of their votes by virtue of the incorrect, arbitrary, obsolete and unconstitutional apportionment of the General Assembly…,

1962, Baker v. Carr, 369 U.S. 274

and the totality of the malapportionment's effect—which permits a minority of about thirty-seven percent of the voting population of the State to control twenty of the thirty-three members of Tennessee's Senate, and a minority of forty percent of the voting population to control sixty-three of the ninety-nine members of the House—results in "a distortion of the constitutional system" established by the Federal and State Constitutions, prevents the General Assembly "from being a body representative of the people of the State of Tennessee,…" and is "contrary to the basic principle of representative government…," and "contrary to the philosophy of government in the United States and all Anglo-Saxon jurisprudence…. "

1962, Baker v. Carr, 369 U.S. 274

Exhibits appended to the complaint purport to demonstrate the extent of the inequalities of which plaintiffs complain. Based upon "approximate voting population," 7 these set forth figures showing that the State [369 U.S. 275] Senator from Tennessee's most populous senatorial district represents five and two-tenths times the number of voters represented by the Senator from the least populous district, while the corresponding ratio for most and least populous House districts is more than eighteen to one. The General Assembly thus apportioned has discriminated against the underrepresented counties and in favor of the overrepresented counties in the collection and distribution of various taxes and tax revenues, notably in the distribution of school and highway improvement funds, 8 this discrimination being "made possible and effective" by the Legislature's failure to reapportion itself. Plaintiffs conclude that election of the State Legislature pursuant to the apportionment fixed by the 1901 Act violates the Tennessee Constitution and deprives them of due process of law and of the equal protection of the laws guaranteed by the Fourteenth Amendment. Their prayer below was for a declaratory judgment striking down the Act, an injunction restraining defendants from any acts necessary to the holding of elections in the districts prescribed by Tenn.Code Ann., 1955, §§ 3-101 to 3-109, until such time as the legislature is reapportioned "according to the [369 U.S. 276] Constitution of the State of Tennessee," and an order directing defendants to declare the next primary and general elections for members of the Tennessee Legislature on an at-large basis—the thirty-three senatorial candidates and the ninety-nine representative candidates receiving the highest number of votes to be declared elected. 9

1962, Baker v. Carr, 369 U.S. 276

Motions to dismiss for want of jurisdiction of the subject matter and for failure to state a claim were made and granted, 179 F.Supp. 824, the District Court relying upon this Court's series of decisions beginning with Colegrove v. Green, 328 U.S. 549, rehearing denied, 329 U.S. 825, motion for reargument before the full bench denied, 329 U.S. 828. The original and intervening plaintiffs bring the case here on appeal. 364 U.S. 898. In this Court they have altered their request for relief, suggesting a "step-by-step approach." The first step is a remand to the District Court with directions to vacate the order dismissing the complaint and to enter an order retaining jurisdiction, providing "the necessary spur to legislative action…. " If this proves insufficient, appellants will ask the "additional spur" of an injunction prohibiting elections under the 1901 Act or a declaration of the Act's unconstitutionality, or both. Finally, all other means failing, the District Court is invited by the plaintiffs, greatly daring, to order an election at large or redistrict the State itself or through a master. The Solicitor General of the United States, who has filed a brief amicus and argued in favor of reversal, asks the Court on this appeal to hold only that the District Court has "jurisdiction," and may properly exercise it to entertain the plaintiffs' claims on the merits. This would leave to that court after remand the questions of the challenged statute's [369 U.S. 277] constitutionality and of some undefined, unadumbrated relief in the event a constitutional violation is found. After an argument at the last Term, the case was set down for reargument, 366 U.S. 907, and heard this Term.

I

1962, Baker v. Carr, 369 U.S. 277

In sustaining appellants' claim, based on the Fourteenth Amendment, that the District Court may entertain this suit, this Court's uniform course of decision over the years is overruled or disregarded. Explicitly it begins with Colegrove v. Green, supra, decided in 1946, but its roots run deep in the Court's historic adjudicatory process.

1962, Baker v. Carr, 369 U.S. 277

Colegrove held that a federal court should not entertain an action for declaratory and injunctive relief to adjudicate the constitutionality, under the Equal Protection Clause and other federal constitutional and statutory provisions, of a state statute establishing the respective districts for the State's election of Representatives to the Congress. Two opinions were written by the four Justices who composed the majority of the seven sitting members of the Court. Both opinions joining in the result in Colegrove v. Green agreed that considerations were controlling which dictated denial of jurisdiction, though not in the strict sense of want of power. While the two opinions show a divergence of view regarding some of these considerations, there are important points of concurrence. Both opinions demonstrate a predominant concern, first, with avoiding federal judicial involvement in matters traditionally left to legislative policy making; second, with respect to the difficulty—in view of the nature of the problems of apportionment and its history in this country—of drawing on or devising judicial standards for judgment, as opposed to legislative determinations, of the part which mere numerical equality among voters should play as a criterion for the allocation of [369 U.S. 278] political power; and, third, with problems of finding appropriate modes of relief—particularly, the problem of resolving the essentially political issue of the relative merits of at-large elections and elections held in districts of unequal population.

1962, Baker v. Carr, 369 U.S. 278

The broad applicability of these considerations—summarized in the loose shorthand phrase, "political question"—in cases involving a State's apportionment of voting power among its numerous localities has led the Court, since 1946, to recognize their controlling effect in a variety of situations. (In all these cases, decision was by a full Court.) The "political question" principle as applied in Colegrove has found wide application commensurate with its function as "one of the rules basic to the federal system and this Court's appropriate place within that structure." Rescue Army v. Municipal Court, 331 U.S. 549, 570. In Colegrove v. Barrett, 330 U.S. 804, litigants brought suit in a Federal District Court challenging as offensive to the Equal Protection Clause Illinois' state legislative apportionment laws. They pointed to state constitutional provisions requiring decennial reapportionment and allocation of seats in proportion to population, alleged a failure to reapportion for more than forty-five years—during which time extensive population shifts had rendered the legislative districts grossly unequal—and sought declaratory and injunctive relief with respect to all elections to be held thereafter. After the complaint was dismissed by the District Court, this Court dismissed an appeal for want of a substantial federal question. A similar District Court decision was affirmed here in Radford v. Gary, 352 U.S. 991. And cf. Remmey v. Smith, 342 U.S. 916. In Tedesco v. Board of Supervisors, 339 U.S. 940, the Court declined to hear, for want of a substantial federal question, the claim that the division of a municipality into voting districts of unequal population for the selection for councilmen fell [369 U.S. 279] afoul of the Fourteenth Amendment, and in Cox v. Peters, 342 U.S. 936, rehearing denied, 343 U.S. 921, it found no substantial federal question raised by a state court's dismissal of a claim for damages for "devaluation" of plaintiff's vote by application of Georgia's county unit system in a primary election for the Democratic gubernatorial candidate. The same Georgia system was subsequently attacked in a complaint for declaratory judgment and an injunction; the federal district judge declined to take the requisite steps for the convening of a statutory three-judge court, and this Court, in Hartsfield v. Sloan, 357 U.S. 916, denied a motion for leave to file a petition for a writ of mandamus to compel the district judge to act. In MacDougall v. Green, 335 U.S. 281, 283, the Court noted that "[t]o assume that political power is a function exclusively of numbers is to disregard the practicalities of government," and, citing the Colegrove cases, declined to find in "such broad constitutional concepts as due process and equal protection of the laws," id. at 284, a warrant for federal judicial invalidation of an Illinois statute requiring as a condition for the formation of a new political party the securing of at least two hundred signatures from each of fifty counties. And in South v. Peters, 339 U.S. 276, another suit attacking Georgia's county unit law, it affirmed a District Court dismissal, saying:

1962, Baker v. Carr, 369 U.S. 279

Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions.

1962, Baker v. Carr, 369 U.S. 279

Id. at 277.

1962, Baker v. Carr, 369 U.S. 279

Of course, it is important to recognize particular, relevant diversities among comprehensively similar situations. Appellants seek to distinguish several of this Court's prior decisions on one or another ground—Colegrove v. [369 U.S. 280] Green on the ground that federal, not state, legislative apportionment was involved; Remmey v. Smith on the ground that state judicial remedies had not been tried; Radford v. Gary on the ground that Oklahoma has the initiative, whereas Tennessee does not. It would only darken counsel to discuss the relevance and significance of each of these assertedly distinguishing factors here and in the context of this entire line of cases. Suffice it that they do not serve to distinguish Colegrove v. Barrett, supra, which is on all fours with the present case, or to distinguish Kidd v. McCanless, 352 U.S. 920, in which the full Court without dissent, only five years ago, dismissed, on authority of Colegrove v. Green and Anderson v. Jordan, 343 U.S. 912, an appeal from the Supreme Court of Tennessee in which a precisely similar attack was made upon the very statute now challenged. If the weight and momentum of an unvarying course of carefully considered decisions are to be respected, appellants' claims are foreclosed not only by precedents governing the exact facts of the present case, but are themselves supported by authority the more persuasive in that it gives effect to the Colegrove principle in distinctly varying circumstances in which state arrangements allocating relative degrees of political influence among geographic groups of voters were challenged under the Fourteenth Amendment.

II

1962, Baker v. Carr, 369 U.S. 280

The Colegrove doctrine, in the form in which repeated decisions have settled it, was not an innovation. It represents long judicial thought and experience. From its earliest opinions, this Court has consistently recognized a class of controversies which do not lend themselves to judicial standards and judicial remedies. To classify the various instances as "political questions" is, rather, a form [369 U.S. 281] of stating this conclusion than revealing of analysis. 10 Some of the cases so labelled have no relevance here. But from others emerge unifying considerations that are compelling.

1962, Baker v. Carr, 369 U.S. 281

1. The cases concerning war or foreign affairs, for example, are usually explained by the necessity of the country's speaking with one voice in such matters. While this concern alone undoubtedly accounts for many of the decisions, 11 others do not fit the pattern. It would hardly embarrass the conduct of war were this Court to determine, in connection with private transactions between litigants, the date upon which war is to be deemed terminated. But the Court has refused to do so. See, e.g., The Protector, 12 Wall. 700; Brown v. Hiatts, 15 Wall. 177; Adger v. Alston, 15 Wall. 555; Williams v. Bruffy, 96 U.S. 176, 192-193. It does not suffice to explain such cases as Ludecke v. Watkins, 335 U.S. 160—deferring to political determination the question of the duration of war for purposes of the Presidential power to deport alien enemies—that judicial intrusion would seriously [369 U.S. 282] impede the President's power effectively to protect the country's interests in time of war. Of course, this is true; but the precise issue presented is the duration of the time of war which demands the power. Cf. Martin v. Mott, 12 Wheat.19; Lamar v. Browne, 92 U.S. 187, 193; Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146; Kahn v. Anderson, 255 U.S. 1. And even for the purpose of determining the extent of congressional regulatory power over the tribes and dependent communities of Indians, it is ordinarily for Congress, not the Court, to determine whether or not a particular Indian group retains the characteristics constitutionally requisite to confer the power. 12 E.g., United States v. Holliday, 3 Wall. 407; Tiger v. Western Investment Co., 221 U.S. 286; United States v. Sandoval, 231 U.S. 28. A controlling factor in such cases is that, decision respecting these kinds of complex matters of policy being traditionally committed not to courts but to the political agencies of government for determination by criteria of political expediency, there exists no standard ascertainable by settled judicial experience or process by reference to which a political decision affecting the question at issue between the parties can be judged. Where the question arises in the course of a litigation involving primarily the adjudication of other issues between the litigants, the Court accepts as a basis for adjudication the political departments' decision of it. But where its determination is the sole function to be served by the exercise of the judicial power, the Court will not entertain the action. See Chicago & Southern Air Lines, Inc., v. Waterman S.S. Corp., [369 U.S. 283] 333 U.S. 103. The dominant consideration is "the lack of satisfactory criteria for a judicial determination…. " Mr. Chief Justice Hughes, for the Court, in Coleman v. Miller, 307 U.S. 433, 454-455. Compare United States v. Rogers, 4 How. 567, 572, with Worcester v. Georgia, 6 Pet. 515. 13

1962, Baker v. Carr, 369 U.S. 283

This may be, like so many questions of law, a matter of degree. Questions have arisen under the Constitution to which adjudication gives answer although the criteria for decision are less than unwavering bright lines. Often, in these cases, illumination was found in the federal structures established by, or the underlying presuppositions of, the Constitution. With respect to such questions, the Court has recognized that, concerning a particular power of Congress put in issue, "…effective restraints on its exercise must proceed from political, rather than from judicial processes." Wickard v. Filburn, 317 U.S. 111, 120. It is also true that, even regarding the duration of war and the status of Indian tribes, referred to above as subjects ordinarily committed exclusively to the nonjudicial branches, the Court has suggested that some limitations exist upon the range within which the decisions of those branches will be permitted to go unreviewed. See United States v. Sandoval, supra, at 46; cf. Chastleton Corp. v. Sinclair, 264 U.S. 543. But this is merely to acknowledge that particular circumstances may differ so greatly in degree as to differ thereby in kind, and that, although within a certain range of cases on a continuum, no standard of distinction can be found to tell between them, other cases will fall above or below the range. The doctrine of political questions, like any other, is not to [369 U.S. 284] be applied beyond the limits of its own logic, with all the quiddities and abstract disharmonies it may manifest. See the disposition of contentions based on logically distorting views of Colegrove v. Green and Hunter v. Pittsburgh, 207 U.S. 161, in Gomillion v. Lightfoot, 364 U.S. 339.

1962, Baker v. Carr, 369 U.S. 284

2. The Court has been particularly unwilling to intervene in matters concerning the structure and organization of the political institutions of the States. The abstention from judicial entry into such areas has been greater even than that which marks the Court's ordinary approach to issues of state power challenged under broad federal guarantees.

1962, Baker v. Carr, 369 U.S. 284

We should be very reluctant to decide that we had jurisdiction in such a case, and thus in an action of this nature to supervise and review the political administration of a state government by its own officials and through its own courts. The jurisdiction of this court would only exist in case there had been…such a plain and substantial departure from the fundamental principles upon which our government is based that it could with truth and propriety be said that, if the judgment were suffered to remain, the party aggrieved would be deprived of his life, liberty or property in violation of the provisions of the Federal Constitution.

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Wilson v. North Carolina, 169 U.S. 586, 596. See Taylor and Marshall v. Beckham (No. 1), 178 U.S. 548; Walton v. House of Representatives, 265 U.S. 487; Snowden v. Hughes, 321 U.S. 1. Cf. In re Sawyer, 124 U.S. 200, 220-221.

1962, Baker v. Carr, 369 U.S. 284

Where, however, state law has made particular federal questions determinative of relations within the structure of state government, not in challenge of it, the Court has resolved such narrow, legally defined questions in proper proceedings. See Boyd v. Nebraska ex rel. Thayer, 143 U.S. 135. In such instances, there is no conflict between state policy and the exercise of federal judicial [369 U.S. 285] power. This distinction explains the decisions in Smiley v. Holm, 285 U.S. 355; Koenig v. Flynn, 285 U.S. 375, and Carroll v. Becker, 285 U.S. 380, in which the Court released state constitutional provisions prescribing local lawmaking procedures from misconceived restriction of superior federal requirements. Adjudication of the federal claim involved in those cases was not one demanding the accommodation of conflicting interests for which no readily accessible judicial standards could be found. See McPherson v. Blacker, 146 U.S. 1, in which, in a case coming here on writ of error from the judgment of a state court which had entertained it on the merits, the Court treated as justiciable the claim that a State could not constitutionally select its presidential electors by districts, but held that Art. II, § 1, cl. 2, of the Constitution left the mode of choosing electors in the absolute discretion of the States. Cf. Pope v. Williams, 193 U.S. 621; Breedlove v. Suttles, 302 U.S. 277. To read with literalness the abstracted jurisdictional discussion in the McPherson opinion reveals the danger of conceptions of "justiciability" derived from talk, and not from the effective decision in a case. In probing beneath the surface of cases in which the Court has declined to interfere with the actions of political organs of government, of decisive significance is whether, in each situation, the ultimate decision has been to intervene or not to intervene. Compare the reliance in South v. Peters, 339 U.S. 276, on MacDougall v. Green, 335 U.S. 281, and the "jurisdictional" form of the opinion in Wilson v. North Carolina, 169 U.S. 586, 596, supra.

1962, Baker v. Carr, 369 U.S. 285

3. The cases involving Negro disfranchisement are no exception to the principle of avoiding federal judicial intervention into matters of state government in the absence of an explicit and clear constitutional imperative. For here the controlling command of Supreme Law is plain and unequivocal. An end of discrimination against [369 U.S. 286] the Negro was the compelling motive of the Civil War Amendments. The Fifteenth expresses this in terms, and it is no less true of the Equal Protecting Clause of the Fourteenth. Slaughter-House Cases, 16 Wall. 36, 67-72; Strauder v. West Virginia, 100 U.S. 303, 306-307; Nixon v. Herndon, 273 U.S. 536, 541. Thus, the Court, in cases involving discrimination against the Negro's right to vote, has recognized not only the action at law for damages, 14 but, in appropriate circumstances, the extraordinary remedy of declaratory or injunctive relief. 15 Schnell v. Davis, 336 U.S. 933; Terry v. Adams, 345 U.S. 461. 16 Injunctions in these cases, it should be noted, would not have restrained statewide general elections. Compare Giles v. Harris, 189 U.S. 475.

1962, Baker v. Carr, 369 U.S. 286

4. The Court has refused to exercise its jurisdiction to pass on "abstract questions of political power, of sovereignty, of government." Massachusetts v. Mellon, 262 U.S. 447, 485. See Texas v. Interstate Commerce Commission, 258 U.S. 158, 162; New Jersey v. Sargent, 269 U.S. 328, 337. The "political question" doctrine, in this aspect, reflects the policies underlying the requirement of "standing": that the litigant who would challenge official [369 U.S. 287] action must claim infringement of an interest particular and personal to himself, as distinguished from a cause of dissatisfaction with the general frame and functioning of government—a complaint that the political institutions are awry. See Stearns v. Wood, 236 U.S. 75; Fairchild v. Hughes, 258 U.S. 126; United Public Workers v. Mitchell, 330 U.S. 75, 89-91. What renders cases of this kind nonjusticiable is not necessarily the nature of the parties to them, for the Court has resolved other issues between similar parties; 17 nor is it the nature of the legal question involved, for the same type of question has been adjudicated when presented in other forms of controversy. 18 The crux of the matter is that courts are not fit instruments of decision where what is essentially at stake is the composition of those large contests of policy traditionally fought out in nonjudicial forums, by which governments and the actions of governments are made and unmade. See Texas v. White, 7 Wall. 700; White v. Hart, 13 Wall. 646; Phillips v. Payne, 92 U.S. 130; Marsh v. Burroughs, 1 Woods 463, 471-472 (Bradley, Circuit Justice); cf. Wilson v. Shaw, 204 U.S. 24; but see Coyle v. Smith, 221 U.S. 559. Thus, where the Cherokee Nation sought by an original motion to restrain the State of Georgia from the enforcement of laws which assimilated Cherokee territory to the State's counties, abrogated Cherokee law, and abolished Cherokee government, the Court held that such a claim was not judicially cognizable. Cherokee Nation v. Georgia, 5 Pet. 1. 19 And in Georgia [369 U.S. 288] v. Stanton, 6 Wall. 50, the Court dismissed for want of jurisdiction a bill by the State of Georgia seeking to enjoin enforcement of the Reconstruction Acts on the ground that the command by military districts which they established extinguished existing state government and replaced it with a form of government unauthorized by the Constitution: 20

1962, Baker v. Carr, 369 U.S. 288

That these matters, both as stated in the body of the bill and in the prayers for relief, call for the judgment of the court upon political questions, and upon rights not of persons or property, but of a political character, will hardly be denied. For the rights for the protection of which our authority is invoked are the rights of sovereignty, of political jurisdiction, of government, of corporate existence as a State, with all its constitutional powers and privileges. No case of private rights or private property infringed, or in danger of actual or threatened infringement, is presented by the bill, in a judicial form, for the judgment of the court.

1962, Baker v. Carr, 369 U.S. 288

Id. at 77. 21 [369 U.S. 289]

1962, Baker v. Carr, 369 U.S. 289

5. The influence of these converging considerations—the caution not to undertake decision where standards meet for judicial judgment are lacking, the reluctance to interfere with matters of state government in the absence of an unquestionable and effectively enforceable mandate, the unwillingness to make courts arbiters of the broad issues of political organization historically committed to other institutions and for whose adjustment the judicial process is ill-adapted—has been decisive of the settled line of cases, reaching back more than a century, which holds that Art. IV, § 4, of the Constitution, guaranteeing to the States "a Republican Form of Government," 22 is not enforceable through the courts. E.g., O'Neill v. Leamer, 239 U.S. 244; Mountain Timber Co. v. Washington, 243 U.S. 219; Cochran v. Board of Education, 281 U.S. 370; Highland Farms Dairy, Inc., v. Anew, 300 U.S. 608. 23 Claims resting on this specific [369 U.S. 290] guarantee of the Constitution have been held nonjusticiable which challenged state distribution of powers between the legislative and judicial branches, Ohio ex rel. Bryant v. Akron Metropolitan Park District, 281 U.S. 74, state delegation of power to municipalities, Kiernan v. Portland, Oregon, 223 U.S. 151, state adoption of the referendum as a legislative institution, Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565, 569, and state restriction upon the power of state constitutional amendment, Marshall v. Dye, 231 U.S. 250, 256-257. The subject was fully considered in Pacific States Telephone & Telegraph Co. v. Oregon, 223 U.S. 118, in which the Court dismissed for want of jurisdiction a writ of error attacking a state license tax statute enacted by the initiative, on the claim that this mode of legislation was inconsistent with a Republican Form of Government and violated the Equal Protection Clause and other federal guarantees. After noting

1962, Baker v. Carr, 369 U.S. 290

…the ruinous destruction of legislative authority in matters purely political which would necessarily be occasioned by giving sanction [369 U.S. 291] to the doctrine which underlies and would be necessarily involved in sustaining the propositions contended for, 24

1962, Baker v. Carr, 369 U.S. 291

the Court said:

1962, Baker v. Carr, 369 U.S. 291

…[The] essentially political nature [of this claim] is at once made manifest by understanding that the assault which the contention here advanced makes it [sic] not on the tax as a tax, but on the State as a State. It is addressed to the framework and political character of the government by which the statute levying the tax was passed. It is the government, the political entity, which (reducing the case to its essence) is called to the bar of this court not for the purpose of testing judicially some exercise of power assailed, on the ground that its exertion [369 U.S. 292] has injuriously affected the rights of an individual because of repugnancy to some constitutional limitation, but to demand of the State that it establish its right to exist as a State, republican in form.

1962, Baker v. Carr, 369 U.S. 292

Id. at 150-151.

1962, Baker v. Carr, 369 U.S. 292

The starting point of the doctrine applied in these cases is, of course, Luther v. Borden, 7 How. 1. The case arose out of the Dorr Rebellion in Rhode Island in 1841-1842. Rhode Island, at the time of the separation from England, had not adopted a new constitution, but had continued, in its existence as an independent State, under its original royal Charter, with certain statutory alterations. This frame of government provided no means for amendment of the fundamental law; the right of suffrage was to be prescribed by legislation, which limited it to freeholders. In the 1830's, largely because of the growth of towns in which there developed a propertied class whose means were not represented by freehold estates, dissatisfaction arose with the suffrage qualifications of the charter government. In addition, population shifts had caused a dated apportionment of seats in the lower house to yield substantial numerical inequality of political influence, even among qualified voters. The towns felt themselves underrepresented, and agitation began for electoral reform. When the charter government failed to respond, popular meetings of those who favored the broader suffrage were held and delegates elected to a convention which met and drafted a state constitution. This constitution provided for universal manhood suffrage (with certain qualifications), and it was to be adopted by vote of the people at elections at which a similarly expansive franchise obtained. This new scheme of government was ratified at the polls and declared effective by the convention, but the government elected and organized under it, with Dorr at its head, never came to power. The [369 U.S. 293] charter government denied the validity of the convention, the constitution and its government and, after an insignificant skirmish, routed Dorr and his followers. It meanwhile provided for the calling of its own convention, which drafted a constitution that went peacefully into effect in 1843. 25

1962, Baker v. Carr, 369 U.S. 293

Luther v. Borden was a trespass action brought by one of Dorr's supporters in a United States Circuit Court to recover damages for the breaking and entering of his house. The defendants justified under military orders pursuant to martial law declared by the charter government, and plaintiff, by his reply, joined issue on the legality of the charter government subsequent to the adoption of the Dorr constitution. Evidence offered by the plaintiff tending to establish that the Dorr government was the rightful government of Rhode Island was rejected by the Circuit Court; the court charged the jury that the charter government was lawful, and, on a verdict for defendants, plaintiff brought a writ of error to this Court.

1962, Baker v. Carr, 369 U.S. 293

The Court, through Mr. Chief Justice Taney, affirmed. After noting that the issue of the charter government's legality had been resolved in that government's favor by the state courts of Rhode Island—that the state courts, deeming the matter a political one unfit for judicial determination, had declined to entertain attacks upon the existence and authority of the charter government—the Chief Justice held that the courts of the United States must follow those of the State in this regard. Id. at 39-40. It was recognized that the compulsion to follow [369 U.S. 294] state law would not apply in a federal court in the face of a superior command found in the Federal Constitution, ibid., but no such command was found. The Constitution, the Court said—referring to the Guarantee Clause of the Fourth Article—

1962, Baker v. Carr, 369 U.S. 294

…as far as it has provided for an emergency of this kind, and authorized the general government to interfere in the domestic concerns of a State, has treated the subject as political in its nature, and placed the power in the hands of that department.

1962, Baker v. Carr, 369 U.S. 294

Id. at 42.

1962, Baker v. Carr, 369 U.S. 294

Under this article of the Constitution, it rests with Congress to decide what government is the established one in a State. For, as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue, and as no senators or representatives were elected under the authority of the government of which Mr. Dorr was the head, Congress was not called upon to decide the controversy. Yet the right to decide is placed there, and not in the courts.

1962, Baker v. Carr, 369 U.S. 294

Ibid. 26 [369 U.S. 295]

1962, Baker v. Carr, 369 U.S. 295

In determining this issue nonjusticiable, the Court was sensitive to the same considerations to which its later decisions have given the varied applications already discussed. It adverted to the delicacy of judicial intervention into the very structure of government. 27 It acknowledged that tradition had long entrusted questions of this nature to nonjudicial processes, 28 and that judicial processes were unsuited to their decision. 29 The absence of guiding standards for judgment was critical, for the question whether the Dorr constitution had been rightfully adopted depended, in part, upon the extent of the franchise to be recognized—the very point of contention over which rebellion had been fought.

1962, Baker v. Carr, 369 U.S. 295

…[I]f the Circuit Court had entered upon this inquiry, by what rule could it have determined the qualification of voters upon the adoption or rejection of the proposed constitution, unless there was some previous law of the State to guide it? It is the province of a court to expound the law, not to make it. And certainly it is no part of the judicial functions of any court of the United States to prescribe the qualification of voters in a State, giving the right to those to whom it is denied by the written and established constitution and laws of the State, or taking it away from those to whom it is given; nor has it the right to determine what political privileges [369 U.S. 296] the citizens of a State are entitled to, unless there is an established constitution or law to govern its decision.

1962, Baker v. Carr, 369 U.S. 296

Id. at 41.

1962, Baker v. Carr, 369 U.S. 296

Mr. Justice Woodbury (who dissented with respect to the effect of martial law) agreed with the Court regarding the inappropriateness of judicial inquiry into the issues:

1962, Baker v. Carr, 369 U.S. 296

But, fortunately for our freedom from political excitements in judicial duties, this court can never with propriety be called on officially to be the umpire in questions merely political. The adjustment of these questions belongs to the people and their political representatives, either in the State or general government. These questions relate to matters not to be settled on strict legal principles. They are adjusted rather by inclination—or prejudice or compromise, often. Some of them succeed or are defeated even by public policy alone, or mere naked power, rather than intrinsic right….

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Another evil, alarming and little foreseen, involved in regarding these as questions for the final arbitrament of judges would be that, in such an event. all political privileges and rights would, in a dispute among the people, depend on our decision finally…. [D]isputed points in making constitutions, depending often, as before shown, on policy, inclination, popular resolves, and popular will,…if the people, in the distribution of powers under the constitution, should ever think of making judges supreme arbiters in political controversies, when not selected by nor, frequently, amenable to them, nor at liberty to follow such various considerations in their judgments as belong to mere political questions, they will dethrone themselves and lose one of their own invaluable birthrights; building up in this way—slowly, but surely—a new sovereign power in the [369 U.S. 297] republic, in most respects irresponsible and unchangeable for life, and one more dangerous, in theory at least, than the worst elective oligarchy in the worst of times….

1962, Baker v. Carr, 369 U.S. 297

Id. at 51-53. 30

III

1962, Baker v. Carr, 369 U.S. 297

The present case involves all of the elements that have made the Guarantee Clause cases nonjusticiable. It is, in effect, a Guarantee Clause claim masquerading under a different label. But it cannot make the case more fit for judicial action that appellants invoke the Fourteenth Amendment, rather than Art. IV, § 4, where, in fact, the gist of their complaint is the same—unless it can be found that the Fourteenth Amendment speaks with greater particularity to their situation. We have been admonished to avoid "the tyranny of labels." Snyder v. Massachusetts, 291 U.S. 97, 114. Art. IV, § 4, is not committed by express constitutional terms to Congress. It is the nature of the controversies arising under it, nothing else, which has made it judicially unenforceable. Of course, if a controversy falls within judicial power, it depends "on how he [the plaintiff] casts his action," Pan American Petroleum Corp. v. Superior Court, 366 U.S. 656, 662, whether he brings himself within a jurisdictional statute. But where judicial competence is wanting, it cannot be created by invoking one clause of the Constitution rather than another. When what was essentially a Guarantee Clause claim was sought to be laid, as well, under the Equal Protection Clause in Pacific States Telephone & Telegraph Co. v. Oregon, supra, the Court had no difficulty in "dispelling [369 U.S. 298] any mere confusion resulting from forms of expression and considering the substance of things…. " 223 U.S. at 140.

1962, Baker v. Carr, 369 U.S. 298

Here, appellants attack "the State as a State," precisely as it was perceived to be attacked in the Pacific States case, id. at 150. Their complaint is that the basis of representation of the Tennessee Legislature hurts them. They assert that "a minority now rules in Tennessee," that the apportionment statute results in a "distortion of the constitutional system," that the General Assembly is no longer "a body representative of the people of the State of Tennessee," all "contrary to the basic principle of representative government…. " Accepting appellants' own formulation of the issue, one can know this handsaw from a hawk. Such a claim would be nonjusticiable not merely under Art. IT, § 4, but under any clause of the Constitution, by virtue of the very fact that a federal court is not a forum for political debate. Massachusetts v. Mellon, supra.

1962, Baker v. Carr, 369 U.S. 298

But appellants, of course, do not rest on this claim simpliciter. In invoking the Equal Protection Clause, they assert that the distortion of representative government complained of is produced by systematic discrimination against them, by way of "a debasement of their votes…. " Does this characterization, with due regard for the facts from which it is derived, add anything to appellants' case? 31

1962, Baker v. Carr, 369 U.S. 298

At first blush, this charge of discrimination based on legislative underrepresentation is given the appearance of [369 U.S. 299] a more private, less impersonal, claim than the assertion that the frame of government is askew. Appellants appear as representatives of a class that is prejudiced as a class, in contradistinction to the polity in its entirety. However, the discrimination relied on is the deprivation of what appellants conceive to be their proportionate share of political influence. This, of course, is the practical effect of any allocation of power within the institutions of government. Hardly any distribution of political authority that could be assailed as rendering government nonrepublican would fail similarly to operate to the prejudice of some groups, and to the advantage of others, within the body politic. It would be ingenuous not to see, or consciously blind to deny, that the real battle over the initiative and referendum, or over a delegation of power to local, rather than statewide authority, is the battle between forces whose influence is disparate among the various organs of government to whom power may be given. No shift of power but works a corresponding shift in political influence among the groups composing a society.

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What, then, is this question of legislative apportionment? Appellants invoke the right to vote and to have their votes counted. 32 But they are permitted to vote, and their votes are counted. They go to the polls, they cast their ballots, they send their representatives to the state [369 U.S. 300] councils. Their complaint is simply that the representatives are not sufficiently numerous or powerful—in short, that Tennessee has adopted a basis of representation with which they are dissatisfied. Talk of "debasement" or "dilution" is circular talk. One cannot speak of "debasement" or "dilution" of the value of a vote until there is first defined a standard of reference as to what a vote should be worth. What is actually asked of the Court in this case is to choose among competing bases of representation—ultimately, really, among competing theories of political philosophy—in order to establish an appropriate frame of government for the State of Tennessee, and thereby for all the States of the Union.

1962, Baker v. Carr, 369 U.S. 300

In such a matter, abstract analogies which ignore the facts of history deal in unrealities; they betray reason. This is not a case in which a State has, through a device however oblique and sophisticated, denied Negroes or Jews or redheaded persons a vote, or given them only a third or a sixth of a vote. That was Gomillion v. Lightfoot, 364 U.S. 339. What Tennessee illustrates is an old and still widespread method of representation—representation by local geographical division, only in part respective of population—in preference to others, others, forsooth, more appealing. Appellants contest this choice, and seek to make this Court the arbiter of the disagreement. They would make the Equal Protection Clause the charter of adjudication, asserting that the equality which it guarantees comports, if not the assurance of equal weight to every voter's vote, at least the basic conception that representation ought to be proportionate to population, a standard by reference to which the reasonableness of apportionment plans may be judged.

1962, Baker v. Carr, 369 U.S. 300

To find such a political conception legally enforceable in the broad and unspecific guarantee of equal protection is to rewrite the Constitution. See Luther v. Borden, supra. Certainly "equal protection" is no more secure [369 U.S. 301] a foundation for judicial judgment of the permissibility of varying forms of representative government than is "Republican Form." Indeed, since "equal protection of the laws" can only mean an equality of persons standing in the same relation to whatever governmental action is challenged, the determination whether treatment is equal presupposes a determination concerning the nature of the relationship. This, with respect to apportionment, means an inquiry into the theoretic base of representation in an acceptably republican state. For a court could not determine the equal protection issue without, in fact, first determining the Republican Form issue, simply because what is reasonable for equal protection purposes will depend upon what frame of government, basically, is allowed. To divorce "equal protection" from "Republican Form" is to talk about half a question.

1962, Baker v. Carr, 369 U.S. 301

The notion that representation proportioned to the geographic spread of population is so universally accepted as a necessary element of equality between man and man that it must be taken to be the standard of a political equality preserved by the Fourteenth Amendment—that it is, in appellants' words "the basic principle of representative government"—is, to put it bluntly, not true. However desirable and however desired by some among the great political thinkers and framers of our government, it has never been generally practiced, today or in the past. It was not the English system, it was not the colonial system, it was not the system chosen for the national government by the Constitution, it was not the system exclusively or even predominantly practiced by the States at the time of adoption of the Fourteenth Amendment, it is not predominantly practiced by the States today. Unless judges, the judges of this Court, are to make their private views of political wisdom the measure of the Constitution—views which, in all honesty, cannot but give the appearance, if not reflect the reality, of [369 U.S. 302] involvement with the business of partisan politics so inescapably a part of apportionment controversies—the Fourteenth Amendment, "itself a historical product," Jackman v. Rosenbaum Co., 260 U.S. 22, 31, provides no guide for judicial oversight of the representation problem.

1962, Baker v. Carr, 369 U.S. 302

1. Great Britain. Writing in 1958, Professor W. J. M. Mackenzie aptly summarized the British history of the principle of representation proportioned to population:

1962, Baker v. Carr, 369 U.S. 302

"Equal electoral districts" formed part of the programme of radical reform in England in the 1830's, the only part of that programme which has not been realised. 33

1962, Baker v. Carr, 369 U.S. 302

Until the late nineteenth century, the sole base of representation (with certain exceptions not now relevant) was the local geographical unit: each county or borough returned its fixed number of members, usually two for the English units, regardless of population. 34 Prior to the Reform Act of 1832, this system was marked by the almost total disfranchisement of the populous northern industrial centers, which had grown to significant size at the advent of the Industrial Revolution and had not been granted borough representation, and by the existence of the rotten borough, playing its substantial part in the Crown's struggle for continued control of the Commons. 35 In 1831, ten southernmost English counties, numbering three and a quarter million people, had two hundred and thirty-five parliamentary representatives, while the six northernmost counties, with more than three and a half million people, had sixty-eight. 36 It was said that one hundred and eighty persons appointed three hundred and [369 U.S. 303] fifty members in the Commons. 37 Less than a half century earlier, Madison, in the Federalist, had remarked that half the House was returned by less than six thousand of the eight million people of England and Scotland. 38

1962, Baker v. Carr, 369 U.S. 303

The Act of 1832, the product of a fierce partisan political struggle and the occasion of charges of gerrymandering not without foundation, 39 effected eradication of only the most extreme numerical inequalities of the unreformed system. It did not adopt the principle of representation based on population, but merely disfranchised certain among the rotten borough and enfranchised most of the urban centers—still quite without regard to their relative numbers. 40 In the wake of the Act, there remained substantial electoral inequality: the boroughs of Cornwall were represented sixteen times as weightily, judged by population, as the county's eastern division; the average ratio of seats to population in ten agricultural counties was four and a half times that in ten manufacturing divisions; Honiton, with about three thousand inhabitants, was equally represented with Liverpool, which had four hundred thousand. 41 In 1866, apportionment by population began to be advocated generally in the House, but was not made the basis of the redistribution of 1867, although the act of that year did apportion representation more evenly, gauged by the population standard. 42 Population shifts increased the surviving inequalities; by 1884, the representation ratio [369 U.S. 304] in many small boroughs was more than twenty-two times that of Birmingham or Manchester, forty-to-one disparities could be found elsewhere, and, in sum, in the 1870's and 1880's, a fourth of the electorate returned two-thirds of the members of the House. 43

1962, Baker v. Carr, 369 U.S. 304

The first systematic English attempt to distribute seats by population was the Redistribution Act of 1885. 44 The statute still left ratios of inequality of as much as seven to one, 45 which had increased to fifteen to one by 1912. 46 In 1918, Parliament again responded to "shockingly bad" conditions of inequality, 47 and to partisan political inspiration, 48 by redistribution. 49 In 1944, redistribution was put on a periodic footing by the House of Commons (Redistribution of Seats) Act of that year, 50 which committed a continuing primary responsibility for reapportioning the Commons to administrative agencies (Boundary Commissions for England, Scotland, Wales and Northern Ireland, respectively). 51 The Commissions, having regard to certain rules prescribed for their guidance, are to prepare at designated intervals reports for the Home Secretary's submission to Parliament, along with the draft of an Order in Council to give effect to the [369 U.S. 305] Commissions' recommendations. The districting rules adopt the basic principle of representation by population, although the principle is significantly modified by directions to respect local geographic boundaries as far as practicable, and by discretion to take account of special geographical conditions, including the size, shape and accessibility of constituencies. Under the original 1944 Act, the rules provided that (subject to the exercise of the discretion respecting special geographical conditions and to regard for the total size of the House of Commons as prescribed by the Act) so far as practicable, the single-member districts should not deviate more than twenty-five percent from the electoral quota (population divided by number of constituencies). However, apparently at the recommendation of the Boundary Commission for England, the twenty-five percent standard was eliminated as too restrictive in 1947, and replaced by the flexible provision that constituencies are to be as near the electoral quota as practicable, a rule which is expressly subordinated both to the consideration of special geographic conditions and to that of preserving local boundaries. 52 Free of the twenty-five percent rule, the Commissions drew up plans of distribution in which inequalities among the districts run, in ordinary cases, as high as two to one and, in the case of a few extraordinary constituencies, three to one. 53 The action of the Boundary Commission for England was twice challenged in the courts in 1954—the claim being that the Commission had violated statutory rules [369 U.S. 306] prescribing the standards for its judgment—and, in both cases, the Judges declined to intervene. In Hammersmith Borough Council v. Boundary Commission for England, 54 Harman, J., was of opinion that the nature of the controversy and the scheme of the Acts made the matter inappropriate for judicial interference, and in Harper v. Home Secretary, 55 the Court of Appeal, per Evershed, M.R., quoting Harman, J., with approval, adverting to the wide range of discretion entrusted to the Commission under the Acts, and remarking the delicate character of the parliamentary issues in which it was sought to engage the court, reached the same conclusion. 56

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The House of Commons (Redistribution of Seats) Act, 1958, 57 made two further amendments to the law. Responsive to the recommendation of the Boundary Commission for England, 58 the interval permitted between Commission reports was more than doubled, to a new maximum of fifteen years. 59 And at the suggestion of the same Commission that

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[i]t would ease the future labours of the Commission and remove much local irritation if Rule 5 [requiring that the electorate of each constituency be as near the electoral quota as practicable] were to be so amended as to allow us to make recommendations preserving the status quo in any area where such a course appeared to be desirable and not inconsistent [369 U.S. 307] with the broad intention of the Rules, 60

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the Commissions were directed to consider the inconveniences attendant upon the alteration of constituencies, and the local ties which such alteration might break. The Home Secretary's view of this amendment was that it worked to erect "a presumption against making changes unless there is a very strong case for them." 61

1962, Baker v. Carr, 369 U.S. 307

2. The Colonies and the Union. For the guiding political theorists of the Revolutionary generation, the English system of representation, in its most salient aspects of numerical inequality, was a model to be avoided, not followed. 62 Nevertheless, the basic English principle of apportioning representatives among the local governmental entities, towns or counties, rather than among units of approximately equal population, had early taken root in the colonies. 63 In some, as in Massachusetts and Rhode Island, numbers of electors were taken into account, in a rough fashion, by allotting increasing fixed quotas of representatives to several towns or classes of towns graduated by population, but in most of the colonies, delegates were allowed to the local units without respect to numbers. 64 This resulted in grossly unequal electoral units. 65 The representation ratio in one North Carolina county was more than eight times that, in another. 66 Moreover, American rotten boroughs had appeared, 67 and apportionment was made an instrument first in the political [369 U.S. 308] struggles between the King or the royal governors and the colonial legislatures, 68 and, later, between the older tidewater regions in the colonies and the growing interior. 69 Madison, in the Philadelphia Convention, adverted to the "inequality of the Representation in the Legislatures of particular States,…" 70 arguing that it was necessary to confer on Congress the power ultimately to regulate the times, places and manner of selecting Representatives, 71 in order to forestall the overrepresented counties' securing themselves a similar overrepresentation in the national councils. The example of South Carolina, where Charleston's overrepresentation was a continuing bone of contention between the tidewater and the back country, was cited by Madison in the Virginia Convention and by King in the Massachusetts Convention, in support of the same power, and King also spoke of the extreme numerical inequality arising from Connecticut's town representation system. 72

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Such inequalities survived the constitutional period. The United States Constitution itself did not largely adopt the principle of numbers. Apportionment of the national legislature among the States was one of the most difficult problems for the Convention; 73 its solution—involving State representation in the Senate 74 and the three-fifths compromise in the House 75—left neither chamber apportioned proportionately to population. [369 U.S. 309] Within the States, electoral power continued to be allotted to favor the tidewater. 76 Jefferson, in his Notes on Virginia, recorded the "very unequal" representation there: individual counties differing in population by a ratio of more than seventeen to one elected the same number of representatives, and those nineteen thousand of Virginia's fifty thousand men who lived between the falls of the rivers and the seacoast returned half the State's senators and almost half its delegates. 77 In South Carolina in 1790, the three lower districts, with a white population of less than twenty-nine thousand, elected twenty senators and seventy assembly members; while, in the uplands, more than one hundred and eleven thousand white persons elected seventeen senators and fifty-four assemblymen. 78

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In the early nineteenth century, the demands of the interior became more insistent. The apportionment quarrel in Virginia was a major factor in precipitating the calling of a constitutional convention in 1829. Bitter animosities racked the convention, threatening the State with disunion. At last, a compromise which gave the three hundred and twenty thousand people of the west thirteen senators, as against the nineteen senators returned by the three hundred sixty-three thousand people of the east, commanded agreement. It was adopted at the polls, but left the western counties so dissatisfied that there were threats of revolt and realignment with the State of Maryland. 79

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Maryland, however, had her own numerical disproportions. In 1820, one representative vote in Calvert County [369 U.S. 310] was worth five in Frederick County, and almost two hundred thousand people were represented by eighteen members, while fifty thousand others elected twenty. 80 This was the result of the county representation system of allotment. And, except for Massachusetts, which, after a long struggle, did adopt representation by population at the mid-century, a similar town representation principle continued to prevail in various forms throughout New England, with all its attendant, often gross, inequalities. 81

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3. The States at the time of ratification of the Fourteenth Amendment, and those later admitted. The several state conventions throughout the first half of the nineteenth century were the scenes of fierce sectional and party strifes respecting the geographic allocation of representation. 82 Their product was a wide variety of apportionment methods which recognized the element of population in differing ways and degrees. Particularly pertinent to appraisal of the contention that the Fourteenth Amendment embodied a standard limiting the freedom of the States with regard to the principles and bases of local legislative apportionment is an examination of the apportionment provisions of the thirty-three States which ratified the Amendment between 1866 and 1870, at their respective times of ratification. These may be considered in two groups: (A) the ratifying States other than the ten Southern States whose constitutions, at the time of ratification or shortly thereafter, were the work of the Reconstruction Act conventions; 83 and [369 U.S. 311] (B) the ten Reconstruction-Act States. All thirty-three are significant, because they demonstrate how unfounded is the assumption that the ratifying States could have agreed on a standard apportionment theory or practice, and how baseless the suggestion that, by voting for the Equal Protection Clause, they sought to establish a test mold for apportionment which—if appellants' argument is sound—struck down sub silentio not a few of their own state constitutional provisions. But the constitutions of the ten Reconstruction Act States have an added importance, for it is scarcely to be thought that the Congress which was so solicitous for the adoption of the Fourteenth Amendment as to make the readmission of the late rebel States to Congress turn on their respective ratifications of it, would have approved constitutions which—again, under appellants' theory—contemporaneously offended the Amendment.

1962, Baker v. Carr, 369 U.S. 311

A. Of the twenty-three ratifying States of the first group, seven or eight had constitutions which demanded or allowed apportionment of both houses on the basis of population, 84 unqualifiedly or with only qualifications respecting the preservation of local boundaries. 85 Three [369 U.S. 312] more apportioned on what was essentially a population base, but provided that, in one house, counties having a specified fraction of a ratio—a moiety or two-thirds—should have a representative. 86 Since each of these three States limited the size of their chambers, the fractional rule could operate—and, at least in Michigan, has, in fact, operated 87—to produce substantial numerical inequalities [369 U.S. 313] in favor of the sparsely populated counties. 88 Iowa favored her small counties by the rule that no more than four counties might be combined in a representative district, 89 and New York and Kansas compromised population and county representation principles by assuring every county, regardless of the number of its inhabitants, at least one seat in their respective Houses. 90

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Ohio and Maine recognized the factor of numbers by a different device. The former gave a House representative to each county having half a ratio, two representatives for a ratio and three-quarters, three representatives for three ratios, and a single additional representative for each additional ratio. 91 The latter, after apportioning among counties on a population base, gave each town of fifteen hundred inhabitants one representative, each town of three thousand, seven hundred and fifty inhabitants two representatives, and so on in increasing intervals to twenty-six thousand, two hundred and fifty inhabitants—towns of that size or larger receiving the maximum permitted number of representatives: seven. 92 The departure from numerical equality under these systems is apparent: in Maine, assuming the incidence of towns in [369 U.S. 314] all categories, representative ratios would differ by factors of two and a half to one, at a minimum. Similarly, Missouri gave each of its counties, however small, one representative, two representatives for three ratios, three representatives for six ratios, and one additional representative for each three ratios above six. 93 New Hampshire allotted a representative to each town of one hundred and fifty ratable male polls of voting age and one more representative for each increment of three hundred above that figure; 94 its Senate was not apportioned by population, but among districts based on the proportion of direct taxes paid. 95 In Pennsylvania, the basis of apportionment in both houses was taxable inhabitants, and in the House, every county of at least thirty-five hundred taxables had a representative, nor could more than three counties be joined in forming a representative district; while, in the Senate, no city or county could have more than four of the State's twenty-five to thirty-three senators. 96

1962, Baker v. Carr, 369 U.S. 314

Finally, four States apportioned at least one House with no regard whatever to population. In Connecticut, 97 and Vermont 98 representation in the House was on a town basis; Rhode Island gave one senator to each of its towns or cities, 99 and New Jersey one to each of its counties. 100 [369 U.S. 315] Nor, in any of these States, was the other House apportioned on a strict principle of equal numbers: Connecticut gave each of its counties a minimum of two senators 101 and Vermont, one; 102 New Jersey assured each county a representative; 103 and, in Rhode Island, which gave at least one representative to each town or city, no town or city could have more than one-sixth of the total number in the House. 104

1962, Baker v. Carr, 369 U.S. 315

B. Among the ten late Confederate States affected by the Reconstruction Acts, in only four did it appear that apportionment of both state legislative houses would or might be based strictly on population. 105 In North Carolina, 106 South Carolina, 107 Louisiana, 108 and Alabama, 109 each county (in the case of Louisiana, each parish) was assured at least one seat in the lower House irrespective of numbers—a distribution which exhausted, respectively, [369 U.S. 316] on the basis of the number of then-existing counties, three-quarters, one-quarter, two-fifths and three-fifths of the maximum possible number of representatives, before a single seat was available for assignment on a population basis, and, in South Carolina, moreover, the Senate was composed of one member elected from each county, except that Charleston sent two. 110 In Florida's House, each county had one seat guaranteed and an additional seat for every thousand registered voters up to a maximum of four representatives, 111 while Georgia, whose Senate seats were distributed among forty-four single member districts each composed of three contiguous counties, 112 assigned representation in its House as follows: three seats to each of the six most populous counties, two to each of the thirty-one next most populous, one to each of the remaining ninety-five. 113 As might be expected, the "one representative per county" minimum pattern has proved incompatible with numerical equality, 114 and Georgia's [369 U.S. 317] county-clustering system has produced representative ratio disparities, between the largest and smallest counties, of more than sixty to one. 115

1962, Baker v. Carr, 369 U.S. 317

C. The constitutions 116 of the thirteen States which Congress admitted to the Union after the ratification of the Fourteenth Amendment showed a similar pattern. Six of them required or permitted apportionment of both Houses by population, subject only to qualifications concerning local boundaries. 117 Wyoming, apportioning by population, guaranteed to each of its counties at least one seat in each House, 118 and Idaho, which prescribed (after the first legislative session) that apportionment should be "as may be provided by law," gave each county at least one representative. 119 In Oklahoma, House members were apportioned among counties so as to give one [369 U.S. 318] seat for half a ratio, two for a ratio and three-quarters, and one for each additional ratio up to a maximum of seven representatives per county. 120 Montana required reapportionment of its House on the basis of periodic enumerations according to ratios to be fixed by law, 121 but its counties were represented as counties in the Senate, each county having one senator. 122 Alaska 123 and Hawaii 124 each apportioned a number of senators among constitutionally fixed districts; their respective Houses were to be periodically reapportioned by population, subject to a moiety rule in Alaska 125 and to Hawaii's guarantee of one representative to each of four constitutionally designated areas. 126 The Arizona Constitution assigned representation to each county in each house, giving one or two senators and from one to seven representatives to each, and making no provision for reapportionment. 127 [369 U.S. 319]

1962, Baker v. Carr, 369 U.S. 319

4. Contemporary apportionment. Detailed recent studies are available to describe the present-day constitutional and statutory status of apportionment in the fifty States. 128 They demonstrate a decided twentieth-century trend away from population as the exclusive base of representation. Today, only a dozen state constitutions provide for periodic legislative reapportionment of both houses by a substantially unqualified application of the population standard, 129 and only about a dozen more prescribe such reapportionment for even a single chamber.

1962, Baker v. Carr, 369 U.S. 319

Specific provision for county representation in at least one house of the state legislature has been increasingly adopted since the end of the 19th century. 130

1962, Baker v. Carr, 369 U.S. 319

More than twenty States now guarantee each county at least one seat in one of their houses regardless of population, and in nine others county or town units are given equal representation in one legislative branch, whatever the number of each unit's inhabitants. Of course, numerically considered, "These provisions invariably result in over-representation of the least populated areas." 131 And in an effort to curb the political dominance of metropolitan regions, at least ten States now limit the maximum entitlement of any single county (or, in some cases, city) [369 U.S. 320] in one legislative house—another source of substantial numerical disproportion. 132

1962, Baker v. Carr, 369 U.S. 320

Moreover, it is common knowledge that the legislatures have not kept reapportionment up to date, even where state constitutions in terms require it. 133 In particular, the pattern of according greater per capita representation to rural, relatively sparsely populated areas—the same pattern which finds expression in various state constitutional provisions, 134 and which has been given effect in England and elsewhere 135—has, in some of the States, been made the law by legislative inaction in the face of [369 U.S. 321] population shifts. 136 Throughout the country, urban and suburban areas tend to be given higher representation ratios than do rural areas. 137

1962, Baker v. Carr, 369 U.S. 321

The stark fact is that, if, among the numerous widely varying principles and practices that control state legislative apportionment today, there is any generally prevailing feature, that feature is geographic inequality in relation to the population standard. 138 Examples could be endlessly multiplied. In New Jersey, counties of [369 U.S. 322] thirty-five thousand and of more than nine hundred and five thousand inhabitants respectively each have a single senator. 139 Representative districts in Minnesota range from 7,290 inhabitants to 107,246 inhabitants. 140 Ratios of senatorial representation in California vary as much as two hundred and ninety-seven to one. 141 In Oklahoma, the range is ten to one for House constituencies and roughly sixteen to one for Senate constituencies. 142 Colebrook, Connecticut—population 592—elects two House representatives; Hartford—population 177,397—also elects two. 143 The first, third and fifth of these examples are the products of constitutional provisions which subordinate population to regional considerations in apportionment; the second is the result of legislative inaction; the fourth derives from both constitutional and legislative sources. A survey made in 1955, in sum, reveals that less than thirty percent of the population inhabit districts sufficient to elect a House majority in thirteen States and a Senate majority in nineteen States. 144 These figures show more than individual variations from a generally accepted standard of electoral equality. They show that there is not—as there has never been—a standard by [369 U.S. 323] which the place of equality as a factor in apportionment can be measured.

1962, Baker v. Carr, 369 U.S. 323

Manifestly, the Equal Protection Clause supplies no clearer guide for judicial examination of apportionment methods than would the Guarantee Clause itself. Apportionment, by its character, is a subject of extraordinary complexity, involving—even after the fundamental theoretical issues concerning what is to be represented in a representative legislature have been fought out or compromised—considerations of geography, demography, electoral convenience, economic and social cohesions or divergencies among particular local groups, communications, the practical effects of political institutions like the lobby and the city machine, ancient traditions and ties of settled usage, respect for proven incumbents of long experience and senior status, mathematical mechanics, censuses compiling relevant data, and a host of others. 145 [369 U.S. 324] Legislative responses throughout the country to the reapportionment demands of the 1960 Census have glaringly confirmed that these are not factors that lend themselves to evaluations of a nature that are the staple of judicial determinations or for which judges are equipped to adjudicate by legal training or experience or native wit. And this is the more so true because, in every strand of this complicated, intricate web of values meet the contending forces of partisan politics. 146 The practical significance of apportionment is that the next election results may differ because of it. Apportionment battles are overwhelmingly party or intra-party contests. 147 It will add a virulent source of friction and tension in federal-state relations to embroil the federal judiciary in them. 148 [369 U.S. 325]

IV

1962, Baker v. Carr, 369 U.S. 325

Appellants, however, contend that the federal courts may provide the standard which the Fourteenth Amendment lacks by reference to the provisions of the constitution of Tennessee. The argument is that, although the same or greater disparities of electoral strength may be suffered to exist immune from federal judicial review in States where they result from apportionment legislation consistent with state constitutions, the Tennessee Legislature may not abridge the rights which, on its face, its own constitution appears to give, without by that act denying equal protection of the laws. It is said that the law of Tennessee, as expressed by the words of its written constitution, has made the basic choice among policies in favor of representation proportioned to population, and that it is no longer open to the State to allot its voting power on other principles.

1962, Baker v. Carr, 369 U.S. 325

This reasoning does not bear analysis. Like claims invoking state constitutional requirement have been rejected here, and for good reason. It is settled that whatever federal consequences may derive from a discrimination worked by a state statute must be the same as if the same discrimination were written into the [369 U.S. 326] State's fundamental law. Nashville, C. & St.L. R. Co. v. Browning, 310 U.S. 362. And see Castillo v. McConnico, 168 U.S. 674; Coulter v. Louisville & N. R. Co., 196 U.S. 599, 608-609; Owensboro Waterworks Co. v. Owensboro, 200 U.S. 38; Hebert v. Louisiana, 272 U.S. 312, 316-317; Snowden v. Hughes, 321 U.S. 1, 11. Appellants complain of a practice which, by their own allegations, has been the law of Tennessee for sixty years. They allege that the Apportionment Act of 1901 created unequal districts when passed, and still maintains unequal districts. They allege that the Legislature has, since 1901, purposefully retained unequal districts. And the Supreme Court of Tennessee has refused to invalidate the law establishing these unequal districts. Kidd v. McCanless, 200 Tenn. 273, 292 S.W.2d 40; appeal dismissed here in 352 U.S. 920. In these circumstances, what was said in the Browning case, supra, at 369, clearly governs this case:

1962, Baker v. Carr, 369 U.S. 326

…Here, according to petitioner's own claim, all the organs of the state are conforming to a practice, systematic, unbroken for more than forty years, and now questioned for the first time. It would be a narrow conception of jurisprudence to confine the notion of "laws" to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice cannot supplant constitutional guarantees, but it can establish what is state law. The Equal Protection Clause did not write an empty formalism into the Constitution. Deeply embedded traditional ways of carrying out state policy, such as those of which petitioner complains, are often tougher and truer law than the dead words of the written text…. [T]he Equal Protection Clause is not a command of candor…. [369 U.S. 327]

1962, Baker v. Carr, 369 U.S. 327

Tennessee's law and its policy respecting apportionment are what 60 years of practice show them to be, not what appellants cull from the unenforced and, according to its own judiciary, unenforceable words of its Constitution. The statute comes here on the same footing, therefore, as would the apportionment laws of New Jersey, California or Connecticut, 149 and is unaffected by its supposed repugnance to the state constitutional language on which appellants rely. 150

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In another aspect, however, the Kidd v. McCanless case, supra, introduces a factor peculiar to this litigation, which only emphasizes the duty of declining the exercise of federal judicial jurisdiction. In all of the apportionment cases which have come before the Court, a consideration which has been weighty in determining their nonjusticiability has been the difficulty or impossibility of devising effective judicial remedies in this class of case. An injunction restraining a general election unless the legislature reapportions would paralyze the critical centers of a State's political system and threaten political dislocation whose consequences are not foreseeable. A declaration devoid [369 U.S. 328] of implied compulsion of injunctive or other relief would be an idle threat. 151 Surely a Federal District Court could not itself remap the State: the same complexities which impede effective judicial review of apportionment a fortiori make impossible a court's consideration of these imponderables as an original matter. And the choice of elections at large, as opposed to elections by district, however unequal the districts, is a matter of sweeping political judgment having enormous political implications, the nature and reach of which are certainly beyond the informed understanding of, and capacity for appraisal by, courts.

1962, Baker v. Carr, 369 U.S. 328

In Tennessee, moreover, the McCanless case has closed off several among even these unsatisfactory and dangerous modes of relief. That case was a suit in the state courts attacking the 1901 Reapportionment Act and seeking a declaration and an injunction of the Act's enforcement or, alternatively, a writ of mandamus compelling state election officials to hold the elections at large, or, again alternatively, a decree of the court reapportioning the State. The Chancellor denied all coercive relief, but entertained the suit for the purpose of rendering a declaratory judgment. It was his view that, despite an invalidation of the statute under which the present legislature was elected, that body would continue to possess de facto authority to reapportion, and that, therefore, the maintaining of the suit did not threaten the disruption of the government. The Tennessee Supreme Court agreed that no coercive relief could be granted; in particular, it said, "There is no provision of law for election of our General Assembly by an election at large over the State." 200 Tenn. at 277, 292 S.W.2d at 42. Thus, a legislature elected at [369 U.S. 329] large would not be the legally constituted legislative authority of the State. The court reversed, however, the Chancellor's determination to give declaratory relief, holding that the ground of demurrer which asserted that a striking down of the statute would disrupt the orderly process of government should have been sustained:

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(4) It seems obvious, and we therefore hold, that, if the Act of 1901 is to be declared unconstitutional, then the de facto doctrine cannot be applied to maintain the present members of the General Assembly in office. If the Chancellor is correct in holding that this statute has expired by the passage of the decade following its enactment, then, for the same reason, all prior apportionment acts have expired by a like lapse of time, and are nonexistent. Therefore, we would not only not have any existing members of the General Assembly, but we would have no apportionment act whatever under which a new election could be held for the election of members to the General Assembly.

\* \* \* \*

1962, Baker v. Carr, 369 U.S. 329

The ultimate result of holding this Act unconstitutional by reason of the lapse of time would be to deprive us of the present Legislature and the means of electing a new one and ultimately bring about the destruction of the State itself.

1962, Baker v. Carr, 369 U.S. 329

200 Tenn. at 281-282, 292 S.W.2d at 44.

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A federal court enforcing the Federal Constitution is not, to be sure, bound by the remedial doctrines of the state courts. But it must consider as pertinent to the propriety or impropriety of exercising its jurisdiction those state law effects of its decree which it cannot itself control. A federal court cannot provide the authority requisite to make a legislature the proper governing body of the State of Tennessee. And it cannot be doubted that the striking [369 U.S. 330] down of the statute here challenged on equal protection grounds, no less than on grounds of failure to reapportion decennially, would deprive the State of all valid apportionment legislation and—under the ruling in McCanless—deprive the State of an effective law-based legislative branch. Just such considerations, among others here present, were determinative in Luther v. Borden and the Oregon initiative cases. 152

1962, Baker v. Carr, 369 U.S. 330

Although the District Court had jurisdiction in the very restricted sense of power to determine whether it could adjudicate the claim, the case is of that class of political controversy which, by the nature of its subject, is unfit for federal judicial action. The judgment of the District Court, in dismissing the complaint for failure to state a claim on which relief can be granted, should therefore be affirmed.

HARLAN, J., dissenting

1962, Baker v. Carr, 369 U.S. 330

Dissenting opinion of MR. JUSTICE HARLAN, whom MR. JUSTICE FRANKFURTER joins.

1962, Baker v. Carr, 369 U.S. 330

The dissenting opinion of MR. JUSTICE FRANKFURTER, in which I join, demonstrates the abrupt departure the majority makes from judicial history by putting the federal courts into this area of state concerns—an area which, in this instance, the Tennessee state courts themselves have refused to enter.

1962, Baker v. Carr, 369 U.S. 330

It does not detract from his opinion to say that the panorama of judicial history it unfolds, though evincing a steadfast underlying principle of keeping the federal courts out of these domains, has a tendency, because of variants in expression, to becloud analysis in a given case. With due respect to the majority, I think that has happened here.

1962, Baker v. Carr, 369 U.S. 330

Once one cuts through the thicket of discussion devoted to "jurisdiction," "standing," "justiciability," and "political [369 U.S. 331] question," there emerges a straightforward issue which, in my view, is determinative of this case. Does the complaint disclose a violation of a federal constitutional right, in other words, a claim over which a United States District Court would have jurisdiction under 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983? The majority opinion does not actually discuss this basic question, but, as one concurring Justice observes, seems to decide it "sub silentio." Ante, p. 261. However, in my opinion, appellants' allegations, accepting all of them as true, do not, parsed down or as a whole, show an infringement by Tennessee of any rights assured by the Fourteenth Amendment. Accordingly, I believe the complaint should have been dismissed for "failure to state a claim upon which relief can be granted." Fed.Rules Civ.Proc., Rule 12(b)(6).

1962, Baker v. Carr, 369 U.S. 331

It is at once essential to recognize this case for what it is. The issue here relates not to a method of state electoral apportionment by which seats in the federal House of Representatives are allocated, but solely to the right of a State to fix the basis of representation in its own legislature. Until it is first decided to what extent that right is limited by the Federal Constitution, and whether what Tennessee has done or failed to do in this instance runs afoul of any such limitation, we need not reach the issues of "justiciability" or "political question" or any of the other considerations which in such cases as Colegrove v. Green, 328 U.S. 549, led the Court to decline to adjudicate a challenge to a state apportionment affecting seats in the federal House of Representatives, in the absence of a controlling Act of Congress. See also Wood v. Broom, 287 U.S. 1.

1962, Baker v. Carr, 369 U.S. 331

The appellants' claim in this case ultimately rests entirely on the Equal Protection Clause of the Fourteenth Amendment. It is asserted that Tennessee has violated the Equal Protection Clause by maintaining, in effect, a [369 U.S. 332] system of apportionment that grossly favors in legislative representation the rural sections of the State as against its urban communities. Stripped to it's essentials, the complaint purports to set forth three constitutional claims of varying breadth:

1962, Baker v. Carr, 369 U.S. 332

(1) The Equal Protection Clause requires that each vote cast in state legislative elections be given approximately equal weight.

1962, Baker v. Carr, 369 U.S. 332

(2) Short of this, the existing apportionment of state legislators is so unreasonable as to amount to an arbitrary and capricious act of classification on the part of the Tennessee Legislature, which is offensive to the Equal Protection Clause.

1962, Baker v. Carr, 369 U.S. 332

(3) In any event, the existing apportionment is rendered invalid under the Fourteenth Amendment because it flies in the face of the Tennessee Constitution.

1962, Baker v. Carr, 369 U.S. 332

For reasons given in MR. JUSTICE FRANKFURTER's opinion, ante pp. 325-327, the last of these propositions is manifestly untenable, and need not be dealt with further. I turn to the other two.

I

1962, Baker v. Carr, 369 U.S. 332

I can find nothing in the Equal Protection Clause or elsewhere in the Federal Constitution which expressly or impliedly supports the view that state legislatures must be so structured as to reflect with approximate equality the voice of every voter. Not only is that proposition refuted by history, as shown by my Brother FRANKFURTER, but it strikes deep into the heart of our federal system. Its acceptance would require us to turn our backs on the regard which this Court has always shown for the judgment of state legislatures and courts on matters of basically local concern [369 U.S. 333]

1962, Baker v. Carr, 369 U.S. 333

In the last analysis, what lies at the core of this controversy is a difference of opinion as to the function of representative government. It is surely beyond argument that those who have the responsibility for devising a system of representation may permissibly consider that factors other than bare numbers should be taken into account. The existence of the United States Senate is proof enough of that. To consider that we may ignore the Tennessee Legislature's judgment in this instance because that body was the product of an asymmetrical electoral apportionment would, in effect, be to assume the very conclusion here disputed. Hence, we must accept the present form of the Tennessee Legislature as the embodiment of the State's choice, or, more realistically, its compromise, between competing political philosophies. The federal courts have not been empowered by the Equal Protection Clause to judge whether this resolution of the State's internal political conflict is desirable or undesirable, wise or unwise.

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With respect to state tax statutes and regulatory measures, for example, it has been said that the

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day is gone when this Court uses the…Fourteenth Amendment to strike down state laws…because they may be unwise, improvident, or out of harmony with a particular school of thought.

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Williamson v. Lee Optical Co., 348 U.S. 483, 488. I would think it all the more compelling for us to follow this principle of self-restraint when what is involved is the freedom of a State to deal with so intimate a concern as the structure of its own legislative branch. The Federal Constitution imposes no limitation on the form which a state government may take other than generally committing to the United States the duty to guarantee to every State "a Republican Form of Government." And, as my Brother FRANKFURTER so conclusively proves (ante pp. 308-317), no intention to fix immutably the [369 U.S. 334] means of selecting representatives for state governments could have been in the minds of either the Founders or the draftsmen of the Fourteenth Amendment.

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In short, there is nothing in the Federal Constitution to prevent a State, acting not irrationally, from choosing any electoral legislative structure it thinks best suited to the interests, temper, and customs of its people. I would have thought this proposition settled by MacDougall v. Green, 335 U.S. 281, in which the Court observed (at p. 283) that to "assume that political power is a function exclusively of numbers is to disregard the practicalities of government," and reaffirmed by South v. Peters, 339 U.S. 276. A State's choice to distribute electoral strength among geographical units, rather than according to a census of population, is certainly no less a rational decision of policy than would be its choice to levy a tax on property, rather than a tax on income. Both are legislative judgments entitled to equal respect from this Court.

II

1962, Baker v. Carr, 369 U.S. 334

The claim that Tennessee's system of apportionment is so unreasonable as to amount to a capricious classification of voting strength stands up no better under dispassionate analysis.

1962, Baker v. Carr, 369 U.S. 334

The Court has said time and again that the Equal Protection Clause does not demand of state enactments either mathematical identity or rigid equality. E.g., Allied Stores of Ohio v. Bowers, 358 U.S. 522, 527-528, and authorities there cited; McGowan v. Maryland, 366 U.S. 420, 425-426. All that is prohibited is "invidious discrimination" bearing no rational relation to any permissible policy of the State. Williamson v. Lee Optical Co., supra, at 489. And in deciding whether such discrimination has been practiced by a State, it must be borne in mind that a "statutory discrimination will not be set aside if any state of facts reasonably may be conceived [369 U.S. 335] to justify it." McGowan v. Maryland, supra. It is not inequality alone that calls for a holding of unconstitutionality; only if the inequality is based on an impermissible standard may this Court condemn it.

1962, Baker v. Carr, 369 U.S. 335

What then is the basis for the claim made in this case that the distribution of state senators and representatives is the product of capriciousness or of some constitutionally prohibited policy? It is not that Tennessee has arranged its electoral districts with a deliberate purpose to dilute the voting strength of one race, cf. Gomillion v. Lightfoot, 364 U.S. 339, or that some religious group is intentionally underrepresented. Nor is it a charge that the legislature has indulged in sheer caprice by allotting representatives to each county on the basis of a throw of the dice, or of some other determinant bearing no rational relation to the question of apportionment. Rather, the claim is that the State Legislature has unreasonably retained substantially the same allocation of senators and representatives as was established by statute in 1901, refusing to recognize the great shift in the population balance between urban and rural communities that has occurred in the meantime.

1962, Baker v. Carr, 369 U.S. 335

It is further alleged that, even as of 1901, the apportionment was invalid in that it did not allocate state legislators among the counties in accordance with the formula set out in Art. II, § 5, of the Tennessee Constitution. In support of this, the appellants have furnished a Table which indicates that, as of 1901, six counties were overrepresented and 11 were underrepresented. But that Table, in fact, shows nothing in the way of significant discrepancy; in the instance of each county, it is only one representative who is either lacking or added. And it is further perfectly evident that the variations are attributable to nothing more than the circumstance that the then enumeration of voters resulted in fractional remainders with respect to which the precise formula of the Tennessee Constitution was, in some [369 U.S. 336] instances, slightly disregarded. Unless such de minimis departures are to be deemed of significance, these statistics certainly provide no substantiation for the charge that the 1901 apportionment was arbitrary and capricious. Indeed, they show the contrary.

1962, Baker v. Carr, 369 U.S. 336

Thus, reduced to its essentials, the charge of arbitrariness and capriciousness rests entirely on the consistent refusal of the Tennessee Legislature over the past 60 years to alter a pattern of apportionment that was reasonable when conceived.

1962, Baker v. Carr, 369 U.S. 336

A Federal District Court is asked to say that the passage of time has rendered the 1901 apportionment obsolete to the point where its continuance becomes vulnerable under the Fourteenth Amendment. But is not this matter one that involves a classic legislative judgment? Surely it lies within the province of a state legislature to conclude that an existing allocation of senators and representatives constitutes a desirable balance of geographical and demographical representation, or that, in the interest of stability of government, it would be best to defer for some further time the redistribution of seats in the state legislature.

1962, Baker v. Carr, 369 U.S. 336

Indeed, I would hardly think it unconstitutional if a state legislature's expressed reason for establishing or maintaining an electoral imbalance between its rural and urban population were to protect the State's agricultural interests from the sheer weight of numbers of those residing in its cities. A State may, after all, take account of the interests of its rural population in the distribution of tax burdens, e.g., American Sugar Rfg. Co. v. Louisiana, 179 U.S. 89, and recognition of the special problems of agricultural interests has repeatedly been reflected in federal legislation, e.g., Capper-Volstead Act, 42 Stat. 388; Agricultural Adjustment Act of 1938, 52 Stat. 31. Even the exemption of agricultural activities from state criminal statutes of otherwise general application has not been deemed offensive to the Equal Protection Clause. [369 U.S. 337] Tigner v. Texas, 310 U.S. 141. Does the Fourteenth Amendment impose a stricter limitation upon a State's apportionment of political representatives to its central government? I think not. These are matters of local policy, on the wisdom of which the federal judiciary is neither permitted nor qualified to sit in judgment.

1962, Baker v. Carr, 369 U.S. 337

The suggestion of my Brother FRANKFURTER that courts lack standards by which to decide such cases as this is relevant not only to the question of "justiciability," but also, and perhaps more fundamentally, to the determination whether any cognizable constitutional claim has been asserted in this case. Courts are unable to decide when it is that an apportionment originally valid becomes void because the factors entering into such a decision are basically matters appropriate only for legislative judgment. And so long as there exists a possible rational legislative policy for retaining an existing apportionment, such a legislative decision cannot be said to breach the bulwark against arbitrariness and caprice that the Fourteenth Amendment affords. Certainly, with all due respect, the facile arithmetical argument contained in Part II of my Brother CLARK's separate opinion (ante, pp. 253-258) provides no tenable basis for considering that there has been such a breach in this instance. (See the Appendix to this opinion.)

1962, Baker v. Carr, 369 U.S. 337

These conclusions can hardly be escaped by suggesting that capricious state action might be found were it to appear that a majority of the Tennessee legislators, in refusing to consider reapportionment, had been actuated by self-interest in perpetuating their own political offices or by other unworthy or improper motives. Since Fletcher v. Peck, 6 Cranch. 87, was decided many years ago, it has repeatedly been pointed out that it is not the business of the federal courts to inquire into the personal motives of legislators. E.g., Arizona v. California, 283 U.S. 423, 455 & n. 7. The function of the federal judiciary ends in [369 U.S. 338] matters of this kind once it appears, as I think it does here on the undisputed facts, that the state action complained of could have rested on some rational basis. (See the Appendix to this opinion.)

1962, Baker v. Carr, 369 U.S. 338

It is my view that the majority opinion has failed to point to any recognizable constitutional claim alleged in this complaint. Indeed, it is interesting to note that my Brother STEWART is at pains to disclaim for himself, and to point out that the majority opinion does not suggest, that the Federal Constitution requires of the States any particular kind of electoral apportionment, still less that they must accord to each voter approximately equal voting strength. Concurring opinion, ante, p. 265. But that being so, what, may it be asked, is left of this complaint? Surely the bare allegations that the existing Tennessee apportionment is "incorrect," "arbitrary," "obsolete" and "unconstitutional"—amounting to nothing more than legal conclusions—do not themselves save the complaint from dismissal. See Snowden v. Hughes, 321 U.S. 1; Collins v. Hardyman, 341 U.S. 651. Nor do those allegations shift to the appellees the burden of proving the constitutionality of this state statute; as is so correctly emphasized by my Brother STEWART (ante, p. 266), this Court has consistently held in cases.arising under the Equal Protection Clause that

1962, Baker v. Carr, 369 U.S. 338

"the burden of establishing the unconstitutionality of a statute rests on him who assails it." Metropolitan Casualty Ins. Co. v. Brownell, 294 U.S. 580, 584.

1962, Baker v. Carr, 369 U.S. 338

(Emphasis added.) Moreover, the appellants do not suggest that they could show at a trial anything beyond the matters previously discussed in this opinion, which add up to nothing in the way of a supportable constitutional challenge against this statute. And finally, the majority's failure to come to grips with the question whether the complaint states a claim cognizable under the Federal Constitution—an issue necessarily presented by appellees' motion to dismiss—[369 U.S. 339] does not, of course, furnish any ground for permitting this action to go to trial.

1962, Baker v. Carr, 369 U.S. 339

From a reading of the majority and concurring opinions one will not find it difficult to catch the premises that underlie this decision. The fact that the appellants have been unable to obtain political redress of their asserted grievances appears to be regarded as a matter which should lead the Court to stretch to find some basis for judicial intervention. While the Equal Protection Clause is invoked, the opinion for the Court notably eschews explaining how, consonant with past decisions, the undisputed facts in this case can be considered to show a violation of that constitutional provision. The majority seems to have accepted the argument, pressed at the bar, that, if this Court merely asserts authority in this field, Tennessee and other "malapportioning" States will quickly respond with appropriate political action, so that this Court need not be greatly concerned about the federal courts becoming further involved in these matters. At the same time, the majority has wholly failed to reckon with what the future may hold in store if this optimistic prediction is not fulfilled. Thus, what the Court is doing reflects more an adventure in judicial experimentation than a solid piece of constitutional adjudication. Whether dismissal of this case should have been for want of jurisdiction or, as is suggested in Bell v. Hood, 327 U.S. 678, 682-683, for failure of the complaint to state a claim upon which relief could be granted, the judgment of the District Court was correct.

1962, Baker v. Carr, 369 U.S. 339

In conclusion, it is appropriate to say that one need not agree, as a citizen, with what Tennessee has done or failed to do in order to deprecate, as a judge, what the majority is doing today. Those observers of the Court who see it primarily as the last refuge for the correction of all inequality or injustice, no matter what its nature or source, will no doubt applaud this decision and its break [369 U.S. 340] with the past. Those who consider that continuing national respect for the Court's authority depends in large measure upon its wise exercise of self-restraint and discipline in constitutional adjudication will view the decision with deep concern.

1962, Baker v. Carr, 369 U.S. 340

I would affirm.

APPENDIX TO OPINION OF MR. JUSTICE HARLAN

THE INADEQUACY OF ARITHMETICAL FORMULAS AS MEASURES

OF THE RATIONALITY OF TENNESSEE'S APPORTIONMENT

1962, Baker v. Carr, 369 U.S. 340

Two of the three separate concurring opinions appear to concede that the Equal Protection Clause does not guarantee to each state voter a vote of approximately equal weight for the State Legislature. Whether the existing Tennessee apportionment is constitutional is recognized to depend only on whether it can find "any possible justification in rationality" (ante, p. 265); it is to be struck down only if "the discrimination here does not fit any pattern" (ante, p. 258).

1962, Baker v. Carr, 369 U.S. 340

One of the concurring opinions, that of my Brother STEWART, suggests no reasons which would justify a finding that the present distribution of state legislators is unconstitutionally arbitrary. The same is true of the majority opinion. My Brother CLARK, on the other hand, concludes that "the apportionment picture in Tennessee is a topsy-turvical of gigantic proportions" (ante, p. 254), solely on the basis of certain statistics presented in the text of his separate opinion and included in a more extensive Table appended thereto. In my view, that analysis is defective not only because the "total representation" formula set out in footnote 7 of the opinion (ante, p. 255), rests on faulty mathematical foundations, but, more basically, because the approach taken wholly [369 U.S. 341] ignores all other factors justifying a legislative determination of the sort involved in devising a proper apportionment for a State Legislature.

1962, Baker v. Carr, 369 U.S. 341

In failing to take any of such other matters into account and in focusing on a particular mathematical formula which, as will be shown, is patently unsound, my Brother CLARK's opinion has, I submit, unwittingly served to bring into bas-relief the very reasons that support the view that this complaint does not state a claim on which relief could be granted. For in order to warrant holding a state electoral apportionment invalid under the Equal Protection Clause, a court, in line with well established constitutional doctrine, must find that none of the permissible policies and none of the possible formulas on which it might have been based could rationally justify particular inequalities.

I

1962, Baker v. Carr, 369 U.S. 341

At the outset, it cannot be denied that the apportionment rules explicitly set out in the Tennessee Constitution are rational. These rules are based on the following obviously permissible policy determinations: (1) to utilize counties as electoral units; (2) to prohibit the division of any county in the composition of electoral districts; (3) to allot to each county that has a substantial voting population—at least two-thirds of the average voting population per county—a separate "direct representative"; (4) to create "floterial" districts (multi-county representative districts) made up of more than one county, and (5) to require that such districts be composed of adjoining counties. 1 Such a framework unavoidably [369 U.S. 342] leads to unreliable arithmetic inequalities under any mathematical formula whereby the counties' "total representation" is sought to be measured. It particularly results in egregiously deceptive disparities if the formula proposed in my Brother CLARK's opinion is applied.

1962, Baker v. Carr, 369 U.S. 342

That formula computes a county's "total representation" by adding (1) the number of "direct representatives" the county is entitled to elect; (2) a fraction of any other seats in the Tennessee House which are allocated to that county jointly with one or more others in a "floterial district"; (3) triple the number of senators the county is entitled to elect alone, and (4) triple a fraction of any seats in the Tennessee Senate which are allocated to that county jointly with one or more others in a multi-county senatorial district. The fractions used for items (2) and (4) are computed by allotting to each county in a combined district an equal share of the House or Senate seat, regardless of the voting population of each of the counties that make up the election district. 2 [369 U.S. 343]

1962, Baker v. Carr, 369 U.S. 343

This formula is patently deficient in that it eliminates from consideration the relative voting power of the counties that are joined together in a single election district. As a result, the formula unrealistically assigns to Moore County one-third of a senator, in addition to its direct representative (ante, p. 255), although it must be obvious that Moore's voting strength in the Eighteenth Senatorial District is almost negligible. Since Moore County could cast only 2,340 votes of a total eligible vote of 30,478 in the senatorial district, it should in truth be considered as represented by one-fifteenth of a senator. Assuming, arguendo, that any "total representation" figure is of significance, Moore's "total representation" should be 1.23, not 2. 3

1962, Baker v. Carr, 369 U.S. 343

The formula suggested by my Brother CLARK must be adjusted regardless whether one thinks, as I assuredly do not, that the Federal Constitution requires that each vote be given equal weight. The correction is necessary simply to reflect the real facts of political life. It may, of course, be true that the floterial representative's "function [369 U.S. 344] is to represent the whole district" (ante, p. 256). But can it be gainsaid that, so long as elections within the district are decided not by a county unit system, in which each county casts one vote, but, by adding the total number of individual votes cast for each candidate, the concern of the elected representatives will primarily be with the most populous counties in the district?

II

1962, Baker v. Carr, 369 U.S. 344

I do not mean to suggest that any mathematical formula, albeit an "adjusted" one, would be a proper touchstone to measure the rationality of the present or of appellants' proposed apportionment plan. For, as the Table appended to my Brother CLARK's opinion so conclusively shows, whether one applies the formula he suggests or one that is adjusted to reflect proportional voting strength within an election district, no plan of apportionment consistent with the principal policies of the Tennessee Constitution could provide proportionately equal "total representation" for each of Tennessee's 95 counties. The pattern suggested by the appellants in Exhibits "A" and "B" attached to their complaint is said to be a "fair distribution" which accords with the Tennessee Constitution, and under which each of the election districts represents approximately equal voting population. But even when tested by the "adjusted" formula, the plan reveals gross "total representation" disparities that would make it appear to be a "crazy quilt." For example, Loudon County, with twice the voting population of Humphreys County, would have less representation than Humphreys and about one-third the representation of Warren County, which has only 73 more voters. Among the more populous counties, similar discrepancies would appear. Although Anderson County has only somewhat over 10% more voters than Blount County, it would have [369 U.S. 345] approximately 75% more representation. And Blount would have approximately two-thirds the representation of Montgomery County, which has about 13% less voters. 4

III

1962, Baker v. Carr, 369 U.S. 345

The fault with a purely statistical approach to the case at hand lies not with the particular mathematical formula used, but in the failure to take account of the fact that a multitude of legitimate legislative policies, along with circumstances of geography and demography, could account for the seeming electoral disparities among counties. The principles set out in the Tennessee Constitution are just some of those that were deemed significant. Others may have been considered and accepted by those entrusted with the responsibility for Tennessee's apportionment. And, for the purposes of judging constitutionality under the Equal Protection Clause, it must be remembered that what is controlling on the issue of "rationality" is not what the State Legislature may actually have considered, but what it may be deemed to have considered.

1962, Baker v. Carr, 369 U.S. 345

For example, in the list of "horribles" cited by my Brother CLARK (ante, p. 255), all the "underrepresented" counties are semi-urban: all contain municipalities of over 10,000 population. 5 This is not to say, however, that the [369 U.S. 346] presence of any such municipality within a county necessarily demands that its proportional representation be reduced in order to render it consistent with an "urban versus rural" plan of apportionment. Other considerations may intervene and outweigh the Legislature's desire to distribute seats so as to achieve a proper balance between urban and rural interests. The size of a county, in terms of its total area, may be a factor. 6 Or the location within a county of some major industry may be thought to call for dilution of voting strength. 7 Again, the combination of certain smaller counties with their more heavily populated neighbors in senatorial or "floterial" districts may result in apparent arithmetic inequalities. 8

1962, Baker v. Carr, 369 U.S. 346

More broadly, the disparities in electoral strength among the various counties in Tennessee, both those relied upon by my Brother CLARK and others, may be [369 U.S. 347] accounted for by various economic, 9 political, 10 and geographic 11 considerations. No allegation is made by the appellants that the existing apportionment is the result of any other forces than are always at work in any legislative process, and the record, briefs, and arguments in this Court themselves attest to the fact that the appellants could put forward nothing further at a trial.

1962, Baker v. Carr, 369 U.S. 347

By disregarding the wide variety of permissible legislative considerations that may enter into a state electoral apportionment, my Brother CLARK has turned a highly complex process into an elementary arithmetical puzzle. [369 U.S. 348] It is only by blinking reality that such an analysis can stand and that the essentially legislative determination can be made the subject of judicial inquiry.

IV

1962, Baker v. Carr, 369 U.S. 348

Apart from such policies as those suggested which would suffice to justify particular inequalities, there is a further consideration which could rationally have led the Tennessee Legislature, in the exercise of a deliberate choice, to maintain the status quo. Rigidity of an apportionment pattern may be as much a legislative policy decision as is a provision for periodic reapportionment. In the interest of stability, a State may write into its fundamental law a permanent distribution of legislators among its various election districts, thus forever ignoring shifts in population. Indeed, several States have achieved this result by providing for minimum and maximum representation from various political subdivisions such as counties, districts, cities, or towns. See Harvey, Reapportionments of State Legislatures—Legal Requirements, 17 Law & Contemp.Probs. (1952), 364, 368-372.

1962, Baker v. Carr, 369 U.S. 348

It is said that one cannot find any rational standard in what the Tennessee Legislature has failed to do over the past 60 years. But surely one need not search far to find rationality in the Legislature's continued refusal to recognize the growth of the urban population that has accompanied the development of industry over the past half decade. The existence of slight disparities between rural areas does not overcome the fact that the foremost apparent legislative motivation has been to preserve the electoral strength of the rural interests notwithstanding shifts in population. And I understand it to be conceded by at least some of the majority that this policy is not [369 U.S. 349] rendered unconstitutional merely because it favors rural voters.

1962, Baker v. Carr, 369 U.S. 349

Once the electoral apportionment process is recognized for what it is—the product of legislative give-and-take and of compromise among policies that often conflict—the relevant constitutional principles at once put these appellants out of the federal courts.

Footnotes

BRENNAN, J., lead opinion (Footnotes)

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1. Public Acts of Tennessee, c. 122 (1901), now Tenn.Code Ann. §§ 3-101 to 3-107. The full text of the 1901 Act as amended appears in an Appendix to this opinion, post, p. 237

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2. The three-judge court was convened pursuant to the order of a single district judge, who, after he had reviewed certain decisions of this Court and found them distinguishable in features "that may ultimately prove to be significant," held that the complaint was not so obviously without merit that he would be justified in refusing to convene a three-judge court. 175 F.Supp. 649, 652.

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3. We heard argument first at the 1960 Term and again at this Term, when the case was set over for reargument. 366 U.S. 907.

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4. A county having less than, but at least two-thirds of, the population required to choose a Representative is allocated one Representative. See also Tenn.Const., Art. II, § 6. A common and much more substantial departure from the "number of voters" or "total population" standard is the guaranty of at least one seat to each county. See, e.g., Kansas Const., Art. 2, § 2; N.J.Const., Art. 4, § 3, ¶ 1.

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While the Tennessee Constitution speaks of the number of "qualified voters," the exhibits attached to the complaint use figures based on the number of persons 21 years of age and over. This basis seems to have been employed by the General Assembly in apportioning legislative seats from the outset. The 1870 statute providing for the first enumeration, Acts of 1870 (1st Sess.), c. 107, directed the courts of the several counties to select a Commissioner to enumerate

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all the male inhabitants of their respective counties, who are twenty-one years of age and upward, who shall be resident citizens of their counties on the first day of January, 1871….

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Reports compiled in the several counties on this basis were submitted to the General Assembly by the Secretary of State and were used in the first apportionment. Appendix to Tenn.S.J., 1871, 41-43. Yet such figures would not reflect the numbers of persons qualified to exercise the franchise under the then-governing qualifications: (a) citizenship; (b) residence in the State 12 months, and in the county 6 months; (c) payment of poll taxes for the preceding year unless entitled to exemption. Acts of 1870 (2d Sess.), c. 10. (These qualifications continued at least until after 1901. See Shan.Tenn.Code Ann., §§ 1167, 1220 (1896; supp. 1904).) Still, when the General Assembly directed the Secretary of State to do all he could to obtain complete reports from the counties, the Resolution spoke broadly of "the impossibility of…[redistricting] without the census returns of the voting population from each county…. " Tenn.S.J., 1871, 46 47, 96. The figures also showed a correlation with Federal Census figures for 1870. The Census reported 259,016 male citizens 21 and upward in Tennessee. Ninth Census of the United States, 1870, Statistics of the Population 635 (1872). The Tennessee Secretary of State's Report, with 15 counties not reported, gave a figure of 237,431. Using the numbers of actual votes in the last gubernatorial election for those 15 counties, the Secretary arrived at a total of 250,025. Appendix to Tenn.S.J., 1871, 41-43. This and subsequent history indicate continued reference to Census figures, and finally, in 1901, abandonment of a state enumeration in favor of the use of Census figures. See notes 7, 8, 9, infra. See also Williams, Legislative Apportionment in Tennessee, 20 Tenn.L.Rev. 235, 236, n. 6. It would therefore appear that, unless there is a contrary showing at the trial, appellants' current figures, taken from the United States Census Reports, are apposite.

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5. Acts of 1871 (1st Sess.), c. 146.

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6. Act of 1870 (1st Sess.), c. 107.

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7. The statute authorizing the enumeration was Acts of 1881 (1st Sess.), c. 124. The enumeration commissioners in the counties were allowed

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access to the U.S. Census Reports of the enumeration of 1880, on file in the offices of the County Court Clerks of the State, and a reference to said reports by said commissioners shall be legitimate as an auxiliary in the enumeration required…

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Ibid., § 4.

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The United States Census reported 330,305 male citizens 21 and upward in Tennessee. The Tenth Census of the United States, 1880, Compendium 596 (1883). The Tennessee Secretary of State's Report gave a figure of 343,817, Tenn.H.J. (1st Extra.Sess.), 1881, 12-14 (1882).

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The General Assembly was enlarged in accordance with the constitutional mandate, since the State's population had passed 1,500,000. Acts of 1881 (1st Extra.Sess.), c. 5, and see, id., S.J.Res. No. III; see also Tenth Census of the United States, 1880, Statistics of the Population 77 (1881). The statute apportioning the General Assembly was Acts of 1881 (1st Extra.Sess.), c. 6.

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8. Acts of 1891, c. 22; Acts of 1891 (Extra.Sess.), c. 10. Reference to United States Census figures was allowed just as in 1881, see supra, n. 7. The United States Census reported 402,476 males 21 and over in Tennessee. The Eleventh Census of the United States, 1890, Population (Part I) 781 (1895). The Tennessee Secretary of State's Report gave a figure of 399,575. 1 Tenn.S.J., 1891, 473 474.

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9. Acts of 1901, S.J.Res. No. 35; Acts of 1901, c. 122. The Joint Resolution said:

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The Federal census of 1900 has been very recently taken, and, by reference to said Federal census, an accurate enumeration of the qualified voters of the respective counties of the State of Tennessee can be ascertained, and thereby save the expense of an actual enumeration….

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10. For the history of legislative apportionment in Tennessee, including attempts made since 1901, see Tenn.S.J., 1959, 909-930; and "A Documented Survey of Legislative Apportionment in Tennessee, 1870-1957," which is attached as exhibit 2 to the intervening complaint of Mayor West of Nashville, both prepared by the Tennessee State Historian, Dr. Robert H. White. Examples of preliminary steps are: in 1911, the Senate called upon the Redistricting Committee to make an enumeration of qualified voters and to use the Federal Census of 1910 as the basis. Acts of 1911, S.J.Res. No. 60, p. 315. Similarly, in 1961, the Senate called for appointment of a select committee to make an enumeration of qualified voters. Acts of 1961, S.J.Res. No. 47. In 1955, the Senate called for a study of reapportionment. Tenn.S.J., 1955, 224; but see id. at 1403. Similarly, in 1961, the House directed the State Legislative Council to study methods of reapportionment. Acts of 1961, H.J.Res. No. 65.

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11. Twelfth Census of the United States, 1900, Population (Part 1) 39 (1901); (Part 2) 202 (1902).

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12. United States Census of Population:1960, General Population Characteristics—Tennessee, Table 16 (1961).

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13. In the words of one of the intervening complaints, the apportionment was "wholly arbitrary,…and, indeed, based upon no lawfully pertinent factor whatever."

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14. The appellants claim that no General Assembly constituted according to the 1901 Act will submit reapportionment proposals either to the people or to a Constitutional Convention. There is no provision for popular initiative in Tennessee. Amendments proposed in the Senate or House must first be approved by a majority of all members of each House and again by two-thirds of the members in the General Assembly next chosen. The proposals are then submitted to the people at the next general election in which a Governor is to be chosen. Alternatively, the legislature may submit to the people at any general election the question of calling a convention to consider specified proposals. Such as are adopted at a convention do not, however, become effective unless approved by a majority of the qualified voters voting separately on each proposed change or amendment at an election fixed by the convention. Conventions shall not be held oftener than once in six years. Tenn.Const., Art. XI, § 3. Acts of 1951, C. 130, § 3, and Acts of 1957, G. 340, § 3, provided that delegates to the 1953 and 1959 conventions were to be chosen from the counties and floterial districts just as are members of the State House of Representatives. The General Assembly's call for a 1953 Constitutional Convention originally contained a provision "relating to the appointment [sic] of representatives and senators," but this was excised. Tenn.H.J., 1951, 784. A Resolution introduced at the 1959 Constitutional Convention and reported unfavorably by the Rules Committee of the Convention was as follows:

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By Mr. Chambliss (of Hamilton County), Resolution No. 12—Relative to Convention considering reapportionment, which is as follows:

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WHEREAS, there is a rumor that this Limited Convention has been called for the purpose of postponing for six years a Convention that would make a decision as to reapportionment; and WHEREAS there is pending in the United States Courts in Tennessee a suit under which parties are seeking, through decree, to compel reapportionment; and

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WHEREAS it is said that this Limited Convention, which was called for limited consideration, is yet a Constitutional Convention within the language of the Constitution as to Constitutional Conventions, forbidding frequent Conventions in the last sentence of Article Eleven, Section 3, second paragraph, more often than each six years, to-wit:

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"No such Convention shall be held oftener than once in six years."

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NOW, THEREFORE, BE IT RESOLVED, That it is the consensus of opinion of the members of this Convention that, since this is a Limited Convention, as hereinbefore set forth, another Convention could be had if it did not deal with the matters submitted to this Limited Convention.

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BE IT FURTHER RESOLVED That it is the consensus of opinion of this Convention that a Convention should be called by the General Assembly for the purpose of considering reapportionment in order that a possibility of Court enforcement being forced on the Sovereign State of Tennessee by the Courts of the National Government may be avoided.

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BE IT FURTHER RESOLVED That this Convention be adjourned for two years to meet again at the same time set forth in the statute providing for this Convention, and that it is the consensus of opinion of this body that it is within the power of the next General Assembly of Tennessee to broaden the powers of this Convention and to authorize and empower this Convention to consider a proper amendment to the Constitution that will provide, when submitted to the electorate, a method of reapportionment.

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Tenn.Constitutional Convention of 1959, The Journal and Debates, 35, 278.

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15. It is clear that appellants' federal constitutional claims rest exclusively on alleged violation of the Fourteenth Amendment. Their primary claim is that the 1901 statute violates the Equal Protection Clause of that amendment. There are allegations invoking the Due Process Clause, but, from the argument and the exhibits, it appears that the Due Process Clause argument is directed at certain tax statutes. Insofar as the claim involves the validity of those statutes under the Due Process Clause, we find it unnecessary to decide its merits. And if the allegations regarding the tax statutes are designed as the framework for proofs as to the effects of the allegedly discriminatory apportionment, we need not rely upon them to support our holding that the complaint states a federal constitutional claim of violation of the Equal Protection Clause. Whether, when the issue to be decided is one of the constitutional adequacy of this particular apportionment, taxation arguments and exhibits as now presented add anything, or whether they could add anything however presented, is for the District Court in the first instance to decide.

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The complaint, in addition to the claims under the Federal Constitution, also alleges rights, and the General Assembly's duties, under the Tennessee Constitution. Since we hold that appellants have—if it develops at trial that the facts support the allegations—a cognizable federal constitutional cause of action resting in no degree on rights guaranteed or putatively guaranteed by the Tennessee Constitution, we do not consider, let alone enforce, rights under a State Constitution which go further than the protections of the Fourteenth Amendment. Lastly, we need not assess the legal significance, in reaching our conclusion, of the statements of the complaint that the apportionment effected today under the 1901 Act is "contrary to the philosophy of government in the United States and all Anglo-Saxon jurisprudence…. "

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16. We need not reach the question of indispensable parties, because the District Court has not yet decided it.

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17. The accuracy of calling even such dismissals "jurisdictional" was questioned in Bell v. Hood. See 327 U.S. at 683.

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18. 42 U.S.C. § 1983 provides:

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

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19. This Court has frequently sustained District Court jurisdiction under 28 U.S.C. § 1343(3) or its predecessors to entertain suits to redress deprivations of rights secured against state infringement by the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Douglas v. Jeannette, 319 U.S. 157; Stefanelli v. Minard, 342 U.S. 117; cf. Nixon v. Herndon, 273 U.S. 536; Nixon v. Condon, 286 U.S. 73; Snowden v. Hughes, 321 U.S. l; Smith v. Allwright, 321 U.S. 649; Monroe v. Pape, 365 U.S. 167; Egan v. Aurora, 365 U.S. 514.

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20. Since that case was not brought to the Court until after the election had been held, the Court cited not only Wood v. Broom, but also directed dismissal for mootness, citing Brownlow v. Schwartz, 261 U.S. 216.

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21. Compare Boeing Aircraft Co. v. King County, 330 U.S. 803 ("the appeal is dismissed for want of jurisdiction"). See Coleman v. Miller, 307 U.S. 433, 440.

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22. Matthews did affirm a judgment that may be read as a dismissal for want of jurisdiction, 179 F.Supp. 470. However, the motion to affirm also rested on the ground of failure to state a claim upon which relief could be granted. Cf. text following, on MacDougall v. Green. And see text infra, p. 236.

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23. The Mayor of Nashville suing "on behalf of himself and all residents of the City of Nashville, Davidson County,…" and the Cities of Chattanooga (Hamilton County) and Knoxville (Knox County), each suing on behalf of its residents, were permitted to intervene as parties plaintiff. Since they press the same claims as do the initial plaintiffs, we find it unnecessary to decide whether the intervenors would have standing to maintain this action in their asserted representative capacities.

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24. The complaint also contains an averment that the appellants sue "on their own behalf and on behalf of all other voters in the State of Tennessee." (Emphasis added.) This may be read to assert a claim that voters in counties allegedly over-represented in the General Assembly also have standing to complain. But it is not necessary to decide that question in this case.

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25. The duties of the respective appellees are alleged to be as follows:

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Defendant, Joe C. Carr, is the duly elected, qualified and acting Secretary of State of the State of Tennessee, with his office in Nashville in said State, and, as such, he is charged with the duty of furnishing blanks, envelopes and information slips to the County Election Commissioners, certifying the results of elections and maintaining the records thereof, and he is further ex officio charged, together with the Governor and the Attorney General, with the duty of examining the election returns received from the County Election Commissioners and declaring the election results, by the applicable provisions of the Tennessee Code Annotated, and by Chapter 164 of the Acts of 1949, inter alia.

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Defendant, George F. McCanless, is the duly appointed and acting Attorney General of the State of Tennessee, with his office in Nashville in said State, and is charged with the duty of advising the officers of the State upon the law, and is made by Section 23-1107 of the Tennessee Code Annotated a necessary party defendant in any declaratory judgment action where the constitutionality of statutes of the State of Tennessee is attacked, and he is ex officio charged, together with the Governor and the Secretary of State, with the duty of declaring the election results, under Section 2-140 of the Tennessee Code Annotated.

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Defendant, Jerry McDonald, is the duly appointed Coordinator of Elections in the State of Tennessee, with his office in Nashville, Tennessee, and, as such official, is charged with the duties set forth in the public law enacted by the 1959 General Assembly of Tennessee creating said office.

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Defendants, Dr. Sam Coward, James Alexander, and Hubert Brooks are the duly appointed and qualified members constituting the State Board of Elections, and as such they are charged with the duty of appointing the Election Commissioners for all the counties of the State of Tennessee, the organization and supervision of the biennial elections as provided by the Statutes of Tennessee, Chapter 9 of Title 2 of the Tennessee Code Annotated, Sections 2-901, et seq.

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That this action is brought against the aforenamed defendants in their representative capacities, and that said Election Commissioners are sued also as representatives of all of the County Election Commissioners in the State of Tennessee, such persons being so numerous as to make it impracticable to bring them all before the court; that there is a common question of law involved, namely, the constitutionality of Tennessee laws set forth in the Tennessee Code Annotated, Section 3-101 through Section 3-109, inclusive; that common relief is sought against all members of said Election Commissions in their official capacities, it being the duties of the aforesaid County Election Commissioners, within their respective jurisdictions, to appoint the judges of elections, to maintain the registry of qualified voters of said County, certify the results of elections held in said County to the defendants State Board of Elections and Secretary of State, and of preparing ballots and taking other steps to prepare for and hold elections in said Counties by virtue of Sections 2-1201 et seq. of Tennessee Code Annotated, and Section 2-301 et seq. of Tennessee Code Annotated, and Chapter 164 of the Acts of 1949, inter alia.

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The question whether the named defendants are sufficient parties remains open for consideration on remand.

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26. Smiley v. Holm, supra, at 361 ("`citizen, elector and taxpayer' of the State"); Koenig v. Flynn, supra, at 379 ("`citizens and voters' of the State"); Wood v. Broom, supra, at 4 ("citizen of Mississippi, a qualified elector under its laws, and also qualified to be a candidate for election as representative in Congress"); cf. Carroll v. Becker, supra, (candidate for office).

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27. Mr. Justice Rutledge was of the view that any question of standing was settled in Smiley v. Holm, supra; MR. JUSTICE BLACK stated "that appellants had standing to sue, since the facts alleged show that they have been injured as individuals." He relied on Coleman v Miller, 307 U.S. 433, 438, 467. See 328 U.S. 564, 568.

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Commentators have suggested that the following statement in MR. JUSTICE FRANKFURTER s opinion might imply a view that appellants there had no standing:

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This is not an action to recover for damage because of the discriminatory exclusion of a plaintiff from rights enjoyed by other citizens. The basis for the suit is not a private wrong, but a wrong suffered by Illinois as a polity.

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328 U.S. at 552. See Jaffe, Standing to Secure Judicial Review: Public Actions, 74 Harv.L.Rev. 1265, 1298 (1961); Lewis, Legislative Apportionment and the Federal Courts, 71 Harv.L.Rev. 1057, 1081-1083 (1958). But since the opinion goes on to consider the merits, it seems that this statement was not intended to intimate any view that the plaintiffs in that action lacked standing. Nor do the cases cited immediately after the above quotation deal with standing. See especially Lane v. Wilson, 307 U.S. 268, 272-273.

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28. MacDougall v. Green, supra, at 282 ("the `Progressive Party,' its nominees for United States Senator, Presidential Electors, and State offices, and several Illinois voters"); South v. Peters, supra, at 277 ("residents of the most populous county in the State"); Radford v. Gary, 145 F.Supp. 541, 542 ("citizen of Oklahoma and resident and voter in the most populous county"); Matthews v. Handley, supra, ("citizen of the State"); see also Hawke v. Smith (No. 1), 253 U.S. 221; Leser v. Garnett, 258 U.S. 130; Coleman v. Miller, 307 U.S. 433, 437-446.

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29. Cook v. Fortson, 329 U.S. 675; Turman v. Duckworth, ibid.; Colegrove v. Barrett, 330 U.S. 804; MacDougall v. Green, 335 U.S. 281; South v. Peters, 339 U.S. 276; Remmey v. Smith, 342 U.S. 916; Anderson v. Jordan, 343 U.S. 912; Kidd v. McCanless, 352 U.S. 920; Radford v. Cary, 352 U.S. 991.

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30.

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

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U.S.Const., Art. IV, 4.

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31. E.g.,

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The conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—"the political"—Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision.

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Oetjen v. Central Leather Co., 246 U.S. 297, 302.

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32. See Doe v. Braden, 16 How. 635, 657; Taylor v. Morton, 23 Fed.Cas., No. 13,799 (C.C.D.Mass.) (Mr. Justice Curtis), affirmed, 2 Black 481.

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33. See Doe v. Braden, 16 How. 635, 657.

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34. And see Clark v. Allen, 331 U.S. 503.

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35. United States v. Klintock, 5 Wheat. 144, 149, see also United States v. Palmer, 3 Wheat. 610, 634-635.

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36. Foster & Elam v. Neilson, 2 Pet. 253, 307, and see Williams v. Suffolk Insurance Co., 13 Pet. 415, 420.

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37. Vermilya-Brown Co. v. Connell, 335 U.S. 377, 380; De Lima v. Bidwell, 182 U.S. 1, 180-200.

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38. See, e.g., Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398, 426.

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39. Contrast Martin v. Mott, supra.

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40. But cf. Dakota Central Tel. Co. v. South Dakota, 250 U.S. 163, 184, 187.

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41. Cf. Dillon v. Gloss, 256 U.S. 368. See also United States v. Sprague, 282 U.S. 716, 732.

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42. See also Fellows v. Blacksmith, 19 How. 366, 372; United States v. Old Settlers, 148 U.S. 427, 466, and compare Doe v. Braden, 16 How. 635, 657.

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43. This case, so frequently cited for the broad proposition that the status of an Indian tribe is a matter for the political departments, is, in fact, a noteworthy example of the limited and precise impact of a political question. The Cherokees brought an original suit in this Court to enjoin Georgia's assertion of jurisdiction over Cherokee territory and abolition of Cherokee government and laws. Unquestionably the case lay at the vortex of most fiery political embroilment. See 1 Warren, The Supreme Court in United States History (Rev. ed.), 729-779. But in spite of some broader language in separate opinions, all that the Court held was that it possessed no original jurisdiction over the suit, for the Cherokees could in no view be considered either a State of this Union or a "foreign state." Chief Justice Marshall treated the question as one of de novo interpretation of words in the Constitution. The Chief Justice did say that "The acts of our government plainly recognize the Cherokee nation as a state, and the courts are bound by those acts," but here he referred to their existence "as a state, as a distinct political society, separated from others…. " From there he went to "A question of much more difficulty…. Do the Cherokees constitute a foreign state in the sense of the constitution?" Id. at 16. Thus, while the Court referred to "the political" for the decision whether the tribe was an entity, a separate polity, it held that whether being an entity the tribe had such status as to be entitled to sue originally was a judicially soluble issue: criteria were discoverable in relevant phrases of the Constitution and in the common understanding of the times. As to this issue, the Court was not hampered by problems of the management of unusual evidence or of possible interference with a congressional program. Moreover, Chief Justice Marshall's dictum that "It savours too much of the exercise of political power to be within the proper province of the judicial department," id. at 20, was not addressed to the issue of the Cherokees' status to sue, but rather to the breadth of the claim asserted and the impropriety of the relief sought. Compare Georgia v. Stanton, 6 Wall. 50, 77. The Chief Justice made clear that, if the issue of the Cherokees' rights arose in a customary legal context, "a proper case with proper parties," it would be justiciable. Thus, when the same dispute produced a case properly brought, in which the right asserted was one of protection under federal treaties and laws from conflicting state law, and the relief sought was the voiding of a conviction under that state law, the Court did void the conviction. Worcester v. Georgia, 6 Pet. 515. There, the fact that the tribe was a separate polity served as a datum contributing to the result, and despite the consequences in a heated federal-state controversy and the opposition of the other branches of the National Government, the judicial power acted to reverse the State Supreme Court. An example of similar isolation of a political question in the decision of a case is Luther v. Borden, 7 How. 1, see infra.

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44. 7 How. at 29. And see 11 The Writings and Speeches of Daniel Webster 217 (1903).

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45. See Mowry, The Dorr War (1901), and its exhaustive bibliography. And for an account of circumstances surrounding the decision here, see 2 Warren, The Supreme Court in United States History (Rev. ed.), 185-195.

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Dorr himself, head of one of the two groups and held in a Rhode Island jail under a conviction for treason, had earlier sought a decision from the Supreme Court that his was the lawful government. His application for original habeas corpus in the Supreme Court was denied because the federal courts then lacked authority to issue habeas for a prisoner held under a state court sentence. Ex parte Dorr, 3 How. 103.

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46. 7 How. at 39.

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47. Id. at 39, 40.

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48. Even though the Court wrote of unrestrained legislative and executive authority under this Guaranty, thus making its enforcement a political question, the Court plainly implied that the political question barrier was no absolute:

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Unquestionably a military government, established as the permanent government of the State, would not be a republican government, and it would be the duty of Congress to overthrow it.

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7 How. at 45. Of course, it does not necessarily follow that, if Congress did not act, the Court would. For while the judiciary might be able to decide the limits of the meaning of "republican form," and thus the factor of lack of criteria might fall away, there would remain other possible barriers to decision because of primary commitment to another branch, which would have to be considered in the particular fact setting presented.

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That was not the only occasion on which this Court indicated that lack of criteria does not obliterate the Guaranty's extreme limits:

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The guaranty is of a republican form of government. No particular government is designated as republican, neither is the exact form to be guaranteed in any manner especially designated. Here, as in other parts of the instrument, we are compelled to resort elsewhere to ascertain what was intended.

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The guaranty necessarily implies a duty on the part of the States themselves to provide such a government. All the States had governments when the Constitution was adopted. In all, the people participated to some extent, through their representatives elected in the manner specially provided. These governments the Constitution did not change. They were accepted precisely as they were, and it is, therefore, to be presumed that they were such as it was the duty of the States to provide. Thus, we have unmistakable evidence of what was republican in form within the meaning of that term as employed in the Constitution.

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Minor v. Happersett, 21 Wall. 162, 175-176. There, the question was whether a government republican in form could deny the vote to women.

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In re Duncan, 139 U.S. 449, upheld a murder conviction against a claim that the relevant codes had been invalidly enacted. The Court there said:

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By the Constitution, a republican form of government is guaranteed to every State in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves; but, while the people are thus the source of political power, their governments, National and State, have been limited by written constitutions, and they have themselves thereby set bounds to their own power, as against the sudden impulses of mere majorities.

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139 U.S. at 461. But the Court did not find any of these fundamental principles violated.

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49. But cf. Hawke v. Smith (No. 1), 253 U.S. 221; National Prohibition Cases, 253 U.S. 350.

1962, Baker v. Carr, 369 U.S. 349

50. 6 Wall. at 65, 66.

1962, Baker v. Carr, 369 U.S. 349

51. The First Reconstruction Act opened:

1962, Baker v. Carr, 369 U.S. 349

Whereas no legal State governments…now exists [sic] in the rebel States of…Georgia [and] Mississippi…, and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established…

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14 Stat. 428. And see 15 Stat. 2, 14.

1962, Baker v. Carr, 369 U.S. 349

52. In Mississippi v. Johnson, 4 Wall. 475, the State sought to enjoin the President from executing the Acts, alleging that his role was purely ministerial. The Court held that the duties were in no sense ministerial, and that, although the State sought to compel inaction, rather than action, the absolute lack of precedent for any such distinction left the case one in which "general principles…forbid judicial interference with the exercise of Executive discretion." 4 Wall. at 499. See also Mississippi v. Stanton, 154 U.S. 554, and see 2 Warren, The Supreme Court in United States History (Rev. ed.), 463.

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For another instance of congressional action challenged as transgressing the Guaranty Clause, see The Collector v. Day, 11 Wall. 113, 125-126, overruled, Graves v. O'Keefe, 306 U.S. 466.

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53. On the other hand, the implication of the Guaranty Clause in a case concerning congressional action does not always preclude judicial action. It has been held that the clause gives Congress no power to impose restrictions upon a State's admission which would undercut the constitutional mandate that the States be on an equal footing. Coyle v. Smith, 221 U.S. 559. And in Texas v. White, 7 Wall. 700, although Congress had determined that the State's government was not republican in form, the State's standing to bring an original action in this Court was sustained.

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54. See infra, p. 235, considering Kidd v. McCanless, 352 U.S. 920.

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55. Boyd v. Nebraska ex rel. Thayer, 143 U.S. 135, 183 (Field, J., dissenting).

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56. Gomillion v. Lightfoot, 270 F.2d 594, relying upon, inter alia, Hunter v. Pittsburgh, 207 U.S. 161.

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57. The Court's opinion was joined by MR. JUSTICE DOUGLAS, noting his adherence to the dissents in Colegrove and South v. Peters, supra, and the judgment was concurred in by MR. JUSTICE WHITTAKER, who wrote that the decision should rest on the Equal Protection Clause, rather than on the Fifteenth Amendment, since there had been not solely a denial of the vote (if there had been that, at all), but also a "fencing out" of a racial group.

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58. No holding to the contrary is to be found in Cave v. Newell, 246 U.S. 650, dismissing a writ of error to the Supreme Court of Missouri 272 Mo. 653, 199 S.W. 1014; or in Snowden v. Hughes, 321 U.S. 1.

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59. The ground of Mr. Justice Rutledge's vote to affirm is further explained in his footnote 3, 328 U.S. at 566:

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"The power of a court of equity to act is a discretionary one…. Where a federal court of equity is asked to interfere with the enforcement of state laws, it should do so only `to prevent irreparable injury which is clear and imminent.'" American Federation of Labor v. Watson, 327 U.S. 582, 593 and cases cited.

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No constitutional questions, including the question whether voters have a judicially enforceable constitutional right to vote at elections of congressmen from districts of equal population, were decided in Colegrove. Six of the participating Justices reached the questions, but divided three to three on their merits. Mr. Justice Rutledge believed that it was not necessary to decide them. He said:

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There is [an alternative to constitutional decision] in this case. And I think the gravity of the constitutional questions raised so great, together with the possibilities for collision [with the political departments of the Government], that the admonition [against avoidable constitutional decision] is appropriate to be followed here. Other reasons support this view, including the fact that, in my opinion, the basic ruling and less important ones in Smiley v. Holm, supra, would otherwise be brought into question.

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328 U.S. at 564-565. He also joined with his brethren who shared his view that the issues were justiciable in considering that Wood v. Broom, 287 U.S. 1, decided no constitutional questions, but

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the Court disposed of the cause on the ground that the 1929 Reapportionment Act, 46 Stat. 21, did not carry forward the requirements of the 1911 Act, 37 Stat. 13, and declined to decide whether there was equity in the bill.

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328 U.S. at 565; see also id. at 573. We agree with this view of Wood v. Broom.

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60. See also Buford v. State Board of Elections, 206 Tenn. 480, 334 S.W.2d 726; State ex rel. Sanborn v. Davidson County Board of Election Comm'rs, No. 36,391 Tenn.Sup.Ct., Oct. 9, 1954 (unreported); 8 Vand.L.Rev. 501 (1955).

DOUGLAS, J., concurring (Footnotes)

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1. I feel strongly that many of the cases cited by the Court and involving so-called "political" questions were wrongly decided.

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In joining the opinion, I do not approve those decisions, but only construe the Court's opinion in this case as stating an accurate historical account of what the prior cases have held.

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2. The statements in Luther v. Borden, 7 How. 1, 42, that this guaranty is enforceable only by Congress or the Chief Executive is not maintainable. Of course, the Chief Executive, not the Court, determines how a State will be protected against invasion. Of course, each House of Congress, not the Court, is "the Judge of the Elections, Returns, and Qualifications of its own Members." Article I, Section 5, Clause 1. But the abdication of all judicial functions respecting voting rights (7 How. at 41), however justified by the peculiarities of the charter form of government in Rhode Island at the time of Dorr's Rebellion, states no general principle. It indeed is contrary to the cases discussed in the body of this opinion—the modern decisions of the Court that give the full panoply of judicial protection to voting rights. Today we would not say with Chief Justice Taney that it is no part of the judicial function to protect the right to vote of those "to whom it is denied by the written and established constitution and laws of the State." Ibid.

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Moreover, the Court's refusal to examine the legality of the regime of martial law which had been laid upon Rhode Island (id. at 45-46) is indefensible, as Mr. Justice Woodbury maintained in his dissent. Id. at 59 et seq. Today we would ask with him:

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…who could hold for a moment, when the writ of habeas corpus cannot be suspended by the legislature itself, either in the general government or most of the States, without an express constitutional permission, that all other writs and laws could be suspended, and martial law substituted for them over the whole State or country, without any express constitutional license to that effect, in any emergency?

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Id. at 67.

1962, Baker v. Carr, 369 U.S. 349

Justice Woodbury went on to say:

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It would be alarming enough to sanction here an unlimited power, exercised either by legislatures, or the executive, or courts, when all our governments are themselves governments of limitations and checks, and of fixed and known laws, and the people a race above all others jealous of encroachments by those in power. And it is far better that those persons should be without the protection of the ordinary laws of the land who disregard them in an emergency, and should look to a grateful country for indemnity and pardon, than to allow, beforehand, the whole frame of jurisprudence to be overturned, and every thing placed at the mercy of the bayonet.

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No tribunal or department in our system of governments ever can be lawfully authorized to dispense with the laws, like some of the tyrannical Stuarts, or to repeal, or abolish, or suspend the whole body of them; or, in other words, appoint an unrestrained military dictator at the head of armed men.

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Whatever stretches of such power may be ventured on in great crises, they cannot be upheld by the laws, as they prostrate the laws and ride triumphant over and beyond them, however the Assembly of Rhode Island, under the exigency, may have hastily supposed that such a measure in this instance was constitutional. It is but a branch of the omnipotence claimed by Parliament to pass bills of attainder, belonging to the same dangerous and arbitrary family with martial law.

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Id. at 69-70.

1962, Baker v. Carr, 369 U.S. 349

What he wrote was later to become the tradition, as expressed by Chief Justice Hughes in Sterling v. Constantin, 287 U.S. 378, 401:

1962, Baker v. Carr, 369 U.S. 349

What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions.

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3. The category of the "political" question is, in my view, narrower than the decided cases indicate.

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Even the English courts have held that a resolution of one House of Parliament does not change the law (Stockdale v. Hansard (1839), 9 A. & E. 1, and Bowles v. Bank of England (No. 2) [1913] 1 Ch. 57), and these decisions imply that the House of Commons, acting alone, does not constitute the "Parliament" recognised by the English courts.

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103 Sol.Jour. 995, 996. The Court in Bowles v. Bank of England, [1913] 1 Ch. 57, 84-85, stated:

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By the statute 1 W. & M., usually known as the Bill of Rights, it was finally settled that there could be no taxation in this country except under authority of an Act of Parliament. The Bill of Rights still remains unrepealed, and no practice or custom, however prolonged, or however acquiesced in on the part of the subject, can be relied on by the Crown as justifying any infringement of its provisions. It follows that, with regard to the powers of the Crown to levy taxation, no resolution, either of the Committee for Ways and Means or of the House itself, has any legal effect whatever. Such resolutions are necessitated by a parliamentary procedure adopted with a view to the protection of the subject against the hasty imposition of taxes, and it would be strange to find them relied on as justifying the Crown in levying a tax before such tax is actually imposed by Act of Parliament.

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In The Pocket Veto Case, 279 U.S. 655, the Court undertook a review of the veto provisions of the Constitution and concluded that the measure in litigation had not become a law. Cf. Coleman v. Miller, 307 U.S. 433.

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Georgia v. Stanton, 6 Wall. 50, involved the application of the Reconstruction Acts to Georgia—laws which destroyed by force the internal regime of that State. Yet the Court refused to take jurisdiction. That question was no more "political" than a host of others we have entertained. See, e.g., Pennsylvania v. West Virginia, 262 U.S. 553; Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579; Alabama v. Texas, 347 U.S. 272.

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Today would this Court hold nonjusticiable or "political" a suit to enjoin a Governor who, like Fidel Castro, takes everything into his own hands and suspends all election laws?

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Georgia v. Stanton, supra, expresses a philosophy at war with Ex parte Milligan, 4 Wall. 2, and Duncan v. Kahanamoku, 327 U.S. 304. The dominance of the civilian authority has been expressed from the beginning. See Wise v. Withers, 3 Cranch 331, 337; Sterling v. Constantin, supra, note 2.

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4. We are told by the National Institute of Municipal Law Officers in an amicus brief:

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Regardless of the fact that, in the last two decades, the United States has become a predominantly urban country where well over two-thirds of the population now lives in cities or suburbs, political representation in the majority of state legislatures is 50 or more years behind the times. Apportionments made when the greater part of the population was located in rural communities are still determining and undermining our elections.

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As a consequence, the municipality of 1960 is forced to function in a horse and buggy environment where there is little political recognition of the heavy demands of an urban population. These demands will become even greater by 1970, when some 150 million people will be living in urban areas.

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The National Institute of Municipal Law Officers has for many years recognized the widespread complaint that, by far the greatest preponderance of state representatives and senators are from rural areas which, in the main, fail to become vitally interested in the increasing difficulties now facing urban administrators.

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Since World War II, the explosion in city and suburban population has created intense local problems in education, transportation, and housing. Adequate handling of these problems has not been possible to a large extent, due chiefly to the political weakness of municipalities. This situation is directly attributable to considerable underrepresentation of cities in the legislatures of most states.

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Amicus brief, pp. 2-3.

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5. The recent ruling by the Iowa Supreme Court that a legislature, though elected under an unfair apportionment scheme, is nonetheless a legislature empowered to act (Cedar Rapids v. Cox, 252 Iowa 948, 964, 108 N.W.2d 253, 262-263; cf. Kidd v. McCanless, 200 Tenn. 273, 292 S.W.2d 40) is plainly correct.

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There need be no fear of a more disastrous collision between federal and state agencies here than where a federal court enjoins gerrymandering based on racial lines. See Gomillion v. Lightfoot, supra.

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The District Court need not undertake a complete reapportionment. It might possibly achieve the goal of substantial equality merely by directing respondent to eliminate the egregious injustices. Or its conclusion that reapportionment should be made may, in itself, stimulate legislative action. That was the result in Asbury Park Press v. Woolley, 33 N.J. 1, 161 A.2d 705, where the state court ruled it had jurisdiction:

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If, by reason of passage of time and changing conditions, the reapportionment statute no longer serves its original purpose of securing to the voter the full constitutional value of his franchise, and the legislative branch fails to take appropriate restorative action, the doors of the courts must be open to him. The lawmaking body cannot, by inaction, alter the constitutional system under which it has its own existence.

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33 N.J. at 14, 161 A.2d at 711. The court withheld its decision on the merits in order that the legislature might have an opportunity to consider adoption of a reapportionment act. For the sequel see Application of Lamb, 67 N.J.Super. 39, 46-47, 169 A.2d 822, 825-826.

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Reapportionment was also the result in Magraw v. Donovan, 159 F.Supp. 901, where a federal three-judge District Court took jurisdiction, saying, 163 F.Supp. 184, 187:

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Here it is the unmistakable duty of the State Legislature to reapportion itself periodically in accordance with recent population changes…. Early in January, 1959, the 61st Session of the Minnesota Legislature will convene, all of the members of which will be newly elected on November 4th of this year. The facts which have been presented to us will be available to them. It is not to be presumed that the Legislature will refuse to take such action as is necessary to comply with its duty under the State Constitution. We defer decision on all the issues presented (including that of the power of this Court to grant relief) in order to afford the Legislature full opportunity to "heed the constitutional mandate to redistrict."

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See 177 F.Supp. 803, where the case was dismissed as moot, the State Legislature having acted.

CLARK, J., concurring (Footnotes)

1962, Baker v. Carr, 369 U.S. 349

1. The opinion stated at 551 that the Court "could also dispose of this case on the authority of Wood v. Broom [287 U.S. 1 (1932)]." Wood v. Broom involved only the interpretation of a congressional reapportionment Act.

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2. Similarly, the Equal Protection Clause was not invoked in Tedesco v. Board of Supervisors, 339 U.S. 940 (1950).

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3. I do not read the later case of Colegrove v. Barrett, 330 U.S. 804 (1947), as having rejected the equal protection argument adopted here. That was merely a dismissal of an appeal where the equal protection point was mentioned along with attacks under three other constitutional provisions, two congressional Acts, and three state constitutional provisions.

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4. Georgia based its election system on a consistent combination of political units and population, giving six unit votes to the eight most populous counties, four unit votes to the 30 counties next in population, and two unit votes to each of the remaining counties.

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5. See Part I of the Appendix to MR. JUSTICE HARLAN's dissent, post, p. 341.

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6. It is suggested that the districting is not unconstitutional since it was established by a statute that was constitutional when passed some 60 years ago. But many Assembly Sessions since that time have deliberately refused to change the original act, and, in any event, "[a] statute [constitutionally] valid when enacted may become invalid by change in the conditions to which it is applied." Nashville, C. & St.L. R. Co. v. Walters, 294 U.S. 405, 415 (1935).

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7. "Total representation" indicates the combined representation in the State Senate (33 members) and the State House of Representatives (99 members) in the Assembly of Tennessee. Assuming a county has one representative, it is credited in this calculation with 1/99. Likewise, if the same county has one-third of a senate seat, it is credited with another 1/99, and thus such a county, in our calculation, would have a "total representation" of two; if a county has one representative and one-sixth of a senate seat, it is credited with 1.5/99, or 1.50. It is this last figure that I use here in an effort to make the comparisons clear. The 1950, rather than the 1960 census of voting population, is used to avoid the charge that use of 1960 tabulations might not have allowed sufficient time for the State to act. However, the 1960 picture is even more irrational than the 1950 one.

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8. Of course, this was not the case in the Georgia county unit system, South v. Peters, supra, or the Illinois initiative plan, MacDougall v. Green, supra, where recognized political units having independent significance were given minimum political weight.

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9. It is interesting to note that state judges often rest their decisions on the ground that this Court has precluded adjudication of the federal claim. See, e.g., Scholle v. Secretary of State, 360 Mich. 1, 104 N.W.2d 63 (1960).

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10. 1 Farrand, The Records of the Federal Convention of 1787, 124.

1962, Baker v. Carr, 369 U.S. 349

11. Kant, Perpetual Peace.

FRANKFURTER, J., dissenting (Footnotes)

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\* It is worth reminding that the problem of legislative apportionment is not one dividing North and South. Indeed, in the present House of Representatives, for example, Michigan's congressional districts are far less representative of the numbers of inhabitants, according to the 1960 census, than are Louisiana's. Michigan's Sixteenth District, which is 93.1% urban, contains 802,994 persons, and its Twelfth, which is 47.6% urban, contains 177,431—one-fifth as many persons. Louisiana's most populous district, the Sixth, is 53.6% urban and contains 536,029 persons, and its least populous, the Eighth, 36.7% urban, contains 263,850—nearly half. Gross disregard of any assumption that our political system implies even approximation to the notion that individual votes in the various districts within a State should have equal weight is as true, e.g., of California, Illinois, and Ohio as it is of Georgia. See United States Department of Commerce, Census Release, February 24, 1962, CB62-23.

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1. See Wood v. Broom, 287 U.S. 1; Colegrove v. Green, 328 U.S. 549, rehearing denied, 329 U.S. 825, motion for reargument before the full bench denied, 329 U.S. 828; Cook v. Fortson, 329 U.S. 675, rehearing denied, 329 U.S. 829; Turman v. Duckworth, 329 U.S. 675, rehearing denied, 329 U.S. 829; Colegrove v. Barrett, 330 U.S. 804; MacDougall v. Green, 335 U.S. 281; South v. Peters, 339 U.S. 276; Tedesco v. Board of Supervisors, 339 U.S. 940; Remmey v. Smith, 342 U.S. 916; Cox v. Peters, 342 U.S. 936, rehearing denied, 343 U.S. 921; Anderson v. Jordan, 343 U.S. 912; Kidd v. McCanless, 352 U.S. 920; Radford v. Gary, 352 U.S. 991; Hartsfield v. Sloan, 357 U.S. 916; Matthews v. Handley, 361 U.S. 127; Perry v. Folsom, 144 F.Supp. 874 (D.C.N.D.Ala.); Magraw v. Donovan, 163 F.Supp. 184 (D.C.D. Minn.); cf. Dyer v. Kazuhisa Abe, 138 F.Supp. 220 (D.C.D. Hawaii). And see Keogh v. Neely, 50 F.2d 685 (C.A. 7th Cir.).

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2. Although the motion to intervene by the Mayor of Nashville asserted an interest in the litigation in only a representative capacity, the complaint which he subsequently filed set forth that he was a qualified voter who also sued in his own behalf. The municipalities of Knoxville and Chattanooga purport to represent their residents. Since the claims of the municipal intervenors do not differ materially from those of the parties who sue as individual voters, the Court need not now determine whether the municipalities are proper parties to this proceeding. See, e.g., Stewart v. Kansas City, 239 U.S. 14.

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3. The original complaint named as defendants Tennessee's Secretary of State, Attorney General, Coordinator of Elections, and the three members of the State Board of Elections, seeking to make the Board members representatives of all the State's County Election Commissioners. The prayer in an intervening complaint by the City of Knoxville, that the Commissioners of Elections of Knox County be added as parties defendant seems not to have been acted on by the court below. Defendants moved to dismiss, inter alia, on the ground of failure to join indispensable parties, and they argue in this Court that only the County Election Commissioners of the ninety-five counties are the effective administrators of Tennessee's elections laws, and that none of the defendants have substantial duties in connection therewith. The District Court deferred ruling on this ground of the motion. Inasmuch as it involves questions of local law more appropriately decided by judges sitting in Tennessee than by this Court, and since, in any event, the failure to join County Election Commissioners in this action looking to prospective relief could be corrected, if necessary, by amendment of the complaints, the issue does not concern the Court on this appeal.

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4. Jurisdiction is predicated upon R.S. § 1979, 42 U.S.C. § 1983, and 28 U.S.C. § 1343(3).

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5. However, counties having two-thirds of the ratio required for a Representative are entitled to seat one member in the House, and there are certain geographical restrictions upon the formation of Senate districts. The applicable provisions of Article II of the Tennessee Constitution are:

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Sec. 4. Census.—An enumeration of the qualified voters, and an apportionment of the Representatives in the General Assembly, shall be made in the year one thousand eight hundred and seventy-one, and within every subsequent term of ten years.

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Sec. 5. Apportionment of representatives.—The number of Representatives shall, at the several periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each, and shall not exceed seventy-five, until the population of the State shall be one million and a half, and shall never exceed ninety-nine; Provided that any county having two-thirds of the ratio shall be entitled to one member.

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Sec. 6. Apportionment of senators.—The number of Senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts according to the number of qualified electors in each, and shall not exceed one-third the number of representatives. In apportioning the Senators among the different counties, the fraction that may be lost by any county or counties, in the apportionment of members to the House of Representatives shall be made up to such county or counties in the Senate as near as may be practicable. When a district is composed of two or more counties, they shall be adjoining, and no county shall be divided in forming a district .

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6. It is alleged that certain amendments to the Act of 1901 made only minor modifications of that Act, adjusting the boundaries of individual districts in a manner not material to plaintiffs' claims.

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7. The exhibits do not reveal the source of the population figures which they set forth, but it appears that the figures were taken from the United States Census of Population, 1950, Volume II, Part 42 (Tennessee), Table 41, at 76-91. These census figures represent the total population over twenty-one years of age in each Tennessee county; they do not purport to enumerate "qualified voters" or "qualified electors," the measure of apportionment prescribed by the Tennessee Constitution. See note 5, supra. To qualify to vote in Tennessee, in addition to fulfilling the age requirement, an individual must be a citizen of the United States, a resident of the State for twelve months and of the county where he offers his vote for six months next preceding the election, and must not be under the disqualification attaching to conviction for certain offenses. Tenn.Code Ann., 1955, §§ 2-201, 2-205. The statistics found in the United States Census of Population, 1950, Volume II, Part 42 (Tennessee), Table 42, at 92-97, suggest that the residence requirement, in particular, may be an unknown variable of considerable significance. Appellants do not suggest a means by which a court, on the basis of the federal census figures, can determine the number of qualified voters in the various Tennessee counties.

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8. The "county aid funds" derived from a portion of a state gasoline privilege tax, for example, are distributed among the counties as follows: one-half equally among the ninety-five counties, one-quarter on the basis of area, one-quarter on the basis of population, to be used by county authorities in the building, repairing and improving of county roads and bridges. Tenn.Code Ann., 1955, § 54-403. Appellants urge that this distribution is discriminatory.

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9. Plaintiffs also suggested, as an alternative to at-large elections, that the District Court might itself redistrict the State. They did not, however, expressly pray such relief.

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10. See Bickel, Foreword: The Passive Virtues, 75 Harv.L.Rev. 40, 45 et seq. (1961).

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11. See, e.g., United States v. Palmer, 3 Wheat. 610, 634, 635; The Divina Pastora, 4 Wheat. 52; Williams v. Suffolk Ins. Co., 13 Pet. 415; Kennett v. Chambers, 14 How. 38; Doe v. Braden, 16 How. 635; Jones v. United States, 137 U.S. 202; Terlinden v. Ames, 184 U.S. 270; Charlton v. Kelly, 229 U.S. 447; Oetjen v. Central Leather Co., 246 U.S. 297; Ex parte Peru, 318 U.S. 578; Clark v. Allen, 331 U.S. 503. Compare Foster and Elam v. Neilson, 2 Pet. 253, with United States v. Arredondo, 6 Pet. 691. Of course, judgment concerning the "political" nature of even a controversy affecting the Nation's foreign affairs is not a simple mechanical matter, and certain of the Court's decisions have accorded scant weight to the consideration of unity of action in the conduct of external relations. Compare Vermilya-Brown Co. v. Connell, 335 U.S. 377, with United States v. Pink, 315 U.S. 203.

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12. Obviously, this is the equivalent of saying that the characteristics are not "constitutionally requisite" in a judicially enforceable sense. The recognition of their necessity as a condition of legislation is left, as is observance of certain other constitutional commands, to the conscience of the nonjudicial organs. Cf. Kentucky v. Dennison, 24 How. 66.

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13. Also compare the Coleman case and United States v. Sprague, 282 U.S. 716, with Hawke v. Smith (No. 1), 253 U.S. 221. See the National Prohibition Cases, 253 U.S. 350, and consider the Court's treatment of the several contentions in Leser v. Garnett, 258 U.S. 130.

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14. E.g., Myers v. Anderson, 238 U.S. 368; Nixon v. Condon, 286 U.S. 73; Lane v. Wilson, 307 U.S. 268; Smith v. Allwright, 321 U.S. 649. The action for damages for improperly rejecting an elector's vote had been given by the English law since the time of Ashby v. White, 1 Brown's Cases in Parliament 62; 2 Ld.Raym. 938; 3 Ld.Raym. 320, a case which, in its own day, precipitated an intra-parliamentary war of major dimensions. See 6 Hansard, Parliamentary History of England (1810), 225-324, 376-436. Prior to the racial discrimination cases, this Court had recognized the action, by implication, in dictum in Swafford v. Templeton, 185 U.S. 487, and Wiley v. Sinkler, 179 U.S. 58, both respecting federal elections.

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15. Cf. Gomillion v. Lightfoot, 364 U.S. 339.

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16. By statute, an action for preventive relief is now given the United States in certain voting cases. 71 Stat. 637, 42 U.S.C. § 1971(c), amending R.S. § 2004. See United States v. Raines, 362 U.S. 17; United States v. Thomas, 362 U.S. 58.

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17. Compare Rhode Island v. Massachusetts, 12 Pet. 657, and cases following, with Georgia v. Stanton, 6 Wall. 50.

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18. Compare Worcester v. Georgia, 6 Pet. 515, with Cherokee Nation v. Georgia, 5 Pet. 1, 20, 28 (Mr. Justice Johnson, concurring), 51 and 75 (Mr. Justice Thompson, dissenting).

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19. This was an alternative ground of Chief Justice Marshall's opinion for the Court. Id. at 20. The question which Marshall reserved as "unnecessary to decide," ibid., was not the justiciability of the bill in this aspect, but the "more doubtful" question whether that "part of the bill which respects the land occupied by the Indians, and prays the aid of the court to protect their possession," might be entertained. Ibid. Mr. Justice Johnson, concurring, found the controversy nonjusticiable, and would have put the ruling solely on this ground, id. at 28, and Mr. Justice Thompson, in dissent, agreed that much of the matter in the bill was not fit for judicial determination. Id. at 51, 75.

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20. Cf. Mississippi v. Johnson, 4 Wall. 475.

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21. Considerations similar to those which determined the Cherokee Nation case and Georgia v. Stanton no doubt explain the celebrated decision in Nabob of the Carnatic v. East India Co., 1 Ves.jun. \*371; 2 Ves.jun. \*56, rather than any attribution of a portion of British sovereignty, in respect of Indian affairs, to the company. The reluctance of the English Judges to involve themselves in contests of factional political power is of ancient standing. In The Duke of York's Claim to the Crown, 5 Rotuli Parl. 375, printed in Wambaugh, Cases on Constitutional Law (1915), 1, the role which the Judges were asked to play appears to have been rather that of advocates than of judges, but the answer which they returned to the Lords relied on reasons equally applicable to either role.

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22.

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

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23. Cf. the cases holding that the Fourteenth Amendment imposes no such restriction upon the form of a State's governmental organization as will permit persons affected by government action to complain that, in its organization principles of separation of powers have been violated. E.g., Dreyer v. Illinois, 187 U.S. 71; Soliah v. Heskin, 222 U.S. 522; Houck v. Little River Drainage District, 239 U.S. 254. The same consistent refusal of this Court to find that the Federal Constitution restricts state power to design the structure of state political institutions is reflected in the cases rejecting claims arising out of the States' creation, alteration, or destruction of local subdivisions or their powers, insofar as these claims are made by the subdivisions themselves, see Laramie County v. Albany County, 92 U.S. 307; Pawhuska v. Pawhuska Oil & Gas Co., 250 U.S. 394; Trenton v. New Jersey, 262 U.S. 182; Risty v. Chicago, R.I. & P. R. Co., 270 U.S. 378, 389-390; Williams v. Mayor and City Council of Baltimore, 289 U.S. 36, or by the whole body of their residents who share only a general, undifferentiated interest in their preservation. See Hunter v. Pittsburgh, 207 U.S. 161. The policy is also given effect by the denial of "standing" to persons seeking to challenge state action as infringing the interest of some separate unit within the State's administrative structure—a denial which precludes the arbitrament by federal courts of what are only disputes over the local allocation of government functions and powers. See, e.g., Smith v. Indiana, 191 U.S. 138; Braxton County Court v. West Virginia, 208 U.S. 192; Marshall v. Dye, 231 U.S. 250; Stewart v Kansas City, 239 U.S. 14.

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24. 223 U.S. at 141.

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…[T]he contention, if held to be sound, would necessarily affect the validity not only of the particular statute which is before us, but of every other statute passed in Oregon since the adoption of the initiative and referendum. And, indeed, the propositions go further than this, since, in their essence, they assert that there is no governmental function, legislative or judicial, in Oregon, because it cannot be assumed, if the proposition be well founded, that there is at one and the same time one and the same government which is republican in form and not of that character.

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Compare Luther v. Borden, 7 How. 1, 38-39:

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…For, if this court is authorized to enter upon this inquiry as proposed by the plaintiff, and it should be decided that the charter government had no legal existence during the period of time above mentioned—if it had been annulled by the adoption of the opposing government—then the laws passed by its legislature during that time were nullities, its taxes wrongfully collected, its salaries and compensation to its officers illegally paid, its public accounts improperly settled, and the judgments and sentences of its courts in civil and criminal cases null and void, and the officers who carried their decisions into operation answerable as trespassers, if not, in some cases, as criminals.

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When the decision of this court might lead to such results, it becomes its duty to examine very carefully its own powers before it undertakes to exercise jurisdiction.

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25. See Bowen, The Recent Contest in Rhode Island (1844); Frieze, A Concise History of the Efforts to Obtain an Extension of Suffrage in Rhode Island; From the Year 1811 to 1842 (2d ed. 1842); Mowry, The Dorr War (1901); Wayland, The Affairs of Rhode Island (2d ed. 1842).

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26. The Court reasoned, with respect to the guarantee against domestic violence also contained in Art. IV, § 4, that this, too, was an authority committed solely to Congress; that Congress had empowered the President, not the courts, to enforce it, and that it was inconceivable that the courts should assume a power to make determinations in the premises which might conflict with those of the Executive. It noted further that, in fact, the President had recognized the governor of the charter government as the lawful authority in Rhode Island, although it had been unnecessary to call out the militia in his support.

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27. See note 24, supra.

1962, Baker v. Carr, 369 U.S. 349

28. Id. at 39, 46-47.

1962, Baker v. Carr, 369 U.S. 349

29. Id. at 41-42.

1962, Baker v. Carr, 369 U.S. 349

30. In evaluating the Court's determination not to inquire into the authority of the charter government, it must be remembered that, throughout the country, Dorr "had received the sympathy of the Democratic press. His cause, therefore, became distinctly a party issue." 2 Warren, The Supreme Court in United States History (Rev. ed.1937), 186.

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31. Appellants also allege discrimination in the legislature's allocation of certain tax burdens and benefits. Whether or not such discrimination would violate the Equal Protection Clause if the tax statutes were challenged in a proper proceeding, see Dane v. Jackson, 256 U.S. 589; cf. Nashville, C. & St.L. R. Co. v. Wallace, 288 U.S. 249, 268, these recitative allegations do not affect the nature of the controversy which appellants' complaints present.

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32. Appellants would find a "right" to have one's ballot counted on authority of United States v. Mosley, 238 U.S. 383; United States v. Classic, 313 U.S. 299; United States v. Saylor, 322 U.S. 385. All that these cases hold is that conspiracies to commit certain sharp election practices which, in a federal election, cause ballots not to receive the weight which the law has, in fact, given them, may amount to deprivations of the constitutionally secured right to vote for federal officers. But see United States v. Bathgate, 246 U.S. 220. The cases do not so much as suggest that there exists a constitutional limitation upon the relative weight to which the law might properly entitle respective ballots, even in federal elections.

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33. Mackenzie, Free Elections (1958) (hereafter, Mackenzie), 108.

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34. Ogg, English Government and Politics (2d ed.1936) (hereafter Ogg), 248-250, 257; Seymour, Electoral Reform in England and Wales (1915) (hereafter, Seymour), 46-47.

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35. Ogg 257-259; Seymour 45-52; Carpenter, The Development of American Political Thought (1930) (hereafter, Carpenter), 45-46.

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36. Ogg 258.

1962, Baker v. Carr, 369 U.S. 349

37. Seymour 51.

1962, Baker v. Carr, 369 U.S. 349

38. The Federalist, No. 56 (Wright ed.1961), at 382. Compare Seymour 49. This takes account of the restricted franchise as well as the effect of the local unit apportionment principle.

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39. Seymour 52-76.

1962, Baker v. Carr, 369 U.S. 349

40. Ogg 264-265; Seymour 318-319.

1962, Baker v. Carr, 369 U.S. 349

41. For these and other instances of gross inequality, see Seymour 320-325.

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42. Seymour 333-346; Ogg 265.

1962, Baker v. Carr, 369 U.S. 349

43. Seymour 349, 490-491.

1962, Baker v. Carr, 369 U.S. 349

44. Seymour 489-518.

1962, Baker v. Carr, 369 U.S. 349

45. Mackenzie 108; see also Seymour 513-517.

1962, Baker v. Carr, 369 U.S. 349

46. Ogg 270.

1962, Baker v. Carr, 369 U.S. 349

47. Ogg 253.

1962, Baker v. Carr, 369 U.S. 349

48. Ogg 270-271.

1962, Baker v. Carr, 369 U.S. 349

49. Ogg 273-274.

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50. 7 & 8 Geo. VI, c. 41. The 1944 Act was amended by the House Of Commons (Redistribution Of Seats) Act, 1947, 10 & 11 Geo. VI, c. 10, and the two, with other provisions, were consolidated in the House Of Commons (Redistribution Of Seats) Act, 1949, 12 & 13 Geo. VI, c. 66, since amended by the House Of Commons (Redistribution Of Seats) Act, 1958, 6 & 7 Eliz. II, c. 26.

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51. See generally Butler, The Redistribution Of Seats, 33 Public Administration 125 (1955).

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52. See note 50, supra. However, Commissions are given discretion to depart from the strict application of the local boundary rule to avoid excessive disparities between the electorate of a constituency and the electoral quota, or between the electorate of a constituency and that of neighboring constituencies. For detailed discussion, see Craig, Parliament and Boundary Commissions, [1959] Public Law 23. See also Butler, supra, note 51, at 127.

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53. Mackenzie 108, 113.

1962, Baker v. Carr, 369 U.S. 349

54. The Times, Dec. 15, 1954, p. 4, cols 3-4.

1962, Baker v. Carr, 369 U.S. 349

55. [1955] 1 Ch. 238.

1962, Baker v. Carr, 369 U.S. 349

56. The court reserved the question whether a judicial remedy might be found in a case in which it appeared that a Commission had manifestly acted in complete disregard of the Acts.

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57. Note 50, supra.

1962, Baker v. Carr, 369 U.S. 349

58. First Periodical Report of the Boundary Commission for England [Cmd. 9311] (1954), 4, par.19.

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59. Under the 1949 Act, see note 50, supra, the intervals between reports were to be not less than three nor more than seven years, with certain qualifications. The 1958 Act raised the minimum to ten and the maximum to fifteen years.

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60. First Periodical Report, supra, note 58, at 4, par. 20.

1962, Baker v. Carr, 369 U.S. 349

61. 582 H.C.Deb. (5th ser.1957-1958), 30.

1962, Baker v. Carr, 369 U.S. 349

62. See The Federalist, No. 56, supra, note 38; Tudor, Life of James Otis (1823), 188-190.

1962, Baker v. Carr, 369 U.S. 349

63. Griffith, The Rise and Development of the Gerrymander (1907) (hereafter, Griffith), 23-24.

1962, Baker v. Carr, 369 U.S. 349

64. Luce, Legislative Principles (1930) (hereafter, Luce), 336-342.

1962, Baker v. Carr, 369 U.S. 349

65. Griffith 25

1962, Baker v. Carr, 369 U.S. 349

66. Griffith 15-16, n. 1.

1962, Baker v. Carr, 369 U.S. 349

67. Griffith 28.

1962, Baker v. Carr, 369 U.S. 349

68. Carpenter 48-49, 54; Griffith 26, 28-29; Luce 339-340.

1962, Baker v. Carr, 369 U.S. 349

69. Carpenter 87; Griffith 26-29, 31.

1962, Baker v. Carr, 369 U.S. 349

70. II Farrand, Records of the Federal Convention (1911), 241.

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71. The power was provided. Art. I, § 4, cl. 1.

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72. III Elliot's Debates (2d ed. 1891), 367; II id. at 50-51.

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73. See Madison, in I Farrand, op. cit. supra, note 70, at 321: "The great difficulty lies in the affair of Representation, and if this could be adjusted, all others would be surmountable."

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74. See The Federalist, No. 62 (Wright ed.1961), at 408-409.

1962, Baker v. Carr, 369 U.S. 349

75. See The Federalist, No. 54, id. at 369-374.

1962, Baker v. Carr, 369 U.S. 349

76. Carpenter 130.

1962, Baker v. Carr, 369 U.S. 349

77. Jefferson, Notes on the State of Virginia (Peden ed.1955), 118-119. See also II writings of Thomas Jefferson (Memorial ed.1903), 160-162.

1962, Baker v. Carr, 369 U.S. 349

78. Carpenter 139-140.

1962, Baker v. Carr, 369 U.S. 349

79. Griffith 102-104

1962, Baker v. Carr, 369 U.S. 349

80. Griffith 104-105

1962, Baker v. Carr, 369 U.S. 349

81. Luce 343-350. Bowen, supra, note 25, at 17-18, records that, in 1824 Providence County, having three-fifths of Rhode Island's population, elected only twenty-two of its seventy-two representatives, and that the town of Providence, more than double the size of Newport, had half Newport's number of representatives.

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82. Carpenter 130-137; Luce 364-367; Griffith 116-117.

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83. See 14 Stat. 428; 15 Stat. 2, 14, 41.

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84. Various indices of population were employed among the States which took account of the factor of numbers. Some counted all inhabitants, e.g., N.J.Const., 1844, Art. IV, § 3; some, only white inhabitants, e.g., Ill.Const., 1848, Art. III, § 8; some, male inhabitants over twenty-one, e.g., Ind.Const., 1851, Art. IV, §§ 4-5; some, qualified voters, e.g., Tenn.Const., 1834, Art. II, §§ 4 to 6; some excluded aliens, e.g., N.Y.Const., 1846, Art. III, §§ 4, 5 (and untaxed persons of color); some excluded untaxed Indians and military personnel, e.g., Neb.Const., 1866-1867, Art. II, § 3. For present purposes, these differences, although not unimportant as revealing fundamental divergences in representation theory, will be disregarded.

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85. Ore.Const., 1857, Art. IV, §§ 5, 6, 7; Ill.Const., 1848, Art. III, §§ 8, 9; Ind.Const., 1851, Art. IV, §§ 4, 5, 6; Minn.Const., 1857, Art. IV, § 2; Wis.Const., 1848, Art. IV, §§ 3 to 5; Mass.Const., 1780, Amends. XXI, XXII; Neb.Const., 1866-1867, Art. II, § 3. All of these but Minnesota made provision for periodic reapportionment. Nevada's Constitution of 1864, Art. XV, § 13, provided that the federal censuses and interim state decennial enumerations should serve as the bases of representation for both houses, but did not expressly require either numerical equality or reapportionment at fixed intervals .

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Several of these constitutions contain provisions which forbid splitting counties or which otherwise require recognition of local boundaries. See, e.g., the severe restriction in Ill.Const., 1848, Art. III, § 9. Such provisions will almost inevitably produce numerical inequalities. See, for example, University of Oklahoma, Bureau of Government Research, Legislative Apportionment in Oklahoma (1956), 21-23. However, because their effect in this regard will turn on idiosyncratic local factors, and because other constitutional provisions are a more significant source of inequality, these provisions are here disregarded.

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86. Tenn.Const., 1834, Art. II, §§ 4 to 6 (two-thirds of a ratio entitles a county to one representative in the House); W.Va.Const., 1861-1863, Art. IV, §§ 4, 5, 7, 8, 9 (one-half of a ratio entitles a county to one representative in the House); Mich.Const., 1850, Art. IV, §§ 2 to 4 (one-half of a ratio entitles each county thereafter organized to one representative in the House). In Oregon and Iowa, a major-fraction rule applied which gave a House seat not only to counties having a moiety of a single ratio, but to all counties having more than half a ratio in excess of the multiple of a ratio. Ore.Const., 1857, Art. IV, § 6, note 85, supra; Iowa Const., 1857, Art. III, §§ 33, 34, 35, 37, note 89, infra.

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87. See Bone, States Attempting to Comply with Reapportionment Requirements, 17 Law & Contemp.Prob. 387, 391 (1952).

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88. It also appears, although the section is not altogether clear, that the provisions of West Virginia's Constitution controlling apportionment of senators would operate in favor of the State's less populous regions by limiting any single county to a maximum of two senators. W.Va.Const., 1861-1863, Art. IV, § 4.

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89. Iowa Const., 1857, Art. III, §§ 33, 34, 35, 37.

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90. N.Y.Const., 1846, Art. III, §§ 4, 5 (except Hamilton County); Kan.Const., 1859, Art. 2, § 2; Art. 10. The Kansas provisions require periodic apportionment based on censuses, but do not in terms demand equal districts.

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91. Ohio Const., 1851, Art. XI, §§ 1 to 5. See Art. XI, §§ 6 to 9 for Senate apportionment.

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92. Me.Const., 1819, Art. IV, Pt. First, §§ 2, 3. See Art. IV, Pt. Second, § 2, for Senate apportionment based on numbers.

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93. Mo.Const., 1865, Art. IV, §§ 2, 7, 8. See Art. IV, §§ 4 to 8, for Senate apportionment based on numbers.

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94. Towns smaller than one hundred and fifty, if so situated that it was "very inconvenient" to join them to other towns for voting purposes, might be permitted by the legislature to send a representative.

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95. N.H.Const., 1792, Pt. Second, §§ IX to XI; Pt. Second, § XXVI.

1962, Baker v. Carr, 369 U.S. 349

96. Pa.Const., 1838, as amended, Art. I, §§ 4, 6, 7.

1962, Baker v. Carr, 369 U.S. 349

97. Conn.Const., 1818, Art. Third, § 3.

1962, Baker v. Carr, 369 U.S. 349

98. Vt.Const., 1793, c. II, § 7.

1962, Baker v. Carr, 369 U.S. 349

99. R.I.Const., 1842, Art. VI, § 1.

1962, Baker v. Carr, 369 U.S. 349

100. N.J.Const., 1844, Art. IV, § 2, cl. One.

1962, Baker v. Carr, 369 U.S. 349

101. Conn.Const., 1818, Amend. II.

1962, Baker v. Carr, 369 U.S. 349

102. Vt.Const., 1793, Amend. 23.

1962, Baker v. Carr, 369 U.S. 349

103. N.J.Const., 1844, Art. IV, § 3, cl. One

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104. R I.Const., 1842, Art. V, § 1.

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105. Ark.Const., 1868, Art. V, §§ 8, 9; Va.Const., 1864, Art. IV, § 6 (this constitution was in effect when Virginia ratified the Fourteenth Amendment); Va.Const., 1870, Art. V, § 4 (this was Virginia's Reconstruction Act convention constitution); Miss.Const., 1868, Art. IV, §§ 33 to 35; Tex.Const., 1868, Art. III, §§ 11, 34. The Virginia Constitutions and Texas' provisions for apportioning its lower chamber do not, in terms, require equality of numbers, although they call for reapportionment following a census. In Arkansas, the legislature was authorized, but not commanded, to reapportion periodically; it is not clear that equality was required.

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106. N.C.Const., 1868, Art. II, §§ 6, 7. See Art. II, § 5, for Senate apportionment based on numbers.

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107. S.C.Const., 1868, Art. I, § 34; Art. II, §§ 4 to 6.

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108. La.Const., 1868, Tit. II, Arts. 20, 21. See Tit. II, Arts. 28 to 30, for Senate apportionment based on numbers.

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109. Ala.Const., 1867, Art. VIII, § 1. See Art. VIII, § 3, for Senate apportionment based on numbers.

1962, Baker v. Carr, 369 U.S. 349

110. S.C.Const., 1868, Art. II, § 8.

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111. Fla.Const., 1868, Art. XIV, par. 1. See Art. XIV, par. 2, for Senate apportionment.

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112. Ga.Const., 1868, Art. III, § 2. The extent of legislative authority to alter these districts is unclear, but it appears that the structure of three contiguous counties for each of forty-four districts is meant to be permanent.

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113. Ga.Const., 1868, Art. III, § 3. The extent of legislative authority to alter the apportionment is unclear, but it appears that the three-tiered structure is meant to be permanent.

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114. See, e.g., Durfee, Apportionment of Representation in the Legislature: A Study of State Constitutions, 43 Mich.L.Rev. 1091, 1097 (1945); Short, States That Have Not Met Their Constitutional Requirements, 17 Law & Contemp.Prob. 377 (1952); Harvey, Reapportionments of State Legislatures—Legal Requirements, 17 Law & Contemp.Prob. 364, 370 (1952). For an excellent case study of numerical inequalities deriving solely from a "one member per county" minimum provision in Ohio, see Aumann, Rural Ohio Hangs On, 46 Nat.Mun.Rev. 189, 191-192 (1957).

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115. Dauer and Kelsay, Unrepresentative States, 44 Nat.Mun.Rev. 571, 574 (1955). (This is the effect of a later Georgia constitutional provision, Ga.Const., 1945, § 2-1501, substantially similar to that of 1868.) The same three-tiered system has subsequently been adopted in Florida, Fla.Const., 1885, Art. VII, §§ 3, 4, where its effects have been inequalities of the order of eighty to one. Dauer and Kelsay, supra, at 575, 587.

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116. The constitutions discussed are those under which the new States entered the Union.

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117. Colo.Const., 1876, Art. V, §§ 45, 47; N.D.Const., 1889, Art. 2, §§ 29, 35; S.D.Const., 1889, Art. III, § 5; Wash.Const., 1889, Art. II, §§ 3, 6; Utah Const., 1895, Art. IX, §§ 2, 4; N.M.Const., 1911, Art. IV, following § 41. The Colorado and Utah Constitutions provide for reapportionment "according to ratios to be fixed by law" after periodic census and enumeration. In New Mexico, the legislature is authorized, but not commanded, to reapportion periodically. North Dakota does not, in terms, demand equality in House representation; members are to be assigned among the several senatorial districts, which are of equal population.

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118. Wyo, Const., 1889, Art. III, Legislative Department, § 3; Art. III, Apportionment, §§ 2, 3.

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119. Idaho Const., 1889, Art. III, § 4.

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120. Okla.Const., 1907, Art. V, § 10(b) to (j). See Art. V, §§ 9(a), 9(b) for Senate apportionment based on numbers.

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121. Mont.Const., 1889, Art. VI, §§ 2, 3

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122. Mont.Const., 1889, Art. V, § 4; Art. VI, § 4. The effective provisions are, first, that there shall be no more than one senator from each county, and, second, that no senatorial district shall consist of more than one county.

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123. Alaska Const., 1956, Art. VI, § 7; Art. XIV, § 2. The exact boundaries of the districts may be modified to conform to changes in House districts, but their numbers of senators and their approximate perimeters are to be preserved.

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124. Hawaii Const., 1950, Art. III, § 2

1962, Baker v. Carr, 369 U.S. 349

125. Alaska Const., 1956, Art. VI, §§ 3, 4, 6. The method of equal proportions is used.

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126. Hawaii Const., 1950, Art. III, § 4. The method of equal proportions is used, and, for sub-apportionment within the four "basic" areas, a form of moiety rule obtains.

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127. Ariz.Const., 1910, Art. IV, Pt. 2, § 1. On the basis of 1910 census figures, this apportionment yielded, for example, a senatorial ratio differential of more than four to one between Mohave and Cochise or between Mohave and Maricopa Counties. II Thirteenth Census of the United States (1910), 71-73.

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128. The pertinent state constitutional provisions are set forth in tabular form in XIII Book of the States (1960-1961), 54-58, and Greenfield, Ford and Emery, Legislative Reapportionment: California in National Perspective (University of California, Berkeley, 1959), 81-85. An earlier treatment, now outdated in several respects but still useful, is Durfee, supra, note 114. See discussions in Harvey, supra, note 114; Shull, Political and Partisan Implications of State Legislative Apportionment, 17 Law & Contemp.Prob. 417, 418-421 (1952).

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129. Nebraska's unicameral legislature is included in this count.

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130. Greenfield, Ford and Emery, supra, note 128, at 7.

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131. Harvey, supra, note 114, at 367. See Tabor, The Gerrymandering of State and Federal Legislative Districts, 16 Md.L.Rev. 277, 282-283 (1956).

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132. See, e.g., Mather and Ray, The Iowa Senatorial Districts Can Be Reapportioned—A Possible Plan, 39 Iowa L.Rev. 535, 536-537 (1954).

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133. See, e.g., Walter, Reapportionment and Urban Representation, 195 Annals of the American Academy of Political and Social Science 11, 12-13 (1938); Bone, supra, note 87. Legislative inaction and state constitutional provisions rejecting the principle of equal numbers have both contributed to the generally prevailing numerical inequality of representation in this country. Compare Waltersupra, with Baker, One Vote, One Value, 47 Nat.Mun.Rev. 16, 18 (1958).

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134. See, e.g., Griffith 116-117; Luce 364-367, 370; Merriam, American Political Ideas (1929), 244-245; Legislation, Apportionment of the New York State Senate, 31 St. John's L.Rev. 335, 341-342 (1957).

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135. In 1947, the Boundary Commission for England,

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…impressed by the advantages of accessibility [that large compact urban regions]…enjoy over widely scattered rural areas…, came to the conclusion that they could conveniently support electorates in excess of the electoral quota, and would, in the majority of cases, prefer to do so, rather than suffer severance of local unity for parliamentary purposes

1962, Baker v. Carr, 369 U.S. 349

—that, "in general, urban constituencies could more conveniently support large electorates than rural constituencies…. " Initial Report of the Boundary Commission for England [Cmd. 7260] (1947), 5. See also Mackenzie 110-111; De Grazia, General Theory of Apportionment, 17 Law & Contemp.Prob. 256, 261-262 (1952).

1962, Baker v. Carr, 369 U.S. 349

136. See Walter, supra, note 133; Walter, Reapportionment of State Legislative Districts, 37 Ill.L.Rev. 20, 37-38 (1942). The urban-rural conflict is often the core of apportionment controversy. See Durfee, supra, note 114, at 1093-1094; Short, supra, note 114, at 381.

1962, Baker v. Carr, 369 U.S. 349

137. Baker, Rural Versus Urban Political Power (1955), 11-19; MacNeil, Urban Representation in State Legislatures, 18 State Government 59 (1945); United States Conference of Mayors, Government Of the People, By the People, For the People (ca.1947).

1962, Baker v. Carr, 369 U.S. 349

138. See, in addition to the authorities cited in notes 130, 131, 136 and 137, supra, and 140 to 144, infra (all containing other examples than those remarked in text), Hurst, The Growth of American Law, The Law Makers (1950), 41-42; American Political Science Assn., Committee on American Legislatures, American State Legislatures (Zeller ed.1954), 34-35; Gosnell, Democracy, The Threshold of Freedom (1948), 179-181; Lewis, Legislative Apportionment and the Federal Courts, 71 Harv.L.Rev. 1057, 1059-1064 (1958); Friedman, Reapportionment Myth, 49 Nat.Civ.Rev. 184, 185-186 (1960); 106 Cong.Rec. 14901-14916 (remarks of Senator Clark and supporting materials); H.R.Rep. No. 2533, 85th Cong., 2d Sess. 24; H.R.Doc. No.198, 84th Cong., 1st Sess. 38-40; Hadwiger, Representation in the Missouri General Assembly, 24 Mo.L.Rev. 178, 180-181 (1959); Hamilton, Beardsley and Coats, Legislative Reapportionment in Indiana: Some Observations and a Suggestion, 35 Notre Dame Law. 368-370 (1960); Corter, Pennsylvania Ponders Apportionment, 32 Temple L.Q. 279, 283-288 (1959). Concerning the classical gerrymander, see Griffith, passim; Luce 395-404; Brooks, Political Parties and Electoral Problems (3d ed.1933), 472-481. For foreign examples of numerical disproportion, see Hogan, Election and Representation (1945), 95; Finer, Theory and Practice of Modern Government (Rev. ed.1949), 551-552.

1962, Baker v. Carr, 369 U.S. 349

139. Baker, supra, note 137, at 11. Recent New Jersey legislation provides for reapportionment of the State's lower House by executive action following each United States census subsequent to that of 1960. N.J.Laws 1961, c. 1. The apportionment is to be made on the basis of population, save that each county is assured at least one House seat. In the State's Senate, however, by constitutional command, each county elects a single senator, regardless of population. N.J.Const., 1947, Art. IV, § II, par. 1.

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140. Note, 42 Minn.L.Rev. 617, 618-619 (1958).

1962, Baker v. Carr, 369 U.S. 349

141. Greenfield, Ford and Emery, supra, note 128, at 3.

1962, Baker v. Carr, 369 U.S. 349

142. University of Oklahoma, Bureau of Government Research, The Apportionment Problem in Oklahoma (1959), 16-29.

1962, Baker v. Carr, 369 U.S. 349

143. 1 Labor's Economic Rev. 89, 96 (1956).

1962, Baker v. Carr, 369 U.S. 349

144. Dauer and Kelsay, Unrepresentative States, 44 Nat.Mun.Rev. 571, 572, 574 (1955).

1962, Baker v. Carr, 369 U.S. 349

145. See the Second Schedule to the House of Commons (Redistribution of Seats) Act, 1949, 12 & 13 Geo. VI, c. 66, as amended by the House of Commons (Redistribution of Seats) Act, 1958, 6 & 7 Eliz. II, c. 26, § 2, and the English experience described in text at notes 50 to 61, supra. See also the Report of the Assembly Interim Committee on Elections and Reapportionment, California Assembly (1951) (hereafter, California Committee Report), 37:

1962, Baker v. Carr, 369 U.S. 349

The geographic—the socioeconomic—the desires of the people—the desires of the elected officeholders—the desires of political parties—all these can and do legitimately operate not only within the framework of the "relatively equal in population districts" factor, but also within the factors of contiguity and compactness. The county and Assembly line legal restrictions operate outside the framework of theoretically "equal in population districts." All the factors might conceivably have the same weight in one situation; in another, some factors might be considerably more important than others in making the final determination.

1962, Baker v. Carr, 369 U.S. 349

A Virginia legislative committee adverted to

1962, Baker v. Carr, 369 U.S. 349

…many difficulties such as natural topographical barriers, divergent business and social interests, lack of communication by rail or highway, and disinclinations of communities to breaking up political ties of long standing, resulting in some cases of districts requesting to remain with populations more than their averages, rather than have their equal representation with the changed conditions.

1962, Baker v. Carr, 369 U.S. 349

Report of the Joint Committee on the Reapportionment of the State into Senatorial and House Districts, Virginia General Assembly, House of Delegates, H. Doc. No. 9 (1922), 1-2. And the Tennessee State Planning Commission, concerning the problem of congressional redistricting in 1950, spoke of a

1962, Baker v. Carr, 369 U.S. 349

tradition [which] relates to the sense of belonging—loyalties to groups and items of common interest with friends and fellow citizens of like circumstance, environment or region.

1962, Baker v. Carr, 369 U.S. 349

Tennessee State Planning Commission, Pub. No. 222, Redistricting for Congress (1950), first page.

1962, Baker v. Carr, 369 U.S. 349

146. See, e.g., California Committee Report at 52.

1962, Baker v. Carr, 369 U.S. 349

…[T]he reapportionment process is, by its very nature, political…. There will be politics in reapportionment as long as a representative form of government exists….

1962, Baker v. Carr, 369 U.S. 349

It is impossible to draw a district boundary line without that line's having some political significance….

1962, Baker v. Carr, 369 U.S. 349

147. See, e.g., S, Celler, Congressional Apportionment—Past, Present, and Future, 17 Law & Contemp.Prob. 268 (1952), speaking of the history of congressional apportionment:

1962, Baker v. Carr, 369 U.S. 349

…A mere reading of the debates [from the Constitutional Convention down to contemporary Congresses] on this question of apportionment reveals the conflicting interests of the large and small states and the extent to which partisan politics permeates the entire problem.

1962, Baker v. Carr, 369 U.S. 349

148. See Standards for Congressional Districts (Apportionment), Hearings before Subcommittee No. 2 of the Committee on the Judiciary, House of Representatives, 86th Cong., 1st Sess. 23, concerning a proposed provision for judicial enforcement of certain standards in the laying out of districts:

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Mr. KASEM. You do not think that that [a provision embodying the language: "in as compact form as practicable"] might result in a decision depending upon the political inclinations of the judge?

1962, Baker v. Carr, 369 U.S. 349

Mr. CELLER. Are you impugning the integrity of our Federal judiciary?

1962, Baker v. Carr, 369 U.S. 349

Mr. KASEM. No; I just recognize their human frailties.

1962, Baker v. Carr, 369 U.S. 349

For an instance of a court torn, in fact, or fancy, over the political issues involved in reapportionment, see State ex rel. Lashly v. Becker, 290 Mo. 560, 235 S.W. 1017, and especially the dissenting opinion of Higbee, J., 290 Mo. at 613, 235 S.W. at 1037.

1962, Baker v. Carr, 369 U.S. 349

149. See text at notes 139-143, supra.

1962, Baker v. Carr, 369 U.S. 349

150. Decisions of state courts which have entertained apportionment cases under their respective state constitutions do not, of course, involve the very different considerations relevant to federal judicial intervention. State court adjudication does not involve the delicate problems of federal-state relations which would inhere in the exercise of federal judicial power to impose restrictions upon the States' shaping of their own governmental institutions. Moreover, state constitutions generally speak with a specificity totally lacking in attempted utilization of the generalities of the Fourteenth Amendment to apportionment matters. Some expressly commit apportionment to state judicial review, see, e.g., N.Y.Const., 193, Art. III, § 5, and, even where they do not, they do precisely fix the criteria for judicial judgment respecting the allocation of representative strength within the electorate. See, e.g., Asbury Park Press. Inc., v. Woolley, 33 N.J. 1, 161 A.2d 705.

1962, Baker v. Carr, 369 U.S. 349

151. Appellants' suggestion that, although no relief may need be given, jurisdiction ought to be retained as a "spur" to legislative action does not merit discussion.

1962, Baker v. Carr, 369 U.S. 349

152. See note 24, supra.

HARLAN, J., dissenting (Footnotes)

1962, Baker v. Carr, 369 U.S. 349

1. The relevant provisions of the Tennessee Constitution are Art. II, §§ 5 and 6:

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Sec. 5. Apportionment of representatives.—The number of Representatives shall, at the several periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each, and shall not exceed seventy-five, until the population of the State shall be one million and a half, and shall never exceed ninety-nine; Provided, that any county having two-thirds of the ratio shall be entitled to one member.

1962, Baker v. Carr, 369 U.S. 349

Sec. 6. Apportionment of senator.—The number of Senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts according to the number of qualified electors in each, and shall not exceed one-third the number of representatives. In apportioning the Senators among the different counties, the fraction that may be lost by any county or counties, in the apportionment of members to the House of Representatives, shall be made up to such county or counties in the Senate, as near as may be practicable. When a district is composed of two or more counties, they shall be adjoining, and no counties shall be divided in forming a district.

1962, Baker v. Carr, 369 U.S. 349

2. This formula is not clearly spelled out in the opinion, but it is necessarily inferred from the figures that are presented. Knox County, for example, is said to have a "total representation" of 7.25. It elects (1) three direct representatives (value 3.00); (2) one representative from a two-county district (value .50); (3) one direct senator (value 3.00), and (4) one senator in a four-county district (value .75). See Appendix to opinion of MR. JUSTICE CLARK, ante pp. 262-264.

1962, Baker v. Carr, 369 U.S. 349

3. If this "adjusted" formula for measuring "total representation" is applied to the other "horribles" cited in the concurring opinion (ante, p. 255), it reveals that these counties—which purportedly have equal "total representation" but distinctly unequal voting population—do not have the same "total representation" at all. Rather than having the same representation as Rutherford County, Moore County has only about 40% of what Rutherford has. Decatur County has only 55% of the representation of Carter County. While Loudon and Anderson Counties are substantially underrepresented, this is because of their proximity to Knox County, which outweighs their votes in the Sixth Senatorial District and in the Eighth Floterial District.

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4. These disparities are as serious, if not more so, when my Brother CLARK's formula is applied to the appellants' proposal. For example, if the seven counties chosen by him as illustrative are examined as they would be represented under the appellants' distribution, Moore County, with a voting population of 2,340, is given more electoral strength than Decatur County, with a voting population of 5,563. Carter County (voting population 23,302) has 20% more "total representation" than Anderson County (voting population 33,990), and 33% more than Rutherford County (voting population 25,316).

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5. Murfreesboro, Rutherford County (pop. 16,017); Elizabethton, Carter County (pop. 10,754); Oak Ridge, Anderson County (pop. 7,387). Tennessee Blue Book, 1960, pp.143-149.

1962, Baker v. Carr, 369 U.S. 349

6. For example, Carter and Washington Counties are each approximately 60% as large as Maury and Madison Counties in terms of square miles, and this may explain the disparity between their "total representation" figures.

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7. For example, in addition to being "semi-urban," Blount County is the location of the City of Alcoa, where the Aluminum Company of America has located a large aluminum smelting and rolling plant. This may explain the difference between its "total representation" and that of Gibson County, which has no such large industry and contains no municipality as large as Maryville.

1962, Baker v. Carr, 369 U.S. 349

8. For example, Chester County (voting population 6,391) is one of those that is presently said to be overrepresented. But under the appellants' proposal, Chester would be combined with populous Madison County in a "floterial district" and with four others, including Shelby County, in a senatorial district. Consequently, its total representation according to the Appendix to my Brother CLARK's opinion would be .19. (Ante, p. 262.) This would have the effect of disenfranchising all the county's voters. Similarly, Rhea County's almost 9,000 voters would find their voting strength so diluted as to be practically nonexistent.

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9. For example, it is primarily the eastern portion of the State that is complaining of malapportionment (along with the Cities of Memphis and Nashville). But the eastern section is where industry is principally located and where population density, even outside the large urban areas, is highest. Consequently, if Tennessee is apportioning in favor of its agricultural interests, as constitutionally it was entitled to do, it would necessarily reduce representation from the east.

1962, Baker v. Carr, 369 U.S. 349

10. For example, sound political reasons surely justify limiting the legislative chambers to workable numbers; in Tennessee, the House is set at 99 and the Senate at 33. It might have been deemed desirable, therefore, to set a ceiling on representation from any single county so as not to deprive others of individual representation. The proportional discrepancies among the four counties with large urban centers may be attributable to a conscious policy of limiting representation in this manner.

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11. For example, Moore County is surrounded by four counties each of which has sufficient voting population to exceed two-thirds of the average voting population per county (which is the standard prescribed by the Tennessee Constitution for the assignment of a direct representative), thus qualifying for direct representatives. Consequently Moore County must be assigned a representative of its own, despite its small voting population, because it cannot be joined with any of its neighbors in a multi-county district, and the Tennessee Constitution prohibits combining it with nonadjacent counties. See note 1, supra.

John F. Kennedy, Announcement of Soviet Arms Buildup in Cuba, 22 October 1962

President Kennedy's Report to the American People on the Soviet Arms Buildup in Cuba, 1962

Title: President Kennedy's Report to the American People on the Soviet Arms Buildup in Cuba

Author: John F. Kennedy

Date: October 22, 1962

Source: Public Papers of the Presidents, J. F. Kennedy, 1962, pp.806-809

[Delivered by radio and television from the President's Office at 7 p.m.]

Public Papers of JFK, 1962, p.806

Good evening, my fellow citizens:

Public Papers of JFK, 1962, p.806

This Government, as promised, has maintained the closest surveillance of the Soviet military buildup on the island of Cuba. Within the past week, unmistakable evidence has established the fact that a series of offensive missile sites is now in preparation on that imprisoned island. The purpose of these bases can be none other than to provide a nuclear strike capability against the Western Hemisphere.

Public Papers of JFK, 1962, p.806

Upon receiving the first preliminary hard information of this nature last Tuesday morning at 9 a.m., I directed that our surveillance be stepped up. And having now confirmed and completed our evaluation of the evidence and our decision on a course of action, this Government feels obliged to report this new crisis to you in fullest detail.

Public Papers of JFK, 1962, p.806

The characteristics of these new missile sites indicate two distinct types of installations. Several of them include medium range ballistic missiles, capable of carrying a nuclear warhead for a distance of more than 1,000 nautical miles. Each of these missiles, in short, is capable of striking Washington, D.C., the Panama Canal, Cape Canaveral, Mexico City, or any other city in the southeastern part of the United States, in Central America, or in the Caribbean area.

Public Papers of JFK, 1962, p.806

Additional sites not yet completed appear to be designed for intermediate range bailistic missiles—capable of traveling more than twice as far—and thus capable of striking most of the major cities in the Western Hemisphere, ranging as far north as Hudson Bay, Canada, and as far south as Lima, Peru. In addition, jet bombers, capable of carrying nuclear weapons, are now being uncrated and assembled in Cuba, while the necessary air bases are being prepared.

Public Papers of JFK, 1962, p.806

This urgent transformation of Cuba into an important strategic base—by the presence of these large, long-range, and clearly offensive weapons of sudden mass destruction-constitutes an explicit threat to the peace and security of all the Americas, in flagrant and deliberate defiance of the Rio Pact of 1947, the traditions of this Nation and hemisphere, the joint resolution of the 87th Congress, the Charter of the United Nations, and my own public warnings to the Soviets on September 4 and 13. This action also contradicts the repeated assurances of Soviet spokesmen, both publicly and privately delivered, that the arms buildup in Cuba would retain its original defensive character, and that the Soviet Union had no need or desire to station strategic missiles on the territory of any other nation.

Public Papers of JFK, 1962, p.806

The size of this undertaking makes clear that it has been planned for some months. · Yet only last month, after I had made clear the distinction between any introduction of ground-to-ground missiles and the existence of defensive antiaircraft missiles, the Soviet Government publicly stated on September 11 that, and I quote, "the armaments and military equipment sent to Cuba are designed exclusively for defensive purposes," that, and I quote the Soviet Government, "there is no need for the Soviet Government to shift its weapons…For a retaliatory blow to any other country, for instance Cuba," and that, and I quote their government, "the Soviet Union has so powerful rockets to carry these nuclear warheads that there is no need to search for sites for them beyond the boundaries of the Soviet Union." That statement was false.

Public Papers of JFK, 1962, p.806–p.807

Only last Thursday, as evidence of this rapid offensive buildup was already in my hand, Soviet Foreign Minister Gromyko told me in my office that he was instructed to make it clear once again, as he said his government had already done, that Soviet assistance [p.807] to Cuba, and I quote, "pursued solely the purpose of contributing to the defense capabilities of Cuba," that, and I quote him, "training by Soviet specialists of Cuban nationals in handling defensive armaments was by no means offensive, and if it were otherwise," Mr. Gromyko went on, "the Soviet Government would never become involved in rendering such assistance." That statement also was false.

Public Papers of JFK, 1962, p.807

Neither the United States of America nor the world community of nations can tolerate deliberate deception and offensive threats on the part of any nation, large or small. We no longer live in a world where only the actual firing of weapons represents a sufficient challenge to a nation's security to constitute maximum peril. Nuclear weapons are so destructive and ballistic missiles are so swift, that any substantially increased possibility of their use or any sudden change in their deployment may well be regarded as a definite threat to peace.

Public Papers of JFK, 1962, p.807

For many years, both the Soviet Union and the United States, recognizing this fact, have deployed strategic nuclear weapons with great care, never upsetting the precarious status quo which insured that these weapons would not be used in the absence of some vital challenge. Our own strategic missiles have never been transferred to the territory of any other nation under a cloak of secrecy and deception; and our history—unlike that of the Soviets since the end of World War II—demonstrates that we have no desire to dominate or conquer any other nation or impose our system upon its people. Nevertheless, American citizens have become adjusted to living daily on the bull's-eye of Soviet missiles located inside the U.S.S.R. or in submarines.

Public Papers of JFK, 1962, p.807

In that sense, missiles in Cuba add to an already clear and present danger—although it should be noted the nations of Latin America have never previously been subjected to a potential nuclear threat.

Public Papers of JFK, 1962, p.807

But this secret, swift, and extraordinary buildup of Communist missiles—in an area well known to have a special and historical relationship to the United States and the nations of the Western Hemisphere, in violation of Soviet assurances, and in defiance of American and hemispheric policy—this sudden, clandestine decision to station strategic weapons for the first time outside of Soviet soil—is a deliberately provocative and unjustified change in the status quo which cannot be accepted by this country, if our courage and our commitments are ever to be trusted again by either friend or foe.

Public Papers of JFK, 1962, p.807

The 1930's taught us a clear lesson: aggressive conduct, if allowed to go unchecked and unchallenged, ultimately leads to war. This nation is opposed to war. We are also true to our word. Our unswerving objective, therefore, must be to prevent the use of these missiles against this or any other country, and to secure their withdrawal or elimination from the Western Hemisphere.

Public Papers of JFK, 1962, p.807

Our policy has been one of patience and restraint, as befits a peaceful and powerful nation, which leads a worldwide alliance. We have been determined not to be diverted from our central concerns by mere irritants and fanatics. But now further action is required-and it is under way; and these actions may only be the beginning. We will not prematurely or unnecessarily risk the costs of worldwide nuclear war in which even the fruits of victory would be ashes in our mouth—but neither will we shrink from that risk at any time it must be faced.

Public Papers of JFK, 1962, p.807

Acting, therefore, in the defense of our own security and of the entire Western Hemisphere, and under the authority entrusted to me by the Constitution as endorsed by the resolution of the Congress, I have directed that the following initial steps be taken immediately:

Public Papers of JFK, 1962, p.807–p.808

First: To halt this offensive buildup, a strict quarantine on all offensive military equipment under shipment to Cuba is being initiated. All ships of any kind bound for Cuba from whatever nation or port will, if found to contain cargoes of offensive weapons, be turned back. This quarantine will [p.808] be extended, if needed, to other types of cargo and carriers. We are not at this time, however, denying the necessities of life as the Soviets attempted to do in their Berlin blockade of 1948.

Public Papers of JFK, 1962, p.808

Second: I have directed the continued and increased close surveillance of Cuba and its military buildup. The foreign ministers of the OAS, in their communique of October 6, rejected secrecy on such matters in this hemisphere. Should these offensive military preparations continue, thus increasing the threat to the hemisphere, further action will be justified. I have directed the Armed Forces to prepare for any eventualities; and I trust that in the interest of both the Cuban people and the Soviet technicians at the sites, the hazards to all concerned of continuing this threat will be recognized.

Public Papers of JFK, 1962, p.808

Third: It shall be the policy of this Nation to regard any nuclear missile launched from Cuba against any nation in the Western Hemisphere as an attack by the Soviet Union on the United States, requiring a full retaliatory response upon the Soviet Union.

Public Papers of JFK, 1962, p.808

Fourth: As a necessary military precaution, I have reinforced our base at Guantanamo, evacuated today the dependents of our personnel there, and ordered additional military units to be on a standby alert basis.

Public Papers of JFK, 1962, p.808

Fifth: We are calling tonight for an immediate meeting of the Organ of Consultation under the Organization of American States, to consider this threat to hemispheric security and to invoke articles 6 and 8 of the Rio Treaty in support of all necessary action. The United Nations Charter allows for regional security arrangements—and the nations of this hemisphere decided long ago against the military presence of outside powers. Our other allies around the world have also been alerted.

Public Papers of JFK, 1962, p.808

Sixth: Under the Charter of the United Nations, we are asking tonight that an emergency meeting of the Security Council be convoked without delay to take action against this latest Soviet threat to world peace. Our resolution will call for the prompt dismantling and withdrawal of all offensive weapons in Cuba, under the supervision of U.N. observers, before the quarantine can be lifted.

Public Papers of JFK, 1962, p.808

Seventh and finally: I call upon Chairman Khrushchev to halt and eliminate this clandestine, reckless, and provocative threat to world peace and to stable relations between our two nations. I call upon him further to abandon this course of world domination, and to join in an historic effort to end the perilous arms race and to transform the history of man. He has an opportunity now to move the world back from the abyss of destruction—by returning to his government's own words that it had no need to station missiles outside its own territory, and withdrawing these weapons from Cuba by refraining from any action which will widen or deepen the present crisis—and then by participating in a search for peaceful and permanent solutions.

Public Papers of JFK, 1962, p.808

This Nation is prepared to present its case against the Soviet threat to peace, and our own proposals for a peaceful world, at any time and in any forum—in the OAS, in the United Nations, or in any other meeting that could be useful—without limiting our freedom of action. We have in the past made strenuous efforts to limit the spread of nuclear weapons. We have proposed the elimination of all arms and military bases in a fair and effective disarmament treaty. We are prepared to discuss new proposals for the removal of tensions on both sides—including the possibilities of a genuinely independent Cuba, free to determine its own destiny. We have no wish to war with the Soviet Union-for we are a peaceful people who desire to live in peace with all other peoples.

Public Papers of JFK, 1962, p.808–p.809

But it is difficult to settle or even discuss these problems in an atmosphere of intimidation. That is why this latest Soviet threat—or any other threat which is made either independently or in response to our actions this week—must and will be met with determination. Any hostile move anywhere in the world against the safety and freedom of peoples to whom we are committed-including in particular the brave [p.809] people of West Berlin—will be met by whatever action is needed.

Public Papers of JFK, 1962, p.809

Finally, I want to say a few words to the captive people of Cuba, to whom this speech is being directly carried by special radio facilities. I speak to you as a friend, as one who knows of your deep attachment to your fatherland, as one who shares your aspirations for liberty and justice for all. And I have watched and the American people have watched with deep sorrow how your nationalist revolution was betrayed—and how your fatherland fell under foreign domination. Now your leaders are no longer Cuban leaders inspired by Cuban ideals. They are puppets and agents of an international conspiracy which has turned Cuba against your friends and neighbors in the Americas—and turned it into the first Latin American country to become a target for nuclear war—the first Latin American country to have these weapons on its soil.

Public Papers of JFK, 1962, p.809

These new weapons are not in your interest. They contribute nothing to your peace and well-being. They can only undermine it. But this country has no wish to cause you to suffer or to impose any system upon you. We know that your lives and land are being used as pawns by those who deny your freedom.

Public Papers of JFK, 1962, p.809

Many times in the past, the Cuban people have risen to throw out tyrants who destroyed their liberty. And I have no doubt that most Cubans today look forward to the time when they will be truly free—free from foreign domination, free to choose their own leaders, free to select their own system, free to own their own land, free to speak and write and worship without fear or degradation. And then shall Cuba be welcomed back to the society of free nations and to the associations of this hemisphere.

Public Papers of JFK, 1962, p.809

My fellow citizens: let no one doubt that this is a difficult and dangerous effort on which we have set out. No one can foresee precisely what course it will take or what costs or casualties will be incurred. Many months of sacrifice and self-discipline lie ahead—months in which both our patience and our will be tested—months in which many threats and denunciations will keep us aware of our dangers. But the greatest danger of all would be to do nothing.

Public Papers of JFK, 1962, p.809

The path we have chosen for the present is full of hazards, as all paths are—but it is the one most consistent with our character and courage as a nation and our commitments around the world. The cost of freedom is always high—but Americans have always paid it. And one path we shall never choose, and that is the path of surrender or submission.

Public Papers of JFK, 1962, p.809

Our goal is not the victory of might, but the vindication of right—not peace at the expense of freedom, but both peace and freedom, here in this hemisphere, and, we hope, around the world. God willing, that goal will be achieved.

Public Papers of JFK, 1962, p.809

Thank you and good night.

Presidental Proclamation 3504: Interdiction of the Delivery of Offensive Weapons to Cuba, 1962

Title: Presidental Proclamation 3504: Interdiction of the Delivery of Offensive Weapons to Cuba

Author: John F. Kennedy

Date: October 23, 1962

Source: Public Papers of the Presidents, J. F. Kennedy, 1962, pp.809-811

Public Papers of JFK, 1962, p.809

By the President of the United States of America a Proclamation:

Public Papers of JFK, 1962, p.809

WHEREAS the peace of the world and the security of the United States and of all American States are endangered by reason of the establishment by the Sino-Soviet powers of an offensive military capability in Cuba, including bases for ballistic missiles with a potential range covering most of North and South America;

Public Papers of JFK, 1962, p.809–p.810

WHEREAS by a Joint Resolution passed by the Congress of the United States and approved on October 3, 1962, it was declared that the United States is determined to prevent by whatever means may be necessary, including the use of arms, the Marxist-Leninist regime in Cuba from extending, by force or the threat of force, its aggressive or [p.810] subversive activities to any part of this hemisphere, and to prevent in Cuba the creation or use of an externally supported military capability endangering the security of the United States; and

Public Papers of JFK, 1962, p.810

WHEREAS the Organ of Consultation of the American Republics meeting in Washington on October 23, 1962, recommended that the Member States, in accordance with Articles 6 and 8 of the Inter-American Treaty of Reciprocal Assistance, take all measures, individually and collectively, including the use of armed force, which they may deem necessary to ensure that the Government of Cuba cannot continue to receive from the Sino-Soviet powers military material and related supplies which may threaten the peace and security of the Continent and to prevent the missiles in Cuba with offensive capability from ever becoming an active threat to the peace and security of the Continent:

Public Papers of JFK, 1962, p.810

Now, THEREFORE, I, JOHN F. KENNEDY, President of the United States of America, acting under and by virtue of the authority conferred upon me by the Constitution and statutes of the United States, in accordance with the aforementioned resolutions of the United States Congress and of the Organ of Consultation of the American Republics, and to defend the security of the United States, do hereby proclaim that the forces under my command are ordered, beginning at 2:on p.m. Greenwich time October 24, 1962, to interdict, subject to the instructions herein contained, the delivery of offensive weapons and associated materiel to Cuba.

Public Papers of JFK, 1962, p.810

For the purposes of this Proclamation, the following are declared to be prohibited materiel:

Public Papers of JFK, 1962, p.810

Surface-to-surface missiles; bomber aircraft; bombs, air-to-surface rockets and guided missiles; warheads for any of the above weapons; mechanical or electronic equipment to support or operate the above items; and any other classes of materiel hereafter designated by the Secretary of Defense for the purpose of effectuating this Proclamation.

Public Papers of JFK, 1962, p.810

To enforce this order, the Secretary of Defense shall take appropriate measures to prevent the delivery of prohibited materiel to Cuba, employing the land, sea and air forces of the United States in cooperation with any forces that may be made available by other American States.

Public Papers of JFK, 1962, p.810

The Secretary of Defense may make such regulations and issue such directives as he deems necessary to ensure the effectiveness of this order, including the designation, within a reasonable distance of Cuba, of prohibited or restricted zones and of prescribed routes.

Public Papers of JFK, 1962, p.810

Any vessel or craft which may be proceeding toward Cuba may be intercepted and may be directed to identify itself, its cargo, equipment and stores and its ports of call, to stop, to lie to, to submit to visit and search, or to proceed as directed. Any vessel or craft which fails or refuses to respond to or comply with directions shall be subject to being taken into custody. Any vessel or craft which it is believed is en route to Cuba and may be carrying prohibited materiel or may itself constitute such materiel shall, wherever possible, be directed to proceed to another destination of its own choice and shall be taken into custody if it fails or refuses to obey such directions. All vessels or craft taken into custody shall be sent into a port of the United States for appropriate disposition.

Public Papers of JFK, 1962, p.810

In carrying out this order, force shah not be used except in case of failure or refusal to comply with directions, or with regulations or directives of the Secretary of Defense issued hereunder, after reasonable efforts have been made to communicate them to the vessel or craft, or in case of self-defense. In any case, force shall be used only to the extent necessary.

Public Papers of JFK, 1962, p.810

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

Public Papers of JFK, 1962, p.810–p.811

DONE in the City of Washington this twenty-third day of October in the year of our Lord, nineteen hundred and sixty-two, and of the Independence of the United States of America [p.811] the one hundred and eighty seventh. [SEAL]

JOHN F. KENNEDY

By the President:

DEAN RUSK

Secretary of State

Public Papers of JFK, 1962, p.811

NOTE: On the same day the President issued Executive Order 11058 "Assigning authority with respect to ordering persons and units in the Ready Reserve to active duty and with respect to extension of enlistment's and other periods of service in the Armed Forces" (a7 F.R. 10403).

King's Letter from a Birmingham Jail, 1963

Title: King's Letter from a Birmingham Jail

Author: Martin Luther King, Jr.

Date: April 16, 1963

Source: Martin Luther King, Jr., Center for Nonviolent Social Change, Atlanta, Georgia

April 16, 1963

Birmingham, Al.

MY DEAR FELLOW CLERGYMEN:

King, Letter from a Birmingham Jail

While confined here in the Birmingham City Jail, I came across your recent statement calling our present activities "unwise and untimely." Seldom, if ever, do I pause to answer criticism of my work and ideas. If I sought to answer all the criticisms that cross my desk, my secretaries would be engaged in little else in the course of the day, and I would have no time for constructive work. But since I feel that you are men of genuine goodwill and your criticisms are sincerely set forth, I would like to answer your statement in what I hope will be patient and reasonable terms.

King, Letter from a Birmingham Jail

I think I should give the reason for my being in Birmingham, since you have been influenced by the argument of "outsiders coming in." I have the honor of serving as president of the Southern Christian Leadership Conference, an organization operating in every Southern state, with headquarters in Atlanta, Georgia. We have some eighty-five affiliate organizations all across the South—one being the Alabama Christian Movement for Human Rights. Whenever necessary and possible we share staff, educational and financial resources with our affiliates. Several months ago our local affiliate here in Birmingham invited us to be on call to engage in a nonviolent direct action program if such were deemed necessary. We readily consented and when the hour came we lived up to our promises. So I am here, along with several members of my staff, because we were invited here. I am here because I have basic organizational ties here.

King, Letter from a Birmingham Jail

Beyond this, I am in Birmingham because injustice is here. Just as the eighth century prophets left their little villages and carried their "thus saith the Lord" far beyond the boundaries of their home towns; and just as the Apostle Paul left his little village of Tarsus and carried the gospel of Jesus Christ to practically every hamlet and city of the Greco-Roman world, I too am compelled to carry the gospel of freedom beyond my particular home town. Like Paul, I must constantly respond to the Macedonian call for aid.

King, Letter from a Birmingham Jail

Moreover, I am cognizant of the interrelatedness of all communities and states. I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly. Never again can we afford to live with the narrow, provincial "outside agitator" idea. Anyone who lives inside the United States can never be considered an outsider anywhere in this country.

King, Letter from a Birmingham Jail

You deplore the demonstrations that are presently taking place in Birmingham. But I am sorry that your statement did not express a similar concern for the conditions that brought the demonstrations into being. I am sure that each of you would want to go beyond the superficial social analyst who looks merely at effects, and does not grapple with underlying causes. I would not hesitate to say that it is unfortunate that so-called demonstrations are taking place in Birmingham at this time, but I would say in more emphatic terms that it is even more unfortunate that the white power structure of this city left the Negro community with no other alternative.

King, Letter from a Birmingham Jail

In any nonviolent campaign there are four basic steps: 1) Collection of the facts to determine whether injustices are alive. 2) Negotiation. 3) Self-purification and 4) Direct action. We have gone through all of these steps in Birmingham. There can be no gainsaying of the fact that racial injustice engulfs this community.

King, Letter from a Birmingham Jail

Birmingham is probably the most thoroughly segregated city in the United States. Its ugly record of police brutality is known in every section of this country. Its unjust treatment of Negroes in the courts is a notorious reality. There have been more unsolved bombings of Negro homes and churches in Birmingham than any city in this nation. These are the hard, brutal and unbelievable facts. On the basis of these conditions, Negro leaders sought to negotiate with the city fathers. But the political leaders consistently refused to engage in good faith negotiation.

King, Letter from a Birmingham Jail

Then came the opportunity last September to talk with some of the leaders of the economic community. In these negotiating sessions certain promises were made by the merchants—such as the promise to remove the humiliating racial signs from the stores. On the basis of these promises Rev. Shuttlesworth and the leaders of the Alabama Christian Movement for Human Rights agreed to call a moratorium on any type of demonstrations. As the weeks and months unfolded we realized that we were the victims of a broken promise. The signs remained. Like so many experiences of the past we were confronted with blasted hopes, and the dark shadow of a deep disappointment settled upon us. So we had no alternative except that of preparing for direct action, whereby we would present our very bodies as a means of laying our case before the conscience of the local and national community. We were not unmindful of the difficulties involved. So we decided to go through a process of self-purification. We started having workshops on nonviolence and repeatedly asked ourselves the questions: "Are you able to accept blows without retaliating?" "Are you able to endure the ordeals of jail?" We decided to set our direct-action program around the Easter season, realizing that with the exception of Christmas, this was the largest shopping period of the year. Knowing that a strong economic withdrawal program would be the by-product of direct action, we felt that this was the best time to bring pressure on the merchants for the needed changes. Then it occurred to us that the March election was ahead and so we speedily decided to postpone action until after election day. When we discovered that Mr. Connor was in the run-off, we decided again to postpone action so that the demonstrations could not be used to cloud the issues. At this time we agreed to begin our nonviolent witness the day after the run-off.

King, Letter from a Birmingham Jail

This reveals that we did not move irresponsibly into direct action. We too wanted to see Mr. Connor defeated; so we went through postponement after postponement to aid in this community need. After this we felt that direct action could be delayed no longer.

King, Letter from a Birmingham Jail

You may well ask: "Why direct action? Why sit-ins, marches, etc.? Isn't negotiation a better path?" You are exactly right in your call for negotiation. Indeed, this is the purpose of direct action. Nonviolent direct action seeks to create such a crisis and establish such creative tension that a community that has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored. I just referred to the creation of tension as a part of the work of the nonviolent resister. This may sound rather shocking. But I must confess that I am not afraid of the word tension. I have earnestly worked and preached against violent tension, but there is a type of constructive nonviolent tension that is necessary for growth. Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half-truths to the unfettered realm of creative analysis and objective appraisal, we must see the need of having nonviolent gadflies to create the kind of tension in society that will help men to rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood. So the purpose of the direct action is to create a situation so crisis-packed that it will inevitably open the door to negotiation. We, therefore, concur with you in your call for negotiation. Too long has our beloved Southland been bogged down in the tragic attempt to live in monologue rather than dialogue.

King, Letter from a Birmingham Jail

One of the basic points in your statement is that our acts are untimely. Some have asked, "Why didn't you give the new administration time to act?" The only answer that I can give to this inquiry is that the new Birmingham administration must be prodded about as much as the outgoing one before it acts. We will be sadly mistaken if we feel that the election of Mr. Boutwell will bring the millennium to Birmingham. While Mr. Boutwell is much more articulate and gentle than Mr. Connor, they are both segregationists, dedicated to the task of maintaining the status quo. The hope I see in Mr. Boutwell is that he will be reasonable enough to see the futility of massive resistance to desegregation. But he will not see this without pressure from the devotees of civil rights. My friends, I must say to you that we have not made a single gain in civil rights without determined legal and nonviolent pressure. History is the long and tragic story of the fact that privileged groups seldom give up their privileges voluntarily. Individuals may see the moral light and voluntarily give up their unjust posture; but as Reinhold Niebuhr has reminded us, groups are more immoral than individuals.

King, Letter from a Birmingham Jail

We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. Frankly, I have never yet engaged in a direct action movement that was "well timed," according to the timetable of those who have not suffered unduly from the disease of segregation. For years now I have heard the words [sic] "Wait!" It rings in the ear of every Negro with a piercing familiarity. This "Wait" has almost always meant "Never." It has been a tranquilizing thalidomide releasing the emotional stress for a moment only to give birth to an ill-formed infant of frustration. We must come to see with the distinguished jurist of yesterday that "justice too long delayed is justice denied."

King, Letter from a Birmingham Jail

We have waited for more than three hundred and forty years for our constitutional and God-given rights. The nations of Asia and Africa are moving with jet-like speed toward the goal of political independence, and we still creep at horse and buggy pace toward the gaining of a cup of coffee at a lunch counter. I guess it is easy for those who have never felt the stinging darts of segregation to say, "Wait." But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate filled policemen curse, kick, brutalize and even kill your black brothers and sisters with impunity; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society; when you suddenly find your tongue twisted and your speech stammering as you seek to explain to your six-year-old daughter why she can't go to the public amusement park that has just been advertised on television, and see tears welling up in her eyes when she is told that Funtown is closed to colored children, and see the depressing clouds of inferiority begin to form in her little mental sky, and see her begin to distort her little personality by unconsciously developing a bitterness toward white people; when you have to concoct an answer for a five-year-old son asking in agonizing pathos: "Daddy, why do white people treat colored people so mean?"; when you take a cross-country drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading "white" and "colored"; when your first name becomes "nigger," your middle name becomes "boy" (however old you are) and your last name becomes "John," and your wife and mother and are never given the respected title "Mrs."; when you are harried by day and haunted by night by the fact that you are a Negro, living constantly at tip-toe stance never quite knowing what to expect next, and plagued with inner fears and outer resentments; when you are forever fighting a degenerating sense of "nobodiness"; then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into an abyss of despair. I hope, sirs, you can understand our legitimate and unavoidable impatience.

King, Letter from a Birmingham Jail

You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court's decision of 1954 outlawing segregation in the public schools, it is rather strange and paradoxical to find us consciously breaking laws. One may well ask: "How can you advocate breaking some laws and obeying others?" The answer is found in the fact that there are two types of laws: There are just and there are unjust laws. I would agree with Saint Augustine that "An unjust law is no law at all."

King, Letter from a Birmingham Jail

Now, what is the difference between the two? How does one determine when a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of Saint Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority, and the segregated a false sense of inferiority. To use the words of Martin Buber, the Jewish philosopher, segregation substitutes and "I-it" relationship for an "I-thou" relationship, and ends up relegating persons to the status of things. So segregation is not only politically, economically and sociologically unsound, but it is morally wrong and sinful. Paul Tillich has said that sin is separation. Isn't segregation an existential expression of man's tragic separation, an expression of his awful estrangement, his terrible sinfulness? So I can urge men to disobey segregation ordinances because they are morally wrong.

King, Letter from a Birmingham Jail

Let us turn to a more concrete example of just and unjust laws. An unjust law is a code that a majority inflicts on a minority that is not binding on itself. This is difference made legal. On the other hand a just law is a code that a majority compels a minority to follow that it is willing to follow itself. This is sameness made legal.

King, Letter from a Birmingham Jail

Let me give another explanation. An unjust law is a code inflicted upon a minority which that minority had no part in enacting or creating because they did not have the unhampered right to vote. Who can say that the legislature of Alabama which set up the segregation laws was democratically elected? Throughout the state of Alabama all types of conniving methods are used to prevent Negroes from becoming registered voters and there are some counties without a single Negro registered to vote despite the fact that the Negro constitutes a majority of the population. Can any law set up in such a state be considered democratically structured?

King, Letter from a Birmingham Jail

These are just a few examples of unjust and just laws. There are some instances when a law is just on its face and unjust in its application. For instance, I was arrested Friday on a charge of parading without a permit. Now there is nothing wrong with an ordinance which requires a permit for a parade, but when the ordinance is used to preserve segregation and to deny citizens the First-Amendment privilege of peaceful assembly and peaceful protest, then it becomes unjust.

King, Letter from a Birmingham Jail

I hope you can see the distinction I am trying to point out. In no sense do I advocate evading or defying the law as the rabid segregationist would do. This would lead to anarchy. One who breaks an unjust law must do it openly, lovingly, (not hatefully as the white mothers did in New Orleans when they were seen on television screaming "nigger, nigger, nigger") and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, is in reality expressing the very highest respect for law.

King, Letter from a Birmingham Jail

Of course, there is nothing new about this kind of civil disobedience. It was seen sublimely in the refusal of Shadrach, Meshach and Abednego to obey the laws of Nebuchadnezzar because a higher moral law was involved. It was practiced superbly by the early Christians who were willing to face hungry lions and the excruciating pain of chopping blocks, before submitting to certain unjust laws of the Roman empire. To a degree academic freedom is a reality today because Socrates practiced civil disobedience.

King, Letter from a Birmingham Jail

We can never forget that everything Hitler did in Germany was "legal" and everything the Hungarian freedom fighters did in Hungary was "illegal." It was "illegal" to aid and comfort a Jew in Hitler's Germany. But I am sure that if I had lived in Germany during that time I would have aided and comforted my Jewish brothers even though it was illegal. If I lived in a Communist country today where certain principles dear to the Christian faith are suppressed, I believe I would openly advocate disobeying these anti-religious laws. I must make two honest confessions to you, my Christian and Jewish brothers. First, I must confess that over the last few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's great stumbling block in the stride toward freedom is not the White Citizen's Counciler or the Ku Klux Klanner, but the white moderate who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says "I agree with you in the goal you seek, but I can't agree with your methods of direct action;" who paternalistically feels he can set the timetable for another man's freedom; who lives by the myth of time and who constantly advises the Negro to wait until a "more convenient season." Shallow understanding from people of goodwill is more frustrating than absolute misunderstanding from people of ill will. Lukewarm acceptance is much more bewildering than outright rejection.

King, Letter from a Birmingham Jail

I had hoped that the white moderate would understand that law and order exist for the purpose of establishing justice, and that when they fail to do this they become dangerously structured dams that block the flow of social progress. I had hoped that the white moderate would understand that the present tension in the South is merely a necessary phase of the transition from an obnoxious negative peace, where the Negro passively accepted his unjust plight, to a substance-filled positive peace, where all men will respect the dignity and worth of human personality. Actually, we who engage in nonviolent direct action are not the creators of tension. We merely bring to the surface the hidden tension that is already alive. We bring it out in the open where it can be seen and dealt with. Like a boil that can never be cured as long as it is covered up but must be opened with all its pus-flowing ugliness to the natural medicines of air and light, injustice must likewise be exposed, with all of the tension its exposing creates, to the light of human conscience and the air of national opinion before it can be cured.

King, Letter from a Birmingham Jail

In your statement you asserted that our actions, even though peaceful, must be condemned because they precipitate violence. But can this assertion be logically made? Isn't this like condemning the robbed man because his possession of money precipitated the evil act of robbery? Isn't this like condemning Socrates because his unswerving commitment to truth and his philosophical delvings precipitated the misguided popular mind to make him drink the hemlock? Isn't this like condemning Jesus because His unique God-Consciousness and never-ceasing devotion to His will precipitated the evil act of crucifixion? We must come to see, as the federal courts have consistently affirmed, that it is immoral to urge an individual to withdraw his efforts to gain his basic constitutional rights because the quest precipitates violence. Society must protect the robbed and punish the robber.

King, Letter from a Birmingham Jail

I had also hoped that the white moderate would reject the myth of time. I received a letter this morning from a white brother in Texas which said: "All Christians know that the colored people will receive equal rights eventually, but it is possible that you are in too great of a religious hurry. It has taken Christianity almost 2000 years to accomplish what it has. The teachings of Christ take time to come to earth." All that is said here grows out of a tragic misconception of time. It is the strangely irrational notion that there is something in the very flow of time that will inevitably cure all ills. Actually time is neutral. It can be used either destructively or constructively. I am coming to feel that the people of ill-will have used time much more effectively than the people of good will. We will have to repent in this generation not merely for the vitriolic words and actions of the bad people, but for the appalling silence of the good people. We must come to see that human progress never rolls in on wheels of inevitability. It comes through the tireless efforts and persistent work of men willing to be co-workers with God, and without this hard work time itself becomes an ally of the forces of social stagnation. We must use time creatively, and forever realize that the time is always ripe to do right. Now is the time to make real the promise of democracy, and transform our pending national elegy into a creative psalm of brotherhood. Now is the time to lift our national policy from the quicksand of racial injustice to the solid rock of human dignity.

King, Letter from a Birmingham Jail

You spoke of our activity in Birmingham as extreme. At first I was rather disappointed that fellow clergymen would see my nonviolent efforts as those of the extremist. I started thinking about the fact that I stand in the middle of two opposing forces in the Negro community. One is a force of complacency made up of Negroes who, as a result of long years of oppression, have been so completely drained of self-respect and a sense of "somebodiness" that they have adjusted to segregation, and, of a few Negroes in the middle class who, because of a degree of academic and economic security, and because at points they profit by segregation, have unconsciously become insensitive to the problems of the masses. The other force is one of bitterness, and hatred comes perilously close to advocating violence. It is expressed in the various black nationalist groups that are springing up over the nation, the largest and best-known being Elijah Muhammad's Muslim movement. This movement is nourished by the contemporary frustration over the continued existence of racial discrimination. It is made up of people who have lost faith in America, who have absolutely repudiated Christianity, and who have concluded that the white man is an incurable "devil." I have tried to stand between these two forces saying that we need not follow the "do-nothingism" of the complacent or the hatred and despair of the black nationalist. There is the more excellent way of love and nonviolent protest. I'm grateful to God that, through the Negro church, the dimension of nonviolence entered our struggle. If this philosophy had not emerged, I am convinced that by now many streets of the South would be flowing with floods of blood. And I am further convinced that if our white brothers dismiss as "rabble rouses" and "outside agitators" those of us who are working through the channels of nonviolent direct action and refuse to support our nonviolent efforts, millions of Negroes, out of frustration and despair, will seek solace and security n black-nationalist ideologies, a development that will lead inevitably to a frightening racial nightmare.

King, Letter from a Birmingham Jail

Oppressed people cannot remain oppressed forever. The urge for freedom will eventually come. This is what happened to the American Negro. Something within has reminded him of his birthright of freedom; something without has reminded him that he can gain it. Consciously and unconsciously, he has been swept in by what the Germans call the Zeitgeist, and with his black brothers of Africa, and his brown and yellow brothers of Asia, South America and the Caribbean, he is moving with a sense of cosmic urgency toward the promised land of racial justice. Recognizing this vital urge that has engulfed the Negro community, one should readily understand public demonstrations. The Negro has many pent up resentments and latent frustrations. He has to get them out. So let him march sometime; let him have his prayer pilgrimages to the city hall; understand why he must have sit-ins and freedom rides. If his repressed emotions do not come out in these nonviolent ways, they will come out in ominous expressions of violence. This is not a threat; it is a fact of history. So I have not said to my people "get rid of your discontent." But I have tried to say that this normal and healthy discontent can be channelized through the creative outlet of nonviolent direct action. Now this approach is being dismissed as extremist. I must admit that I was initially disappointed in being so categorized.

King, Letter from a Birmingham Jail

But as I continued to think about the matter I gradually gained a bit of satisfaction from being considered an extremist. Was not Jesus an extremist for love—"Love your enemies, bless them that curse you, pray for them that despitefully use you." Was not Amos an extremist for justice—"Let justice roll down like waters and righteousness like a mighty stream." Was not Paul an extremist for the gospel of Jesus Christ—"I bear in my body the marks of the Lord Jesus." Was not Martin Luther an extremist—"Here I stand; I can do none other so help me God." Was not John Bunyan an extremist—"I will stay in jail to the end of my days before I make a butchery of my conscience." Was not Abraham Lincoln an extremist—"This nation cannot survive half slave and half free." Was not Thomas Jefferson an extremist—"We hold these truths to be self-evident, that all men are created equal." So the question is not whether we will be extremist but what kind of extremist will we be. Will we be extremists for hate or will we be extremists for love? Will we be extremists for the preservation of injustice—or will we be extremists for the cause of justice? In that dramatic scene on Calvary's hill, three men were crucified. We must not forget that all three were crucified for the same crime—the crime of extremism. Two were extremists for immorality, and thusly fell below their environment. The other, Jesus Christ, was an extremist for love, truth and goodness, and thereby rose above his environment. So, after all, maybe the South, the nation and the world are in dire need of creative extremists.

King, Letter from a Birmingham Jail

I had hoped that the white moderate would see this. Maybe I was too optimistic. Maybe I expected too much. I guess I should have realized that few members of a race that has oppressed another race can understand or appreciate the deep groans and passionate yearnings of those that have been oppressed and still fewer have the vision to see that injustice must be rooted out by strong, persistent and determined action. I am thankful, however, that some of our white brothers have grasped the meaning of this social revolution and committed themselves to it. They are still all too small in quantity, but they are big in quality. Some like Ralph McGill, Lillian Smith, Harry Golden and James Dabbs have written about our struggle in eloquent, prophetic and understanding terms. Others have marched with us down nameless streets of the South. They have languished in filthy roach-infested jails, suffering the abuse and brutality of angry policemen who see them as "dirty nigger lovers." They, unlike so many of their moderate brothers and sisters, have recognized the urgency of the moment and sensed the need for powerful "action" antidotes to combat the disease of segregation.

King, Letter from a Birmingham Jail

Let me rush on to mention my other disappointment. I have been so greatly disappointed with the white church and its leadership. Of course, there are some notable exceptions. I am not unmindful of the fact that each of you has taken some significant stands on this issue. I commend you, Rev. Stallings, for your Christian stand on this past Sunday, in welcoming Negroes to your worship service on a non-segregated basis. I commend the Catholic leaders of this state for integrating Spring Hill College several years ago.

King, Letter from a Birmingham Jail

But despite these notable exceptions I must honestly reiterate that I have been disappointed with the church. I do not say that as one of those negative critics who can always find something wrong with the church. I say it as a minister of the gospel, who loves the church; who was nurtured in its bosom; who has been sustained by its spiritual blessings and who will remain true to it as long as the cord of life shall lengthen.

King, Letter from a Birmingham Jail

I had the strange feeling when I was suddenly catapulted into the leadership of the bus protest in Montgomery several years ago, that we would have the support of the white church. I felt that the white ministers, priests and rabbis of the South would be some of our strongest allies. Instead, some have been outright opponents, refusing to understand the freedom movement and misrepresenting its leaders; all too many others have been more cautious than courageous and have remained silent behind the anesthetizing security of the stained-glass windows.

King, Letter from a Birmingham Jail

In spite of my shattered dreams of the past, I came to Birmingham with the hope that the white religious leadership of this community would see the justice of our cause, and with deep moral concern, serve as the channel through which our just grievances would get to the power structure. I had hoped that each of you would understand. But again I have been disappointed. I have heard numerous religious leaders of the South call upon their worshippers to comply with a desegregation decision because it is the law, but I have longed to hear white ministers say, "follow this decree because integration is morally right and the Negro is your brother." In the midst of blatant injustices inflicted upon the Negro, I have watched white churches stand on the sideline and merely mouth pious irrelevancies and sanctimonious trivialities. In the midst of a mighty struggle to rid our nation of racial and economic injustice, I have heard so many ministers say, "those are social issues with which the gospel has no real concern.", and I have watched so many churches commit themselves to a completely other-worldly religion which made a strange distinction between body and soul, the sacred and the secular.

King, Letter from a Birmingham Jail

So here we are moving toward the exit of the twentieth century with a religious community largely adjusted to the status quo, standing as a tail-light behind other community agencies rather than a headlight leading men to higher levels of justice.

King, Letter from a Birmingham Jail

I have traveled the length and breadth of Alabama, Mississippi and all the other southern states. On sweltering summer days and crisp autumn mornings I have looked at her beautiful churches with their lofty spires pointing heavenward. I have beheld the impressive outlay of her massive religious education buildings. Over and over again I have found myself asking: "What kind of people worship here? Who is their God? Where were their voices when the lips of Governor Barnett dripped with words of interposition and nullification? Where were they when Governor Wallace gave the clarion call for defiance and hatred? Where were their voices of support when tired, bruised and weary Negro men and women decided to rise from the dark dungeons of complacency to the bright hills of creative protest?"

King, Letter from a Birmingham Jail

Yes, these questions are still in my mind. In deep disappointment, I have wept over the laxity of the church. But be assured that my tears have been tears of love. There can be no deep disappointment where there is not deep love. Yes, I love the church; I love her sacred walls. How could I do otherwise? I am in the rather unique position of being the son, the grandson and the great-grandson of preachers. Yes, I see the church as the body of Christ. But, oh! How we have blemished and scarred that body through social neglect and fear of being nonconformists.

King, Letter from a Birmingham Jail

There was a time when the church was very powerful. It was during that period when the early Christians rejoiced when they were deemed worthy to suffer for what they believed. In those days the church was not merely a thermometer that recorded the ideas and principles of popular opinion; it was a thermostat that transformed the mores of society. Whenever the early Christians entered a town the power structure got disturbed and immediately sought to convict them for being "disturbers of the peace" and "outside agitators." But they went on with the conviction that they were "a colony of heaven," and had to obey God rather than man. They were small in number but big in commitment. They were too God-intoxicated to be "astronomically intimidated." They brought an end to such ancient evils as infanticide and gladiatorial contest.

King, Letter from a Birmingham Jail

Things are different now. The contemporary church is often a weak, ineffectual voice with an uncertain sound. It is so often the arch supporter of the status quo. Far from being disturbed by the presence of the church, the power structure of the average community is consoled by the church's silent and often vocal sanction of things as they are.

King, Letter from a Birmingham Jail

But the judgement of God is upon the church as never before. If the church of today does not recapture the sacrificial spirit of the early church, it will lose its authentic ring, forfeit the loyalty of millions, and be dismissed as an irrelevant social club with no meaning for the twentieth century. I am meeting young people every day whose disappointment with the church has risen to outright disgust.

King, Letter from a Birmingham Jail

Maybe again, I have been too optimistic. Is organized religion too inextricably bound to status-quo to save our nation and the world? Maybe I must turn my faith to the inner spiritual church, the church within the church, as the true ecclesia and the hope of the world. But again I am thankful to God that some noble souls from the ranks of organized religion have broken loose from the paralyzing chains of conformity and joined us as active partners in the struggle for freedom. They have left their secure congregations and walked the streets of Albany, Georgia, with us. They have gone through the highways of the South on tortuous rides for freedom. Yes, they have gone to jail with us. Some have been kicked out of their churches, and lost support of their bishops and fellow ministers. But they have gone with the faith that right defeated is stronger than evil triumphant. These men have been the leaven in the lump of the race. Their witness has been the spiritual salt that has preserved the true meaning of the Gospel in these troubled times. They have carved a tunnel of hope though the dark mountain of disappointment.

King, Letter from a Birmingham Jail

I hope the church as a whole will meet the challenge of this decisive hour. But even if the church does not come to the aid of justice, I have no despair about the future. I have no fear about the outcome of our struggle in Birmingham, even if our motives are presently misunderstood. We will reach the goal of freedom in Birmingham and all over the nation, because the goal of America is freedom. Abused and scorned though we may be, our destiny is tied up with the destiny of America. Before the pilgrims landed at Plymouth we were here. Before the pen of Jefferson etched across the pages of history the majestic words of the Declaration of Independence, we were here. For more than two centuries our fore-parents labored in this country without wages; they made cotton king; and they built the homes of their masters in the midst of brutal injustice and shameful humiliation—and yet our of a bottomless vitality they continued to thrive and develop. If the inexpressible cruelties of slavery could not stop us, the opposition we now face will surely fail. We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands.

King, Letter from a Birmingham Jail

I must close now. But before closing I am impelled to mention one other point in your statement that troubled me profoundly. You warmly commended the Birmingham police force for keeping "order" and "preventing violence." I don't believe you would have so warmly commended the police force if you had seen its angry violent dogs literally biting six unarmed, nonviolent Negroes. I don't believe you would so quickly commend the policemen if you would observe their ugly and inhuman treatment of Negroes here in the city jail; if you would watch them push and curse old Negro women and young Negro girls; if you would see them slap and kick old Negro men and young boys; if you will observe them, as they did on two occasions, refuse to give us food because we wanted to sing our grace together. I'm sorry that I can't join you in your praise for the police department.

King, Letter from a Birmingham Jail

It is true that they have been rather disciplined in their public handling of the demonstrators. In this sense they have been rather publicly "nonviolent". But for what purpose? To preserve the evil system of segregation. Over the last few years I have consistently preached that nonviolence demands that the means we use must be as pure as the ends we seek. So I have tried to make it clear that it is wrong to use immoral means to attain moral ends. But now I must affirm that it is just as wrong, or even more so, to use moral means to preserve immoral ends. Maybe Mr. Connor and his policemen have been rather publicly nonviolent, as Chief Pritchett was in Albany, Georgia, but they have used the moral means of nonviolence to maintain the immoral end of flagrant racial injustice. T. S. Eliot has said that there is no greater treason than to do the right deed for the wrong reason.

King, Letter from a Birmingham Jail

I wish you had commended the Negro sit-inners and demonstrators of Birmingham for their sublime courage, their willingness to suffer and their amazing discipline in the midst of the most inhuman provocation. One day the South will recognize its real heroes. They will be the James Merediths, courageously and with a majestic sense of purpose, facing jeering and hostile mobs and with the agonizing loneliness that characterizes the life of the pioneer. They will be old oppressed, battered Negro women, symbolized in a seventy-two year old woman of Montgomery, Alabama, who rose up with a sense of dignity and with her people decided not to ride the segregated buses, and responded to one who inquired about her tiredness with ungrammatical profundity; "my feet is tired, but my soul is rested." They will be the young high school and college students, young ministers of the gospel and a host of their elders courageously and nonviolently sitting-in at lunch counters and willingly going to jail for conscience's sake. One day the South will know that when these disinherited children of God sat down at lunch counters they were in reality standing up for the best in the American dream and the most sacred values in our Judaeo-Christian heritage, and thusly, carrying our whole nation back to those great wells of democracy which were dug deep by the founding fathers in the formulation of the Constitution and the Declaration of Independence.

King, Letter from a Birmingham Jail

Never before have I written a letter this long, (or should I say a book?). I'm afraid it is much too long to take your precious time. I can assure you that it would have been much shorter if I had been writing from a comfortable desk, but what else is there to do when you are alone for days in the dull monotony of a narrow jail cell other than write long letters, think strange thoughts, and pray long prayers?

King, Letter from a Birmingham Jail

If I have said anything in this letter that is an overstatement of the truth and is indicative of an unreasonable impatience, I beg you to forgive me. If I have said anything in this letter that is an understatement of the truth and is indicative of my having a patience that makes me patient with anything less than brotherhood, I beg God to forgive me.

King, Letter from a Birmingham Jail

I hope this letter finds you strong in the faith. I also hope that circumstances will soon make it possible for me to meet each of you, not as an integrationist or a civil rights leader, but as a fellow clergyman and a Christian brother. Let us all hope that the dark clouds of racial prejudice will soon pass away and the deep fog of misunderstanding will be lifted from our fear-drenched communities and in some not too distant tomorrow the radiant stars of love and brotherhood will shine over our great nation with all their scintillating beauty.

King, Letter from a Birmingham Jail

Yours for the cause of Peace and Brotherhood,

Martin Luther King, Jr.

President Kennedy's Commencement Address at American University in Washington, 1963

Title: President Kennedy's Commencement Address at American University in Washington

Author: John F. Kennedy

Date: June 10, 1963

Source: Public Papers of the Presidents, J. F. Kennedy, 1963, pp.459-464

Public Papers of JFK, 1963, p.459

President Anderson, members of the faculty, board of trustees, distinguished guests, my old colleague, Senator Bob Byrd, who has earned his degree through many years of attending night law school while I am earning mine in the next 30 minutes, ladies and gentlemen:

Public Papers of JFK, 1963, p.459–p.460

It is with great pride that I participate in this ceremony of the American University, sponsored by the Methodist Church, founded by Bishop John Fletcher Hurst, and first opened by President Woodrow Wilson in 1914. This is a young and growing university, but it has already fulfilled Bishop Hurst's enlightened hope for the study of history and public affairs in a city devoted to the making of history and to the conduct of the public's business. By sponsoring this [p.460] institution of higher learning for all who wish to learn, whatever their color or their creed, the Methodists of this area and the Nation deserve the Nation's thanks, and I commend all those who are today graduating.

Public Papers of JFK, 1963, p.460

Professor Woodrow Wilson once said that every man sent out from a university should be a man of his nation as well as a man of his time, and I am confident that the men and women who carry the honor of graduating from this institution will continue to give from their lives, from their talents, a high measure of public service and public support.

Public Papers of JFK, 1963, p.460

"There are few earthly things more beautiful than a university," wrote John Masefield, in his tribute to English universities—and his words are equally true today. He did not refer to spires and towers, to campus greens and ivied walls. He admired the splendid beauty of the university, he said, because it was "a place where those who hate ignorance may strive to know, where those who perceive truth may strive to make others see."

Public Papers of JFK, 1963, p.460

I have, therefore, chosen this time and this place to discuss a topic on which ignorance too often abounds and the truth is too rarely perceived—yet it is the most important topic on earth: world peace.

Public Papers of JFK, 1963, p.460

What kind of peace do I mean? What kind of peace do we seek? Not a Pax Americana enforced on the world by American weapons of war. Not the peace of the grave or the security of the slave. I am talking about genuine peace, the kind of peace that makes life on earth worth living, the kind that enables men and nations to grow and to hope and to build a better life for their children—not merely peace for Americans but peace for all men and women—not merely peace in our time but peace for all time.

Public Papers of JFK, 1963, p.460

I speak of peace because of the new face of war. Total war makes no sense in an age when great powers can maintain large and relatively invulnerable nuclear forces and refuse to surrender without resort to those forces. It makes no sense in an age when a single nuclear weapon contains almost ten times the explosive force delivered by all of the allied air forces in the Second World War. It makes no sense in an age when the deadly poisons produced by a nuclear exchange would be carried by wind and water and soil and seed to the far corners of the globe and to generations yet unborn.

Public Papers of JFK, 1963, p.460

Today the expenditure of billions of dollars every year on weapons acquired for the purpose of making sure we never need to use them is essential to keeping the peace. But surely the acquisition of such idle stockpiles—which can only destroy and never create—is not the only, much less the most efficient, means of assuring peace.

Public Papers of JFK, 1963, p.460

I speak of peace, therefore, as the necessary rational end of rational men. I realize that the pursuit of peace is not as dramatic as the pursuit of warm—and frequently the words of the pursuer fall on deaf ears. But we have no more urgent task.

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Some say that it is useless to speak of world peace or world law or world disarmament-and that it will be useless until the leaders of the Soviet Union adopt a more enlightened attitude. I hope they do. I believe we can help them do it. But I also believe that we must reexamine our own attitude—as individuals and as a Nation—for our attitude is as essential as theirs. And every graduate of this school, every thoughtful citizen who despairs of war and wishes to bring peace, should begin by looking inward—by examining his own attitude toward the possibilities of peace, toward the Soviet Union, toward the course of the cold war and toward freedom and peace here at home.

Public Papers of JFK, 1963, p.460

First: Let us examine our attitude toward peace itself. Too many of us think it is impossible. Too many think it unreal. But that is a dangerous, defeatist belief. It leads to the conclusion that war is inevitable—that mankind is doomed—that we are gripped by forces we cannot control.

Public Papers of JFK, 1963, p.460–p.461

We need not accept that view. Our problems are manmade—therefore, they can be [p.461] solved by man. And man can be as big as he wants. No problem of human destiny is beyond human beings. Man's reason and spirit have often solved the seemingly unsolvable—and we believe they can do it again.

Public Papers of JFK, 1963, p.461

I am not referring to the absolute, infinite concept of universal peace and good will of which some fantasies and fanatics dream. I do not deny the value of hopes and dreams but we merely invite discouragement and incredulity by making that our only and immediate goal.

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Let us focus instead on a more practical, more attainable peace—based not on a sudden revolution in human nature but on a gradual evolution in human institutions—on a series of concrete actions and effective agreements which are in the interest of all concerned. There is no single, simple key to this peace—no grand or magic formula to be adopted by one or two powers. Genuine peace must be the product of many nations, the sum of many acts. It must be dynamic, not static, changing to meet the challenge of each new generation. For peace is a process—a way of solving problems.

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With such a peace, there will still be quarrels and conflicting interests, as there are within families and nations. World peace, like community peace, does not require that each man love his neighbor—it requires only that they live together in mutual tolerance, submitting their disputes to a just and peaceful settlement. And history teaches us that enmities between nations, as between individuals, do not last forever. However fixed our likes and dislikes may seem, the tide of time and events will often bring surprising changes in the relations between nations and neighbors.

Public Papers of JFK, 1963, p.461

So let us persevere. Peace need not be impracticable, and war need not be inevitable. By defining our goal more clearly, by making it seem more manageable and less remote, we can help all peoples to see it, to draw hope from it, and to move irresistibly toward it.

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Second: Let us reexamine our attitude toward the Soviet Union. It is discouraging to think that their leaders may actually believe what their propagandists write. It is discouraging to read a recent authoritative Soviet text on Military Strategy and find, on page after page, wholly baseless and incredible claims—such as the allegation that "American imperialist circles are preparing to unleash different types of wars…that there is a very real threat of a preventive war being unleashed by American imperialists against the Soviet Union…[and that] the political aims of the American imperialists are to enslave economically and politically the European and other capitalist countries…[and] to achieve world domination…by means of aggressive wars."

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Truly, as it was written long ago: "The wicked flee when no man pursueth." Yet it is sad to read these Soviet statements—to realize the extent of the gulf between us. But it is also a warning—a warning to the American people not to fall into the same trap as the Soviets, not to see only a distorted and desperate view of the other side, not to see conflict as inevitable, accommodation as impossible, and communication as nothing more than an exchange of threats.

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No government or social system is so evil that its people must be considered as lacking in virtue. As Americans, we find communism profoundly repugnant as a negation of personal freedom and dignity. But we can still hail the Russian people for their many achievements—in science and space, in economic and industrial growth, in culture and in acts of courage.

Public Papers of JFK, 1963, p.461–p.462

Among the many traits the peoples of our two countries have in common, none is stronger than our mutual abhorrence of war. Almost unique, among the major world powers, we have never been at war with each other. And no nation in the history of battle ever suffered more than the Soviet Union suffered in the course of the Second World War. At least 20 million lost their lives. Countless millions of homes and farms were burned or sacked. A third of the nation's territory, including nearly two [p.462] thirds of its industrial base, was turned into a wasteland—a loss equivalent to the devastation of this country east of Chicago.

Public Papers of JFK, 1963, p.462

Today, should total war ever break out again—no matter how—our two countries would become the primary targets. It is an ironic but accurate fact that the two strongest powers are the two in the most danger of devastation. All we have built, all we have worked for, would be destroyed in the first 24 hours. And even in the cold war, which brings burdens and dangers to so many countries, including this Nation's closest allies—our two countries bear the heaviest burdens. For we are both devoting massive sums of money to weapons that could be better devoted to combating ignorance, poverty, and disease. We are both caught up in a vicious and dangerous cycle in which suspicion on one side breeds suspicion on the other, and new weapons beget counter-weapons.

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In short, both the United States and its allies, and the Soviet Union and its allies, have a mutually deep interest in a just and genuine peace and in halting the arms race. Agreements to this end are in the interests of the Soviet Union as well as ours—and even the most hostile nations can be relied upon to accept and keep those treaty obligations, and only those treaty obligations, which are in their own interest.

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So, let us not be blind to our differences-but let us also direct attention to our common interests and to the means by which those differences can be resolved. And if we cannot end now our differences, at least we can help make the world safe for diversity. For, in the final analysis, our most basic common link is that we all inhabit this small planet. We all breathe the same air. We all cherish our children's future. And we are all mortal.

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Third: Let us reexamine our attitude toward the cold war, remembering that we are not engaged in a debate, seeking to pile up debating points. We are not here distributing blame or pointing the finger of judgment. We must deal with the world as it is, and not as it might have been had the history of the last 18 years been different.

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We must, therefore, persevere in the search for peace in the hope that constructive changes within the Communist bloc might bring within reach solutions which now seem beyond us. We must conduct our affairs in such a way that it becomes in the Communists' interest to agree on a genuine peace. Above all, while defending our own vital interests, nuclear powers must avert those confrontations which bring an adversary to a choice of either a humiliating retreat or a nuclear war. To adopt that kind of course in the nuclear age would be evidence only of the bankruptcy of our policy-or of a collective death-wish for the world.

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To secure these ends, America's weapons are nonprovocative, carefully controlled, designed to deter, and capable of selective use. Our military forces are committed to peace and disciplined in self-restraint. Our diplomats are instructed to avoid unnecessary irritants and purely rhetorical hostility.

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For we can seek a relaxation of tensions without relaxing our guard. And, for our part, we do not need to use threats to prove that we are resolute. We do not need to jam foreign broadcasts out of fear our faith will be eroded. We are unwilling to impose our system on any unwilling people—but we are willing and able to engage in peaceful competition with any people on earth.

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Meanwhile, we seek to strengthen the United Nations, to help solve its financial problems, to make it a more effective instrument for peace, to develop it into a genuine world security system—a system capable of resolving disputes on the basis of law, of insuring the security of the large and the small, and of creating conditions under which arms can finally be abolished.

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At the same time we seek to keep peace inside the non-Communist world, where many nations, all of them our friends, are divided over issues which weaken Western unity, which invite Communist intervention or which threaten to erupt into war. Our efforts in West New Guinea, in the Congo, [p.463] in the Middle East, and in the Indian subcontinent, have been persistent and patient despite criticism from both sides. We have also tried to set an example for others—by seeking to adjust small but significant differences with our own closest neighbors in Mexico and in Canada.

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Speaking of other nations, I wish to make one point clear. We are bound to many nations by alliances. Those alliances exist because our concern and theirs substantially overlap. Our commitment to defend Western Europe and West Berlin, for example, stands undiminished because of the identity of our vital interests. The United States will make no deal with the Soviet Union at the expense of other nations and other peoples, not merely because they are our partners, but also because their interests and ours converge.

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Our interests converge, however, not only in defending the frontiers of freedom, but in pursuing the paths of peace. It is our hope—and the purpose of allied policies—to convince the Soviet Union that she, too, should let each nation choose its own future, so long as that choice does not interfere with the choices of others. The Communist drive to impose their political and economic system on others is the primary cause of world tension today. For there can be no doubt that, if all nations could refrain from interfering in the self-determination of others, the peace would be much more assured.

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This will require a new effort to achieve world law—a new context for world discussions. It will require increased understanding between the Soviets and ourselves. And increased understanding will require increased contact and communication. One step in this direction is the proposed arrangement for a direct line between Moscow and Washington, to avoid on each side the dangerous delays, misunderstandings, and misreadings of the other's actions which might occur at a time of crisis.

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We have also been talking in Geneva about other first-step measures of arms control, designed to limit the intensity of the arms race and to reduce the risks of accidental war. Our primary long-range interest in Geneva, however, is general and complete disarmament—designed to take place by stages, permitting parallel political developments to build the new institutions of peace which would take the place of arms. The pursuit of disarmament has been an effort of this Government since the 1920's. It has been urgently sought by the past three ado ministrations. And however dim the prospects may be today, we intend to continue this effort—to continue it in order that all countries, including our own, can better grasp what the problems and possibilities of disarmament are.

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The one major area of these negotiations where the end is in sight, yet where a fresh start is badly needed, is in a treaty to outlaw nuclear tests. The conclusion of such a treaty, so near and yet so far, would check the spiraling arms race in one of its most dangerous areas. It would place the nuclear powers in a position to deal more effectively with one of the greatest hazards which man faces in 1963, the further spread of nuclear arms. It would increase our security—it would decrease the prospects of war. Surely this goal is sufficiently important to require our steady pursuit, yielding neither to the temptation to give up the whole effort nor the temptation to give up our insistence on vital and responsible safeguards.

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I am taking this opportunity, therefore, to announce two important decisions in this regard.

First: Chairman Khrushchev, Prime Minister Macmillan, and I have agreed that highlevel discussions will shortly begin in Moscow looking toward early agreement on a comprehensive test ban treaty. Our hopes must be tempered with the caution of history—but with our hopes go the hopes of all mankind.

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Second: To make clear our good faith and solemn convictions on the matter, I now declare that the United States does not propose to conduct nuclear tests in the atmosphere [p.464] so long as other states do not do so. We will not be the first to resume. Such a declaration is no substitute for a formal binding treaty, but I hope it will help us achieve one. Nor would such a treaty be a substitute for disarmament, but I hope it will help us achieve it.

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Finally, my fellow Americans, let us examine our attitude toward peace and freedom here at home. The quality and spirit of our own society must justify and support our efforts abroad. We must show it in the dedication of our own lives—as many of you who are graduating today will have a unique opportunity to do, by serving without pay in the Peace Corps abroad or in the proposed National Service Corps here at home.

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But wherever we are, we must all, in our daily lives, live up to the age-old faith that peace and freedom walk together. In too many of our cities today, the peace is not secure because freedom is incomplete.

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It is the responsibility of the executive branch at all levels of government—local, State, and National—to provide and protect that freedom for all of our citizens by all means within their authority. It is the responsibility of the legislative branch at all levels, wherever that authority is not now adequate, to make it adequate. And it is the responsibility of all citizens in all sections of this country to respect the rights of all others and to respect the law of the land.

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All this is not unrelated to world peace. "When a man's ways please the Lord," the Scriptures tell us, "he maketh even his enemies to be at peace with him." And is not peace, in the last analysis, basically a matter of human rights—the right to live out our lives without fear of devastation-the right to breathe air as nature provided it—the right of future generations to a healthy existence?

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While we proceed to safeguard our national interests, let us also safeguard human interests. And the elimination of war and arms is clearly in the interest of both. No treaty, however much it may be to the advantage of all, however tightly it may be worded, can provide absolute security against the risks of deception and evasion. But it can—if it is sufficiently effective in its enforcement and if it is sufficiently in the interests of its signers—offer far more security and far fewer risks than an unabated, uncontrolled, unpredictable arms race.

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The United States, as the world knows, will never start a war. We do not want a war. We do not now expect a war. This generation of Americans has already had enough—more than enough—of war and hate and oppression. We shall be prepared if others wish it. We shall be alert to try to stop it. But we shall also do our part to build a world of peace where the weak are safe and the strong are just. We are not helpless before that task or hopeless of its success. Confident and unafraid, we labor on—not toward a strategy of annihilation but toward a strategy of peace.

Public Papers of JFK, 1963, p.464

NOTE: The President spoke at the John M. Reeves Athletic Field on the campus of American University after being awarded an honorary degree of doctor of laws. In his opening words he referred to Hurst R. Anderson, president of the university, and Robert C. Byrd, U.S. Senator from West Virginia.

John F. Kennedy, National Address on Civil Rights, 11 June 1963

President Kennedy's Report to the American People on Civil Rights, 1963

Title: President Kennedy's Report to the American People on Civil Rights

Author: John F. Kennedy

Date: June 11, 1963

Source: Public Papers of the Presidents, J. F. Kennedy, 1963, pp.468-471

[Delivered by radio and television from the President's office at 8 p.m.]

Public Papers of JFK, 1963, p.468

Good evening, my fellow citizens:

Public Papers of JFK, 1963, p.468

This afternoon, following a series of threats and defiant statements, the presence of Alabama National Guardsmen was required on the University of Alabama to carry out the final and unequivocal order of the United States District Court of the Northern District of Alabama. That order called for the admission of two clearly qualified young Alabama residents who happened to have been born Negro.

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That they were admitted peacefully on the campus is due in good measure to the conduct of the students of the University of Alabama, who met their responsibilities in a constructive way.

Public Papers of JFK, 1963, p.468

I hope that every American, regardless of where he lives, will stop and examine his conscience about this and other related incidents. This Nation was founded by men of many nations and backgrounds. It was rounded on the principle that all men are created equal, and that the rights of every man are diminished when the rights of one man are threatened.

Public Papers of JFK, 1963, p.468

Today we are committed to a worldwide struggle to promote and protect the rights of all who wish to be free. And when Americans are sent to Viet-Nam or West Berlin, we do not ask for whites only. It ought to be possible, therefore, for American students of any color to attend any public institution they select without having to be backed up by troops.

Public Papers of JFK, 1963, p.468

It ought to be possible for American consumers of any color to receive equal service in places of public accommodation, such as hotels and restaurants and theaters and retail stores, without being forced to resort to demonstrations in the street, and it ought to be possible for American citizens of any color to register and to vote in a free election without interference or fear of reprisal.

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It ought to be possible, in short, for every American to enjoy the privileges of being American without regard to his race or his color. In short, every American ought to have the right to be treated as he would wish to be treated, as one would wish his children to be treated. But this is not the case.

Public Papers of JFK, 1963, p.468–p.469

The Negro baby born in America today, regardless of the section of the Nation in which he is born, has about one-half as much chance of completing a high school as a white baby born in the same place on the same day, one-third as much chance of completing college, one-third as much chance of becoming a professional man, twice as much chance of becoming unemployed, about one-seventh as much chance of earning $10,000 [p.469] a year, a life expectancy which is 7 years shorter, and the prospects of earning only half as much.

Public Papers of JFK, 1963, p.469

This is not a sectional issue. Difficulties over segregation and discrimination exist in every city, in every State of the Union, producing in many cities a rising tide of discontent that threatens the public safety. Nor is this a partisan issue. In a time of domestic crisis men of good will and generosity should be able to unite regardless of party or politics. This is not even a legal or legislative issue alone. It is better to settle these matters in the courts than on the streets, and new laws are needed at every level, but law alone cannot make men see right.

Public Papers of JFK, 1963, p.469

We are confronted primarily with a moral issue. It is as old as the scriptures and is as clear as the American Constitution.

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The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated. If an American, because his skin is dark, cannot eat lunch in a restaurant open to the public, if he cannot send his children to the best public school available, if he cannot vote for the public officials who represent him, if, in short, he cannot enjoy the full and free life which all of us want, then who among us would be content to have the color of his skin changed and stand in his place? Who among us would then be content with the counsels of patience and delay?

Public Papers of JFK, 1963, p.469

One hundred years of delay have passed since President Lincoln freed the slaves, yet their heirs, their grandsons, are not fully free. They are not yet freed from the bonds of injustice. They are not yet freed from social and economic oppression. And this Nation, for all its hopes and all its boasts, will not be fully free until all its citizens are free.

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We preach freedom around the world, and we mean it, and we cherish our freedom here at home, but are we to say to the world, and much more importantly, to each other that this is a land of the free except for the Negroes; that we have no second-class citizens except Negroes; that we have no class or cast system, no ghettoes, no master race except with respect to Negroes?

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Now the time has come for this Nation to fulfill its promise. The events in Birmingham and elsewhere have so increased the cries for equality that no city or State or legislative body can prudently choose to ignore them.

Public Papers of JFK, 1963, p.469

The fires of frustration and discord are burning in every city, North and South, where legal remedies are not at hand. Redress is sought in the streets, in demonstrations, parades, and protests which create tensions and threaten violence and threaten lives.

Public Papers of JFK, 1963, p.469

We face, therefore, a moral crisis as a country and as a people. It cannot be met by repressive police action. It cannot be left to increased demonstrations in the streets. It cannot be quieted by token moves or talk. It is a time to act in the Congress, in your State and local legislative body and, above all, in all of our daily lives.

Public Papers of JFK, 1963, p.469

It is not enough to pin the blame on others, to say this is a problem of one section of the country or another, or deplore the fact that we face. A great change is at hand, and our task, our obligation, is to make that revolution, that change, peaceful and constructive for all.

Public Papers of JFK, 1963, p.469

Those who do nothing are inviting shame as well as violence. Those who act boldly are recognizing right as well as reality.

Public Papers of JFK, 1963, p.469

Next week I shall ask the Congress of the United States to act, to make a commitment it has not fully made in this century to the proposition that race has no place in American life or law. The Federal judiciary has upheld that proposition in a series of forthright cases. The executive branch has adopted that proposition in the conduct of its affairs, including the employment of Federal personnel, the use of Federal facilities, and the sale of federally financed housing.

Public Papers of JFK, 1963, p.469–p.470

But there are other necessary measures which only the Congress can provide, and they must be provided at this session. The old code of equity law under which we live [p.470] commands for every wrong a remedy, but in too many communities, in too many parts of the country, wrongs are inflicted on Negro citizens and there are no remedies at law. Unless the Congress acts, their only remedy is in the street.

Public Papers of JFK, 1963, p.470

I am, therefore, asking the Congress to enact legislation giving all Americans the right to be served in facilities which are open to the public—hotels, restaurants, theaters, retail stores, and similar establishments.

Public Papers of JFK, 1963, p.470

This seems to me to be an elementary right. Its denial is an arbitrary indignity that no American in 1963 should have to endure, but many do.

Public Papers of JFK, 1963, p.470

I have recently met with scores of business leaders urging them to take voluntary action to end this discrimination and I have been encouraged by their response, and in the last 2 weeks over 75 cities have seen progress made in desegregating these kinds of facilities. But many are unwilling to act alone, and for this reason, nationwide legislation is needed if we are to move this problem from the streets to the courts.

Public Papers of JFK, 1963, p.470

I am also asking Congress to authorize the Federal Government to participate more fully in lawsuits designed to end segregation in public education. We have succeeded in persuading many districts to de-segregate voluntarily. Dozens have admitted Negroes without violence. Today a Negro is attending a State-supported institution in every one of our 50 States, but the pace is very slow.

Public Papers of JFK, 1963, p.470

Too many Negro children entering segregated grade schools at the time of the Supreme Court's decision 9 years ago will enter segregated high schools this fall, having suffered a loss which can never be restored. The lack of an adequate education denies the Negro a chance to get a decent job.

Public Papers of JFK, 1963, p.470

The orderly implementation of the Supreme Court decision, therefore, cannot be left solely to those who may not have the economic resources to carry the legal action or who may be subject to harassment.

Public Papers of JFK, 1963, p.470

Other features will be also requested, including greater protection for the right to vote. But legislation, I repeat, cannot solve this problem alone. It must be solved in the homes of every American in every community across our country.

Public Papers of JFK, 1963, p.470

In this respect, I want to pay tribute to those citizens North and South who have been working in their communities to make life better for all. They are acting not out of a sense of legal duty but out of a sense of human decency.

Public Papers of JFK, 1963, p.470

Like our soldiers and sailors in all parts of the world they are meeting freedom's challenge on the firing line, and I salute them for their honor and their courage.

Public Papers of JFK, 1963, p.470

My fellow Americans, this is a problem which faces us all—in every city of the North as well as the South. Today there are Negroes unemployed, two or three times as many compared to whites, inadequate in education, moving into the large cities, unable to find work, young people particularly out of work without hope, denied equal rights, denied the opportunity to eat at a restaurant or lunch counter or go to a movie theater, denied the right to a decent education, denied almost today the right to attend a State university even though qualified. It seems to me that these are matters which concern us all, not merely Presidents or Congressmen or Governors, but every citizen of the United States.

Public Papers of JFK, 1963, p.470

This is one country. It has become one country because all of us and all the people who came here had an equal chance to develop their talents.

Public Papers of JFK, 1963, p.470

We cannot say to 10 percent of the population that you can't have that right; that your children can't have the chance to develop whatever talents they have; that the only way that they are going to get their rights is to go into the streets and demonstrate. I think we owe them and we owe ourselves a better country than that.

Public Papers of JFK, 1963, p.470

Therefore, I am asking for your help in making it easier for us to move ahead and to provide the kind of equality of treatment which we would want ourselves; to give a chance for every child to be educated to the limit of his talents.

Public Papers of JFK, 1963, p.471

As I have said before, not every child has an equal talent or an equal ability or an equal motivation, but they should have the equal right to develop their talent and their ability and their motivation, to make something of themselves.

Public Papers of JFK, 1963, p.471

We have a right to expect that the Negro community will be responsible, will uphold the law, but they have a right to expect that the law will be fair, that the Constitution will be color blind, as Justice Harlan said at the turn of the century.

Public Papers of JFK, 1963, p.471

This is what we are talking about and this is a matter which concerns this country and what it stands for, and in meeting it I ask the support of all our citizens.

Public Papers of JFK, 1963, p.471

Thank you very much.

John F. Kennedy, "Ich bin ein Berliner" Address at the Berlin Wall, 26 June 1963

President Kennedy's Remarks at the Berlin Wall, 1963

Title: President Kennedy's Remarks at the Berlin Wall

Author: John F. Kennedy

Date: June 26, 1963

Source: Public Papers of the Presidents, J. F. Kennedy, 1963, pp.524-525

[The President's remarks were made in the Rudolph Wilde Platz.]

Public Papers of JFK, 1963, p.524

I AM proud to come to this city as the guest of your distinguished Mayor, who has symbolized throughout the world the fighting spirit of West Berlin. And I am proud to visit the Federal Republic with your distinguished Chancellor who for so many years has committed Germany to democracy and freedom and progress, and to come here in the company of my fellow American, General Clay, who has been in this city during its great moments of crisis and will come again if ever needed.

Public Papers of JFK, 1963, p.524

Two thousand years ago the proudest boast was "civis Romanus sum." Today, in the world of freedom, the proudest boast is "Ich bin ein Berliner."

Public Papers of JFK, 1963, p.524

I appreciate my interpreter translating my German!

Public Papers of JFK, 1963, p.524

There are many people in the world who really don't understand, or say they don't, what is the great issue between the free world and the Communist world. Let them come to Berlin. There are some who say that communism is the wave of the future. Let them come to Berlin. And there are some who say in Europe and elsewhere we can work with the Communists. Let them come to Berlin. And there are even a few who say that it is true that communism is an evil system, but it permits us to make economic progress. Lass' sic nach Berlin kommen. Let them come to Berlin.

Public Papers of JFK, 1963, p.524–p.525

Freedom has many difficulties and democracy is not perfect, but we have never had to put a wall up to keep our people in, to prevent them from leaving us. I want to say, on behalf of my countrymen, who live many miles away on the other side of the Atlantic, who are far distant from you, that they take the greatest pride that they have been able to share with you, even from a distance, the story of the last 18 years. I know of no town, no city, that has been besieged for 18 years that still lives with the vitality and the force, and the hope and the determination of the city of West Berlin. While the wall is the most obvious and vivid demonstration of the failures of. the Communist system, for all the world to see, we take no satisfaction in it, for it is, as your [p.525] Mayor has said, an offense not only against history but an offense against humanity, separating families, dividing husbands and wives and brothers and sisters, and dividing a people who wish to be joined together.

Public Papers of JFK, 1963, p.525

What is true of this city is true of Germany-real, lasting peace in Europe can never be assured as long as one German out of four is denied the elementary right of free men, and that is to make a free choice. In 18 years of peace and good faith, this generation of Germans has earned the right to be free, including the right to unite their families and their nation in lasting peace, with good will to all people. You live in a defended island of freedom, but your life is part of the main. So let me ask you, as I close, to lift your eyes beyond the dangers of today, to the hopes of tomorrow, beyond the freedom merely of this city of Berlin, or your country of Germany, to the advance of freedom everywhere, beyond the wall to the day of peace with justice, beyond yourselves and ourselves to all mankind.

Public Papers of JFK, 1963, p.525

Freedom is indivisible, and when one man is enslaved, all are not free. When all are free, then we can look forward to that day when this city will be joined as one and this country and this great Continent of Europe in a peaceful and hopeful globe. When that day finally comes, as it will, the people of West Berlin can take sober satisfaction in the fact that they were in the front lines for almost two decades.

Public Papers of JFK, 1963, p.525

All free men, wherever they may live, are citizens of Berlin, and, therefore, as a free man, I take pride in the words "Ich bin ein Berliner."

Public Papers of JFK, 1963, p.525

NOTE: The President spoke at 12:50 p.m. from a platform erected on the steps of the Schoneberger Rathaus, West Berlin's city hall, where he signed the Golden Book and remained for lunch. In his opening remarks he referred to Mayor Willy Brandt, Chancellor Adenauer, and Gen. Lucius D. Clay.

President Kennedy's Address to the American People on the Nuclear Test Ban Treaty, 1963

Title: President Kennedy's Address to the American People on the Nuclear Test Ban Treaty

Author: John F. Kennedy

Date: July 26, 1963

Source: Public Papers of the Presidents, J. F. Kennedy, 1963, pp.601-606

[Delivered by radio and television from the President's office at 7 p.m.]

Public Papers of JFK, 1963, p.601

Good evening, my fellow citizens:

Public Papers of JFK, 1963, p.601

I speak to you tonight in a spirit of hope. Eighteen years ago the advent of nuclear weapons changed the course of the world as well as the war. Since that time, all mankind has been struggling to escape from the darkening prospect of mass destruction on earth. In an age when both sides have come to possess enough nuclear power to destroy the human race several times over, the world of communism and the world of free choice have been caught up in a vicious circle of conflicting ideology and interest. Each increase of tension has produced an increase of arms; each increase of arms has produced an increase of tension.

Public Papers of JFK, 1963, p.601

In these years, the United States and the Soviet Union have frequently communicated suspicion and warnings to each other, but very rarely hope. Our representatives have met at the summit and at the brink; they have met in Washington and in Moscow; in Geneva and at the United Nations. But too often these meetings have produced only darkness, discord, or disillusion.

Public Papers of JFK, 1963, p.601–p.602

Yesterday a shaft of light cut into the [p.602] darkness. Negotiations were concluded in Moscow on a treaty to ban all nuclear tests in the atmosphere, in outer space, and under water. For the first time, an agreement has been reached on bringing the forces of nuclear destruction under international control—a goal first sought in 1946 when Bernard Baruch presented a comprehensive control plan to the United Nations.

Public Papers of JFK, 1963, p.602

That plan, and many subsequent disarmament plans, large and small, have all been blocked by those opposed to international inspection. A ban on nuclear tests, however, requires on-the-spot inspection only for underground tests. This Nation now possesses a variety of techniques to detect the nuclear tests of other nations which are conducted in the air or under water, for such tests produce unmistakable signs which our modern instruments can pick up.

Public Papers of JFK, 1963, p.602

The treaty initialed yesterday, therefore, is a limited treaty which ,permits continued underground testing and prohibits only those tests that we ourselves can police. It requires no control posts, no onsite inspection, no international body.

Public Papers of JFK, 1963, p.602

We should also understand that it has other limits as well. Any nation which signs the treaty will have an opportunity to withdraw if it finds that extraordinary events related to the subject matter of the treaty have jeopardized its supreme interests; and no nation's right of self-defense will in any way be impaired. Nor does this treaty mean an end to the threat of nuclear war. It will not reduce nuclear stockpiles; it will not halt the production of nuclear weapons; it will not restrict their use in time of war.

Public Papers of JFK, 1963, p.602

Nevertheless, this limited treaty will radically reduce the nuclear testing which would otherwise be conducted on both sides; it will prohibit the United States, the United Kingdom, the Soviet Union, and all others who sign it, from engaging in the atmospheric tests which have so alarmed mankind; and it offers to all the world a welcome sign of hope.

Public Papers of JFK, 1963, p.602

For this is not a unilateral moratorium, but a specific and solemn legal obligation. While it will not prevent this Nation from testing underground, or from being ready to conduct atmospheric tests if the acts of others so require, it gives us a concrete opportunity to extend its coverage to other nations and later to other forms of nuclear tests.

Public Papers of JFK, 1963, p.602

This treaty is in part the product of Western patience and vigilance. We have made clear—most recently in Berlin and Cuba-our deep resolve to protect our security and our freedom against any form of aggression. We have also made clear our steadfast determination to limit the arms race. In three administrations, our soldiers and diplomats have worked together to this end, always supported by Great Britain. Prime Minister Macmillan joined with President Eisenhower in proposing a limited test ban in 1959, and again with me in 1961 and 1962.

Public Papers of JFK, 1963, p.602

But the achievement of this goal is not a victory for one side—it is a victory for mankind. It reflects no concessions either to or by the Soviet Union. It reflects simply our common recognition of the dangers in further testing.

Public Papers of JFK, 1963, p.602

This treaty is not the millennium. It will not resolve all conflicts, or cause the Communists to forego their ambitions, or eliminate the dangers of war. It will not reduce our need for arms or allies or programs of assistance to others. But it is an important first step—a step towards peace—a step towards reason—a step away from war.

Public Papers of JFK, 1963, p.602

Here is what this step can mean to you and to your children and your neighbors:

Public Papers of JFK, 1963, p.602–p.603

First, this treaty can be a step towards reduced world tension and broader areas of agreement. The Moscow talks have reached no agreement on any other subject, nor is this treaty conditioned on any other matter. Under Secretary Harriman made it clear that any nonaggression arrangements across the division in Europe would require full consultation with our allies and full attention to their interests. He also made clear our strong preference for a more comprehensive treaty banning all tests everywhere, and our ultimate hope for general and complete [p.603] disarmament. The Soviet Government, however, is still unwilling to accept the inspection such goals require.

Public Papers of JFK, 1963, p.603

No one can predict with certainty, therefore, what further agreements, if any, can be built on the foundations of this one. They could include controls on preparations for surprise attack, or on numbers and type of armaments. There could be further limitations on the spread of nuclear weapons. The important point is that efforts to seek new agreements will go forward.

Public Papers of JFK, 1963, p.603

But the difficulty of predicting the next step is no reason to be reluctant about this step. Nuclear test ban negotiations have long been a symbol of East-West disagreement. If this treaty can also be a symbol-if it can symbolize the end of one era and the beginning of another—if both sides can by this treaty gain confidence and experience in peaceful collaboration—then this short and simple treaty may well become an historic mark in man's age-old pursuit of peace.

Public Papers of JFK, 1963, p.603

Western policies have long been designed to persuade the Soviet Union to renounce aggression, direct or indirect, so that their people and all people may live and let live in peace. The unlimited testing of new weapons of war cannot lead towards that end—but this treaty, if it can be followed by further progress, can clearly move in that direction.

Public Papers of JFK, 1963, p.603

I do not say that a world without aggression or threats of war would be an easy world. It will bring new problems, new challenges from the Communists, new dangers of relaxing our vigilance or of mistaking their intent.

Public Papers of JFK, 1963, p.603

But those dangers pale in comparison to those of the spiraling arms race and a collision course towards war. Since the beginning of history, war has been mankind's constant companion. It has been the rule, not the exception. Even a nation as young and as peace-loving as our own has fought through eight wars. And three times in the last two years and a half I have been required to report to you as President that this Nation and the Soviet Union stood on the verge of direct military confrontation—in Laos, in Berlin, and in Cuba.

Public Papers of JFK, 1963, p.603

A war today or tomorrow, if it led to nuclear war, would not be like any war in history. A full-scale nuclear exchange, lasting less than 60 minutes, with the weapons now in existence, could wipe out more than 300 million Americans, Europeans, and Russians, as well as untold numbers elsewhere. And the survivors, as Chairman Khrushchev warned the Communist Chinese, "the survivors would envy the dead." For they would inherit a world so devastated by explosions and poison and fire that today we cannot even conceive of its horrors. So let us try to turn the world away from war. Let us make the most of this opportunity, and every opportunity, to reduce tension, to slow down the perilous nuclear arms race, and to check the world's slide toward final annihilation.

Public Papers of JFK, 1963, p.603

Second, this treaty can be a step towards freeing the world from the fears and dangers of radioactive fallout. Our own atmospheric tests last year were conducted under conditions which restricted such fallout to an absolute minimum. But over the years the number and the yield of weapons tested have rapidly increased and so have the radioactive hazards from such testing. Continued unrestricted testing by the nuclear powers, joined in time by other nations which may be less adept in limiting pollution, will increasingly contaminate the air that all of us must breathe.

Public Papers of JFK, 1963, p.603

Even then, the number of children and grandchildren with cancer in their bones, with leukemia in their blood, or with poison in their lungs might seem statistically small to some, in comparison with natural health hazards. But this is not a natural health hazard—and it is not a statistical issue. The loss of even one human life, or the malformation of even one baby—who may be born long after we are gone—should be of concern to us all. Our children and grandchildren are not merely statistics toward which we can be indifferent.

Public Papers of JFK, 1963, p.603–p.604

Nor does this affect the nuclear powers [p.604] alone. These tests befoul the air of all men and all nations, the committed and the uncommitted alike, without their knowledge and without their consent. That is why the continuation of atmospheric testing causes so many countries to regard all nuclear powers as equally evil; and we can hope that its prevention will enable those countries to see the world more clearly, while enabling all the world to breathe more easily.

Public Papers of JFK, 1963, p.604

Third, this treaty can be a step toward preventing the spread of nuclear weapons to nations not now possessing them. During the next several years, in addition to the four current nuclear powers, a small but significant number of nations will have the intellectual, physical, and financial resources to produce both nuclear weapons and the means of delivering them. In time, it is estimated, many other nations will have either this capacity or other ways of obtaining nuclear warheads, even as missiles can be commercially purchased today.

Public Papers of JFK, 1963, p.604

I ask you to stop and think for a moment what it would mean to have nuclear weapons in so many hands, in the hands of countries large and small, stable and unstable, responsible and irresponsible, scattered throughout the world. There would be no rest for anyone then, no stability, no real security, and no chance of effective disarmament. There would only be the increased chance of accidental war, and an increased necessity for the great powers to involve themselves in what otherwise would be local conflicts.

Public Papers of JFK, 1963, p.604

If only one thermonuclear bomb were to be dropped on any American, Russian, or any other city, whether it was launched by accident or design, by a madman or by an enemy, by a large nation or by a small, from any corner of the world, that one bomb could release more destructive power on the inhabitants of that one helpless city than all the bombs dropped in the Second World War.

Public Papers of JFK, 1963, p.604

Neither the United States nor the Soviet Union nor the United Kingdom nor France can look forward to that day with equanimity. We have a great obligation, all four nuclear powers have a great obligation, to use whatever time remains to prevent the spread of nuclear weapons, to persuade other countries not to test, transfer, acquire, possess, or produce such weapons.

Public Papers of JFK, 1963, p.604

This treaty can be the opening wedge in that campaign. It provides that none of the parties will assist other nations to test in the forbidden environments. It opens the door for further agreements on the control of nuclear weapons, and it is open for all nations to sign, for it is in the interest of all nations, and already we have heard from a number of countries who wish to join with us promptly.

Public Papers of JFK, 1963, p.604

Fourth and finally, this treaty can limit the nuclear arms race in ways which, on balance, will strengthen our Nation's security far more than the continuation of unrestricted testing. For in today's world, a nation's security does not always increase as its arms increase, when its adversary is doing the same, and unlimited competition in the testing and development of new types of destructive nuclear weapons will not make the world safer for either side. Under this limited treaty, on the other hand, the testing of other nations could never be sufficient to offset the ability of our strategic forces to deter or survive a nuclear attack and to penetrate and destroy an aggressor's homeland.

Public Papers of JFK, 1963, p.604

We have, and under this treaty we will continue to have, the nuclear strength that we need. It is true that the Soviets have tested nuclear weapons of a yield higher than that which we thought to be necessary, but the hundred megaton bomb of which they spoke 2 years ago does not and will not change the balance of strategic power. The United States has chosen, deliberately, to concentrate on more mobile and more efficient weapons, with lower but entirely sufficient yield, and our security is, therefore, not impaired by the treaty I am discussing.

Public Papers of JFK, 1963, p.604–p.605

It is also true, as Mr. Khrushchev would [p.605] agree, that nations cannot afford in these matters to rely simply on the good faith of their adversaries. We have not, therefore, overlooked the risk of secret violations. There is at present a possibility that deep in outer space, that hundreds and thousands and millions of miles away from the earth illegal tests might go undetected. But we already have the capability to construct a system of observation that would make such tests almost impossible to conceal, and we can decide at any time whether such a system is needed in the light of the limited risk to us and the limited reward to others of violations attempted at that range. For any tests which might be conducted so far out in space, which cannot be conducted more easily and efficiently and legally underground, would necessarily be of such a magnitude that they would be extremely difficult to conceal. We can also employ new devices to check on the testing of smaller weapons in the lower atmosphere. Any violations, moreover, involves, along with the risk of detection, the end of the treaty and the worldwide consequences for the violator.

Public Papers of JFK, 1963, p.605

Secret violations are possible and secret preparations for a sudden withdrawal are possible, and thus our own vigilance and strength must be maintained, as we remain ready to withdraw and to resume all forms of testing, if we must. But it would be a mistake to assume that this treaty will be quickly broken. The gains of illegal testing are obviously slight compared to their cost, and the hazard of discovery, and the nations which have initialed and will sign this treaty prefer it, in my judgment, to unrestricted testing as a matter of their own self-interests for these nations, too, and all nations, have a stake in limiting the arms race, in holding the spread of nuclear weapons, and in breathing air that is not radioactive. While it may be theoretically possible to demonstrate the risks inherent in any treaty, and such risks in this treaty are small, the far greater risks to our security are the risks of unrestricted testing, the risk of a nuclear arms race, the risk of new nuclear powers, nuclear pollution, and nuclear war.

Public Papers of JFK, 1963, p.605

This limited test ban, in our most careful judgment, is safer by far for the United States than an unlimited nuclear arms race. For all these reasons, I am hopeful that this Nation will promptly approve the limited test ban treaty. There will, of course, be debate in the country and in the Senate. The Constitution wisely requires the advice and consent of the Senate to all treaties, and that consultation has already begun. All this is as it should be. A document which may mark an historic and constructive opportunity for the world deserves an historic and constructive debate.

Public Papers of JFK, 1963, p.605

It is my hope that all of you will take part in that debate, for this treaty is for all of us. It is particularly for our children and our grandchildren, and they have no lobby here in Washington. This debate will involve military, scientific, and political experts, but it must be not left to them alone. The right and the responsibility are yours.

Public Papers of JFK, 1963, p.605

If we are to open new doorways to peace, if we are to seize this rare opportunity for progress, if we are to be as bold and farsighted in our control of weapons as we have been in their invention, then let us now show all the world on this side of the wall and the other that a strong America also stands for peace. There is no cause for complacency.

Public Papers of JFK, 1963, p.605

We have learned in times past that the spirit of one moment or place can be gone in the next. We have been disappointed more than once, and we have no illusions now that there are shortcuts on the road to peace. At many points around the globe the Communists are continuing their efforts to exploit weakness and poverty. Their concentration of nuclear and conventional arms must still be deterred.

Public Papers of JFK, 1963, p.605–p.606

The familiar contest between choice and coercion, the familiar places of danger and conflict, are all still there, in Cuba, in Southeast Asia, in Berlin, and all around the globe, still requiring all the strength and the vigilance that we can muster. Nothing [p.606] could more greatly damage our cause than if we and our allies were to believe that peace has already been achieved, and that our strength and unity were no longer required.

Public Papers of JFK, 1963, p.606

But now, for the first time in many years, the path of peace may be open. No one can be certain what the future will bring. No one can say whether the time has come for an easing of the struggle. But history and our own conscience will judge us harsher if we do not now make every effort to test our hopes by action, and this is the place to begin. According to the ancient Chinese proverb, "A journey of a thousand miles must begin with a single step."

Public Papers of JFK, 1963, p.606

My fellow Americans, let us take that first step. Let us, if we can, step back from the shadows of war and seek out the way of peace. And if that journey is a thousand miles, or even more, let history record that we, in this land, at this time, took the first step.

Public Papers of JFK, 1963, p.606

Thank you and good night.

School Dist. of Abington Tp. v. Schempp, 1963

Title: School District of Abington Township, Pennsylvania v. Schempp

Author: U.S. Supreme Court

Date: June 17, 1963

Source: 374 U.S. 203

This case was argued February 27-28, 1963, and was decided June 17, 1963, together with No. 119, Murray et al. v. Curlett et al., Constituting the Board of School Commissioners of Baltimore City, on certiorari to the Court of Appeals of Maryland, argued February 27, 1963.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Syllabus

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 203

Because of the prohibition of the First Amendment against the enactment by Congress of any law "respecting an establishment of religion," which is made applicable to the States by the Fourteenth Amendment, no state law or school board may require that passages from the Bible be read or that the Lord's Prayer be recited in the public schools of a State at the beginning of each school day—even if individual students may be excused from attending or participating in such exercises upon written request of their parents. Pp. 205-227.

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 203

201 F.Supp. 815, affirmed.

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 203

228 Md. 239, 179 A.2d 698, reversed. [374 U.S. 205]

CLARK, J., lead opinion

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 205

MR. JUSTICE CLARK delivered the opinion of the Court.

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 205

Once again, we are called upon to consider the scope of the provision of the First Amendment to the United States Constitution which declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…. " These companion cases present the issues in the context of state action requiring that schools begin each day with readings from the Bible. While raising the basic questions under slightly different factual situations, the cases permit of joint treatment. In light of the history of the First Amendment and of our cases interpreting and applying its requirements, we hold that the practices at issue and the laws requiring them are unconstitutional under the Establishment Clause, as applied to the States through the Fourteenth Amendment.

I

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 205

The Facts in Each Case: No. 142. The Commonwealth of Pennsylvania, by law, 24 Pa.Stat. § 15-1516, as amended, Pub.Law 1928 (Supp. 1960) Dec. 17, 1959, requires that

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 205

At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian.

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 205

The Schempp family, husband and wife and two of their three children, brought suit to enjoin enforcement of the statute, contending that their rights under the Fourteenth Amendment to the Constitution of the United States are, have been, and will continue to be, violated unless this statute be declared unconstitutional as violative of these provisions of the First Amendment. They sought to enjoin the appellant school district, wherein the Schempp children attend school, and its officers and the [374 U.S. 206] Superintendent of Public Instruction of the Commonwealth from continuing to conduct such readings and recitation of the Lord's Prayer in the public schools of the district pursuant to the statute. A three-judge statutory District Court for the Eastern District of Pennsylvania held that the statute is violative of the Establishment Clause of the First Amendment as applied to the States by the Due Process Clause of the Fourteenth Amendment, and directed that appropriate injunctive relief issue. 201 F.Supp. 815. 1 On appeal by the District, its officials, and the Superintendent under 28 U.S.C. § 1253, we noted probable jurisdiction. 371 U.S. 807.

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 206

The appellees Edward Lewis Schempp, his wife Sidney, and their children, Roger and Donna, are of the Unitarian faith, and are members of the Unitarian Church in Germantown, Philadelphia, Pennsylvania, where they, as well as another son, Ellory, regularly attend religious services. The latter was originally a party, but, having graduated from the school system pendente lite, was voluntarily dismissed from the action. The other children attend the Abington Senior High School, which is a public school operated by appellant district.

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 206

On each school day at the Abington Senior High School between 8:15 and 8:30 a.m., while the pupils are attending their home rooms or advisory sections, opening exercises [374 U.S. 207] are conducted pursuant to the statute. The exercises are broadcast into each room in the school building through an intercommunications system, and are conducted under the supervision of a teacher by students attending the school's radio and television workshop. Selected students from this course gather each morning in the school's workshop studio for the exercises, which include readings by one of the students of 10 verses of the Holy Bible, broadcast to each room in the building. This is followed by the recitation of the Lord's Prayer, likewise over the intercommunications system, but also by the students in the various classrooms, who are asked to stand and join in repeating the prayer in unison. The exercises are closed with the flag salute and such pertinent announcements as are of interest to the students. Participation in the opening exercises, as directed by the statute, is voluntary. The student reading the verses from the Bible may select the passages and read from any version he chooses, although the only copies furnished by the school are the King James version, copies of which were circulated to each teacher by the school district. During the period in which the exercises have been conducted, the King James, the Douay, and the Revised Standard versions of the Bible have been used, as well as the Jewish Holy Scriptures. There are no prefatory statements, no questions asked or solicited, no comments or explanations made, and no interpretations given at or during the exercises. The students and parents are advised that the student may absent himself from the classroom or, should he elect to remain, not participate in the exercises.

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It appears from the record that, in schools not having an intercommunications, system the Bible reading and the recitation of the Lord's Prayer were conducted by the [374 U.S. 208] home-room teacher, 2 who chose the text of the verses and read them herself or had students read them in rotation or by volunteers. This was followed by a standing recitation of the Lord's Prayer, together with the Pledge of Allegiance to the Flag by the class in unison and a closing announcement of routine school items of interest.

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At the first trial, Edward Schempp and the children testified as to specific religious doctrines purveyed by a literal reading of the Bible "which were contrary to the religious beliefs which they held, and to their familial teaching." 177 F.Supp. 398, 400. The children testified that all of the doctrines to which they referred were read to them at various times as part of the exercises. Edward Schempp testified at the second trial that he had considered having Roger and Donna excused from attendance at the exercises, but decided against it for several reasons, including his belief that the children's relationships with their teachers and classmates would be adversely affected. 3 [374 U.S. 209]

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Expert testimony was introduced by both appellants and appellees at the first trial, which testimony was summarized by the trial court as follows:

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Dr. Solomon Grayzel testified that there were marked differences between the Jewish Holy Scriptures and the Christian Holy Bible, the most obvious of which was the absence of the New Testament in the Jewish Holy Scriptures. Dr. Grayzel testified that portions of the New Testament were offensive to Jewish tradition, and that, from the standpoint of Jewish faith, the concept of Jesus Christ as the Son of God was "practically blasphemous." He cited instances in the New Testament which, assertedly, were not only sectarian in nature but tended to bring the Jews into ridicule or scorn. Dr. Grayzel gave as his expert opinion that such material from the New Testament could be explained to Jewish children in such a way as to do no harm to them. But if portions of the New Testament were read without explanation, they could be, and, in his specific experience with children, Dr. Grayzel observed, had been, psychologically harmful to the child, and had caused a divisive force within the social media of the school.

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Dr. Grayzel also testified that there was significant difference in attitude with regard to the respective Books of the Jewish and Christian Religions in that Judaism attaches no special significance to the reading of the Bible per se, and that the Jewish Holy Scriptures are source materials to be studied. But Dr. Grayzel did state that many portions of the New, [374 U.S. 210] as well as of the Old, Testament contained passages of great literary and moral value.

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Dr. Luther A. Weigle, an expert witness for the defense, testified in some detail as to the reasons for and the methods employed in developing the King James and the Revised Standard Versions of the Bible. On direct examination, Dr. Weigle stated that the Bible was nonsectarian. He later stated that the phrase "nonsectarian" meant to him nonsectarian within the Christian faiths. Dr. Weigle stated that his definition of the Holy Bible would include the Jewish Holy Scriptures, but also stated that the "Holy Bible" would not be complete without the New Testament. He stated that the New Testament "conveyed the message of Christians." In his opinion, reading of the Holy Scriptures to the exclusion of the New Testament would be a sectarian practice. Dr. Weigle stated that the Bible was of great moral, historical and literary value. This is conceded by all the parties, and is also the view of the court.

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177 F.Supp. 398, 401-402.

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The trial court, in striking down the practices and the statute requiring them, made specific findings of fact that the children's attendance at Abington Senior High School is compulsory, and that the practice of reading 10 verses from the Bible is also compelled by law. It also found that:

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The reading of the verses, even without comment, possesses a devotional and religious character and constitutes, in effect, a religious observance. The devotional and religious nature of the morning exercises is made all the more apparent by the fact that the Bible reading is followed immediately by a recital in unison by the pupils of the Lord's Prayer. The fact that some pupils, or, theoretically, all pupils, might be excused from attendance at the exercises [374 U.S. 211] does not mitigate the obligatory nature of the ceremony, for…Section 1516…unequivocally requires the exercises to be held every school day in every school in the Commonwealth. The exercises are held in the school buildings, and perforce are conducted by and under the authority of the local school authorities, and during school sessions. Since the statute requires the reading of the "Holy Bible," a Christian document, the practice…prefers the Christian religion. The record demonstrates that it was the intention of…the Commonwealth…to introduce a religious ceremony into the public schools of the Commonwealth.

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201 F.Supp. at 819.

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No. 119. In 1905, the Board of School Commissioners of Baltimore City adopted a rule pursuant to Art. 77, § 202 of the Annotated Code of Maryland. The rule provided for the holding of opening exercises in the schools of the city, consisting primarily of the "reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer." The petitioners, Mrs. Madalyn Murray and her son, William J. Murray III, are both professed atheists. Following unsuccessful attempts to have the respondent school board rescind the rule, this suit was filed for mandamus to compel its rescission and cancellation. It was alleged that William was a student in a public school of the city, and Mrs. Murray, his mother, was a taxpayer therein; that it was the practice under the rule to have a reading on each school morning from the King James version of the Bible; that, at petitioners' insistence, the rule was amended 4 to permit children to [374 U.S. 212] be excused from the exercise on request of the parent, and that William had been excused pursuant thereto; that nevertheless the rule as amended was in violation of the petitioners' rights "to freedom of religion under the First and Fourteenth Amendments" and in violation of "the principle of separation between church and state, contained therein…. " The petition particularized the petitioners' atheistic beliefs and stated that the rule, as practiced, violated their rights

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in that it threatens their religious liberty by placing a premium on belief as against non-belief and subjects their freedom of conscience to the rule of the majority; it pronounces belief in God as the source of all moral and spiritual values, equating these values with religious values, and thereby renders sinister, alien and suspect the beliefs and ideals of your Petitioners, promoting doubt and question of their morality, good citizenship and good faith.

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The respondents demurred, and the trial court, recognizing that the demurrer admitted all facts well pleaded, sustained it without leave to amend. The Maryland Court of Appeals affirmed, the majority of four justices holding the exercise not in violation of the First and Fourteenth Amendments, with three justices dissenting. 228 Md. 239, 179 A.2d 698. We granted certiorari. 371 U.S. 809.

II

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It is true that religion has been closely identified with our history and government. As we said in Engel v. Vitale, 370 U.S. 421, 434 (1962),

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The history of man is inseparable from the history of religion. And…, since [374 U.S. 213] the beginning of that history, many people have devoutly believed that "More things are wrought by prayer than this world dreams of."

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In Zorach v. Clauson, 343 U.S. 306, 313 (1952), we gave specific recognition to the proposition that "[w]e are a religious people whose institutions presuppose a Supreme Being." The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself. This background is evidenced today in our public life through the continuance in our oaths of office from the Presidency to the Alderman of the final supplication, "So help me God." Likewise, each House of the Congress provides through its Chaplain an opening prayer, and the sessions of this Court are declared open by the crier in a short ceremony, the final phrase of which invokes the grace of God. Again, there are such manifestations in our military forces, where those of our citizens who are under the restrictions of military service wish to engage in voluntary worship. Indeed, only last year, an official survey of the country indicated that 64% of our people have church membership, Bureau of the Census, U.S. Department of Commerce, Statistical Abstract of the United States (83d ed.1962), 48, while less than 30% profess no religion whatever. Id. at p. 46. It can be truly said, therefore, that today, as in the beginning, our national life reflects a religious people who, in the words of Madison, are

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earnestly praying, as…in duty bound, that the Supreme Lawgiver of the Universe…guide them into every measure which may be worthy of his [blessing…].

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Memorial and Remonstrance Against Religious Assessments, quoted in Everson v. Board of Education, 330 U.S. 1, 71-72 (1947) (Appendix to dissenting opinion of Rutledge, J.). [374 U.S. 214]

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This is not to say, however, that religion has been so identified with our history and government that religious freedom is not likewise as strongly imbedded in our public and private life. Nothing but the most telling of personal experiences in religious persecution suffered by our forebears, see Everson v. Board of Education, supra, at 8-11, could have planted our belief in liberty of religious opinion any more deeply in our heritage. It is true that this liberty frequently was not realized by the colonists, but this is readily accountable by their close ties to the Mother Country. 5 However, the views of Madison and Jefferson, preceded by Roger Williams, 6 came to be incorporated not only in the Federal Constitution but likewise in those of most of our States. This freedom to worship was indispensable in a country whose people came from the four quarters of the earth and brought with them a diversity of religious opinion. Today authorities list 83 separate religious bodies, each with membership exceeding 50,000, existing among our people, as well as innumerable smaller groups. Bureau of the Census, op. cit. supra, at 46-47.

III

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Almost a hundred years ago, in Minor v. Board of Education of Cincinnati, 7 Judge Alphonso Taft, father [374 U.S. 215] of the revered Chief Justice, in an unpublished opinion, stated the ideal of our people as to religious freedom as one of

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absolute equality before the law, of all religious opinions and sects….

\* \* \* \*

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The government is neutral, and, while protecting all, it prefers none, and it disparages none.

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Before examining this "neutral" position in which the Establishment and Free Exercise Clauses of the First Amendment place our Government, it is well that we discuss the reach of the Amendment under the cases of this Court.

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First, this Court has decisively settled that the First Amendment's mandate that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" has been made wholly applicable to the States by the Fourteenth Amendment. Twenty-three years ago, in Cantwell v. Connecticut, 310 U.S. 296, 303 (1940), this Court, through Mr. Justice Roberts, said:

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The fundamental concept of liberty embodied in that [Fourteenth] Amendment embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment [374 U.S. 216] has rendered the legislatures of the states as incompetent as Congress to enact such laws. 8

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In a series of cases since Cantwell, the Court has repeatedly reaffirmed that doctrine, and we do so now. Murdock v. Pennsylvania, 319 U.S. 105, 108 (1943); Everson v. Board of Education, supra; Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 210-211 (1948); Zorach v. Clauson, supra; McGowan v. Maryland, 366 U.S. 420 (1961); Torcaso v. Watkins, 367 U.S. 488 (1961), and Engel v. Vitale, supra.

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Second, this Court has rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another. Almost 20 years ago in Everson, supra, at 15, the Court said that

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[n]either a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.

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And Mr. Justice Jackson, dissenting, agreed:

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There is no answer to the proposition…that the effect of the religious freedom Amendment to our Constitution was to take every form of propagation of religion out of the realm of things which could directly or indirectly be made public business, and thereby be supported in whole or in part at taxpayers' expense…. This freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity.

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Id. at 26. [374 U.S. 217] Further, Mr. Justice Rutledge, joined by Justices Frankfurter, Jackson and Burton, declared:

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The [First] Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily, it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion.

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Id. at 31-32. The same conclusion has been firmly maintained ever since that time, see Illinois ex rel. McCollum, supra, at pp. 210-211; McGowan v. Maryland, supra, at 442-443; Torcaso v. Watkins, supra, at 492-493, 495, and we reaffirm it now.

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While none of the parties to either of these cases has questioned these basic conclusions of the Court, both of which have been long established, recognized, and consistently reaffirmed, others continue to question their history, logic and efficacy. Such contentions, in the light of the consistent interpretation in cases of this Court, seem entirely untenable, and of value only as academic exercises.

IV

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The interrelationship of the Establishment and the Free Exercise Clauses was first touched upon by Mr. Justice Roberts for the Court in Cantwell v. Connecticut, supra, at 303-304, where it was said that their "inhibition of legislation" had

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a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of [374 U.S. 218] conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted br law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus, the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.

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A half dozen years later in Everson v. Board of Education, supra, at 14-15, this Court, through MR. JUSTICE BLACK, stated that the "scope of the First Amendment…was designed forever to suppress" the establishment of religion or the prohibition of the free exercise thereof. In short, the Court held that the Amendment

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requires the state to be a neutral in its relations with groups of religious believers and nonbelievers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them.

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Id. at 18. And Mr. Justice Jackson, in dissent, declared that public schools are organized

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on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion. The assumption is that, after the individual has been instructed in worldly wisdom, he will be better fitted to choose his religion.

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Id. at 23-24. Moreover, all of the four dissenters, speaking through Mr. Justice Rutledge, agreed that

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Our constitutional policy…does not deny the value or the necessity for religious training, teaching or observance. Rather, it secures their free exercise. But, to that end, it does deny that the state can undertake or sustain them in any form or degree. For this [374 U.S. 219] reason, the sphere of religious activity, as distinguished from the secular intellectual liberties, has been given the two-fold protection, and, as the state cannot forbid, neither can it perform or aid in performing, the religious function. The dual prohibition makes that function altogether private.

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Id. at 52.

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Only one year later, the Court was asked to reconsider and repudiate the doctrine of these cases in McCollum v. Board of Education. It was argued that,

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historically, the First Amendment was intended to forbid only government preference of one religion over another…. In addition, they ask that we distinguish or overrule our holding in the Everson case that the Fourteenth Amendment made the "establishment of religion" clause of the First Amendment applicable as a prohibition against the States.

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333 U.S. at 211. The Court, with Mr. Justice Reed alone dissenting, was unable to "accept either of these contentions." Ibid. Mr. Justice Frankfurter, joined by Justices Jackson, Rutledge and Burton, wrote a very comprehensive and scholarly concurrence in which he said that

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[s]eparation is a requirement to abstain from fusing functions of Government and of religious sects, not merely to treat them all equally.

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Id. at 227. Continuing, he stated that:

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the Constitution…prohibited the Government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages.

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Id. at 228.

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In 1952, in Zorach v. Clauson, supra, MR. JUSTICE DOUGLAS, for the Court, reiterated:

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There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And, so far as interference with the "free exercise" of religion and an [374 U.S. 220] "establishment" of religion are concerned, the separation must be complete and unequivocal. The First Amendment, within the scope of its coverage, permits no exception; the prohibition is absolute. The First Amendment, however, does not say that, in every and all respects, there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter.

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343 U.S. at 312.

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And then, in 1961, in McGowan v. Maryland and in Torcaso v. Watkins, each of these cases was discussed and approved. CHIEF JUSTICE WARREN, in McGowan, for a unanimous Court on this point, said:

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But the First Amendment, in its final form, did not simply bar a congressional enactment establishing a church; it forbade all laws respecting an establishment of religion. Thus, this Court has given the Amendment a "broad interpretation…in the light of its history and the evils it was designed forever to suppress…. "

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366 U.S. at 441-442. And MR. JUSTICE BLACK, for the Court, in Torcaso, without dissent but with Justices Frankfurter and HARLAN concurring in the result, used this language:

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We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person "to profess a belief or disbelief in any religion." Neither can constitutionally pass laws or impose requirements which aid all religions as against nonbelievers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.

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367 U.S. at 495.

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Finally, in Engel v. Vitale, only last year, these principles were so universally recognized that the Court, without [374 U.S. 221] the citation of a single case and over the sole dissent of MR. JUSTICE STEWART, reaffirmed them. The Court found the 22-word prayer used in "New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer…[to be] a religious activity." 370 U.S. at 424. It held that

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it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.

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Id. at 425. In discussing the reach of the Establishment and Free Exercise Clauses of the First Amendment, the Court said:

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Although these two clauses may in certain instances overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion, and is violated by the enactment of laws which establish an official religion, whether those laws operate directly to coerce nonobserving individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.

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Id. at 430-431. And, in further elaboration, the Court found that the

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first and most immediate purpose [of the Establishment Clause] rested on the belief that a union of government and religion tends to destroy government and to degrade religion.

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Id. at 431. When government, the Court said, allies itself with one particular form of religion, the [374 U.S. 222] inevitable result is that it incurs "the hatred, disrespect and even contempt of those who held contrary beliefs." Ibid.

V

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The wholesome "neutrality" of which this Court's cases speak thus stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxies. This the Establishment Clause prohibits. And a further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state. This the Free Exercise Clause guarantees. Thus, as we have seen, the two clauses may overlap. As we have indicated, the Establishment Clause has been directly considered by this Court eight times in the past score of years and, with only one Justice dissenting on the point, it has consistently held that the clause withdrew all legislative power respecting religious belief or the expression thereof. The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that, to withstand the strictures of the Establishment Clause, there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. Everson v. Board of Education, supra; McGowan v. Maryland, supra, at 442. The Free Exercise Clause, likewise considered many times here, withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise [374 U.S. 223] of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority. Hence, it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion. The distinction between the two clauses is apparent—a violation of the Free Exercise Clause is predicated on coercion, while the Establishment Clause violation need not be so attended.

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Applying the Establishment Clause principles to the cases at bar, we find that the States are requiring the selection and reading at the opening of the school day of verses from the Holy Bible and the recitation of the Lord's Prayer by the students in unison. These exercises are prescribed as part of the curricular activities of students who are required by law to attend school. They are held in the school buildings under the supervision and with the participation of teachers employed in those schools. None of these factors, other than compulsory school attendance, was present in the program upheld in Zorach v. Clauson. The trial court in No. 142 has found that such an opening exercise is a religious ceremony, and was intended by the State to be so. We agree with the trial court's finding as to the religious character of the exercises. Given that finding, the exercises and the law requiring them are in violation of the Establishment Clause.

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There is no such specific finding as to the religious character of the exercises in No. 119, and the State contends (as does the State in No. 142) that the program is an effort to extend its benefits to all public school children without regard to their religious belief. Included within its secular purposes, it says, are the promotion of moral values, the contradiction to the materialistic trends of our times, the perpetuation of our institutions and the teaching of literature. The case came up [374 U.S. 224] on demurrer, of course, to a petition which alleged that the uniform practice under the rule had been to read from the King James version of the Bible, and that the exercise was sectarian. The short answer, therefore, is that the religious character of the exercise was admitted by the State. But even if its purpose is not strictly religious, it is sought to be accomplished through readings, without comment, from the Bible. Surely the place of the Bible as an instrument of religion cannot be gainsaid, and the State's recognition of the pervading religious character of the ceremony is evident from the rule's specific permission of the alternative use of the Catholic Douay version, as well as the recent amendment permitting nonattendance at the exercises. None of these factors is consistent with the contention that the Bible is here used either as an instrument for nonreligious moral inspiration or as a reference for the teaching of secular subjects.

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The conclusion follows that, in both cases, the laws require religious exercises, and such exercises are being conducted in direct violation of the rights of the appellees and petitioners. 9 Nor are these required exercises mitigated by the fact that individual students may absent [374 U.S. 225] themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause. See Engel v. Vitale, supra, at 430. Further, it is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, "it is proper to take alarm at the first experiment on our liberties." Memorial and Remonstrance Against Religious Assessments, quoted in Everson, supra, at 65.

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It is insisted that, unless these religious exercises are permitted, a "religion of secularism" is established in the schools. We agree, of course, that the State may not establish a "religion of secularism" in the sense of affirmatively opposing or showing hostility to religion, thus "preferring those who believe in no religion over those who do believe." Zorach v. Clauson, supra, at 314. We do not agree, however, that this decision in any sense has that effect. In addition, it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment. But the exercises here do not fall into those categories. They are religious exercises, required by the States in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion.

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Finally, we cannot accept that the concept of neutrality, which does not permit a State to require a religious exercise even with the consent of the majority of those [374 U.S. 226] affected, collides with the majority's right to free exercise of religion. 10 While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to anyone, it has never meant that a majority could use the machinery of the State to practice its beliefs. Such a contention was effectively answered by Mr. Justice Jackson for the Court in West Virginia Board of Education v. Barnette, 319 U.S. 624, 638 (1943):

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The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One's right to…freedom of worship…and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

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The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretation of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment. Applying that rule to the facts of these cases, we affirm the judgment in No. 142. [374 U.S. 227] In No. 119, the judgment is reversed, and the cause remanded to the Maryland Court of Appeals for further proceedings consistent with this opinion

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It is so ordered.

DOUGLAS, J., concurring

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MR. JUSTICE DOUGLAS, concurring.

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I join the opinion of the Court and add a few words in explanation.

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While the Free Exercise Clause of the First Amendment is written in terms of what the State may not require of the individual, the Establishment Clause, serving the same goal of individual religious freedom, is written in different terms.

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Establishment of a religion can be achieved in several ways. The church and state can be one; the church may control the state, or the state may control the church; or the relationship may take one of several possible forms of a working arrangement between the two bodies. 1 Under all of these arrangements, the church typically has a place in the state's budget, and church law usually governs such matters as baptism, marriage, divorce and separation, at least for its members and sometimes for the entire body politic. 2 Education, too, is usually high on the priority [374 U.S. 228] list of church interests. 3 In the past, schools were often made the exclusive responsibility of the church. Today, in some state-church countries, the state runs the public schools, but compulsory religious exercises are often required of some or all students. Thus, under the agreement Franco made with the Holy See when he came to power in Spain,

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The Church regained its place in the national budget. It insists on baptizing all children, and has made the catechism obligatory in state schools. 4

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The vice of all such arrangements under the Establishment Clause is that the state is lending its assistance to a church's efforts to gain and keep adherents. Under the First Amendment, it is strictly a matter for the individual and his church as to what church he will belong to and how much support, in the way of belief, time, activity or money, he will give to it. "This pure Religious Liberty"

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declared…[all forms of church-state relationships] and their fundamental idea to be oppressions of conscience and abridgments of that liberty which God and nature had conferred on every living soul. 5

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In these cases, we have no coercive religious exercise aimed at making the students conform. The prayers announced are not compulsory, though some may think they have that indirect effect because the nonconformist student may be induced to participate for fear of being called an "oddball." But that coercion, if it be present, [374 U.S. 229] has not been shown; so the vices of the present regimes are different.

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These regimes violate the Establishment Clause in two different ways. In each case, the State is conducting a religious exercise; and, as the Court holds, that cannot be done without violating the "neutrality" required of the State by the balance of power between individual, church and state that has been struck by the First Amendment. But the Establishment Clause is not limited to precluding the State itself from conducting religious exercises. It also forbids the State to employ its facilities or funds in a way that gives any church, or all churches, greater strength in our society than it would have by relying on its members alone. Thus, the present regimes must fall under that clause for the additional reason that public funds, though small in amount, are being used to promote a religious exercise. Through the mechanism of the State, all of the people are being required to finance a religious exercise that only some of the people want and that violates the sensibilities of others.

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The most effective way to establish any institution is to finance it, and this truth is reflected in the appeals by church groups for public funds to finance their religious schools. 6 Financing a church either in its strictly religious activities or in its other activities is equally unconstitutional, as I understand the Establishment Clause. Budgets for one activity may be technically separable from budgets for others. 7 But the institution is an inseparable whole, a living organism, which is strengthened in proselytizing when it is strengthened in any department by contributions from other than its own members. [374 U.S. 230]

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Such contributions may not be made by the State even in a minor degree without violating the Establishment Clause. It is not the amount of public funds expended; as this case illustrates, it is the use to which public funds are put that is controlling. For the First Amendment does not say that some forms of establishment are allowed; it says that "no law respecting an establishment of religion" shall be made. What may not be done directly may not be done indirectly, lest the Establishment Clause become a mockery.

BRENNAN, J., concurring

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MR. JUSTICE BRENNAN, concurring.

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Almost a century and a half ago, John Marshall, in M'Culloch v. Maryland, enjoined: "…we must never forget, that it is a constitution we are expounding." 4 Wheat. 316, 407. The Court's historic duty to expound the meaning of the Constitution has encountered few issues more intricate or more demanding than that of the relationship between religion and the public schools. Since undoubtedly we are "a religious people whose institutions presuppose a Supreme Being," Zorach v. Clauson, 343 U.S. 306, 313, deep feelings are aroused when aspects of that relationship are claimed to violate the injunction of the First Amendment that government may make "no law respecting an establishment of religion, or prohibiting the free exercise thereof…. " Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government. It is therefore understandable that the constitutional prohibitions encounter their severest test when they are sought to be applied in the school classroom. Nevertheless it is this Court's inescapable duty to declare whether exercises in the public schools of the States, such as those of Pennsylvania and Maryland questioned here, are involvements of religion in public institutions of a kind which offends the First and Fourteenth Amendments. [374 U.S. 231]

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When John Locke ventured in 1689,

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I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other, 1

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he anticipated the necessity which would be thought by the Framers to require adoption of a First Amendment, but not the difficulty that would be experienced in defining those "just bounds." The fact is that the line which separates the secular from the sectarian in American life is elusive. The difficulty of defining the boundary with precision inheres in a paradox central to our scheme of liberty. While our institutions reflect a firm conviction that we are a religious people, those institutions, by solemn constitutional injunction, may not officially involve religion in such a way as to prefer, discriminate against, or oppress, a particular sect or religion. Equally, the Constitution enjoins those involvements of religious with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends where secular means would suffice. The constitutional mandate expresses a deliberate and considered judgment that such matters are to be left to the conscience of the citizen, and declares as a basic postulate of the relation between the citizen and his government that "the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand…. " 2

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I join fully in the opinion and the judgment of the Court. I see no escape from the conclusion that the exercises [374 U.S. 232] called in question in these two cases violate the constitutional mandate. The reasons we gave only last Term in Engel v. Vitale, 370 U.S. 421, for finding in the New York Regents' prayer an impermissible establishment of religion compel the same judgment of the practices at bar. The involvement of the secular with the religious is no less intimate here, and it is constitutionally irrelevant that the State has not composed the material for the inspirational exercises presently involved. It should be unnecessary to observe that our holding does not declare that the First Amendment manifests hostility to the practice or teaching of religion, but only applies prohibitions incorporated in the Bill of Rights in recognition of historic needs shared by Church and State alike. While it is my view that not every involvement of religion in public life is unconstitutional, I consider the exercises at bar a form of involvement which clearly violates the Establishment Clause.

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The importance of the issue and the deep conviction with which views on both sides are held seem to me to justify detailing at some length my reasons for joining the Court's judgment and opinion.

I

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The First Amendment forbids both the abridgment of the free exercise of religion and the enactment of laws "respecting an establishment of religion." The two clauses, although distinct in their objectives and their applicability, emerged together from a common panorama of history. The inclusion of both restraints upon the power of Congress to legislate concerning religious matters shows unmistakably that the Framers of the First Amendment were not content to rest the protection of religious liberty exclusively upon either clause. "In assuring the free exercise of religion," Mr. Justice Frankfurter has said, [374 U.S. 233]

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the Framers of the First Amendment were sensitive to the then recent history of those persecutions and impositions of civil disability with which sectarian majorities in virtually all of the Colonies had visited deviation in the matter of conscience. This protection of unpopular creeds, however, was not to be the full extent of the Amendment's guarantee of freedom from governmental intrusion in matters of faith. The battle in Virginia, hardly four years won, where James Madison had led the forces of disestablishment in successful opposition to Patrick Henry's proposed Assessment Bill levying a general tax for the support of Christian teachers, was a vital and compelling memory in 1789.

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McGowan v. Maryland, 366 U.S. 420, 464-465.

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It is true that the Framers' immediate concern was to prevent the setting up of an official federal church of the kind which England and some of the Colonies had long supported. But nothing in the text of the Establishment Clause supports the view that the prevention of the setting up of an official church was meant to be the full extent of the prohibitions against official involvements in religion. It has rightly been said:

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If the framers of the Amendment meant to prohibit Congress merely from the establishment of a "church," one may properly wonder why they didn't so state. That the words church and religion were regarded as synonymous seems highly improbable, particularly in view of the fact that the contemporary state constitutional provisions dealing with the subject of establishment used definite phrases such as "religious sect," "sect," or "denomination."…With such specific wording in contemporary state constitutions, why was not a similar wording adopted for the First Amendment if its framers intended to prohibit nothing more than what the States were prohibiting? [374 U.S. 234]

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Lardner, How Far Does the Constitution Separate Church and State? 45 Am.Pol.Sci.Rev. 110, 112 (1951).

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Plainly, the Establishment Clause, in the contemplation of the Framers, "did not limit the constitutional proscription to any particular, dated form of state-supported theological venture."

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What Virginia had long practiced, and what Madison, Jefferson and others fought to end, was the extension of civil government's support to religion in a manner which made the two in some degree interdependent, and thus threatened the freedom of each. The purpose of the Establishment Clause was to assure that the national legislature would not exert its power in the service of any purely religious end; that it would not, as Virginia and virtually all of the Colonies had done, make of religion, as religion, an object of legislation…. The Establishment Clause withdrew from the sphere of legitimate legislative concern and competence a specific, but comprehensive, area of human conduct: man's belief or disbelief in the verity of some transcendental idea and man's expression in action of that belief or disbelief.

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McGowan v. Maryland, supra, at 465-466 (opinion of Frankfurter, J.).

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In sum, the history which our prior decisions have summoned to aid interpretation of the Establishment Clause permits little doubt that its prohibition was designed comprehensively to prevent those official involvements of religion which would tend to foster or discourage religious worship or belief.

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But an awareness of history and an appreciation of the aims of the Founding Fathers do not always resolve concrete problems. The specific question before us has, for example, aroused vigorous dispute whether the architects of the First Amendment—James Madison and Thomas Jefferson particularly—understood the prohibition against any "law respecting an establishment of [374 U.S. 235] religion" to reach devotional exercises in the public schools. 3 It may be that Jefferson and Madison would have held such exercises to be permissible—although, even in Jefferson's case, serious doubt is suggested by his admonition against

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putting the Bible and Testament into the hands of the children at an age when their judgments are not sufficiently matured for religious inquiries…. 4

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But [374 U.S. 236] I doubt that their view, even if perfectly clear one way or the other, would supply a dispositive answer to the question presented by these cases. A more fruitful inquiry, it seems to me, is whether the practices here challenged threaten those consequences which the Framers deeply feared; whether, in short, they tend to promote that type of interdependence between religion and state which the First Amendment was designed to prevent. 5 Our task is to translate

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the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials [374 U.S. 237] dealing with the problems of the twentieth century….

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West Virginia State Board of Education v. Barnette, 319 U.S. 624, 639.

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A too literal quest for the advice of the Founding Fathers upon the issues of these cases seems to me futile and misdirected for several reasons: first, on our precise problem, the historical record is, at best, ambiguous, and statements can readily be found to support either side of the proposition. The ambiguity of history is understandable if we recall the nature of the problems uppermost in the thinking of the statesmen who fashioned the religious guarantees; they were concerned with far more flagrant intrusions of government into the realm of religion than any that our century has witnessed. 6 While it is clear to me that the Framers meant the Establishment Clause to prohibit more than the creation of an established federal church such as existed in England, I have no doubt that, in their preoccupation with the imminent question of established churches, they gave no distinct [374 U.S. 238] consideration to the particular question whether the clause also forbade devotional exercises in public institutions.

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Second, the structure of American education has greatly changed since the First Amendment was adopted. In the context of our modern emphasis upon public education available to all citizens, any views of the eighteenth century as to whether the exercises at bar are an "establishment" offer little aid to decision. Education, as the Framers knew it, was in the main confined to private schools more often than not under strictly sectarian supervision. Only gradually did control of education pass largely to public officials. 7 It would, therefore, [374 U.S. 239] hardly be significant if the fact was that the nearly universal devotional exercises in the schools of the young Republic did not provoke criticism; even today, religious ceremonies in church supported private schools are constitutionally unobjectionable. [374 U.S. 240]

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Third, our religious composition makes us a vastly more diverse people than were our forefathers. They knew differences chiefly among Protestant sects. Today, the Nation is far more heterogeneous religiously, including as it does substantial minorities not only of Catholics and Jews but as well of those who worship according to no version of the Bible and those who worship no God at all. 8 [374 U.S. 241] See Torcaso v. Watkins, 367 U.S. 488, 495. In the face of such profound changes, practices which may have been objectionable to no one in the time of Jefferson and Madison may today be highly offensive to many persons, the deeply devout and the nonbelievers alike.

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Whatever Jefferson or Madison would have thought of Bible reading or the recital of the Lord's Prayer in what few public schools existed in their day, our use of the history of their time must limit itself to broad purposes, not specific practices. By such a standard, I am persuaded, as is the Court, that the devotional exercises carried on in the Baltimore and Abington schools offend the First Amendment because they sufficiently threaten in our day those substantive evils the fear of which called forth the Establishment Clause of the First Amendment. It is "a constitution we are expounding," and our interpretation of the First Amendment must necessarily be responsive to the much more highly charged nature of religious questions in contemporary society.

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Fourth, the American experiment in free public education available to all children has been guided in large measure by the dramatic evolution of the religious diversity among the population which our public schools serve. The interaction of these two important forces in our national life has placed in bold relief certain positive values in the consistent application to public institutions generally, and public schools particularly, of the constitutional decree against official involvements of religion which might produce the evils the Framers meant the Establishment Clause to forestall. The public schools are supported entirely, in most communities, by public funds—funds exacted not only from parents, nor alone from those who hold particular religious views, nor indeed from those who subscribe to any creed at all. It is implicit in the history and character of American public education that the public schools serve a uniquely [374 U.S. 242] public function: the training of American citizens in an atmosphere free of parochial, divisive, or separatist influences of any sort—an atmosphere in which children may assimilate a heritage common to all American groups and religions. See Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203. This is a heritage neither theistic nor atheistic, but simply civic and patriotic. See Meyer v. Nebraska, 262 U.S. 390, 400-403.

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Attendance at the public schools has never been compulsory; parents remain morally and constitutionally free to choose the academic environment in which they wish their children to be educated. The relationship of the Establishment Clause of the First Amendment to the public school system is preeminently that of reserving such a choice to the individual parent, rather than vesting it in the majority of voters of each State or school district. The choice which is thus preserved is between a public secular education, with its uniquely democratic values, and some form of private or sectarian education, which offers values of its own. In my judgment, the First Amendment forbids the State to inhibit that freedom of choice by diminishing the attractiveness of either alternative—either by restricting the liberty of the private schools to inculcate whatever values they wish, or by jeopardizing the freedom of the public schools from private or sectarian pressures. The choice between these very different forms of education is one very much like the choice of whether or not to worship—which our Constitution leaves to the individual parent. It is no proper function of the state or local government to influence or restrict that election. The lesson of history—drawn more from the experiences of other countries than from our own—is that a system of free public education forfeits its unique contribution to the growth of democratic citizenship when that choice ceases to be freely available to each parent. [374 U.S. 243]

II

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The exposition by this Court of the religious guarantees of the First Amendment has consistently reflected and reaffirmed the concerns which impelled the Framers to write those guarantees into the Constitution. It would be neither possible nor appropriate to review here the entire course of our decisions on religious questions. There emerge from those decisions, however, three principles of particular relevance to the issue presented by the cases at bar, and some attention to those decisions is therefore appropriate.

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First. One line of decisions derives from contests for control of a church property or other internal ecclesiastical disputes. This line has settled the proposition that, in order to give effect to the First Amendment's purpose of requiring on the part of all organs of government a strict neutrality toward theological questions, courts should not undertake to decide such questions. These principles were first expounded in the case of Watson v. Jones, 13 Wall. 679, which declared that judicial intervention in such a controversy would open up

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the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination….

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13 Wall. at 733. Courts above all must be neutral, for "[t]he law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." 9 13 Wall. at 728. This principle has recently [374 U.S. 244] been reaffirmed in Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, and Kreshik v. St. Nicholas Cathedral, 363 U.S. 190.

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The mandate of judicial neutrality in theological controversies met its severest test in United States v. Ballard, 322 U.S. 78. That decision put in sharp relief certain principles which bear directly upon the questions presented in these cases. Ballard was indicted for fraudulent use of the mails in the dissemination of religious literature. He requested that the trial court submit to the jury the question of the truthfulness of the religious views he championed. The requested charge was refused, and we upheld that refusal, reasoning that the First Amendment foreclosed any judicial inquiry into the truth or falsity of the defendant's religious beliefs. We said:

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Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views.

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Men may believe what they cannot [374 U.S. 245] prove. They may not be put to the proof of their religious doctrines or beliefs…. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations.

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322 U.S. at 86-87.

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The dilemma presented by the case was severe. While the alleged truthfulness of nonreligious publications could ordinarily have been submitted to the jury, Ballard was deprived of that defense only because the First Amendment forbids governmental inquiry into the verity of religious beliefs. In dissent, Mr. Justice Jackson expressed the concern that, under this construction of the First Amendment, "[p]rosecutions of this character easily could degenerate into religious persecution." 322 U.S. at 95. The case shows how elusive is the line which enforces the Amendment's injunction of strict neutrality, while manifesting no official hostility toward religion—a line which must be considered in the cases now before us. 10 Some might view the result of the Ballard case as a manifestation of hostility—in that the conviction stood because the defense could not be raised. To others, it [374 U.S. 246] might represent merely strict adherence to the principle of neutrality already expounded in the cases involving doctrinal disputes. Inevitably, insistence upon neutrality, vital as it surely is for untrammeled religious liberty, may appear to border upon religious hostility. But, in the long view, the independence of both church and state in their respective spheres will be better served by close adherence to the neutrality principle. If the choice is often difficult, the difficulty is endemic to issues implicating the religious guarantees of the First Amendment. Freedom of religion will be seriously jeopardized if we admit exceptions for no better reason than the difficulty of delineating hostility from neutrality in the closest cases.

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Second. It is only recently that our decisions have dealt with the question whether issues arising under the Establishment Clause may be isolated from problems implicating the Free Exercise Clause. Everson v. Board of Education, 330 U.S. 1, is, in my view, the first of our decisions which treats a problem of asserted unconstitutional involvement as raising questions purely under the Establishment Clause. A scrutiny of several earlier decisions said by some to have etched the contours of the clause shows that such cases neither raised nor decided any constitutional issues under the First Amendment. Bradfield v. Roberts, 175 U.S. 291, for example, involved challenges to a federal grant to a hospital administered by a Roman Catholic order. The Court rejected the claim for lack of evidence that any sectarian influence changed its character as a secular institution chartered as such by the Congress. 11

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Quick Bear v. Leupp, 210 U.S. 50, is also illustrative. The immediate question there was one of statutory construction, although the issue had originally involved the [374 U.S. 247] constitutionality of the use of federal funds to support sectarian education on Indian reservations. Congress had already prohibited federal grants for that purpose, thereby removing the broader issue, leaving only the question whether the statute authorized the appropriation for religious teaching of Treaty funds held by the Government in trust for the Indians. Since these were the Indians' own funds, the Court held only that the Indians might direct their use for such educational purposes as they chose, and that the administration by the Treasury of the disbursement of the funds did not inject into the case any issue of the propriety of the use of federal moneys. 12 Indeed, the Court expressly approved the reasoning of the Court of Appeals that to deny the Indians the right to spend their own moneys for religious purposes of their choice might well infringe the free exercise of their religion:

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it seems inconceivable that Congress should have intended to prohibit them from receiving religious education at their own cost if they so desired it….

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210 U.S. at 82. This case forecast, however, an increasingly troublesome First Amendment paradox: that the logical interrelationship between the Establishment and Free Exercise Clauses may produce situations where an injunction against an apparent establishment must be withheld in order to avoid infringement of rights of free exercise. That paradox was not squarely presented in Quick Bear, but the care taken by the Court [374 U.S. 248] to avoid a constitutional confrontation discloses an awareness of possible conflicts between the two clauses. I shall come back to this problem later, infra, pp. 296-299.

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A third case in this group is Cochran v. Louisiana State Board, 281 U.S. 370, which involved a challenge to a state statute providing public funds to support a loan of free textbooks to pupils of both public and private schools. The constitutional issues in this Court extended no further than the claim that this program amounted to a taking of private property for nonpublic use. The Court rejected the claim on the ground that no private use of property was involved; "…we cannot doubt that the taxing power of the State is exerted for a public purpose." 281 U.S. at 375. The case therefore raised no issue under the First Amendment. 13

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In Pierce v. Society of Sisters, 268 U.S. 510, a Catholic parochial school and a private but nonsectarian military academy challenged a state law requiring all children between certain ages to attend the public schools. This Court held the law invalid as an arbitrary and unreasonable interference both with the rights of the schools and with the liberty of the parents of the children who attended them. The due process guarantee of the Fourteenth Amendment "excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only." 268 U.S. at 535. While one of the plaintiffs was indeed a parochial school, the case obviously decided no First Amendment question, but recognized only the constitutional right to establish and patronize private schools—including parochial schools—which meet the state's reasonable minimum curricular requirements. [374 U.S. 249]

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Third. It is true, as the Court says, that the "two clauses [Establishment and Free Exercise] may overlap." Because of the overlap, however, our decisions under the Free Exercise Clause bear considerable relevance to the problem now before us, and should be briefly reviewed. The early free exercise cases generally involved the objections of religious minorities to the application to them of general nonreligious legislation governing conduct. Reynolds v. United States, 98 U.S. 145, involved the claim that a belief in the sanctity of plural marriage precluded the conviction of members of a particular sect under nondiscriminatory legislation against such marriage. The Court rejected the claim, saying:

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Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices…. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances. 14

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98 U.S. at 166-167. [374 U.S. 250]

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Davis v. Beason, 133 U.S. 333, similarly involved the claim that the First Amendment insulated from civil punishment certain practices inspired or motivated by religious beliefs. The claim was easily rejected:

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It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society.

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133 U.S. at 342. See also Mormon Church v. United States, 136 U.S. 1; Jacobson v. Massachusetts, 197 U.S. 11; Prince v. Massachusetts, 321 U.S. 158; Cleveland v. United States, 329 U.S. 14.

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But we must not confuse the issue of governmental power to regulate or prohibit conduct motivated by religious beliefs with the quite different problem of governmental authority to compel behavior offensive to religious principles. In Hamilton v. Regents of the University of California, 293 U.S. 245, the question was that of the power of a State to compel students at the State University to participate in military training instruction against their religious convictions. The validity of the statute was sustained against claims based upon the First Amendment. But the decision rested on a very narrow principle: since there was neither a constitutional right nor a legal obligation to attend the State University, the obligation to participate in military training courses, [374 U.S. 251] reflecting a legitimate state interest, might properly be imposed upon those who chose to attend. Although the rights protected by the First and Fourteenth Amendments were presumed to include

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the right to entertain the beliefs, to adhere to the principles and to teach the doctrines on which these students base their objections to the order prescribing military training,

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those Amendments were construed not to free such students from the military training obligations if they chose to attend the University. Justices Brandeis, Cardozo and Stone, concurring separately, agreed that the requirement infringed no constitutionally protected liberties. They added, however, that the case presented no question under the Establishment Clause. The military instruction program was not an establishment, since it in no way involved "instruction in the practice or tenets of a religion." 293 U.S. at 266. Since the only question was one of free exercise, they concluded, like the majority, that the strong state interest in training a citizen militia justified the restraints imposed, at least so long as attendance at the University was voluntary. 15

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Hamilton has not been overruled, although United States v. Schwimmer, 279 U.S. 644, and United States v. Macintosh, 283 U.S. 605, upon which the Court in Hamilton relied, have since been overruled by Girouard v. United States, 328 U.S. 61. But if Hamilton retains any vitality with respect to higher education, we recognized its inapplicability to cognate questions in the public primary and secondary schools when we held, in West Virginia Board of Education v. Barnette, supra, that a State had no power to expel from public schools students who refused on religious grounds to comply with a daily flag [374 U.S. 252] salute requirement. Of course, such a requirement was no more a law "respecting an establishment of religion" than the California law compelling the college students to take military training. The Barnette plaintiffs, moreover, did not ask that the whole exercise be enjoined, but only that an excuse or exemption be provided for those students whose religious beliefs forbade them to participate in the ceremony. The key to the holding that such a requirement abridged rights of free exercise lay in the fact that attendance at school was not voluntary but compulsory. The Court said:

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This issue is not prejudiced by the Court's previous holding that, where a State, without compelling attendance, extends college facilities to pupils who voluntarily enroll, it may prescribe military training as part of the course without offense to the Constitution…. Hamilton v. Regents, 293 U.S. 245. In the present case, attendance is not optional.

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319 U.S. at 631-632. The Barnette decision made another significant point. The Court held that the State must make participation in the exercise voluntary for all students, and not alone for those who found participation obnoxious on religious grounds. In short, there was simply no need to "inquire whether nonconformist beliefs will exempt from the duty to salute," because the Court found no state "power to make the salute a legal duty." 319 U.S. at 635.

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The distinctions between Hamilton and Barnette are, I think, crucial to the resolution of the cases before us. The different results of those cases are attributable only in part to a difference in the strength of the particular state interests which the respective statutes were designed to serve. Far more significant is the fact that Hamilton dealt with the voluntary attendance at college of young adults, while Barnette involved the compelled attendance [374 U.S. 253] of young children at elementary and secondary schools. 16 This distinction warrants a difference in constitutional results. And it is with the involuntary attendance of young school children that we are exclusively concerned in the cases now before the Court.

III

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 253

No one questions that the Framers of the First Amendment intended to restrict exclusively the powers of the Federal Government. 17 Whatever limitations that Amendment now imposes upon the States derive from the Fourteenth Amendment. The process of absorption of the religious guarantees of the First Amendment as protections against the States under the Fourteenth Amendment began with the Free Exercise Clause. In 1923 the Court held that the protections of the Fourteenth included at least a person's freedom "to worship God according to the dictates of his own conscience…. " 18 Meyer v. Nebraska, 262 U.S. 390, 399. See also Hamilton v. Regents, supra, at 262. Cantwell v. Connecticut, 310 U.S. 296, completed in 1940 the process of absorption [374 U.S. 254] of the Free Exercise Clause and recognized its dual aspect: the Court affirmed freedom of belief as an absolute liberty, but recognized that conduct, while it may also be comprehended by the Free Exercise Clause, "remains subject to regulation for the protection of society." 310 U.S. at 303-304. This was a distinction already drawn by Reynolds v. United States, supra. From the beginning, this Court has recognized that, while government may regulate the behavioral manifestations of religious beliefs, it may not interfere at all with the beliefs themselves.

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The absorption of the Establishment Clause has, however, come later, and by a route less easily charted. It has been suggested, with some support in history, that absorption of the First Amendment's ban against congressional legislation "respecting an establishment of religion" is conceptually impossible, because the Framers meant the Establishment Clause also to foreclose any attempt by Congress to disestablish the existing official state churches. 19 Whether or not such was the understanding of the Framers, and whether such a purpose would have inhibited the absorption of the Establishment Clause at the threshold of the Nineteenth Century, are questions not dispositive of our present inquiry. For it is [374 U.S. 255] clear on the record of history that the last of the formal state establishments was dissolved more than three decades before the Fourteenth Amendment was ratified, and thus the problem of protecting official state churches from federal encroachments could hardly have been any concern of those who framed the post-Civil War Amendments. 20 Any such objective of the First Amendment, having become historical anachronism by 1868, cannot be thought to have deterred the absorption of the Establishment Clause to any greater degree than it would, for example, have deterred the absorption of the Free Exercise Clause. That no organ of the Federal Government possessed in 1791 any power to restrain the interference of the States in religious matters is indisputable. See Permoli v. New Orleans, 3 How. 589. It is equally plain, on the other hand, that the Fourteenth Amendment created a panoply of new federal rights for the protection of citizens of the various States. And among those rights was freedom from such state governmental involvement in the affairs of religion as the Establishment Clause had originally foreclosed on the part of Congress. [374 U.S. 256]

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It has also been suggested that the "liberty" guaranteed by the Fourteenth Amendment logically cannot absorb the Establishment Clause because that Clause is not one of the provisions of the Bill of Rights which in terms protects a "freedom" of the individual. See Corwin, A Constitution of Powers in a Secular State (1951), 113-116. The fallacy in this contention, I think, is that it underestimates the role of the Establishment Clause as a co-guarantor, with the Free Exercise Clause, of religious liberty. The Framers did not entrust the liberty of religious beliefs to either clause alone. The Free Exercise Clause "was not to be the full extent of the Amendment's guarantee of freedom from governmental intrusion in matters of faith." McGowan v. Maryland, supra, at 464 (opinion of Fankfurter, J.).

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Finally, it has been contended that absorption of the Establishment Clause is precluded by the absence of any intention on the part of the Framers of the Fourteenth Amendment to circumscribe the residual powers of the States to aid religious activities and institutions in ways which fell short of formal establishments. 21 That argument relies in part upon the express terms of the [374 U.S. 257] abortive Blaine Amendment—proposed several years after the adoption of the Fourteenth Amendment—which would have added to the First Amendment a provision that "[n]o State shall make any law respecting an establishment of religion…. " Such a restriction would have been superfluous, it is said, if the Fourteenth Amendment had already made the Establishment Clause binding upon the States.

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The argument proves too much, for the Fourteenth Amendment's protection of the free exercise of religion can hardly be questioned; yet the Blaine Amendment would also have added an explicit protection against state laws abridging that liberty. 22 Even if we assume that the draftsmen of the Fourteenth Amendment saw no immediate connection between its protections against state action infringing personal liberty and the guarantees of the First Amendment, it is certainly too late in the day to suggest that their assumed inattention to the question dilutes the force of these constitutional guarantees in their application to the States. 23 It is enough to conclude [374 U.S. 258] that the religious liberty embodied in the Fourteenth Amendment would not be viable if the Constitution were interpreted to forbid only establishments ordained by Congress. 24 [374 U.S. 259]

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The issue of what particular activities the Establishment Clause forbids the States to undertake is our more immediate concern. In Everson v. Board of Education, 330 U.S. 1, 15-16, a careful study of the relevant history led the Court to the view, consistently recognized in decisions since Everson, that the Establishment Clause embodied the Framers' conclusion that government and religion have discrete interests which are mutually best served when each avoids too close a proximity to the other. It is not only the nonbeliever who fears the injection of sectarian doctrines and controversies into the civil polity, but in as high degree it is the devout believer who fears the secularization of a creed which becomes too deeply involved with and dependent upon the government. 25 It [374 U.S. 260] has rightly been said of the history of the Establishment Clause that

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our tradition of civil liberty rests not only on the secularism of a Thomas Jefferson, but also on the fervent sectarianism…of a Roger Williams.

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Freund, The Supreme Court of the United States (1961), 84.

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Our decisions on questions of religious education or exercises in the public schools have consistently reflected this dual aspect of the Establishment Clause. Engel v. Vitale unmistakably has its roots in three earlier cases which, on cognate issues, shaped the contours of the Establishment Clause. First, in Everson, the Court held that reimbursement by the town of parents for the cost of transporting their children by public carrier to parochial (as well as public and private nonsectarian) schools did not offend the Establishment Clause. Such reimbursement, by easing the financial burden upon Catholic parents, may indirectly have fostered the operation of the Catholic schools, and may thereby indirectly have facilitated the teaching of Catholic principles, thus serving ultimately a religious goal. But this form of governmental assistance was difficult to distinguish from myriad other incidental, if not insignificant, government benefits enjoyed by religious institutions—fire and police protection, tax exemptions, and the pavement of streets and sidewalks, for example.

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The State contributes no money to the schools. It does not support them. Its legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from [374 U.S. 261] accredited schools.

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330 U.S. at 18. Yet even this form of assistance was thought by four Justices of the Everson Court to be barred by the Establishment Clause because too perilously close to that public support of religion forbidden by the First Amendment.

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The other two cases, Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, and Zorach v. Clauson, 343 U.S. 306, can best be considered together. Both involved programs of released time for religious instruction of public school students. I reject the suggestion that Zorach overruled McCollum in silence. 26 The distinction which the Court drew in Zorach between the two cases is, in my view, faithful to the function of the Establishment Clause.

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I should first note, however, that McCollum and Zorach do not seem to me distinguishable in terms of the free exercise claims advanced in both cases. 27 The nonparticipant in the McCollum program was given secular instruction in a separate room during the times his classmates had religious lessons; the nonparticipant in any Zorach program also received secular instruction, while his classmates repaired to a place outside the school for religious instruction.

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The crucial difference, I think, was that the McCollum program offended the Establishment Clause, while the Zorach program did not. This was not, in my view, because of the difference in public expenditures involved. True, the McCollum program involved the regular use of school facilities, classrooms, heat and light and time from the regular school day—even though the actual [374 U.S. 262] incremental cost may have been negligible. All religious instruction under the Zorach program, by contrast, was carried on entirely off the school premises, and the teacher's part was simply to facilitate the children's release to the churches. The deeper difference was that the McCollum program placed the religious instructor in the public school classroom in precisely the position of authority held by the regular teachers of secular subjects, while the Zorach program did not. 28 The McCollum program, [374 U.S. 263] in lending to the support of sectarian instruction all the authority of the governmentally operated public school system, brought government and religion into that proximity which the Establishment Clause forbids. To be sure, a religious teacher presumably commands substantial respect and merits attention in his own right. But the Constitution does not permit that prestige and capacity for influence to be augmented by investiture of all the symbols of authority at the command of the lay teacher for the enhancement of secular instruction.

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More recent decisions have further etched the contours of Establishment. In the Sunday Law Cases, we found in state laws compelling a uniform day of rest from worldly labor no violation of the Establishment Clause (McGowan v. Maryland, 366 U.S. 420). The basic [374 U.S. 264] ground of our decision was that, granted the Sunday Laws were first enacted for religious ends, they were continued in force for reasons wholly secular, namely, to provide a universal day of rest and ensure the health and tranquillity of the community. In other words, government may originally have decreed a Sunday day of rest for the impermissible purpose of supporting religion, but abandoned that purpose and retained the laws for the permissible purpose of furthering overwhelmingly secular ends.

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Such was the evolution of the contours of the Establishment Clause before Engel v. Vitale. There, a year ago, we held that the daily recital of the state-composed Regents' Prayer constituted an establishment of religion because, although the prayer itself revealed no sectarian content or purpose, its nature and meaning were quite clearly religious. New York, in authorizing its recitation, had not maintained that distance between the public and the religious sectors commanded by the Establishment Clause when it placed the "power, prestige and financial support of government" behind the prayer. In Engel, as in McCollum, it did not matter that the amount of time and expense allocated to the daily recitation was small, so long as the exercise itself was manifestly religious. Nor did it matter that few children had complained of the practice, for the measure of the seriousness of a breach of the Establishment Clause has never been thought to be the number of people who complain of it.

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We also held two Terms ago, in Torcaso v. Watkins, supra, that a State may not constitutionally require an applicant for the office of Notary Public to swear or affirm that he believes in God. The problem of that case was strikingly similar to the issue presented 18 years before in the flag salute case, West Virginia Board of Education v. Barnette, supra. In neither case was there any claim of establishment of religion, but only of infringement of [374 U.S. 265] the individual's religious liberty—in the one case, that of the nonbeliever who could not attest to a belief in God; in the other, that of the child whose creed forbade in to salute the flag. But Torcaso added a new element not present in Barnette. The Maryland test oath involved an attempt to employ essentially religious (albeit nonsectarian) means to achieve a secular goal to which the means bore no reasonable relationship. No one doubted the State's interest in the integrity of its Notaries Public, but that interest did not warrant the screening of applicants by means of a religious test. The Sunday Law Cases were different in that respect. Even if Sunday Laws retain certain religious vestiges, they are enforced today for essentially secular objectives which cannot be effectively achieved in modern society except by designating Sunday as the universal day of rest. The Court's opinions cited very substantial problems in selecting or enforcing an alternative day of rest. But the teaching of both Torcaso and the Sunday Law Cases is that government may not employ religious means to serve secular interests, however legitimate they may be, at least without the clearest demonstration that nonreligious means will not suffice. 29 [374 U.S. 266]

IV

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I turn now to the cases before us. 30 The religious nature of the exercises here challenged seems plain. Unless Engel v. Vitale is to be overruled or we are to engage in wholly disingenuous distinction, we cannot sustain [374 U.S. 267] these practices. Daily recital of the Lord's Prayer and the reading of passages of Scripture are quite as clearly breaches of the command of the Establishment Clause as was the daily use of the rather bland Regents' Prayer in the New York public schools. Indeed, I would suppose that, if anything, the Lord's Prayer and the Holy Bible are more clearly sectarian, and the present violations of the First Amendment consequently more serious. But the religious exercises challenged in these cases have a long history. And, almost from the beginning, Bible reading and daily prayer in the schools have been the subject of debate, criticism by educators and other public officials, and proscription by courts and legislative councils. At the outset, then, we must carefully canvass both aspects of this history.

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The use of prayers and Bible readings at the opening of the school day long antedates the founding of our Republic. The Rules of the New Haven Hopkins Grammar School required in 1684

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[t]hat, the Scholars being [374 U.S. 268] called together, the Mr. shall every morning begin his work with a short prayer for a blessing on his Laboures and their learning…. 31

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More rigorous was the provision in a 1682 contract with a Dutch schoolmaster in Flatbush, New York:

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When the school begins, one of the children shall read the morning prayer, as it stands in the catechism, and close with the prayer before dinner; in the afternoon, it shall begin with the prayer after dinner, and end with the evening prayer. The evening school shall begin with the Lord's prayer, and close by singing a psalm. 32

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After the Revolution, the new States uniformly continued these long-established practices in the private and the few public grammar schools. The school committee of Boston in 1789, for example, required the city's several schoolmasters "daily to commence the duties of their office by prayer and reading a portion of the Sacred Scriptures…. " 33 That requirement was mirrored throughout the original States, and exemplified the universal practice well into the nineteenth century. As the free public schools gradually supplanted the private academies and sectarian schools between 1800 and 1850, morning devotional exercises were retained with few alterations. Indeed, public pressures upon school administrators in many parts of the country would hardly have condoned abandonment of practices to which a century or more of private religious education had accustomed the American people. 34 The controversy centered, in [374 U.S. 269] fact, principally about the elimination of plainly sectarian practices and textbooks, and led to the eventual substitution of nonsectarian, though still religious, exercises and materials. 35

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Statutory provision for daily religious exercises is, however, of quite recent origin. At the turn of this century, there was but one State—Massachusetts—which had a law making morning prayer or Bible reading obligatory. Statutes elsewhere either permitted such practices or simply left the question to local option. It was not until after 1910 that 11 more States, within a few years, joined Massachusetts in making one or both exercises compulsory. 36 The Pennsylvania law with which we are [374 U.S. 270] concerned in the Schempp case, for example, took effect in 1913, and even the Rule of the Baltimore School Board involved in the Murray case dates only from 1905. In no State has there ever been a constitutional or statutory prohibition against the recital of prayers or the reading of Scripture, although a number of States have outlawed these practices by judicial decision or administrative order. What is noteworthy about the panoply of state and local regulations from which these cases emerge is the relative recency of the statutory codification of practices which have ancient roots, and the rather small number of States which have ever prescribed compulsory religious exercises in the public schools.

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The purposes underlying the adoption and perpetuation of these practices are somewhat complex. It is beyond question that the religious benefits and values realized from daily prayer and Bible reading have usually been considered paramount, and sufficient to justify the continuation of such practices. To Horace Mann, embroiled in an intense controversy over the role of sectarian instruction and textbooks in the Boston public schools, there was little question that the regular use of the Bible—which he thought essentially nonsectarian—would bear fruit in the spiritual enlightenment of his pupils. 37 A contemporary of Mann's, the Commissioner of Education of a neighboring State, expressed a view which many enlightened educators of that day shared:

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As a textbook of morals, the Bible is preeminent, and should have a prominent place in our schools, [374 U.S. 271] either as a reading book or as a source of appeal and instruction. Sectarianism, indeed, should not be countenanced in the schools; but the Bible is not sectarian…. The Scriptures should at least be read at the opening of the school, if no more. Prayer may also be offered with the happiest effects. 38

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Wisconsin's Superintendent of Public Instruction, writing a few years later in 1858, reflected the attitude of his eastern colleagues, in that he regarded

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with special favor the use of the Bible in public schools, as preeminently first in importance among textbooks for teaching the noblest principles of virtue, morality, patriotism, and good order—love and reverence for God—charity and good will to man. 39

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Such statements reveal the understanding of educators that the daily religious exercises in the schools served broader goals than compelling formal worship of God or fostering church attendance. The religious aims of the educators who adopted and retained such exercises were comprehensive, and in many cases quite devoid of sectarian bias—but the crucial fact is that they were nonetheless religious. While it has been suggested, see pp. 278-281, infra that daily prayer and reading of Scripture now serve secular goals as well, there can be no doubt that the origins of these practices were unambiguously religious, even where the educator's aim was not to win adherents to a particular creed or faith.

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Almost from the beginning, religious exercises in the public schools have been the subject of intense criticism, vigorous debate, and judicial or administrative prohibition. Significantly, educators and school boards [374 U.S. 272] early entertained doubts about both the legality and the soundness of opening the school day with compulsory prayer or Bible reading. Particularly in the large Eastern cities, where immigration had exposed the public schools to religious diversities and conflicts unknown to the homogeneous academies of the eighteenth century, local authorities found it necessary even before the Civil War to seek an accommodation. In 1843, the Philadelphia School Board adopted the following resolutions:

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RESOLVED, that no children be required to attend or unite in the reading of the Bible in the Public Schools, whose parents are conscientiously opposed thereto:

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RESOLVED, that those children whose parents conscientiously prefer and desire any particular version of the Bible, without note or comment, be furnished with same. 40

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A decade later, the Superintendent of Schools of New York State issued an even bolder decree that prayers could no longer be required as part of public school activities, and that, where the King James Bible was read, Catholic students could not be compelled to attend. 41 This type of accommodation was not restricted to the East Coast; the Cincinnati Board of Education resolved in 1869 that

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religious instruction and the reading of religious books, including the Holy Bible, are prohibited in the common schools of Cincinnati, it being the true object and intent of this rule to allow the children of the parents of all sects and opinions, in matters of faith and worship, [374 U.S. 273] to enjoy alike the benefit of the common school fund. 42

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The Board repealed at the same time an earlier regulation which had required the singing of hymns and psalms to accompany the Bible reading at the start of the school day. And, in 1889, one commentator ventured the view that "[t]here is not enough to be gained from Bible reading to justify the quarrel that has been raised over it." 43

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Thus, a great deal of controversy over religion in the public schools had preceded the debate over the Blaine Amendment, precipitated by President Grant's insistence that matters of religion should be left "to the family altar, the church, and the private school, supported entirely by private contributions." 44 There was ample precedent, too, for Theodore Roosevelt's declaration that, in the interest of "absolutely nonsectarian public schools," it was "not our business to have the Protestant Bible or the Catholic Vulgate or the Talmud read in those schools." 45 The same principle appeared in the message of an Ohio Governor who vetoed a compulsory Bible reading bill in 1925:

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It is my belief that religious teaching in our homes, Sunday schools, churches, by the good [374 U.S. 274] mothers, fathers, and ministers of Ohio is far preferable to compulsory teaching of religion by the state. The spirit of our federal and state constitutions from the beginning…[has] been to leave religious instruction to the discretion of parents. 46

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The same theme has recurred in the opinions of the Attorneys General of several States holding religious exercises or instruction to be in violation of the state or federal constitutional command of separation of church and state. 47 Thus, the basic principle upon which our decision last year in Engel v. Vitale necessarily rested, and which we reaffirm today, can hardly be thought to be radical or novel.

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Particularly relevant for our purposes are the decisions of the state courts on questions of religion in the public schools. Those decisions, while not, of course, authoritative in this Court, serve nevertheless to define the problem before us and to guide our inquiry. With the growth of religious diversity and the rise of vigorous dissent it was inevitable that the courts would be called upon to enjoin religious practices in the public schools which offended certain sects and groups. The earliest of such decisions declined to review the propriety of actions taken by school authorities, so long as those actions were within [374 U.S. 275] the purview of the administrators' powers. 48 Thus, where the local school board required religious exercises, the courts would not enjoin them, 49 and where, as in at least one case, the school officials forbade devotional practices, the court refused on similar grounds to overrule that decision. 50 Thus, whichever way the early cases came up, the governing principle of nearly complete deference to administrative discretion effectively foreclosed any consideration of constitutional questions.

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 275

The last quarter of the nineteenth century found the courts beginning to question the constitutionality of public school religious exercises. The legal context was still, of course, that of the state constitutions, since the First Amendment had not yet been held applicable to state action. And the state constitutional prohibitions against church-state cooperation or governmental aid to religion were generally less rigorous than the Establishment Clause of the First Amendment. It is therefore remarkable that the courts of a half dozen States found compulsory religious exercises in the public schools in violation of their respective state constitutions. 51 These [374 U.S. 276] courts attributed much significance to the clearly religious origins and content of the challenged practices, and to the impossibility of avoiding sectarian controversy in their conduct. The Illinois Supreme Court expressed in 1910 the principles which characterized these decisions:

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The public school is supported by the taxes which each citizen, regardless of his religion or his lack of it, is compelled to pay. The school, like the government, is simply a civil institution. It is secular, and not religious, in its purposes. The truths of the Bible are the truths of religion, which do not come within the province of the public school…. No one denies that they should be taught to the youth of the State. The constitution and the law do not interfere with such teaching, but they do banish theological polemics from the schools and the school districts. This is done not from any hostility to religion, but because it is no part of the duty of the State to teach religion—to take the money of all and apply it to teaching the children of all the religion of a part only. Instruction in religion must be voluntary.

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People ex rel. Ring v. Board of Education, 245 Ill. 334, 349, 92 N.E. 251, 256 (1910). The Supreme Court of South Dakota, in banning devotional exercises from the public schools of that State, also cautioned that

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[t]he state as an educator must keep out of this field, and especially is this true in the common schools, where the child is immature, without fixed religious convictions….

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State ex rel. Finger v. Weedman, 55 S.D. 343, 357, 226 N.W. 348, 354 (1929). [374 U.S. 277]

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Even those state courts which have sustained devotional exercises under state law 52 have usually recognized the primarily religious character of prayers and Bible readings. If such practices were not for that reason unconstitutional, it was necessarily because the state constitution forbade only public expenditures for sectarian instruction, or for activities which made the schoolhouse a "place of worship," but said nothing about the subtler question of laws "respecting an establishment of religion." 53 Thus, the panorama of history permits no [374 U.S. 278] other conclusion than that daily prayers and Bible readings in the public schools have always been designed to be, and have been regarded as, essentially religious exercises. Unlike the Sunday closing laws, these exercises appear neither to have been divorced from their religious origins nor deprived of their centrally religious character by the passage of time, 54 cf. McGowan v. Maryland, supra, at 442-445. On this distinction alone we might well rest a constitutional decision. But three further contentions have been pressed in the argument of these cases. These contentions deserve careful consideration, for if the position of the school authorities were correct in respect to any of them, we would be misapplying the principles of Engel v. Vitale.

A

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First, it is argued that, however clearly religious may have been the origins and early nature of daily prayer and Bible reading, these practices today serve so clearly secular educational purposes that their religious attributes may be overlooked. I do not doubt, for example, that morning devotional exercises may foster better discipline in the classroom, and elevate the spiritual level on which the school day opens. The Pennsylvania Superintendent of Public Instruction, testifying by deposition in the Schempp case, offered his view that daily Bible reading

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places upon the children or those hearing the reading of this, and the atmosphere which goes on in the reading…one of the last vestiges of moral value [374 U.S. 279] that we have left in our school system.

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The exercise thus affords, the Superintendent concluded, "a strong contradiction to the materialistic trends of our time." Baltimore's Superintendent of Schools expressed a similar view of the practices challenged in the Murray case, to the effect that

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[t]he acknowledgement of the existence of God as symbolized in the opening exercises establishes a discipline tone which tends to cause each individual pupil to constrain his overt acts and to consequently conform to accepted standards of behavior during his attendance at school.

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These views are by no means novel, see, e.g., Billard v. Board of Education, 69 Kan. 53, 57-58, 76 P. 422, 423 (1904). 55

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It is not the business of this Court to gainsay the judgments of experts on matters of pedagogy. Such decisions must be left to the discretion of those administrators charged with the supervision of the Nation's public schools. The limited province of the courts is to determine whether the means which the educators have chosen to achieve legitimate pedagogical ends infringe the constitutional freedoms of the First Amendment. The secular purposes which devotional exercises are said to serve fall into two categories—those which depend upon an immediately religious experience shared by the participating children and those which appear sufficiently divorced from the religious content of the devotional material that they can be served equally by nonreligious [374 U.S. 280] materials. With respect to the first objective, much has been written about the moral and spiritual values of infusing some religious influence or instruction into the public school classroom. 56 To the extent that only religious materials will serve this purpose, it seems to me that the purpose, as well as the means, is so plainly religious that the exercise is necessarily forbidden by the Establishment Clause. The fact that purely secular benefits may eventually result does not seem to me to justify the exercises, for similar indirect nonreligious benefits could no doubt have been claimed for the released time program invalidated in McCollum.

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The second justification assumes that religious exercises at the start of the school day may directly serve solely secular ends—for example, by fostering harmony and tolerance among the pupils, enhancing the authority of the teacher, and inspiring better discipline. To the extent that such benefits result not from the content of the readings and recitation, but simply from the holding of such a solemn exercise at the opening assembly or the first class of the day, it would seem that less sensitive materials might equally well serve the same purpose. I have previously suggested that Torcaso and the Sunday Law Cases forbid the use of religious means to achieve secular [374 U.S. 281] ends where nonreligious means will suffice. That principle is readily applied to these cases. It has not been shown that readings from the speeches and messages of great Americans, for example, or from the documents of our heritage of liberty, daily recitation of the Pledge of Allegiance, or even the observance of a moment of reverent silence at the opening of class, may not adequately serve the solely secular purposes of the devotional activities without jeopardizing either the religious liberties of any members of the community or the proper degree of separation between the spheres of religion and government. 57 Such substitutes would, I think, be unsatisfactory or inadequate only to the extent that the present activities do, in fact, serve religious goals. While I do not question the judgment of experienced educators that the challenged practices may well achieve valuable secular ends, it seems to me that the State acts unconstitutionally if it either sets about to attain even indirectly religious ends by religious means, or if it uses religious means to serve secular ends where secular means would suffice.

B

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Second, it is argued that the particular practices involved in the two cases before us are unobjectionable [374 U.S. 282] because the prefer no particular sect or sects at the expense of others. Both the Baltimore and Abington procedures permit, for example, the reading of any of several versions of the Bible, and this flexibility is said to ensure neutrality sufficiently to avoid the constitutional prohibition. One answer, which might be dispositive, is that any version of the Bible is inherently sectarian, else there would be no need to offer a system of rotation or alternation of versions in the first place, that is, to allow different sectarian versions to be used on different days. The sectarian character of the Holy Bible has been at the core of the whole controversy over religious practices in the public schools throughout its long and often bitter history. 58 To [374 U.S. 283] vary the version as the Abington and Baltimore schools have done may well be less offensive than to read from the King James version every day, as once was the practice. But the result even of this relatively benign procedure is that majority sects are preferred in approximate proportion to their representation in the community and in the student body, while the smaller sects suffer commensurate discrimination. So long as the subject matter of the exercise is sectarian in character, these consequences cannot be avoided.

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The argument contains, however, a more basic flaw. There are persons in every community—often deeply devout—to whom any version of the Judaeo-Christian Bible is offensive. 59 There are others whose reverence for the Holy Scriptures demands private study or reflection, and to whom public reading or recitation is sacrilegious, as one of the expert witnesses at the trial of the Schempp case explained. To such persons, it is not the fact of using the Bible in the public schools, nor the content of any particular version, that is offensive, but only the manner in [374 U.S. 284] which it is used. 60 For such persons, the anathema of public communion is even more pronounced when prayer is involved. Many deeply devout persons have always regarded prayer as a necessarily private experience. 61 One Protestant group recently commented, for example: "When one thinks of prayer as sincere outreach of a [374 U.S. 285] human soul to the Creator, 'required prayer' becomes an absurdity." 62 There is a similar problem with respect to comment upon the passages of Scripture which are to be read. Most present statutes forbid comment, and this practice accords with the views of many religious groups as to the manner in which the Bible should be read. However, as a recent survey discloses, scriptural passages read without comment frequently convey no message to the younger children in the school. Thus, there has developed a practice in some schools of bridging the gap between faith and understanding by means of "definitions," even where "comment" is forbidden by statute. 63 The present practice, therefore, poses a difficult dilemma: while Bible reading is almost universally required to be without comment, since only by such a prohibition can sectarian interpretation be excluded from the classroom, [374 U.S. 286] the rule breaks down at the point at which rudimentary definitions of Biblical terms are necessary for comprehension if the exercise is to be meaningful at all.

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It has been suggested that a tentative solution to these problems may lie in the fashioning of a "common core" of theology tolerable to all creeds but preferential to none. 64 But as one commentator has recently observed, "[h]istory is not encouraging to" those who hope to fashion a "common denominator of religion detached from its manifestation in any organized church." Sutherland, Establishment According to Engel, 76 Harv.L.Rev. 25, 51 (1962). Thus, the notion of a "common core" litany or supplication offends many deeply devout worshippers who do not find clearly sectarian practices objectionable. 65 Father Gustave Weigel has recently expressed [374 U.S. 287] a widely shared view:

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The moral code held by each separate religious community can reductively be unified, but the consistent particular believer wants no such reduction. 66

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And, as the American Council on Education warned several years ago,

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The notion of a common core suggests a watering down of the several faiths to the point where common essentials appear. This might easily lead to a new sect—a public school sect—which would take its place alongside the existing faiths and compete with them. 67

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Engel is surely authority that nonsectarian religious practices, equally with sectarian exercises, violate the Establishment Clause. Moreover, even if the Establishment Clause were oblivious to nonsectarian religious practices, I think it quite likely that the "common core" approach would be sufficiently objectionable to many groups to be foreclosed by the prohibitions of the Free Exercise Clause.

C

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 287

A third element which is said to absolve the practices involved in these cases from the ban of the religious guarantees of the Constitution is the provision to excuse or exempt students who wish not to participate. Insofar as these practices are claimed to violate the Establishment [374 U.S. 288] Clause, I find the answer which the District Court gave after our remand of Schempp to be altogether dispositive:

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The fact that some pupils, or theoretically all pupils, might be excused from attendance at the exercises does not mitigate the obligatory nature of the ceremony…. The exercises are held in the school buildings, and perforce are conducted by and under the authority of the local school authorities and during school sessions. Since the statute requires the reading of the "Holy Bible," a Christian document, the practice, as we said in our first opinion, prefers the Christian religion. The record demonstrates that it was the intention of the General Assembly of the Commonwealth of Pennsylvania to introduce a religious ceremony into the public schools of the Commonwealth.

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201 F.Supp. at 819. Thus, the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question, if it is once found that these practices are essentially religious exercises designed at least in part to achieve religious aims through the use of public school facilities during the school day.

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The more difficult question, however, is whether the availability of excusal for the dissenting child serves to refute challenges to these practices under the Free Exercise Clause. While it is enough to decide these cases to dispose of the establishment questions, questions of free exercise are so inextricably interwoven into the history and present status of these practices as to justify disposition of this second aspect of the excusal issue. The answer is that the excusal procedure itself necessarily operates in such a way as to infringe the rights of free exercise of those children who wish to be excused. We have held in Barnette and Torcaso, respectively, that a State may require neither public school students nor candidates [374 U.S. 289] for an office of public trust to profess beliefs offensive to religious principles. By the same token, the State could not constitutionally require a student to profess publicly his disbelief as the prerequisite to the exercise of his constitutional right of abstention. And apart from Torcaso and Barnette, I think Speiser v. Randall, 357 U.S. 513, suggests a further answer. We held there that a State may not condition the grant of a tax exemption upon the willingness of those entitled to the exemption to affirm their loyalty to the Government, even though the exemption was itself a matter of grace, rather than of constitutional right. We concluded that to impose upon the eligible taxpayers the affirmative burden of proving their loyalty impermissibly jeopardized the freedom to engage in constitutionally protected activities close to the area to which the loyalty oath related. Speiser v. Randall seems to me to dispose of two aspects of the excusal or exemption procedure now before us. First, by requiring what is tantamount in the eyes of teachers and schoolmates to a profession of disbelief, or at least of nonconformity, the procedure may well deter those children who do not wish to participate for any reason based upon the dictates of conscience from exercising an indisputably constitutional right to be excused. 68 Thus, the excusal [374 U.S. 290] provision in its operation subjects them to a cruel dilemma. In consequence, even devout children may well avoid claiming their right and simply continue to participate in exercises distasteful to them because of an understandable reluctance to be stigmatized as atheists or nonconformists simply on the basis of their request.

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Such reluctance to seek exemption seems all the more likely in view of the fact that children are disinclined at this age to step out of line or to flout "peer-group norms." Such is the widely held view of experts who have studied the behaviors and attitudes of children. 69 This is also [374 U.S. 291] the basis of Mr. Justice Frankfurter's answer to a similar contention made in the McCollum case:

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That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and nonconformity is not an [374 U.S. 292] outstanding characteristic of children. The result is an obvious pressure upon children to attend.

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333 U.S. at 227. Also apposite is the answer given more than 70 years ago by the Supreme Court of Wisconsin to the argument that an excusal provision saved a public school devotional exercise from constitutional invalidation:

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…the excluded pupil loses caste with his fellows, and is liable to be regarded with aversion, and subjected to reproach and insult. But it is a sufficient refutation of the argument that the practice in question tends to destroy the equality of the pupils which the constitution seeks to establish and protect, and puts a portion of them to serious disadvantage in many ways with respect to the others.

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State ex rel. Weiss v. District Board of School District No. 8, 76 Wis. 177, 200, 44 N.W. 967, 975. And, 50 years ago, a like answer was offered by the Louisiana Supreme Court:

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Under such circumstances, the children would be excused from the opening exercises…because of their religious beliefs. And excusing such children on religious grounds, although the number excused might be very small, would be a distinct preference in favor of the religious beliefs of the majority, and would work a discrimination against those who were excused. The exclusion of a pupil under such circumstances puts him in a class by himself; it subjects him to a religious stigma, and all because of his religious belief. Equality in public education would be destroyed by such act, under a Constitution which seeks to establish equality and freedom in religious matters.

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Herold v. Parish Board of School Directors, 136 La. 1034, 1049-1050, 68 So. 116, 121. See also Tudor v. Board of Education, 14 N.J. 31, 48-52, [374 U.S. 293] 100 A.2d 857, 867-868; Brown v. Orange County Board of Public Instruction, 128 So.2d 181, 185 (Fla.App.).

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Speiser v. Randall also suggests the answer to a further argument based on the excusal procedure. It has been suggested by the School Board, in Schempp, that we ought not pass upon the appellees' constitutional challenge at least until the children have availed themselves of the excusal procedure and found it inadequate to redress their grievances. Were the right to be excused not itself of constitutional stature, I might have some doubt about this issue. But we held in Speiser that the constitutional vice of the loyalty oath procedure discharged any obligation to seek the exemption before challenging the constitutionality of the conditions upon which it might have been denied. 357 U.S. at 529. Similarly, we have held that one need not apply for a permit to distribute constitutionally protected literature, Lovell v. Griffin, 303 U.S. 444, or to deliver a speech, Thomas v. Collins, 323 U.S. 516, before he may attack the constitutionality of a licensing system of which the defect is patent. Insofar as these cases implicate only questions of establishment, it seems to me that the availability of an excuse is constitutionally irrelevant. Moreover, the excusal procedure seems to me to operate in such a way as to discourage the free exercise of religion on the part of those who might wish to utilize it, thereby rendering it unconstitutional in an additional and quite distinct respect.

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To summarize my views concerning the merits of these two cases: the history, the purpose and the operation of the daily prayer recital and Bible reading leave no doubt that these practices, standing by themselves, constitute an impermissible breach of the Establishment Clause. Such devotional exercises may well serve legitimate nonreligious purposes. To the extent, however, that such purposes [374 U.S. 294] are really without religious significance, it has never been demonstrated that secular means would not suffice. Indeed, I would suggest that patriotic or other nonreligious materials might provide adequate substitutes—inadequate only to the extent that the purposes now served are indeed directly or indirectly religious. Under such circumstances, the States may not employ religious means to reach a secular goal unless secular means are wholly unavailing. I therefore agree with the Court that the judgment in Schempp, No. 142, must be affirmed, and that, in Murray, No. 119, must be reversed.

V

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 294

These considerations bring me to a final contention of the school officials in these cases: that the invalidation of the exercises at bar permits this Court no alternative but to declare unconstitutional every vestige, however slight, of cooperation or accommodation between religion and government. I cannot accept that contention. While it is not, of course, appropriate for this Court to decide questions not presently before it, I venture to suggest that religious exercises in the public schools present a unique problem. For not every involvement of religion in public life violates the Establishment Clause. Our decision in these cases does not clearly forecast anything about the constitutionality of other types of interdependence between religious and other public institutions.

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Specifically, I believe that the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers. It is a line which the Court has consistently sought to mark in its decisions expounding the religious guarantees of the First Amendment. What the Framers meant to foreclose, and what our decisions under the Establishment Clause have forbidden, [374 U.S. 295] are those involvements of religious with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends where secular means would suffice. When the secular and religious institutions become involved in such a manner, there inhere in the relationship precisely those dangers—as much to church as to state—which the Framers feared would subvert religious liberty and the strength of a system of secular government. On the other hand, there may be myriad forms of involvements of government with religion which do not import such dangers, and therefore should not, in my judgment, be deemed to violate the Establishment Clause. Nothing in the Constitution compels the organs of government to be blind to what everyone else perceives—that religious differences among Americans have important and pervasive implications for our society. Likewise, nothing in the Establishment Clause forbids the application of legislation having purely secular ends in such a way as to alleviate burdens upon the free exercise of an individual's religious beliefs. Surely the Framers would never have understood that such a construction sanctions that involvement which violates the Establishment Clause. Such a conclusion can be reached, I would suggest, only by using the words of the First Amendment to defeat its very purpose.

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The line between permissible and impermissible forms of involvement between government and religion has already been considered by the lower federal and state courts. I think a brief survey of certain of these forms of accommodation will reveal that the First Amendment commands not official hostility toward religion, but only a strict neutrality in matters of religion. Moreover, it may serve to suggest that the scope of our holding today [374 U.S. 296] is to be measured by the special circumstances under which these cases have arisen, and by the particular dangers to church and state which religious exercises in the public schools present. It may be helpful for purposes of analysis to group these other practices and forms of accommodation into several rough categories.

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A. The Conflict Between Establishment and Free Exercise.—There are certain practices, conceivably violative of the Establishment Clause, the striking down of which might seriously interfere with certain religious liberties also protected by the First Amendment. 70 Provisions for churches and chaplains at military establishments for those in the armed services may afford one such example. 71 [374 U.S. 297] The like provision by state and federal governments for chaplains in penal institutions may afford another example. 72 It is argued that such provisions may be assumed to contravene the Establishment Clause, yet be sustained on constitutional grounds as necessary to secure to the members of the Armed Forces and prisoners those rights of worship guaranteed under the Free Exercise Clause. Since government has deprived such persons of the opportunity [374 U.S. 298] to practice their faith at places of their choice, the argument runs, government may, in order to avoid infringing the free exercise guarantees, provide substitutes where it requires such persons to be. Such a principle might support, for example, the constitutionality of draft exemptions for ministers and divinity students, 73 cf. Selective Draft Law Cases, 245 U.S. 366, 389-390; of the excusal of children from school on their respective religious holidays, and of the allowance by government of temporary use of public buildings by religious organizations when their own churches have become unavailable because of a disaster or emergency. 74

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Such activities and practices seem distinguishable from the sponsorship of daily Bible reading and prayer recital. For one thing, there is no element of coercion present in the appointment of military or prison chaplains; the soldier or convict who declines the opportunities for worship would not ordinarily subject himself to the suspicion or obloquy of his peers. Of special significance to this distinction is the fact that we are here usually dealing [374 U.S. 299] with adults, not with impressionable children as in the public schools. Moreover, the school exercises are not designed to provide the pupils with general opportunities for worship denied them by the legal obligation to attend school. The student's compelled presence in school for five days a week in no way renders the regular religious facilities of the community less accessible to him than they are to others. The situation of the school child is therefore plainly unlike that of the isolated soldier or the prisoner.

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The State must be steadfastly neutral in all matters of faith, and neither favor nor inhibit religion. In my view, government cannot sponsor religious exercises in the public schools without jeopardizing that neutrality. On the other hand, hostility, not neutrality, would characterize the refusal to provide chaplains and places of worship for prisoners and soldiers cut off by the State from all civilian opportunities for public communion, the withholding of draft exemptions for ministers and conscientious objectors, or the denial of the temporary use of an empty public building to a congregation whose place of worship has been destroyed by fire or flood. I do not say that government must provide chaplains or draft exemptions, or that the courts should intercede if it fails to do so.

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B. Establishment and Exercises in Legislative Bodies.—The saying of invocational prayers in legislative chambers, state or federal, and the appointment of legislative chaplains, might well represent no involvements of the kind prohibited by the Establishment Clause. 75 Legislators, federal and state, are mature adults who may presumably absent themselves from such public and ceremonial [374 U.S. 300] exercises without incurring any penalty, direct or indirect. It may also be significant that, at least in the case of the Congress, Art. I, § 5, of the Constitution makes each House the monitor of the "Rules of its Proceedings" so that it is at least arguable whether such matters present "political questions" the resolution of which is exclusively confided to Congress. See Baker v. Carr, 369 U.S. 186, 232. Finally, there is the difficult question of who may be heard to challenge such practices. See Elliott v. White, 23 F.2d 997.

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C. Non-Devotional Use of the Bible in the Public Schools.—The holding of the Court today plainly does not foreclose teaching about the Holy Scriptures or about the differences between religious sects in classes in literature or history. Indeed, whether or not the Bible is involved, it would be impossible to teach meaningfully many subjects in the social sciences or the humanities without some mention of religion. 76 To what extent, and at what points in the curriculum, religious materials should be cited are matters which the courts ought to entrust very largely to the experienced officials who superintend our Nation's public schools. They are experts in such matters, and we are not. We should heed Mr. Justice Jackson's caveat that any attempt by this Court to announce curricular standards would be

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to decree a uniform, rigid and, if we are consistent, an unchanging standard for countless school boards representing [374 U.S. 301] and serving highly localized groups which not only differ from each other, but which themselves from time to time change attitudes.

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Illinois ex rel. McCollum v. Board of Education, supra, at 237.

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We do not, however, in my view, usurp the jurisdiction of school administrators by holding, as we do today, that morning devotional exercises in any form are constitutionally invalid. But there is no occasion now to go further and anticipate problems we cannot judge with the material now before us. Any attempt to impose rigid limits upon the mention of God or references to the Bible in the classroom would be fraught with dangers. If it should sometime hereafter be shown that, in fact, religion can play no part in the teaching of a given subject without resurrecting the ghost of the practices we strike down today, it will then be time enough to consider questions we must now defer.

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D. Uniform Tax Exemptions Incidentally Available to Religious Institutions.—Nothing we hold today questions the propriety of certain tax deductions or exemptions which incidentally benefit churches and religious institutions, along with many secular charities and nonprofit organizations. If religious institutions benefit, it is in spite of, rather than because of, their religious character. For religious institutions simply share benefits which government makes generally available to educational, charitable, and eleemosynary groups. 77 There is no indication that taxing authorities have used such benefits in any way to subsidize worship or foster belief in God. And as [374 U.S. 302] among religious beneficiaries, the tax exemption or deduction can be truly nondiscriminatory, available on equal terms to small as well as large religious bodies, to popular and unpopular sects, and to those organizations which reject, as well as those which accept, a belief in God. 78

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E. Religious Considerations in Public Welfare Programs.—Since government may not support or directly aid religious activities without violating the Establishment Clause, there might be some doubt whether nondiscriminatory programs of governmental aid may constitutionally include individuals who become eligible wholly or partially for religious reasons. For example, it might be suggested that, where a State provides unemployment compensation generally to those who are unable to find suitable work, it may not extend such benefits to persons who are unemployed by reason of religious beliefs or practices without thereby establishing the religion to which those persons belong. Therefore, the argument runs, the State may avoid an establishment only by singling out and excluding such persons on the ground that religious beliefs or practices have made them potential beneficiaries. Such a construction would, it seems to me, require government to impose religious discriminations and disabilities, thereby jeopardizing the free exercise of religion, in order to avoid what is thought to constitute an establishment.

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The inescapable flaw in the argument, I suggest, is its quite unrealistic view of the aims of the Establishment Clause. The Framers were not concerned with the effects of certain incidental aids to individual worshippers which come about as by-products of general and nondiscriminatory welfare programs. If such benefits serve to make [374 U.S. 303] easier or less expensive the practice of a particular creed, or of all religions, it can hardly be said that the purpose of the program is in any way religious, or that the consequence of its nondiscriminatory application is to create the forbidden degree of interdependence between secular and sectarian institutions. I cannot therefore accept the suggestion, which seems to me implicit in the argument outlined here, that every judicial or administrative construction which is designed to prevent a public welfare program from abridging the free exercise of religious beliefs, is for, that reason, ipso facto, an establishment of religion.

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F. Activities Which, Though Religious in Origin, Have Ceased to Have Religious Meaning.—As we noted in our Sunday Law decisions, nearly every criminal law on the books can be traced to some religious principle or inspiration. But that does not make the present enforcement of the criminal law in any sense an establishment of religion, simply because it accords with widely held religious principles. As we said in McGowan v. Maryland, 366 U.S. 420, 442,

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the "Establishment" Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions.

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This rationale suggests that the use of the motto "In God We Trust" on currency, on documents and public buildings and the like may not offend the clause. It is not that the use of those four words can be dismissed as "de minimis"—for I suspect there would be intense opposition to the abandonment of that motto. The truth is that we have simply interwoven the motto so deeply into the fabric of our civil polity that its present use may well not present that type of involvement which the First Amendment prohibits.

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This general principle might also serve to insulate the various patriotic exercises and activities used in the public schools and elsewhere which, whatever may have been [374 U.S. 304] their origins, no longer have a religious purpose or meaning. The reference to divinity in the revised pledge of allegiance, for example, may merely recognize the historical fact that our Nation was believed to have been founded "under God." Thus, reciting the pledge may be no more of a religious exercise than the reading aloud of Lincoln's Gettysburg Address, which contains an allusion to the same historical fact.

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The principles which we reaffirm and apply today can hardly be thought novel or radical. They are, in truth, as old as the Republic itself, and have always been as integral a part of the First Amendment as the very words of that charter of religious liberty. No less applicable today than they were when first pronounced a century ago, one year after the very first court decision involving religious exercises in the public schools, are the words of a distinguished Chief Justice of the Commonwealth of Pennsylvania, Jeremiah S. Black:

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The manifest object of the men who framed the institutions of this country, was to have a State without religion, and a Church without politics—that is to say, they meant that one should never be used as an engine for any purpose of the other, and that no man's rights in one should be tested by his opinions about the other. As the Church takes no note of men's political differences, so the State looks with equal eye on all the modes of religious faith…. Our fathers seem to have been perfectly sincere in their belief that the members of the Church would be more patriotic, and the citizens of the State more religious, by keeping their respective functions entirely separate.

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Essay on Religious Liberty, in Black, ed., Essays and Speeches of Jeremiah S. Black (1886), 53. [374 U.S. 305]

GOLDBERG, J., concurring

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 305

MR. JUSTICE GOLDBERG, with whom MR. JUSTICE HARLAN joins, concurring.

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As is apparent from the opinions filed today, delineation of the constitutionally permissible relationship between religion and government is a most difficult and sensitive task, calling for the careful exercise of both judicial and public judgment and restraint. The considerations which lead the Court today to interdict the clearly religious practices presented in these cases are to me wholly compelling; I have no doubt as to the propriety of the decision, and therefore join the opinion and judgment of the Court. The singular sensitivity and concern which surround both the legal and practical judgments involved impel me, however, to add a few words in further explication, while at the same time avoiding repetition of the carefully and ably framed examination of history and authority by my Brethren.

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The First Amendment's guarantees, as applied to the States through the Fourteenth Amendment, foreclose not only laws "respecting an establishment of religion", but also those "prohibiting the free exercise thereof." These two proscriptions are to be read together, and in light of the single end which they are designed to serve. The basic purpose of the religion clause of the First Amendment is to promote and assure the fullest possible scope of religious liberty and tolerance for all, and to nurture the conditions which secure the best hope of attainment of that end.

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The fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and nonreligion, and that it work deterrence of no religious belief. But devotion even to these simply stated objectives presents no easy course, for the unavoidable accommodations necessary to achieve the [374 U.S. 306] maximum enjoyment of each and all of them are often difficult of discernment. There is for me no simple and clear measure which by precise application can readily and invariably demark the permissible from the impermissible.

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It is said, and I agree, that the attitude of government toward religion must be one of neutrality. But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it.

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Neither government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God, and that many of our legal, political and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion and, indeed, under certain circumstances, the First Amendment may require that it do so. And it seems clear to me from the opinions in the present and past cases that the Court would recognize the propriety of providing military chaplains and of the teaching about religion, as distinguished from the teaching of religion, in the public schools. The examples could readily be multiplied, for both the required and the permissible accommodations between state and church frame the relation as one free of hostility or favor and productive of religious and political harmony, but without undue involvement of one in the concerns or practices of the other. To be sure, the judgment in each case is a delicate one, but it must be made if we are to do loyal service as judges to the ultimate First Amendment objective of religious liberty. [374 U.S. 307]

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The practices here involved do not fall within any sensible or acceptable concept of compelled or permitted accommodation, and involve the state so significantly and directly in the realm of the sectarian as to give rise to those very divisive influences and inhibitions of freedom which both religion clauses of the First Amendment preclude. The state has ordained and has utilized its facilities to engage in unmistakably religious exercises—the devotional reading and recitation of the Holy Bible—in a manner having substantial and significant import and impact. That it has selected, rather than written, a particular devotional liturgy seems to me without constitutional import. The pervasive religiosity and direct governmental involvement inhering in the prescription of prayer and Bible reading in the public schools, during and as part of the curricular day, involving young impressionable children whose school attendance is statutorily compelled, and utilizing the prestige, power, and influence of school administration, staff, and authority, cannot realistically be termed simply accommodation, and must fall within the interdiction of the First Amendment. I find nothing in the opinion of the Court which says more than this. And, of course, today's decision does not mean that all incidents of government which import of the religious are therefore, and without more, banned by the strictures of the Establishment Clause. As the Court declared only last Term in Engel v. Vitale, 370 U.S. 421, 435, n. 21:

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There is, of course, nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or [374 U.S. 308] with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State…has sponsored in this instance.

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The First Amendment does not prohibit practices which, by any realistic measure, create none of the dangers which it is designed to prevent and which do not so directly or substantially involve the state in religious exercises or in the favoring of religion as to have meaningful and practical impact. It is, of course, true that great consequences can grow from small beginnings, but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow.

STEWART, J., dissenting

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MR. JUSTICE STEWART, dissenting.

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I think the records in the two cases before us are so fundamentally deficient as to make impossible an informed or responsible determination of the constitutional issues presented. Specifically, I cannot agree that, on these records, we can say that the Establishment Clause has necessarily been violated. 1 But I think there exist serious questions under both that provision and the Free Exercise Clause—insofar as each is imbedded in the Fourteenth Amendment—which require the remand of these cases for the taking of additional evidence.

I

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The First Amendment declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…. " It is, I [374 U.S. 309] think, a fallacious oversimplification to regard these two provisions as establishing a single constitutional standard of "separation of church and state," which can be mechanically applied in every case to delineate the required boundaries between government and religion. We err in the first place if we do not recognize, as a matter of history and as a matter of the imperatives of our free society, that religion and government must necessarily interact in countless ways. Secondly, the fact is that, while in many contexts the Establishment Clause and the Free Exercise Clause fully complement each other, there are areas in which a doctrinaire reading of the Establishment Clause leads to irreconcilable conflict with the Free Exercise Clause.

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A single obvious example should suffice to make the point. Spending federal funds to employ chaplains for the armed forces might be said to violate the Establishment Clause. Yet a lonely soldier stationed at some faraway outpost could surely complain that a government which did not provide him the opportunity for pastoral guidance was affirmatively prohibiting the free exercise of his religion. And such examples could readily be multiplied. The short of the matter is simply that the two relevant clauses of the First Amendment cannot accurately be reflected in a sterile metaphor which by its very nature may distort, rather than illumine, the problems involved in a particular case. Cf. Sherbert v. Verner, post, p. 398.

II

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As a matter of history, the First Amendment was adopted solely as a limitation upon the newly created National Government. The events leading to its adoption strongly suggest that the Establishment Clause was primarily an attempt to insure that Congress not only would be powerless to establish a national church, but [374 U.S. 310] would also be unable to interfere with existing state establishments. See McGowan v. Maryland, 366 U.S. 420, 440-441. Each State was left free to go its own way and pursue its own policy with respect to religion. Thus, Virginia from the beginning pursued a policy of disestablishmentarianism. Massachusetts, by contrast, had an established church until well into the nineteenth century.

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So matters stood until the adoption of the Fourteenth Amendment, or, more accurately, until this Court's decision in Cantwell v. Connecticut, in 1940. 310 U.S. 296. In that case, the Court said:

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The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. 2

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I accept without question that the liberty guaranteed by the Fourteenth Amendment against impairment by the States embraces in full the right of free exercise of religion protected by the First Amendment, and I yield to no one in my conception of the breadth of that freedom. See Braunfeld v. Brown, 366 U.S. 599, 616 (dissenting opinion). I accept too the proposition that the Fourteenth Amendment has somehow absorbed the Establishment Clause, although it is not without irony that a constitutional provision evidently designed to leave the States free to go their own way should now have become a restriction upon their autonomy. But I cannot agree with what seems to me the insensitive definition of the Establishment Clause contained in the Court's opinion, nor with the different, but, I think, equally mechanistic definitions contained in the separate opinions which have been filed. [374 U.S. 311]

III

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 311

Since the Cantwell pronouncement in 1940, this Court has only twice held invalid state laws on the ground that they were laws "respecting an establishment of religion" in violation of the Fourteenth Amendment. McCollum v. Board of Education, 333 U.S. 203; Engel v. Vitale, 370 U.S. 421. On the other hand, the Court has upheld against such a challenge laws establishing Sunday as a compulsory day of rest, McGowan v. Maryland, 366 U.S. 420, and a law authorizing reimbursement from public funds for the transportation of parochial school pupils. Everson v. Board of Education, 330 U.S. 1.

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Unlike other First Amendment guarantees, there is an inherent limitation upon the applicability of the Establishment Clause's ban on state support to religion. That limitation was succinctly put in Everson v. Board of Education, 330 U.S. 1, 18: "State power is no more to be used so as to handicap religions than it is to favor them." 3 And in a later case, this Court recognized that the limitation was one which was itself compelled by the free exercise guarantee.

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To hold that a state cannot, consistently with the First and Fourteenth Amendments, utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not…manifest a governmental hostility to religion or religious teachings. A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty of the free [374 U.S. 312] exercise of religion.

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McCollum v. Board of Education, 333 U.S. 203, 211-212.

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That the central value embodied in the First Amendment—and, more particularly, in the guarantee of "liberty" contained in the Fourteenth—is the safeguarding of an individual's right to free exercise of his religion has been consistently recognized. Thus, in the case of Hamilton v. Regents, 293 U.S. 245, 265, Mr. Justice Cardozo, concurring, assumed that it was

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…the religious liberty protected by the First Amendment against invasion by the nation [which] is protected by the Fourteenth Amendment against invasion by the states.

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(Emphasis added.) And in Cantwell v. Connecticut, supra, the purpose of those guarantees was described in the following terms:

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On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion.

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310 U.S. at 303.

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It is this concept of constitutional protection embodied in our decisions which makes the cases before us such difficult ones for me. For there is involved in these cases a substantial free exercise claim on the part of those who affirmatively desire to have their children's school day open with the reading of passages from the Bible.

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It has become accepted that the decision in Pierce v. Society of Sisters, 268 U.S. 510, upholding the right of parents to send their children to nonpublic schools, was ultimately based upon the recognition of the validity of the free exercise claim involved in that situation. It might be argued here that parents who wanted their children to be exposed to religious influences in school could, under Pierce, send their children to private or parochial [374 U.S. 313] schools. But the consideration which renders this contention too facile to be determinative has already been recognized by the Court: "Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way." Murdock v. Pennsylvania, 319 U.S. 105, 111.

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It might also be argued that parents who want their children exposed to religious influences can adequately fulfill that wish off school property and outside school time. With all its surface persuasiveness, however, this argument seriously misconceives the basic constitutional justification for permitting the exercises at issue in these cases. For a compulsory state educational system so structures a child's life that, if religious exercises are held to be an impermissible activity in schools, religion is placed at an artificial and state-created disadvantage. Viewed in this light, permission of such exercises for those who want them is necessary if the schools are truly to be neutral in the matter of religion. And a refusal to permit religious exercises thus is seen not as the realization of state neutrality, but rather as the establishment of a religion of secularism, or, at the least, as government support of the beliefs of those who think that religious exercises should be conducted only in private.

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What seems to me to be of paramount importance, then, is recognition of the fact that the claim advanced here in favor of Bible reading is sufficiently substantial to make simple reference to the constitutional phrase "establishment of religion" as inadequate an analysis of the cases before us as the ritualistic invocation of the nonconstitutional phrase "separation of church and state." What these cases compel, rather, is an analysis of just what the "neutrality" is which is required by the interplay of the Establishment and Free Exercise Clauses of the First Amendment, as imbedded in the Fourteenth. [374 U.S. 314]

IV

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 314

Our decisions make clear that there is no constitutional bar to the use of government property for religious purposes. On the contrary, this Court has consistently held that the discriminatory barring of religious groups from public property is itself a violation of First and Fourteenth Amendment guarantees. Fowler v. Rhode Island, 345 U.S. 67; Niemotko v. Maryland, 340 U.S. 268. A different standard has been applied to public school property, because of the coercive effect which the use by religious sects of a compulsory school system would necessarily have upon the children involved. McCollum v. Board of Education, 333 U.S. 203. But insofar as the McCollum decision rests on the Establishment, rather than the Free Exercise, Clause, it is clear that its effect is limited to religious instruction—to government support of proselytizing activities of religious sects by throwing the weight of secular authority behind the dissemination of religious tenets. 4

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 314

The dangers both to government and to religion inherent in official support of instruction in the tenets of various religious sects are absent in the present cases, which involve only a reading from the Bible unaccompanied by comments which might otherwise constitute instruction. Indeed, since, from all that appears in either record, any teacher who does not wish to do so is free not to participate, 5 it cannot even be contended that some [374 U.S. 315] infinitesimal part of the salaries paid by the State are made contingent upon the performance of a religious function.

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In the absence of evidence that the legislature or school board intended to prohibit local schools from substituting a different set of readings where parents requested such a change, we should not assume that the provisions before us—as actually administered—may not be construed simply as authorizing religious exercises, nor that the designations may not be treated simply as indications of the promulgating body's view as to the community's preference. We are under a duty to interpret these provisions so as to render them constitutional if reasonably possible. Compare Two Guys v. McGinley, 366 U.S. 582, 592-595; Everson v. Board of Education, 330 U.S. 1, 4, and n. 2. In the Schempp case there is evidence which indicates that variations were, in fact, permitted by the very school there involved, and that further variations were not introduced only because of the absence of requests from parents. And in the Murray case, the Baltimore rule itself contains a provision permitting another version of the Bible to be substituted for the King James version.

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If the provisions are not so construed, I think that their validity under the Establishment Clause would be extremely doubtful, because of the designation of a particular religious book and a denominational prayer. But since, even if the provisions are construed as I believe they must be, I think that the cases before us must be remanded for further evidence on other issues—thus affording the plaintiffs an opportunity to prove that local variations are not, in fact, permitted—I shall for the balance [374 U.S. 316] of this dissenting opinion treat the provisions before us as making the variety and content of the exercises, as well as a choice as to their implementation, matters which ultimately reflect the consensus of each local school community. In the absence of coercion upon those who do not wish to participate—because they hold less strong beliefs, other beliefs, or no beliefs at all—such provisions cannot, in my view, be held to represent the type of support of religion barred by the Establishment Clause. For the only support which such rules provide for religion is the withholding of state hostility—a simple acknowledgment on the part of secular authorities that the Constitution does not require extirpation of all expression of religious belief.

V

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 316

I have said that these provisions authorizing religious exercises are properly to be regarded as measures making possible the free exercise of religion. But it is important to stress that, strictly speaking, what is at issue here is a privilege, rather than a right. In other words, the question presented is not whether exercises such as those at issue here are constitutionally compelled, but rather whether they are constitutionally invalid. And that issue, in my view, turns on the question of coercion.

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It is clear that the dangers of coercion involved in the holding of religious exercises in a school room differ qualitatively from those presented by the use of similar exercises or affirmations in ceremonies attended by adults. Even as to children, however, the duty laid upon government in connection with religious exercises in the public schools is that of refraining from so structuring the school environment as to put any kind of pressure on a child to participate in those exercises; it is not that of providing an atmosphere in which children are kept scrupulously insulated from any awareness that some of their fellows [374 U.S. 317] may want to open the school day with prayer, or of the fact that there exist in our pluralistic society differences of religious belief.

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These are not, it must be stressed, cases like Brown v. Board of Education, 347 U.S. 483, in which this Court held that, in the sphere of public education, the Fourteenth Amendment's guarantee of equal protection of the laws required that race not be treated as a relevant factor. A segregated school system is not invalid because its operation is coercive; it is invalid simply because our Constitution presupposes that men are created equal, and that, therefore, racial differences cannot provide a valid basis for governmental action. Accommodation of religious differences on the part of the State, however, is not only permitted but required by that same Constitution.

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The governmental neutrality which the First and Fourteenth Amendments require in the cases before us, in other words, is the extension of evenhanded treatment to all who believe, doubt, or disbelieve—a refusal on the part of the State to weight the scales of private choice. In these cases, therefore, what is involved is not state action based on impermissible categories, but rather an attempt by the State to accommodate those differences which the existence in our society of a variety of religious beliefs makes inevitable. The Constitution requires that such efforts be struck down only if they are proven to entail the use of the secular authority of government to coerce a preference among such beliefs.

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It may well be, as has been argued to us, that even the supposed benefits to be derived from noncoercive religious exercises in public schools are incommensurate with the administrative problems which they would create. The choice involved, however, is one for each local community and its school board, and not for this Court. For, as I have said, religious exercises are not constitutionally invalid if they simply reflect differences which exist in the [374 U.S. 318] society from which the school draws its pupils. They become constitutionally invalid only if their administration places the sanction of secular authority behind one or more particular religious or irreligious beliefs.

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To be specific, it seems to me clear that certain types of exercises would present situations in which no possibility of coercion on the part of secular officials could be claimed to exist. Thus, if such exercises were held either before or after the official school day, or if the school schedule were such that participation were merely one among a number of desirable alternatives, 6 it could hardly be contended that the exercises did anything more than to provide an opportunity for the voluntary expression of religious belief. On the other hand, a law which provided for religious exercises during the school day and which contained no excusal provision would obviously be unconstitutionally coercive upon those who did not wish to participate. And even under a law containing an excusal provision, if the exercises were held during the school day, and no equally desirable alternative were provided by the school authorities, the likelihood that children might be under at least some psychological compulsion to participate would be great. In a case such as the latter, however, I think we would err if we assumed such coercion in the absence of any evidence. 7 [374 U.S. 319]

VI

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Viewed in this light, it seems to me clear that the records in both of the cases before us are wholly inadequate to support an informed or responsible decision. Both cases involve provisions which explicitly permit any student who wishes, to be excused from participation in the exercises. There is no evidence in either case as to whether there would exist any coercion of any kind upon a student who did not want to participate. No evidence at all was adduced in the Murray case, because it was decided upon a demurrer. All that we have in that case, therefore, is the conclusory language of a pleading. While such conclusory allegations are acceptable for procedural purposes, I think that the nature of the constitutional problem involved here clearly demands that no decision be made except upon evidence. In the Schempp case, the record shows no more than a subjective prophecy by a parent of what he thought would happen if a request were made to be excused from participation in the exercises under the amended statute. No such request was ever made, and there is no evidence whatever as to what might or would actually happen, nor of what administrative arrangements the school actually might or could make to free from pressure of any kind those who do not want to participate in the exercises. There were no District Court findings on this issue, since the case under the amended statute was decided exclusively on Establishment Clause grounds. 201 F.Supp. 815

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What our Constitution indispensably protects is the freedom of each of us, be he Jew or Agnostic, Christian or [374 U.S. 320] Atheist, Buddhist or Freethinker, to believe or disbelieve, to worship or not worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government. It is conceivable that these school boards, or even all school boards, might eventually find it impossible to administer a system of religious exercises during school hours in such a way as to meet this constitutional standard—in such a way as completely to free from any kind of official coercion those who do not affirmatively want to participate. 8 But I think we must not assume that school boards so lack the qualities of inventiveness and good will as to make impossible the achievement of that goal.

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I would remand both cases for further hearings.

Footnotes

CLARK, J., lead opinion (Footnotes)

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1. The action was brought in 1958, prior to the 1959 amendment of § 15-1516 authorizing a child's nonattendance at the exercises upon parental request. The three-judge court held the statute and the practices complained of unconstitutional under both the Establishment Clause and the Free Exercise Clause. 177 F.Supp. 398. Pending appeal to this Court by the school district, the statute was so amended, and we vacated the judgment and remanded for further proceedings. 364 U.S. 298. The same three-judge court granted appellees' motion to amend the pleadings, 195 F.Supp. 518, held a hearing on the amended pleadings and rendered the judgment, 201 F.Supp. 815, from which appeal is now taken.

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2. The statute, as amended, imposes no penalty upon a teacher refusing to obey its mandate. However, it remains to be seen whether one refusing could have his contract of employment terminated for "willful violation of the school laws." 24 Pa.Stat. (Supp. 1960) § 11-1122.

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3. The trial court summarized his testimony as follows:

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Edward Schempp, the children's father, testified that, after careful consideration, he had decided that he should not have Roger or Donna excused from attendance at these morning ceremonies. Among his reasons were the following. He said that he thought his children would be "labeled as `odd balls'" before their teachers and classmates every school day; that children, like Roger's and Donna's classmates, were liable "to lump all particular religious difference[s] or religious objections [together] as `atheism,'" and that, today, the word "atheism" is often connected with "atheistic communism," and has "very bad" connotations, such as "un-American" or "anti-Red," with overtones of possible immorality. Mr. Schempp pointed out that, due to the events of the morning exercises following in rapid succession, the Bible reading, the Lord's Prayer, the Flag Salute, and the announcements, excusing his children from the Bible reading would mean that probably they would miss hearing the announcements so important to children. He testified also that, if Roger and Donna were excused from Bible reading, they would have to stand in the hall outside their "homeroom," and that this carried with it the imputation of punishment for bad conduct.

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201 F.Supp. at 818.

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4. The rule as amended provides as follows:

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Opening Exercises. Each school, either collectively or in classes, shall be opened by the reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer. The Douay version may be used by those pupils who prefer it. Appropriate patriotic exercises should be held as a part of the general opening exercise of the school or class. Any child shall be excused from participating in the opening exercises or from attending the opening exercises upon the written request of his parent or guardian.

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5. There were established churches in at least eight of the original colonies, and various degrees of religious support in others as late as the Revolutionary War. See Engel v. Vitale, supra, at 428, n. 10.

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6.

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There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or human combination, or society. It hath fallen out sometimes that both Papists and Protestants, Jews and Turks, may be embarked in one ship; upon which supposal, I affirm that all the liberty of conscience I ever pleaded for turns upon these two hinges, that none of the Papists, Protestants, Jews, or Turks be forced to come to the ship's prayers or worship, nor compelled from their own particular prayers or worship, if they practice any.

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7. Superior Court of Cincinnati, February, 1870. The opinion is not reported, but is published under the title The Bible in the Common Schools (Cincinnati: Robert Clarke & Co. 1870). Judge Taft's views, expressed in dissent, prevailed on appeal. See Board of Educational of Cincinnati v. Minor, 23 Ohio St. 211, 253 (1872), in which the Ohio Supreme Court held that:

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The great bulk of human affairs and human interests is left by any free government to individual enterprise and individual action. Religion is eminently one of these interests, lying outside the true and legitimate province of government.

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8. Application to the States of other clauses of the First Amendment obtained even before Cantwell. Almost 40 years ago, in the opinion of the Court in Gitlow v. New York, 268 U.S. 652, 666 (1925), Mr. Justice Sanford said:

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For present purposes, we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States.

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9. It goes without saying that the laws and practices involved here can be challenged only by persons having standing to complain. But the requirements for standing to challenge state action under the Establishment Clause, unlike those relating to the Free Exercise Clause, do not include proof that particular religious freedoms are infringed. McGowan v. Maryland, supra, at 429-430. The parties here are school children and their parents, who are directly affected by the laws and practices against which their complaints are directed. These interests surely suffice to give the parties standing to complain. See Engel v. Vitale, supra. Cf. McCollum v. Board of Education, supra; Everson v. Board of Education, supra. Compare Doremus v. Board of Education, 342 U.S. 429 (1952), which involved the same substantive issues presented here. The appeal was there dismissed upon the graduation of the school child involved and because of the appellants' failure to establish standing as taxpayers.

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10. We are not, of course, presented with, and therefore do not pass upon, a situation such as military service, where the Government regulates the temporal and geographic environment of individuals to a point that, unless it permits voluntary religious services to be conducted with the use of government facilities, military personnel would be unable to engage in the practice of their faiths.

DOUGLAS, J., concurring (Footnotes)

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1. See Bates, Religious Liberty: An Inquiry (1945), 9-14, 239-252; Cobb, Religious Liberty in America (1902), 1-2, cc. IV, V; Gledhill, Pakistan, The Development of its Laws and Constitution (8 British Commonwealth, 1957), 11-15; Keller, Church and State on the European Continent (1936), c. 2; Pfeffer, Church, State, and Freedom (1953), c. 2; I Stokes, Church and State in the United States (1950), 151-169.

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2. See III Stokes, op. cit. supra, n. 1, 42-67; Bates, op. cit. supra, n. 1, 9-11, 58-59, 98, 245; Gledhill, op. cit. supra, n. 1, 128, 192, 205, 208; Rackman, Israel's Emerging Constitution (1955), 120-134; Drinan, Religious Freedom in Israel, America (Apr. 6, 1963), 456-457.

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3. See II Stokes, op. cit. supra, n. 1, 488-548; Boles, The Bible, Religion, and the Public Schools (2d ed.1963), 4-10; Rackman, op. cit. supra, n. 2, at 136-141; O'Brien, The Engel Case From A Swiss Perspective, 61 Mich.L.Rev. 1069; Freund, Muslim Education in West Pakistan, 56 Religious Education 31.

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4. Bates, op. cit. supra, n. 1, at 18; Pfeffer, op. cit. supra, n. 1, at 28-31; Thomas, The Balance of Forces in Spain, 41 Foreign Affairs 208, 210.

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5. Cobb, op. cit. supra, n. 1, at 2.

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6. See II Stokes, op. cit. supra, n. 1, at 681-695.

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7. See Accountants' Handbook (4th ed.1956) 4.8-4.15.

BRENNAN, J., concurring (Footnotes)

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1. Locke, A Letter Concerning Toleration, in 35 Great Books of the Western World (Hutchins ed.1952), 2.

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2. Representative Daniel Carroll of Maryland during debate upon the proposed Bill of Rights in the First Congress, August 15, 1789, I Annals of Cong. 730.

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3. See Healey, Jefferson on Religion in Public Education (1962); Boles, The Bible, Religion, and the Public Schools (1961), 16-21; Butts, The American Tradition in Religion and Education (1950), 119-130; Cahn, On Government and Prayer, 37 N.Y.U.L.Rev. 981 (1962); Costanzo, Thomas Jefferson, Religious Education and Public Law, 8 J.Pub.Law 81 (1959); Comment, The Supreme Court, the First Amendment, and Religion in the Public Schools, 63 Col.L.Rev. 73, 79-83 (1963).

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4. Jefferson's caveat was, in full:

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Instead, therefore, of putting the Bible and Testament into the hands of the children at an age when their judgments are not sufficiently matured for religious inquiries, their memories may here be stored with the most useful facts from Grecian, Roman, European and American history.

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2 Writings of Thomas Jefferson (Memorial ed.1903), 204. Compare Jefferson's letter to his nephew, Peter Carr, when the latter was about to begin the study of law, in which Jefferson outlined a suggested course of private study of religion, since "[y]our reason is now mature enough to examine this object." Letter to Peter Carr, August 10, 1787, in Padover, The Complete Jefferson (1943), 1058. Jefferson seems to have opposed sectarian instruction at any level of public education, see Healey, Jefferson on Religion in Public Education (1962), 206-210, 256, 264-265. The absence of any mention of religious instruction in the projected elementary and secondary schools contrasts significantly with Jefferson's quite explicit proposals concerning religious instruction at the University of Virginia. His draft for "A Bill for the More General Diffusion of Knowledge," in 1779, for example, outlined in some detail the secular curriculum for the public schools, while avoiding any references to religious studies. See Padover, supra, at 1048-1054. The later draft of an "Act for Establishing Elementary Schools" which Jefferson submitted to the Virginia General Assembly in 1817 provided that

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no religious reading, instruction or exercise, shall be prescribed or practiced inconsistent with the tenets of any religious sect or denomination.

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Padover, supra, at 1076. Reliance upon Jefferson's apparent willingness to permit certain religious instruction at the University seems, therefore, to lend little support to such instruction in the elementary and secondary schools. Compare, e.g., Corwin, A Constitution of Powers in a Secular State (1951), 104-106; Costanzo, Thomas Jefferson, Religious Education and Public Law, 8 J.Pub.Law 81, 100-106 (1959).

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5. Cf. Mr. Justice Rutledge's observations in Everson v. Board of Education, 330 U.S. 1, 53-54 (dissenting opinion). See also Fellman, Separation of Church and State in the United States: A Summary View, 1950 Wis.L.Rev. 427, 428-429; Rosenfield, Separation of Church and State in the Public Schools, 22 U. of Pitt.L.Rev. 561, 569 (1961); MacKinnon, Freedom?—or Toleration? The Problem of Church and State in the United States, [1959] Pub.Law 374. One author has suggested these reasons for cautious application of the history of the Constitution's religious guarantees to contemporary problems:

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First, the brevity of Congressional debate and the lack of writings on the question by the framers make any historical argument inconclusive, and open to serious question. Second, the amendment was designed to outlaw practices which had existed before its writing, but there is no authoritative declaration of the specific practices at which it was aimed. And third, most of the modern religious freedom cases turn on issues which were, at most, academic in 1789, and perhaps did not exist at all. Public education was almost nonexistent in 1789, and the question of religious education in public schools may not have been foreseen.

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Beth, The American Theory of Church and State (1958), 88.

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6. See generally, for discussion of the early efforts for disestablishment of the established colonial churches, and of the conditions against which the proponents of separation of church and state contended, Sweet, The Story of Religion in America (1950), c. XIII; Cobb, The Rise of Religious Liberty in America (1902), c. IX; Eckenrode, Separation of Church and State in Virginia (1910); Brant, James Madison—The Nationalist, 1780-1787 (1948), c. XXII; Bowers, The Young Jefferson (1945), 193-199; Butts, The American Tradition in Religion and Education (1950), c. II; Kruse, The Historical Meaning and Judicial Construction of the Establishment of Religion Clause of the First Amendment, 2 Washburn L.J. 65, 79-83 (1962). Compare also Alexander Hamilton's conception of "the characteristic difference between a tolerated and established religion" and his grounds of opposition to the latter, in his remarks on the Quebec Bill in 1775, 2 Works of Alexander Hamilton (Hamilton ed. 1850), 133-138. Compare, for the view that contemporary evidence reveals a design of the Framers to forbid not only formal establishment of churches, but various forms of incidental aid to or support of religion, Lardner, How Far Does the Constitution Separate Church and State? 45 Am.Pol.Sci.Rev. 110, 112-115 (1951).

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7. The origins of the modern movement for free state supported education cannot be fixed with precision. In England, the Levellers unavailingly urged in their platform of 1649 the establishment of free primary education for all, or at least for boys. See Brailsford, The Levellers and the English Revolution (1961), 534. In the North American Colonies, education was, almost without exception, under private sponsorship and supervision, frequently under control of the dominant Protestant sects. This condition prevailed after the Revolution and into the first quarter of the nineteenth century. See generally Mason, Moral Values and Secular Education (1950), c. II; Thayer, The Role of the School in American Society (1960), c. X; Greene, Religion and the State: The Making and Testing of an American Tradition (1941), 120-122. Thus, Virginia's colonial Governor Berkeley exclaimed in 1671:

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I thank God there are no free schools nor printing, and I hope we shall not have them these hundred years; for learning has brought disobedience, and heresy, and sects into the world….

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(Emphasis deleted.) Bates, Religious Liberty: An Inquiry (1945), 327.

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The exclusively private control of American education did not, however, quite survive Berkeley's expectations. Benjamin Franklin's proposals in 1749 for a Philadelphia Academy heralded the dawn of publicly supported secondary education, although the proposal did not bear immediate fruit. See Johnson and Yost, Separation of Church and State in the United States (1948), 26-27. Jefferson's elaborate plans for a public school system in Virginia came to naught after the defeat in 1796 of his proposed Elementary School Bill, which found little favor among the wealthier legislators. See Bowers, The Young Jefferson (1945), 182-186. It was not until the 1820's and 1830's, under the impetus of Jacksonian democracy, that a system of public education really took root in the United States. See 1 Beard, The Rise of American Civilization (1937), 810-818. One force behind the development of secular public schools may have been a growing dissatisfaction with the tightly sectarian control over private education, see Harner, Religion's Place in General Education (1949), 29-30. Yet the burgeoning public school systems did not immediately supplant the old sectarian and private institutions; Alexis de Tocqueville, for example, remarked after his tour of the Eastern States in 1831 that "[a]lmost all education is entrusted to the clergy." 1 Democracy in America (Bradley ed.1945) 309, n. 4. And compare Lord Bryce's observations, a half century later, on the still largely denominational character of American higher education, 2 The American Commonwealth (1933), 734-735.

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Efforts to keep the public schools of the early nineteenth century free from sectarian influence were of two kinds. One took the form of constitutional provisions and statutes adopted by a number of States forbidding appropriations from the public treasury for the support of religious instruction in any manner. See Moehlman, The Wall of Separation Between Church and State (1951), 132-135; Lardner, How Far Does the Constitution Separate Church and State? 45 Am.Pol.Sci.Rev. 110, 122 (1951). The other took the form of measures directed against the use of sectarian reading and teaching materials in the schools. The texts used in the earliest public schools had been largely taken over from the private academies, and retained a strongly religious character and content. See Nichols, Religion and American Democracy (1959), 640; Kinney, Church and State, The Struggle for Separation in New Hampshire, 1630-1900 (1955), 150-153. In 1827, however, Massachusetts enacted a statute providing that school boards might not thereafter

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direct any school books to be purchased or used, in any of the schools…which are calculated to favour any particular religious sect or tenet.

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2 Stokes, Church and State in the United States (1950), 53. For further discussion of the background of the Massachusetts law and difficulties in its early application, see Dunn, What Happened to Religious Education? (1958), c. IV. As other States followed the example of Massachusetts, the use of sectarian texts was in time as widely prohibited as the appropriation of public funds for religious instruction.

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Concerning the evolution of the American public school systems free of sectarian influence, compare Mr. Justice Frankfurter's account:

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It is pertinent to remind that the establishment of this principle of Separation in the field of education was not due to any decline in the religious beliefs of the people. Horace Mann was a devout Christian, and the deep religious feeling of James Madison is stamped upon the Remonstrance. The secular public school did not imply indifference to the basic role of religion in the life of the people, nor rejection of religious education as a means of fostering it. The claims of religion were not minimized by refusing to make the public schools agencies for their assertion. The nonsectarian or secular public school was the means of reconciling freedom in general with religious freedom. The sharp confinement of the public schools to secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in which pressures are most resisted and where conflicts are most easily and most bitterly engendered.

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Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 216.

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8. The comparative religious homogeneity of the United States at the time the Bill of Rights was adopted has been considered in Haller, The Puritan Background of the First Amendment, in Read ed., The Constitution Reconsidered (1938) , 131, 133-134; Beth, The American Theory of Church and State (1958), 74; Kinney, Church and State, The Struggle for Separation in New Hampshire, 1630-1900 (1955), 155-161. However, Madison suggested in the Fifty-first Federalist that the religious diversity which existed at the time of the Constitutional Convention constituted a source of strength for religious freedom, much as the multiplicity of economic and political interests enhanced the security of other civil rights. The Federalist (Cooke ed.1961), 351-352.

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9. See Comment, The Power of Courts Over the Internal Affairs of Religious Groups, 43 Calif.L.Rev. 322 (1955); Comment, Judicial Intervention in Disputes Within Independent Church Bodies, 54 Mich.L.Rev. 102 (1955); Note, Judicial Intervention in Disputes Over the Use of Church Property, 75 Harv.L.Rev. 1142 (1962). Compare Vidal v. Girard's Executors, 2 How. 127. The principle of judicial nonintervention in essentially religious disputes appears to have been reflected in the decisions of several state courts declining to enforce essentially private agreements concerning the religious education and worship of children of separated or divorced parents. See, e.g., Hackett v. Hackett, 78 Ohio Abs. 485, 150 N.E.2d 431; Stanton v. Stanton, 213 Ga. 545, 100 S.E.2d 289; Friedman, The Parental Right to Control the Religious Education of a Child, 29 Harv.L.Rev. 485 (1916); 72 Harv.L.Rev. 372 (1958); Note, 10 West. Res.L.Rev. 171 (1959).

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Governmental nonintervention in religious affairs and institutions seems assured by Article 26 of the Constitution of India, which provides:

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Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

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(a) to establish and maintain institutions for religious and charitable purposes;

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(b) to manage its own affairs in matters of religion;

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(c) to own and acquire movable and immovable property; and

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(d) to administer such property in accordance with law.

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See 1 Chaudhri, Constitutional Rights and Limitations (1955), 875. This Article does not, however, appear to have completely foreclosed judicial inquiry into the merits of intradenominational disputes. See Gledhill, Fundamental Rights in India (1955), 101-102.

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10. For a discussion of the difficulties inherent in the Ballard case, see Kurland, Religion and the Law (1962), 75-79. This Court eventually reversed the convictions on the quite unrelated ground that women had been systematically excluded from the jury, Ballard v. United States, 329 U.S. 187. For discussions of the difficulties in interpreting and applying the First Amendment so as to foster the objective of neutrality without hostility, see, e.g., Katz, Freedom of Religion and State Neutrality, 20 U. of Chi.L.Rev. 426, 438 (1953); Kauper, Church, State, and Freedom: A Review, 52 Mich.L.Rev. 829, 842 (1954). Compare, for an interesting apparent attempt to avoid the Ballard problem at the international level, Article 3 of the Multilateral Treaty between the United States and certain American Republics, which provides that extradition will not be granted, inter alia, when "the offense is…directed against religion." Blakely, American State Papers and Related Documents on Freedom in Religion (4th rev. ed.1949), 316.

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11. See Kurland, Religion and the Law (1962), 32-34.

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12. Compare the treatment of an apparently very similar problem in Article 28 of the Constitution of India:

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(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

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(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

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1 Chaudhri, Constitutional Rights and Limitations (1955), 875-876, 939.

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13. See Kurland, Religion and the Law (1962), 231; Fellman, Separation of Church and State in the United State: A Summary View, 1950 Wis.L.Rev. 427, 442.

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14. This distinction, implicit in the First Amendment, had been made explicit in the original Virginia Bill of Rights provision that

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all men should enjoy the fullest toleration in the exercise of religion according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless, under color of religion, any man disturb the peace, the happiness, or safety of society.

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See Cobb, The Rise of Religious Liberty in America (1902), 491. Concerning various legislative limitations and restraints upon religiously motivated behavior which endangers or offends society, see Manwaring, Render Unto Caesar: The Flag-Salute Controversy (1962), 412. Various courts have applied this principle to proscribe certain religious exercises or activities which were thought to threaten the safety or morals of the participants or the rest of the community, e.g., State v. Massey, 229 N.C. 734, 51 S.E.2d 179; Harden v. State, 188 Tenn. 17, 216 S.W.2d 708; Lawson v. Commonwealth, 291 Ky. 437, 164 S.W.2d 972; cf. Sweeney v. Webb, 33 Tex.Civ.App. 324, 76 S.W. 766.

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That the principle of these cases, and the distinction between belief and behavior, are susceptible of perverse application may be suggested by Oliver Cromwell's mandate to the besieged Catholic community in Ireland:

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As to freedom of conscience, I meddle with no man's conscience; but if you mean by that liberty to celebrate the Mass, I would have you understand that in no place where the power of the Parliament of England prevails shall that be permitted.

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Quoted in Hook, The Paradoxes of Freedom (1962), 23.

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15. With respect to the decision in Hamilton v. Regents, compare two recent comments: Kurland, Religion and the Law (1962), 40, and French, Comment, Unconstitutional Conditions: An Analysis 50 Geo.L.J. 234, 246 (1961).

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16. See generally as to the background and history of the Barnette case, Manwaring, Render Unto Caesar: The Flag-Salute Controversy (1962), especially at 252-253. Compare, for the interesting treatment of a problem similar to that of Barnette, in a nonconstitutional context, Chabot v. Les Commissaires D'Ecoles de Lamorandiere, [1957] Que.B.R. 707, noted in 4 McGill L.J. 268 (1958).

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17. See Barron v. Baltimore, 7 Pet. 243; Permoli v. New Orleans, 3 How. 589, 609; cf. Fox v. Ohio, 5 How. 410, 434-435; Withers v. Buckley, 20 How. 84, 89-91. As early as 1825, however, at least one commentator argued that the guarantees of the Bill of Rights, excepting only those of the First and Seventh Amendments, were meant to limit the powers of the States. Rawle, A View of the Constitution of the United States of America (1825), 120-130.

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18. In addition to the statement of this Court in Meyer, at least one state court assumed as early as 1921 that claims of abridgment of the free exercise of religion in the public schools must be tested under the guarantees of the First Amendment, as well as those of the state constitution. Hardwick v. Board of School Trustees, 54 Cal.App. 696, 704-705, 205 P. 49, 52. See Louisell and Jackson, Religion, Theology, and Public Higher Education, 50 Cal.L.Rev. 751, 772 (1962). Even before the Fourteenth Amendment, New York State enacted a general common school law in 1844 which provided that no religious instruction should be given which could be construed to violate the rights of conscience "as secured by the constitution of this state and the United States." N.Y.Laws, 1844, c. 320, § 12.

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19. See, e.g., Snee, Religious Disestablishment and the Fourteenth Amendment, 1954 Wash.U.L.Q. 371, 373-394; Kruse, The Historical Meaning and Judicial Construction of the Establishment of Religion Clause of the First Amendment, 2 Washburn L.J. 65, 84-85, 127130 (1962); Katz, Religion and American Constitutions, Address at Northwestern University Law School, March 20, 1963, pp.6-7. But see the debate in the Constitutional Convention over the question whether it was necessary or advisable to include among the enumerated powers of the Congress a power "to establish an University, in which no preferences or distinctions should be allowed on account of religion." At least one delegate thought such an explicit delegation "is not necessary," for "[t]he exclusive power at the Seat of Government will reach the object." The proposal was defeated by only two votes. 2 Farrand, Records of the Federal Convention of 1787 (1911), 616.

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20. The last formal establishment, that of Massachusetts, was dissolved in 1833. The process of disestablishment in that and other States is described in Cobb, The Rise of Religious Liberty in America (1902), c. X; Sweet, The Story of Religion in America (1950), c. XIII. The greater relevance of conditions existing at the time of adoption of the Fourteenth Amendment is suggested in Note, State Sunday Laws and the Religious Guarantees of the Federal Constitution, 7 Harv.L.Rev. 729, 739, n. 79 (1960).

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21. See Corwin, A Constitution of Powers in a Secular State (1951), 111-114; Fairman and Morrison, Does the Fourteenth Amendment Incorporate the Bill of Rights? 2 Stan.L.Rev. 5 (1949); Meyer, Comment, The Blaine Amendment and the Bill of Rights, 64 Harv.L.Rev. 939 (1951); Howe, Religion and Race in Public Education, 8 Buffalo L.Rev. 242, 245-247 (1959). Cf. Cooley, Principles of Constitutional Law (2d ed. 1891), 213-214. Compare Professor Freund's comment:

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Looking back, it is hard to see how the Court could have done otherwise, how it could have persisted in accepting freedom of contract as a guaranteed liberty without giving equal status to freedom of press and speech, assembly, and religious observance. What does not seem so inevitable is the inclusion within the Fourteenth Amendment of the concept of nonestablishment of religion in the sense of forbidding nondiscriminatory aid to religion, where there is no interference with freedom of religious exercise.

1963, School Dist. of Abington Tp. v. Schempp, 374 U.S. 320

Freund, The Supreme Court of the United States (1961), 58-59.

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22. The Blaine Amendment, 4 Cong.Rec. 5580, included also a more explicit provision that

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no money raised by taxation in any State for the support of public schools or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect or denomination….

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The Amendment passed the House but failed to obtain the requisite two-thirds vote in the Senate. See 4 Cong.Rec. 5595. The prohibition which the Blaine Amendment would have engrafted onto the American Constitution has been incorporated in the constitutions of other nations; compare Article 28(1) of the Constitution of India ("No religious instruction shall be provided in any educational institution wholly maintained out of State funds"); Article XX of the Constitution of Japan ("…the State and its organs shall refrain from religious education or any other religious activity"). See 1 Chaudhri, Constitutional Rights and Limitations (1955), 875, 876.

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23. Three years after the adoption of the Fourteenth Amendment, Mr. Justice Bradley wrote a letter expressing his views on a proposed constitutional amendment designed to acknowledge the dependence of the Nation upon God, and to recognize the Bible as the foundation of its laws and the supreme ruler of its conduct:

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I have never been able to see the necessity or expediency of the movement for obtaining such an amendment. The Constitution was evidently framed and adopted by the people of the United States with the fixed determination to allow absolute religious freedom and equality, and to avoid all appearance even of a State religion, or a State endorsement of any particular creed or religious sect…. And after the Constitution in its original form was adopted, the people made haste to secure an amendment that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. This shows the earnest desire of our Revolutionary fathers that religion should be left to the free and voluntary action of the people themselves. I do not regard it as manifesting any hostility to religion, but as showing a fixed determination to leave the people entirely free on the subject.

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And it seems to me that our fathers were wise; that the great voluntary system of this country is quite as favorable to the promotion of real religion as the systems of governmental protection and patronage have been in other countries. And whilst I do not understand that the association which you represent desire to invoke any governmental interference, still the amendment sought is a step in that direction which our fathers (quite as good Christians as ourselves) thought it wise not to take. In this country, they thought they had settled one thing at least, that it is not the province of government to teach theology.

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…Religion, as the basis and support of civil government, must reside not in the written Constitution, but in the people themselves. And we cannot legislate religion into the people. It must be infused by gentler and wiser methods.

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Miscellaneous Writings of Joseph P. Bradley (1901), 357-359. For a later phase of the controversy over such a constitutional amendment as that which Justice Bradley opposed, see Finlator, Christ in Congress, 4 J. Church and State 205 (1962).

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24. There is no doubt that, whatever "establishment" may have meant to the Framers of the First Amendment in 1791, the draftsmen of the Fourteenth Amendment three quarters of a century later understood the Establishment Clause to foreclose many incidental forms of governmental aid to religion which fell far short of the creation or support of an official church. The Report of a Senate Committee as early as 1853, for example, contained this view of the Establishment Clause:

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If Congress has passed, or should pass, any law which, fairly construed, has in any degree introduced, or should attempt to introduce, in favor of any church, or ecclesiastical association, or system of religious faith, all or any one of these obnoxious particulars—endowment at the public expense, peculiar privileges to its members, or disadvantages or penalties upon those who should reject its doctrines or belong to other communions—such law would be a "law respecting an establishment of religion," and, therefore, in violation of the constitution.

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S.Rep. No. 376, 32d Cong., 2d Sess. 1-2.

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Compare Thomas M. Cooley's exposition in the year in which the Fourteenth Amendment was ratified:

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Those things which are not lawful under any of the American constitutions may be stated thus:

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1. Any law respecting an establishment of religion….

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2. Compulsory support, by taxation or otherwise, of religious instruction. Not only is no one denomination to be favored at the expense of the rest, but all support of religious instruction must be entirely voluntary.

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Cooley, Constitutional Limitations (1st ed. 1868), 469.

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25. Compare, e.g., Miller, Roger Williams: is Contribution to the American Tradition (1953), 83, with Madison, Memorial and Remonstrance Against Religious Assessments, reprinted as an Appendix to the dissenting opinion of Mr. Justice Rutledge, Everson v. Board of Education, supra at 63-72. See also Cahn, On Government and Prayer, 37 N.Y.U.L.Rev. 981, 982-985 (1962); Jefferson's Bill for Establishing Religious Freedom, in Padover, The Complete Jefferson (1943), 946-947; Moulton and Myers, Report on Appointing Chaplains to the Legislature of New York, in Blau, Cornerstones of Religious Freedom in America (1949), 141-156; Bury, A History of Freedom of Thought (2d ed.1952), 75-76.

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26. See, e.g., Spicer, The Supreme Court and Fundamental Freedoms (1959), 83-84; Kauper, Church, State, and Freedom: A Review, 52 Mich.L.Rev. 829, 839 (1954); Reed, Church-State and the Zorach Case, 27 Notre Dame Lawyer 529, 539-541 (1952).

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27. See 343 U.S. at 321-322 (Frankfurter, J., dissenting); Kurland, Religion and the Law (1962), 89. I recognize that there is a question whether, in Zorach, the free exercise claims asserted were, in fact, proved. 343 U.S. at 311.

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28. Mr. Justice Frankfurter described the effects of the McCollum program thus:

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Religious education so conducted on school time and property is patently woven into the working scheme of the school. The Champaign arrangement thus presents powerful elements of inherent pressure by the school system in the interest of religious sects…. As a result, the public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and in the process, sharpens the consciousness of religious differences, at least among some of the children committed to its care.

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333 U.S. at 227-228.

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For similar reasons, some state courts have enjoined the public schools from employing or accepting the services of members of religious orders even in the teaching of secular subjects, e.g., Zellers v. Huff, 55 N.M. 501, 236 P.2d 949; Berghorn v. Reorganized School Dist. No. 8, 364 Mo. 121, 260 S.W.2d 573; compare ruling of Texas Commissioner of Education, Jan. 25, 1961, in 63 American Jewish Yearbook (1962), 188. Over a half century ago, a New York court sustained a school board's exclusion from the public schools of teachers wearing religious garb on similar grounds:

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Then, all through the school hours, these teachers…were before the children as object lessons of the order and church of which they were members. It is within our common observation that young children…are very susceptible to the influence of their teachers and of the kind of object lessons continually before them in schools conducted under these circumstances and with these surroundings.

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O'Connor v. Hendrick, 109 App.Div. 361, 371-372, 96 N.Y.Supp. 161, 169. See also Commonwealth v. Herr, 229 Pa. 132, 78 A. 68; Comment, Religious Garb in the Public Schools—A Study in Conflicting Liberties, 22 U. of Chi.L.Rev. 888 (1955). Also apposite are decisions of several courts which have enjoined the use of parochial schools as part of the public school system, Harfst v. Hoegen, 349 Mo. 808, 163 S.W.2d 609; or have invalidated programs for the distribution in public school classrooms of Gideon Bibles, Brown v. Orange County Board of Public Instruction, 128 So.2d 181 (Fla.App.); Tudor v. Board of Education, 14 N.J. 31, 100 A.2d 857. See Note, The First Amendment and Distribution of Religious Literature in the Public Schools, 41 Va.L.Rev. 789, 803-806 (1955). In Tudor, the court stressed the role of the public schools in the Bible program:

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…the public school machinery is used to bring about the distribution of these Bibles to the children…. In the eyes of the pupils and their parents, the board of education has placed its stamp of approval upon this distribution and, in fact, upon the Gideon Bible itself…. This is more than mere "accommodation" of religion permitted in the Zorach case. The school's part in this distribution is an active one, and cannot be sustained on the basis of a mere assistance to religion.

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14 N.J. at 51-52, 100 A.2d at 868. The significance of the teacher's authority was recognized by one early state court decision:

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The school being in session, the right to command was vested in the teacher, and the duty of obedience imposed upon the pupils. Under such circumstances, a request and a command have the same meaning. A request from one in authority is understood to be a mere euphemism. It is, in fact, a command in an inoffensive form.

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State ex rel. Freeman v. Scheve, 65 Neb. 876, 880, 93 N.W. 169, 170.

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29. See, for other illustrations of the principle that, where First Amendment freedoms are or may be affected, government must employ those means which will least inhibit the exercise of constitutional liberties, Lovell v. Griffin, 303 U.S. 444; Schneider v. State, 308 U.S. 147, 161; Martin v. Struthers, 319 U.S. 141; Saia v. New York, 334 U.S. 558; Shelton v. Tucker, 364 U.S. 479, 488-489; Bantam Books, Inc., v. Sullivan, 372 U.S. 58, 66, 69-71. See also Note, State Sunday Laws and the Religious Guarantees of the Federal Constitution, 73 Harv.L.Rev. 729, 743-745 (1960); Freund, The Supreme Court of the United States (1961), 86-87; 74 Harv.L.Rev. 613 (1961). And compare Miller v. Cooper, 56 N.M. 355, 244 P.2d 520 (1952), in which a state court permitted the holding of public school commencement exercises in a church building only because no public buildings in the community were adequate to accommodate the ceremony.

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30. No question has been raised in these cases concerning the standing of these parents to challenge the religious practices conducted in the schools which their children presently attend. Whatever authority Doremus v. Board of Education, 342 U.S. 429, might have on the question of the standing of one not the parent of children affected by the challenged exercises is not before us in these cases. Neither in McCollum nor in Zorach was there any reason to question the standing of the parent plaintiffs under settled principles of justiciability and jurisdiction, whether or not their complaints alleged pecuniary loss or monetary injury. The free exercise claims of the parents alleged injury sufficient to give them standing. If, however, the gravamen of the lawsuit were exclusively one of establishment, it might seem illogical to confer standing upon a parent who—though he is concededly in the best position to assert a free exercise claim—suffers no financial injury, by reason of being a parent, different from that of the ordinary taxpayer, whose standing may be open to question. See Sutherland, Establishment According to Engel, 76 Harv.L.Rev. 25, 41-43 (1962). I would suggest several answers to this conceptual difficulty. First, the parent is surely the person most directly and immediately concerned about and affected by the challenged establishment, and to deny him standing either in his own right or on behalf of his child might effectively foreclose judicial inquiry into serious breaches of the prohibitions of the First Amendment—even though no special monetary injury could be shown. See Schempp v. School District of Abington Township, 177 F.Supp. 398, 407; Kurland, The Regents' Prayer Case: "Full of Sound and Fury, Signifying…," 1962 Supreme Court Review 1, 22. Second, the complaint in every case thus far challenging an establishment has set forth at least a colorable claim of infringement of free exercise. When the complaint includes both claims, and neither is frivolous, it would surely be overtechnical to say that a parent who does not detail the monetary cost of the exercises to him may ask the court to pass only upon the free exercise claim, however logically the two may be related. Cf. Pierce v. Society of Sisters, supra; Truax v. Raich, 239 U.S. 33, 38-39; NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 458-460; Bell v. Hood, 327 U.S. 678; Bantam Books, Inc., v. Sullivan, 372 U.S. 58, 64, n. 6. Finally, the concept of standing is a necessarily flexible one, designed principally to ensure that the plaintiffs have

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such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions….

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Baker v. Carr, 369 U.S. 186, 204. It seems to me that even a cursory examination of the complaints in these two cases and the opinions below discloses that these parents have very real grievances against the respective school authorities which cannot be resolved short of constitutional adjudication. See generally Arthur Garfield Hays Civil Liberties Conference: Public Aid to Parochial Schools and Standing to Bring Suit, 12 Buffalo L.Rev. 35 (1962); Jaffe, Standing to Secure Judicial Review: Public Actions, 74 Harv.L.Rev. 1265 (1961); Sutherland, Due Process and Disestablishment, 62 Harv.L.Rev. 1306, 1327-1332 (1949); Comment, The Supreme Court, the First Amendment, and Religion in the Public Schools, 63 Col.L.Rev. 73, 94, n. 153 (1963).

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31. Quoted in Dunn, What Happened to Religious Education? (1958), 21.

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32. Quoted id. at 22

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33. Quoted in Hartford, Moral Values in Public Education: Lessons From the Kentucky Experience (1958), 31.

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34. See Culver, Horace Mann and Religion in the Massachusetts Public Schools (1929), for an account of one prominent educator's efforts to satisfy both the protests of those who opposed continuation of sectarian lessons and exercises in public schools, and the demands of those who insisted upon the retention of some essentially religious practices. Mann's continued use of the Bible for what he regarded as nonsectarian exercises represented his response to these cross-pressures. See Mann, Religious Education, in Blau, Cornerstones of Religious Freedom in America (1949), 163-201 (from the Twelfth Annual Report for 1848 of the Secretary of the Board of Education of Massachusetts). See also Boles, The Bible, Religion, and the Public Schools (1961), 22-27.

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35. See 2 Stokes, Church and State in the United States (1950), 572-579; Greene, Religion and the State: The Making and Testing of an American Tradition (1941), 122-126.

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36. E.g., Ala.Code, Tit. 52, § 542; Del.Code Ann., Tit. 14, §§ 4101-4102; Fla.Stat.Ann. § 231.09(2); Mass.Ann.Laws, c. 71, § 31; Tenn.Code Ann. § 49-1307(4). Some statutes, like the recently amended Pennsylvania statute involved in Schempp, provide for the excusal or exemption of children whose parents do not wish them to participate. See generally Johnson and Yost, Separation of Church and State in the United States (1948), 33-36; Thayer, The Role of the School in American Society (1960), 374-375; Beth, The American Theory of Church and State (1958), 106-107. Compare with the American statutory approach Article 28(3) of the Constitution of India:

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(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

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See 1 Chaudhri, Constitutional Rights and Limitations (1955), 876, 939.

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37. See note 34, supra.

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38. Quoted from New Hampshire School Reports, 1850, 31-32, in Kinney, Church and State: The Struggle for Separation in New Hampshire, 1630-1900 (1955), 157-158.

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39. Quoted in Boyer, Religious Education of Public School Pupils in Wisconsin, 1953 Wis.L.Rev. 181, 186.

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40. Quoted in Dunn, What Happened to Religious Education? (195), 271.

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41. Quoted in Butts, The American Tradition in Religion and Education (1950), 135-136.

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42. See Board of Education v. Minor, 23 Ohio St. 211; Blakely, American State Papers and Related Documents on Freedom in Religion (4th rev. ed.1949), 864.

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43. Report of the United States Commissioner of Education for the Year 1888-1889, part I, H.R.Exec.Doc. No. 1, part 5, 51st Cong., 1st Sess. 627.

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44. Quoted in Illinois ex rel. McCollum v. Board of Education, supra at 218 (opinion of Frankfurter, J.). See also President Grant's Annual Message to Congress, Dec. 7, 1875, 4 Cong.Rec. 175 et seq., which apparently inspired the drafting and submission of the Blaine Amendment. See Meyer, Comment, The Blaine Amendment and the Bill of Rights, 64 Harv.L.Rev. 939 (1951).

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45. Theodore Roosevelt to Michael A. Schaap, Feb. 22, 1915, 8 Letters of Theodore Roosevelt (Morison ed.1954), 893.

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46. Quoted in Boles, The Bible, Religion, and the Public Schools (1961), 238.

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47. E.g., 1955 op. Ariz. Atty.Gen. 67; 26 Ore.Op.Atty.Gen. 46 (1952); 25 Cal.Op.Atty.Gen. 316 (1955); 1948-1950 Nev. Atty.Gen. Rep. 69 (1948). For a 1961 opinion of the Attorney General of Michigan to the same effect, see 63 American Jewish Yearbook (1962) 189. In addition to the Governor of Ohio, see note 46, supra, a Governor of Arizona vetoed a proposed law which would have permitted "reading the Bible, without comment, except to teach Historical or Literary facts." See 2 Stokes, Church and State in the United States (1950), 568.

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48. See Johnson and Yost, Separation of Church and State in the United States (1948), 71; Note, Bible Reading in Public Schools, 9 Vand.L.Rev. 849, 851 (1956).

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49. E.g., Spiller v. Inhabitants of Woburn, 12 Allen (Mass.) 127 (1866); Donahoe v. Richards, 38 Maine 376, 413 (1854); cf. Ferriter v. Tyler, 48 Vt. 444, 471-472 (1876).

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50. Board of Education v. Minor, 23 Ohio St. 211 (1873).

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51. People ex rel. Ring v. Board of Education, 245 Ill. 334, 92 N.E. 251 (1910); Herold v. Parish Board of School Directors, 136 La. 1034, 68 So. 116 (1915); State ex rel. Weiss v. District Board, 76 Wis. 177, 44 N.W. 967 (1890); State ex rel. Finger v. Weedman, 55 S.D. 343, 226 N.W. 348 (1929); State ex rel. Dearle v. Frazier, 102 Wash. 369, 173 P. 35 (1918); cf. State ex rel. Clithero v. Showalter, 159 Wash. 519, 293 P. 1000 (1930); State ex rel. Freeman v. Scheve, 65 Neb. 853, 91 N.W. 846 (1902), modified, 65 Neb. 876, 93 N.W.169 (1903). The cases are discussed in Boles, The Bible, Religion, and the Public Schools (1961), c. IV; Harrison, The Bible, the Constitution and Public Education, 29 Tenn.L.Rev. 363, 386-389 (1962).

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52. Moore v. Monroe, 64 Iowa 367, 20 N.W. 475 (1884); Hackett v. Brooksville Graded School District, 120 Ky. 608, 87 S.W. 792 (1905); Billard v. Board of Education, 69 Kan. 53, 76 P. 422 (1904); Pfeiffer v. Board of Education, 118 Mich. 560, 77 N.W. 250 (1898); Kaplan v. School District, 171 Minn. 142, 214 N.W. 18 (1927); Lewis v. Board of Education, 157 Misc. 520, 285 N.Y. Supp. 164 (Sup.Ct.1935), modified on other grounds, 247 App.Div. 106, 286 N.Y. Supp. 174 (1936), appeal dismissed, 276 N.Y. 490, 12 N.E.2d 172 (1937); Doremus v. Board of Education, 5 N.J. 435, 75 A.2d 880 (1950), appeal dismissed, 342 U.S. 429; Church v. Bullock, 104 Tex. 1, 109 S.W. 115 (1908); People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927); Wilkerson v. City of Rome, 152 Ga. 762, 110 S.E. 895 (1922); Carden v. Bland, 199 Tenn. 665, 288 S.W.2d 718 (1956); Chamberlin v. Dade County Board of Public Instruction, 143 So.2d 21 (Fla.1962).

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53. For discussion of the constitutional and statutory provisions involved in the state cases which sustained devotional exercises in the public schools, see Boles, The Bible, Religion, and the Public Schools (1961), c. III; Harrison, The Bible, the Constitution and Public Education, 29 Tenn.L.Rev. 363, 381-385 (1962); Fellman, Separation of Church and State in the United States: A Summary View, 1950 Wis.L.Rev. 427, 45452; Note, Bible Reading in Public Schools, 9 Vand.L.Rev. 849, 854-859 (1956); Note, Nineteenth Century Judicial Thought Concerning Church-State Relations, 40 Minn.L.Rev. 672, 675-678 (1956). State courts appear to have been increasingly influenced in sustaining devotional practices by the availability of an excuse or exemption for dissenting students. See Cushman, The Holy Bible and the Public Schools, 40 Cornell L.Q. 475, 477 (1955); 13 Vand.L.Rev. 552 (1960).

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54. See Rosenfield, Separation of Church and State in the Public Schools, 22 U. of Pitt.L.Rev. 561, 571-572 (1961); Harrison, The Bible the Constitution and Public Education, 29 Tenn.L.Rev. 363 399-400 (1962); 30 Ford.L.Rev. 801, 803 (1962); 45 Va.L.Rev. 1381 (1959). The essentially religious character of the materials used in these exercises is, in fact, strongly suggested by the presence of excusal or exemption provisions, and by the practice of rotating or alternating the use of different prayers and versions of the Holy Bible

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55. In the Billard case, the teacher whose use of the Lord's Prayer and the Twenty-third Psalm was before the court testified that the exercise served disciplinary, rather than spiritual, purposes:

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It is necessary to have some general exercise after the children come in from the playground to prepare them for their work. You need some general exercise to quiet them down.

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When asked again if the purpose were not at least partially religious, the teacher replied, "[i]t was religious to the children that are religious, and to the others it was not." 69 Kan. at 57-58, 76 P. at 423.

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56. See, e.g., Henry, The Place of Religion in Public Schools (1950); Martin, Our Public Schools—Christian or Secular (1952); Educational Policies Comm'n of the National Educational Assn., Moral and Spiritual Values in the Public Schools (1951), c. IV; Harner, Religion's Place in General Education (1949). Educators are by no means unanimous, however, on this question. See Boles, The Bible, Religion, and the Public Schools (1961), 223-224. Compare George Washington's advice in his Farewell Address:

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And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that National morality can prevail in exclusion of religious principle.

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35 Writings of George Washington (Fitzpatrick ed.1940), 229.

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57. Thomas Jefferson's insistence that, where the judgments of young children

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are not sufficiently matured for religious inquiries, their memories may here be stored with the most useful facts from Grecian, Roman, European and American history,

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2 Writings of Thomas Jefferson (Memorial ed.1903), 204, is relevant here. Recent proposals have explored the possibility of commencing the school day "with a quiet moment that would still the tumult of the playground and start a day of study," Editorial, Washington Post, June 28, 1962, § A, p. 22, col. 2. See also New York Times, Aug. 30, 1962, § 1, p. 18, col. 2. For a consideration of these and other alternative proposals see Choper, Religion in the Public Schools: A Proposed Constitutional Standard, 47 Minn.L.Rev. 329, 370-371 (1963). See also 2 Stokes, Church and State in the United States (1950), 571.

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58. The history, as it bears particularly upon the role of sectarian differences concerning Biblical texts and interpretation, has been summarized in Tudor v. Board of Education, 14 N.J. 31, 36-44, 100 A.2d 857, 859-864. See also State ex rel. Weiss v. District Board, 76 Wis. 177, 190-193, 44 N.W. 967, 972-975. One state court adverted to these differences a half century ago:

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The Bible, in its entirety, is a sectarian book as to the Jew and every believer in any religion other than the Christian religion, and, as to those who are heretical or who hold beliefs that are not regarded as orthodox…, its use in the schools necessarily results in sectarian instruction. There are many sects of Christians, and their differences grow out of their differing constructions of various parts of the Scriptures—the different conclusions drawn as to the effect of the same words. The portions of Scripture which form the basis of these sectarian differences cannot be thoughtfully and intelligently read without impressing the reader, favorably or otherwise, with reference to the doctrines supposed to be derived from them.

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People ex rel. Ring v. Board of Education, 245 Ill. 334, 347-348, 92 N.E. 251, 255. But see, for a sharply critical comment, Schofield, Religious Liberty and Bible Reading in Illinois Public Schools, 6 Ill.L.Rev. 17 (1911), See also Dunn, What Happened to Religious Education? (1958), 268-273; Dawson, America's Way in Church, State, and Society (1953), 53-54; Johnson and Yost, Separation of Church and State in the United States (1948), c. IV; Harpster, Religion, Education and the Law, 36 Marquette L.Rev. 24, 445 (1952); 20 Ohio State L.J. 701, 702-703 (1959).

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59. See Torcaso v. Watkins, supra, at 495, n. 11; Cushman, The Holy Bible and the Public Schools, 40 Cornell L.Q. 475, 480-483 (1955); Note, Separation of Church and State: Religious Exercises in the Schools, 31 U. of Cinc.L.Rev. 408, 41112 (1962). Few religious persons today would share the universality of the Biblical canons of John Quincy Adams:

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You ask me what Bible I take as the standard of my faith—the Hebrew, the Samaritan, the old English translation, or what? I answer, the Bible containing the sermon upon the mount—any Bible that I can read and understand…. I take any one of them for my standard of faith. If Socinus or Priestley had made a fair translation of the Bible, I would have taken that, but without their comments.

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John Quincy Adams to John Adams, Jan. 3, 1817, in Koch and Peden, Selected Writings of John and John Quincy Adams (1946), 292.

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60. Rabbi Solomon Grayzel testified before the District Court,

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In Judaism, the Bible is not read, it is studied. There is no special virtue attached to a mere reading of the Bible; there is a great deal of virtue attached to a study of the Bible.

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See Boles, The Bible, Religion, and the Public Schools (1961), 208-218; Choper, Religion in the Public Schools: A Proposed Constitutional Standard, 47 Minn.L.Rev. 39, 372-375 (1963). One religious periodical has suggested the danger that

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an observance of this sort is likely to deteriorate quickly into an empty formality with little, if any, spiritual significance. Prescribed forms of this sort, as many colleges have concluded after years of compulsory chapel attendance, can actually work against the inculcation of vital religion.

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Prayers in Public Schools Opposed, 69 Christian Century, Jan. 9, 1952, p. 35.

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61. See Cahn, On Government and Prayer, 37 N.Y.U.L.Rev. 981, 993-994 (1962). A leading Protestant journal recently noted:

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Agitation for removal of religious practices in public schools is not prompted or supported entirely by Jews, humanists, and atheists. At both local and national levels, many Christian leaders, concerned both for civil rights of minorities and for adequate religious education, are opposed to religious exercises in public schools…. Many persons, both Jews and Christians, believe that prayer and Bible reading are too sacred to be permitted in public schools, in spite of their possible moral value.

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Smith, The Religious Crisis In Our Schools, 128 The Episcopalian, May 1963, pp. 12-13. See, e.g., for other recent statements on this question, Editorial, Amending the Amendment, 108 America, May 25, 1963, p. 736; Sissel, A Christian View: Behind the Fight Against School Prayer, 27 Look, June 18, 1963, p.25. It should be unnecessary to demonstrate that the Lord's Prayer, more clearly than the Regents' Prayer involved in Engel v. Vitale, is an essentially Christian supplication. See, e.g., Scott, The Lord's Prayer: Its Character, Purpose, and Interpretation (1951), 55; Buttrick, So We Believe, So We Pray (1951), 142; Levy, Lord's Prayer, in 7 Universal Jewish Encyclopedia (1948), 19-193.

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62. Statement of the Baptist Joint Committee on Public Affairs, in 4 J. Church and State 144 (1962).

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63. See Harrison, The Bible, the Constitution and Public Education, 29 Tenn.L.Rev. 363, 397 (1962). The application of statutes and regulations which forbid comment on scriptural passages is further complicated by the view of certain religious groups that reading without comment is either meaningless or actually offensive. Compare Rabbi Grayzel's testimony before the District Court that "the Bible is misunderstood when it is taken without explanation." A recent survey of the attitudes of certain teachers disclosed concern that "refusal to answer pupil questions regarding any curricular activity is not educationally sound," and that reading without comment might create in the minds of the pupils the impression that something was "hidden or wrong." Boles, The Bible, Religion, and the Public Schools (1961), 235-236. Compare the comment of a foreign observer:

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In no other field of learning would we expect a child to draw the full meaning from what he reads without accompanying explanatory comment. But comment by the teacher will inevitably reveal his own personal preferences, and the exhibition of preferences is what we are seeking to eliminate.

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MacKinnon, Freedom?—or Toleration? The Problem of Church and State in the United States, [1959] Pub.Law 374, 383.

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64. See Abbott, A Common Bible Reader for Public Schools, 56 Religious Education 20 (1961); Note, 22 Albany L.Rev. 156-157 (1958); 2 Stokes, Church and State in the United States (1950), 501-506 (describing the "common denominator" or "three faiths" plan and certain programs of instruction designed to implement the "common core" approach). The attempts to evolve a universal, nondenominational prayer are by no means novel. See, e.g., Madison's letter to Edward Everett, March 19, 1823, commenting upon a

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project of a prayer…intended to comprehend & conciliate College Students of every [Christian] denomination, by a Form composed wholly of texts & phrases of scripture.

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9 Writings of James Madison (Hunt ed.1910), 126. For a fuller description of this and other attempts to fashion a "common core" or nonsectarian exercise, see Engel v. Vitale, 18 Misc.2d 659, 660-662, 191 N.Y.S.2d 453, 459-460.

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65. See the policy statement recently drafted by the National Council of the Churches of Christ:

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…neither true religion nor good education is dependent upon the devotional use of the Bible in the public school program…. Apart from the constitutional questions involved, attempts to establish a "common core" of religious beliefs to be taught in public schools for the purpose of indoctrination are unrealistic and unwise. Major faith groups have not agreed on a formulation of religious beliefs common to all. Even if they had done so, such a body of religious doctrine would tend to become a substitute for the more demanding commitments of historic faiths.

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Washington Post, May 25, 1963, § A, p. 1, col. 4. See also Choper, Religion in the Public Schools: A Proposed Constitutional Standard, 47 Minn.L.Rev. 329, 341, 368-369 (1963). See also Hartford, Moral Values in Public Education: Lessons from the Kentucky Experience (1958), 261-262; Moehlman, The Wall of Separation Between Church and State (1951), 158-159. Cf. Mosk, "Establishment Clause" Clarified, 22 Law in Transition 231, 235-236 (1963).

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66. Quoted in Kurland, The Regents' Prayer Case: "Full of Sound and Fury, Signifying…,"1962 Supreme Court Review (1962), 1, 31.

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67. Quoted in Harrison, The Bible, the Constitution and Public Education, 29 Tenn.L.Rev. 363, 417 (1962). See also Dawson, America's Way in Church, State, and Society (1953), 54.

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68. See the testimony of Edward L. Schempp, the father of the children in the Abington schools and plaintiff appellee in No. 142, concerning his reasons for not asking that his children be excused from the morning exercises after excusal was made available through amendment of the statute:

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We originally objected to our children being exposed to the reading of the King James version of the Bible…, and under those conditions, we would have theoretically liked to have had the children excused. But we felt that the penalty of having our children labelled as "odd balls" before their teachers and classmates every day in the year was even less satisfactory than the other problem….

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The children, the classmates of Roger and Donna are very liable to label and lump all particular religious difference or religious objections as atheism, particularly, today the word "atheism" is so often tied to atheistic communism, and atheism has very bad connotations in the minds of children and many adults today.

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A recent opinion of the Attorney General of California gave as one reason for finding devotional exercises unconstitutional the likelihood that

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[c]hildren forced by conscience to leave the room during such exercises would be placed in a position inferior to that of students adhering to the State-endorsed religion.

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25 Cal.Op.Atty.Gen. 316, 319 (1955). Other views on this question, and possible effects of the excusal procedure, are summarized in Rosenfield, Separation of Church and State in the Public Schools, 22 U. of Pitt.L.Rev. 561, 581-585 (1961); Note, Separation of Church and State: Religious Exercises in the Schools, 31 U. of Cinc.L.Rev. 408, 416 (1962); Note, 62 W.Va.L.Rev. 353, 358 (1960).

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69. Extensive testimony by behavioral scientists concerning the effect of similar practices upon children's attitudes and behaviors is discussed in Tudor v. Board of Education, 14 N.J. 31, 50-52, 100 A.2d 857, 867-868. See also Choper, Religion in the Public Schools: A Proposed Constitutional Standard, 47 Minn.L.Rev. 329, 344 (1963). There appear to be no reported experiments which bear directly upon the question under consideration. There have, however, been numerous experiments which indicate the susceptibility of school children to peer group pressures, especially where important group norms and values are involved. See, e.g., Berenda, The Influence of the Group on the Judgments of Children (1950), 26-33; Argyle, Social Pressure in Public and Private Situations, 54 J. Abnormal & Social Psych. 172 (1957); cf. Rhine, The Effect of Peer Group Influence Upon Concept-Attitude Development and Change, 51 J. Social Psych. 173 (1960); French, Morrison and Levinger, Coercive Power and Forces Affecting Conformity, 61 J. Abnormal and Social Psych. 93 (1960). For a recent and important experimental study of the susceptibility of students to various factors in the school environment, see Zander, Curtis and Rosenfeld, The Influence of Teachers and Peers on Aspirations of Youth (U.S. Office of Education Cooperative Research Project No. 451, 1961), 24-25, 78-79. It is also apparent that the susceptibility of school children to prestige suggestion and social influence within the school environment varies inversely with the age, grade level, and consequent degree of sophistication of the child, see Pated and Gordon, Some Personal and Situational Determinants of Yielding to Influence, 61 J. Abnormal and Social Psych. 411, 417 (1960).

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Experimental findings also shed some light upon the probable effectiveness of a provision for excusal when, as is usually the case, the percentage of the class wishing not to participate in the exercises is very small. It has been demonstrated, for example, that the inclination even of adults to depart or dissent overtly from strong group norms varies proportionately with the size of the dissenting group—that is, inversely with the apparent or perceived strength of the norm itself—and is markedly slighter in the case of the sole or isolated dissenter. See, e.g., Asch, Studies of Independence and Conformity: I. A Minority of One Against a Unanimous Majority (Psych. Monographs No. 416, 1956), 69-70; Asch, Effects of Group Pressure upon the Modification and Distortion of Judgments, in Cartwright and Zander, Group Dynamics (2d ed.1960), 189-199; Luchins and Luchins, On Conformity With True and False Communications, 42 J. Social Psych. 283 (1955). Recent important findings on these questions are summarized in Hare, Handbook of Small Group Research (1962), c. II.

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70. See, on the general problem of conflict and accommodation between the two clauses, Katz, Freedom of Religion and State Neutrality, 20 U. of Chi.L.Rev. 426, 429 (1953); Griswold, Absolute Is In the Dark, 8 Utah L.Rev. 167, 176-179 (1963); Kauper, Church, State, and Freedom: A Review, 52 Mich.L.Rev. 829, 833 (1954). One author has suggested that the Establishment and Free Exercise Clauses must be

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read as stating a single precept: that government cannot utilize religion as a standard for action or inaction because these clauses, read together as they should be, prohibit classification in terms of religion either to confer a benefit or to impose a burden.

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Kurland, Religion and the Law (1962), 112. Compare the formula of accommodation embodied in the Australian Constitution, § 116:

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The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

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Essays on the Australian Constitution (Else-Mitchell ed.1961), 15.

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71. There has been much difference of opinion throughout American history concerning the advisability of furnishing chaplains at government expense. Compare, e.g., Washington's order regarding chaplains for the Continental Army, July 9, 1776, in 5 Writings of George Washington (Fitzpatrick ed.1932), 244, with Madison's views on a very similar question, letter to Eduard Livingston, July 10, 1822, 9 Writings of James Madison (Hunt ed.1910), 100-103. Compare also this statement by the Armed Forces Chaplains Board concerning the chaplain's obligation:

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To us has been entrusted the spiritual and moral guidance of the young men and women in the Armed Services of this country. A chaplain has many duties—yet first and foremost is that of presenting God to men and women wearing the military uniform. What happens to them while they are in military service has a profound effect on what happens in the community as they resume civilian life. We, as chaplains, must take full cognizance of that fact and dedicate our work to making them finer, spiritually strengthened citizens.

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Builders of Faith (U.S. Department of Defense 1955), ii. It is interesting to compare in this regard an express provision, Article 140, of the Weimar Constitution: "Necessary free time shall be accorded to the members of the armed forces for the fulfillment of their religious duties." McBain and Rogers, The New Constitutions of Europe (1922), 203.

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72. For a discussion of some recent and difficult problems in connection with chaplains and religious exercises in prisons, see, e.g., Pierce v. La Vallee, 293 F.2d 233; In re Ferguson, 55 Cal.2d 663, 361 P.2d 417; McBride v. McCorkle, 44 N.J.Super. 468, 130 A.2d 881; Brown v. McGinnis, 10 N.Y.2d 531, 180 N.E.2d 791; discussed in Comment, 62 Col.L.Rev. 1488 (1962); 75 Harv.L.Rev. 837 (1962). Compare Article XVIII of the Hague Convention Regulations of 1899:

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Prisoners of war shall enjoy every latitude in the exercise of their religion, including attendance at their own church services, provided only they comply with the regulations for order and police issued by the military authorities.

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Quoted in Blakely, American State Papers and Related Documents on Freedom in Religion (4th rev. ed.1949), 313.

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73. Compare generally Sibley and Jacob, Conscription of Conscience: The American State and the Conscientious Objector, 1940-1947 (1952), with Conklin, Conscientious Objector Provisions: A View in the Light of Torcaso v. Watkins, 51 Geo.L.J. 252 (1963).

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74. See, e.g., Southside Estates Baptist Church v. Board of Trustees, 115 So.2d 697 (Fla.); Lewis v. Mandeville, 201 Misc. 120, 107 N.Y.S.2d 865; cf. School District No. 97 v. Schmidt, 128 Colo. 495, 263 P.2d 581 (temporary loan of school district's custodian to church). A different problem may be presented with respect to the regular use of public school property for religious activities, State ex rel. Gilbert v. Dilley, 95 Neb. 527, 145 N.W. 999; the erection on public property of a statue of or memorial to an essentially religious figure, State ex rel. Singelmann v. Morrison, 57 So.2d 238 (La.App.); seasonal displays of a religious character, Baer v. Kolmorgen, 14 Misc.2d 1015, 181 N.Y.S.2d 230; or the performance on public property of a drama or opera based on religious material or carrying a religious message, cf. County of Los Angeles v. Hollinger, 200 Cal.App.2d 877, 19 Cal.Rptr. 648.

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75. Compare Moulton and Myers, Report on Appointing Chaplains to the Legislature of New York, in Blau, Cornerstones of Religious Freedom in America (1949), 141-156; Comment, 63 Col.L.Rev. 73, 97 (1963)

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76. A comprehensive survey of the problems raised concerning the role of religion in the secular curriculum is contained in Brown, ed., The Study of Religion in the Public Schools: An Appraisal (1958). See also Katz, Religion and American Constitutions, Lecture at Northwestern University Law School, March 21, 1963, pp. 37-41; Educational Policies Comm'n of the National Education Assn., Moral and Spiritual Values in the Public Schools (1951), 49-80. Compare, for a consideration of similar problems in state supported colleges and universities, Louisell and Jackson, Religion, Theology, and Public Higher Education, 50 Cal.L.Rev. 751 (1962).

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77. See generally Torpey, Judicial Doctrines of Religious Rights in America (1948), c. VI; Van Alstyne, Tax Exemption of Church Property, 20 Ohio State L.J. 461 (1959); Sutherland, Due Process and Disestablishment, 62 Harv.L.Rev. 1306, 1336-1338 (1949); Louisell and Jackson, Religion, Theology, and Public Higher Education, 50 Cal.L.Rev. 751, 773-780 (1962); 7 De Paul L.Rev. 206 (1958); 58 Col.L.Rev. 417 (1958); 9 Stan.L.Rev. 366 (1957).

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78. See, e.g., Washington Ethical Society v. District of Columbia, 101 U.S.App.D.C. 371, 249 F.2d 127; Fellowship of Humanity v. County of Alameda, 153 Cal.App.2d 673, 315 P.2d 394.

STEWART, J., dissenting (Footnotes)

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1. It is instructive, in this connection, to examine the complaints in the two cases before us. Neither complaint attacks the challenged practices as "establishments." What both allege as the basis for their causes of actions are, rather, violations of religious liberty.

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2. 310 U.S. at 303. The Court's statement as to the Establishment Clause in Cantwell was dictum. The case was decided on free exercise grounds.

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3. See also, in this connection, Zorach v. Clauson, 343 U.S. 306, 314:

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Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.

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4.

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This is, beyond all question, a utilization of the tax established and tax supported public school system to aid religious groups to spread their faith.

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McCollum v. Board of Education, 333 U.S. 203, 210. (Emphasis added.)

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5. The Pennsylvania statute was specifically amended to remove the compulsion upon teachers. Act of December 17, 1959, p. L.1928, 24 Purdon's Pa.Stat.Ann. § 15-1516. Since the Maryland case is here on a demurrer, the issue of whether or not a teacher could be dismissed for refusal to participate seems, among many others, never to have been raised.

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6. See, e.g., the description of a plan permitting religious instruction off school property contained in McCollum v. Board of Education, 333 U.S. 203, 224 (separate opinion of Mr. Justice Frankfurter).

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7. Cf.

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The task of separating the secular from the religious in education is one of magnitude, intricacy and delicacy. To lay down a sweeping constitutional doctrine as demanded by complainant and apparently approved by the Court, applicable alike to all school boards of the nation,…is to decree a uniform, rigid and, if we are consistent, an unchanging standard for countless school boards representing and serving highly localized groups which not only differ from each other but which themselves from time to time change attitudes. It seems to me that to do so is to allow zeal for our own ideas of what is good in public instruction to induce us to accept the role of a super board of education for every school district in the nation.

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McCollum v. Board of Education, 333 U.S. 203, 237 (concurring opinion of Mr. Justice Jackson).

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8. For example, if the record in the Schempp case contained proof (rather than mere prophecy) that the timing of morning announcements by the school was such as to handicap children who did not want to listen to the Bible reading, or that the excusal provision was so administered as to carry any overtones of social inferiority, then impermissible coercion would clearly exist.

"I Have a Dream" by the Reverend Martin Luther King, Jr., 28 August 1963

King's "I Have a Dream" Speech, 1963

Title: King's "I Have a Dream" Speech

Author: Martin Luther King, Jr.

Date: August 28, 1963

Source: Martin Luther King, Jr., Center for Nonviolent Social Change, Atlanta, Georgia

August 28, 1963

Washington, D. C.

King, "I Have a Dream"

I am happy to join with you today in what will go down in history as the greatest demonstration for freedom in the history of our nation. Five score years ago, a great American, in whose symbolic shadow we stand today, signed the Emancipation Proclamation. This momentous decree came as a great beacon light of hope to millions of Negro slaves, who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of their captivity.

King, "I Have a Dream"

But one hundred years later, the Negro still is not free. One hundred years later, the life of the Negro is still sadly crippled by the manacle of segregation and the chains of discrimination.

King, "I Have a Dream"

One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languished in the corners of American society and finds himself an exile in his own land.

King, "I Have a Dream"

So we've come here today to dramatize a shameful condition. In a sense we have come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, black men as well as white men, would be guaranteed the inalienable rights of life, liberty and the pursuit of happiness.

King, "I Have a Dream"

It is obvious today that America has defaulted on this promissory note insofar as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked "insufficient funds." But we refuse to believe that the bank of justice is bankrupt. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. So we have come to cash this check, a check that will give us upon demand the riches of freedom and the security of justice.

King, "I Have a Dream"

We have also come to this hallowed spot to remind America of the fierce urgency of Now. This is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism. Now is the time to make real the promises of democracy. Now is the time to rise from the dark and desolate valley of segregation to the sunlit path of racial justice. Now is the time to lift our nation from the quicksands of racial injustice to the solid rock of brotherhood. Now is the time to make justice a reality for all of God's children. It would be fatal for the nation to overlook the urgency of the moment. This sweltering summer of the Negro's legitimate discontent will not pass until there is an invigorating autumn of freedom and equality.

King, "I Have a Dream"

Nineteen sixty-three is not an end, but a beginning. Those who hope that the Negro needed to blow off steam and will now be content will have a rude awakening if the nation returns to business as usual.

King, "I Have a Dream"

There will be neither rest nor tranquility in America until the Negro is granted his citizenship rights. The whirlwinds of revolt will continue to shake the foundations of our nation until the bright day of justice emerges.

King, "I Have a Dream"

But there is something that I must say to my people who stand on the warm threshold which leads into the palace of justice. In the process of gaining our rightful place we must not be guilty of wrongful deeds.

King, "I Have a Dream"

Let us not seek to satisfy our thirst for freedom by drinking from the cup of bitterness and hatred. We must ever conduct our struggle on the high plane of dignity and discipline. We must not allow our creative protest to degenerate into physical violence. Again and again we must rise to the majestic heights of meeting physical force with soul force.

King, "I Have a Dream"

The marvelous new militancy which has engulfed the Negro community must not lead us to a distrust of all white people, for many of our white brothers, as evidenced by their presence here today, have come to realize that their destiny is tied up with our destiny. They have come to realize that their freedom is inextricably bound to our freedom. We cannot walk alone.

King, "I Have a Dream"

And as we walk, we must make the pledge that we shall always march ahead. We cannot turn back. There are those who are asking the devotees of civil rights, "When will you be satisfied?" We can never be satisfied as long as the Negro is the victim of the unspeakable horrors of police brutality.

King, "I Have a Dream"

We can never be satisfied as long as our bodies, heavy with the fatigue of travel, cannot gain lodging in the motels of the highways and the hotels of the cities. We cannot be satisfied as long as a Negro’s basic mobility is from a smaller ghetto to a larger one.

King, "I Have a Dream"

We can never be satisfied as long as our children are stripped of their selfhood and robbed of their dignity by signs stating “for whites only.” We cannot be satisfied as long as a Negro in Mississippi cannot vote and a Negro in New York believes he has nothing for which to vote. No, we are not satisfied and we will not be satisfied until justice rolls down like waters and righteousness like a mighty stream.

King, "I Have a Dream"

I am not unmindful that some of you have come here out of great trials and tribulations. Some of you have come fresh from narrow jail cells. Some of you have come from areas where your quest for freedom left you battered by the storms of persecutions and staggered by the winds of police brutality. You have been the veterans of creative suffering. Continue to work with the faith that unearned suffering is redemptive.

King, "I Have a Dream"

Go back to Mississippi, go back to Alabama, go back to South Carolina, go back to Georgia, go back to Louisiana, go back to the slums and ghettos of our northern cities, knowing that somehow this situation can and will be changed. Let us not wallow in the valley of despair.

King, "I Have a Dream"

So I say to you, my friends, that even though we face the difficulties of today and tomorrow. I still have a dream. It is a dream deeply rooted in the American dream that one day this nation will rise up and live out the true meaning of its creed—we hold these truths to be self-evident that all men are created equal.

King, "I Have a Dream"

I have a dream that one day on the red hills of Georgia the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood.

King, "I Have a Dream"

I have a dream that one day even the state of Mississippi, a state sweltering with the heat of injustice, sweltering with the heat of oppression, will be transformed into an oasis of freedom and justice.

King, "I Have a Dream"

I have a dream my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character. I have a dream today!

King, "I Have a Dream"

I have a dream that one day, down in Alabama, with its vicious racists, with its governor having his lips dripping with the words of interposition and nullification, that one day, right there in Alabama, little black boys and black girls will be able to join hands with little white boys and white girls as sisters and brothers. I have a dream today!

King, "I Have a Dream"

I have a dream that one day every valley shall be exalted, and every hill and mountain shall be made low, the rough places will be made plain and the crooked places will be made straight and the glory of the Lord shall be revealed and all flesh shall see it together.

King, "I Have a Dream"

This is our hope. This is the faith that I will go back to the South with.

King, "I Have a Dream"

With this faith we will be able to hew out of the mountain of despair a stone of hope. With this faith we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood.

King, "I Have a Dream"

With this faith we will be able to work together, to pray together, to struggle together, to go to jail together, to stand up for freedom together, knowing that we will be free one day. This will be the day, this will be the day when all of God's children will be able to sing with new meaning "My country 'tis of thee, sweet land of liberty, of thee I sing; land where my fathers died, land of the pilgrim's pride; from every mountainside, let freedom ring"—and if America is to be a great nation, this must become true.

King, "I Have a Dream"

So let freedom ring from the prodigious hilltops of New Hampshire.

King, "I Have a Dream"

Let freedom ring from the mighty mountains of New York.

King, "I Have a Dream"

Let freedom ring from the heightening Alleghenies of Pennsylvania.

King, "I Have a Dream"

Let freedom ring from the snow-capped Rockies of Colorado.

King, "I Have a Dream"

Let freedom ring from the curvaceous slopes of California.

King, "I Have a Dream"

But not only that.

King, "I Have a Dream"

Let freedom ring from Stone Mountain of Georgia.

King, "I Have a Dream"

Let freedom ring from Lookout Mountain of Tennessee.

King, "I Have a Dream"

Let freedom ring from every hill and molehill of Mississippi, from every mountainside, let freedom ring!

King, "I Have a Dream"

And when we allow freedom to ring, when we let it ring from every village and hamlet, from every state and city, we will be able to speed up that day when all of God's children, black men and white men, Jews and Gentiles, Catholics and Protestants—will be able to join hands and to sing in the words of the old Negro spiritual, "Free at last, free at last; thank God Almighty, we are free at last."

Statement by President Kennedy Following the Senate Vote on the Nuclear Test Ban Treaty, 1963

Title: Statement by President Kennedy Following the Senate Vote on the Nuclear Test Ban Treaty

Author: John F. Kennedy

Date: September 24, 1963

Source: Public Papers of the Presidents, J. F. Kennedy, 1963, p.704

Public Papers of JFK, 1963, p.704

THE ACTION of the United States Senate in giving its advice and consent to the nuclear test ban treaty is a welcome culmination of this effort to lead the world once again to the path of peace. The wide support of Senators of both parties given to the treaty after an extensive and wide-ranging debate is evidence not only that the treaty has wide public support, but also of the collective judgment that this instrument is good for the people of the United States and people all over the world. I congratulate the Senate for its action and wish to particularly commend the painstaking work of the leaders of both parties in the Senate and Senator J. William Fulbright of Arkansas in bringing the treaty to this highly satisfactory vote.

Public Papers of JFK, 1963, p.704

NOTE: For the President's remarks on ratifying the treaty, see Item 403.

Public Papers of JFK, 1963, p.704

The statement was released at Milford, Pa.

President Johnson's Special Message to the Congress Proposing a Nationwide War on the Sources of Poverty, 1964

Title: President Eisenhower's Special Message to the Congress Proposing a Nationwide War on the Sources of Poverty

Author: Lyndon B. Johnson

Date: March 16, 1964

Source: Public Papers of the Presidents, Johnson, 1963-1964, pp.375-380

Public Papers of LBJ, 1963-1964, p.375

To the Congress of the United States:

Public Papers of LBJ, 1963-1964, p.375

We are citizens of the richest and most fortunate nation in the history of the world.

Public Papers of LBJ, 1963-1964, p.375

One hundred and eighty years ago we were a small country struggling for survival on the margin of a hostile land.

Public Papers of LBJ, 1963-1964, p.375

Today we have established a civilization of free men which spans an entire continent.

Public Papers of LBJ, 1963-1964, p.376

With the growth of our country has come opportunity for our people—opportunity to educate our children, to use our energies in productive work, to increase our leisure-opportunity for almost every American to hope that through work and talent he could create a better life for himself and his family.

Public Papers of LBJ, 1963-1964, p.376

The path forward has not been an easy one.

Public Papers of LBJ, 1963-1964, p.376

But we have never lost sight of our goal: an America in which every citizen shares all the opportunities of his society, in which every man has a chance to advance his welfare to the limit of his capacities.

Public Papers of LBJ, 1963-1964, p.376

We have come a long way toward this goal.

Public Papers of LBJ, 1963-1964, p.376

We still have a long way to go.

Public Papers of LBJ, 1963-1964, p.376

The distance which remains is the measure of the great unfinished work of our society.

Public Papers of LBJ, 1963-1964, p.376

To finish that work I have called for a national war on poverty. Our objective: total victory.

Public Papers of LBJ, 1963-1964, p.376

There are millions of Americans—one fifth of our people—who have not shared in the abundance which has been granted to most of us, and on whom the gates of opportunity have been closed.

Public Papers of LBJ, 1963-1964, p.376

What does this poverty mean to those who endure it?

Public Papers of LBJ, 1963-1964, p.376

It means a daily struggle to secure the necessities for even a meager existence. It means that the abundance, the comforts, the opportunities they see all around them are beyond their grasp.

Public Papers of LBJ, 1963-1964, p.376

Worst of all, it means hopelessness for the young.

Public Papers of LBJ, 1963-1964, p.376

The young man or woman who grows up without a decent education, in a broken home, in a hostile and squalid environment, in ill health or in the face of racial injustice-that young man or woman is often trapped in a life of poverty.

Public Papers of LBJ, 1963-1964, p.376

He does not have the skills demanded by a complex society. He does not know how to acquire those skills. He faces a mounting sense of despair which drains initiative and ambition and energy.

Public Papers of LBJ, 1963-1964, p.376

Our tax cut will create millions of new jobs—new exits from poverty.

Public Papers of LBJ, 1963-1964, p.376

But we must also strike down all the barriers which keep many from using those exits.

Public Papers of LBJ, 1963-1964, p.376

The war on poverty is not a struggle simply to support people, to make them dependent on the generosity of others.

Public Papers of LBJ, 1963-1964, p.376

It is a struggle to give people a chance.

Public Papers of LBJ, 1963-1964, p.376

It is an effort to allow them to develop and use their capacities, as we have been allowed to develop and use ours, so that they can share, as others share, in the promise of this nation.

Public Papers of LBJ, 1963-1964, p.376

We do this, first of all, because it is right that we should.

Public Papers of LBJ, 1963-1964, p.376

From the establishment of public education and land grant colleges through agricultural extension and encouragement to industry, we have pursued the goal of a nation with full and increasing opportunities for all its citizens.

Public Papers of LBJ, 1963-1964, p.376

The war on poverty is a further step in that pursuit.

Public Papers of LBJ, 1963-1964, p.376

We do it also because helping some will increase the prosperity of all.

Public Papers of LBJ, 1963-1964, p.376

Our fight against poverty will be an investment in the most valuable of our resources—the skills and strength of our people.

Public Papers of LBJ, 1963-1964, p.376

And in the future, as in the past, this investment will return its cost many fold to our entire economy.

Public Papers of LBJ, 1963-1964, p.376–p.377

If we can raise the annual earnings of 10 million among the poor by only $1,000 we will have added 14 billion dollars a year to our national output. In addition we can make important reductions in public assistance payments which now cost us 4 [p.377] billion dollars a year, and in the large costs of fighting crime and delinquency, disease and hunger.

Public Papers of LBJ, 1963-1964, p.377

This is only part of the story.

Public Papers of LBJ, 1963-1964, p.377

Our history has proved that each time we broaden the base of abundance, giving more people the chance to produce and consume, we create new industry, higher production, increased earnings and better income for all.

Public Papers of LBJ, 1963-1964, p.377

Giving new opportunity to those who have little will enrich the lives of all the rest.

Public Papers of LBJ, 1963-1964, p.377

Because it is right, because it is wise, and because, for the first time in our history, it is possible to couquer poverty, I submit, for the consideration of the Congress and the country, the Economic Opportunity Act of 1964·

Public Papers of LBJ, 1963-1964, p.377

The Act does not merely expand old programs or improve what is already being done.

Public Papers of LBJ, 1963-1964, p.377

It charts a new course.

Public Papers of LBJ, 1963-1964, p.377

It strikes at the causes, not just the consequences of poverty.

Public Papers of LBJ, 1963-1964, p.377

It can be a milestone in our one-hundred eighty year search for a better life for our people.

Public Papers of LBJ, 1963-1964, p.377

This Act provides five basic opportunities.

Public Papers of LBJ, 1963-1964, p.377

It will give almost half a million underprivileged young Americans the opportunity to develop skills, continue education, and find useful work.

Public Papers of LBJ, 1963-1964, p.377

It will give every American community the opportunity to develop a comprehensive plan to fight its own poverty—and help them to carry out their plans.

Public Papers of LBJ, 1963-1964, p.377

It will give dedicated Americans the opportunity to enlist as volunteers in the war against poverty.

Public Papers of LBJ, 1963-1964, p.377

It will give many workers and farmers the opportunity to break through particular barriers which bar their escape from poverty.

Public Papers of LBJ, 1963-1964, p.377

It will give the entire nation the opportunity for a concerted attack on poverty through the establishment, under my direction, of the Office of Economic Opportunity, a national headquarters for the war against poverty.

Public Papers of LBJ, 1963-1964, p.377

This is how we propose to create these opportunities.

Public Papers of LBJ, 1963-1964, p.377

First we will give high priority to helping young Americans who lack skills, who have not completed their education or who cannot complete it because they are too poor.

Public Papers of LBJ, 1963-1964, p.377

The years of high school and college age are the most critical stage of a young person's life. If they are not helped then, many will be condemned to a life of poverty which they, in turn, will pass on to their children.

Public Papers of LBJ, 1963-1964, p.377

I therefore recommend the creation of a Job Corps, a Work-Training Program, and a Work Study Program.

Public Papers of LBJ, 1963-1964, p.377

A new national Job Corps will build toward an enlistment of 100,000 young men. They will be drawn from those whose background, health and education make them least fit for useful work.

Public Papers of LBJ, 1963-1964, p.377

Those who volunteer will enter more than 100 Camps and Centers around the country.

Public Papers of LBJ, 1963-1964, p.377

Half of these young men will work, in the first year, on special conservation projects to give them education, useful work experience and to enrich the natural resources of the country.

Public Papers of LBJ, 1963-1964, p.377

Half of these young men will receive, in the first year, a blend of training, basic education and work experience in Job Training Centers.

Public Papers of LBJ, 1963-1964, p.377

These are not simply camps for the underprivileged. They are new educational institutions, comparable in innovation to the land grant colleges. Those who enter them will emerge better qualified to play a productive role in American society.

Public Papers of LBJ, 1963-1964, p.377–p.378

A new national Work-Training Program operated by the Department of Labor will provide work and training for 200,000 [p.378] American men and women between the ages of 16 and 21. This will be developed through state and local governments and non-profit agencies.

Public Papers of LBJ, 1963-1964, p.378

Hundreds of thousands of young Americans badly need the experience, the income, and the sense of purpose which useful full or part-time work can bring. For them such work may mean the difference between finishing school or dropping out. Vital community activities from hospitals and playgrounds to libraries and settlement houses are suffering because there are not enough people to staff them.

Public Papers of LBJ, 1963-1964, p.378

We are simply bringing these needs together.

Public Papers of LBJ, 1963-1964, p.378

A new national Work-Study Program operated by the Department of Health, Education, and Welfare will provide federal funds for part-time jobs for 140,000 young Americans who do not go to college because they cannot afford it.

Public Papers of LBJ, 1963-1964, p.378

There is no more senseless waste than the waste of the brainpower and skill of those who are kept from college by economic circumstance. Under this program they will, in a great American tradition, be able to work their way through school.

Public Papers of LBJ, 1963-1964, p.378

They and the country will be richer for it.

Public Papers of LBJ, 1963-1964, p.378

Second, through a new Community Action program we intend to strike at poverty at its source—in the streets of our cities and on the farms of our countryside among the very young and the impoverished old.

Public Papers of LBJ, 1963-1964, p.378

This program asks men and women throughout the country to prepare long-range plans for the attack on poverty in their own local communities.

Public Papers of LBJ, 1963-1964, p.378

These are not plans prepared in Washington and imposed upon hundreds of different situations.

Public Papers of LBJ, 1963-1964, p.378

They are based on the fact that local citizens best understand their own problems, and know best how to deal with those problems.

Public Papers of LBJ, 1963-1964, p.378

These plans will be local plans striking at the many untilled needs which underlie poverty in each community, not just one or two. Their components and emphasis will differ as needs differ.

Public Papers of LBJ, 1963-1964, p.378

These plans will be local plans calling upon all the resources available to the community-federal and state, local and private, human and material.

Public Papers of LBJ, 1963-1964, p.378

And when these plans are approved by the Office of Economic Opportunity, the federal government will finance up to 9070 of the additional cost for the first two years.

Public Papers of LBJ, 1963-1964, p.378

The most enduring strength of our nation is the huge reservoir of talent, initiative and leadership which exists at every level of our society.

Public Papers of LBJ, 1963-1964, p.378

Through the Community Action Program we call upon this, our greatest strength, to overcome our greatest weakness.

Public Papers of LBJ, 1963-1964, p.378

Third, I ask for the authority to recruit and train skilled volunteers for the war against poverty.

Public Papers of LBJ, 1963-1964, p.378

Thousands of Americans have volunteered to serve the needs of other lands.

Public Papers of LBJ, 1963-1964, p.378

Thousands more want the chance to serve the needs of their own land.

Public Papers of LBJ, 1963-1964, p.378

They should have that chance.

Public Papers of LBJ, 1963-1964, p.378

Among older people who have retired, as well as among the young, among women as well as men, there are many Americans who are ready to enlist in our war against poverty.

Public Papers of LBJ, 1963-1964, p.378

They have skills and dedication. They are badly needed.

Public Papers of LBJ, 1963-1964, p.378

If the State requests them, if the community needs and will use them, we will recruit and train them and give them the chance to serve.

Public Papers of LBJ, 1963-1964, p.378

Fourth, we intend to create new opportunities for certain hard-hit groups to break out of the pattern of poverty.

Public Papers of LBJ, 1963-1964, p.379

Through a new program of loans and guarantees we can provide incentives to those who will employ the unemployed.

Public Papers of LBJ, 1963-1964, p.379

Through programs of work and retraining for unemployed fathers and mothers we can help them support their families in dignity while preparing themselves for new work.

Public Papers of LBJ, 1963-1964, p.379

Through funds to purchase needed land, organize cooperatives, and create new and adequate family farms we can help those whose life on the land has been a struggle without hope.

Public Papers of LBJ, 1963-1964, p.379

Filth, I do not intend that the war against poverty become a series of uncoordinated and unrelated efforts—that it perish for lack of leadership and direction.

Public Papers of LBJ, 1963-1964, p.379

Therefore this bill creates, in the Executive Office of the President, a new Office of Economic Opportunity. Its Director will be my personal Chief of Staff for the War against poverty. I intend to appoint Sargent Shriver to this post.

Public Papers of LBJ, 1963-1964, p.379

He will be directly responsible for these new programs. He will work with and through existing agencies of the government.

Public Papers of LBJ, 1963-1964, p.379

This program—the Economic Opportunity Act—is the foundation of our war against poverty. But it does not stand alone.

Public Papers of LBJ, 1963-1964, p.379

For the past three years this government has advanced a number of new proposals which strike at important areas of need and distress.

Public Papers of LBJ, 1963-1964, p.379

I ask the Congress to extend those which are already in action, and to establish those which have already been proposed.

Public Papers of LBJ, 1963-1964, p.379

There are programs to help badly distressed areas such as the Area Redevelopment Act, and the legislation now being prepared to help Appalachia.

Public Papers of LBJ, 1963-1964, p.379

There are programs to help those without training find a place in today's complex society—such as the Manpower Development Training Act and the Vocational Education Act for youth.

Public Papers of LBJ, 1963-1964, p.379

There are programs to protect those who are specially vulnerable to the ravages of poverty—hospital insurance for the elderly, protection for migrant farm workers, a food stamp program for the needy, coverage for millions not now protected by a minimum wage, new and expanded unemployment benefits for men out of work, a Housing and Community Development bill for those seeking decent homes.

Public Papers of LBJ, 1963-1964, p.379

Finally there are programs which help the entire country, such as aid to education which, by raising the quality of schooling available to every American child, will give a new chance for knowledge to the children of the poor.

Public Papers of LBJ, 1963-1964, p.379

I ask immediate action on all these programs.

Public Papers of LBJ, 1963-1964, p.379

What you are being asked to consider is not a simple or an easy program. But poverty is not a simple or an easy enemy.

Public Papers of LBJ, 1963-1964, p.379

It cannot be driven from the land by a single attack on a single front. Were this so we would have conquered poverty long ago.

Public Papers of LBJ, 1963-1964, p.379

Nor can it be conquered by government alone.

Public Papers of LBJ, 1963-1964, p.379

For decades American labor and American business, private institutions and private individuals have been engaged in strengthening our economy and offering new opportunity to those in need.

Public Papers of LBJ, 1963-1964, p.379

We need their help, their support, and their full participation.

Public Papers of LBJ, 1963-1964, p.379

Through this program we offer new incentives and new opportunities for cooperation, so that all the energy of our nation, not merely the efforts of government, can be brought to bear on our common enemy.

Public Papers of LBJ, 1963-1964, p.379–p.380

Today, for the first time in our history, we have the power to strike away the barriers [p.380] to full participation in our society. Having the power, we have the duty.

Public Papers of LBJ, 1963-1964, p.380

The Congress is charged by the Constitution to "provide…for the general welfare of the United States." Our present abundance is a measure of its success in fulfilling that duty. Now Congress is being asked to extend that welfare to all our people.

Public Papers of LBJ, 1963-1964, p.380

The President of the United States is President of all the people in every section of the country. But this office also holds a special responsibility to the distressed and disinherited, the hungry and the hopeless of this abundant nation.

Public Papers of LBJ, 1963-1964, p.380

It is in pursuit of that special responsibility that I submit this Message to you today.

Public Papers of LBJ, 1963-1964, p.380

The new program I propose is within our means. Its cost of 970 million dollars is 1 percent of our national budget—and every dollar I am requesting for this program is already included in the budget I sent to Congress in January.

Public Papers of LBJ, 1963-1964, p.380

But we cannot measure its importance by its cost.

Public Papers of LBJ, 1963-1964, p.380

For it charts an entirely new course of hope for our people.

Public Papers of LBJ, 1963-1964, p.380

We are fully aware that this program will not eliminate all the poverty in America in a few months or a few years. Poverty is deeply rooted and its causes are many.

Public Papers of LBJ, 1963-1964, p.380

But this program will show the way to new opportunities for millions of our fellow citizens.

Public Papers of LBJ, 1963-1964, p.380

It will provide a lever with which we can begin to open the door to our prosperity for those who have been kept outside.

Public Papers of LBJ, 1963-1964, p.380

It will also give us the chance to test our weapons, to try our energy and ideas and imagination for the many battles yet to come. As conditions change, and as experience illuminates our difficulties, we will be prepared to modify our strategy.

Public Papers of LBJ, 1963-1964, p.380

And this program is much more than a beginning.

Public Papers of LBJ, 1963-1964, p.380

Rather it is a commitment. It is a total commitment by this President, and this Congress, and this nation, to pursue victory over the most ancient of mankind's enemies.

Public Papers of LBJ, 1963-1964, p.380

On many historic occasions the President has requested from Congress the authority to move against forces which were endangering the well-being of our country. This is such an occasion.

Public Papers of LBJ, 1963-1964, p.380

On similar occasions in the past we have often been called upon to wage war against foreign enemies which threatened our freedom. Today we are asked to declare war on a domestic enemy which threatens the strength of our nation and the welfare of our people.

Public Papers of LBJ, 1963-1964, p.380

If we now move forward against this enemy—if we can bring to the challenges of peace the same determination and strength which has brought us victory in war—then this day and this Congress will have won a secure and honorable place in the history of the nation, and the enduring gratitude of generations of Americans yet to come.

Public Papers of LBJ, 1963-1964, p.380

LYNDON B. JOHNSON

Public Papers of LBJ, 1963-1964, p.380

NOTE: The draft bill and a section by section analysis were released with the President's message. They are printed in House Document 243 (88th Cong., 2d sess.).

Public Papers of LBJ, 1963-1964, p.380

For the President's remarks upon signing the Economic Opportunity Act of 1964, see Item 528.

Lyndon B. Johnson "Great Society" Address, 22 May 1964

President Johnson's Remarks on the "Great Society" given at the University of Michigan, 1964

Title: President Johnson's Remarks on the "Great Society" given at the University of Michigan

Author: Lyndon B. Johnson

Date: May 22, 1964

Source: Public Papers of the Presidents, Johnson, 1963-1964, pp.704-707

Public Papers of LBJ, 1963-1964, p.704

President Hatcher, Governor Romney, Senators McNamara and Hart, Congressmen Meader and Staebler, and other members of the fine Michigan delegation, members of the graduating class, my fellow Americans:

Public Papers of LBJ, 1963-1964, p.704

It is a great pleasure to be here today. This university has been coeducational since 1870, but I do not believe it was on the basis of your accomplishments that a Detroit high school girl said, "In choosing a college, you first have to decide whether you want a coeducational school or an educational school."

Public Papers of LBJ, 1963-1964, p.704

Well, we can find both here at Michigan, although perhaps at different hours.

Public Papers of LBJ, 1963-1964, p.704

I came out here today very anxious to meet the Michigan student whose father told a friend of mine that his son's education had been a real value. It stopped his mother from bragging about him.

Public Papers of LBJ, 1963-1964, p.704

I have come today from the turmoil of your Capital to the tranquility of your campus to speak about the future of your country.

Public Papers of LBJ, 1963-1964, p.704

The purpose of protecting the life of our Nation and preserving the liberty of our citizens is to pursue the happiness of our people. Our success in that pursuit is the test of our success as a Nation.

Public Papers of LBJ, 1963-1964, p.704

For a century we labored to settle and to subdue a continent. For half a century we called upon unbounded invention and untiring industry to create an order of plenty for all of our people.

Public Papers of LBJ, 1963-1964, p.704

The challenge of the next half century is whether we have the wisdom to use that wealth to enrich and elevate our national life, and to advance the quality of our American civilization.

Public Papers of LBJ, 1963-1964, p.704

Your imagination, your initiative, and your indignation will determine whether we build a society where progress is the servant of our needs, or a society where old values and new visions are buried under unbridled growth. For in your time we have the opportunity to move not only toward the rich society and the powerful society, but upward to the Great Society.

Public Papers of LBJ, 1963-1964, p.704

The Great Society rests on abundance and liberty for all. It demands an end to poverty and racial injustice, to which we are totally committed in our time. But that is just the beginning.

Public Papers of LBJ, 1963-1964, p.704

The Great Society is a place where every child can find knowledge to enrich his mind and to enlarge his talents. It is a place where leisure is a welcome chance to build and reflect, not a feared cause of boredom and restlessness. It is a place where the city of man serves not only the needs of the body and the demands of commerce but the desire for beauty and the hunger for community.

Public Papers of LBJ, 1963-1964, p.704

It is a place where man can renew contact with nature. It is a place which honors creation for its own sake and for what it adds to the understanding of the race. It is a place where men are more concerned with the quality of their goals than the quantity of their goods.

Public Papers of LBJ, 1963-1964, p.704

But most of all, the Great Society is not a safe harbor, a resting place, a final objective, a finished work. It is a challenge constantly renewed, beckoning us toward a destiny where the meaning of our lives matches the marvelous products of our labor.

Public Papers of LBJ, 1963-1964, p.704

So I want to talk to you today about three places where we begin to build the Great Society—in our cities, in our countryside, and in our classrooms.

Public Papers of LBJ, 1963-1964, p.704–p.705

Many of you will live to see the day, perhaps 50 years from now, when there will be 400 million Americans four-fifths of them [p.705] in urban areas. In the remainder of this century urban population will double, city land will double, and we will have to build homes, highways, and facilities equal to all those built since this country was first settled. So in the next 40 years we must rebuild the entire urban United States.

Public Papers of LBJ, 1963-1964, p.705

Aristotle said: "Men come together in cities in order to live, but they remain together in order to live the good life." It is harder and harder to live the good life in American cities today.

Public Papers of LBJ, 1963-1964, p.705

The catalog of ills is long: there is the decay of the centers and the despoiling of the suburbs. There is not enough housing for our people or transportation for our traffic. Open land is vanishing and old landmarks are violated.

Public Papers of LBJ, 1963-1964, p.705

Worst of all expansion is eroding the precious and time honored values of community with neighbors and communion with nature. The loss of these values breeds loneliness and boredom and indifference.

Public Papers of LBJ, 1963-1964, p.705

Our society will never be great until our cities are great. Today the frontier of imagination and innovation is inside those cities and not beyond their borders.

Public Papers of LBJ, 1963-1964, p.705

New experiments are already going on. It will be the task of your generation to make the American city a place where future generations will come, not only to live but to live the good life.

Public Papers of LBJ, 1963-1964, p.705

I understand that if I stayed here tonight I would see that Michigan students are really doing their best to live the good life.

Public Papers of LBJ, 1963-1964, p.705

This is the place where the Peace Corps was started. It is inspiring to see how all of you, while you are in this country, are trying so hard to live at the level of the people.

Public Papers of LBJ, 1963-1964, p.705

A second place where we begin to build the Great Society is in our countryside. We have always prided ourselves on being not only America the strong and America the free, but America the beautiful. Today that beauty is in danger. The water we drink, the food we eat, the very air that we breathe, are threatened with pollution. Our parks are overcrowded, our seashores overburdened. Green fields and dense forests are disappearing.

Public Papers of LBJ, 1963-1964, p.705

A few years ago we were greatly concerned about the "Ugly American." Today we must act to prevent an ugly America.

Public Papers of LBJ, 1963-1964, p.705

For once the battle is lost, once our natural splendor is destroyed, it can never be recaptured. And once man can no longer walk with beauty or wonder at nature his spirit will wither and his sustenance be wasted.

Public Papers of LBJ, 1963-1964, p.705

A third place to build the Great Society is in the classrooms of America. There your children's lives will be shaped. Our society will not be great until every young mind is set free to scan the farthest reaches of thought and imagination. We are still far from that goal.

Public Papers of LBJ, 1963-1964, p.705

Today, 8 million adult Americans, more than the entire population of Michigan, have not finished 5 years of school. Nearly 20 million have not finished 8 years of school. Nearly 54 million—more than one-quarter of all America—have not even finished high school.

Public Papers of LBJ, 1963-1964, p.705

Each year more than 100,000 high school graduates, with proved ability, do not enter college because they cannot afford it. And if we cannot educate today's youth, what will we do in 1970 when elementary school enrollment will be 5 million greater than 1960? And high school enrollment will rise by 5 million. College enrollment will increase by more than 3 million.

Public Papers of LBJ, 1963-1964, p.705–p.706

In many places, classrooms are overcrowded and curricula are outdated. Most of our qualified teachers are underpaid, and many of our paid teachers are unqualified. So we must give every child a place to sit [p.706] and a teacher to learn from. Poverty must not be a bar to learning, and learning must offer an escape from poverty.

Public Papers of LBJ, 1963-1964, p.706

But more classrooms and more teachers are not enough. We must seek an educational system which grows in excellence as it grows in size. This means better training for our teachers. It means preparing youth to enjoy their hours of leisure as well as their hours of labor. It means exploring new techniques of teaching, to find new ways to stimulate the love of learning and the capacity for creation.

Public Papers of LBJ, 1963-1964, p.706

These are three of the central issues of the Great Society. While our Government has many programs directed at those issues, I do not pretend that we have the full answer to those problems.

Public Papers of LBJ, 1963-1964, p.706

But I do promise this: We are going to assemble the best thought and the broadest knowledge from all over the world to find those answers for America. I intend to establish working groups to prepare a series of White House conferences and meetings-on the cities, on natural beauty, on the quality of education, and on other emerging challenges. And from these meetings and from this inspiration and from these studies we will begin to set our course toward the Great Society.

Public Papers of LBJ, 1963-1964, p.706

The solution to these problems does not rest on a massive program in Washington, nor can it rely solely on the strained resources of local authority. They require us to create new concepts of cooperation, a creative federalism, between the National Capital and the leaders of local communities.

Public Papers of LBJ, 1963-1964, p.706

Woodrow Wilson once wrote: "Every man sent out from his university should be a man of his Nation as well as a man of his time."

Public Papers of LBJ, 1963-1964, p.706

Within your lifetime powerful forces, already loosed, will take us toward a way of life beyond the realm of our experience, almost beyond the bounds of our imagination.

Public Papers of LBJ, 1963-1964, p.706

For better or for worse, your generation has been appointed by history to deal with those problems and to lead America toward a new age. You have the chance never before afforded to any people in any age. You can help build a society where the demands of morality, and the needs of the spirit, can be realized in the life of the Nation.

Public Papers of LBJ, 1963-1964, p.706

So, will you join in the battle to give every citizen the full equality which God enjoins and the law requires, whatever his belief, or race, or the color of his skin?

Public Papers of LBJ, 1963-1964, p.706

Will you join in the battle to give every citizen an escape from the crushing weight of poverty?

Public Papers of LBJ, 1963-1964, p.706

Will you join in the battle to make it possible for all nations to live in enduring peace—as neighbors and not as mortal enemies ?

Public Papers of LBJ, 1963-1964, p.706

Will you join in the battle to build the Great Society, to prove that our material progress is only the foundation on which we will build a richer life of mind and spirit?

Public Papers of LBJ, 1963-1964, p.706

There are those timid souls who say this battle cannot be won; that we are condemned to a soulless wealth. I do not agree. We have the power to shape the civilization that we want. But we need your will, your labor, your hearts, if we are to build that kind of society.

Public Papers of LBJ, 1963-1964, p.706–p.707

Those who came to this land sought to build more than just a new country. They sought a new world. So I have come here today to your campus to say that you can make their vision our reality. So let us from this moment begin our work so that [p.707] in the future men will look back and say: It was then, after a long and weary way, that man turned the exploits of his genius to the full enrichment of his life.

Public Papers of LBJ, 1963-1964, p.707

Thank you. Goodby.

Public Papers of LBJ, 1963-1964, p.707

NOTE: The President spoke at the graduation' exercises at the University of Michigan at Ann Arbor after receiving an honorary degree of Doctor of Civil Law. His opening words referred to Harlan H. Hatcher, President of the University, Governor George Romney, Senators Pat McNamara and Philip A. Hart, and Representatives George Meader and Neil Staebler, all of Michigan.

Reynolds v. Sims, 1964

Title: Reynolds v. Sims

Author: U.S. Supreme Court

Date: June 15, 1964

Source: 377 U.S. 533

This case was argued November 13, 1963, and was decided June 15, 1964, together with No. 27, Vann et al. v. Baggett, Secretary of State of Alabama, et al., and No. 41, McConnell et al. v. Bagett, Secretary of State of Alabama, et al., also on appeal from the same court.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

Syllabus

1964, Reynolds v. Sims, 377 U.S. 533

Charging that malapportionment of the Alabama Legislature deprived them and others similarly situated of rights under the Equal Protection Clause of the Fourteenth Amendment and the Alabama Constitution, voters in several Alabama counties brought suit against various officials having state election duties. Complainants sought a declaration that the existing state legislative apportionment provisions were unconstitutional; an injunction against future elections pending reapportionment in accordance with the State Constitution; or, absent such reapportionment, a mandatory injunction requiring holding the 1962 election for legislators at large over the entire State. The complaint alleged serious discrimination against voters in counties whose populations had grown proportionately far more than others since the 1900 census which, despite Alabama's constitutional requirements for legislative representation based on population and for decennial reapportionment, formed the basis for the existing legislative apportionment. Pursuant to the 1901 constitution, the legislature consisted of 106 representatives and 35 senators for the State's 67 counties and senatorial districts; each county was entitled to at least one representative; each senate district could have only one member, and no county could be divided between two senate districts. A three-judge Federal District Court declined ordering the May, 1962, primary election to be held at large, stating that it should not act before the legislature had further opportunity to take corrective measures before the general election. Finding after a hearing that neither of two apportionment plans which the legislature thereafter adopted, to become effective in 1966, would cure the gross inequality and invidious discrimination of the existing representation, which all parties generally conceded violated the Equal Protection Clause, and that the complainants' votes were unconstitutionally debased under all of the three plans at issue, the District Court ordered temporary reapportionment for the 1962 general [377 U.S. 534] election by combining features of the two plans adopted by the legislature, and enjoined officials from holding future elections under any of the invalid plans. The officials appealed, claiming that the District Court erred in holding unconstitutional the existing and proposed reapportionment plans and that a federal court lacks power affirmatively to reapportion a legislature; two groups of complainants also appealed, one claiming error in the District Court's failure to reapportion the Senate according to population, the other claiming error in its failure to reapportion both houses on a population basis.

1964, Reynolds v. Sims, 377 U.S. 534

Held:

1964, Reynolds v. Sims, 377 U.S. 534

1. The right of suffrage is denied by debasement or dilution of a citizen's vote in a state or federal election. Pp. 554-555.

1964, Reynolds v. Sims, 377 U.S. 534

2. Under the Equal Protection Clause, a claim of debasement of the right to vote through malapportionment presents a justiciable controversy, and the Equal Protection Clause provides manageable standards for lower courts to determine the constitutionality of a state legislative apportionment scheme. Baker v. Carr, 369 U.S. 186, followed. Pp. 556-557.

1964, Reynolds v. Sims, 377 U.S. 534

3. The Equal Protection Clause requires substantially equal legislative representation for all citizens in a State regardless of where they reside. Pp. 56l-568.

1964, Reynolds v. Sims, 377 U.S. 534

(a) Legislators represent people, not areas. P. 562.

1964, Reynolds v. Sims, 377 U.S. 534

(b) Weighting votes differently according to where citizens happen to reside is discriminatory. Pp. 563-568.

1964, Reynolds v. Sims, 377 U.S. 534

4. The seats in both houses of a bicameral legislature must, under the Equal Protection Clause, be apportioned substantially on a population basis. Pp. 568-576.

1964, Reynolds v. Sims, 377 U.S. 534

5. The District Court correctly held that the existing Alabama apportionment scheme and both of the proposed plans are constitutionally invalid, since neither legislative house is or would thereunder be apportioned on a population basis. Pp. 568-571.

1964, Reynolds v. Sims, 377 U.S. 534

6. The superficial resemblance between one of the Alabama apportionment plans and the legislative representation scheme of the Federal Congress affords no proper basis for sustaining that plan, since the historical circumstances which gave rise to the congressional system of representation, arising out of compromise among sovereign States, are unique and without relevance to the allocation of seats in state legislatures. Pp. 571-577.

1964, Reynolds v. Sims, 377 U.S. 534

7. The federal constitutional requirement that both houses of a state legislature must be apportioned on a population basis means that, as nearly as practicable, districts be of equal population, though mechanical exactness is not required. Somewhat more [377 U.S. 535] flexibility may be constitutionally permissible for state legislative apportionment than for congressional districting. Pp. 577-581.

1964, Reynolds v. Sims, 377 U.S. 535

(a) A state legislative apportionment scheme may properly give representation to various political subdivisions and provide for compact districts of contiguous territory if substantial equality among districts is maintained. Pp. 578-579.

1964, Reynolds v. Sims, 377 U.S. 535

(b) Some deviations from a strict equal population principle are constitutionally permissible in the two houses of a bicameral state legislature, where incident to the effectuation of a rational state policy, so long as the basic standard of equality of population among districts is not significantly departed from. P. 579.

1964, Reynolds v. Sims, 377 U.S. 535

(c) Considerations of history, economic or other group interests, or area alone do not justify deviations from the equal population principle. Pp. 579-580.

1964, Reynolds v. Sims, 377 U.S. 535

(d) Insuring some voice to political subdivisions in at least one legislative body may, within reason, warrant some deviations from population-based representation in state legislatures. Pp. 580-581.

1964, Reynolds v. Sims, 377 U.S. 535

8. In admitting States into the Union, Congress does not purport to pass on all constitutional questions concerning the character of state governmental organization, such as whether a state legislature's apportionment departs from the equal population principle; in any case, congressional approval could not validate an unconstitutional state legislative apportionment. P. 582.

1964, Reynolds v. Sims, 377 U.S. 535

9. States, consistently with the Equal Protection Clause, can properly provide for periodic revision of reapportionment schemes, though revision less frequent than decennial would be constitutionally suspect. Pp. 583-584.

1964, Reynolds v. Sims, 377 U.S. 535

10. Courts should attempt to accommodate the relief ordered to the apportionment provisions of state constitutions as far as possible, provided that such provisions harmonize with the Equal Protection Clause. P. 584.

1964, Reynolds v. Sims, 377 U.S. 535

11. A court, in awarding or withholding immediate relief, should consider the proximity of a forthcoming election and the mechanics and complexities of election laws, and should rely on general equitable principles. P. 585.

1964, Reynolds v. Sims, 377 U.S. 535

12. The District Court properly exercised its judicial power in this case by ordering reapportionment of both houses of the Alabama Legislature for purposes of 1962 elections as a temporary measure by using the best parts of the two proposed plans, each of which it had found, as a whole, invalid, and in retaining jurisdiction while deferring a hearing on the issuance of a final injunction [377 U.S. 536] to give the reapportioned legislature an opportunity to act effectively. Pp. 586-587.

1964, Reynolds v. Sims, 377 U.S. 536

208 F.Supp. 431, affirmed and remanded for further proceedings.

WARREN, J., lead opinion

1964, Reynolds v. Sims, 377 U.S. 536

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

1964, Reynolds v. Sims, 377 U.S. 536

Involved in these cases are an appeal and two cross-appeals from a decision of the Federal District Court for the Middle District of Alabama holding invalid, under [377 U.S. 537] the Equal Protection Clause of the Federal Constitution, the existing and two legislatively proposed plans for the apportionment of seats in the two houses of the Alabama Legislature, and ordering into effect a temporary reapportionment plan comprised of parts of the proposed but judicially disapproved measures. 1

I

1964, Reynolds v. Sims, 377 U.S. 537

On August 26, 1961, the original plaintiffs (appellees in No. 23), residents, taxpayers and voters of Jefferson County, Alabama, filed a complaint in the United States District Court for the Middle District of Alabama, in their own behalf and on behalf of all similarly situated Alabama voters, challenging the apportionment of the Alabama Legislature. Defendants below (appellants in No. 23), sued in their representative capacities, were various state and political party officials charged with the performance of certain duties in connection with state elections. 2 The complaint alleged a deprivation of rights under the Alabama Constitution and under the Equal Protection Clause of the Fourteenth Amendment, and asserted that the District Court had jurisdiction under provisions of the Civil Rights Act, 42 U.S.C. §§ 1983, 1988, as well as under 28 U.S.C. § 1343(3).

1964, Reynolds v. Sims, 377 U.S. 537

The complaint stated that the Alabama Legislature was composed of a Senate of 35 members and a House of Representatives of 106 members. It set out relevant portions of the 1901 Alabama Constitution, which prescribe the number of members of the two bodies of the [377 U.S. 538] State Legislature and the method of apportioning the seats among the State's 67 counties, and provide as follows:

1964, Reynolds v. Sims, 377 U.S. 538

Art. IV, Sec. 50.

1964, Reynolds v. Sims, 377 U.S. 538

The legislature shall consist of not more than thirty-five senators, and not more than one hundred and five members of the house of representatives, to be apportioned among the several districts and counties, as prescribed in this Constitution; provided that, in addition to the above number of representatives, each new county hereafter created shall be entitled to one representative.

1964, Reynolds v. Sims, 377 U.S. 538

Art. IX, Sec. 197.

1964, Reynolds v. Sims, 377 U.S. 538

The whole number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives.

1964, Reynolds v. Sims, 377 U.S. 538

Art. IX, Sec. 198.

1964, Reynolds v. Sims, 377 U.S. 538

The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken.

1964, Reynolds v. Sims, 377 U.S. 538

Art. IX, Sec. 199.

1964, Reynolds v. Sims, 377 U.S. 538

It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively; provided, that [377 U.S. 539] each county shall be entitled to at least one representative.

1964, Reynolds v. Sims, 377 U.S. 539

Art. IX, Sec. 200.

1964, Reynolds v. Sims, 377 U.S. 539

It shall be the duty of the legislature at its first session after taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more, and such districts, when formed, shall not be changed until the next apportioning session of the legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the legislature may be attached to senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other.

1964, Reynolds v. Sims, 377 U.S. 539

Art. XVIII, Sec. 284.

1964, Reynolds v. Sims, 377 U.S. 539

…Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments.

1964, Reynolds v. Sims, 377 U.S. 539

The maximum size of the Alabama House was increased from 105 to 106 with the creation of a new county in 1903, pursuant to the constitutional provision which states that, in addition to the prescribed 105 House seats, each county thereafter created shall be entitled to one representative. Article IX, §§ 202 and 203, of the Alabama Constitution established precisely the boundaries of the State's senatorial and representative districts until the enactment of a new reapportionment plan by the legislature. These 1901 constitutional provisions, specifically describing the composition of the senatorial [377 U.S. 540] districts and detailing the number of House seats allocated to each county, were periodically enacted as statutory measures by the Alabama Legislature, as modified only by the creation of an additional county in 1903, and provided the plan of legislative apportionment existing at the time this litigation was commenced. 3

1964, Reynolds v. Sims, 377 U.S. 540

Plaintiffs below alleged that the last apportionment of the Alabama Legislature was based on the 1900 federal census, despite the requirement of the State Constitution that the legislature be reapportioned decennially. They asserted that, since the population growth in the State from 1900 to 1960 had been uneven, Jefferson and other counties were now victims of serious discrimination with respect to the allocation of legislative representation. As a result of the failure of the legislature to reapportion itself, plaintiffs asserted, they were denied "equal suffrage in free and equal elections…and the equal protection of the laws," in violation of the Alabama Constitution and the Fourteenth Amendment to the Federal Constitution. The complaint asserted that plaintiffs had no other adequate remedy, and that they had exhausted all forms of relief other than that available through the federal courts. They alleged that the Alabama Legislature had established a pattern of prolonged inaction from 1911 to the present which "clearly demonstrates that no reapportionment…shall be effected"; that representation at any future constitutional convention would be established by the legislature, making it unlikely that the membership of any such convention would be fairly representative, and that, while the Alabama Supreme Court had found that the legislature had not complied with the State Constitution in failing to reapportion according [377 U.S. 541] to population decennially, 4 that court had nevertheless indicated that it would not interfere with matters of legislative reapportionment. 5

1964, Reynolds v. Sims, 377 U.S. 541

Plaintiffs requested that a three-judge District Court be convened. 6 With respect to relief, they sought a declaration that the existing constitutional and statutory provisions, establishing the present apportionment of seats in the Alabama Legislature, were unconstitutional under the Alabama and Federal Constitutions, and an injunction against the holding of future elections for legislators until the legislature reapportioned itself in accordance with the State Constitution. They further requested the issuance of a mandatory injunction, effective until such time as the legislature properly reapportioned, requiring the conducting of the 1962 election for legislators at large over the entire State, and any other relief which "may seem just, equitable and proper."

1964, Reynolds v. Sims, 377 U.S. 541

A three-judge District Court was convened, and three groups of voters, taxpayers and residents of Jefferson, Mobile, and Etowah Counties were permitted to intervene [377 U.S. 542] in the action as intervenor-plaintiffs. Two of the groups are cross-appellants in Nos. 27 and 41. With minor exceptions, all of the intervenors adopted the allegations of and sought the same relief as the original plaintiffs.

1964, Reynolds v. Sims, 377 U.S. 542

On March 29, 1962, just three days after this Court had decided Baker v. Carr, 369 U.S. 186, plaintiffs moved for a preliminary injunction requiring defendants to conduct at large the May, 1962, Democratic primary election and the November, 1962, general election for members of the Alabama Legislature. The District Court set the motion for hearing in an order stating its tentative views that an injunction was not required before the May, 1962, primary election to protect plaintiffs' constitutional rights, and that the Court should take no action which was not "absolutely essential" for the protection of the asserted constitutional rights before the Alabama Legislature had had a "further reasonable but prompt opportunity to comply with its duty" under the Alabama Constitution.

1964, Reynolds v. Sims, 377 U.S. 542

On April 14, 1962, the District Court, after reiterating the views expressed in its earlier order, reset the case for hearing on July 16, noting that the importance of the case, together with the necessity for effective action within a limited period of time, required an early announcement of its views. 205 F.Supp. 245. Relying on our decision in Baker v. Carr, the Court found jurisdiction, justiciability and standing. It stated that it was taking judicial notice of the facts that there had been population changes in Alabama's counties since 1901, that the present representation in the State Legislature was not on a population basis, and that the legislature had never reapportioned its membership as required by the Alabama Constitution. 7 Continuing, the Court stated [377 U.S. 543] that, if the legislature complied with the Alabama constitutional provision requiring legislative representation to be based on population, there could be no objection on federal constitutional grounds to such an apportionment. The Court further indicated that, if the legislature failed to act, or if its actions did not meet constitutional standards, it would be under a "clear duty" to take some action on the matter prior to the November, 1962, general election. The District Court stated that its "present thinking" was to follow an approach suggested by MR. JUSTICE CLARK in his concurring opinion in Baker v. Carr 8—awarding seats released by the consolidation or revamping of existing districts to counties suffering "the most egregious discrimination," thereby releasing the strangle hold on the legislature sufficiently so as to permit the newly elected body to enact a constitutionally valid and permanent reapportionment plan, and allowing eventual dismissal of the case. Subsequently, plaintiffs were permitted to amend their complaint by adding a further prayer for relief, which asked the District Court to reapportion the Alabama Legislature provisionally so that the rural strangle hold would be relaxed enough to permit it to reapportion itself.

1964, Reynolds v. Sims, 377 U.S. 543

On July 12, 1962, an extraordinary session of the Alabama Legislature adopted two reapportionment plans to take effect for the 1966 elections. One was a proposed constitutional amendment, referred to as the "67-Senator Amendment." 9 It provided for a House of Representatives consisting of 106 members, apportioned by giving [377 U.S. 544] one seat to each of Alabama's 67 counties and distributing the others according to population by the "equal proportions" method. 10 Using this formula, the constitutional amendment specified the number of representatives allotted to each county until a new apportionment could be made on the basis of the 1970 census. The Senate was to be composed of 67 members, one from each county. The legislation provided that the proposed amendment should be submitted to the voters for ratification at the November 1962 general election.

1964, Reynolds v. Sims, 377 U.S. 544

The other reapportionment plan was embodied in a statutory measure adopted by the legislature and signed into law by the Alabama Governor, and was referred to as the "Crawford-Webb Act." 11 It was enacted as standby legislation, to take effect in 1966 if the proposed constitutional amendment should fail of passage by a majority of the State's voters, or should the federal courts refuse to accept the proposed amendment (though not rejected by the voters) as effective action in compliance with the requirements of the Fourteenth Amendment. The act provided for a Senate consisting of 35 members, representing 35 senatorial districts established along county lines, and altered only a few of the former districts. In apportioning the 106 seats in the Alabama House of Representatives, the statutory measure gave each county one seat, and apportioned the remaining 39 on a rough population basis, under a formula requiring increasingly more population for a county to be accorded [377 U.S. 545] additional seats. The Crawford-Webb Act also provided that it would be effective "until the legislature is reapportioned according to law," but provided no standards for such a reapportionment. Future apportionments would presumably be based on the existing provisions of the Alabama Constitution which the statute, unlike the proposed constitutional amendment, would not affect.

1964, Reynolds v. Sims, 377 U.S. 545

The evidence adduced at trial before the three-judge panel consisted primarily of figures showing the population of each Alabama county and senatorial district according to the 1960 census, and the number of representatives allocated to each county under each of the three plans at issue in the litigation—the existing apportionment (under the 1901 constitutional provisions and the current statutory measures substantially reenacting the same plan), the proposed 67-Senator constitutional amendment, and the Crawford-Webb Act. Under all three plans, each senatorial district would be represented by only one senator.

1964, Reynolds v. Sims, 377 U.S. 545

On July 21, 1962, the District Court held that the inequality of the existing representation in the Alabama Legislature violated the Equal Protection Clause of the Fourteenth Amendment, a finding which the Court noted had been "generally conceded" by the parties to the litigation, since population growth and shifts had converted the 1901 scheme, as perpetuated some 60 years later, into an invidiously discriminatory plan completely lacking in rationality. 208 F.Supp. 431. Under the existing provisions, applying 1960 census figures, only 25.1% of the State's total population resided in districts represented by a majority of the members of the Senate, and only 25.7% lived in counties which could elect a majority of the members of the House of Representatives. Population variance ratios of up to about 41-to-1 existed in the Senate, and up to about 16-to-1 in the House. Bullock County, with a population of only 13,462, and Henry County, with a population of only 15,286, each were allocated two seats [377 U.S. 546] in the Alabama House, whereas Mobile County, with a population of 314,301, was given only three seats, and Jefferson County, with 634,864 people, had only seven representatives. 12 With respect to senatorial apportionment, since the pertinent Alabama constitutional provisions had been consistently construed as prohibiting the giving of more than one Senate seat to any one county, 13 Jefferson County, with over 600,000 people, was given only one senator, as was Lowndes County, with a 1960 population of only 15,417, and Wilcox County, with only 18,739 people. 14

1964, Reynolds v. Sims, 377 U.S. 546

The Court then considered both the proposed constitutional amendment and the Crawford-Webb Act to ascertain [377 U.S. 547] whether the legislature had taken effective action to remedy the unconstitutional aspects of the existing apportionment. In initially summarizing the result which it had reached, the Court stated:

1964, Reynolds v. Sims, 377 U.S. 547

This Court has reached the conclusion that neither the "67-Senator Amendment" nor the "Crawford-Webb Act" meets the necessary constitutional requirements. We find that each of the legislative acts, when considered as a whole, is so obviously discriminatory, arbitrary and irrational that it becomes unnecessary to pursue a detailed development of each of the relevant factors of the [federal constitutional] test. 15

1964, Reynolds v. Sims, 377 U.S. 547

The Court stated that the apportionment of one senator to each county, under the proposed constitutional amendment, would "make the discrimination in the Senate even more invidious than at present." Under the 67-Senator Amendment, as pointed out by the court below,

1964, Reynolds v. Sims, 377 U.S. 547

[t]he present control of the Senate by members representing 25.1% of the people of Alabama would be reduced to control by members representing 19.4% of the people of the State,

1964, Reynolds v. Sims, 377 U.S. 547

the 34 smallest counties, with a total population of less than that of Jefferson County, would have a majority of the senatorial seats, and senators elected by only about 14% of the State's population could prevent the submission to the electorate of any future proposals to amend the State Constitution (since a vote of two-fifths of the members of one house can defeat a proposal to amend the Alabama Constitution). Noting that the "only conceivable rationalization" of the senatorial apportionment scheme is that it was based on equal representation of political subdivisions within the State, and is thus analogous to the Federal Senate, the District Court rejected the analogy on the ground that Alabama [377 U.S. 548] counties are merely involuntary political units of the State created by statute to aid in the administration of state government. In finding the so-called federal analogy irrelevant, the District Court stated:

1964, Reynolds v. Sims, 377 U.S. 548

The analogy cannot survive the most superficial examination into the history of the requirement of the Federal Constitution and the diametrically opposing history of the requirement of the Alabama Constitution that representation shall be based on population. Nor can it survive a comparison of the different political natures of states and counties. 16

1964, Reynolds v. Sims, 377 U.S. 548

The Court also noted that the senatorial apportionment proposal "may not have complied with the State Constitution," since not only is it explicitly provided that the population basis of legislative representation "shall not be changed by constitutional amendments," 17 but the Alabama Supreme Court had previously indicated that that requirement could probably be altered only by constitutional convention. 18 The Court concluded, however, that the apportionment of seats in the Alabama House, under the proposed constitutional amendment, was "based upon reason, with a rational regard for known and accepted [377 U.S. 549] standards of apportionment." 19 Under the proposed apportionment of representatives, each of the 67 counties was given one seat, and the remaining 39 were allocated on a population basis. About 43% of the State's total population would live in counties which could elect a majority in that body. And, under the provisions of the 67-Senator Amendment, while the maximum population variance ratio was increased to about 59-to-1 in the Senate, it was significantly reduced to about 4.7-to-1 in the House of Representatives. Jefferson County was given 17 House seats, an addition of 10, and Mobile County was allotted eight, an increase of five. The increased representation of the urban counties was achieved primarily by limiting the State's 55 least populous counties to one House seat each, and the net effect was to take 19 seats away from rural counties and allocate them to the more populous counties. Even so, serious disparities from a population-based standard remained. Montgomery County, with 169,210 people, was given only four seats, while Coosa County, with a population of only 10,726, and Cleburne County, with only 10,911, were each allocated one representative.

1964, Reynolds v. Sims, 377 U.S. 549

Turning next to the provisions of the Crawford-Webb Act, the District Court found that its apportionment of the 106 seats in the Alabama House of Representatives, by allocating one seat to each county and distributing the remaining 39 to the more populous counties in diminishing ratio to their populations, was "totally unacceptable." 20 Under this plan, about 37% of the State's total [377 U.S. 550] population would reside in counties electing a majority of the members of the Alabama House, with a maximum population variance ratio of about 5-to-1. Each representative from Jefferson and Mobile Counties would represent over 52,000 persons, while representatives from eight rural counties would each represent less than 20,000 people. The Court regarded the senatorial apportionment provided in the Crawford-Webb Act as "a step in the right direction, but an extremely short step," and but a "slight improvement over the present system of representation." 21 The net effect of combining a few of the less populous counties into two-county districts and splitting up several of the larger districts into smaller ones would be merely to increase the minority which would be represented by a majority of the members of the Senate from 25.1% to only 27.6% of the State's population. 22 The Court pointed out that, under the Crawford-Webb Act, the vote of a person in the senatorial district consisting of Bibb and Perry Counties would be worth 20 times that of a citizen in Jefferson County, and that the vote of a citizen in the six smallest districts would be worth 15 or more times that of a Jefferson County voter. The Court concluded that the Crawford-Webb [377 U.S. 551] Act was "totally unacceptable" as a "piece of permanent legislation" which, under the Alabama Constitution, would have remained in effect without alteration at least until after the next decennial census.

1964, Reynolds v. Sims, 377 U.S. 551

Under the detailed requirements of the various constitutional provisions relating to the apportionment of seats in the Alabama Senate and House of Representatives, the Court found, the membership of neither house can be apportioned solely on a population basis, despite the provision in Art. XVIII, § 284, which states that "[r]epresentation in the legislature shall be based upon population." In dealing with the conflicting and somewhat paradoxical requirements (under which the number of seats in the House is limited to 106 but each of the 67 counties is required to be given at least one representative, and the size of the Senate is limited to 35 but it is required to have at least one-fourth of the members of the House, although no county can be given more than one senator), the District Court stated its view that "the controlling or dominant provision of the Alabama Constitution on the subject of representation in the Legislature" is the previously referred to language of § 284. The Court stated that the detailed requirements of Art. IX, § § 197-200,

1964, Reynolds v. Sims, 377 U.S. 551

make it obvious that in neither the House nor the Senate can representation be based strictly and entirely upon population…. The result may well be that representation according to population to some extent must be required in both Houses if invidious discrimination in the legislative systems as a whole is to be avoided. Indeed,…it is the policy and theme of the Alabama Constitution to require representation according to population in both Houses as nearly as may be, while still complying with more detailed provisions. 23 [377 U.S. 552]

1964, Reynolds v. Sims, 377 U.S. 552

The District Court then directed its concern to the providing of an effective remedy. It indicated that it was adopting and ordering into effect for the November, 1962, election a provisional and temporary reapportionment plan composed of the provisions relating to the House of Representatives contained in the 67-Senator Amendment and the provisions of the Crawford-Webb Act relating to the Senate. The Court noted, however, that

1964, Reynolds v. Sims, 377 U.S. 552

[t]he proposed reapportionment of the Senate in the "Crawford-Webb Act," unacceptable as a piece of permanent legislation, may not even break the stranglehold.

1964, Reynolds v. Sims, 377 U.S. 552

Stating that it was retaining jurisdiction and deferring any hearing on plaintiffs' motion for a permanent injunction

1964, Reynolds v. Sims, 377 U.S. 552

until the Legislature, as provisionally reapportioned…, has an opportunity to provide for a true reapportionment of both Houses of the Alabama Legislature,

1964, Reynolds v. Sims, 377 U.S. 552

the Court emphasized that its "moderate" action was designed to break the stranglehold by the smaller counties on the Alabama Legislature, and would not suffice as a permanent reapportionment. On July 25, 1962, the Court entered its decree in accordance with its previously stated determinations, concluding that

1964, Reynolds v. Sims, 377 U.S. 552

plaintiffs…are denied…equal protection…by virtue of the debasement of their votes since the Legislature of the State of Alabama has failed and continues to fail to reapportion itself as required by law.

1964, Reynolds v. Sims, 377 U.S. 552

It enjoined the defendant state officials from holding any future elections under any of the apportionment plans that it had found invalid, and stated that the 1962 election of Alabama legislators could validly be conducted only under the apportionment scheme specified in the Court's order.

1964, Reynolds v. Sims, 377 U.S. 552

After the District Court's decision, new primary elections were held pursuant to legislation enacted in 1962 at the same special session as the proposed constitutional amendment and the Crawford-Webb Act, to be effective [377 U.S. 553] in the event the Court itself ordered a particular reapportionment plan into immediate effect. The November, 1962, general election was likewise conducted on the basis of the District Court's ordered apportionment of legislative seats, as MR. JUSTICE BLACK refused to stay the District Court's order. Consequently, the present Alabama Legislature is apportioned in accordance with the temporary plan prescribed by the District Court's decree. All members of both houses of the Alabama Legislature serve four-year terms, so that the next regularly scheduled election of legislators will not be held until 1966. The 1963 regular session of the Alabama Legislature produced no legislation relating to legislative apportionment, 24 and the legislature, which meets biennially, will not hold another regular session until 1965.

1964, Reynolds v. Sims, 377 U.S. 553

No effective political remedy to obtain relief against the alleged malapportionment of the Alabama Legislature appears to have been available. 25 No initiative procedure exists under Alabama law. Amendment of the State Constitution can be achieved only after a proposal is adopted by three-fifths of the members of both houses of the legislature and is approved by a majority of the people, 26 or as a result of a constitutional convention convened [377 U.S. 554] after approval by the people of a convention call initiated by a majority of both houses of the Alabama Legislature. 27 Notices of appeal to this Court from the District Court's decision were timely filed by defendants below (appellants in No. 23) and by two groups of intervenor-plaintiffs (cross appellants in Nos. 27 and 41). Appellants in No. 23 contend that the District Court erred in holding the existing and the two proposed plans for the apportionment of seats in the Alabama Legislature unconstitutional, and that a federal court lacks the power to affirmatively reapportion seats in a state legislature. Cross-appellants in No. 27 assert that the court below erred in failing to compel reapportionment of the Alabama Senate on a population basis, as allegedly required by the Alabama Constitution and the Equal Protection Clause of the Federal Constitution. Cross-appellants in No. 41 contend that the District Court should have required and ordered into effect the apportionment of seats in both houses of the Alabama Legislature on a population basis. We noted probable jurisdiction on June 10, 1963. 374 U.S. 802.

II

1964, Reynolds v. Sims, 377 U.S. 554

Undeniably, the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal, elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, Ex parte Yarbrough, 110 U.S. 651, and to have their votes counted, United States v. Mosley, 238 U.S. 383. In Mosley, the Court stated that it is "as equally unquestionable that the right to have one's vote counted is as open to protection…as the right to put a ballot in a box." 238 U.S. [377 U.S. 555] at 386. T he right to vote can neither be denied outright, Guinn v. United States, 238 U.S. 347, Lane v. Wilson, 307 U.S. 268, nor destroyed by alteration of ballots, see United States v. Classic, 313 U.S. 299, 315, nor diluted by ballot box stuffing, Ex parte Siebold, 100 U.S. 371, United States v. Saylor, 322 U.S. 385. As the Court stated in Classic,

1964, Reynolds v. Sims, 377 U.S. 555

Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted….

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313 U.S. at 315. Racially based gerrymandering, Gomillion v. Lightfoot, 364 U.S. 339, and the conducting of white primaries, Nixon v. Herndon, 273 U.S. 536, Nixon v. Condon, 286 U.S. 73, Smith v. Allwright, 321 U.S. 649, Terry v. Adams, 345 U.S. 461, both of which result in denying to some citizens their right to vote, have been held to be constitutionally impermissible. And history has seen a continuing expansion of the scope of the right of suffrage in this country. 28 The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise. 29 [377 U.S. 556]

1964, Reynolds v. Sims, 377 U.S. 556

In Baker v. Carr, 369 U.S. 186, we held that a claim asserted under the Equal Protection Clause challenging the constitutionality of a State's apportionment of seats in its legislature, on the ground that the right to vote of certain citizens was effectively impaired, since debased and diluted, in effect presented a justiciable controversy subject to adjudication by federal courts. The spate of similar cases filed and decided by lower courts since our decision in Baker amply shows that the problem of state legislative malapportionment is one that is perceived to exist in a large number of the States. 30 In Baker, a suit involving an attack on the apportionment of seats in the Tennessee Legislature, we remanded to the District Court, which had dismissed the action, for consideration on the merits. We intimated no view as to the proper constitutional standards for evaluating the validity of a state legislative apportionment scheme. Nor did we give any consideration to the question of appropriate remedies. Rather, we simply stated:

1964, Reynolds v. Sims, 377 U.S. 556

Beyond noting that we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what remedy would be most appropriate if appellants prevail at the trial. 31 [377 U.S. 557]

1964, Reynolds v. Sims, 377 U.S. 557

We indicated in Baker, however, that the Equal Protection Clause provides discoverable and manageable standards for use by lower courts in determining the constitutionality of a state legislative apportionment scheme, and we stated:

1964, Reynolds v. Sims, 377 U.S. 557

Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine if, on the particular facts they must, that a discrimination reflects no policy, but simply arbitrary and capricious action. 32

1964, Reynolds v. Sims, 377 U.S. 557

Subsequent to Baker, we remanded several cases to the courts below for reconsideration in light of that decision. 33

1964, Reynolds v. Sims, 377 U.S. 557

In Gray v. Sanders, 372 U.S. 368, we held that the Georgia county unit system, applicable in statewide primary elections, was unconstitutional, since it resulted in a dilution of the weight of the votes of certain Georgia voters merely because of where they resided. After indicating that the Fifteenth and Nineteenth Amendments prohibit a State from overweighting or diluting votes on the basis of race or sex, we stated:

1964, Reynolds v. Sims, 377 U.S. 557

How, then, can one person be given twice or ten times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, [377 U.S. 558] whatever their income and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of "we the people" under the Constitution visualizes no preferred class of voters, but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions. 34

1964, Reynolds v. Sims, 377 U.S. 558

Continuing, we stated that

1964, Reynolds v. Sims, 377 U.S. 558

there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the State.

1964, Reynolds v. Sims, 377 U.S. 558

And, finally, we concluded:

1964, Reynolds v. Sims, 377 U.S. 558

The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote. 35

1964, Reynolds v. Sims, 377 U.S. 558

We stated in Gray, however, that that case,

1964, Reynolds v. Sims, 377 U.S. 558

unlike Baker v. Carr,…does not involve a question of the degree to which the Equal Protection Clause of the Fourteenth Amendment limits the authority of a State Legislature in designing the geographical districts from which representatives are chosen either for the State Legislature or for the Federal House of Representatives…. Nor does it present the question, inherent in the bicameral form of our Federal Government, whether a State may have one house chosen without regard to population. 36 [377 U.S. 559] Of course, in these cases, we are faced with the problem not presented in Gray—that of determining the basic standards and stating the applicable guidelines for implementing our decision in Baker v. Carr.

1964, Reynolds v. Sims, 377 U.S. 559

In Wesberry v. Sanders, 376 U.S. 1, decided earlier this Term, we held that attacks on the constitutionality of congressional districting plans enacted by state legislatures do not present nonjusticiable questions, and should not be dismissed generally for "want of equity." We determined that the constitutional test for the validity of congressional districting schemes was one of substantial equality of population among the various districts established by a state legislature for the election of members of the Federal House of Representatives.

1964, Reynolds v. Sims, 377 U.S. 559

In that case, we decided that an apportionment of congressional seats which "contracts the value of some votes and expands that of others" is unconstitutional, since

1964, Reynolds v. Sims, 377 U.S. 559

the Federal Constitution intends that, when qualified voters elect members of Congress, each vote be given as much weight as any other vote….

1964, Reynolds v. Sims, 377 U.S. 559

We concluded that the constitutional prescription for election of members of the House of Representatives "by the People," construed in its historical context, "means that, as nearly as is practicable, one man's vote in a congressional election is to be worth as much as another's." We further stated:

1964, Reynolds v. Sims, 377 U.S. 559

It would defeat the principle solemnly embodied in the Great Compromise—equal representation in the House for equal numbers of people—for us to hold that, within the States, legislatures may draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others. 37

1964, Reynolds v. Sims, 377 U.S. 559

We found further, in Wesberry, that "our Constitution's plain objective" was that "of making equal representation [377 U.S. 560] for equal numbers of people the fundamental goal…. " We concluded by stating:

1964, Reynolds v. Sims, 377 U.S. 560

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right. 38

1964, Reynolds v. Sims, 377 U.S. 560

Gray and Wesberry are, of course, not dispositive of or directly controlling on our decision in these cases involving state legislative apportionment controversies. Admittedly, those decisions, in which we held that, in statewide and in congressional elections, one person's vote must be counted equally with those of all other voters in a State, were based on different constitutional considerations, and were addressed to rather distinct problems. But neither are they wholly inapposite. Gray, though not determinative here, since involving the weighting of votes in statewide elections, established the basic principle of equality among voters within a State, and held that voters cannot be classified, constitutionally, on the basis of where they live, at least with respect to voting in statewide elections. And our decision in Wesberry was, of course, grounded on that language of the Constitution which prescribes that members of the Federal House of Representatives are to be chosen "by the People," while attacks on state legislative apportionment schemes, such as that involved in the instant cases, are principally based on the Equal Protection Clause of the Fourteenth Amendment. Nevertheless, Wesberry clearly established that the fundamental principle of representative government in this country is one of equal [377 U.S. 561] representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State. Our problem, then, is to ascertain, in the instant cases, whether there are any constitutionally cognizable principles which would justify departures from the basic standard of equality among voters in the apportionment of seats in state legislatures.

III

1964, Reynolds v. Sims, 377 U.S. 561

A predominant consideration in determining whether a State's legislative apportionment scheme constitutes an invidious discrimination violative of rights asserted under the Equal Protection Clause is that the rights allegedly impaired are individual and personal in nature. As stated by the Court in United States v. Bathgate, 246 U.S. 220, 227, "[t]he right to vote is personal…. " 39 While the result of a court decision in a state legislative apportionment controversy may be to require the restructuring of the geographical distribution of seats in a state legislature, the judicial focus must be concentrated upon ascertaining whether there has been any discrimination against certain of the State's citizens which constitutes an impermissible impairment of their constitutionally protected right to vote. Like Skinner v. Oklahoma, 316 U.S. 535, such a case "touches a sensitive and important area of human rights," and "involves one of the basic civil rights of man," presenting questions of alleged "invidious discriminations…against groups or types of individuals in violation of the constitutional guaranty of just and equal laws." 316 U.S. at 536, 541. Undoubtedly, the right of suffrage is a fundamental matter [377 U.S. 562] in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. Almost a century ago, in Yick Wo v. Hopkins, 118 U.S. 356, the Court referred to "the political franchise of voting" as "a fundamental political right, because preservative of all rights." 118 U.S. at 370.

1964, Reynolds v. Sims, 377 U.S. 562

Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system. It could hardly be gainsaid that a constitutional claim had been asserted by an allegation that certain otherwise qualified voters had been entirely prohibited from voting for members of their state legislature. And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only at face value, could be constitutionally sustainable. Of course, the effect of [377 U.S. 563] state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical. 40 Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State. Two, five, or 10 of them must vote before the effect of their voting is equivalent to that of their favored neighbor. Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable. One must be ever aware that the Constitution forbids "sophisticated, as well as simple-minded, modes of discrimination." Lane v. Wilson, 307 U.S. 268, 275; Gomillion v. Lightfoot, 364 U.S. 339, 342. As we stated in Wesberry v. Sanders, supra:

1964, Reynolds v. Sims, 377 U.S. 563

We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth [377 U.S. 564] more in one district than in another would…run counter to our fundamental ideas of democratic government…. 41

1964, Reynolds v. Sims, 377 U.S. 564

State legislatures are, historically, the fountainhead of representative government in this country. A number of them have their roots in colonial times, and substantially antedate the creation of our Nation and our Federal Government. In fact, the first formal stirrings of American political independence are to be found, in large part, in the views and actions of several of the colonial legislative bodies. With the birth of our National Government, and the adoption and ratification of the Federal [377 U.S. 565] Constitution, state legislatures retained a most important place in our Nation's governmental structure. But representative government is, in essence, self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. Most citizens can achieve this participation only as qualified voters through the election of legislators to represent them. Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less.

1964, Reynolds v. Sims, 377 U.S. 565

Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators. To conclude differently, and to sanction minority control of state legislative bodies, would appear to deny majority rights in a way that far surpasses any possible denial of minority rights that might otherwise be thought to result. Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsive to the popular will. And the concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged. With respect to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live. Any suggested criteria for the differentiation of citizens are insufficient to justify any discrimination, as to the weight of their votes, unless relevant to the permissible purposes of legislative apportionment. Since the achieving of fair and effective representation for all citizens [377 U.S. 566] is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race, Brown v. Board of Education, 347 U.S. 483, or economic status, Griffin v. Illinois, 351 U.S. 12, Douglas v. California, 372 U.S. 353. Our constitutional system amply provides for the protection of minorities by means other than giving them majority control of state legislatures. And the democratic ideals of equality and majority rule, which have served this Nation so well in the past, are hardly of any less significance for the present and the future.

1964, Reynolds v. Sims, 377 U.S. 566

We are told that the matter of apportioning representation in a state legislature is a complex and many-faceted one. We are advised that States can rationally consider factors other than population in apportioning legislative representation. We are admonished not to restrict the power of the States to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this: a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us. As stated in Gomillion v. Lightfoot, supra:

1964, Reynolds v. Sims, 377 U.S. 566

When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right. 42 [377 U.S. 567] To the extent that a citizen's right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote. The complexions of societies and civilizations change, often with amazing rapidity. A nation once primarily rural in character becomes predominantly urban. 43 Representation schemes once fair and equitable become archaic and outdated. But the basic principle of representative government remains, and must remain, unchanged—the weight of a citizen's vote cannot be made to depend on where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies. 44 [377 U.S. 568] A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept of a government of laws, and not men. This is at the heart of Lincoln's vision of "government of the people, by the people, [and] for the people." The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races.

IV

1964, Reynolds v. Sims, 377 U.S. 568

We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State. Since under neither the existing apportionment provisions nor either of the proposed plans was either of the houses of the Alabama Legislature apportioned on a population basis, the District Court correctly held that all three of these schemes were constitutionally invalid. Furthermore, the existing apportionment, and also, to a lesser extent, the apportionment under the Crawford-Webb Act, presented little more than crazy quilts, completely lacking in rationality, and could be found invalid on that basis alone. 45 Although [377 U.S. 569] the District Court presumably found the apportionment of the Alabama House of Representatives under the 67-Senator Amendment to be acceptable, we conclude that the deviations from a strict population basis are too egregious to permit us to find that that body, under this proposed plan, was apportioned sufficiently on a population basis so as to permit the arrangement to be constitutionally sustained. Although about 43% of the State's total population would be required to comprise districts which could elect a majority in that body, only 39 of the 106 House seats were actually to be distributed on a population basis, as each of Alabama's 67 counties was given at least one representative, and population variance ratios of close to 5-to-1 would have existed. While mathematical nicety is not a constitutional requisite, one could hardly conclude that the Alabama House, under the proposed constitutional amendment, had been apportioned sufficiently on a population basis to be sustainable under the requirements of the Equal Protection Clause. And none of the other apportionments of seats in either of the bodies of the Alabama Legislature, under the three plans considered by the District Court, came nearly as close to approaching the required constitutional standard as did that of the House of Representatives under the 67-Senator Amendment.

1964, Reynolds v. Sims, 377 U.S. 569

Legislative apportionment in Alabama is signally illustrative and symptomatic of the seriousness of this problem in a number of the States. At the time this litigation was commenced, there had been no reapportionment [377 U.S. 570] of seats in the Alabama Legislature for over 60 years. 46 Legislative inaction, coupled with the unavailability of any political or Judicial remedy, 47 had resulted, with the passage of years, in the perpetuated scheme becoming little more than an irrational anachronism. Consistent failure by the Alabama Legislature to comply with state constitutional requirements as to the frequency of reapportionment and the bases of legislative representation resulted in a minority strangle hold on the State Legislature. Inequality of representation in one house added to the inequality in the other. With the crazy-quilt existing apportionment virtually conceded to be invalid, the Alabama Legislature offered two proposed plans for consideration by the District Court, neither of which was to be effective until 1966 and neither of which provided for the apportionment of even one of the two houses on a population basis. We find that the court below did not err in holding that neither of these proposed reapportionment schemes, considered as a whole, "meets the necessary constitutional requirements." And we conclude that the District Court acted properly in considering these two proposed plans, although neither was to become effective until the 1966 election and the proposed constitutional amendment was scheduled to be submitted to the State's voters in November 1962. 48 [377 U.S. 571] Consideration by the court below of the two proposed plans was clearly necessary in determining whether the Alabama Legislature had acted effectively to correct the admittedly existing malapportionment, and in ascertaining what sort of judicial relief, if any, should be afforded.

V

1964, Reynolds v. Sims, 377 U.S. 571

Since neither of the houses of the Alabama Legislature, under any of the three plans considered by the District Court, was apportioned on a population basis, we would be justified in proceeding no further. However, one of the proposed plans, that contained in the so-called 67-Senator Amendment, at least superficially resembles the scheme of legislative representation followed in the Federal Congress. Under this plan, each of Alabama's 67 counties is allotted one senator, and no counties are given more than one Senate seat. Arguably, this is analogous to the allocation of two Senate seats, in the Federal Congress, to each of the 50 States, regardless of population. Seats in the Alabama House, under the proposed constitutional amendment, are distributed by giving each of the 67 counties at least one, with the remaining 39 seats being allotted among the more populous counties on a population basis. This scheme, at least at first glance, appears to resemble that prescribed for the Federal House of Representatives, where the 435 seats are distributed among the States on a population basis, although each State, regardless of its population, is given at least one Congressman. Thus, although there are substantial differences in underlying rationale and result, 49 [377 U.S. 572] the 67-Senator Amendment, as proposed by the Alabama Legislature, at least arguably presents for consideration a scheme analogous to that used for apportioning seats in Congress.

1964, Reynolds v. Sims, 377 U.S. 572

Much has been written since our decision in Baker v. Carr about the applicability of the so-called federal analogy to state legislative apportionment arrangements. 50 After considering the matter, the court below concluded that no conceivable analogy could be drawn between the federal scheme and the apportionment of seats in the Alabama Legislature under the proposed constitutional [377 U.S. 573] amendment. 51 We agree with the District Court, and find the federal analogy inapposite and irrelevant to state legislative districting schemes. Attempted reliance on the federal analogy appears often to be little more than an after-the-fact rationalization offered in defense of maladjusted state apportionment arrangements. The original constitutions of 36 of our States provided that representation in both houses of the state legislatures would be based completely, or predominantly, on population. 52 And the Founding Fathers clearly had no intention of establishing a pattern or model for the apportionment of seats in state legislatures when the system of representation in the Federal Congress was adopted. 53 Demonstrative of this is the fact that the Northwest Ordinance, adopted in the same year, 1787, as the Federal Constitution, provided for the apportionment of seats in territorial legislatures solely on the basis of population. 54 [377 U.S. 574]

1964, Reynolds v. Sims, 377 U.S. 574

The system of representation in the two Houses of the Federal Congress is one ingrained in our Constitution, as part of the law of the land. It is one conceived out of compromise and concession indispensable to the establishment of our federal republic. 55 Arising from unique historical circumstances, it is based on the consideration that, in establishing our type of federalism a group of formerly independent States bound themselves together under one national government. Admittedly, the original 13 States surrendered some of their sovereignty in agreeing to join together "to form a more perfect Union." But at the heart of our constitutional system remains the concept of separate and distinct governmental entities which have delegated some, but not all, of their formerly held powers to the single national government. The fact that almost three-fourths of our present States were never, in fact, independently sovereign does not detract from our view that the so-called federal analogy is inapplicable as a sustaining precedent for state legislative apportionments. The developing history and growth of our republic cannot cloud the fact that, at the time of the inception of the system of representation in the Federal Congress, a compromise between the larger and smaller States on this matter averted a deadlock in the Constitutional Convention which had threatened to abort the birth of our Nation. In rejecting an asserted analogy to the federal electoral college in Gray v. Sanders, supra, we stated:

1964, Reynolds v. Sims, 377 U.S. 574

We think the analogies to the electoral college, to districting and redistricting and to other phases of the problems of representation in state or federal legislatures or conventions, are inapposite. The inclusion of the electoral college in the Constitution, as the result of specific historical concerns, validated the collegiate principle despite its inherent numerical inequality, but implied nothing about the use of [377 U.S. 575] an analogous system by a State in a statewide election. No such specific accommodation of the latter was ever undertaken, and therefore no validation of its numerical inequality ensued. 56

1964, Reynolds v. Sims, 377 U.S. 575

Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in Hunter v. City of Pittsburgh, 207 U.S. 161, 178, these governmental units are "created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them," and the

1964, Reynolds v. Sims, 377 U.S. 575

number, nature and duration of the powers conferred upon [them]…and the territory over which they shall be exercised rests in the absolute discretion of the State.

1964, Reynolds v. Sims, 377 U.S. 575

The relationship of the States to the Federal Government could hardly be less analogous.

1964, Reynolds v. Sims, 377 U.S. 575

Thus, we conclude that the plan contained in the 67-Senator Amendment for apportioning seats in the Alabama Legislature cannot be sustained by recourse to the so-called federal analogy. Nor can any other inequitable state legislative apportionment scheme be justified on such an asserted basis. This does not necessarily mean that such a plan is irrational, or involves something other than a "republican form of government." We conclude simply that such a plan is impermissible for the States under the Equal Protection Clause, since perforce resulting, in virtually every case, in submergence of the equal population principle in at least one house of a state legislature.

1964, Reynolds v. Sims, 377 U.S. 575

Since we find the so-called federal analogy inapposite to a consideration of the constitutional validity of state [377 U.S. 576] legislative apportionment schemes, we necessarily hold that the Equal Protection Clause requires both houses of a state legislature to be apportioned on a population basis. The right of a citizen to equal representation and to have his vote weighted equally with those of all other citizens in the election of members of one house of a bicameral state legislature would amount to little if States could effectively submerge the equal population principle in the apportionment of seats in the other house. If such a scheme were permissible, an individual citizen's ability to exercise an effective voice in the only instrument of state government directly representative of the people might be almost as effectively thwarted as if neither house were apportioned on a population basis. Deadlock between the two bodies might result in compromise and concession on some issues. But, in all too many cases, the more probable result would be frustration of the majority will through minority veto in the house not apportioned on a population basis, stemming directly from the failure to accord adequate overall legislative representation to all of the State's citizens on a nondiscriminatory basis. In summary, we can perceive no constitutional difference, with respect to the geographical distribution of state legislative representation, between the two houses of a bicameral state legislature.

1964, Reynolds v. Sims, 377 U.S. 576

We do not believe that the concept of bicameralism is rendered anachronistic and meaningless when the predominant basis of representation in the two state legislative bodies is required to be the same population. A prime reason for bicameralism, modernly considered, is to insure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative measures. Simply because the controlling criterion for apportioning representation is required to be the same in both houses does not mean that there will be no differences in the composition and complexion of the two bodies. Different [377 U.S. 577] constituencies can be represented in the two houses. One body could be composed of single member districts, while the other could have at least some multi-member districts. The length of terms of the legislators in the separate bodies could differ. The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ. And apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house. In summary, these and other factors could be, and are presently in many States, utilized to engender differing complexions and collective attitudes in the two bodies of a state legislature, although both are apportioned substantially on a population basis.

VI

1964, Reynolds v. Sims, 377 U.S. 577

By holding that, as a federal constitutional requisite, both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement. 57

1964, Reynolds v. Sims, 377 U.S. 577

In Wesberry v. Sanders, supra, the Court stated that congressional representation must be based on population as nearly as is practicable. In implementing the basic constitutional principle of representative government as enunciated by the Court in Wesberry—equality of population [377 U.S. 578] among districts—some distinctions may well be made between congressional and state legislative representation. Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a State than congressional seats, it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting while still affording adequate representation to all parts of the State. To do so would be constitutionally valid so long as the resulting apportionment was one based substantially on population and the equal population principle was not diluted in any significant way. Somewhat more flexibility may therefore be constitutionally permissible with respect to state legislative apportionment than in congressional districting. Lower courts can and assuredly will work out more concrete and specific standards for evaluating state legislative apportionment schemes in the context of actual litigation. For the present, we deem it expedient not to attempt to spell out any precise constitutional tests. What is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of the case. Developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of state legislative apportionment. Cf. Slaughter-House Cases, 16 Wall. 36, 78-79. Thus, we proceed to state here only a few rather general considerations which appear to us to be relevant.

1964, Reynolds v. Sims, 377 U.S. 578

A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivision or [377 U.S. 579] natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering. Single-member districts may be the rule in one State, while another State might desire to achieve some flexibility by creating multi-member 58 or floterial districts. 59 Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State.

1964, Reynolds v. Sims, 377 U.S. 579

History indicates, however, that many States have deviated, to a greater or lesser degree, from the equal population principle in the apportionment of seats in at least one house of their legislatures. 60 So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature. But neither history alone, 61 nor economic or other sorts of [377 U.S. 580] group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal population principle. Again, people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations. Arguments for allowing such deviations in order to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired are today, for the most part, unconvincing.

1964, Reynolds v. Sims, 377 U.S. 580

A consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions. Several factors make more than insubstantial claims that a State can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. In many States, much of the legislature's activity involves the enactment of so-called local [377 U.S. 581] legislation, directed only to the concerns of particular political subdivisions. And a State may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering. However, permitting deviations from population-based representation does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population. Carried too far, a scheme of giving at least one seat in one house to each political subdivision (for example, to each county) could easily result, in many States, in a total subversion of the equal population principle in that legislative body. 62 This would be especially true in a State where the number of counties is large, and many of them are sparsely populated, and the number of seats in the legislative body being apportioned does not significantly exceed the number of counties. 63 Such a result, we conclude, would be constitutionally impermissible. And careful judicial scrutiny must, of course, be given, in evaluating state apportionment schemes, to the character, as well as the degree, of deviations from a strict population basis. But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all of the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired. [377 U.S. 582]

VII

1964, Reynolds v. Sims, 377 U.S. 582

One of the arguments frequently offered as a basis for upholding a State's legislative apportionment arrangement, despite substantial disparities from a population basis in either or both houses, is grounded on congressional approval, incident to admitting States into the Union, of state apportionment plans containing deviations from the equal population principle. Proponents of this argument contend that congressional approval of such schemes, despite their disparities from population-based representation, indicates that such arrangements are plainly sufficient as establishing a "republican form of government." As we stated in Baker v. Carr, some questions raised under the Guaranty Clause are nonjusticiable, where "political" in nature and where there is a clear absence of judicially manageable standards. 64 Nevertheless, it is not inconsistent with this view to hold that, despite congressional approval of state legislative apportionment plans at the time of admission into the Union, even though deviating from the equal population principle here enunciated, the Equal Protection Clause can, and does, require more. And an apportionment scheme in which both houses are based on population can hardly be considered as failing to satisfy the Guaranty Clause requirement. Congress presumably does not assume, in admitting States into the Union, to pass on all constitutional questions relating to the character of state governmental organization. In any event, congressional approval, however well considered, could hardly validate an unconstitutional state legislative apportionment. Congress simply lacks the constitutional power to insulate States from attack with respect to alleged deprivations of individual constitutional rights. [377 U.S. 583]

VIII

1964, Reynolds v. Sims, 377 U.S. 583

That the Equal Protection Clause requires that both houses of a state legislature be apportioned on a population basis does not mean that States cannot adopt some reasonable plan for periodic revision of their apportionment schemes. Decennial reapportionment appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and growth. Reallocation of legislative seats every 10 years coincides with the prescribed practice in 41 of the States, 65 often honored more in the breach than the observance, however. Illustratively, the Alabama Constitution requires decennial reapportionment, yet the last reapportionment of the Alabama Legislature, when this suit was brought, was in 1901. Limitations on the frequency of reapportionment are justified by the need for stability and continuity in the organization of the legislative system, although undoubtedly reapportioning no more frequently than every 10 years leads to some imbalance in the population of districts toward the end of the decennial period, and also to the development of resistance to change on the part of some incumbent legislators. In substance, we do not regard the Equal Protection Clause as requiring daily, monthly, annual or biennial reapportionment, so long as a State has a reasonably conceived plan for periodic readjustment of legislative representation. While we do not intend to indicate that decennial reapportionment is a constitutional requisite, compliance with such an approach would clearly meet the minimal [377 U.S. 584] requirements for maintaining a reasonably current scheme of legislative representation. And we do not mean to intimate that more frequent reapportionment would not be constitutionally permissible or practicably desirable. But if reapportionment were accomplished with less frequency, it would assuredly be constitutionally suspect.

IX

1964, Reynolds v. Sims, 377 U.S. 584

Although general provisions of the Alabama Constitution provide that the apportionment of seats in both houses of the Alabama Legislature should be on a population basis, other more detailed provisions clearly make compliance with both sets of requirements impossible. With respect to the operation of the Equal Protection Clause, it makes no difference whether a State's apportionment scheme is embodied in its constitution or in statutory provisions. In those States where the alleged malapportionment has resulted from noncompliance with state constitutional provisions which, if complied with, would result in an apportionment valid under the Equal Protection Clause, the judicial task of providing effective relief would appear to be rather simple. We agree with the view of the District Court that state constitutional provisions should be deemed violative of the Federal Constitution only when validly asserted constitutional rights could not otherwise be protected and effectuated. Clearly, courts should attempt to accommodate the relief ordered to the apportionment provisions of state constitutions insofar as is possible. But it is also quite clear that a state legislative apportionment scheme is no less violative of the Federal Constitution when it is based on state constitutional provisions which have been consistently complied with than when resulting from a noncompliance with state constitutional requirements. When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause, of course, controls. [377 U.S. 585]

X

1964, Reynolds v. Sims, 377 U.S. 585

We do not consider here the difficult question of the proper remedial devices which federal courts should utilize in state legislative apportionment cases. 66 Remedial techniques in this new and developing area of the law will probably often differ with the circumstances of the challenged apportionment and a variety of local conditions. It is enough to say now that, once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan. However, under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case even though the existing apportionment scheme was found invalid. In awarding or withholding immediate relief, a court is entitled to, and should, consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree. As stated by MR. JUSTICE DOUGLAS, concurring in Baker v. Carr, "any relief accorded can be fashioned in the light of well known principles of equity." 67 [377 U.S. 586]

1964, Reynolds v. Sims, 377 U.S. 586

We feel that the District Court in this case acted in a most proper and commendable manner. It initially acted wisely in declining to stay the impending primary election in Alabama, and properly refrained from acting further until the Alabama Legislature had been given an opportunity to remedy the admitted discrepancies in the State's legislative apportionment scheme, while initially stating some of its views to provide guidelines for legislative action. And it correctly recognized that legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so. Additionally, the court below acted with proper judicial restraint, after the Alabama Legislature had failed to act effectively in remedying the constitutional deficiencies in the State's legislative apportionment scheme, in ordering its own temporary reapportionment plan into effect, at a time sufficiently early to permit the holding of elections pursuant to that plan without great difficulty, and in prescribing a plan admittedly provisional in purpose so as not to usurp the primary responsibility for reapportionment which rests with the legislature.

1964, Reynolds v. Sims, 377 U.S. 586

We find, therefore, that the action taken by the District Court in this case, in ordering into effect a reapportionment of both houses of the Alabama Legislature for purposes of the 1962 primary and general elections, by using the best parts of the two proposed plans which it had found, as a whole, to be invalid, 68 was an appropriate and [377 U.S. 587] well considered exercise of judicial power. Admittedly, the lower court's ordered plan was intended only as a temporary and provisional measure, and the District Court correctly indicated that the plan was invalid as a permanent apportionment. In retaining jurisdiction while deferring a hearing on the issuance of a final injunction in order to give the provisionally reapportioned legislature an opportunity to act effectively, the court below proceeded in a proper fashion. Since the District Court evinced its realization that its ordered reapportionment could not be sustained as the basis for conducting the 1966 election of Alabama legislators, and avowedly intends to take some further action should the reapportioned Alabama Legislature fail to enact a constitutionally valid, permanent apportionment scheme in the interim, we affirm the judgment below and remand the cases for further proceedings consistent with the views stated in this opinion.

1964, Reynolds v. Sims, 377 U.S. 587

It is so ordered.

CLARK, J., concurring

1964, Reynolds v. Sims, 377 U.S. 587

MR. JUSTICE CLARK, concurring in the affirmance.

1964, Reynolds v. Sims, 377 U.S. 587

The Court goes much beyond the necessities of this case in laying down a new "equal population" principle for state legislative apportionment. This principle seems to be an offshoot of Gray v. Sanders, 372 U.S. 368, 381 (1963), i.e., "one person, one vote," modified by the "nearly as is practicable" admonition of Wesberry v. Sanders, 376 U.S. 1, 8 (1964).\* Whether "nearly as is [377 U.S. 588] practicable" means "one person, one vote" qualified by "approximately equal" or "some deviations" or by the impossibility of "mathematical nicety" is not clear from the majority's use of these vague and meaningless phrases. But whatever the standard, the Court applies it to each house of the State Legislature.

1964, Reynolds v. Sims, 377 U.S. 588

It seems to me that all that the Court need say in this case is that each plan considered by the trial court is "a crazy quilt," clearly revealing invidious discrimination in each house of the Legislature and therefore violative of the Equal Protection Clause. See my concurring opinion in Baker v. Carr, 369 U.S. 186, 253-258 (1962).

1964, Reynolds v. Sims, 377 U.S. 588

I therefore do not reach the question of the so-called "federal analogy." But, in my view, if one house of the State Legislature meets the population standard, representation in the other house might include some departure from it so as to take into account, on a rational basis, other factors in order to afford some representation to the various elements of the State. See my dissenting opinion in Lucas v. Forty-Fourth General Assembly of Colorado, post, p. 741, decided this date.

STEWART, J., statement

1964, Reynolds v. Sims, 377 U.S. 588

MR. JUSTICE STEWART.

1964, Reynolds v. Sims, 377 U.S. 588

All of the parties have agreed with the District Court's finding that legislative inaction for some 60 years, in the face of growth and shifts in population, has converted Alabama's legislative apportionment plan enacted in 1901 into one completely lacking in rationality. Accordingly, for the reasons stated in my dissenting opinion in Lucas v. Forty-Fourth General Assembly of Colorado, post, p. 744, I would affirm the judgment of the District Court holding that this apportionment violated the Equal Protection Clause.

1964, Reynolds v. Sims, 377 U.S. 588

I also agree with the Court that it was proper for the District Court, in framing a remedy, to adhere as closely [377 U.S. 589] as practicable to the apportionments approved by the representatives of the people of Alabama, and to afford the State of Alabama full opportunity, consistent with the requirements of the Federal Constitution, to devise its own system of legislative apportionment.

HARLAN, J., dissenting

1964, Reynolds v. Sims, 377 U.S. 589

MR. JUSTICE HARLAN, dissenting.\*

1964, Reynolds v. Sims, 377 U.S. 589

In these cases, the Court holds that seats in the legislatures of six States 1 are apportioned in ways that violate the Federal Constitution. Under the Court's ruling, it is bound to follow that the legislatures in all but a few of the other 44 States will meet the same fate. 2 These decisions, with Wesberry v. Sanders, 376 U.S. 1, involving congressional districting by the States, and Gray v. Sanders, 372 U.S. 368, relating to elections for statewide office, have the effect of placing basic aspects of state political systems under the pervasive overlordship of the federal judiciary. Once again, 3 I must register my protest. [377 U.S. 590]

PRELIMINARY STATEMENT

1964, Reynolds v. Sims, 377 U.S. 590

Today's holding is that the Equal Protection Clause of the Fourteenth Amendment requires every State to structure its legislature so that all the members of each house represent substantially the same number of people; other factors may be given play only to the extent that they do not significantly encroach on this basic "population" principle. Whatever may be thought of this holding as a piece of political ideology—and even on that score, the political history and practices of this country from its earliest beginnings leave wide room for debate (see the dissenting opinion of Frankfurter, J., in Baker v. Carr, 369 U.S. 186, 266, 301-323)—I think it demonstrable that the Fourteenth Amendment does not impose this political tenet on the States or authorize this Court to do so.

1964, Reynolds v. Sims, 377 U.S. 590

The Court's constitutional discussion, found in its opinion in the Alabama cases (Nos. 23, 27, 41, ante, p. 533) and more particularly at pages 561-568 thereof, is remarkable (as, indeed, is that found in the separate opinions of my Brothers STEWART and CLARK, ante, pp. 588, 587) for its failure to address itself at all to the Fourteenth Amendment as a whole or to the legislative history of the Amendment pertinent to the matter at hand. Stripped of aphorisms, the Court's argument boils down to the assertion that appellees' right to vote has been invidiously "debased" or "diluted" by systems of apportionment which entitle them to vote for fewer legislators than other voters, an assertion which is tied to the Equal Protection Clause only by the constitutionally frail tautology that "equal" means "equal."

1964, Reynolds v. Sims, 377 U.S. 590

Had the Court paused to probe more deeply into the matter, it would have found that the Equal Protection Clause was never intended to inhibit the States in choosing [377 U.S. 591] any democratic method they pleased for the apportionment of their legislatures. This is shown by the language of the Fourteenth Amendment taken as a whole, by the understanding of those who proposed and ratified it, and by the political practices of the States at the time the Amendment was adopted. It is confirmed by numerous state and congressional actions since the adoption of the Fourteenth Amendment, and by the common understanding of the Amendment as evidenced by subsequent constitutional amendments and decisions of this Court before Baker v. Carr, supra, made an abrupt break with the past in 1962.

1964, Reynolds v. Sims, 377 U.S. 591

The failure of the Court to consider any of these matters cannot be excused or explained by any concept of "developing" constitutionalism. It is meaningless to speak of constitutional "development" when both the language and history of the controlling provisions of the Constitution are wholly ignored. Since it can, I think, be shown beyond doubt that state legislative apportionments, as such, are wholly free of constitutional limitations, save such as may be imposed by the Republican Form of Government Clause (Const., Art. IV, § 4), 4 the Court's action now bringing them within the purview of the Fourteenth Amendment amounts to nothing less than an exercise of the amending power by this Court.

1964, Reynolds v. Sims, 377 U.S. 591

So far as the Federal Constitution is concerned, the complaints in these cases should all have been dismissed below for failure to state a cause of action, because what [377 U.S. 592] has been alleged or proved shows no violation of any constitutional right.

1964, Reynolds v. Sims, 377 U.S. 592

Before proceeding to my argument, it should be observed that nothing done in Baker v. Carr, supra, or in the two cases that followed in its wake, Gray v. Sanders and Wesberry v. Sanders, supra, from which the Court quotes at some length, forecloses the conclusion which I reach.

1964, Reynolds v. Sims, 377 U.S. 592

Baker decided only that claims such as those made here are within the competence of the federal courts to adjudicate. Although the Court stated as its conclusion that the allegations of a denial of equal protection presented "a justiciable constitutional cause of action," 369 U.S. at 237, it is evident from the Court's opinion that it was concerned all but exclusively with justiciability, and gave no serious attention to the question whether the Equal Protection Clause touches state legislative apportionments. 5 Neither the opinion of the Court nor any of the concurring opinions considered the relevant text of the Fourteenth Amendment or any of the historical materials bearing on that question. None of the materials was briefed or otherwise brought to the Court's attention. 6 [377 U.S. 593]

1964, Reynolds v. Sims, 377 U.S. 593

In the Gray case, the Court expressly laid aside the applicability to state legislative apportionments of the "one person, one vote" theory there found to require the striking down of the Georgia county unit system. See 372 U.S. at 376, and the concurring opinion of STEWART, J., joined by CLARK, J., id. at 381-382.

1964, Reynolds v. Sims, 377 U.S. 593

In Wesberry, involving congressional districting, the decision rested on Art. I, § 2, of the Constitution. The Court expressly did not reach the arguments put forward concerning the Equal Protection Clause. See 376 U.S. at 8, note 10.

1964, Reynolds v. Sims, 377 U.S. 593

Thus, it seems abundantly clear that the Court is entirely free to deal with the cases presently before it in light of materials now called to its attention for the first time. To these I now turn.

I

A. The Language of the Fourteenth Amendment

1964, Reynolds v. Sims, 377 U.S. 593

The Court relies exclusively on that portion of § 1 of the Fourteenth Amendment which provides that no State shall "deny to any person within its Jurisdiction the equal protection of the laws," and disregards entirely the significance of § 2, which reads:

1964, Reynolds v. Sims, 377 U.S. 593

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or [377 U.S. 594] other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

1964, Reynolds v. Sims, 377 U.S. 594

(Emphasis added.)

1964, Reynolds v. Sims, 377 U.S. 594

The Amendment is a single text. It was introduced and discussed as such in the Reconstruction Committee, 7 which reported it to the Congress. It was discussed as a unit in Congress, and proposed as a unit to the States, 8 which ratified it as a unit. A proposal to split up the Amendment and submit each section to the States as a separate amendment was rejected by the Senate. 9 Whatever one might take to be the application to these cases of the Equal Protection Clause if it stood alone, I am unable to understand the Court's utter disregard of the second section, which expressly recognizes the States' power to deny "or in any way" abridge the right of their inhabitants to vote for "the members of the [State] Legislature," and its express provision of a remedy for such denial or abridgment. The comprehensive scope of the second section and its particular reference to the state legislatures preclude the suggestion that the first section was intended to have the result reached by the Court today. If indeed the words of the Fourteenth Amendment speak for themselves, as the majority's disregard of history seems to imply, they speak as clearly as may be against the construction which the majority puts on them. But we are not limited to the language of the Amendment itself. [377 U.S. 595]

B. Proposal and Ratification of the Amendment

1964, Reynolds v. Sims, 377 U.S. 595

The history of the adoption of the Fourteenth Amendment provides conclusive evidence that neither those who proposed nor those who ratified the Amendment believed that the Equal Protection Clause limited the power of the States to apportion their legislatures as they saw fit. Moreover, the history demonstrates that the intention to leave this power undisturbed was deliberate, and was widely believed to be essential to the adoption of the Amendment.

1964, Reynolds v. Sims, 377 U.S. 595

(i) Proposal of the amendment in Congress.—A resolution proposing what became the Fourteenth Amendment was reported to both houses of Congress by the Reconstruction Committee of Fifteen on April 30, 1866, 10 The first two sections of the proposed amendment read:

1964, Reynolds v. Sims, 377 U.S. 595

SEC. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

1964, Reynolds v. Sims, 377 U.S. 595

SEC. 2. Representatives shall be apportioned among the several States which may be included within this Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens [377 U.S. 596] shall bear to the whole number of male citizens not less than twenty-one years of age. 11

1964, Reynolds v. Sims, 377 U.S. 596

In the House, Thaddeus Stevens introduced debate on the resolution on May 8. In his opening remarks, Stevens explained why he supported the resolution although it fell "far short" of his wishes:

1964, Reynolds v. Sims, 377 U.S. 596

I believe it is all that can be obtained in the present state of public opinion. Not only Congress, but the several States, are to be consulted. Upon a careful survey of the whole ground, we did not believe that nineteen of the loyal States could be induced to ratify any proposition more stringent than this. 12

1964, Reynolds v. Sims, 377 U.S. 596

In explanation of this belief, he asked the House to remember

1964, Reynolds v. Sims, 377 U.S. 596

that three months since, and more, the committee reported and the House adopted a proposed amendment fixing the basis of representation in such way as would surely have secured the enfranchisement of every citizen at no distant period,

1964, Reynolds v. Sims, 377 U.S. 596

but that proposal had been rejected by the Senate. 13

1964, Reynolds v. Sims, 377 U.S. 596

He then explained the impact of the first section of the proposed Amendment, particularly the Equal Protection Clause.

1964, Reynolds v. Sims, 377 U.S. 596

This amendment…allows Congress to correct the unjust legislation of the States so far that the [377 U.S. 597] law which operates upon one man shall operate equally upon all. Whatever law punishes a white man for a crime shall punish the black man precisely in the same way and to the same degree. Whatever law protects the white man shall afford "equal" protection to the black man. Whatever means of redress is afforded to one shall be afforded to all. Whatever law allows the white man to testify in court shall allow the man of color to do the same. These are great advantages over their present codes. Now, different degrees of punishment are inflicted not on account of the magnitude of the crime, but according to the color of the skin. Now color disqualifies a man from testifying in courts, or being tried in the same way as white men. I need not enumerate these partial and oppressive laws. Unless the Constitution should restrain them, those States will all, I fear, keep up this discrimination and crush to death the hated freedmen. 14

1964, Reynolds v. Sims, 377 U.S. 597

He turned next to the second section, which he said he considered "the most important in the article." 15 Its effect, he said, was to fix "the basis of representation in Congress." 16 In unmistakable terms, he recognized the power of a State to withhold the right to vote:

1964, Reynolds v. Sims, 377 U.S. 597

If any State shall exclude any of her adult male citizens from the elective franchise, or abridge that right, she shall forfeit her right to representation in the same proportion. The effect of this provision will be either to compel the States to grant universal suffrage or so to shear them of their power as to keep them forever in a hopeless minority in the national Government, both legislative and executive. 17 [377 U.S. 598]

1964, Reynolds v. Sims, 377 U.S. 598

Closing his discussion of the second section, he noted his dislike for the fact that it allowed "the States to discriminate [with respect to the right to vote] among the same class, and receive proportionate credit in representation." 18

1964, Reynolds v. Sims, 377 U.S. 598

Toward the end of the debate three days later, Mr. Bingham, the author of the first section in the Reconstruction Committee and its leading proponent, 19 concluded his discussion of it with the following:

1964, Reynolds v. Sims, 377 U.S. 598

Allow me, Mr. Speaker, in passing, to say that this amendment takes from no State any right that ever pertained to it. No State ever had the right, under the forms of law or otherwise, to deny to any freeman the equal protection of the laws or to abridge the privileges or immunities of any citizen of the Republic, although many of them have assumed and exercised the power, and that without remedy. The amendment does not give, as the second section shows, the power to Congress of regulating suffrage in the several States. 20

1964, Reynolds v. Sims, 377 U.S. 598

(Emphasis added.) He immediately continued:

1964, Reynolds v. Sims, 377 U.S. 598

The second section excludes the conclusion that, by the first section, suffrage is subjected to congressional law, save, indeed, with this exception, that, as the right in the people of each State to a republican government and to choose their Representatives in Congress is of the guarantees of the Constitution, by this amendment, a remedy might be given directly for a case supposed by Madison, where treason might change a State government from a republican to a [377 U.S. 599] despotic government, and thereby deny suffrage to the people. 21

1964, Reynolds v. Sims, 377 U.S. 599

(Emphasis added.) He stated at another point in his remarks:

1964, Reynolds v. Sims, 377 U.S. 599

To be sure, we all agree, and the great body of the people of this country agree, and the committee thus far in reporting measures of reconstruction agree, that the exercise of the elective franchise, though it be one of the privileges of a citizen of the Republic, is exclusively under the control of the States. 22

1964, Reynolds v. Sims, 377 U.S. 599

(Emphasis added.)

1964, Reynolds v. Sims, 377 U.S. 599

In the three days of debate which separate the opening and closing remarks, both made by members of the Reconstruction Committee, every speaker on the resolution, with a single doubtful exception, 23 assumed without question that, as Mr. Bingham said, supra, "the second section excludes the conclusion that, by the first section, suffrage is subjected to congressional law." The assumption was neither inadvertent nor silent. Much of the debate concerned the change in the basis of representation effected by the second section, and the speakers stated repeatedly, in express terms or by unmistakable implication, that the States retained the power to regulate suffrage within their borders. Attached as Appendix A hereto are some of those statements. The resolution was adopted by the House without change on May 10. 24 [377 U.S. 600]

1964, Reynolds v. Sims, 377 U.S. 600

Debate in the Senate began on May 23, and followed the same pattern. Speaking for the Senate Chairman of the Reconstruction Committee, who was ill, Senator Howard, also a member of the Committee, explained the meaning of the Equal Protection Clause as follows:

1964, Reynolds v. Sims, 377 U.S. 600

The last two clauses of the first section of the amendment disable a State from depriving not merely a citizen of the United States, but any person, whoever he may be, of life, liberty, or property without due process of law, or from denying to him the equal protection of the laws of the State. This abolishes all class legislation in the States, and does away with the injustice of subjecting one caste of persons to a code not applicable to another. It prohibits the hanging of a black man for a crime for which the white man is not to be hanged. It protects the black man in his fundamental rights as a citizen with the same shield which it throws over the white man. Is it not time, Mr. President, that we extend to the black man, I had almost called it the poor privilege of the equal protection of the law?…

1964, Reynolds v. Sims, 377 U.S. 600

But, sir, the first section of the proposed amendment does not give to either of these classes the right of voting. The right of suffrage is not, in law, one of the privileges or immunities thus secured by the Constitution. It is merely the creature of law. It has always been regarded in this country as the result of positive local law, not regarded as one of those fundamental rights lying at the basis of all society and without which a people cannot exist except as slaves, subject to a depostism [sic]. 25

1964, Reynolds v. Sims, 377 U.S. 600

(Emphasis added.)

1964, Reynolds v. Sims, 377 U.S. 600

Discussing the second section, he expressed his regret that it did "not recognize the authority of the United States over the question of suffrage in the several States [377 U.S. 601] at all." 26 He justified the limited purpose of the Amendment in this regard as follows:

1964, Reynolds v. Sims, 377 U.S. 601

But, sir, it is not the question here what will we do; it is not the question what you, or I, or half a dozen other members of the Senate may prefer in respect to colored suffrage; it is not entirely the question what measure we can pass through the two Houses; but the question really is, what will the Legislatures of the various States to whom these amendments are to be submitted do in the premises; what is it likely will meet the general approbation of the people who are to elect the Legislatures, three fourths of whom must ratify our propositions before they have the force of constitutional provisions?

\* \* \* \*

1964, Reynolds v. Sims, 377 U.S. 601

The committee were of opinion that the States are not yet prepared to sanction so fundamental a change as would be the concession of the right of suffrage to the colored race. We may as well state it plainly and fairly, so that there shall be no misunderstanding on the subject. It was our opinion that three-fourths of the States of this Union could not be induced to vote to grant the right of suffrage, even in any degree or under any restriction, to the colored race….

1964, Reynolds v. Sims, 377 U.S. 601

The second section leaves the right to regulate the elective franchise still with the States, .and does not meddle with that right. 27

1964, Reynolds v. Sims, 377 U.S. 601

(Emphasis added.)

1964, Reynolds v. Sims, 377 U.S. 601

There was not in the Senate, as there had been in the House, a closing speech in explanation of the Amendment. But because the Senate considered, and finally adopted, several changes in the first and second sections, even more attention was given to the problem of voting rights there than had been given in the House. In the [377 U.S. 602] Senate, it was fully understood by everyone that neither the first nor the second section interfered with the right of the States to regulate the elective franchise. Attached as Appendix B hereto are representative statements from the debates to that effect. After having changed the proposed amendment to the form in which it was adopted, the Senate passed the resolution on June 8, 1866. 28 As changed, it passed in the House on June 13. 29

1964, Reynolds v. Sims, 377 U.S. 602

(ii) Ratification by the "loyal" States.—Reports of the debates in the state legislatures on the ratification of the Fourteenth Amendment are not generally available. 30 There is, however, compelling indirect evidence. Of the 23 loyal States which ratified the Amendment before 1870, five had constitutional provisions for apportionment of at least one house of their respective legislatures which wholly disregarded the spread of population. 31 [377 U.S. 603] Ten more had constitutional provisions which gave primary emphasis to population, but which applied also other principles, such as partial ratios and recognition of political subdivisions, which were intended to favor sparsely settled areas. 32 Can it be seriously contended that the legislatures of these States, almost two-thirds of those concerned, would have ratified an amendment which might render their own States' constitutions unconstitutional?

1964, Reynolds v. Sims, 377 U.S. 603

Nor were these state constitutional provisions merely theoretical. In New Jersey, for example, Cape May County, with a population of 8,349, and Ocean County, with a population of 13,628, each elected one State Senator, as did Essex and Hudson Counties, with populations of 143,839 and 129,067, respectively. 33 In the House, each county was entitled to one representative, which left 39 seats to be apportioned according to population. 34 Since there were 12 counties besides the two already mentioned which had populations over 30,000, 35 it is evident that there were serious disproportions in the House also. In [377 U.S. 604] New York, each of the 60 counties except Hamilton County was entitled to one of the 128 seats in the Assembly. 36 This left 69 seats to be distributed among counties the populations of which ranged from 15,420 to 942,292. 37 With seven more counties having populations over 100,000 and 13 others having populations over 50,000, 38 the disproportion in the Assembly was necessarily large. In Vermont, after each county had been allocated one Senator, there were 16 seats remaining to be distributed among the larger counties. 39 The smallest county had a population of 4,082; the largest had a population of 40,651, and there were 10 other counties with populations over 20,000. 40

1964, Reynolds v. Sims, 377 U.S. 604

(iii) Ratification by the "reconstructed" States.—Each of the 10 "reconstructed" States was required to ratify the Fourteenth Amendment before it was readmitted to the Union. 41 The Constitution of each was scrutinized in Congress. 42 Debates over readmission [377 U.S. 605] were extensive. 43 In at least one instance, the problem of state legislative apportionment was expressly called to the attention of Congress. Objecting to the inclusion of Florida in the Act of June 25, 1868, Mr. Farnsworth stated on the floor of the House:

1964, Reynolds v. Sims, 377 U.S. 605

I might refer to the apportionment of representatives. By this constitution, representatives in the Legislature of Florida are apportioned in such a manner as to give to the sparsely populated portions of the State the control of the Legislature. The sparsely populated parts of the State are those where there are very few negroes, the parts inhabited by the white rebels, the men who, coming in from Georgia, Alabama, and other States, control the fortunes of their several counties. By this constitution, every county in that State is entitled to a representative. There are in that State counties that have not thirty registered voters; yet, under this constitution, every one of those counties is entitled [377 U.S. 606] to a representative in the Legislature, while the populous counties are entitled to only one representative each, with an additional representative for every thousand inhabitants. 44

1964, Reynolds v. Sims, 377 U.S. 606

The response of Mr. Butler is particularly illuminating:

1964, Reynolds v. Sims, 377 U.S. 606

All these arguments, all these statements, all the provisions of this constitution have been submitted to the Judiciary Committee of the Senate, and they have found the constitution republican and proper. This constitution has been submitted to the Senate, and they have found it republican and proper. It has been submitted to your own Committee on Reconstruction, and they have found it republican and proper, and have reported it to this House. 45

1964, Reynolds v. Sims, 377 U.S. 606

The Constitutions of six of the 10 States contained provisions departing substantially from the method of apportionment now held to be required by the Amendment. 46 And, as in the North, the departures were as real, in fact, as in theory. In North Carolina, 90 of the 120 representatives were apportioned among the counties without regard to population, leaving 30 seats to be distributed by numbers. 47 Since there were seven counties with populations under 5,000 and 26 counties with populations over 15,000, the disproportions must have been widespread and substantial. 48 In South Carolina, Charleston, with a population of 88,863, elected two Senators; each of the other counties, with populations ranging from 10,269 to [377 U.S. 607] 42,486, elected one Senator. 49 In Florida, each of the 39 counties was entitled to elect one Representative; no county was entitled to more than four. 50 These principles applied to Dade County, with a population of 85, and to Alachua County and Leon County, with populations of 17,328 and 15,236, respectively. 51

1964, Reynolds v. Sims, 377 U.S. 607

It is incredible that Congress would have exacted ratification of the Fourteenth Amendment as the price of readmission, would have studied the State Constitutions for compliance with the Amendment, and would then have disregarded violations of it.

1964, Reynolds v. Sims, 377 U.S. 607

The facts recited above show beyond any possible doubt:

1964, Reynolds v. Sims, 377 U.S. 607

(1) that Congress, with full awareness of and attention to the possibility that the States would not afford full equality in voting rights to all their citizens, nevertheless deliberately chose not to interfere with the States' plenary power in this regard when it proposed the Fourteenth Amendment;

1964, Reynolds v. Sims, 377 U.S. 607

(2) that Congress did not include in the Fourteenth Amendment restrictions on the States' power to control voting rights because it believed that, if such restrictions were included, the Amendment would not be adopted; and

1964, Reynolds v. Sims, 377 U.S. 607

(3) that at least a substantial majority, if not all, of the States which ratified the Fourteenth Amendment did not consider that, in so doing, they were accepting limitations on their freedom, never before questioned, to regulate voting rights as they chose.

1964, Reynolds v. Sims, 377 U.S. 607

Even if one were to accept the majority's belief that it is proper entirely to disregard the unmistakable implications [377 U.S. 608] of the second section of the Amendment in construing the first section, one is confounded by its disregard of all this history. There is here none of the difficulty which may attend the application of basic principles to situations not contemplated or understood when the principles were framed. The problems which concern the Court now were problems when the Amendment was adopted. By the deliberate choice of those responsible for the Amendment, it left those problems untouched.

C. After 1868

1964, Reynolds v. Sims, 377 U.S. 608

The years following 1868, far from indicating a developing awareness of the applicability of the Fourteenth Amendment to problems of apportionment, demonstrate precisely the reverse: that the States retained and exercised the power independently to apportion their legislatures. In its Constitutions of 1875 and 1901, Alabama carried forward earlier provisions guaranteeing each county at least one representative and fixing an upper limit to the number of seats in the House. 52 Florida's Constitution of 1885 continued the guarantee of one representative for each county and reduced the maximum number of representatives per county from four to three. 53 Georgia, in 1877, continued to favor the smaller counties. 54 Louisiana, in 1879, guaranteed each parish at least one representative in the House. 55 In 1890, Mississippi guaranteed each county one representative, established a maximum number of representatives, and provided that specified groups of counties should each have approximately one-third of the seats in the House, whatever [377 U.S. 609] the spread of population. 56 Missouri's Constitution of 1875 gave each county one representative and otherwise favored less populous areas. 57 Montana's original Constitution of 1889 apportioned the State Senate by counties. 58 In 1877, New Hampshire amended its Constitution's provisions for apportionment, but continued to favor sparsely settled areas in the House and to apportion seats in the Senate according to direct taxes paid; 59 the same was true of New Hampshire's Constitution of 1902. 60

1964, Reynolds v. Sims, 377 U.S. 609

In 1894, New York adopted a Constitution the peculiar apportionment provisions of which were obviously intended to prevent representation according to population: no county was allowed to have more than one-third of all the Senators, no two counties which were adjoining or "separated only by public waters" could have more than one-half of all the Senators, and whenever any county became entitled to more than three Senators, the total number of Senators was increased, thus preserving to the small counties their original number of seats. 61 In addition, each county except Hamilton was guaranteed a seat in the Assembly. 62 The North Carolina Constitution of 1876 gave each county at least one representative and fixed a maximum number of representatives for the whole House. 63 Oklahoma's Constitution at the time of its admission to the Union (1907) favored small counties by the use of partial ratios and a maximum number of seats in the House; in addition, no county was permitted to "take part" in the election of more than seven [377 U.S. 610] representatives. 64 Pennsylvania, in 1873, continued to guarantee each county one representative in the House. 65 The same was true of South Carolina' Constitution of 1895, which provided also that each county should elect one and only one Senator. 66 Utah's original Constitution of 1895 assured each county of one representative in the House. 67 Wyoming, when it entered the Union in 1889, guaranteed each county at least one Senator and one representative. 68

D. Today

1964, Reynolds v. Sims, 377 U.S. 610

Since the Court now invalidates the legislative apportionments in six States, and has so far upheld the apportionment in none, it is scarcely necessary to comment on the situation in the States today, which is, of course, as fully contrary to the Court's decision as is the record of every prior period in this Nation's history. As of 1961, the Constitutions of all but 11 States, roughly 20% of the total, recognized bases of apportionment other than geographic spread of population, and to some extent favored sparsely populated areas by a variety of devices, ranging from straight area representation or guaranteed minimum area representation to complicated schemes of the kind exemplified by the provisions of New York's Constitution of 1894, still in effect until struck down by the Court today in No. 20, post, p. 633. 69 Since [377 U.S. 611] Tennessee, which was the subject of Baker v. Carr, and Virginia, scrutinized and disapproved today in No. 69, post, p. 678, are among the 11 States whose own Constitutions are sound from the standpoint of the Federal Constitution as construed today, it is evident that the actual practice of the States is even more uniformly than their theory opposed to the Court's view of what is constitutionally permissible.

E. Other Factors

1964, Reynolds v. Sims, 377 U.S. 611

In this summary of what the majority ignores, note should be taken of the Fifteenth and Nineteenth Amendments. The former prohibited the States from denying or abridging the right to vote "on account of race, color, or previous condition of servitude." The latter, certified as part of the Constitution in 1920, added sex to the prohibited classifications. In Minor v. Happersett, 21 Wall. 162, this Court considered the claim that the right of women to vote was protected by the Privileges and Immunities Clause of the Fourteenth Amendment. The Court's discussion there of the significance of the Fifteenth Amendment is fully applicable here with respect to the Nineteenth Amendment as well.

1964, Reynolds v. Sims, 377 U.S. 611

And still again, after the adoption of the fourteenth amendment, it was deemed necessary to adopt a fifteenth, as follows:

1964, Reynolds v. Sims, 377 U.S. 611

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

1964, Reynolds v. Sims, 377 U.S. 611

The fourteenth amendment had already provided that no State should make or enforce any law which should abridge the privileges or immunities of citizens of the United States. If suffrage was one of these privileges or immunities, why amend the Constitution to prevent its being denied on account of race, &c.? Nothing is more evident than that the greater must [377 U.S. 612] include the less, and if all were already protected, why go through with the form of amending the Constitution to protect a part?

1964, Reynolds v. Sims, 377 U.S. 612

Id. at 175.

1964, Reynolds v. Sims, 377 U.S. 612

In the present case, we can go still further. If constitutional amendment was the only means by which all men and, later, women, could be guaranteed the right to vote at all, even for federal officers, how can it be that the far less obvious right to a particular kind of apportionment of state legislatures—a right to which is opposed a far more plausible conflicting interest of the State than the interest which opposes the general right to vote—can be conferred by judicial construction of the Fourteenth Amendment? 70 Yet, unless one takes the highly implausible view that the Fourteenth Amendment controls methods of apportionment but leaves the right to vote itself unprotected, the conclusion is inescapable that the Court has, for purposes of these cases, relegated the Fifteenth and Nineteenth Amendments to the same limbo of constitutional anachronisms to which the second section of the Fourteenth Amendment has been assigned.

1964, Reynolds v. Sims, 377 U.S. 612

Mention should be made finally of the decisions of this Court which are disregarded or, more accurately, silently overruled today. Minor v. Happersett, supra, in which the Court held that the Fourteenth Amendment did not [377 U.S. 613] confer the right to vote on anyone, has already been noted. Other cases are more directly in point. In Colegrove v. Barrett, 330 U.S. 804, this Court dismissed "for want of a substantial federal question" an appeal from the dismissal of a complaint alleging that the Illinois legislative apportionment resulted in "gross inequality in voting power" and "gross and arbitrary and atrocious discrimination in voting" which denied the plaintiffs equal protection of the laws. 71 In Remmey v. Smith, 102 F.Supp. 708 (D.C.E.D.Pa.), a three-judge District Court dismissed a complaint alleging that the apportionment of the Pennsylvania Legislature deprived the plaintiffs of "constitutional rights guaranteed to them by the Fourteenth Amendment." Id. at 709. The District Court stated that it was aware that the plaintiffs' allegations were "notoriously true" and that

1964, Reynolds v. Sims, 377 U.S. 613

the practical disenfranchisement of qualified electors in certain of the election districts in Philadelphia County is a matter of common knowledge.

1964, Reynolds v. Sims, 377 U.S. 613

Id. at 710. This Court dismissed the appeal "for the want of a substantial federal question." 342 U.S. 916.

1964, Reynolds v. Sims, 377 U.S. 613

In Kidd v. McCanless, 200 Tenn. 273, 292 S.W.2d 40, the Supreme Court of Tennessee dismissed an action for a declaratory judgment that the Tennessee Apportionment Act of 1901 was unconstitutional. The complaint alleged that

1964, Reynolds v. Sims, 377 U.S. 613

a minority of approximately 37% of the voting population of the State now elects and controls 20 of the 33 members of the Senate; that a minority of 40% of the voting population of the State now controls 63 of the 99 members of the House of Representatives.

1964, Reynolds v. Sims, 377 U.S. 613

Id. at 276, 292 S.W.2d at 42. Without dissent, this Court granted the motion to dismiss the appeal. 352 U.S. 920. In Radford v. Gary, 145 F.Supp. 541 (D.C.W.D.Okla.), a three-judge District Court was [377 U.S. 614] convened to consider

1964, Reynolds v. Sims, 377 U.S. 614

the complaint of the plaintiff to the effect that the existing apportionment statutes of the State of Oklahoma violate the plain mandate of the Oklahoma Constitution and operate to deprive him of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

1964, Reynolds v. Sims, 377 U.S. 614

Id. at 542. The plaintiff alleged that he was a resident and voter in the most populous county of the State, which had about 15% of the total population of the State but only about 2% of the seats in the State Senate and less than 4% of the seats in the House. The complaint recited the unwillingness or inability of the branches of the state government to provide relief, and alleged that there was no state remedy available. The District Court granted a motion to dismiss. This Court affirmed without dissent. 352 U.S. 991.

1964, Reynolds v. Sims, 377 U.S. 614

Each of these recent cases is distinguished on some ground or other in Baker v. Carr. See 369 U.S. at 235-236. Their summary dispositions prevent consideration whether these after-the-fact distinctions are real or imaginary. The fact remains, however, that, between 1947 and 1957, four cases raising issues precisely the same as those decided today were presented to the Court. Three were dismissed because the issues presented were thought insubstantial, and, in the fourth, the lower court's dismissal was affirmed. 72

\* \* \* \*

1964, Reynolds v. Sims, 377 U.S. 614

I have tried to make the catalogue complete, yet to keep it within the manageable limits of a judicial opinion. In my judgment, today's decisions are refuted by [377 U.S. 615] the language of the Amendment which they construe and by the inference fairly to be drawn from subsequently enacted Amendments. They are unequivocally refuted by history and by consistent theory and practice from the time of the adoption of the Fourteenth Amendment until today.

II

1964, Reynolds v. Sims, 377 U.S. 615

The Court's elaboration of its new "constitutional" doctrine indicates how far—and how unwisely—it has strayed from the appropriate bounds of its authority. The consequence of today's decision is that, in all but the handful of States which may already satisfy the new requirements, the local District Court or, it may be, the state courts, are given blanket authority and the constitutional duty to supervise apportionment of the State Legislatures. It is difficult to imagine a more intolerable and inappropriate interference by the judiciary with the independent legislatures of the States.

1964, Reynolds v. Sims, 377 U.S. 615

In the Alabama cases (Nos. 23, 27, 41), the District Court held invalid not only existing provisions of the State Constitution—which this Court lightly dismisses with a wave of the Supremacy Clause and the remark [377 U.S. 616] that "it makes no difference whether a State's apportionment scheme is embodied in its constitution or in statutory provisions," ante p. 581, but also a proposed amendment to the Alabama Constitution which had never been submitted to the voters of Alabama for ratification, and "standby" legislation which was not to become effective unless the amendment was rejected (or declared unconstitutional), and in no event before 1966. Sims v. Frink, 208 F.Supp. 431. See ante, pp. 543-551. Both of these measures had been adopted only nine days before, 73 at an Extraordinary Session of the Alabama Legislature, convened pursuant to what was very nearly a directive of the District Court, see Sims v. Frink, 205 F.Supp. 245, 248. The District Court formulated its own plan for the apportionment of the Alabama Legislature by picking and choosing among the provisions of the legislative measures. 208 F.Supp. at 441-442. See ante, p. 552. Beyond that, the court warned the legislature that there would be still further judicial reapportionment unless the legislature, like it or not, undertook the task for itself. 208 F.Supp. at 442. This Court now states that the District Court acted in "a most proper and commendable manner," ante, p. 586, and approves the District Court's avowed intention of taking "some further action" unless the State Legislature acts by 1966, ante, p. 587.

1964, Reynolds v. Sims, 377 U.S. 616

In the Maryland case (No. 29, post, p. 656), the State Legislature was called into Special Session and enacted a temporary reapportionment of the House of Delegates, under pressure from the state courts. 74 Thereafter, the [377 U.S. 617] Maryland Court of Appeals held that the Maryland Senate was constitutionally apportioned. Maryland Committee for Fair Representation v. Tawes, 229 Md. 406, 184 A.2d 715. This Court now holds that neither branch of the State Legislature meets constitutional requirements. Post, p. 674. The Court presumes that, since

1964, Reynolds v. Sims, 377 U.S. 617

the Maryland constitutional provisions relating to legislative apportionment [are] hereby held unconstitutional, the Maryland Legislature…has the inherent power to enact at least temporary reapportionment legislation pending adoption of state constitutional provisions

1964, Reynolds v. Sims, 377 U.S. 617

which satisfy the Federal Constitution, id. at 675. On this premise, the Court concludes that the Maryland courts need not "feel obliged to take further affirmative action" now, but that

1964, Reynolds v. Sims, 377 U.S. 617

under no circumstances should the 1966 election of members of the Maryland Legislature be permitted to be conducted pursuant to the existing or any other unconstitutional plan.

1964, Reynolds v. Sims, 377 U.S. 617

Id. at 676.

1964, Reynolds v. Sims, 377 U.S. 617

In the Virginia case (No. 69, post, p. 678), the State Legislature in 1962 complied with the state constitutional requirement of regular reapportionment. 75 Two days later, a complaint was filed in the District Court. 76 Eight months later, the legislative reapportionment was [377 U.S. 618] declared unconstitutional. Mann v. Davis, 213 F.Supp. 577. The District Court gave the State Legislature two months within which to reapportion itself in special session, under penalty of being reapportioned by the court. 77 Only a stay granted by a member of this Court slowed the process; 78 it is plain that no stay will be forthcoming in the future. The Virginia Legislature is to be given "an adequate opportunity to enact a valid plan," but if it fails "to act promptly in remedying the constitutional defects in the State's legislative apportionment plan," the District Court is to "take further action." Post, p. 693.

1964, Reynolds v. Sims, 377 U.S. 618

In Delaware (No. 307, post, p. 695), the District Court entered an order on July 25, 1962, which stayed proceedings until August 7, 1962, "in the hope and expectation" that the General Assembly would take "some appropriate action" in the intervening 13 days. Sincock v. Terry, 207 F.Supp. 205, 207. By way of prodding, presumably, the court noted that, if no legislative action were taken and the court sustained the plaintiffs' claim,

1964, Reynolds v. Sims, 377 U.S. 618

the present General Assembly and any subsequent General Assembly, the members of which were elected pursuant to Section 2 of Article 2 [the challenged provisions of the Delaware Constitution], might be held not to be a de jure legislature, and its legislative acts might be held invalid and unconstitutional.

1964, Reynolds v. Sims, 377 U.S. 618

Id. at 205-206. Five days later, on July 30, 1962, the General Assembly approved a proposed amendment to the State Constitution. On August 7, 1962, the District Court entered an order denying the [377 U.S. 619] defendants' motion to dismiss. The court said that it did not wish to substitute its judgment "for the collective wisdom of the General Assembly of Delaware," but that, "in the light of all the circumstances," it had to proceed promptly. 210 F.Supp. 395, 396. On October 16, 1962, the court declined to enjoin the conduct of elections in November. 210 F.Supp. 396. The court went on to express its regret that the General Assembly had not adopted the court's suggestion, see 207 F.Supp. at 206-207, that the Delaware Constitution be amended to make apportionment a statutory, rather than a constitutional, matter, so as to facilitate further changes in apportionment which might be required. 210 F.Supp. at 401. In January, 1963, the General Assembly again approved the proposed amendment of the apportionment provisions of the Delaware Constitution, which thereby became effective on January 17, 1963. 79 Three months later, on April 17, 1963, the District Court reached "the reluctant conclusion" that Art. II, § 2, of the Delaware Constitution was unconstitutional, with or without the 1963 amendment. Sincock v. Duffy, 215 F.Supp. 169, 189. Observing that "the State of Delaware, the General Assembly, and this court all seem to be trapped in a kind of box of time," id. at 191, the court gave the General Assembly until October 1, 1963, to adopt acceptable provisions for apportionment. On May 20, 1963, the District Court enjoined the defendants from conducting any elections, including the general election scheduled for November, 1964, pursuant to the old or the new constitutional provisions. 80 This Court now approves all these [377 U.S. 620] proceedings, noting particularly that, in allowing the 1962 elections to go forward, "the District Court acted in a wise and temperate manner." Post, p. 710. 81

1964, Reynolds v. Sims, 377 U.S. 620

Records such as these in the cases decided today are sure to be duplicated in most of the other States if they have not been already. They present a jarring picture of courts threatening to take action in an area which they have no business entering, inevitably on the basis of political judgments which they are incompetent to make. They show legislatures of the States meeting in haste and deliberating and deciding in haste to avoid the threat of judicial interference. So far as I can tell, the Court's only response to this unseemly state of affairs is ponderous insistence that "a denial of constitutionally protected rights demands judicial protection," ante, p. 566. By thus refusing to recognize the bearing which a potential for [377 U.S. 621] conflict of this kind may have on the question whether the claimed rights are, in fact, constitutionally entitled to judicial protection, the Court assumes, rather than supports, its conclusion.

1964, Reynolds v. Sims, 377 U.S. 621

It should by now be obvious that these cases do not mark the end of reapportionment problems in the courts. Predictions once made that the courts would never have to face the problem of actually working out an apportionment have proved false. This Court, however, continues to avoid the consequences of its decisions, simply assuring us that the lower courts "can and…will work out more concrete and specific standards," ante, p. 578. Deeming it "expedient" not to spell out "precise constitutional tests," the Court contents itself with stating "only a few rather general considerations." Ibid.

1964, Reynolds v. Sims, 377 U.S. 621

Generalities cannot obscure the cold truth that cases of this type are not amenable to the development of judicial standards. No set of standards can guide a court which has to decide how many legislative districts a State shall have, or what the shape of the districts shall be, or where to draw a particular district line. No judicially manageable standard can determine whether a State should have single member districts or multi-member districts or some combination of both. No such standard can control the balance between keeping up with population shifts and having stable districts. In all these respects, the courts will be called upon to make particular decisions with respect to which a principle of equally populated districts will be of no assistance whatsoever. Quite obviously, there are limitless possibilities for districting consistent with such a principle. Nor can these problems be avoided by judicial reliance on legislative judgments so far as possible. Reshaping or combining one or two districts, or modifying just a few district lines, is no less a matter of choosing among many possible [377 U.S. 622] solutions, with varying political consequences, than reapportionment broadside. 82

1964, Reynolds v. Sims, 377 U.S. 622

The Court ignores all this, saying only that "what is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of the case," ante, p. 578. It is well to remember that the product of today's decisions will not be readjustment of a few districts in a few States which most glaringly depart from the principle of equally populated districts. It will be a redetermination, extensive in many cases, of legislative districts in all but a few States.

1964, Reynolds v. Sims, 377 U.S. 622

Although the Court—necessarily, as I believe—provides only generalities in elaboration of its main thesis, its opinion nevertheless fully demonstrates how far removed these problems are from fields of judicial competence. Recognizing that "indiscriminate districting" is an invitation to "partisan gerrymandering," ante pp. 578-579, the Court nevertheless excludes virtually every basis for the formation of electoral districts other than "indiscriminate districting." In one or another of today's opinions, the Court declares it unconstitutional for a State to give effective consideration to any of the following in establishing legislative districts:

1964, Reynolds v. Sims, 377 U.S. 622

(1) history; 83

1964, Reynolds v. Sims, 377 U.S. 622

(2) "economic or other sorts of group interests"; 84

1964, Reynolds v. Sims, 377 U.S. 622

(3) area; 85

1964, Reynolds v. Sims, 377 U.S. 622

(4) geographical considerations; 86

1964, Reynolds v. Sims, 377 U.S. 622

(5) a desire "to insure effective representation for sparsely settled areas"; 87 [377 U.S. 623]

1964, Reynolds v. Sims, 377 U.S. 623

(6) "availability of access of citizens to their representatives"; 88

1964, Reynolds v. Sims, 377 U.S. 623

(7) theories of bicameralism (except those approved by the Court); 89

1964, Reynolds v. Sims, 377 U.S. 623

(8) occupation; 90

1964, Reynolds v. Sims, 377 U.S. 623

(9) "an attempt to balance urban and rural power." 91

1964, Reynolds v. Sims, 377 U.S. 623

(10) the preference of a majority of voters in the state. 92

1964, Reynolds v. Sims, 377 U.S. 623

So far as presently appears, the only factor which a State may consider, apart from numbers, is political subdivisions. But even "a clearly rational state policy" recognizing this factor is unconstitutional if "population is submerged as the controlling consideration…. " 93

1964, Reynolds v. Sims, 377 U.S. 623

I know of no principle of logic or practical or theoretical politics, still less any constitutional principle, which establishes all or any of these exclusions. Certain it is that the Court's opinion does not establish them. So far as the Court says anything at all on this score, it says only that "legislators represent people, not trees or acres," ante, p. 662; that "citizens, not history or economic interests, cast votes," ante, p. 580; that "people, not land or trees or pastures, vote," ibid. 94 All this may be conceded. But it is surely equally obvious, and, in the context of elections, more meaningful, to note that people are not ciphers, and that legislators can represent their electors only by speaking [377 U.S. 624] for their interests—economic, social, political—many of which do reflect the place where the electors live. The Court does not establish, or indeed even attempt to make a case for the proposition that conflicting interests within a State can only be adjusted by disregarding them when voters are grouped for purposes of representation.

CONCLUSION

1964, Reynolds v. Sims, 377 U.S. 624

With these cases, the Court approaches the end of the third round set in motion by the complaint filed in Baker v. Carr. What is done today deepens my conviction that judicial entry into this realm is profoundly ill-advised and constitutionally impermissible. As I have said before, Wesberry v. Sanders, supra, at 48, I believe that the vitality of our political system, on which, in the last analysis, all else depends, is weakened by reliance on the judiciary for political reform; in time, a complacent body politic may result.

1964, Reynolds v. Sims, 377 U.S. 624

These decisions also cut deeply into the fabric of our federalism. What must follow from them may eventually appear to be the product of state legislatures. Nevertheless, no thinking person can fail to recognize that the aftermath of these cases, however desirable it may be thought in itself, will have been achieved at the cost of a radical alteration in the relationship between the States and the Federal Government, more particularly the Federal Judiciary. Only one who has an overbearing impatience with the federal system and its political processes will believe that that cost was not too high, or was inevitable.

1964, Reynolds v. Sims, 377 U.S. 624

Finally, these decisions give support to a current mistaken view of the Constitution and the constitutional function of this Court. This view, in a nutshell, is that every major social ill in this country can find its cure in some constitutional "principle," and that this Court should "take the lead" in promoting reform when other branches of government fail to act. The Constitution is [377 U.S. 625] not a panacea for every blot upon the public welfare, nor should this Court, ordained as a judicial body, be thought of as a general haven for reform movements. The Constitution is an instrument of government, fundamental to which is the premise that in a diffusion of governmental authority lies the greatest promise that this Nation will realize liberty for all its citizens. This Court, limited in function in accordance with that premise, does not serve its high purpose when it exceeds its authority, even to satisfy justified impatience with the slow workings of the political process. For when, in the name of constitutional interpretation, the Court adds something to the Constitution that was deliberately excluded from it, the Court, in reality, substitutes its view of what should be so for the amending process.

1964, Reynolds v. Sims, 377 U.S. 625

I dissent in each of these cases, believing that in none of them have the plaintiffs stated a cause of action. To the extent that Baker v. Carr, expressly or by implication, went beyond a discussion of jurisdictional doctrines independent of the substantive issues involved here, it should be limited to what it, in fact, was: an experiment in venturesome constitutionalism. I would reverse the judgments of the District Courts in Nos. 23, 27, and 41 (Alabama), No. 69 (Virginia), and No. 307 (Delaware), and remand with directions to dismiss the complaints. I would affirm the judgments of the District Courts in No. 20 (New York), and No. 508 (Colorado), and of the Court of Appeals of Maryland in No. 29.

APPENDIX A TO OPINION OF MR. JUSTICE HARLAN, DISSENTING

1964, Reynolds v. Sims, 377 U.S. 625

Statements made in the House of Representatives during the debate on the resolution proposing the Fourteenth Amendment.\* [377 U.S. 626]

1964, Reynolds v. Sims, 377 U.S. 626

As the nearest approach to justice which we are likely to be able to make, I approve of the second section that bases representation upon voters.

1964, Reynolds v. Sims, 377 U.S. 626

2463 (Mr. Garfield).

1964, Reynolds v. Sims, 377 U.S. 626

Would it not be a most unprecedented thing that, when this [former slave] population are not permitted where they reside to enter into the basis of representation in their own State, we should receive it as an element of representation here; that, when they will not count them in apportioning their own legislative districts, we are to count them as five-fifths (no longer as three-fifths, for that is out of the question) as soon as you make a new apportionment?

1964, Reynolds v. Sims, 377 U.S. 626

2464-2465 (Mr. Thayer).

1964, Reynolds v. Sims, 377 U.S. 626

The second section of the amendment is ostensibly intended to remedy a supposed inequality in the basis of representation. The real object is to reduce the number of southern representatives in Congress and in the Electoral College, and also to operate as a standing inducement to negro suffrage.

1964, Reynolds v. Sims, 377 U.S. 626

2467 (Mr. Boyer).

1964, Reynolds v. Sims, 377 U.S. 626

Shall the pardoned rebels of the South include in the basis of representation four million people to whom they deny political rights, and to no one of whom is allowed a vote in the selection of a Representative?

1964, Reynolds v. Sims, 377 U.S. 626

2468 (Mr. Kelley).

1964, Reynolds v. Sims, 377 U.S. 626

I shall, Mr. Speaker, vote for this amendment not because I approve it. Could I have controlled the report of the committee of fifteen, it would have proposed to give the right of suffrage to every loyal man in the country.

1964, Reynolds v. Sims, 377 U.S. 626

2469 (Mr. Kelley).

1964, Reynolds v. Sims, 377 U.S. 626

But I will ask, why should not the representation of the States be limited as the States themselves limit suffrage?…If the negroes of the South are [377 U.S. 627] not to be counted as a political element in the government of the South in the States, why should they be counted as a political element in the government of the country in the Union?

1964, Reynolds v. Sims, 377 U.S. 627

2498 (Mr. Broomall).

1964, Reynolds v. Sims, 377 U.S. 627

It is now proposed to base representation upon suffrage, upon the number of voters, instead of upon the aggregate population in every State of the Union.

1964, Reynolds v. Sims, 377 U.S. 627

2502 (Mr. Raymond).

1964, Reynolds v. Sims, 377 U.S. 627

We admit equality of representation based upon the exercise of the elective franchise by the people. The proposition in the matter of suffrage falls short of what I desire, but, so far as it goes, it tends to the equalization of the inequality at present existing, and while I demand and shall continue to demand the franchise for all loyal male citizens of this country—and I cannot but admit the possibility that ultimately those eleven States may be restored to representative power without the right of franchise being conferred upon the colored people—I should feel myself doubly humiliated and disgraced, and criminal even, if I hesitated to do what I can for a proposition which equalizes representation.

1964, Reynolds v. Sims, 377 U.S. 627

2508 (Mr. Boutwell).

1964, Reynolds v. Sims, 377 U.S. 627

Now, conceding to each State the right to regulate the right of suffrage, they ought not to have a representation for male citizens not less than twenty-one years of age, whether white or black, who are deprived of the exercise of suffrage. This amendment will settle the complication in regard to suffrage and representation, leaving each State to regulate that for itself, so that it will be for it to decide whether or not it shall have a representation for all its male citizens not less than twenty-one years of age.

1964, Reynolds v. Sims, 377 U.S. 627

2510 (Mr. Miller). [377 U.S. 628]

1964, Reynolds v. Sims, 377 U.S. 628

Manifestly no State should have its basis of national representation enlarged by reason of a portion of citizens within its borders to which the elective franchise is denied. If political power shall be lost because of such denial, not imposed because of participation in rebellion or other crime, it is to be hoped that political interests may work in the line of justice, and that the end will be the impartial enfranchisement of all citizens not disqualified by crime. Whether that end shall be attained or not, this will be secured: that the measure of political power of any State shall be determined by that portion of its citizens which can speak and act at the polls, and shall not be enlarged because of the residence within the State of portions of its citizens denied the right of franchise. So much for the second section of the amendment. It is not all that I wish and would demand, but odious inequalities are removed by it and representation will be equalized, and the political rights of all citizens will under its operation be, as we believe, ultimately recognized and admitted.

1964, Reynolds v. Sims, 377 U.S. 628

2511 (Mr. Eliot).

1964, Reynolds v. Sims, 377 U.S. 628

I have no doubt that the Government of the United States has full power to extend the elective franchise to the colored population of the insurgent States. I mean authority; I said power. I have no doubt that the Government of the United States has authority to do this under the Constitution, but I do not think they have the power. The distinction I make between authority and power is this: we have, in the nature of our Government, the right to do it; but the public opinion of the country is such at this precise moment as to make it impossible we should do it. It was therefore most wise on the part of the committee on reconstruction to waive this matter in deference to public opinion. The situation [377 U.S. 629] of opinion in these States compels us to look to other means to protect the Government against the enemy.

1964, Reynolds v. Sims, 377 U.S. 629

2532 (Mr. Banks).

1964, Reynolds v. Sims, 377 U.S. 629

If you deny to any portion of the loyal citizens of your State the right to vote for Representatives, you shall not assume to represent them, and, as you have done for so long a time, misrepresent and oppress them. This is a step in the right direction, and although I should prefer to see incorporated into the Constitution a guarantee of universal suffrage, as we cannot get the required two-thirds for that, I cordially support this proposition as the next best.

1964, Reynolds v. Sims, 377 U.S. 629

2539-2540 (Mr. Farnsworth).

APPENDIX B TO OPINION OF MR. JUSTICE HARLAN, DISSENTING.

1964, Reynolds v. Sims, 377 U.S. 629

Statements made in the Senate during the debate on the resolution proposing the Fourteenth Amendment.\*

1964, Reynolds v. Sims, 377 U.S. 629

The second section of the constitutional amendment proposed by the committee can be justified upon no other theory than that the negroes ought to vote, and negro suffrage must be vindicated before the people in sustaining that section, for it does not exclude the non-voting population of the North, because it is admitted that there is no wrong in excluding from suffrage aliens, females, and minors. But we say, if the negro is excluded from suffrage he shall also be excluded from the basis of representation. Why this inequality? Why this injustice? For injustice it would be unless there be some good reason for this discrimination against the South in excluding her non-voting population from the basis [377 U.S. 630] of representation. The only defense that we can make to this apparent injustice is that the South commits an outrage upon human rights when she denies the ballot to the blacks, and we will not allow her to take advantage of her own wrong, or profit by this outrage. Does anyone suppose it possible to avoid this plain issue before the people? For if they will sustain you in reducing the representation of the South because she does not allow the negro to vote, they will do so because they think it is wrong to disfranchise him.

1964, Reynolds v. Sims, 377 U.S. 630

2800 (Senator Stewart).

1964, Reynolds v. Sims, 377 U.S. 630

It [the second section of the proposed amendment] relieves him [the Negro] from misrepresentation in Congress by denying him any representation whatever.

1964, Reynolds v. Sims, 377 U.S. 630

2801 (Senator Stewart):

1964, Reynolds v. Sims, 377 U.S. 630

But I will again venture the opinion that it [the second section] means as if it read thus: no State shall be allowed a representation on a colored population unless the right of voting is given to the negroes—presenting to the States the alternative of loss of representation or the enfranchisement of the negroes, and their political equality.

1964, Reynolds v. Sims, 377 U.S. 630

2939 (Senator Hendricks).

1964, Reynolds v. Sims, 377 U.S. 630

I should be much better satisfied if the right of suffrage had been given at once to the more intelligent of them [the Negroes] and such as had served in our Army. But it is believed by wiser ones than myself that this amendment will very soon produce some grant of suffrage to them, and that the craving for political power will ere long give them universal suffrage…. Believing that this amendment probably goes as far in favor of suffrage to the negro as is practicable to accomplish now, and hoping it may in [377 U.S. 631] the end accomplish all I desire in this respect, I shall vote for its adoption, although I should be glad to go further.

1964, Reynolds v. Sims, 377 U.S. 631

2963-2964 (Senator Poland).

1964, Reynolds v. Sims, 377 U.S. 631

What is to be the operation of this amendment? Just this: your whip is held over Pennsylvania, and you say to her that she must either allow her negroes to vote or have one member of Congress less.

1964, Reynolds v. Sims, 377 U.S. 631

2987 (Senator Cowan).

1964, Reynolds v. Sims, 377 U.S. 631

Now, sir, in all the States—certainly in mine, and no doubt in all—there are local as contradistinguished from State elections. There are city elections, county elections, and district or borough elections, and those city and county and district elections are held under some law of the State in which the city or county or district or borough may be, and in those elections, according to the laws of the States, certain qualifications are prescribed, residence within the limits of the locality and a property qualification in some. Now, is it proposed to say that, if every man in a State is not at liberty to vote at a city or a country or a borough election that is to affect the basis of representation?

1964, Reynolds v. Sims, 377 U.S. 631

2991 (Senator Johnson).

1964, Reynolds v. Sims, 377 U.S. 631

Again, Mr. President, the measure upon the table, like the first proposition submitted to the Senate from the committee of fifteen, concedes to the States…not only the right, but the exclusive right, to regulate the franchise…. It says that each of the southern States, and, of course, each other State in the Union, has a right to regulate for itself the franchise, and that consequently, as far as the Government of the United States is concerned, if the black man is not permitted the right to the franchise, it will be a wrong (if a wrong) which the Government [377 U.S. 632] of the United States will be impotent to redress.

1964, Reynolds v. Sims, 377 U.S. 632

3027 (Senator Johnson).

1964, Reynolds v. Sims, 377 U.S. 632

The amendment fixes representation upon numbers, precisely as the Constitution now does, but when a State denies or abridges the elective franchise to any of its male inhabitants who are citizens of the United States and not less than twenty-one years of age, except for participation in rebellion or other crime, then such State will lose its representation in Congress in the proportion which the male citizen so excluded bears to the whole number of male citizens not less than twenty-one years of age in the State.

1964, Reynolds v. Sims, 377 U.S. 632

3033 (Senator Henderson).

Footnotes

WARREN, J., lead opinion (Footnotes)

1964, Reynolds v. Sims, 377 U.S. 632

1. Sims v. Frink, 208 F.Supp. 431 (D.C.M.D.Ala.1962). All decisions of the District Court in this litigation are reported sub nom. Sims v. Frink.

1964, Reynolds v. Sims, 377 U.S. 632

2. Included among the defendants were the Secretary of State and the Attorney General of Alabama, the Chairmen and Secretaries of the Alabama State Democratic Executive Committee and the State Republican Executive Committee, and three Judges of Probate of three counties, as representatives of all the probate judges of Alabama.

1964, Reynolds v. Sims, 377 U.S. 632

3. Provisions virtually identical to those contained in Art. IX, §§ 202 and 203, were enacted into the Alabama Codes of 1907 and 1923, and were most recently reenacted as statutory provisions in §§ 1 and 2 of Tit. 32 of the 1940 Alabama Code (as recompiled in 1958).

1964, Reynolds v. Sims, 377 U.S. 632

4. See Opinion of the Justices, 263 Ala. 158, 164, 81 So.2d 881, 887 (1955), and Opinion of the Justices, 254 Ala. 185, 187, 47 So.2d 714, 717 (1950), referred to by the District Court in its preliminary opinion. 205 F.Supp. 245, 247.

1964, Reynolds v. Sims, 377 U.S. 632

5. See Ex parte Rice, 273 Ala. 712, 143 So.2d 848 (1962), where the Alabama Supreme Court, on May 9, 1962, subsequent to the District Court's preliminary order in the instant litigation as well as our decision in Baker v. Carr, 369 U.S. 186, refused to review a denial of injunctive relief sought against the conducting of the 1962 primary election until after reapportionment of the Alabama Legislature, stating that "this matter is a legislative function, and…the Court has no jurisdiction…. " And in Waid v. Pool, 255 Ala. 441, 51 So.2d 869 (1951), the Alabama Supreme Court, in a similar suit, had stated that the lower court had properly refused to grant injunctive relief because

1964, Reynolds v. Sims, 377 U.S. 632

appellants…are seeking interference by the judicial department of the state in respect to matters committed by the constitution to the legislative department.

1964, Reynolds v. Sims, 377 U.S. 632

255 Ala., at 442, 51 So.2d at 870.

1964, Reynolds v. Sims, 377 U.S. 632

6. Under 28 U.S.C. §§ 2281 and 2284.

1964, Reynolds v. Sims, 377 U.S. 632

7. During the over 60 years since the last substantial reapportionment in Alabama, the State's population increased from 1,828,697 to 3,244,286. Virtually all of the population gain occurred in urban counties, and many of the rural counties incurred sizable losses in population.

1964, Reynolds v. Sims, 377 U.S. 632

8. See 369 U.S. at 260 (CLARK, J., concurring).

1964, Reynolds v. Sims, 377 U.S. 632

9. Proposed Constitutional Amendment No. 1 of 1962, Alabama Senate Bill No. 29, Act No. 93, Acts of Alabama, Special Session, 1962, p. 124. The text of the proposed amendment is set out as Appendix B to the lower court's opinion. 208 F.Supp. at 443-444.

1964, Reynolds v. Sims, 377 U.S. 632

10. For a discussion of this method of apportionment, used in distributing seats in the Federal House of Representatives among the States, and other commonly used apportionment methods, see Schmeckebier, The Method of Equal Proportions, 17 Law & Contemp.Prob. 302 (1952).

1964, Reynolds v. Sims, 377 U.S. 632

11. Alabama Reapportionment Act of 1962, Alabama House Bill No. 59, Act No. 91, Acts of Alabama, Special Session, 1962, p. 121. The text of the act is reproduced as Appendix C to the lower court's opinion. 208 F.Supp. at 445-446.

1964, Reynolds v. Sims, 377 U.S. 632

12. A comprehensive chart showing the representation by counties in the Alabama House of Representatives under the existing apportionment provisions is set out as Appendix D to the lower court's opinion. 208 F.Supp. at 447-449. This chart includes the number of House seats given to each county, and the populations of the 67 Alabama counties under the 1900, 1950, and 1960 censuses.

1964, Reynolds v. Sims, 377 U.S. 632

13. Although cross appellants in No. 27 assert that the Alabama Constitution forbids the division of a county, in forming senatorial districts, only when one or both pieces will be joined with another county to form a multi-county district, this view appears to be contrary to the language of Art. IX, § 200, of the Alabama Constitution and the practice under it. Cross-appellants contend that counties entitled by population to two or more senators can be split into the appropriate number of districts, and argue that, prior to the adoption of the 1901 provisions, the Alabama Constitution so provided, and there is no reason to believe that the language of the present provision was intended to effect any change. However, the only apportionments under the 1901 Alabama Constitution—the 1901 provisions and the Crawford-Webb Act—gave no more than one seat to a county even though by population several counties would have been entitled to additional senatorial representation.

1964, Reynolds v. Sims, 377 U.S. 632

14. A chart showing the composition, by counties, of the 35 senatorial districts provided for under the existing apportionment, and the population of each according to the 1900, 1950, and 1960 censuses, is reproduced as Appendix E to the lower court's opinion. 208 F.Supp. at 450.

1964, Reynolds v. Sims, 377 U.S. 632

15. 208 F.Supp. at 437.

1964, Reynolds v. Sims, 377 U.S. 632

16. Id. at 438

1964, Reynolds v. Sims, 377 U.S. 632

17. According to the District Court, in the interval between its preliminary order and its decision on the merits, the Alabama Legislature, despite adopting this constitutional amendment proposal,

1964, Reynolds v. Sims, 377 U.S. 632

refused to inquire of the Supreme Court of the State of Alabama whether this provision in the Constitution of the State of Alabama could be changed by constitutional amendment as the "67-Senator Amendment" proposes.

1964, Reynolds v. Sims, 377 U.S. 632

208 F.Supp. at 437.

1964, Reynolds v. Sims, 377 U.S. 632

18. At least this is the reading of the District Court of two somewhat conflicting decisions by the Alabama Supreme Court, resulting in a "manifest uncertainty of the legality of the proposed constitutional amendment, as measured by State standards…. " 208 F.Supp. at 438. Compare Opinion of the Justices, 254 Ala. 183, 184, 47 So.2d 713, 714 (1950), with Opinion of the Justices, 263 Ala. 158, 164, 81 So.2d 881, 887 (1955).

1964, Reynolds v. Sims, 377 U.S. 632

19. See the later discussion, infra at 568-569, and note 68, infra where we reject the lower court's apparent conclusion that the apportionment of the Alabama House, under the 67-Senator Amendment, comported with the requirements of the Equal Protection Clause.

1964, Reynolds v. Sims, 377 U.S. 632

20. While no formula for the statute's apportionment of representatives is expressly stated, one can be extrapolated. Counties with less than 45,000 people are given one seat; those with 45,000 to 90,000 receive two seats; counties with 90,000 to 150,000, three seats; those with 150,000 to 300,000, four seats; counties with 300,000 to 600,000, six seats, and counties with over 600,000 are given 12 seats.

1964, Reynolds v. Sims, 377 U.S. 632

21. Appendix F to the lower court's opinion sets out a chart showing the populations of the 35 senatorial districts provided for under the Crawford-Webb Act and the composition, by counties, of the various districts. 208 F.Supp. at 451.

1964, Reynolds v. Sims, 377 U.S. 632

22. Cross appellants in No. 27 assert that the Crawford-Webb Act was a "minimum change measure" which merely redrew new senatorial district lines around the nominees of the May, 1962, Democratic primary so as to retain the seats of 34 of the 35 nominees, and resulted, in practical effect, in the shift of only one Senate seat from an overrepresented district to another underpopulated, newly created district.

1964, Reynolds v. Sims, 377 U.S. 632

23. 208 F.Supp. at 439.

1964, Reynolds v. Sims, 377 U.S. 632

24. Possibly this resulted from an understandable desire on the part of the Alabama Legislature to await a final determination by this Court in the instant litigation before proceeding to enact a permanent apportionment plan.

1964, Reynolds v. Sims, 377 U.S. 632

25. However, a proposed constitutional amendment, which would have made the Alabama House of Representatives somewhat more representative of population but the Senate substantially less so, was rejected by the people in a 1956 referendum, with the more populous counties accounting for the defeat.

1964, Reynolds v. Sims, 377 U.S. 632

See the discussion in Lucas v. Forty-Fourth General Assembly of Colorado, post, pp. 736-737, decided also this date, with respect to the lack of federal constitutional significance of the presence or absence of an available political remedy.

1964, Reynolds v. Sims, 377 U.S. 632

26. Ala.Const., Art. XVIII, § 284.

1964, Reynolds v. Sims, 377 U.S. 632

27. Ala.Const., Art. XVIII, § 286.

1964, Reynolds v. Sims, 377 U.S. 632

28. The Fifteenth, Seventeenth, Nineteenth, Twenty-third and Twenty-fourth Amendments to the Federal Constitution all involve expansions of the right of suffrage. Also relevant in this regard is the civil rights legislation enacted by Congress in 1957 and 1960.

1964, Reynolds v. Sims, 377 U.S. 632

29. As stated by MR. JUSTICE DOUGLAS, dissenting in South v. Peters, 339 U.S. 276, 279:

1964, Reynolds v. Sims, 377 U.S. 632

There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted…. It also includes the right to have the vote counted at full value without dilution or discount…. That federally protected right suffers substantial dilution…[where a] favored group has full voting strength…[and] [t]he groups not in favor have their votes discounted.

1964, Reynolds v. Sims, 377 U.S. 632

30. Litigation challenging the constitutionality of state legislative apportionment schemes had been instituted in at least 34 States prior to the end of 1962—within nine months of our decision in Baker v. Carr. See McKay, Political Thickets and Crazy Quilts: Reapportionment and Equal Protection, 61 Mich.L.Rev. 645, 706-710 (1963), which contains an appendix summarizing reapportionment litigation through the end of 1962. See also David and Eisenberg, Devaluation of the Urban and Suburban Vote (1961); Goldberg, The Statistics of Malapportionment, 72 Yale L.J. 90 (1962).

1964, Reynolds v. Sims, 377 U.S. 632

31. 369 U.S. at 198.

1964, Reynolds v. Sims, 377 U.S. 632

32. Id. at 226.

1964, Reynolds v. Sims, 377 U.S. 632

33. Scholle v. Hare, 369 U.S. 429 (Michigan); WMCA, Inc., v. Simon, 370 U.S. 190 (New York).

1964, Reynolds v. Sims, 377 U.S. 632

34. 372 U.S. at 379-380.

1964, Reynolds v. Sims, 377 U.S. 632

35. Id. at 381.

1964, Reynolds v. Sims, 377 U.S. 632

36. Id. at 376. Later in the opinion, we again stated:

1964, Reynolds v. Sims, 377 U.S. 632

Nor does the question here have anything to do with the composition of the state or federal legislature. And we intimate no opinion on the constitutional phases of that problem beyond what we said in Baker v. Carr.…

1964, Reynolds v. Sims, 377 U.S. 632

Id. at 378.

1964, Reynolds v. Sims, 377 U.S. 632

37. 376 U.S. at 14.

1964, Reynolds v. Sims, 377 U.S. 632

38. Id. at 17-18.

1964, Reynolds v. Sims, 377 U.S. 632

39. As stated by MR. JUSTICE DOUGLAS, the rights sought to be vindicated in a suit challenging an apportionment scheme are "personal and individual," South v. Peters, 339 U.S. at 280, and are "important political rights of the people," MacDougall v. Green, 335 U.S. 281, 288. (DOUGLAS, J., dissenting.)

1964, Reynolds v. Sims, 377 U.S. 632

40. As stated by MR. JUSTICE BLACK, dissenting, in Colegrove v. Green, 328 U.S. 549, 569-571:

1964, Reynolds v. Sims, 377 U.S. 632

No one would deny that the equal protection clause would…prohibit a law that would expressly give certain citizens a half-vote and others a full vote…. [T]he constitutionally guaranteed right to vote and the right to have one's vote counted clearly imply the policy that state election systems, no matter what their form, should be designed to give approximately equal weight to each vote cast…. [A] state legislature cannot deny eligible voters the right to vote for Congressmen and the right to have their vote counted. It can no more destroy the effectiveness of their vote in part and no more accomplish this in the name of "apportionment" than under any other name.

1964, Reynolds v. Sims, 377 U.S. 632

41. 376 U.S. at 8. See also id. at 17, quoting from James Wilson, a delegate to the Constitutional Convention and later an Associate Justice of this Court, who stated:

1964, Reynolds v. Sims, 377 U.S. 632

[A]ll elections ought to be equal. Elections are equal when a given number of citizens in one part of the state choose as many representatives as are chosen by the same number of citizens in any other part of the state. In this manner, the proportion of the representatives and of the constituents will remain invariably the same.

1964, Reynolds v. Sims, 377 U.S. 632

2 The Works of James Wilson (Andrews ed. 1896) 15.

1964, Reynolds v. Sims, 377 U.S. 632

And, as stated by MR. JUSTICE DOUGLAS, dissenting, in MacDougall v. Green, 335 U.S. at 288, 290:

1964, Reynolds v. Sims, 377 U.S. 632

[A] regulation…[which] discriminates against the residents of the populous counties of the state in favor of rural sections…lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment.

1964, Reynolds v. Sims, 377 U.S. 632

Free and honest elections are the very foundation of our republican form of government…. Discrimination against any group or class of citizens in the exercise of these constitutionally protected rights of citizenship deprives the electoral process of integrity….

1964, Reynolds v. Sims, 377 U.S. 632

None would deny that a state law giving some citizens twice the vote of other citizens in either the primary or general election would lack that equality which the Fourteenth Amendment guarantees…. The theme of the Constitution is equality among citizens in the exercise of their political rights. The notion that one group can be granted greater voting strength than another is hostile to our standards for popular representative government.

1964, Reynolds v. Sims, 377 U.S. 632

42. 364 U.S.at 347

1964, Reynolds v. Sims, 377 U.S. 632

43. Although legislative apportionment controversies are generally viewed as involving urban-rural conflicts, much evidence indicates that presently it is the fast-growing suburban areas which are probably the most seriously underrepresented in many of our state legislatures. And, while currently the thrust of state legislative malapportionment results, in most States, in underrepresentation of urban and suburban areas, in earlier times, cities were, in fact, overrepresented in a number of States. In the early 19th century, certain of the seaboard cities in some of the Eastern and Southern States possessed and struggled to retain legislative representation disproportionate to population, and bitterly opposed according additional representation to the growing inland areas. Conceivably, in some future time, urban areas might again be in a situation of attempting to acquire or retain legislative representation in excess of that to which, on a population basis, they are entitled. Malapportionment can, and has historically, run in various directions. However and whenever it does, it is constitutionally impermissible under the Equal Protection Clause.

1964, Reynolds v. Sims, 377 U.S. 632

44. The British experience in eradicating "rotten boroughs" is interesting and enlightening. Parliamentary representation is now based on districts of substantially equal population, and periodic reapportionment is accomplished through independent Boundary Commissions. For a discussion of the experience and difficulties in Great Britain in achieving fair legislative representation, see Edwards, Theoretical and Comparative Aspects of Reapportionment and Redistricting: With Reference to Baker v. Carr, 15 Vand.L.Rev. 1265, 1275 (1962). See also the discussion in Baker v. Carr, 369 U.S. at 302-307. (Frankfurter, J., dissenting.)

1964, Reynolds v. Sims, 377 U.S. 632

45. Under the existing scheme, Marshall County, with a 1960 population of 48,018, Baldwin County, with 49,088, and Houston County, with 50,718, are each given only one seat in the Alabama House, while Bullock County, with only 13,462, Henry County, with 15,286, and Lowndes County, with 15,417, are allotted two representatives each. And in the Alabama Senate, under the existing apportionment, a district comprising Lauderdale and Limestone Counties had a 1960 population of 98,135, and another composed of Lee and Russell Counties had 96,105. Conversely, Lowndes County, with only 15,417, and Wilcox County, with 18,739, are nevertheless single-county senatorial districts given one Senate seat each.

1964, Reynolds v. Sims, 377 U.S. 632

46. An interesting pre-Baker discussion of the problem of legislative malapportionment in Alabama is provided in Comment, Alabama's Unrepresentative Legislature, 14 Ala.L.Rev. 403 (1962).

1964, Reynolds v. Sims, 377 U.S. 632

47. See the cases cited and discussed in notes 4-5, supra, where the Alabama Supreme Court refused even to consider the granting of relief in suits challenging the validity of the apportionment of seats in the Alabama Legislature, although it stated that the legislature had failed to comply with the requirements of the State Constitution with respect to legislative reapportionment.

1964, Reynolds v. Sims, 377 U.S. 632

48. However, since the District Court found the proposed constitutional amendment prospectively invalid, it was never, in fact, voted upon by the State's electorate.

1964, Reynolds v. Sims, 377 U.S. 632

49. Resemblances between the system of representation in the Federal Congress and the apportionment scheme embodied in the 67-Senator Amendment appear to be more superficial than actual. Representation in the Federal House of Representatives is apportioned by the Constitution among the States in conformity with population. While each State is guaranteed at least one seat in the House, as a feature of our unique federal system, only four States have less than 1/435 of the country's total population, under the 1960 census. Thus, only four seats in the Federal House are distributed on a basis other than strict population. In Alabama, on the other hand, 40 of the 67 counties have less than 1/106 of the State's total population. Thus, under the proposed amendment, over 1/3 of the total number of seats in the Alabama House would be distributed on a basis other than strict population. States with almost 50% of the Nation's total population are required in order to elect a majority of the members of the Federal House, though unfair districting within some of the States presently reduces to about 42% the percentage of the country's population which reside in districts electing individuals comprising a majority in the Federal House. Cf. Wesberry v. Sanders, supra, holding such congressional districting unconstitutional. Only about 43% of the population of Alabama would live in districts which could elect a majority in the Alabama House under the proposed constitutional amendment. Thus, it could hardly be argued that the proposed apportionment of the Alabama House was based on population in a way comparable to the apportionment of seats in the Federal House among the States.

1964, Reynolds v. Sims, 377 U.S. 632

50. For a thorough statement of the arguments against holding the so-called federal analogy applicable to state legislative apportionment matters, see, e.g., McKay, Reapportionment and the Federal Analogy (National Municipal League pamphlet 1962); McKay, The Federal Analogy and State Apportionment Standards, 38 Notre Dame Law. 487 (1963). See also Merrill, Blazes for a Trail Through the Thicket of Reapportionment, 16 Okla.L.Rev. 59, 67-70 (1963).

1964, Reynolds v. Sims, 377 U.S. 632

51. 208 F.Supp. at 438. See the discussion of the District Court's holding as to the applicability of the federal analogy earlier in this opinion, supra at 547-548.

1964, Reynolds v. Sims, 377 U.S. 632

52. Report of Advisory Commission on Intergovernmental Relations, Apportionment of State Legislatures 10-11, 35, 69 (1962).

1964, Reynolds v. Sims, 377 U.S. 632

53. Thomas Jefferson repeatedly denounced the inequality of representation provided for under the 1776 Virginia Constitution and frequently proposed changing the State Constitution to provide that both houses be apportioned on the basis of population. In 1816, he wrote that

1964, Reynolds v. Sims, 377 U.S. 632

a government is republican in proportion as every member composing it has his equal voice in the direction of its concerns…by representatives chosen by himself….

1964, Reynolds v. Sims, 377 U.S. 632

Letter to Samuel Kercheval, 10 Writings of Thomas Jefferson (Ford ed. 1899) 38. And a few years later, in 1819, he stated:

1964, Reynolds v. Sims, 377 U.S. 632

Equal representation is so fundamental a principle in a true republic that no prejudice can justify its violation, because the prejudices themselves cannot be justified.

1964, Reynolds v. Sims, 377 U.S. 632

Letter to William King, Jefferson Papers, Library of Congress, Vol. 216, p. 38616.

1964, Reynolds v. Sims, 377 U.S. 632

54. Article II, § 14, of the Northwest Ordinance of 1787 stated quite specifically:

1964, Reynolds v. Sims, 377 U.S. 632

The inhabitants of the said territory shall always be entitled to the benefits…of a proportionate representation of the people in the Legislature.

1964, Reynolds v. Sims, 377 U.S. 632

55. See the discussion in Wesberry v. Sanders, 376 U.S. at 14.

1964, Reynolds v. Sims, 377 U.S. 632

56. 372 U.S. at 378.

1964, Reynolds v. Sims, 377 U.S. 632

57. As stated by the Court in Bain Peanut Co. v. Pinson, 282 U.S. 499, 501, "We must remember that the machinery of government would not work if it were not allowed a little play in its joints."

1964, Reynolds v. Sims, 377 U.S. 632

58. But cf. the discussion of some of the practical problems inherent in the use of multi-member districts in Lucas v. Forty-Fourth General Assembly of Colorado, post, pp. 731-732, decided also this date.

1964, Reynolds v. Sims, 377 U.S. 632

59. See the discussion of the concept of floterial districts in Davis v. Mann, post, pp. 686-687, n. 2, decided also this date.

1964, Reynolds v. Sims, 377 U.S. 632

60. For a discussion of the formal apportionment formulae prescribed for the allocation of seats in state legislatures, see Dixon, Apportionment Standards and Judicial Power, 38 Notre Dame Law. 367, 398-400 (1963). See also The Book of the States 1962-1963, 58-62.

1964, Reynolds v. Sims, 377 U.S. 632

61. In rejecting a suggestion that the representation of the newer Western States in Congress should be limited so that it would never exceed that of the original States, the Constitutional Convention plainly indicated its view that history alone provided an unsatisfactory basis for differentiations relating to legislative representation. See Wesberry v. Sanders, 376 U.S. at 14. Instead, the Northwest Ordinance of 1787, in explicitly providing for population-based representation of those living in the Northwest Territory in their territorial legislatures, clearly implied that, as early as the year of the birth of our federal system, the proper basis of legislative representation was regarded as being population.

1964, Reynolds v. Sims, 377 U.S. 632

62. See McKay, Political Thickets and Crazy Quilts: Reapportionment and Equal Protection, 61 Mich.L.Rev. 645, 699-699 (1963).

1964, Reynolds v. Sims, 377 U.S. 632

63. Determining the size of its legislative bodies is, of course, a matter within the discretion of each individual State. Nothing in this opinion should be read as indicating that there are any federal constitutional maximums or minimums on the size of state legislative bodies.

1964, Reynolds v. Sims, 377 U.S. 632

64. See 369 U.S. at 217-232, discussing the nonjusticiability of malapportionment claims asserted under the Guaranty Clause.

1964, Reynolds v. Sims, 377 U.S. 632

65. Report of Advisory Commission on Intergovernmental Relations, Apportionment of State Legislatures 56 (1962). Additionally, the constitutions of seven other States either require or permit reapportionment of legislative representation more frequently than every 10 years. See also The Book of the States 1962-1963, 58-62.

1964, Reynolds v. Sims, 377 U.S. 632

66. Cf. Baker v. Carr, 369 U.S. 186, 198. See also 369 U.S. at 250-251 (DOUGLAS, J., concurring), and passages from Baker quoted in this opinion, supra, at 556, 557, and infra.

1964, Reynolds v. Sims, 377 U.S. 632

67. 369 U.S. at 250.

1964, Reynolds v. Sims, 377 U.S. 632

68. Although the District Court indicated that the apportionment of the Alabama House under the 67-Senator Amendment was valid and acceptable, we, of course, reject that determination, which we regard as merely precatory and advisory, since the court below found the overall plan, under the proposed constitutional amendment, to be unconstitutional. See 208 F.Supp. at 440-441. See the discussion earlier in this opinion, supra, at 568-569.

CLARK, J., concurring (Footnotes)

1964, Reynolds v. Sims, 377 U.S. 632

\* Incidentally, neither of these cases, upon which the Court bases its opinion, is apposite. Gray involved the use of Georgia's county unit rule in the election of United States Senators, and Wesberry was a congressional apportionment case.

HARLAN, J., dissenting (Footnotes)

1964, Reynolds v. Sims, 377 U.S. 632

\* [This opinion applies also to No . 20, WMCA, Inc. et al. v. Lomenzo, Secretary of State of New York, et al., post, p. 633; No. 29, Maryland Committee for Fair Representation et al. v. Tawes, Governor, et al., post, p. 656; No. 69, Davis, Secretary, State Board of Elections, et al. v. Mann et al., post, p. 678; No. 307, Roman, Clerk, et al. v. Sincock et al., post, p. 695, and No. 508, Lucas et al. v. Forty-Fourth General Assembly of Colorado et al., post, p. 713.]

1964, Reynolds v. Sims, 377 U.S. 632

1. Alabama, Colorado, Delaware, Maryland, New York, Virginia

1964, Reynolds v. Sims, 377 U.S. 632

2. In the Virginia case, Davis v. Mann, post, p. 678, the defendants introduced an exhibit prepared by the staff of the Bureau of Public Administration of the University of Virginia in which the Virginia Legislature, now held to be unconstitutionally apportioned, was ranked eighth among the 50 States in "representativeness," with population taken as the basis of representation. The Court notes that, before the end of 1962, litigation attacking the apportionment of state legislatures had been instituted in at least 34 States. Ante, p. 556, note 30. See infra, pp. 610-611.

1964, Reynolds v. Sims, 377 U.S. 632

3. See Baker v. Carr, 369 U.S. 186, 330, and the dissenting opinion of Frankfurter, J., in which I joined, id. at 266; Gray v. Sanders, 372 U.S. 368, 382; Wesberry v. Sanders, 376 U.S. 1, 20.

1964, Reynolds v. Sims, 377 U.S. 632

4. That clause, which manifestly has no bearing on the claims made in these cases, see V Elliot's Debates on the Adoption of the Federal Constitution (1845), 332-333, could not, in any event, be the foundation for judicial relief. Luther v. Borden, 7 How. 1, 42-44; Ohio ex rel. Bryant v. Akron Metropolitan Park District, 281 U.S. 74, 79-80; Highland Farms Dairy, Inc., v. Agnew, 300 U.S. 608, 612. In Baker v. Carr, supra, at 227, the Court stated that reliance on the Republican Form of Government Clause "would be futile."

1964, Reynolds v. Sims, 377 U.S. 632

5. It is fair to say that, beyond discussion of a large number of cases having no relevance to this question, the Court's views on this subject were fully stated in the compass of a single sentence:

1964, Reynolds v. Sims, 377 U.S. 632

Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects no policy, but simply arbitrary and capricious action.

1964, Reynolds v. Sims, 377 U.S. 632

369 U.S. at 226.

1964, Reynolds v. Sims, 377 U.S. 632

Except perhaps for the "crazy quilt" doctrine of my Brother CLARK, 369 U.S. at 251, nothing is added to this by any of the concurring opinions, id. at 241, 265.

1964, Reynolds v. Sims, 377 U.S. 632

6. The cryptic remands in Scholle v. Hare, 369 U.S. 429, and WMCA, Inc. v. Simon, 370 U.S. 190, on the authority of Baker, had nothing to say on the question now before the Court.

1964, Reynolds v. Sims, 377 U.S. 632

7. See the Journal of the Committee, reprinted in Kendrick, The Journal of the Joint Committee of Fifteen on Reconstruction (1914), 83-117.

1964, Reynolds v. Sims, 377 U.S. 632

8. See the debates in Congress, Cong.Globe, 39th Cong., 1st Sess., 2459-3149, passim (1866) (hereafter Globe).

1964, Reynolds v. Sims, 377 U.S. 632

9. Globe 3040.

1964, Reynolds v. Sims, 377 U.S. 632

10. Globe 2265, 2286.

1964, Reynolds v. Sims, 377 U.S. 632

11. As reported in the House. Globe 2286. For prior versions of the Amendment in the Reconstruction Committee, see Kendrick, op. cit. supra, note 7, 83-117. The work of the Reconstruction Committee is discussed in Kendrick, supra, and Flack, The Adoption of the Fourteenth Amendment (1908), 55-139, passim.

1964, Reynolds v. Sims, 377 U.S. 632

12. Globe 2459

1964, Reynolds v. Sims, 377 U.S. 632

13. Ibid. Stevens was referring to a proposed amendment to the Constitution which provided that

1964, Reynolds v. Sims, 377 U.S. 632

whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons therein of such race or color shall be excluded from the basis of representation.

1964, Reynolds v. Sims, 377 U.S. 632

Globe 535. It passed the House, id. at 538, but did not muster the necessary two-thirds vote in the Senate, id. at 1289.

1964, Reynolds v. Sims, 377 U.S. 632

14. Globe 2459

1964, Reynolds v. Sims, 377 U.S. 632

15. Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

16. Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

17. Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

18. Globe 2460.

1964, Reynolds v. Sims, 377 U.S. 632

19. Kendrick, op. cit. supra, note 7, 87, 106; Flack, op. cit. supra, note 11, 60-68, 71.

1964, Reynolds v. Sims, 377 U.S. 632

20. Globe 2542.

1964, Reynolds v. Sims, 377 U.S. 632

21. Ibid. It is evident from the context of the reference to a republican government that Bingham did not regard limitations on the right to vote or the denial of the vote to specified categories of individuals as violating the guarantee of a republican form of government.

1964, Reynolds v. Sims, 377 U.S. 632

22. Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

23. Representative Rogers, who voted against the resolution, Globe 2545, suggested that the right to vote might be covered by the Privileges and Immunities Clause. Globe 2538. But immediately thereafter, he discussed the possibility that the Southern States might "refuse to allow the negroes to vote." Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

24. Globe 2545

1964, Reynolds v. Sims, 377 U.S. 632

25. Globe 2766.

1964, Reynolds v. Sims, 377 U.S. 632

26. Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

27. Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

28. Globe 3042.

1964, Reynolds v. Sims, 377 U.S. 632

29. Globe 3149

1964, Reynolds v. Sims, 377 U.S. 632

30. Such evidence as there is, mostly committee reports and messages to the legislatures from Governors of the States, is to the same effect as the evidence from the debates in the Congress. See Ark. House J. 288 (1866-1867); Fla.Sen. J. 8-10 (1866); Ind.House J. 47-48, 50-51 (1867); Mass.Legis. Doc., House Doc. No. 149, 4-14, 16-17, 23, 24, 25-26 (1867); Mo.Sen.J. 14 (1867); N.J.Sen.J. 7 (Extra Sess. 1866); N.C. Sen.J. 96-97, 98-99 (1866-1867); Tenn.House J. 12-15 (1865-1866); Tenn.Sen.J. 8 (Extra Sess. 1866), Va.House J. & Doc., Doc. No. 1, 35 (1866-1867); Wis.Sen.J. 33, 101-103 (1867). Contra: S.C.House J. 34 (1866); Tex.Sen.J. 422 (1866 App.).

1964, Reynolds v. Sims, 377 U.S. 632

For an account of the proceedings in the state legislatures and citations to the proceedings, see Fairman, "Does the Fourteenth Amendment Incorporate the Bill of Rights?" 2 Stan.L.Rev. 5, 81-126 (1949).

1964, Reynolds v. Sims, 377 U.S. 632

31. Conn.Const., 1818, Art. Third, § 3 (towns); N.H.Const., 1792, Part Second, § XXVI (direct taxes paid); N.J.Const., 1844, Art. IV, § II, cl. 1 (counties); R.I.Const., 1842, Art. VI, § 1 (towns and cities); Vt.Const., 1793, c. II, § 7 (towns).

1964, Reynolds v. Sims, 377 U.S. 632

In none of these States was the other House apportioned strictly according to population. Conn.Const., 1818, Amend. II; N.H.Const., 1792, Part Second, §§ IX-XI; N.J.Const., 1844, Art. IV, § III, cl. 1; R.I.Const., 1842, Art. V, § 1; Vt.Const., 1793, Amend. 23.

1964, Reynolds v. Sims, 377 U.S. 632

32. Iowa Const., 1857, Art. III, § 35; Kan.Const., 1859, Art. 2, § 2, Art. 10, § 1; Me.Const., 1819, Art. IV-Part First, § 3; Mich.Const., 1850, Art. IV, § 3; Mo.Const., 1865, Art. IV, § 2; N.Y.Const., 1846, Art. III, § 5; Ohio Const., 1851, Art. XI, §§ 2-5; Pa.Const., 1838, Art. I, §§ 4, 6, 7, as amended; Tenn.Const., 1834, Art. II, § 5; W.Va.Const., 1861-1863, Art. IV, § 9.

1964, Reynolds v. Sims, 377 U.S. 632

33. Ninth Census of the United States, Statistics of Population (1872) (hereafter Census), 49. The population figures, here and hereafter, are for the year 1870, which presumably best reflect the figures for the years 1866-1870. Only the figures for 1860 were available at that time, of course, and they would have been used by anyone interested in population statistics. See, e.g., Globe 3028 (remarks of Senator Johnson).

1964, Reynolds v. Sims, 377 U.S. 632

The method of apportionment is contained in N.J.Const., 1844, Art. IV, § II, cl. 1.

1964, Reynolds v. Sims, 377 U.S. 632

34. N.J.Const., 1844, Art. IV. III, cl. 1. Census 49.

1964, Reynolds v. Sims, 377 U.S. 632

35. Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

36. N.Y.Const., 1846, Art. III, §§ 2, 5. Census 50-51.

1964, Reynolds v. Sims, 377 U.S. 632

37. Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

38. Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

39. There were 14 counties, Census 67, each of which was entitled to at least one out of a total of 30 seats. Vt.Const., 1793, Amend. 23.

1964, Reynolds v. Sims, 377 U.S. 632

40. Census 67.

1964, Reynolds v. Sims, 377 U.S. 632

41. Act of Mar. 2, 1867, § 5, 14 Stat. 429. See also Act of June 25, 1868, 15 Stat. 73, declaring that the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida, would be admitted to representation in Congress when their legislatures had ratified the Fourteenth Amendment. Other conditions were also imposed, including a requirement that Georgia nullify certain provisions of its Constitution. Ibid. Arkansas, which had already ratified the Fourteenth Amendment, was readmitted by Act of June 22, 1868, 15 Stat. 72. Virginia was readmitted by Act of Jan. 26, 1870, 16 Stat. 62; Mississippi by Act of Feb. 23, 1870, 16 Stat. 67, and Texas by Act of Mar. 30, 1870, 16 Stat. 80. Georgia was not finally readmitted until later, by Act of July 15, 1870, 16 Stat. 363.

1964, Reynolds v. Sims, 377 U.S. 632

42. Discussing the bill which eventuated in the Act of June 25, 1868, see note 41, supra, Thaddeus Stevens said:

1964, Reynolds v. Sims, 377 U.S. 632

Now, sir, what is the particular question we are considering? Five or six States have had submitted to them the question of forming constitutions for their own government. They have voluntarily formed such constitutions, under the direction of the Government of the United States…. They have sent us their constitutions. Those constitutions have been printed and laid before us. We have looked at them; we have pronounced them republican in form, and all we propose to require is that they shall remain so forever. Subject to this requirement, we are willing to admit them into the Union.

1964, Reynolds v. Sims, 377 U.S. 632

Cong.Globe, 40th Cong., 2d Sess., 2465 (1868). See also the remarks of Mr. Butler, infra p. 606.

1964, Reynolds v. Sims, 377 U.S. 632

he close attention given the various Constitutions is attested by the Act of June 25, 1868, which conditioned Georgia's readmission on the deletion of

1964, Reynolds v. Sims, 377 U.S. 632

the first and third subdivisions of section seventeen of the fifth article of the constitution of said State, except the proviso to the first subdivision….

1964, Reynolds v. Sims, 377 U.S. 632

15 Stat. 73. The sections involved are printed in Sen.Ex.Doc. No. 57, 40th Cong., 2d Sess., 14-15.

1964, Reynolds v. Sims, 377 U.S. 632

Compare United States v. Florida, 363 U.S. 121, 124-127.

1964, Reynolds v. Sims, 377 U.S. 632

43. See, e.g., Cong.Globe, 40th Cong., 2d Sess., 2412-2413, 2858-2860, 2861-2871, 2895-2900, 2901-2904, 2927-2935, 2963-2970, 2998-3022, 3023-3029 (1868).

1964, Reynolds v. Sims, 377 U.S. 632

44. Cong.Globe, 40th Cong., 2d Sess., 3090-3091 (1868).

1964, Reynolds v. Sims, 377 U.S. 632

45. Id. at 3092.

1964, Reynolds v. Sims, 377 U.S. 632

46. Ala.Const., 1867, Art. VIII, § 1; Fla.Const., 1868, Art. XIV; Ga.Const., 1868, Art. III, § 3, ¶ 1; La.Const., 1868, Tit. II, Art. 20; N.C.Const., 1868, Art. II, § 6; S.C.Const., 1868, Art. II, §§ 6, 8.

1964, Reynolds v. Sims, 377 U.S. 632

47. N.C.Const., 1868, Art. II, § 6. There were 90 counties. Census 52-53.

1964, Reynolds v. Sims, 377 U.S. 632

48. Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

49. S.C.Const., 1868, Art. II, § 8; Census 60.

1964, Reynolds v. Sims, 377 U.S. 632

50. Fla.Const., 1868, Art. XIV.

1964, Reynolds v. Sims, 377 U.S. 632

51. Census 18-19.

1964, Reynolds v. Sims, 377 U.S. 632

52. Ala.Const., 1875, Art. IX, §§ 2, 3; Ala.Const., 1901, Art. IX, §§ 198, 199.

1964, Reynolds v. Sims, 377 U.S. 632

53. Fla.Const., 1885, Art. VII, § 3.

1964, Reynolds v. Sims, 377 U.S. 632

54. La.Const., 1877, Art. III, § III.

1964, Reynolds v. Sims, 377 U.S. 632

55. La.Const., 1879, Art. 16.

1964, Reynolds v. Sims, 377 U.S. 632

56. Miss.Const., 1890, Art. 13, § 256.

1964, Reynolds v. Sims, 377 U.S. 632

57. Mo.Const., 1875, Art. IV, § 2.

1964, Reynolds v. Sims, 377 U.S. 632

58. Mont.Const., 1889, Art. V, § 4, Art. VI, § 4.

1964, Reynolds v. Sims, 377 U.S. 632

59. N.H.Const., 1792, Part Second, §§ IX-XI, XXVI, as amended.

1964, Reynolds v. Sims, 377 U.S. 632

60. N.H Const., 1902, Part Second, Arts. 9, 10, 25.

1964, Reynolds v. Sims, 377 U.S. 632

61. N.Y.Const., 1894, Art. III, § 4.

1964, Reynolds v. Sims, 377 U.S. 632

62. N.Y.Const., 1894, Art. III, § 5.

1964, Reynolds v. Sims, 377 U.S. 632

63. N.C.Const., 1876, Art. II, § 5.

1964, Reynolds v. Sims, 377 U.S. 632

64. Okla.Const., 1907, Art. V, § 10.

1964, Reynolds v. Sims, 377 U.S. 632

65. Pa.Const., 1873, Art. II, § 17.

1964, Reynolds v. Sims, 377 U.S. 632

66. S.C.Const., 1895, Art. III, §§ 4, 6.

1964, Reynolds v. Sims, 377 U.S. 632

67. Utah Const., 1895, Art. IX, § 4.

1964, Reynolds v. Sims, 377 U.S. 632

68. Wyo.Const., 1889, Art. III, § 3.

1964, Reynolds v. Sims, 377 U.S. 632

69. A tabular presentation of constitutional provisions for apportionment as of Nov. 1, 1961, appears in The Book of the States 1962-1963, 58-62. Using this table, but disregarding some deviations from a pure population base, the Advisory Commission on Intergovernmental Relations states that there are 15 States in which the legislatures are apportioned solely according to population. Apportionment of State Legislatures (1962), 12.

1964, Reynolds v. Sims, 377 U.S. 632

70. Compare the Court's statement in Guinn v. United States, 238 U.S. 347, 362:

1964, Reynolds v. Sims, 377 U.S. 632

…Beyond doubt, the [Fifteenth] Amendment does not take away from the state governments in a general sense the power over suffrage which has belonged to those governments from the beginning and without the possession of which power the whole fabric upon which the division of state and national authority under the Constitution and the organization of both governments rest would be without support and both the authority of the nation and the State would fall to the ground. In fact, the very command of the Amendment recognizes the possession of the general power by the State, since the Amendment seeks to regulate its exercise as to the particular subject with which it deals.

1964, Reynolds v. Sims, 377 U.S. 632

71. The quoted phrases are taken from the Jurisdictional Statement, pp.13, 19.

1964, Reynolds v. Sims, 377 U.S. 632

72. In two early cases dealing with party primaries in Texas, the Court indicated that the Equal Protection Clause did afford some protection of the right to vote. Nixon v. Herndon, 273 U.S. 536; Nixon v. Condon, 286 U.S. 73. Before and after these cases, two cases dealing with the qualifications for electors in Oklahoma had gone off on the Fifteenth Amendment, Guinn v. United States, 238 U.S. 347; Lane v. Wilson, 307 U.S. 268. The rationale of the Texas cases is almost certainly to be explained by the Court's reluctance to decide that party primaries were a part of the electoral process for purposes of the Fifteenth Amendment. See Newberry v. United States, 256 U.S. 232. Once that question was laid to rest in United States v. Classic, 313 U.S. 299, the Court decided subsequent cases involving Texas party primaries on the basis of the Fifteenth Amendment. Smith v. Allwright, 321 U.S. 649; Terry v. Adams, 345 U.S. 461.

1964, Reynolds v. Sims, 377 U.S. 632

The recent decision in Gomillion v. Lightfoot, 364 U.S. 339, that a constitutional claim was stated by allegations that municipal lines had been redrawn with the intention of depriving Negroes of the right to vote in municipal elections was based on the Fifteenth Amendment. Only one Justice, in a concurring opinion, relied on the Equal Protection Clause of the Fourteenth Amendment. Id. at 349.

1964, Reynolds v. Sims, 377 U.S. 632

73. The measures were adopted on July 12, 1962. The District Court handed down its opinion on July 21, 1962.

1964, Reynolds v. Sims, 377 U.S. 632

74. In reversing an initial order of the Circuit Court for Anne Arundel County dismissing the plaintiffs' complaint, the Maryland Court of Appeals directed the lower court to hear evidence on and determine the plaintiffs' constitutional claims, and, if it found provisions of the Maryland Constitution to be invalid, to

1964, Reynolds v. Sims, 377 U.S. 632

declare that the Legislature has the power, if called into Special Session by the Governor and such action be deemed appropriate by it, to enact a bill reapportioning its membership for purposes of the November, 1962, election.

1964, Reynolds v. Sims, 377 U.S. 632

Maryland Committee for Fair Representation v. Tawes, 228 Md. 412, 438-439, 180 A.2d 656, 670. On remand, the opinion of the Circuit Court included such a declaration. The opinion was filed on May 24, 1962. The Maryland Legislature, in Special Session, adopted the "emergency" measures now declared unconstitutional seven days later, on May 31, 1962.

1964, Reynolds v. Sims, 377 U.S. 632

75. The Virginia Constitution, Art. IV, § 43, requires that a reapportionment be made every 10 years.

1964, Reynolds v. Sims, 377 U.S. 632

76. The 1962 reapportionment acts were approved on Apr. 7, 1962. The complaint was filed on Apr. 9, 1962.

1964, Reynolds v. Sims, 377 U.S. 632

77. The District Court handed down its opinion on Nov. 28, 1962, and gave the Virginia General Assembly until Jan. 31, 1963, "to enact appropriate reapportionment laws." 213 F.Supp. at 585-586. The court stated that, failing such action or an appeal to this Court, the plaintiffs might apply to it "for such further orders as may be required." Id. at 586.

1964, Reynolds v. Sims, 377 U.S. 632

78. On Dec. 15, 1962, THE CHIEF JUSTICE granted a stay pending final disposition of the case in this Court.

1964, Reynolds v. Sims, 377 U.S. 632

79. The Delaware Constitution, Art. XVI, § 1, requires that amendments be approved by the necessary two-thirds vote in two successive General Assemblies.

1964, Reynolds v. Sims, 377 U.S. 632

80. The District Court thus nailed the lid on the "box of time" in which everyone seemed to it "to be trapped." The lid was temporarily opened a crack on June 27, 1963, when MR. JUSTICE BRENNAN granted a stay of the injunction until disposition of the case by this Court. Since the Court states that

1964, Reynolds v. Sims, 377 U.S. 632

the delay inherent in following the state constitutional prescription for approval of constitutional amendments by two successive General Assemblies cannot be allowed to result in an impermissible deprivation of appellees' right to an adequate voice in the election of legislators to represent them,

1964, Reynolds v. Sims, 377 U.S. 632

post, p. 711, the lid has presumably been slammed shut again.

1964, Reynolds v. Sims, 377 U.S. 632

81. In New York and Colorado, this pattern of conduct has thus far been avoided. In the New York case (No. 20, post, p. 633), the District Court twice dismissed the complaint, once without reaching the merits, WMCA, Inc. v. Simon, 202 F.Supp. 741, and once, after this Court's remand following Baker v. Carr, supra, 370 U.S. 190, on the merits, 208 F.Supp. 368. In the Colorado case (No. 508, post, p. 713), the District Court first declined to interfere with a forthcoming election at which reapportionment measures were to be submitted to the voters, Lisco v. McNichols, 208 F.Supp. 471, and, after the election, upheld the apportionment provisions which had been adopted, 219 F.Supp. 922.

1964, Reynolds v. Sims, 377 U.S. 632

In view of the action which this Court now takes in both of these cases, there is little doubt that the legislatures of these two States will now be subjected to the same kind of pressures from the federal judiciary as have the other States.

1964, Reynolds v. Sims, 377 U.S. 632

82. It is not mere fancy to suppose that, in order to avoid problems of this sort, the Court may one day be tempted to hold that all state legislators must be elected in statewide elections.

1964, Reynolds v. Sims, 377 U.S. 632

83. Ante, p. 579.

1964, Reynolds v. Sims, 377 U.S. 632

84. Ante, pp. 579-580.

1964, Reynolds v. Sims, 377 U.S. 632

85. Ante, p. 580

1964, Reynolds v. Sims, 377 U.S. 632

86. Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

87. Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

88. Ibid.

1964, Reynolds v. Sims, 377 U.S. 632

89. Ante, pp.576-577

1964, Reynolds v. Sims, 377 U.S. 632

90. Davis v. Mann, post, p. 691.

1964, Reynolds v. Sims, 377 U.S. 632

91. Id. at 692.

1964, Reynolds v. Sims, 377 U.S. 632

92. Lucas v. Forty-Fourth General Assembly, post, p. 736.

1964, Reynolds v. Sims, 377 U.S. 632

93. Ante, p. 581.

1964, Reynolds v. Sims, 377 U.S. 632

94. The Court does note that, in view of modern developments in transportation and communication, it finds "unconvincing" arguments based on a desire to insure representation of sparsely settled areas or to avoid districts so large that voters' access to their representatives is impaired. Ante, p. 580.

HARLAN, J., dissenting (Footnotes)

1964, Reynolds v. Sims, 377 U.S. 632

\*All page references are to Cong.Globe, 39th Cong., 1st Sess. (1866).

Bell v. Maryland, 1964

Title: Bell v. Maryland

Author: U.S. Supreme Court

Date: June 22, 1964

Source: 378 U.S. 226

This case was argued October 14-15, 1963, and was decided June 22, 1964.

CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Syllabus

1964, Bell v. Maryland, 378 U.S. 226

Petitioners, Negro "sit-in" demonstrators, were asked to leave a Baltimore restaurant solely because of their race, refused to do so, and were convicted of violating Maryland's criminal trespass law. The convictions were affirmed by the highest state court. Subsequent to that affirmance, and prior to disposition of the case on writ of certiorari in this Court, the City of Baltimore and the State of Maryland enacted "public accommodations" laws, applicable to Baltimore, making it unlawful for restaurants to deny their services to any person because of his race.

1964, Bell v. Maryland, 378 U.S. 226

Held: The judgments of the Maryland Court of Appeals are vacated and reversed, and the case is remanded to that court so that it may consider whether the convictions should be nullified in view of the supervening change in state law. Pp. 227-242.

1964, Bell v. Maryland, 378 U.S. 226

(a) The effect of the public accommodations laws appears to be that petitioners' conduct in refusing to leave the restaurant after being asked to do so because of their race would not be a crime today; that conduct is now recognized as the exercise of a right, and the law's prohibition is directed not at them, but at the restaurant proprietor who would deny them service because of their race. P. 230.

1964, Bell v. Maryland, 378 U.S. 226

(b) The common law rule, followed in Maryland, requires the dismissal of pending criminal proceedings charging conduct which, because of a supervening change in state law, is no longer deemed criminal; that rule would apparently apply to this case, which was pending in this Court at the time of the supervening legislation. Pp. 230-232.

1964, Bell v. Maryland, 378 U.S. 226

(c) Although Maryland has a "saving clause" statute which in, certain circumstances, saves state convictions from the effect of that rule, there is reason to doubt that the statute would be held applicable to this case. Pp. 232-237.

1964, Bell v. Maryland, 378 U.S. 226

(d) When a change in the applicable state law intervenes between decision of a case by the highest state court and decision on review here, the Court's practice is to vacate and reverse the judgment and remand the case to the state court, so that it may [378 U.S. 227] reconsider it in the light of the change in state law; that practice should be followed here. Pp. 237-242.

1964, Bell v. Maryland, 378 U.S. 227

227 Md. 302,176 A. 2d 771, vacated, reversed, and remanded.

BRENNAN, J., lead opinion

1964, Bell v. Maryland, 378 U.S. 227

MR. JUSTICE BRENNAN delivered the opinion of the Court.

1964, Bell v. Maryland, 378 U.S. 227

Petitioners, 12 Negro students, were convicted in a Maryland state court as a result of their participation in a "sit-in" demonstration at Hooper's restaurant in the City of Baltimore in 1960. The convictions were based on a record showing in summary that a group of 15 to 20 Negro students, including petitioners, went to Hooper's restaurant to engage in what their counsel describes as a "sit-in protest" because the restaurant would not serve Negroes. The "hostess," on orders of Mr. Hooper, the president of the corporation owning the restaurant, told them, "solely on the basis of their color," that they would [378 U.S. 228] not be served. Petitioners did not leave when requested to by the hostess and the manager; instead, they went to tables, took seats, and refused to leave, insisting that they be served. On orders of Mr. Hooper, the police were called, but they advised that a warrant would be necessary before they could arrest petitioners. Mr. Hooper then went to the police station and swore out warrants, and petitioners were accordingly arrested.

1964, Bell v. Maryland, 378 U.S. 228

The statute under which the convictions were obtained was the Maryland criminal trespass law, § 577 of Art. 27 of the Maryland Code, 1957 edition, under which it is a misdemeanor to

1964, Bell v. Maryland, 378 U.S. 228

enter upon or cross over the land, premises or private property of any person or persons in this State after having been duly notified by the owner or his agent not to do so.

1964, Bell v. Maryland, 378 U.S. 228

The convictions were affirmed by the Maryland Court of Appeals, 227 Md. 302, 176 A.2d 771 (1962), and we granted certiorari. 374 U.S. 805.

1964, Bell v. Maryland, 378 U.S. 228

We do not reach the questions that have been argued under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. It appears that a significant change has taken place in the applicable law of Maryland since these convictions were affirmed by the Court of Appeals. Under this Court's settled practice in such circumstances, the judgments must consequently be vacated and reversed, and the case remanded so that the state court may consider the effect of the supervening change in state law.

1964, Bell v. Maryland, 378 U.S. 228

Petitioners' convictions were affirmed by the Maryland Court of Appeals on January 9, 1962. Since that date, Maryland has enacted laws that abolish the crime of which petitioners were convicted. These laws accord petitioners a right to be served in Hooper's restaurant, and make unlawful conduct like that of Hooper's president and hostess in refusing them service because of their race. On June 8, 1962, the City of Baltimore enacted its Ordinance No. 1249, adding § 10A to Art. 14A of the [378 U.S. 229] Baltimore City Code (1950 ed.). The ordinance, which by its terms took effect from the date of its enactment, prohibits owners and operators of Baltimore places of public accommodation, including restaurants, from denying their services or facilities to any person because of his race. A similar "public accommodations law," applicable to Baltimore City and Baltimore County, though not to some of the State's other counties, was adopted by the State Legislature on March 29, 1963. Art. 49B Md. Code § 11 (1963 Supp.). This statute went into effect on June 1, 1963, as provided by § 4 of the Act, Acts 1963, c. 227. The statute provides that:

1964, Bell v. Maryland, 378 U.S. 229

It is unlawful for an owner or operator of a place of public accommodation or an agent or employee of said owner or operator, because of the race, creed, color, or national origin of any person, to refuse, withhold from, or deny to such person any of the accommodations, advantages, facilities and privileges of such place of public accommodation. For the purpose of this subtitle, a place of public accommodation means any hotel, restaurant, inn, motel or an establishment commonly known or recognized as regularly engaged in the business of providing sleeping accommodations, or serving food, or both, for a consideration, and which is open to the general public…. 1 [378 U.S. 230]

1964, Bell v. Maryland, 378 U.S. 230

It is clear from these enactments that petitioners' conduct in entering or crossing over the premises of Hooper's restaurant after being notified not to do so because of their race would not be a crime today; on the contrary, the law of Baltimore and of Maryland now vindicates their conduct and recognizes it as the exercise of a right, directing the law's prohibition not at them, but at the restaurant owner or manager who seeks to deny them service because of their race.

1964, Bell v. Maryland, 378 U.S. 230

An examination of Maryland decisions indicates that, under the common law of Maryland, the supervening enactment of these statutes abolishing the crime for which petitioners were convicted would cause the Maryland Court of Appeals at this time to reverse the convictions and order the indictments dismissed. For Maryland follows the universal common law rule that, when the legislature repeals a criminal statute or otherwise removes the State's condemnation from conduct that was formerly deemed criminal, this action requires the dismissal of a pending criminal proceeding charging such conduct. The rule applies to any such proceeding which at the time of the supervening legislation, has not yet reached final disposition in the highest court authorized to review it. Thus, in Keller v. State, 12 Md. 322 (1858), the statute under which the appellant had been indicted and convicted was repealed by the legislature after the case had been argued on appeal in the Court of Appeals, but before that court's decision, although the repeal was not brought to the notice of the court until after the judgment of affirmance had been announced. The appellant's subsequent motion to correct the judgment was granted, and the judgment was reversed. The court explained, id. at 325-327:

1964, Bell v. Maryland, 378 U.S. 230

It is well settled that a party cannot be convicted after the law under which he may be prosecuted has been repealed, although the offence may have been [378 U.S. 231] committed before the repeal…. The same principle applies where the law is repealed, or expires pending an appeal on a writ of error from the judgment of an inferior court…. The judgment in a criminal cause cannot be considered as final and conclusive to every intent, notwithstanding the removal of the record to a superior court. If this were so, there would be no use in taking the appeal or suing out a writ of error…. And so, if the law be repealed pending the appeal or writ of error, the judgment will be reversed, because the decision must be in accordance with the law at the time of final judgment.

1964, Bell v. Maryland, 378 U.S. 231

The rule has since been reaffirmed by the Maryland court on a number of occasions. Beard v. State, 74 Md. 130, 135, 21 A. 700, 702 (1891); Smith v. State, 45 Md. 49 (1876); State v. Gambrill, 115 Md. 506, 513, 81 A. 10, 12 (1911); State v. Clifton, 177 Md. 572, 574, 10 A.2d 703, 704 (1940). 2 [378 U.S. 232]

1964, Bell v. Maryland, 378 U.S. 232

It is true that the present case is factually distinguishable, since here the legislative abolition of the crime for which petitioners were convicted occurred after rather, than before, the decision of the Maryland Court of Appeals. But that fact would seem irrelevant. For the purpose of applying the rule of the Maryland common law, it appears that the only question is whether the legislature acts before the affirmance of the conviction becomes final. In the present case, the judgment is not yet final, for it is on direct review in this Court. This would thus seem to be a case where, as in Keller, the change of law has occurred "pending an appeal on a writ of error from the judgment of an inferior court," and hence where the Maryland Court of Appeals, upon remand from this Court, would render its decision "in accordance with the law at the time of final judgment." It thus seems that the Maryland Court of Appeals would take account of the supervening enactment of the city and state public accommodations laws and, applying the principle that a statutory offense which has "ceased to exist is no longer punishable at all," Beard v. State, supra, 74 Md. 130, 135, 21 A. 700, 702 (1891), would now reverse petitioners' convictions and order their indictments dismissed.

1964, Bell v. Maryland, 378 U.S. 232

The Maryland common law is not, however, the only Maryland law that is relevant to the question of the effect of the supervening enactments upon these convictions. Maryland has a general saving clause statute which, in certain circumstances, "saves" state convictions from the common law effect of supervening enactments. It is thus necessary to consider the impact of that clause upon the present situation. The clause, Art. 1 Md. Code § 3 (1957), reads as follows:

1964, Bell v. Maryland, 378 U.S. 232

The repeal, or the repeal and reenactment, or the revision, amendment or consolidation of any statute, or of any section or part of a section of any statute, [378 U.S. 233] civil or criminal, shall not have the effect to release, extinguish, alter, modify or change, in whole or in part, any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such statute, section or part thereof, unless the repealing, repealing and reenacting, revising, amending or consolidating act shall expressly so provide; and such statute, section or part thereof, so repealed, repealed and reenacted, revised, amended or consolidated, shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings or prosecutions, civil or criminal, for the enforcement of such penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions imposing, inflicting or declaring such penalty, forfeiture or liability.

1964, Bell v. Maryland, 378 U.S. 233

Upon examination of this clause and of the relevant state case law and policy considerations, we are far from persuaded that the Maryland Court of Appeals would hold the clause to be applicable to save these convictions. By its terms, the clause does not appear to be applicable at all to the present situation. It applies only to the "repeal," "repeal and reenactment," "revision," "amendment," or "consolidation" of any statute or part thereof. The effect wrought upon the criminal trespass statute by the supervening public accommodations laws would seem to be properly described by none of these terms. The only two that could even arguably apply are "repeal" and "amendment." But neither the city nor the state public accommodations enactment gives the slightest indication that the legislature considered itself to be "repealing" or "amending" the trespass law. Neither enactment refers in any way to the trespass law, as is characteristically done when a prior statute is being [378 U.S. 234] repealed or amended. 3 This fact alone raises a substantial possibility that the saving clause would be held inapplicable, for the clause might be narrowly construed—especially since it is in derogation of the common law, and since this is a criminal case—as requiring that a "repeal" or "amendment" be designated as such in the supervening statute itself. 4

1964, Bell v. Maryland, 378 U.S. 234

The absence of such terms from the public accommodations laws becomes more significant when it is recognized that the effect of these enactments upon the trespass statute was quite different from that of an "amendment" [378 U.S. 235] or even a "repeal" in the usual sense. These enactments do not—in the manner of an ordinary "repeal," even one that is substantive, rather than only formal or technical—merely erase the criminal liability that had formerly attached to persons who entered or crossed over the premises of a restaurant after being notified not to because of their race; they go further, and confer upon such persons an affirmative right to carry on such conduct, making it unlawful for the restaurant owner or proprietor to notify them to leave because of their race. Such a substitution of a right for a crime, and vice versa, is a possibly unique phenomenon in legislation; it thus might well be construed as falling outside the routine categories of "amendment" and "repeal."

1964, Bell v. Maryland, 378 U.S. 235

Cogent state policy considerations would seem to support such a view. The legislative policy embodied in the supervening enactments here would appear to be much more strongly opposed to that embodied in the old enactment than is usually true in the case of an "amendment" or "repeal." It would consequently seem unlikely that the legislature intended the saving clause to apply in this situation, where the result of its application would be the conviction and punishment of persons whose "crime" has been not only erased from the statute books, but officially vindicated by the new enactments. A legislature that passed a public accommodations law making it unlawful to deny service on account of race probably did not desire that persons should still be prosecuted and punished for the "crime" of seeking service from a place of public accommodations which denies it on account of race. Since the language of the saving clause raises no barrier to a ruling in accordance with these policy considerations, we should hesitate long indeed before concluding that the Maryland Court of Appeals would definitely hold the saving clause applicable to save these convictions. [378 U.S. 236]

1964, Bell v. Maryland, 378 U.S. 236

Moreover, even if the word "repeal" or "amendment" were deemed to make the saving clause prima facie applicable, that would not be the end of the matter. There would remain a substantial possibility that the public accommodations laws would be construed as falling within the clause's exception: "unless the repealing…act shall expressly so provide." Not only do the policy considerations noted above support such an interpretation, but the operative language of the state public accommodations enactment affords a solid basis for a finding that it does "expressly so provide" within the terms of the saving clause. Whereas most criminal statutes speak in the future tense—see, for example, the trespass statute here involved, Art. 27 Md. Code § 577: "Any person or persons who shall enter upon or cross over…"—the state enactment here speaks in the present tense, providing that "[i]t is unlawful for an owner or operator…. " In this very context, the Maryland Court of Appeals has given effect to the difference between the future and present tense. In Beard v. State, supra, 74 Md. 130, 21 A. 700, the court, in holding that a supervening statute did not implicitly repeal the former law, and thus did not require dismissal of the defendant's conviction under that law, relied on the fact that the new statute used the word "shall," rather than the word "is." From this, the court concluded that

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The obvious intention of the legislature in passing it was not to interfere with past offences, but merely to fix a penalty for future ones.

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74 Md. at 133, 21 A. at 701. Conversely here, the use of the present, instead of the more usual future tense, may very possibly be held by the Court of Appeals, especially in view of the policy considerations involved, to constitute an "express provision" by the legislature, within the terms of the saving clause, that it did intend its new enactment to apply to past as well as future conduct—that it did not intend the saving clause to be applied, in derogation of [378 U.S. 237] the common law rule, so as to permit the continued prosecution and punishment of persons accused of a "crime" which the legislature has now declared to be a right.

1964, Bell v. Maryland, 378 U.S. 237

As a matter of Maryland law, then, the arguments supporting a conclusion that the saving clause would not apply to save these convictions seem quite substantial. It is not for us, however, to decide this question of Maryland law, or to reach a conclusion as to how the Maryland Court of Appeals would decide it. Such a course would be inconsistent with our tradition of deference to state courts on questions of state law. Now is it for us to ignore the supervening change in state law and proceed to decide the federal constitutional questions presented by this case. To do so would be to decide questions which, because of the possibility that the state court would now reverse the convictions, are not necessarily presented for decision. Such a course would be inconsistent with our constitutional inability to render advisory opinions, and with our consequent policy of refusing to decide a federal question in a case that might be controlled by a state ground of decision. See Murdock v. Memphis, 20 Wall. 590, 634-636. To avoid these pitfalls—to let issues of state law be decided by state courts and to preserve our policy of avoiding gratuitous decisions of federal questions—we have long followed a uniform practice where a supervening event raises a question of state law pertaining to a case pending on review here. That practice is to vacate and reverse the judgment and remand the case to the state court, so that it may reconsider it in the light of the supervening change in state law.

1964, Bell v. Maryland, 378 U.S. 237

The rule was authoritatively stated and applied in Missouri ex rel. Wabash R. Co. v. Public Service Comm'n, 273 U.S. 126, a case where the supervening event was—as it is here—enactment of new state legislation asserted to change the law under which the case had been decided [378 U.S. 238] by the highest state court. Speaking for the Court, Mr. Justice Stone said:

1964, Bell v. Maryland, 378 U.S. 238

Ordinarily, this Court on writ of error to a state court, considers only federal questions, and does not review questions of state law. But where questions of state law arising after the decision below are presented here, our appellate powers are not thus restricted. Either because new facts have supervened since the judgment below, or because of a change in the law, this Court, in the exercise of its appellate jurisdiction, may consider the state questions thus arising and either decide them or remand the cause for appropriate action by the state courts. The meaning and effect of the state statute now in question are primarily for the determination of the state court. While this Court may decide these questions, it is not obliged to do so, and, in view of their nature, we deem it appropriate to refer the determination to the state court. In order that the state court may be free to consider the question and make proper disposition of it, the judgment below should be set aside, since a dismissal of this appeal might leave the judgment to be enforced as rendered. The judgment is accordingly reversed, and the cause remanded for further proceedings.

1964, Bell v. Maryland, 378 U.S. 238

(Citations omitted.) 273 U.S. at 131.

1964, Bell v. Maryland, 378 U.S. 238

Similarly, in Patterson v. Alabama, 294 U.S. 600, Mr. Chief Justice Hughes stated the rule as follows:

1964, Bell v. Maryland, 378 U.S. 238

We have frequently held that, in the exercise of our appellate jurisdiction, we have power not only to correct error in the judgment under review, but to make such disposition of the case as justice requires. And, in determining what justice does require, the Court is bound to consider any change, either in fact [378 U.S. 239] or in law, which has supervened since the judgment was entered. We may recognize such a change, which may affect the result, by setting aside the judgment and remanding the case so that the state court may be free to act. We have said that to do this is not to review, in any proper sense of the term, the decision of the state court upon a nonfederal question, but only to deal appropriately with a matter arising since its judgment and having a bearing upon the right disposition of the case.

1964, Bell v. Maryland, 378 U.S. 239

294 U.S. at 607.

1964, Bell v. Maryland, 378 U.S. 239

For other cases applying the rule, see Gulf, C. & S.F. R. Co. v. Dennis, 224 U.S. 503, 505-507; Dorchy v. Kansas, 264 U.S. 286, 289; Ashcraft v. Tennessee, 322 U.S. 143, 155-156. 5

1964, Bell v. Maryland, 378 U.S. 239

The question of Maryland law raised here by the supervening enactment of the city and state public accommodations laws clearly falls within the rule requiring us to vacate and reverse the judgment and remand the case to the Maryland Court of Appeals. Indeed, we have followed this course in other situations involving a state saving clause or similar provision, where it was considerably more probable than it is here that the State would desire its judgment to stand despite the supervening change of law. In Roth v. Delano, 338 U.S. 226, the Court vacated and remanded the judgment in light of the State's supervening repeal of the applicable statute despite the presence in the repealer of a saving clause which, unlike the one here, was clearly applicable in terms. In Dorchy v. Kansas, supra, 264 U.S. 286, the supervening event was a holding by this Court that another [378 U.S. 240] portion of the same state statute was unconstitutional, and the question was whether Dorchy's conviction could stand nevertheless. The state statute had a severability provision which seemingly answered the question conclusively, providing that,

1964, Bell v. Maryland, 378 U.S. 240

If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision….

1964, Bell v. Maryland, 378 U.S. 240

Nevertheless, a unanimous Court vacated and reversed the judgment and remanded the case so that the question could be decided by the state court. Mr. Justice Brandeis said, 264 U.S. at 290-291:

1964, Bell v. Maryland, 378 U.S. 240

Whether section 19 [the criminal provision under which Dorchy stood convicted] is so interwoven with the system held invalid that the section cannot stand alone is a question of interpretation, and of legislative intent…. Section 28 of the act [the severability clause]…provides a rule of construction which may sometimes aid in determining that intent. But it is an aid merely, not an inexorable command.

1964, Bell v. Maryland, 378 U.S. 240

The task of determining the intention of the state legislature in this respect, like the usual function of interpreting a state statute, rests primarily upon the state court. Its decision as to the severability of a provision is conclusive upon this Court…. In cases coming from the state courts, this Court, in the absence of a controlling state decision, may, in passing upon the claim under the federal law, decide also the question of severability. But it is not obliged to do so. The situation may be such as to make it appropriate to leave the determination of the question to the state court. We think that course should be followed in this case.

1964, Bell v. Maryland, 378 U.S. 240

…In order that the state court may pass upon this question, its judgment in this case, which was [378 U.S. 241] rendered before our decision in (the other case), should be vacated…. To this end, the judgment is

1964, Bell v. Maryland, 378 U.S. 241

Reversed.

1964, Bell v. Maryland, 378 U.S. 241

Except for the immaterial fact that a severability clause, rather than a saving clause, was involved, the holding and the operative language of the Dorchy case are precisely in point here. Indeed, the need to set aside the judgment and remand the case is even more compelling here, since the Maryland saving clause is not literally applicable to the public accommodations laws, and since state policy considerations strengthen the inference that it will be held inapplicable. Here, as in Dorchy, the applicability of the clause to save the conviction "is a question of interpretation and of legislative intent," and hence it is "appropriate to leave the determination of the question to the state court." Even if the Maryland saving clause were literally applicable, the fact would remain that, as in Dorchy, the clause

1964, Bell v. Maryland, 378 U.S. 241

provides a rule of construction which may sometimes aid in determining that intent. But it is an aid merely, not an inexorable command.

1964, Bell v. Maryland, 378 U.S. 241

The Maryland Court of Appeals has stated that the Maryland saving clause is likewise "merely an aid to interpretation." State v. Kennerly, note 4, supra, 204 Md. at 417, 104 A.2d at 634.

1964, Bell v. Maryland, 378 U.S. 241

In short, this case involves not only a question of state law, but an open and arguable one. This Court thus has a "duty to recognize the changed situation," Gulf, C. & S.F.R. Co. v. Dennis, supra, 224 U.S. at 507, and, by vacating and reversing the judgment and remanding the case, to give effect to the principle that "[t]he meaning and effect of the state statute now in question are primarily for the determination of the state court." Missouri ex rel. Wabash R. Co. v. Public Service Comm'n, supra, 273 U.S. at 131. [378 U.S. 242]

1964, Bell v. Maryland, 378 U.S. 242

Accordingly, the judgment of the Maryland Court of Appeals should be vacated, and the case remanded to that court, and, to this end, the judgment is

1964, Bell v. Maryland, 378 U.S. 242

Reversed and remanded.

DOUGLAS, J., separate opinion

1964, Bell v. Maryland, 378 U.S. 242

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE GOLDBERG concurs as respects Parts II-V, for reversing and directing dismissal of the indictment.

I

1964, Bell v. Maryland, 378 U.S. 242

I reach the merits of this controversy. The issue is ripe for decision, and petitioners, who have been convicted of asking for service in Hooper's restaurant, are entitled to an answer to their complaint here and now.

1964, Bell v. Maryland, 378 U.S. 242

On this the last day of the Term, we studiously avoid decision of the basic issue of the right of public accommodation under the Fourteenth Amendment, remanding the case to the state court for reconsideration in light of an issue of state law.

1964, Bell v. Maryland, 378 U.S. 242

This case was argued October 14 and 15, 1963—over eight months ago. The record of the case is simple, the constitutional guidelines well marked, the precedents marshalled. Though the Court is divided, the preparation of opinions laying bare the differences does not require even two months, let alone eight. Moreover, a majority reach the merits of the issue. Why then should a minority prevent a resolution of the differing views?

1964, Bell v. Maryland, 378 U.S. 242

The laws relied on for vacating and remanding were enacted June 8, 1962, and March 29, 1963—long before oral argument. We did indeed not grant certiorari until June 10, 1963. Hence, if we were really concerned with this state law question, we would have vacated and remanded for reconsideration in light of those laws on June 10, 1963. By now, we would have had an answer, and been able to put our decision into the mainstream of the law at this critical hour. If the parties had been concerned, [378 U.S. 243] they too might have asked that we follow that course. Maryland adverted to the new law merely to show why certiorari should not be granted. At the argument and at our conferences, we were not concerned with that question, the issue being deemed frivolous. Now it is resurrected to avoid facing the constitutional question.

1964, Bell v. Maryland, 378 U.S. 243

The whole Nation has to face the issue; Congress is conscientiously considering it; some municipalities have had to make it their first order of concern; law enforcement officials are deeply implicated, North as well as South; the question is at the root of demonstrations, unrest, riots, and violence in various areas. The issue, in other words, consumes the public attention. Yet we stand mute, avoiding decision of the basic issue by an obvious pretense.

1964, Bell v. Maryland, 378 U.S. 243

The clash between Negro customers and white restaurant owners is clear; each group claims protection by the Constitution, and tenders the Fourteenth Amendment as justification for its action. Yet we leave resolution of the conflict to others, when, if our voice were heard, the issues for the Congress and for the public would become clear and precise. The Court was created to sit in troubled times, as well as in peaceful days.

1964, Bell v. Maryland, 378 U.S. 243

There is a school of thought that our adjudication of a constitutional issue should be delayed and postponed as long as possible. That school has had many stout defenders, and ingenious means have at times been used to avoid constitutional pronouncements. Yet judge-made rules, fashioned to avoid decision of constitutional questions, largely forget what Chief Justice Marshall wrote in Fletcher v. Peck, 6 Cranch. 87, 137-138:

1964, Bell v. Maryland, 378 U.S. 243

Whatever respect might have been felt for the state sovereignties, it is not to be disguised that the framers of the constitution viewed, with some apprehension, the violent acts which might grow out of the feelings of the moment; and that the people of the [378 U.S. 244] United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the states are obviously founded in this sentiment, and the constitution of the United States contains what may be deemed a bill of rights for the people of each state.

1964, Bell v. Maryland, 378 U.S. 244

Much of our history has shown that what Marshall said of the encroachment of legislative power on the rights of the people is true also of the encroachment of the judicial branch, as where state courts use unconstitutional procedures to convict people or make criminal what is beyond the reach of the States. I think our approach here should be that of Marshall in Marbury v. Madison, 1 Cranch. 137, 177-178, where the Court spoke with authority though there was an obviously easy way to avoid saying anything:

1964, Bell v. Maryland, 378 U.S. 244

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

1964, Bell v. Maryland, 378 U.S. 244

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

1964, Bell v. Maryland, 378 U.S. 244

We have in this case a question that is basic to our way of life and fundamental in our constitutional scheme. No question preoccupies the country more than this one; [378 U.S. 245] it is plainly justiciable; it presses for a decision one way or another; we should resolve it. The people should know that, when filibusters occupy other forums, when oppressions are great, when the clash of authority between the individual and the State is severe, they can still get justice in the courts. When we default, as we do today, the prestige of law in the life of the Nation is weakened.

1964, Bell v. Maryland, 378 U.S. 245

For these reasons, I reach the merits, and I vote to reverse the judgments of conviction outright.

II

1964, Bell v. Maryland, 378 U.S. 245

The issue in this case, according to those who would affirm, is whether a person's "personal prejudices" may dictate the way in which he uses his property and whether he can enlist the aid of the State to enforce those "personal prejudices." With all respect, that is not the real issue. The corporation that owns this restaurant did not refuse service to these Negroes because "it" did not like Negroes. The reason "it" refused service was because "it" thought "it" could make more money by running a segregated restaurant.

1964, Bell v. Maryland, 378 U.S. 245

In the instant case, G. Carroll Hooper, president of the corporate chain owning the restaurant here involved, testified concerning the episode that gave rise to these convictions. The reasons were wholly commercial ones:

1964, Bell v. Maryland, 378 U.S. 245

I set at the table with him and two other people and reasoned and talked to him why my policy was not yet one of integration, and told him that I had two hundred employees, and half of them were colored. I thought as much of them as I did the white employees. I invited them back in my kitchen if they'd like to go back and talk to them. I wanted to prove to them it wasn't my policy, my personal prejudice—we were not, that I had valuable colored employees, and I thought just as much of them. I [378 U.S. 246] tried to reason with these leaders, told them that, as long as my customers were deciding who they want to eat with—I'm at the mercy of my customers. I'm trying to do what they want. If they fail to come in, these people are not paying my expenses, and my bills. They didn't want to go back and talk to my colored employees, because every one of them are in sympathy with me, and, that is, we're in sympathy with what their objectives are, with what they are trying to abolish….

1964, Bell v. Maryland, 378 U.S. 246

(Italics added.)

1964, Bell v. Maryland, 378 U.S. 246

Here, as in most of the sit-in cases before us, the refusal of service did not reflect "personal prejudices," but business reasons. 1 Were we today to hold that segregated restaurants whose racial policies were enforced by a State violated the Equal Protection Clause, all restaurants would be on an equal footing, and the reasons given in this and most of the companion cases for refusing service to Negroes would evaporate. Moreover, when corporate restaurateurs are involved, whose "personal prejudices" are being protected? The stockholders"? The directors"? The officers"? The managers"? The truth is, I think, that the corporate interest is in making money, not in protecting "personal prejudices."

III

1964, Bell v. Maryland, 378 U.S. 246

I leave those questions to another part of this opinion, 2 and turn to an even more basic issue.

1964, Bell v. Maryland, 378 U.S. 246

I now assume that the issue is the one stated by those who would affirm. The case in that posture deals with a relic of slavery—an institution that has cast a long shadow across the land, resulting today in a second-class citizenship in this area of public accommodations. [378 U.S. 247]

1964, Bell v. Maryland, 378 U.S. 247

The Thirteenth, Fourteenth, and Fifteenth Amendments had

1964, Bell v. Maryland, 378 U.S. 247

one pervading purpose…we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him.

1964, Bell v. Maryland, 378 U.S. 247

Slaughter-House Cases, 16 Wall. 36.

1964, Bell v. Maryland, 378 U.S. 247

Prior to those Amendments, Negroes were segregated and disallowed the use of public accommodations except and unless the owners chose to serve them. To affirm these judgments would remit those Negroes to their old status, and allow the States to keep them there by the force of their police and their judiciary.

1964, Bell v. Maryland, 378 U.S. 247

We deal here with public accommodations—with the right of people to eat and travel as they like and to use facilities whose only claim to existence is serving the public. What the President said in his State of the Union Message on January 8, 1964, states the constitutional right of all Americans, regardless of race or color, to be treated equally by all branches of government:

1964, Bell v. Maryland, 378 U.S. 247

Today Americans of all races stand side by side in Berlin and in Vietnam.

1964, Bell v. Maryland, 378 U.S. 247

They died side by side in Korea.

1964, Bell v. Maryland, 378 U.S. 247

Surely they can work and eat and travel side by side in their own country.

1964, Bell v. Maryland, 378 U.S. 247

The Black Codes were a substitute for slavery; segregation was a substitute for the Black Codes; 3 [378 U.S. 248] the discrimination in these sit-in cases is a relic of slavery. 4

1964, Bell v. Maryland, 378 U.S. 248

The Fourteenth Amendment says "No State shall make or enforce any law which shall abridge the privileges or [378 U.S. 249] immunities of citizens of the United States." The Fourteenth Amendment also makes every person who is born here a citizen, and there is no second or third or fourth class of citizenship. See, e.g., Schneider v. Rusk, 377 U.S. 163, 168.

1964, Bell v. Maryland, 378 U.S. 249

We deal here with incidents of national citizenship. As stated in the Slaughter-House Cases, 16 Wall. 36, 71-72, concerning the federal rights resting on the Thirteenth, Fourteenth, and Fifteenth Amendments:

1964, Bell v. Maryland, 378 U.S. 249

…no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. It is true that only the fifteenth amendment, in terms, mentions the negro by speaking of his color and his slavery. But it is just as true that each of the other articles was addressed to the grievances of that race, and designed to remedy them as the fifteenth. [378 U.S. 250] When we deal with Amendments touching the liberation of people from slavery, we deal with rights "which owe their existence to the Federal government, its National character, its Constitution, or its laws." Id., 16 Wall. at 79. We are not in the field of exclusive municipal regulation, where federal intrusion might

1964, Bell v. Maryland, 378 U.S. 250

fetter and degrade the State governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character.

1964, Bell v. Maryland, 378 U.S. 250

Id., 16 Wall. at 78.

1964, Bell v. Maryland, 378 U.S. 250

There has been a judicial reluctance to expand the content of national citizenship beyond racial discrimination, voting rights, the right to travel, safe custody in the hands of a federal marshal, diplomatic protection abroad, and the like. See Slaughter-House Cases, supra; Logan v. United States, 144 U.S. 263; United States v. Classic, 313 U.S. 299; Edwards v. California, 314 U.S. 160; Kent v. Dulles, 357 U.S. 116. The reluctance has been due to a fear of creating constitutional refuges for a host of rights historically subject to regulation. See Madden v. Kentucky, 309 U.S. 83, overruling Colgate v. Harvey, 296 U.S. 404. But those fears have no relevance here, where we deal with Amendments whose dominant purpose was to guarantee the freedom of the slave race and establish a regime where national citizenship has only one class.

1964, Bell v. Maryland, 378 U.S. 250

The manner in which the right to be served in places of public accommodations is an incident of national citizenship and of the right to travel is summarized in H.R.Rep. No. 914, Pt. 2, 88th Cong., 1st Sess., pp. 7-8:

1964, Bell v. Maryland, 378 U.S. 250

An official of the National Association for the Advancement of Colored People testified before the Senate Commerce Subcommittee as follows:

1964, Bell v. Maryland, 378 U.S. 250

For millions of Americans, this is vacation time. Swarms of families load their automobiles and trek across country. I invite the members of this committee [378 U.S. 251] to imagine themselves darker in color and to plan an auto trip from Norfolk, Va., to the gulf coast of Mississippi, say, to Biloxi. Or one from Terre Haute, Ind., to Charleston, S.C., or from Jacksonville, Fla., to Tyler, Tex.

1964, Bell v. Maryland, 378 U.S. 251

How far do you drive each day? Where and under what conditions can you and your family eat? Where can they use a restroom? Can you stop driving after a reasonable day behind the wheel, or must you drive until you reach a city where relatives or friends will accommodate you and yours for the night? Will your children be denied a soft drink or an ice cream cone because they are not white?

1964, Bell v. Maryland, 378 U.S. 251

In response to Senator Pastore's question as to what the Negro must do, there was the reply:

1964, Bell v. Maryland, 378 U.S. 251

Where you travel through what we might call hostile territory, you take your chances. You drive and you drive and you drive. You don't stop where there is a vacancy sign out at a motel at 4 o'clock in the afternoon and rest yourself; you keep on driving until the next city or the next town where you know somebody or they know somebody who knows somebody who can take care of you.

1964, Bell v. Maryland, 378 U.S. 251

This is the way you plan it.

1964, Bell v. Maryland, 378 U.S. 251

Some of them don't go.

1964, Bell v. Maryland, 378 U.S. 251

Daily we permit citizens of our Nation to be humiliated and subjected to hardship and abuse solely because of their color.

1964, Bell v. Maryland, 378 U.S. 251

As stated in the first part of the same Report, p. 18:

1964, Bell v. Maryland, 378 U.S. 251

Today, more than 100 years after their formal emancipation, Negroes, who make up over 10 percent of our population, are, by virtue of one or another type of discrimination, not accorded the rights, privileges, and opportunities which are considered to be, and must be, the birthright of all citizens. [378 U.S. 252]

1964, Bell v. Maryland, 378 U.S. 252

When one citizen, because of his race, creed, or color, is denied the privilege of being treated as any other citizen in places of public accommodation, we have classes of citizenship, one being more degrading than the other. That is at war with the one class of citizenship created by the Thirteenth, Fourteenth, and Fifteenth Amendments.

1964, Bell v. Maryland, 378 U.S. 252

As stated in Ex parte Virginia, 100 U.S. 339, 344-345, where a federal indictment against a state judge for discriminating against Negroes in the selection of jurors was upheld:

1964, Bell v. Maryland, 378 U.S. 252

One great purpose of these amendments was to raise the colored race from that condition of inferiority and servitude in which most of them had previously stood into perfect equality of civil rights with all other persons within the jurisdiction of the States. They were intended to take away all possibility of oppression by law because of race or color. They were intended to be, what they really are, limitations of the power of the States and enlargements of the power of Congress.

IV

1964, Bell v. Maryland, 378 U.S. 252

The problem in this case, and in the other sit-in cases before us, is presented as though it involved the situation of "a private operator conducting his own business on his own premises and exercising his own judgment" 5 as to whom he will admit to the premises.

1964, Bell v. Maryland, 378 U.S. 252

The property involved is not, however, a man's home or his yard, or even his fields. Private property is involved, but it is property that is serving the public. As my Brother GOLDBERG says, it is a "civil" right, not a "social," right with which we deal. Here it is a restaurant refusing service to a Negro. But so far as principle and law are concerned, it might just as well be a hospital refusing [378 U.S. 253] admission to a sick or injured Negro (cf. Simkins v Moses H. Cone Memorial Hospital, 323 F.2d 959), or a drugstore refusing antibiotics to a Negro, or a bus denying transportation to a Negro, or a telephone company refusing to install a telephone in a Negro's home.

1964, Bell v. Maryland, 378 U.S. 253

The problem with which we deal has no relation to opening or closing the door of one's home. The home, of course, is the essence of privacy, in no way dedicated to public use, in no way extending an invitation to the public. Some businesses, like the classical country store where the owner lives overhead or in the rear, make the store an extension, so to speak, of the home. But such is not this case. The facts of these sit-in cases have little resemblance to any institution of property which we customarily associate with privacy.

1964, Bell v. Maryland, 378 U.S. 253

Joseph H. Choate, who argued the Income Tax Cases (Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 534 [argument of counsel omitted from electronic version]), said:

1964, Bell v. Maryland, 378 U.S. 253

I have thought that one of the fundamental objects of all civilized government was the preservation of the rights of private property. I have thought that it was the very keystone of the arch upon which all civilized government rests, and that, this once abandoned, everything was at stake and in danger. That is what Mr. Webster said in 1820 at Plymouth, and I supposed that all educated, civilized men believed in that.

1964, Bell v. Maryland, 378 U.S. 253

Charles A. Beard had the theory that the Constitution was "an economic document drawn with superb skill by men whose property interests were immediately at stake." An Economic Interpretation of the Constitution of the United States (1939), p. 188. That school of thought would receive new impetus from an affirmance of these judgments. Seldom have modern cases (cf. the ill-starred Dred Scott decision, 19 How. 393) so exalted property in suppression of individual rights. We would [378 U.S. 254] reverse the modern trend were we to hold that property voluntarily serving the public can receive state protection when the owner refuses to serve some solely because they are colored.

1964, Bell v. Maryland, 378 U.S. 254

There is no specific provision in the Constitution which protects rights of privacy and enables restaurant owners to refuse service to Negroes. The word "property" is indeed not often used in the Constitution, though, as a matter of experience and practice, we are committed to free enterprise. The Fifth Amendment makes it possible to take "private property" for public use only on payment of "just compensation." The ban on quartering soldiers in any home in time of peace, laid down by the Third Amendment, is one aspect of the right of privacy. The Fourth Amendment, in its restrictions on searches and seizures, also sets an aura of privacy around private interests. And the Due Process Clauses of the Fifth and Fourteenth Amendments lay down the command that no person shall be deprived "of life, liberty, or property, without due process of law." (Italics added.) From these provisions, those who would affirm find emanations that lead them to the conclusion that the private owner of a restaurant serving the public can pick and choose whom he will serve and restrict his dining room to whites only.

1964, Bell v. Maryland, 378 U.S. 254

Apartheid, however, is barred by the common law as respects innkeepers and common carriers. There were, to be sure, criminal statutes that regulated the common callings. But the civil remedies were made by judges who had no written constitution. We, on the other hand, live under a constitution that proclaims equal protection under the law. Why then, even in the absence of a statute, should apartheid be given constitutional sanction in the restaurant field? That was the question I asked in Lombard v. Louisiana, 373 U.S. 267. I repeat it here. Constitutionally speaking, why should Hooper Food Co., Inc., [378 U.S. 255] or Peoples Drug Stores—or any other establishment that dispenses food or medicines—stand on a higher, more sanctified level than Greyhound Bus when it comes to a constitutional right to pick and choose its customers?

1964, Bell v. Maryland, 378 U.S. 255

The debates on the Fourteenth Amendment show, as my Brother GOLDBERG points out, that one of its purposes was to grant the Negro "the rights and guarantees of the good old common law." Post at 294. The duty of common carriers to carry all, regardless of race, creed, or color, was in part the product of the inventive genius of judges. See Lombard v. Louisiana, 373 U.S. at 275-277. We should make that body of law the common law of the Thirteenth and Fourteenth Amendments, so to speak. Restaurants in the modern setting are as essential to travelers as inns and carriers.

1964, Bell v. Maryland, 378 U.S. 255

Are they not as much affected with a public interest? Is the right of a person to eat less basic than his right to travel, which we protected in Edwards v. California, 314 U.S. 160? Does not a right to travel in modern times shrink in value materially when there is no accompanying right to eat in public places?

1964, Bell v. Maryland, 378 U.S. 255

The right of any person to travel interstate irrespective of race, creed, or color is protected by the Constitution. Edwards v. California, supra. Certainly his right to travel intrastate is as basic. Certainly his right to eat at public restaurants is as important in the modern setting as the right of mobility. In these times, that right is, indeed, practically indispensable to travel, either interstate or intrastate.

V

1964, Bell v. Maryland, 378 U.S. 255

The requirement of equal protection, like the guarantee of privileges and immunities of citizenship, is a constitutional command directed to each State.

1964, Bell v. Maryland, 378 U.S. 255

State judicial action is as clearly "state" action as state administrative action. Indeed, we held in Shelley v. Kraemer, 334 U.S. 1, 20, that

1964, Bell v. Maryland, 378 U.S. 255

State action, as that [378 U.S. 256] phrase is understood for the purposes of the Fourteenth Amendment, refers to exertions of state power in all forms.

1964, Bell v. Maryland, 378 U.S. 256

That case involved suits in state courts to enforce restrictive covenants in deeds of residential property whereby the owner agreed that it should not be used or occupied by any person except a Caucasian. There was no state statute regulating the matter. That is, the State had not authorized by legislative enactment the use of restrictive covenants in residential property transactions; nor was there any administrative regulation of the matter. Only the courts of the State were involved. We held without dissent, in an opinion written by Chief Justice Vinson, that there was nonetheless state action within the meaning of the Fourteenth Amendment:

1964, Bell v. Maryland, 378 U.S. 256

The short of the matter is that, from the time of the adoption of the Fourteenth Amendment until the present, it has been the consistent ruling of this Court that the action of the States to which the Amendment has reference includes action of state courts and state judicial officials. Although, in construing the terms of the Fourteenth Amendment, differences have from time to time been expressed as to whether particular types of state action may be said to offend the Amendment's prohibitory provisions, it has never been suggested that state court action is immunized from the operation of those provisions simply because the act is that of the judicial branch of the state government.

1964, Bell v. Maryland, 378 U.S. 256

Id., 334 U.S. at 18.

1964, Bell v. Maryland, 378 U.S. 256

At the time of the Shelley case, there was, to be sure, a Congressional Civil Rights Act that guaranteed all citizens the same right to purchase and sell property "as is enjoyed by white citizens." Id., 334 U.S. at 11. But the existence of that statutory right, like the existence of a right under [378 U.S. 257] the Constitution, is no criterion for determining what is or what is not "state" action within the meaning of the Fourteenth Amendment. The conception of "state" action has been considered in light of the degree to which a State has participated in depriving a person of a right. "Judicial" action alone has been considered ample in hundreds of cases. Thus, "state action" took place only by judicial action in cases involving the use of coerced confessions (e.g., Chambers v. Florida, 309 U.S. 227), the denial to indigents of equal protection in judicial proceedings (e.g., Griffin v. Illinois, 351 U.S. 12), and the action of state courts in punishing for contempt by publication (e.g., Bridges v. California, 314 U.S. 252).

1964, Bell v. Maryland, 378 U.S. 257

Maryland's action against these Negroes was as authoritative as any case where the State in one way or another puts its full force behind a policy. The policy here was segregation in places of public accommodation; and Maryland enforced that policy with her police, her prosecutors, and her courts.

1964, Bell v. Maryland, 378 U.S. 257

The owners of the residential property in Shelley v. Kraemer were concerned, as was the corporate owner of this Maryland restaurant, over a possible decrease in the value of the property if Negroes were allowed to enter. It was testified in Shelley v. Kraemer that white purchasers got better bank loans than Negro purchasers:

1964, Bell v. Maryland, 378 U.S. 257

A. Well, I bought 1238 north Obert, a 4-family flat, about a year ago through a straw party, and I was enabled to secure a much larger first deed of trust than I would have been able to do at the present home on Garfield.

1964, Bell v. Maryland, 378 U.S. 257

The Court: I understand what you mean: it's easier to finance?

1964, Bell v. Maryland, 378 U.S. 257

A. Yes, easier to finance through white. That's common knowledge. [378 U.S. 258]

1964, Bell v. Maryland, 378 U.S. 258

Q. You mean if property is owned by a white person, its easier to finance it?

1964, Bell v. Maryland, 378 U.S. 258

A. White can secure larger loans, better loans. I have a 5% loan.

1964, Bell v. Maryland, 378 U.S. 258

In McGhee v. Sipes, a companion case to Shelley v. Kraemer, a realtor testified:

1964, Bell v. Maryland, 378 U.S. 258

I have seen the result of influx of colored people moving into a white neighborhood. There is a depression of values to start with, general run down of the neighborhood within a short time afterwards. I have, however, seen one exception. The colored people on Scotten, south of Tireman, have kept up their property pretty good and enjoyed them. As a result of this particular family's moving in. the people in the section are rather panic-stricken, and they are willing to sell—the only thing that is keeping them from throwing their stuff on the market and giving it away is the fact that they think they can get one or two colored people in there out of there. My own sales have been affected by this family….

1964, Bell v. Maryland, 378 U.S. 258

I am familiar with the property at 4626 Seebaldt, and the value of it with a colored family in it is fifty-two hundred, and if there was no colored family in it, I would say sixty-eight hundred. I would say seven thousand is a fair price for that property.

1964, Bell v. Maryland, 378 U.S. 258

While the purpose of the restrictive covenant is in part to protect the commercial values in a "closed" community (see Hundley v. Gorewitz, 77 U.S.App.D.C. 48, 132 F.2d 23, 24), it at times involves more. The sale to a Negro may bring a higher price than a sale to a white. See Swain v. Maxwell, 355 Mo. 448, 454, 196 S.W.2d 780, 785. Yet the resistance to having a Negro as a neighbor is often strong. All-white or all-Caucasian residential communities are often preferred by the owners. [378 U.S. 259]

1964, Bell v. Maryland, 378 U.S. 259

An occupant of a "white" area testified in Hurd v. Hodge, 334 U.S. 24, another companion case to Shelley v. Kraemer:

1964, Bell v. Maryland, 378 U.S. 259

…we feel bitter towards you for coming in and breaking up our block. We were very peaceful and harmonious there, and we feel that you bought that property just to transact it over to colored people, and we don't like it, and naturally we feel bitter towards you….

1964, Bell v. Maryland, 378 U.S. 259

This witness added:

1964, Bell v. Maryland, 378 U.S. 259

A. The complexion of the person doesn't mean anything.

1964, Bell v. Maryland, 378 U.S. 259

Q. The complexion does not?

1964, Bell v. Maryland, 378 U.S. 259

A. It is a fact that he is a negro.

1964, Bell v. Maryland, 378 U.S. 259

Q. I see, so no matter how brown a negro may be, no matter how white they are, you object to them?

1964, Bell v. Maryland, 378 U.S. 259

A. I would say yes, Mr. Houston…. I want to live with my own color people.

1964, Bell v. Maryland, 378 U.S. 259

The preferences involved in Shelley v. Kraemer and its companion cases were far more personal than the motivations of the corporate managers in the present case when they declined service to Negroes. Why should we refuse to let state courts enforce apartheid in residential areas of our cities, but let state courts enforce apartheid in restaurants? If a court decree is state action in one case, it is in the other. Property rights, so heavily underscored, are equally involved in each case.

1964, Bell v. Maryland, 378 U.S. 259

The customer in a restaurant is transitory; he comes and may never return. The colored family who buys the house next door is there for keeps—night and day. If "personal prejudices" are not to be the criterion in one case, they should not be in the other. We should put these restaurant cases in line with Shelley v. Kraemer, holding that what the Fourteenth Amendment requires in restrictive covenant cases it also requires from restaurants. [378 U.S. 260]

1964, Bell v. Maryland, 378 U.S. 260

Segregation of Negroes in the restaurants and lunch counters of parts of America is a relic of slavery. It is a badge of second-class citizenship. It is a denial of a privilege and immunity of national citizenship and of the equal protection guaranteed by the Fourteenth Amendment against abridgment by the States. When the state police, the state prosecutor, and the state courts unite to convict Negroes for renouncing that relic of slavery, the "State" violates the Fourteenth Amendment.

1964, Bell v. Maryland, 378 U.S. 260

I would reverse these judgments of conviction outright, as these Negroes, in asking for service in Hooper's restaurant, were only demanding what was their constitutional right.

APPENDIX I TO OPINION OF MR. JUSTICE DOUGLAS

1964, Bell v. Maryland, 378 U.S. 260

In the sit-in cases involving eating places last Term and this Term, practically all restaurant or lunch counter owners whose constitutional rights were vindicated below are corporations. Only two out of the 20 before us are noncorporate, as Appendix III shows. Some of these corporations are small, privately owned affairs. Others are large, national or regional businesses with many stockholders:

1964, Bell v. Maryland, 378 U.S. 260

S. H. Kress & Co., operating 272 stores in 30 States, its stock being listed on the New York Stock Exchange; McCrory Corporation, with 1,307 stores, its stock being listed on the New York Stock Exchange; J. J. Newberry Co., with 567 stores of which 371 serve food, its stock being listed on the New York Stock Exchange; F. W. Woolworth Co., with 2,130 stores, its stock also being listed on the New York Stock Exchange; Eckerd Drugs, having 17 stores with its stock traded over the counter. F. W. Woolworth has over 90,000 stockholders; J. J. Newberry about 8,000; McCrory over 24,000; S. H. Kress over 8,000; Eckerd Drugs about 1,000. [378 U.S. 261]

1964, Bell v. Maryland, 378 U.S. 261

At the national level, most "eating places," as Appendix IV shows, are individual proprietorships or partnerships. But a substantial number are corporate in form, and even though in numbers they are perhaps an eighth of the others, in business done they make up a much larger percentage of the total.

1964, Bell v. Maryland, 378 U.S. 261

Those living in the Washington, D.C., metropolitan area know that it is true in that area—the hotels are incorporated; Howard Johnson Co., listed on the New York Stock Exchange, has 650 restaurants and over 15,000 stockholders; Hot Shoppes, Inc., has 4,900 stockholders; Thompson Co. (involved in District of Columbia v. John R. Thompson Co., 346 U.S. 100) has 50 restaurants in this country with over 1,000 stockholders, and its stock is listed on the New York Stock Exchange; Peoples Drug Stores, with a New York Stock Exchange listing, has nearly 5,000 stockholders. See Moody's Industrial Manual (1963 ed.).

1964, Bell v. Maryland, 378 U.S. 261

All the sit-in cases involve a contest in a criminal trial between Negroes who sought service and state prosecutors and state judges who enforced trespass laws against them. The corporate beneficiaries of these convictions, those whose constitutional rights were vindicated by these convictions, are not parties to these suits. The beneficiary in the present case was Hooper Food Co., Inc., a Maryland corporation; and, as seen in Appendix IV, "eating places" in Maryland owned by corporations, though not a fourth in number of those owned by individuals or partnerships, do nearly as much business as the other two combined.

1964, Bell v. Maryland, 378 U.S. 261

So far as the corporate owner is concerned, what constitutional right is vindicated? It is said that ownership of property carries the right to use it in association with such people as the owner chooses. The corporate owners in these cases—the stockholders—are unidentified members of the public at large, who probably never saw these petitioners, who may never have frequented [378 U.S. 262] these restaurants. What personal rights of theirs would be vindicated by affirmance? Why should a stockholder in Kress, Woolworth, Howard Johnson, or any other corporate owner in the restaurant field have standing to say that any associational rights personal to him are involved? Why should his interests—his associational rights—make it possible to send these Negroes to jail?

1964, Bell v. Maryland, 378 U.S. 262

Who, in this situation, is the corporation? Whose racial prejudices are reflected in "its" decision to refuse service to Negroes? The racial prejudices of the manager? Of the stockholders? Of the board of directors?

1964, Bell v. Maryland, 378 U.S. 262

The Court in Santa Clara County v. Southern Pacific R. Co., 118 U.S. 394, interrupted counsel on oral argument to say,

1964, Bell v. Maryland, 378 U.S. 262

The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of opinion that it does.

1964, Bell v. Maryland, 378 U.S. 262

118 U.S. at 396. Later, the Court held that corporations are "persons" within the meaning of the Due Process Clause of the Fourteenth Amendment. Minneapolis & St. L.R. Co. v. Beckwith, 129 U.S. 26, 28. While that view is the law today, it prevailed only over dissenting opinions. See the dissent of MR. JUSTICE BLACK in Connecticut General Co. v. Johnson, 303 U.S. 77, 85; and my dissent in Wheeling Steel Corp. v. Glander, 337 U.S. 562, 576. MR. JUSTICE BLACK said of that doctrine and its influence:

1964, Bell v. Maryland, 378 U.S. 262

…of the cases in this Court in which the Fourteenth Amendment was applied during the first fifty years after its adoption, less than one-half of one percent invoked it in protection of the negro race, and more than 50 percent asked that its benefits be extended to corporations.

1964, Bell v. Maryland, 378 U.S. 262

Connecticut General Co. v. Johnson, 303 U.S. at 90. [378 U.S. 263]

1964, Bell v. Maryland, 378 U.S. 263

A corporation, like any other "client," is entitled to the attorney-client privilege. See Radiant Burners, Inc., v. American Gas Ass'n, 320 F.2d 314. A corporation is protected as a publisher by the Freedom of the Press Clause of the First Amendment. Grosjean v. American Press Co., 297 U.S. 233, 244; New York Times Co. v. Sullivan, 376 U.S. 254. A corporation, over the dissent of the first Mr. Justice Harlan, was held entitled to protection against unreasonable searches and seizures by reason of the Fourth Amendment. Hale v. Henkel, 201 U.S. 43, 76-77. On the other hand, the privilege of self-incrimination guaranteed by the Fifth Amendment cannot be utilized by a corporation. United States v. White, 322 U.S. 694. "The constitutional privilege against self-incrimination is essentially a personal one, applying only to natural individuals." Id. at 698.

1964, Bell v. Maryland, 378 U.S. 263

We deal here, we are told, with personal rights—the rights pertaining to property. One need not share his home with one he dislikes. One need not allow another to put his foot upon his private domain for any reason he desires—whether bigoted or enlightened. In the simple agricultural economy that Jefferson extolled, the conflicts posed were highly personal. But how is a "personal" right infringed when a corporate chain store, for example, is forced to open its lunch counters to people of all races? How can that so-called right be elevated to a constitutional level? How is that corporate right more "personal" than the right against self-incrimination?

1964, Bell v. Maryland, 378 U.S. 263

The revolutionary change effected by an affirmance in these sit-in cases would be much more damaging to an open and free society than what the Court did when it gave the corporation the sword and the shield of the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Affirmance finds in the Constitution a corporate right to refuse service to anyone "it" chooses, and to get the State to put people in jail who defy "its" will. [378 U.S. 264]

1964, Bell v. Maryland, 378 U.S. 264

More precisely, affirmance would give corporate management vast dimensions for social planning. 1

1964, Bell v. Maryland, 378 U.S. 264

Affirmance would make corporate management the arbiter of one of the deepest conflicts in our society: corporate management could then enlist the aid of state police, state prosecutors, and state courts to force apartheid on the community they served, if apartheid best suited the corporate need; or, if its profits would be better served by lowering the barriers of segregation, it could do so.

1964, Bell v. Maryland, 378 U.S. 264

Veblen, while not writing directly about corporate management and the racial issue, saw the danger of leaving fundamental, governmental decisions to the managers or absentee owners of our corporate enterprises:

1964, Bell v. Maryland, 378 U.S. 264

Absentee ownership and absentee management on this grand scale is immune from neighborly personalities and from sentimental considerations and scruples.

1964, Bell v. Maryland, 378 U.S. 264

It takes effect through the colorless and impersonal channels of corporation management at the [378 U.S. 265] hands of businesslike officials whose discretion and responsibility extend no farther than the procuring of a reasonably large—that is to say, the largest obtainable—net gain in terms of price. The absentee owners are removed out of all touch with the working personnel or with the industrial work in hand, except such remote, neutral and dispassionate contact by proxy as may be implied in the continued receipt of a free income; and very much the same is true for the business agents of the absentee owners, the investment bankers and the staff of responsible corporation officials. Their relation to what is going on, and to the manpower by use of which it is going on, is a fiscal relation. As industry, as a process of workmanship and a production of the means of life, the work in hand has no meaning for the absentee owners sitting in the fiscal background of these vested interests. Personalities and tangible consequences are eliminated, and the business of governing the rate and volume of the output goes forward in terms of funds, prices, and percentages.

1964, Bell v. Maryland, 378 U.S. 265

Absentee Ownership (1923), pp. 215-216.

1964, Bell v. Maryland, 378 U.S. 265

The point is that corporate motives in the retail field relate to corporate profits, corporate prestige, and corporate public relations. 2 Corporate motives have no tinge of [378 U.S. 266] an individual's choice to associate only with one class of customers, to keep members of one race from his "property," to erect a wall of privacy around a business in the manner that one is erected around the home. [378 U.S. 267]

1964, Bell v. Maryland, 378 U.S. 267

At times, a corporation has standing to assert the constitutional rights of its members, as otherwise the rights peculiar to the members as individuals might be lost or impaired. Thus, in NAACP v. Alabama, 357 U.S. 449, the question was whether the NAACP, a membership corporation, could assert on behalf of its members a right personal to them to be protected from compelled disclosure by the State of their affiliation with it. In that context, we said the NAACP was "the appropriate party to assert these rights, because it and its members are in every practical sense identical." Id. at 459. We felt, moreover, that to deny the NAACP standing to raise the question and to require it to be claimed by the members themselves "would result in nullification of the right at the very moment of its assertion." Ibid. Those were the important reasons governing our decision, the adverse effect of disclosure on the NAACP itself being only a makeweight. Id. at 459-460.

1964, Bell v. Maryland, 378 U.S. 267

The corporate owners of a restaurant, like the corporate owners of streetcars, buses, telephones, and electric light and gas facilities, are interested in balance sheets and in profit and loss statements. "It" does not stand at the door turning Negroes aside because of "its" feelings of antipathy to black-skinned people. "It" does not have any associational rights comparable to the classic individual store owner at a country crossroads whose store, in the dichotomy of an Adam Smith, was indeed no different from his home. "It" has been greatly transformed, as Berle and Means, The Modern Corporation and Private Property (1932), made clear a generation ago; and "it" has also transformed our economy. Separation of power [378 U.S. 268] or control from beneficial ownership was part of the phenomenon of change:

1964, Bell v. Maryland, 378 U.S. 268

This dissolution of the atom of property destroys the very foundation on which the economic order of the past three centuries has rested. Private enterprise, which has molded economic life since the close of the middle ages, has been rooted in the institution of private property. Under the feudal system, its predecessor, economic organization grew out of mutual obligations and privileges derived by various individuals from their relation to property which no one of them owned. Private enterprise, on the other hand, has assumed an owner of the instruments of production with complete property rights over those instruments. Whereas the organization of feudal economic life rested upon an elaborate system of binding customs, the organization under the system of private enterprise has rested upon the self-interest of the property owner—a self-interest held in check only by competition and the conditions of supply and demand. Such self-interest has long been regarded as the best guarantee of economic efficiency. It has been assumed that, if the individual is protected in the right both to use his own property as he sees fit and to receive the full fruits of its use, his desire for personal gain, for profits, can be relied upon as an effective incentive to his efficient use of any industrial property he may possess.

1964, Bell v. Maryland, 378 U.S. 268

In the quasi-public corporation, such an assumption no longer holds…. it is no longer the individual himself who uses his wealth. Those in control of that wealth, and therefore in a position to secure industrial efficiency and produce profits, are no longer, as owners, entitled to the bulk of such profits. Those who control the destinies of the typical [378 U.S. 269] modern corporation own so insignificant a fraction of the company's stock that the returns from running the corporation profitably accrue to them in only a very minor degree. The stockholders, on the other hand, to whom the profits of the corporation go, cannot be motivated by those profits to a more efficient use of the property, since they have surrendered all disposition of it to those in control of the enterprise. The explosion of the atom of property destroys the basis of the old assumption that the quest for profits will spur the owner of industrial property to its effective use. It consequently challenges the fundamental economic principle of individual initiative in industrial enterprise.

1964, Bell v. Maryland, 378 U.S. 269

Id. at 8-9. By like token, the separation of the atom of "property" into one unit of "management" and into another of "absentee ownership" has in other ways basically changed the relationship of that "property" to the public.

1964, Bell v. Maryland, 378 U.S. 269

A corporation may exclude Negroes if "it" thinks "it" can make more money doing so. "It" may go along with community prejudices when the profit and loss statement will benefit; "it" is unlikely to go against the current of community prejudice when profits are endangered. 3 [378 U.S. 270]

1964, Bell v. Maryland, 378 U.S. 270

Veblen stated somewhat the same idea in Absentee Ownership (1923), p. 107:

1964, Bell v. Maryland, 378 U.S. 270

…the arts of business are arts of bargaining, effrontery, salesmanship, make-believe, and are directed to the gain of the businessman at the cost of the community at large and in detail. Neither tangible performance nor the common good is a business proposition. Any material use which his traffic may serve is quite beside the businessman's purpose, except indirectly, insofar as it may serve to influence his clientele to his advantage.

1964, Bell v. Maryland, 378 U.S. 270

By this standard, the bus company could refuse service to Negroes if "it" felt "its" profits would increase once apartheid were allowed in the transportation field.

1964, Bell v. Maryland, 378 U.S. 270

In the instant case, G. Carroll Hooper, president of the corporate chain owning the restaurant here involved, testified concerning the episode that gave rise to these convictions. His reasons were wholly commercial ones, as we have already seen. [378 U.S. 271]

1964, Bell v. Maryland, 378 U.S. 271

There are occasions when the corporation is little more than a veil for man and wife or brother and brother, and disregarding the corporate entity often is the instrument for achieving a just result. But the relegation of a Negro customer to second-class citizenship is not just. Nor is fastening apartheid on America a worthy occasion for tearing aside the corporate veil.

APPENDIX II TO OPINION OF MR. JUSTICE DOUGLAS

1964, Bell v. Maryland, 378 U.S. 271

A. In Green v. Virginia, 378 U.S. 550, the purpose or reason for not serving Negroes was ruled to be immaterial to the issues in the case.

1964, Bell v. Maryland, 378 U.S. 271

B. In the following cases, the testimony of corporate officers shows that the reason was either a commercial one or, which amounts to the same thing, that service to Negroes was not in accord with local custom:

1964, Bell v. Maryland, 378 U.S. 271

1. Bouie v. City of Columbia, 378 U.S. 347.

1964, Bell v. Maryland, 378 U.S. 271

Dr. Guy Malone, the manager of the Columbia branch of Eckerd Drugs of Florida, Inc., testified:

1964, Bell v. Maryland, 378 U.S. 271

Q. Mr. Malone, is the public generally invited to do business with Eckerd's?

1964, Bell v. Maryland, 378 U.S. 271

A. Yes, I would say so.

1964, Bell v. Maryland, 378 U.S. 271

Q. Does that mean all of the public of all races?

1964, Bell v. Maryland, 378 U.S. 271

A. Yes.

1964, Bell v. Maryland, 378 U.S. 271

Q. Are Negroes welcome to do business with Eckerd's?

1964, Bell v. Maryland, 378 U.S. 271

A. Yes.

1964, Bell v. Maryland, 378 U.S. 271

Q. Are Negroes welcome to do business at the lunch counter at Eckerd's?

1964, Bell v. Maryland, 378 U.S. 271

A. Well, we have never served Negroes at the lunch counter department.

1964, Bell v. Maryland, 378 U.S. 271

Q. According to the present policy of Eckerd's, the lunch counter is closed to members of the Negro public?

1964, Bell v. Maryland, 378 U.S. 271

A. I would say yes. [378 U.S. 272]

1964, Bell v. Maryland, 378 U.S. 272

Q. And all other departments of Eckerd's are open to members of the Negro public, as well as to other members of the public generally?

1964, Bell v. Maryland, 378 U.S. 272

A. Yes.

1964, Bell v. Maryland, 378 U.S. 272

Q. Mr. Malone, on the occasion of the arrest of these young men, what were they doing in your store, if you know?

1964, Bell v. Maryland, 378 U.S. 272

A. Well, it was four of them came in. Two of them went back and sat down at the first booth and started reading books, and they sat there for about fifteen minutes. Of course, we had had a group about a week prior to that, of about fifty, who came into the store.

1964, Bell v. Maryland, 378 U.S. 272

Mr. Perry: Your Honor, I ask, of course, that the prior incident be stricken from the record. That is not responsive to the question which has been asked, and is not pertinent to the matter of the guilt or innocence of these young men.

1964, Bell v. Maryland, 378 U.S. 272

The Court: All right, strike it.

1964, Bell v. Maryland, 378 U.S. 272

Mr. Sholenberger: Your Honor, this is their own witness.

1964, Bell v. Maryland, 378 U.S. 272

Mr. Perry: We announced at the outset that Mr. Malone would, in a sense, be a hostile witness.

\* \* \* \*

1964, Bell v. Maryland, 378 U.S. 272

Q. And so, when a person comes into Eckerd's and seats himself at a place where food is ordinarily served, what is the practice of your employees in that regard?

1964, Bell v. Maryland, 378 U.S. 272

A. Well, it's to take their order.

1964, Bell v. Maryland, 378 U.S. 272

Q. Did anyone seek to take the orders of these young men?

1964, Bell v. Maryland, 378 U.S. 272

A. No, they did not.

1964, Bell v. Maryland, 378 U.S. 272

Q. Why did they not do so?

1964, Bell v. Maryland, 378 U.S. 272

A. Because we didn't want to serve them.

1964, Bell v. Maryland, 378 U.S. 272

Q. Why did you not want to serve them?

1964, Bell v. Maryland, 378 U.S. 272

A. I don't think I have to answer that.

1964, Bell v. Maryland, 378 U.S. 272

Q. Did you refuse to serve them because they were Negroes? [378 U.S. 273]

1964, Bell v. Maryland, 378 U.S. 273

A. No.

1964, Bell v. Maryland, 378 U.S. 273

Q. You did say, however, that Eckerd's has the policy of not serving Negroes in the lunch counter section?

1964, Bell v. Maryland, 378 U.S. 273

A. I would say that all stores do the same thing.

1964, Bell v. Maryland, 378 U.S. 273

Q. We're speaking specifically of Eckerd's?

1964, Bell v. Maryland, 378 U.S. 273

A. Yes.

1964, Bell v. Maryland, 378 U.S. 273

Q. Did you or any or your employees, Mr. Malone, approach these defendants and take their order for food?

1964, Bell v. Maryland, 378 U.S. 273

A. No.

1964, Bell v. Maryland, 378 U.S. 273

2. Robinson v. Florida, 378 U.S. 153.

1964, Bell v. Maryland, 378 U.S. 273

A Vice President of Shell's City, Inc., testified:

1964, Bell v. Maryland, 378 U.S. 273

Q. Why did you refuse to serve these defendants?

1964, Bell v. Maryland, 378 U.S. 273

A. Because I feel, definitely, it is very detrimental to our business to do so.

1964, Bell v. Maryland, 378 U.S. 273

Q. What do you mean "detrimental"?

1964, Bell v. Maryland, 378 U.S. 273

A. Detrimental because it would mean a loss of business to us to serve mixed groups.

1964, Bell v. Maryland, 378 U.S. 273

Another Vice President of Shell's City, Inc., testified:

1964, Bell v. Maryland, 378 U.S. 273

Q. You have several departments in your store, do you not?

1964, Bell v. Maryland, 378 U.S. 273

A. Yes. Nineteen, I believe. Maybe twenty.

1964, Bell v. Maryland, 378 U.S. 273

Q. Negroes are invited to participate and make purchases in eighteen of these departments?

1964, Bell v. Maryland, 378 U.S. 273

A. Yes, sir.

1964, Bell v. Maryland, 378 U.S. 273

Q. Can you distinguish between your feeling that it is not detrimental to have them served in eighteen departments and it is detrimental to have them served in the nineteenth department, namely, the lunch counter?

1964, Bell v. Maryland, 378 U.S. 273

A. Well, it goes back to what is the custom, that is, the tradition of what is basically observed in Dade County would be the bottom of it. We have—

\* \* \* \*

1964, Bell v. Maryland, 378 U.S. 273

Q. Would you tell me what this custom is, that you are making reference to, that would prevent you from serving Negroes at your lunch counter? [378 U.S. 274]

1964, Bell v. Maryland, 378 U.S. 274

A. I believe I already answered that, that it is the customs and traditions and practice in this county—not only in this county, but in this part of the state and elsewhere, not to serve whites and colored people seated in the same restaurant. That's my answer.

1964, Bell v. Maryland, 378 U.S. 274

Q. Was that the sole reason, the sole basis, for your feeling that this was detrimental to your business?

1964, Bell v. Maryland, 378 U.S. 274

A. Well, that is the foundation of it, yes, but we feel that, at this time, if we went into a thing of trying to break that barrier, we might have racial trouble, which we don't want. We have lots of good friends among colored people, and will have when this case is over.

1964, Bell v. Maryland, 378 U.S. 274

Q. Are you familiar with the fact that the Woolworth Stores in this community have eliminated this practice?

1964, Bell v. Maryland, 378 U.S. 274

Mr. Goshgarian: To which the State objects. It is irrelevant and immaterial.

1964, Bell v. Maryland, 378 U.S. 274

The Court: The objection is sustained.

1964, Bell v. Maryland, 378 U.S. 274

3. Fox v. North Carolina, 378 U.S. 587.

1964, Bell v. Maryland, 378 U.S. 274

Mr. Claude M. Breeden, the manager of the McCrory branch in Raleigh, testified:

1964, Bell v. Maryland, 378 U.S. 274

I just don't serve colored. I don't have the facilities for serving colored. Explaining why I don't serve colored. I don't have the facilities for serving colored. I have the standard short order lunch, but I don't serve colored. I don't serve colored because I don't have the facilities for serving colored.

1964, Bell v. Maryland, 378 U.S. 274

COUNSEL FOR DEFENDANT: What facilities would be necessary for serving colored?

1964, Bell v. Maryland, 378 U.S. 274

SOLICITOR FOR STATE: Objection.

1964, Bell v. Maryland, 378 U.S. 274

THE COURT: Sustained.

1964, Bell v. Maryland, 378 U.S. 274

WITNESS CONTINUES: It is not the policy of my store to discriminate and not serve Negroes. We have no policy against discrimination. I do not discriminate, and it is not the custom in the Raleigh Store to discriminate. I do not have the facilities for serving colored, and that is why I don't serve colored. [378 U.S. 275]

1964, Bell v. Maryland, 378 U.S. 275

4. Mitchell v. City of Charleston, 378 U.S. 551.

1964, Bell v. Maryland, 378 U.S. 275

Mr. Albert C. Watts, the manager of the S. H. Kress & Co. outlet in Charleston, testified:

1964, Bell v. Maryland, 378 U.S. 275

Q…. What type of business is Kress'?

1964, Bell v. Maryland, 378 U.S. 275

A. Five and Ten Cent variety store.

1964, Bell v. Maryland, 378 U.S. 275

Q. Could you tell us briefly something about what commodities it sells—does it sell just about every type of commodity that one might find in this type establishment?

1964, Bell v. Maryland, 378 U.S. 275

A. Strictly variety store merchandise—no appliances or anything like that.

1964, Bell v. Maryland, 378 U.S. 275

Q. I see. Kress, I believe it invites members of the public generally into its premises to do business, does it not?

1964, Bell v. Maryland, 378 U.S. 275

A. Yes.

1964, Bell v. Maryland, 378 U.S. 275

Q. It invites Negroes in to do business, also?

1964, Bell v. Maryland, 378 U.S. 275

A. Right.

1964, Bell v. Maryland, 378 U.S. 275

Q. Are Negroes served in all of the departments of Kress' except your lunch counter?

1964, Bell v. Maryland, 378 U.S. 275

A. We observe local custom.

1964, Bell v. Maryland, 378 U.S. 275

Q. In Charleston, South Carolina, the store that you manage, sir, does Kress' serve Negroes at the lunch counter?

1964, Bell v. Maryland, 378 U.S. 275

A. No. It is not a local custom.

1964, Bell v. Maryland, 378 U.S. 275

Q. To your knowledge, does the other like businesses serve Negroes at their lunch counters? What might happen at Woolworth's or some of the others?

1964, Bell v. Maryland, 378 U.S. 275

A. They observe local custom—I say they wouldn't.

1964, Bell v. Maryland, 378 U.S. 275

Q. Then you know of your own knowledge that they do not serve Negroes? Are you speaking of other business such as your business?

1964, Bell v. Maryland, 378 U.S. 275

A. I can only speak in our field, yes.

1964, Bell v. Maryland, 378 U.S. 275

Q. In your field, so that the other stores in your field do not serve Negroes at their lunch counters?

1964, Bell v. Maryland, 378 U.S. 275

A. Yes, sir. [378 U.S. 276]

1964, Bell v. Maryland, 378 U.S. 276

5. Hamm v. City of Rock Hill, 377 U.S. 988.

1964, Bell v. Maryland, 378 U.S. 276

Mr. H. C. Whiteaker, the manager of McCrory's in Rock Hill, testified:

1964, Bell v. Maryland, 378 U.S. 276

Q. All right. Now, how many departments do you have in your store?

1964, Bell v. Maryland, 378 U.S. 276

A. Around twenty.

1964, Bell v. Maryland, 378 U.S. 276

Q. Around twenty departments?

1964, Bell v. Maryland, 378 U.S. 276

A. Yes, sir.

1964, Bell v. Maryland, 378 U.S. 276

Q. All right, sir, is one of these departments considered a lunch counter or establishment where food is served?

1964, Bell v. Maryland, 378 U.S. 276

A. Yes, sir. That is a separate department.

\* \* \* \*

1964, Bell v. Maryland, 378 U.S. 276

Q. Now, I believe, is it true that you invite members of the public to come into your store?

1964, Bell v. Maryland, 378 U.S. 276

A. Yes, it is for the public.

1964, Bell v. Maryland, 378 U.S. 276

Q. And is it true, too, that the public to you means everybody, various races, religions, nationalities?

1964, Bell v. Maryland, 378 U.S. 276

A. Yes, sir.

1964, Bell v. Maryland, 378 U.S. 276

Q. The policy of your store as manager is not to exclude anybody from coming in and buying these three thousand items on account of race, nationality or religion, is that right?

1964, Bell v. Maryland, 378 U.S. 276

A. The only place where there has been exception, where there is an exception, is at our lunch counter.

1964, Bell v. Maryland, 378 U.S. 276

Q. Oh, I see. Is that a written policy you get from headquarters in New York?

1964, Bell v. Maryland, 378 U.S. 276

A. No, sir.

1964, Bell v. Maryland, 378 U.S. 276

Q. It is not. You don't have any memorandum in your store that says that is a policy?

1964, Bell v. Maryland, 378 U.S. 276

A. No, sir.

\* \* \* \*

1964, Bell v. Maryland, 378 U.S. 276

Q. Is it true, then, that if, that well, even if a man was quiet enough, and a Communist, that he could sit at your lunch counter and eat, according to the policy of your store right now? Whether you knew he was a Communist [378 U.S. 277] or not, so his political beliefs would not have anything to do with it, is that right?

1964, Bell v. Maryland, 378 U.S. 277

A. No.

1964, Bell v. Maryland, 378 U.S. 277

Q. Now, sir, you said that there was a policy there as to Negroes sitting. Am I to understand that you do serve Negroes or Americans who are Negroes, standing up?

1964, Bell v. Maryland, 378 U.S. 277

A. To take out at the end of the counter, we serve take-outs, yes, sir.

1964, Bell v. Maryland, 378 U.S. 277

Q. In other words, you have a lunch counter at the end of your store?

1964, Bell v. Maryland, 378 U.S. 277

A. No, I said at the end, they can wait and get a package or a meal or order a coke or hamburger and take it out.

1964, Bell v. Maryland, 378 U.S. 277

Q. Oh, to take out. They don't normally eat it on the premises?

1964, Bell v. Maryland, 378 U.S. 277

A. They might, but usually it is to take out.

\* \* \* \*

1964, Bell v. Maryland, 378 U.S. 277

Q. Of course, you probably have some Negro employees in your store, in some capacity, don't you?

1964, Bell v. Maryland, 378 U.S. 277

A. Yes, sir.

1964, Bell v. Maryland, 378 U.S. 277

Q. They eat on the premises, is that right?

1964, Bell v. Maryland, 378 U.S. 277

A. Yes, sir.

1964, Bell v. Maryland, 378 U.S. 277

Q. But not at the lunch counter?

1964, Bell v. Maryland, 378 U.S. 277

A. No, sir.

\* \* \* \*

1964, Bell v. Maryland, 378 U.S. 277

Q. Oh, I see, but generally speaking, you consider the American Negro as part of the general public, is that right, just generally speaking?

1964, Bell v. Maryland, 378 U.S. 277

A. Yes, sir.

1964, Bell v. Maryland, 378 U.S. 277

Q. You don't have any objections for him spending any amount of money he wants to on these 3,000 items, do you?

1964, Bell v. Maryland, 378 U.S. 277

A. That's up to him to spend if he wants to spend.

1964, Bell v. Maryland, 378 U.S. 277

Q. This is a custom, as I understand it, this is a custom, instead of a law, that causes you not to want him to ask for service at the lunch counter? [378 U.S. 278]

1964, Bell v. Maryland, 378 U.S. 278

A. There is no law to my knowledge; it is merely a custom in this community.

1964, Bell v. Maryland, 378 U.S. 278

C. The testimony in the following cases is less definitive with respect to why Negroes were refused service.

1964, Bell v. Maryland, 378 U.S. 278

In Griffin v. Maryland, 378 U.S. 130, the president of the corporations which own and operate Glen Echo Amusement Park said he would admit Chinese, Filipinos, Indians and, generally, anyone but Negroes. He did not elaborate, beyond stating that a private property owner has the right to make such a choice.

1964, Bell v. Maryland, 378 U.S. 278

In Barr v. City of Columbia, 378 U.S. 146, the co-owner and manager of the Taylor Street Pharmacy said Negroes could purchase in other departments of his store, and that, whether for business or personal reasons, he felt he had a right to refuse service to anyone.

1964, Bell v. Maryland, 378 U.S. 278

In Williams v. North Carolina, 378 U.S. 548, the president of Jones Drug Company said Negroes were not permitted to take seats at the lunch counter. He did say, however, that Negroes could purchase food and eat it on the premises so long as they stood some distance from the lunch counter, such as near the back door.

1964, Bell v. Maryland, 378 U.S. 278

In Lupper v. Arkansas, 377 U.S. 989, and Harris v. Virginia, 378 U.S. 552, the record discloses only that the establishment did not serve Negroes.

APPENDIX III TO OPINION OF MR. JUSTICE DOUGLAS

1964, Bell v. Maryland, 378 U.S. 278

Corporate\* Business Establishments Involved In The "Sit-in" Cases Before This Court During The 1962 Term and The 1963 Term. Reference (other than the record in each case): Moody's Industrial Manual (1963 ed.). [378 U.S. 279]

1964, Bell v. Maryland, 378 U.S. 279

1. Gus Blass & Co. Department Store.

1964, Bell v. Maryland, 378 U.S. 279

Case: Lupper v. Arkansas, 377 U.S. 989.

1964, Bell v. Maryland, 378 U.S. 279

Location: Little Rock, Arkansas.

1964, Bell v. Maryland, 378 U.S. 279

Ownership: Privately owned corporation.

1964, Bell v. Maryland, 378 U.S. 279

2. Eckerd Drugs of Florida, Inc.

1964, Bell v. Maryland, 378 U.S. 279

Case: Bouie v. City of Columbia, 378 U.S. 347.

1964, Bell v. Maryland, 378 U.S. 279

Location: 17 retail drugstores throughout Southern States.

1964, Bell v. Maryland, 378 U.S. 279

Ownership: Publicly owned corporation.

1964, Bell v. Maryland, 378 U.S. 279

Number of shareholders: 1,000.

1964, Bell v. Maryland, 378 U.S. 279

Stock traded: Over-the-counter market.

1964, Bell v. Maryland, 378 U.S. 279

3. George's Drug Stores, Inc.

1964, Bell v. Maryland, 378 U.S. 279

Case: Harris v. Virginia, 378 U.S. 552.

1964, Bell v. Maryland, 378 U.S. 279

Location: Hopewell, Virginia.

1964, Bell v. Maryland, 378 U.S. 279

Ownership: Privately owned corporation.

1964, Bell v. Maryland, 378 U.S. 279

4. Gwynn Oak Park, Inc.

1964, Bell v. Maryland, 378 U.S. 279

Case: Drews v. Maryland, 378 U.S. 547.

1964, Bell v. Maryland, 378 U.S. 279

Location: Baltimore, Maryland.

1964, Bell v. Maryland, 378 U.S. 279

Ownership: Privately owned corporation.

1964, Bell v. Maryland, 378 U.S. 279

5. Hooper Food Company, Inc.

1964, Bell v. Maryland, 378 U.S. 279

Case: Bell v. Maryland, 378 U.S. 226.

1964, Bell v. Maryland, 378 U.S. 279

Location: Several restaurants in Baltimore, Maryland.

1964, Bell v. Maryland, 378 U.S. 279

Ownership: Privately owned corporation.

1964, Bell v. Maryland, 378 U.S. 279

6. Howard Johnson Co.

1964, Bell v. Maryland, 378 U.S. 279

Case: Henry v. Virginia, 374 U.S. 98.

1964, Bell v. Maryland, 378 U.S. 279

Location: 650 restaurants in 25 States.

1964, Bell v. Maryland, 378 U.S. 279

Ownership: Publicly owned corporation.

1964, Bell v. Maryland, 378 U.S. 279

Number of shareholders: 15,203.

1964, Bell v. Maryland, 378 U.S. 279

Stock traded: New York Stock Exchange.

1964, Bell v. Maryland, 378 U.S. 279

7. Jones Drug Company, Inc.

1964, Bell v. Maryland, 378 U.S. 279

Case: Williams v. North Carolina, 378 U.S. 548.

1964, Bell v. Maryland, 378 U.S. 279

Location: Monroe, North Carolina.

1964, Bell v. Maryland, 378 U.S. 279

Ownership: Privately owned corporation. [378 U.S. 280]

1964, Bell v. Maryland, 378 U.S. 280

8. Kebar, Inc. (lessee from Rakad, Inc.).

1964, Bell v. Maryland, 378 U.S. 280

Case: Griffin v. Maryland, 378 U.S. 130.

1964, Bell v. Maryland, 378 U.S. 280

Location: Glen Echo Amusement Park, Maryland.

1964, Bell v. Maryland, 378 U.S. 280

Ownership: Privately owned corporation.

1964, Bell v. Maryland, 378 U.S. 280

9. S. H. Kress & Company.

1964, Bell v. Maryland, 378 U.S. 280

Cases: Mitchell v. City of Charleston, 378 U.S. 551;

1964, Bell v. Maryland, 378 U.S. 280

Avent v. North Carolina, 373 U.S. 375; Gober v. City

1964, Bell v. Maryland, 378 U.S. 280

of Birmingham, 373 U.S. 374; Peterson v. City of

1964, Bell v. Maryland, 378 U.S. 280

Greenville, 373 U.S. 244.

1964, Bell v. Maryland, 378 U.S. 280

Location: 272 stores in 30 States.

1964, Bell v. Maryland, 378 U.S. 280

Ownership: Publicly owned corporation.

1964, Bell v. Maryland, 378 U.S. 280

Number of shareholders: 8,767.

1964, Bell v. Maryland, 378 U.S. 280

Stock traded: New York Stock Exchange.

1964, Bell v. Maryland, 378 U.S. 280

10. Loveman's Department Store (food concession operated by

1964, Bell v. Maryland, 378 U.S. 280

Price Candy Company of Kansas City).

1964, Bell v. Maryland, 378 U.S. 280

Case: Gober v. City of Birmingham, supra.

1964, Bell v. Maryland, 378 U.S. 280

Location: Birmingham, Alabama.

1964, Bell v. Maryland, 378 U.S. 280

Ownership: Privately owned corporation.

1964, Bell v. Maryland, 378 U.S. 280

11. McCrory Corporation.

1964, Bell v. Maryland, 378 U.S. 280

Cases: Fox v. North Carolina, 378 U.S. 587; Hamm v.

1964, Bell v. Maryland, 378 U.S. 280

City of Rock Hill, 377 U.S. 988; Lombard v. Louisiana,

1964, Bell v. Maryland, 378 U.S. 280

373 U.S. 267.

1964, Bell v. Maryland, 378 U.S. 280

Location: 1,307 stores throughout the United States.

1964, Bell v. Maryland, 378 U.S. 280

Ownership: Publicly owned corporation.

1964, Bell v. Maryland, 378 U.S. 280

Number of shareholders: 24,117.

1964, Bell v. Maryland, 378 U.S. 280

Stock traded: New York Stock Exchange.

1964, Bell v. Maryland, 378 U.S. 280

12. National White Tower System, Incorporated.

1964, Bell v. Maryland, 378 U.S. 280

Case: Green v. Virginia, 378 U.S. 550.

1964, Bell v. Maryland, 378 U.S. 280

Location: Richmond, Virginia, and other cities (number

1964, Bell v. Maryland, 378 U.S. 280

unknown).

1964, Bell v. Maryland, 378 U.S. 280

Ownership: Apparently a privately owned corporation.

1964, Bell v. Maryland, 378 U.S. 280

[378 U.S. 281]

1964, Bell v. Maryland, 378 U.S. 281

13. J. J. Newberry Co.

1964, Bell v. Maryland, 378 U.S. 281

Case: Gober v. City of Birmingham, supra.

1964, Bell v. Maryland, 378 U.S. 281

Location: 567 variety stores in 46 States; soda fountains,

1964, Bell v. Maryland, 378 U.S. 281

lunch bars, cafeterias and restaurants in 371 stores.

1964, Bell v. Maryland, 378 U.S. 281

Ownership: Publicly owned corporation.

1964, Bell v. Maryland, 378 U.S. 281

Number of shareholders: 7,909.

1964, Bell v. Maryland, 378 U.S. 281

Stock traded: New York Stock Exchange.

1964, Bell v. Maryland, 378 U.S. 281

14. Patterson Drug Co.

1964, Bell v. Maryland, 378 U.S. 281

Cases: Thompson v. Virginia, 374 U.S. 99; Wood v.

1964, Bell v. Maryland, 378 U.S. 281

Virginia, 374 U.S. 100.

1964, Bell v. Maryland, 378 U.S. 281

Location: Lynchburg, Virginia.

1964, Bell v. Maryland, 378 U.S. 281

Ownership: Privately owned corporation.

1964, Bell v. Maryland, 378 U.S. 281

15. Pizitz's Department Store.

1964, Bell v. Maryland, 378 U.S. 281

Case: Gober v. City of Birmingham, supra.

1964, Bell v. Maryland, 378 U.S. 281

Location: Birmingham, Alabama.

1964, Bell v. Maryland, 378 U.S. 281

Ownership: Privately owned corporation.

1964, Bell v. Maryland, 378 U.S. 281

16. Shell's City, Inc.

1964, Bell v. Maryland, 378 U.S. 281

Case: Robinson v. Florida, 378 U.S. 153.

1964, Bell v. Maryland, 378 U.S. 281

Location: Miami, Florida.

1964, Bell v. Maryland, 378 U.S. 281

Ownership: Privately owned corporation.

1964, Bell v. Maryland, 378 U.S. 281

17. Thalhimer Bros., Inc., Department Store.

1964, Bell v. Maryland, 378 U.S. 281

Case: Randolph v. Virginia, 374 U.S. 97.

1964, Bell v. Maryland, 378 U.S. 281

Location: Richmond, Virginia.

1964, Bell v. Maryland, 378 U.S. 281

Ownership: Privately owned corporation.

1964, Bell v. Maryland, 378 U.S. 281

18. F. W. Woolworth Company.

1964, Bell v. Maryland, 378 U.S. 281

Case: Gober v. City of Birmingham, supra.

1964, Bell v. Maryland, 378 U.S. 281

Location: 2,130 stores (primarily variety stores)

1964, Bell v. Maryland, 378 U.S. 281

throughout the United States.

1964, Bell v. Maryland, 378 U.S. 281

Ownership: Publicly owned corporation.

1964, Bell v. Maryland, 378 U.S. 281

Number of shareholders: 90,435.

1964, Bell v. Maryland, 378 U.S. 281

Stock traded: New York Stock Exchange. [378 U.S. 282]

APPENDIX IV TO OPINION OF MR. JUSTICE DOUGLAS.

1964, Bell v. Maryland, 378 U.S. 282

Legal form of organization—by kind of business.

1964, Bell v. Maryland, 378 U.S. 282

References: United States Census of Business, 1958, Vol. I.

1964, Bell v. Maryland, 378 U.S. 282

Retail trade—Summary Statistics (1961).

1964, Bell v. Maryland, 378 U.S. 282

A. UNITED STATES.

1964, Bell v. Maryland, 378 U.S. 282

Establishments Sales

1964, Bell v. Maryland, 378 U.S. 282

Eating places: (number) ($1,000)

1964, Bell v. Maryland, 378 U.S. 282

Total 229,238 $11,037,644

1964, Bell v. Maryland, 378 U.S. 282

Individual proprietorships 166,003 5,202,308

1964, Bell v. Maryland, 378 U.S. 282

Partnerships 37,756 2,062,830

1964, Bell v. Maryland, 378 U.S. 282

Corporations 25,184 3,723,295

1964, Bell v. Maryland, 378 U.S. 282

Cooperatives 231 13,359

1964, Bell v. Maryland, 378 U.S. 282

Other legal forms 64 35,852

1964, Bell v. Maryland, 378 U.S. 282

Drugstores with fountain:

1964, Bell v. Maryland, 378 U.S. 282

Total 24,093 $ 3,535,637

1964, Bell v. Maryland, 378 U.S. 282

Individual proprietorships 13,549 1,294,737

1964, Bell v. Maryland, 378 U.S. 282

Partnerships 4,368 602,014

1964, Bell v. Maryland, 378 U.S. 282

Corporations 6,140 1,633,998

1964, Bell v. Maryland, 378 U.S. 282

Cooperatives 9 (withheld)

1964, Bell v. Maryland, 378 U.S. 282

Other legal forms 27 Do.

1964, Bell v. Maryland, 378 U.S. 282

Proprietary stores with fountain:

1964, Bell v. Maryland, 378 U.S. 282

Total 2,601 132,518

1964, Bell v. Maryland, 378 U.S. 282

Individual proprietorships 1,968 85,988

1964, Bell v. Maryland, 378 U.S. 282

Partnerships 446 (withheld)

1964, Bell v. Maryland, 378 U.S. 282

Corporations 185 21,090

1964, Bell v. Maryland, 378 U.S. 282

Cooperatives —— ——

1964, Bell v. Maryland, 378 U.S. 282

Other legal forms 2 (withheld)

1964, Bell v. Maryland, 378 U.S. 282

Department stores:

1964, Bell v. Maryland, 378 U.S. 282

Total 3,157 13,359,467

1964, Bell v. Maryland, 378 U.S. 282

Individual proprietorships 19 (withheld)

1964, Bell v. Maryland, 378 U.S. 282

Partnerships 64 85,273

1964, Bell v. Maryland, 378 U.S. 282

Corporations 3,073 13,245,916

1964, Bell v. Maryland, 378 U.S. 282

Cooperatives 1 (withheld)

1964, Bell v. Maryland, 378 U.S. 282

Other legal forms —— ——

1964, Bell v. Maryland, 378 U.S. 282

[378 U.S. 283]

1964, Bell v. Maryland, 378 U.S. 283

B. STATE OF MARYLAND\*

1964, Bell v. Maryland, 378 U.S. 283

Establishments Sales

1964, Bell v. Maryland, 378 U.S. 283

(number) ($1,000)

1964, Bell v. Maryland, 378 U.S. 283

Eating places:

1964, Bell v. Maryland, 378 U.S. 283

Total 3,223 175,546

1964, Bell v. Maryland, 378 U.S. 283

Individual proprietorships 2,109 72,816

1964, Bell v. Maryland, 378 U.S. 283

Partnerships 456 30,386

1964, Bell v. Maryland, 378 U.S. 283

Corporations 628 71,397

1964, Bell v. Maryland, 378 U.S. 283

Other legal forms 30 947

1964, Bell v. Maryland, 378 U.S. 283

Drugstores, proprietary stores:

1964, Bell v. Maryland, 378 U.S. 283

Total 832 139,943

1964, Bell v. Maryland, 378 U.S. 283

Individual proprietorships 454 42,753

1964, Bell v. Maryland, 378 U.S. 283

Partnerships 139 (withheld)

1964, Bell v. Maryland, 378 U.S. 283

Corporations 235 76,403

1964, Bell v. Maryland, 378 U.S. 283

Other legal forms 4 (withheld)

1964, Bell v. Maryland, 378 U.S. 283

Department stores:

1964, Bell v. Maryland, 378 U.S. 283

Total 43 247,872

1964, Bell v. Maryland, 378 U.S. 283

Individual proprietorships —— ——

1964, Bell v. Maryland, 378 U.S. 283

Partnerships —— ——

1964, Bell v. Maryland, 378 U.S. 283

Corporations 43 247,872

1964, Bell v. Maryland, 378 U.S. 283

Other legal forms —— ——

[378 U.S. 284]

APPENDIX V TO OPINION OF MR. JUSTICE DOUGLAS.

1964, Bell v. Maryland, 378 U.S. 284

STATE ANTIDISCRIMINATION LAWS

1964, Bell v. Maryland, 378 U.S. 284

(As of March 18, 1964)

1964, Bell v. Maryland, 378 U.S. 284

(PREPARED BY THE UNITED STATES COMMISSION ON CIVIL RIGHTS)

1964, Bell v. Maryland, 378 U.S. 284

Privately

1964, Bell v. Maryland, 378 U.S. 284

owned

1964, Bell v. Maryland, 378 U.S. 284

public

1964, Bell v. Maryland, 378 U.S. 284

State accommoda- Private Private Private Private

1964, Bell v. Maryland, 378 U.S. 284

tions employment housing schools hospitals

1964, Bell v. Maryland, 378 U.S. 284

Alaska 11959 11959 1962 —— 21962

1964, Bell v. Maryland, 378 U.S. 284

California 1897 1959 1963 —— 21959

1964, Bell v. Maryland, 378 U.S. 284

Colorado 1885 1957 1959 —— ——

1964, Bell v. Maryland, 378 U.S. 284

Connecticut 1884 1947 1959 —— 21953

1964, Bell v. Maryland, 378 U.S. 284

Delaware 1963 1960 —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

Hawaii —— 1963 —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

Idaho 1961 1961 —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

Illinois 1885 1961 —— 3 1963 4 1927

1964, Bell v. Maryland, 378 U.S. 284

Indiana 1885 1945 —— —— 21963

1964, Bell v. Maryland, 378 U.S. 284

Iowa 1884 1963 —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

Kansas 1874 1961 —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

Kentucky 5—— —— —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

Maine 1959 —— —— —— 2 1959

1964, Bell v. Maryland, 378 U.S. 284

Maryland 6 1963 —— —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

Massachusetts 1865 1946 1959 1949 1953

1964, Bell v. Maryland, 378 U.S. 284

Michigan 7 1885 1955 —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

Minnesota 1885 1955 1961 —— 21943

1964, Bell v. Maryland, 378 U.S. 284

Missouri —— 1961 —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

Montana 1955 —— —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

Nebraska 1885 —— —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

New Hampshire 1961 —— 1961 —— 2 1961

1964, Bell v. Maryland, 378 U.S. 284

New Jersey 1884 1945 1961 1945 1951

1964, Bell v. Maryland, 378 U.S. 284

New Mexico 1955 1949 —— —— 1957

1964, Bell v. Maryland, 378 U.S. 284

New York 1874 1945 1961 1945 1945

1964, Bell v. Maryland, 378 U.S. 284

North Dakota 1961 —— —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

Ohio 1884 1959 —— —— 21961

1964, Bell v. Maryland, 378 U.S. 284

Oregon 1953 1949 81959 91951 21961

1964, Bell v. Maryland, 378 U.S. 284

Pennsylvania 1887 1955 1961 1939 1939

1964, Bell v. Maryland, 378 U.S. 284

Rhode Island 1885 1949 —— —— 21957

1964, Bell v. Maryland, 378 U.S. 284

South Dakota 1963 —— —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

Vermont 1957 1963 —— —— 2 1957

1964, Bell v. Maryland, 378 U.S. 284

Washington 10 1890 1949 —— 1957 21957

1964, Bell v. Maryland, 378 U.S. 284

Wisconsin 1895 1957 —— —— ——

1964, Bell v. Maryland, 378 U.S. 284

Wyoming 1961 —— —— —— 2 1961

[378 U.S. 285]

1964, Bell v. Maryland, 378 U.S. 285

The dates are those in which the law was first enacted; the underlining [italics] means that the law is enforced by a commission. In addition to the above, the following cities in States without pertinent laws have enacted antidiscrimination ordinances: Albuquerque, N. Mex. (housing); Ann Arbor, Mich. (housing); Baltimore, Md. (employment); Beloit, Wis. (housing); Chicago, Ill. (housing); El Paso, Tex. (public accommodations); Ferguson, Mo. (public accommodations); Grand Rapids, Mich. (housing); Kansas City, Mo. (public accommodations); Louisville, Ky. (public accommodations); Madison, Wis. (housing); Oberlin, Ohio (housing); Omaha, Nebr. (employment); Peoria, Ill. (housing); St. Joseph, Mo. (public accommodations); St. Louis, Mo. (housing and public accommodations); Toledo, Ohio (housing); University City, Mo. (public accommodations); Yellow Springs, Ohio (housing); and Washington, D.C. (public accommodations and housing). [378 U.S. 286]

GOLDBERG, J., concurring

1964, Bell v. Maryland, 378 U.S. 286

MR. JUSTICE GOLDBERG, with whom THE CHIEF JUSTICE joins, and with whom MR. JUSTICE DOUGLAS joins as to Parts IV-V, concurring.

I

1964, Bell v. Maryland, 378 U.S. 286

I join in the opinion and the judgment of the Court, and would therefore have no occasion under ordinary circumstances to express my views on the underlying constitutional issue. Since, however, the dissent at length discusses this constitutional issue and reaches a conclusion with which I profoundly disagree, I am impelled to state the reasons for my conviction that the Constitution guarantees to all Americans the right to be treated as equal members of the community with respect to public accommodations.

II

1964, Bell v. Maryland, 378 U.S. 286

The Declaration of Independence states the American creed:

1964, Bell v. Maryland, 378 U.S. 286

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

1964, Bell v. Maryland, 378 U.S. 286

This ideal was not fully achieved with the adoption of our Constitution because of the hard and tragic reality of Negro slavery. The Constitution of the new Nation, while heralding liberty, in effect declared all men to be free and equal—except black men, who were to be neither free nor equal. This inconsistency reflected a fundamental departure from the American creed, a departure which it took a tragic civil war to set right. With the adoption, however, of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, freedom and equality were guaranteed expressly to all regardless "of race, color, or previous condition of servitude." 1 United States v. Reese, 92 U.S. 214, 218. [378 U.S. 287]

1964, Bell v. Maryland, 378 U.S. 287

In the light of this American commitment to equality and the history of that commitment, these Amendments must be read not as

1964, Bell v. Maryland, 378 U.S. 287

legislative codes which are subject to continuous revision with the changing course of events, but as the revelation of the great purposes which were intended to be achieved by the Constitution as a continuing instrument of government.

1964, Bell v. Maryland, 378 U.S. 287

United States v. Classic, 313 U.S. 299, 316. The cases following the 1896 decision in Plessy v. Ferguson, 163 U.S. 537, too often tended to negate this great purpose. In 1954, in Brown v. Board of Education, 347 U.S. 483, this Court unanimously concluded that the Fourteenth Amendment commands equality, and that racial segregation by law is inequality. Since Brown, the Court has consistently applied this constitutional standard to give real meaning to the Equal Protection Clause "as the revelation" of an enduring constitutional purpose. 2

1964, Bell v. Maryland, 378 U.S. 287

The dissent argues that the Constitution permits American citizens to be denied access to places of public accommodation solely because of their race or color. Such a few does not do justice to a Constitution which [378 U.S. 288] is color blind, and to the Court's decision in Brown v. Board of Education, which affirmed the right of all Americans to public equality. We cannot blind ourselves to the consequences of a constitutional interpretation which would permit citizens to be turned away by all the restaurants, or by the only restaurant, in town. The denial of the constitutional right of Negroes to access to places of public accommodation would perpetuate a caste system in the United States.

1964, Bell v. Maryland, 378 U.S. 288

The Thirteenth, Fourteenth and Fifteenth Amendments do not permit Negroes to be considered as second-class citizens in any aspect of our public life. Under our Constitution distinctions sanctioned by law between citizens because of race, ancestry, color or religion "are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." Hirabayashi v. United States, 320 U.S. 81, 100. We make no racial distinctions between citizens in exacting from them the discharge of public responsibilities: the heaviest duties of citizenship—military service, taxation, obedience to laws—are imposed even-handedly upon black and white. States may and do impose the burdens of state citizenship upon Negroes and the States in many ways benefit from the equal imposition of the duties of federal citizenship. Our fundamental law which insures such an equality of public burdens, in my view, similarly insures an equality of public benefits. This Court has repeatedly recognized and applied this fundamental principle to many aspects of community life. 3

III

1964, Bell v. Maryland, 378 U.S. 288

Of course, our constitutional duty is "to construe, not to rewrite or amend, the Constitution." Post at 342 (dissenting opinion of MR. JUSTICE BLACK). Our sworn duty to construe the Constitution requires, however, that [378 U.S. 289] we read it to effectuate the intent and purposes of the Framers. We must, therefore, consider the history and circumstances indicating what the Civil War Amendments were in fact designed to achieve.

1964, Bell v. Maryland, 378 U.S. 289

In 1873, in one of the earliest cases interpreting the Thirteenth and Fourteenth Amendments, this Court observed:

1964, Bell v. Maryland, 378 U.S. 289

[N]o one can fail to be impressed with the one pervading purpose found in…all [these Amendments], lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him….

1964, Bell v. Maryland, 378 U.S. 289

Slaughter-House Cases, 16 Wall. 36, 71.

1964, Bell v. Maryland, 378 U.S. 289

A few years later, in 1880, the Court had occasion to observe that these Amendments were written and adopted

1964, Bell v. Maryland, 378 U.S. 289

to raise the colored race from that condition of inferiority and servitude in which most of them had previously stood, into perfect equality of civil rights with all other persons within the jurisdiction of the States.

1964, Bell v. Maryland, 378 U.S. 289

Ex parte Virginia, 100 U.S. 339, 344-345. In that same Term, the Court, in Strauder v. West Virginia, 100 U.S. 303, 307, stated that the recently adopted Fourteenth Amendment must "be construed liberally, to carry out the purposes of its framers." Such opinions immediately following the adoption of the Amendments clearly reflect the contemporary understanding that they were

1964, Bell v. Maryland, 378 U.S. 289

to secure to the colored race, thereby invested with the rights, privileges, and responsibilities of citizenship, the enjoyment of all the civil rights that, under the law, are enjoyed by white persons….

1964, Bell v. Maryland, 378 U.S. 289

Neal v. Delaware, 103 U.S. 370, 386. [378 U.S. 290]

1964, Bell v. Maryland, 378 U.S. 290

The historical evidence amply supports the conclusion of the Government, stated by the Solicitor General in this Court, that:

1964, Bell v. Maryland, 378 U.S. 290

it is an inescapable inference that Congress, in recommending the Fourteenth Amendment, expected to remove the disabilities barring Negroes from the public conveyances and places of public accommodation with which they were familiar, and thus to assure Negroes an equal right to enjoy these aspects of the public life of the community.

1964, Bell v. Maryland, 378 U.S. 290

The subject of segregation in public conveyances and accommodations was quite familiar to the Framers of the Fourteenth Amendment. 4 Moreover, it appears that the contemporary understanding of the general public was that freedom from discrimination in places of public accommodation was part of the Fourteenth Amendment's promise of equal protection. 5 This view was readily [378 U.S. 291] accepted by the Supreme Court of Mississippi in 1873 in Donnell v. State, 48 Miss. 661. The Mississippi Supreme Court there considered and upheld the equal accommodations provisions of Mississippi's "civil rights" bill as applied to a Negro theater patron. Justice Simrall, speaking for the court, noted that the "13th, 14th and 15th amendments of the constitution of the United States are the logical results of the late civil war," id. at 675, and concluded that the

1964, Bell v. Maryland, 378 U.S. 291

fundamental idea and principle pervading these amendments is an impartial equality of rights and privileges, civil and political, to all "citizens of the United States…. "

1964, Bell v. Maryland, 378 U.S. 291

Id. at 677. 6

1964, Bell v. Maryland, 378 U.S. 291

In Strauder v. West Virginia, supra, this Court had occasion to consider the concept of civil rights embodied in the Fourteenth Amendment:

1964, Bell v. Maryland, 378 U.S. 291

What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to [378 U.S. 292] the colored race,—the right to exemption from unfriendly legislation against them distinctively as colored,—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race.

1964, Bell v. Maryland, 378 U.S. 292

Id. at 307-308.

\* \* \* \*

1964, Bell v. Maryland, 378 U.S. 292

The Fourteenth Amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms, and those are as comprehensive as possible. Its language is prohibitory, but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection, either for life, liberty, or property.

1964, Bell v. Maryland, 378 U.S. 292

Id. at 310. (Emphasis added.)

1964, Bell v. Maryland, 378 U.S. 292

The Fourteenth Amendment was in part designed to provide a firm constitutional basis for the Civil Rights Act of 1866, 14 Stat. 27, and to place that legislation beyond the power of congressional repeal. 7 The origins of subsequently proposed amendments and legislation lay in the 1866 bill and in a companion measure, the Freedmen's [378 U.S. 293] Bureau bill. 8 The latter was addressed to States

1964, Bell v. Maryland, 378 U.S. 293

wherein, in consequence of any State or local law,…custom, or prejudice, any of the civil rights or immunities belonging to white persons, including the right…to have full and equal benefit of all laws and proceedings for the security of person and estate, are refused or denied to negroes….

1964, Bell v. Maryland, 378 U.S. 293

Cong.Globe, 39th Cong., 1st Sess., 318. A review of the relevant congressional debates reveals that the concept of civil rights which lay at the heart both of the contemporary legislative proposals and of the Fourteenth Amendment encompassed the right to equal treatment in public places—a right explicitly recognized to be a "civil," rather than a "social," right. It was repeatedly emphasized "that colored persons shall enjoy the same civil rights as white persons," 9 that the colored man should have the right "to go where he pleases," 10 that he should have "practical" freedom, 11 [378 U.S. 294] and that he should share "the rights and guarantees of the good old common law." 12

1964, Bell v. Maryland, 378 U.S. 294

In the debates that culminated in the acceptance of the Fourteenth Amendment, the theme of granting "civil," as distinguished from "social," rights constantly recurred. 13 Although it was commonly recognized that, in some areas, the civil-social distinction was misty, the critical fact is that it was generally understood that "civil rights" certainly included the right of access to places of public accommodation, for these were most clearly places and areas of life where the relations of men were traditionally regulated by governments. 14 Indeed, the opponents both [378 U.S. 295] of the Freedmen's Bureau bill and of the Civil Rights Act of 1866 frequently complained, without refutation or contradiction, that these measures would grant Negroes the right to equal treatment in places of public accommodation. Thus, for example, Senator Davis of Kentucky, in opposing the Freedmen's Bureau bill, protested that

1964, Bell v. Maryland, 378 U.S. 295

commingling with [white persons] in hotels, theaters, steamboats, and other civil rights and privileges were always forbid to free negroes, until…

1964, Bell v. Maryland, 378 U.S. 295

recently granted by Massachusetts. 15

1964, Bell v. Maryland, 378 U.S. 295

An 1873 decision of the Supreme Court of Iowa clearly reflects the contemporary understanding of the meaning of the Civil Rights Act of 1866. In Coger v. North West. Union Packet Co., 37 Iowa 145, a colored woman sought damages for assault and battery occurring when the officers of a Mississippi River steamboat ordered that she be removed from a dining table in accordance with a practice of segregation in the main dining room on the boat. In giving judgment for the plaintiff, the Iowa Supreme Court quoted the Civil Rights Act of 1866 and concluded that:

1964, Bell v. Maryland, 378 U.S. 295

Under this statute, equality in rights is secured to the negro. The language is comprehensive, and includes the right to property and all rights growing out of contracts. It includes within its broad terms every right arising in the affairs of life. The right of the passenger under the contract of transportation with the carrier is included therein. The colored man is guarantied equality and equal protection [378 U.S. 296] of the laws with his white neighbor. These are the rights secured to him as a citizen of the United States, without regard to his color, and constitute his privileges, which are secured by [the Fourteenth Amendment].

1964, Bell v. Maryland, 378 U.S. 296

Id. at 156.

1964, Bell v. Maryland, 378 U.S. 296

The Court then went on to reject the contention that the rights asserted were "social, and…not, therefore, secured by the constitution and statutes, either of the State or of the United States." Id. at 157. 16

1964, Bell v. Maryland, 378 U.S. 296

Underlying the congressional discussions, and at the heart of the Fourteenth Amendment's guarantee of equal protection, was the assumption that the State by statute or by "the good old common law" was obligated to guarantee all citizens access to places of public accommodation. This obligation was firmly rooted in ancient [378 U.S. 297] Anglo-American tradition. In his work on bailments, Judge Story spoke of this tradition:

1964, Bell v. Maryland, 378 U.S. 297

An innkeeper is bound…to take in all travelers and wayfaring persons, and to entertain them, if he can accommodate them, for a reasonable compensation; and he must guard their goods with proper diligence…. If an innkeeper improperly refuses to receive or provide for a guest, he is liable to be indicted therefor….

1964, Bell v. Maryland, 378 U.S. 297

Story, Commentaries on the Law of Bailments (Schouler, 9th ed., 1878) § 476. 17

\* \* \* \* [378 U.S. 298]

1964, Bell v. Maryland, 378 U.S. 298

The first and most general obligation on [carriers of passengers] is to carry passengers whenever they offer themselves, and are ready to pay for their transportation. This results from their setting themselves up, like innkeepers and common carriers of goods, for a common public employment on hire. They are no more at liberty to refuse a passenger, if they have sufficient room and accommodations, than an innkeeper is to refuse suitable room and accommodations to a guest….

1964, Bell v. Maryland, 378 U.S. 298

Id. at §§ 590, 591. It was in this vein that the Supreme Court of Mississippi spoke when, in 1873, it applied the equal accommodations [378 U.S. 299] provisions of the State's civil rights bill to a Negro refused admission to a theater:

1964, Bell v. Maryland, 378 U.S. 299

Among those customs, which we call the common law, that have come down to us from the remote past are rules which have a special application to those who sustain a quasi-public relation to the community. The wayfarer and the traveler had a right to demand food and lodging from the innkeeper; the common carrier was bound to accept all passengers and goods offered for transportation, according to his means. So, too, all who applied for admission to the public shows and amusements were entitled to admission, and, in each instance, for a refusal, an action on the case lay unless sufficient reason were shown. The statute deals with subjects which have always been under legal control.

1964, Bell v. Maryland, 378 U.S. 299

Donnell v. State, 48 Miss. 661, 680-681.

1964, Bell v. Maryland, 378 U.S. 299

In a similar manner, Senator Sumner, discussing the Civil Rights Act of 1875, referred to and quoted from Holingshed, Story, Kent and Parsons on the common law duties of innkeepers and common carriers to treat all alike. Cong.Globe, 42d Cong., 2d Sess., 382-383. With regard to "theaters and places of public amusement," the Senator observed that:

1964, Bell v. Maryland, 378 U.S. 299

Theaters and other places of public amusement, licensed by law, are kindred to inns or public conveyances, though less noticed by jurisprudence. But, like their prototypes, they undertake to provide for the public under sanction of law. They are public institutions, regulated, if not created, by law, enjoying privileges, and in consideration thereof, assuming duties not unlike those of the inn and the public conveyance. From essential reason, the rule should be the same with all. As the inn cannot close its [378 U.S. 300] doors, or the public conveyance refuse a seat to any paying traveler decent in condition, so must it be with the theater and other places of public amusement. Here are institutions whose peculiar object is the "pursuit of happiness," which has been placed among the equal rights of all.

1964, Bell v. Maryland, 378 U.S. 300

Id. at 383. 18

1964, Bell v. Maryland, 378 U.S. 300

The first sentence of § 1 of the Fourteenth Amendment, the spirit of which pervades all of the Civil War Amendments, [378 U.S. 301] was obviously designed to overrule Dred Scott v. Sandford, 19 How. 393, and to ensure that the constitutional concept of citizenship with all attendant rights and privileges would henceforth embrace Negroes. It follows that Negroes, as citizens, necessarily became entitled to share the right, customarily possessed by other citizens, of access to public accommodations. The history of the affirmative obligations existing at common law serves partly to explain the negative—"deny to any person"—language of the Fourteenth Amendment. For it was assumed that, under state law, when the Negro's disability as a citizen was removed, he would be assured the same public civil rights that the law had guaranteed white persons. This view pervades the opinion of the Supreme Court of Michigan in Ferguson v. Gies, 82 Mich. 358, 46 N.W. 718, decided in 1890. That State had recently enacted a statute prohibiting the denial to any person, regardless of race, of

1964, Bell v. Maryland, 378 U.S. 301

the full and equal accommodations…and privileges of…restaurants…and all other places of public accommodation and amusement…. 19

1964, Bell v. Maryland, 378 U.S. 301

A Negro plaintiff brought an action for damages arising from the refusal of a restaurant owner to serve him at a row of tables reserved for whites. In upholding the plaintiff's claim, the Michigan court observed:

1964, Bell v. Maryland, 378 U.S. 301

The negro is now, by the Constitution of the United States, given full citizenship with the white man, and all the rights and privileges of citizenship attend him wherever he goes. Whatever right a white man [378 U.S. 302] has in a public place, the black man has also, because of such citizenship.

1964, Bell v. Maryland, 378 U.S. 302

Id., 82 Mich. at 364, 46 N.W. at 720. The court then emphasized that, in light of this constitutional principle, the same result would follow whether the claim rested on a statute or on the common law:

1964, Bell v. Maryland, 378 U.S. 302

The common law, as it existed in this State before the passage of this statute and before the colored man became a citizen under our Constitution and laws, gave to the white man a remedy against any unjust discrimination to the citizen in all public places. It must be considered that, when this suit was planted, the colored man, under the common law of this State, was entitled to the same rights and privileges in public places as the white man, and he must be treated the same there; and that his right of action for any injury arising from an unjust discrimination against him is just as perfect and sacred in the courts as that of any other citizen. This statute is only declaratory of the common law as I understand it now to exist in this State.

1964, Bell v. Maryland, 378 U.S. 302

Id., 82 Mich. at 365, 46 N.W. at 720. 20 Evidence such as this demonstrates that Mr. Justice Harlan, dissenting in the Civil Rights Cases, 109 U.S. 3, 26, was surely correct when he observed:

1964, Bell v. Maryland, 378 U.S. 302

But what was secured to colored citizens of the United States—as between them and their respective States—by the national grant to them of State citizenship? With what rights, privileges, or immunities did this grant invest them? There is one, if there be no other—exemption from race discrimination in respect of any civil right belonging to citizens of the [378 U.S. 303] white race in the same State. That, surely, is their constitutional privilege when within the jurisdiction of other States. And such must be their constitutional right, in their own State unless the recent amendments be splendid baubles, thrown out to delude those who deserved fair and generous treatment at the hands of the nation. Citizenship in this country necessarily imports at least equality of civil rights among citizens of every race in the same State. It is fundamental in American citizenship that, in respect of such rights, there shall be no discrimination by the State, or its officers, or by individuals or corporations exercising public functions or authority, against any citizen because of his race or previous condition of servitude.

1964, Bell v. Maryland, 378 U.S. 303

Id. at 48.

1964, Bell v. Maryland, 378 U.S. 303

The Framers of the Fourteenth Amendment, reacting against the Black Codes, 21 made certain that the States could not frustrate the guaranteed equality by enacting discriminatory legislation or by sanctioning discriminatory treatment. At no time in the consideration of the Amendment was it suggested that the States could achieve the same prohibited result by withdrawing the traditional right of access to public places. In granting Negroes citizenship and the equal protection of the laws, it was never thought that the States could permit the proprietors of inns and public places to restrict their general invitation to the public and to citizens in order to exclude [378 U.S. 304] the Negro public and Negro citizens. The Fourteenth Amendment was therefore cast in terms under which judicial power would come into play where the State withdrew or otherwise denied the guaranteed protection

1964, Bell v. Maryland, 378 U.S. 304

from legal discriminations, implying inferiority in civil society, lessening the security of [the Negroes'] enjoyment of the rights which others enjoy….

1964, Bell v. Maryland, 378 U.S. 304

Strauder v. West Virginia, 100 U.S. at 308.

1964, Bell v. Maryland, 378 U.S. 304

Thus, a fundamental assumption of the Fourteenth Amendment was that the States would continue, as they had for ages, to enforce the right of citizens freely to enter public places. This assumption concerning the affirmative duty attaching to places of public accommodation was so rooted in the experience of the white citizenry that law and custom blended together indistinguishably. 22 Thus, it seemed natural for the Supreme Court of Mississippi, considering a public accommodations provision in a civil rights statute, to refer to "those customs which we call the common law, that have come down to us from the remote past," Donnell v. State, 48 Miss. at 680, [378 U.S. 305] and thus it seems significant that the various proposals for federal legislation often interchangeably referred to discriminatory acts done under "law" or under "custom." 23 In sum, then, it was understood that, under the Fourteenth Amendment, the duties of the proprietors of places of public accommodation would remain as they had long been, and that the States would now be affirmatively obligated to insure that these rights ran to Negro, as well as white, citizens.

1964, Bell v. Maryland, 378 U.S. 305

The Civil Rights Act of 1875, enacted seven years after the Fourteenth Amendment, specifically provided that all citizens must have

1964, Bell v. Maryland, 378 U.S. 305

the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement….

1964, Bell v. Maryland, 378 U.S. 305

18 Stat. 335. The constitutionality of this federal legislation was reviewed by this Court in 1883 in the Civil Rights Cases, 109 U.S. 3. The dissent in the present case purports to follow the "state action" concept articulated in that early decision. There, the Court had declared that, under the Fourteenth Amendment:

1964, Bell v. Maryland, 378 U.S. 305

It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due [378 U.S. 306] process of law, or which denies to any of them the equal protection of the laws.

1964, Bell v. Maryland, 378 U.S. 306

109 U.S. at 11. (Emphasis added.) Mr. Justice Bradley, writing for the Court over the strong dissent of Mr. Justice Harlan, held that a proprietor's racially motivated denial of equal access to a public accommodation did not, without more, involve state action. It is of central importance to the case at bar that the Court's decision was expressly predicated:

1964, Bell v. Maryland, 378 U.S. 306

on the assumption that a right to enjoy equal accommodation and privileges in all inns, public conveyances, and places of public amusement is one of the essential rights of the citizen which no State can abridge or interfere with.

1964, Bell v. Maryland, 378 U.S. 306

Id. at 19. The Court added that:

1964, Bell v. Maryland, 378 U.S. 306

Innkeepers and public carriers, by the laws of all the States, so far as we are aware, 24 are bound, to the [378 U.S. 307] extent of their facilities, to furnish proper accommodation to all unobjectionable persons who in good faith apply for them.

1964, Bell v. Maryland, 378 U.S. 307

Id. at 25. 25

1964, Bell v. Maryland, 378 U.S. 307

This assumption, whatever its validity at the time of the 1883 decision, has proved to be unfounded. Although reconstruction ended in 1877, six years before the Civil Rights Cases, there was little immediate action in the South to establish segregation, in law or in fact, in places [378 U.S. 308] of public accommodation. 26 This benevolent, or perhaps passive, attitude endured about a decade, and then, in the late 1880's, States began to enact laws mandating unequal treatment in public places. 27 Finally, three-quarters of a century later, after this Court declared such legislative action invalid, some States began to utilize and make available their common law to sanction similar discriminatory treatment.

1964, Bell v. Maryland, 378 U.S. 308

A State applying its statutory or common law 28 to deny, rather than protect, the right of access to public accommodations has clearly made the assumption of the opinion [378 U.S. 309] in the Civil Rights Cases inapplicable and has, as the author of that opinion would himself have recognized, denied the constitutionally intended equal protection. Indeed, in light of the assumption so explicitly stated in the Civil Rights Cases, it is significant that Mr. Justice Bradley, who spoke for the Court, had, earlier in correspondence with Circuit Judge Woods, expressed the view that the Fourteenth Amendment

1964, Bell v. Maryland, 378 U.S. 309

not only prohibits the making or enforcing of laws which shall abridge the privileges of the citizen, but prohibits the states from denying to all persons within its jurisdiction the equal protection of the laws. 29

1964, Bell v. Maryland, 378 U.S. 309

In taking this position, which is consistent with his opinion and the assumption in the Civil Rights Cases, 30 he concluded that:

1964, Bell v. Maryland, 378 U.S. 309

Denying includes inaction as well as action. And denying the equal protection of the laws includes the omission to protect, as well as the omission [378 U.S. 310] to pass laws for protection. 31

1964, Bell v. Maryland, 378 U.S. 310

These views are fully consonant with this Court's recognition that state conduct which might be described as "inaction" can nevertheless [378 U.S. 311] constitute responsible "state action" within the meaning of the Fourteenth Amendment. See, e.g., Marsh v. Alabama, 326 U.S. 501; Shelley v. Kraemer, 334 U.S. 1; Terry v. Adams, 345 U.S. 461; Barrows v. Jackson, 346 U.S. 249.

1964, Bell v. Maryland, 378 U.S. 311

In the present case, the responsibility of the judiciary in applying the principles of the Fourteenth Amendment is clear. The State of Maryland has failed to protect petitioners' constitutional right to public accommodations, and is now prosecuting them for attempting to exercise that right. The decision of Maryland's highest court in sustaining these trespass convictions cannot be described as "neutral," for the decision is as affirmative in effect as if the State had enacted an unconstitutional law explicitly authorizing racial discrimination in places of public accommodation. A State, obligated under the Fourteenth Amendment to maintain a system of law in which Negroes are not denied protection in their claim to be treated as equal members of the community, may not use its criminal trespass laws to frustrate the constitutionally granted right. Nor, it should be added, may a State frustrate this right by legitimating a proprietor's attempt at self-help. To permit self-help would be to disregard the principle that

1964, Bell v. Maryland, 378 U.S. 311

[t]oday, no less that 50 years ago, the solution to the problems growing out of race relations "cannot be promoted by depriving citizens of their constitutional rights and privileges," Buchanan v. Warley,…245 U.S. at 80-81.

1964, Bell v. Maryland, 378 U.S. 311

Watson v. City of Memphis, 373 U.S. 526, 539. As declared in Cooper v. Aaron, 358 U.S. 1, 16, "law and order are not…to be preserved by depriving the Negro…of [his] constitutional rights."

1964, Bell v. Maryland, 378 U.S. 311

In spite of this, the dissent intimates that its view best comports with the needs of law and order. Thus, it is said:

1964, Bell v. Maryland, 378 U.S. 311

It would betray our whole plan for a tranquil and orderly society to say that a citizen, because of his personal [378 U.S. 312] prejudices, habits attitudes, or beliefs, is cast outside the law's protection, and cannot call for the aid of officers sworn to uphold the law and preserve the peace.

1964, Bell v. Maryland, 378 U.S. 312

Post at 327-328. This statement, to which all will readily agree, slides over the critical question: whose conduct is entitled to the "law's protection"? Of course, every member of this Court agrees that law and order must prevail; the question is whether the weight and protective strength of law and order will be cast in favor of the claims of the proprietors or in favor of the claims of petitioners. In my view, the Fourteenth Amendment resolved this issue in favor of the right of petitioners to public accommodations, and it follows that, in the exercise of that constitutionally granted right, they are entitled to the "law's protection." Today, as long ago, "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws…. " Marbury v. Madison, 1 Cranch 137, 163.

IV

1964, Bell v. Maryland, 378 U.S. 312

My Brother DOUGLAS convincingly demonstrates that the dissent has constructed a straw man by suggesting that this case involves "a property owner's right to choose his social or business associates." Post at 343. The restaurant involved in this case is concededly open to a large segment of the public. Restaurants such as this daily open their doors to millions of Americans. These establishments provide a public service as necessary today as the inns and carriers of Blackstone's time. It should be recognized that the claim asserted by the Negro petitioners concerns such public establishments, and does not infringe upon the rights of property owners or personal associational interests.

1964, Bell v. Maryland, 378 U.S. 312

Petitioners frankly state that the

1964, Bell v. Maryland, 378 U.S. 312

extension of constitutional guarantees to the authentically private choices of man is wholly unacceptable, and any constitutional [378 U.S. 313] theory leading to that result would have reduced itself to absurdity.

1964, Bell v. Maryland, 378 U.S. 313

Indeed, the constitutional protection extended to privacy and private association assures against the imposition of social equality. As noted before, the Congress that enacted the Fourteenth Amendment was particularly conscious that the "civil" rights of man should be distinguished from his "social" rights. 32 Prejudice and bigotry in any form are regrettable, but it is the constitutional right of every person to close his home or club to any person or to choose his social intimates and business partners solely on the basis of personal prejudices including race. These and other rights pertaining to privacy and private association are themselves constitutionally protected liberties.

1964, Bell v. Maryland, 378 U.S. 313

We deal here, however, with a claim of equal access to public accommodations. This is not a claim which significantly impinges upon personal associational interests; nor is it a claim infringing upon the control of private property not dedicated to public use. A judicial ruling on this claim inevitably involves the liberties and freedoms [378 U.S. 314] both of the restaurant proprietor and of the Negro citizen. The dissent would hold, in effect, that the restaurant proprietor's interest in choosing customers on the basis of race is to be preferred to the Negro's right to equal treatment by a business serving the public. The history and purposes of the Fourteenth Amendment indicate, however, that the Amendment resolves this apparent conflict of liberties in favor of the Negro's right to equal public accommodations. As the Court said in Marsh v. Alabama, 326 U.S. 501, 506:

1964, Bell v. Maryland, 378 U.S. 314

The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. 33

1964, Bell v. Maryland, 378 U.S. 314

The broad acceptance of the public in this and in other restaurants clearly demonstrates that the proprietor's interest in private or unrestricted association is slight. 34 The relationship between the modern innkeeper or restaurateur and the customer is relatively impersonal and evanescent. This is highlighted by cases such as Barr v. City of Columbia, 378 U.S. 146; Bouie v. City of Columbia, 378 U.S. 347, and Robinson v. Florida, 378 U.S. 153, in which Negroes are invited into all departments of the store but nonetheless ordered, in the name of private association or property rights, not to purchase and eat food, as other customers do, on the premises. As the history of the common law [378 U.S. 315] and, indeed, of our own times graphically illustrates, the interests of proprietors of places of public accommodation have always been adapted to the citizen's felt need for public accommodations, a need which is basic and deep-rooted. This history and the purposes of the Fourteenth Amendment compel the conclusion that the right to be served in places of public accommodation regardless of color cannot constitutionally be subordinated to the proprietor's interest in discriminatorily refusing service.

1964, Bell v. Maryland, 378 U.S. 315

Of course, although the present case involves the right to service in a restaurant, the fundamental principles of the Fourteenth Amendment apply with equal force to other places of public accommodation and amusement. Claims so important as those presented here cannot be dismissed by asserting that the Fourteenth Amendment, while clearly addressed to inns and public conveyances, did not contemplate lunch counters and soda fountains. Institutions such as these serve essentially the same needs in modern life as did the innkeeper and the carrier at common law. 35 It was to guard against narrow conceptions that Chief Justice Marshall admonished the Court never to forget

1964, Bell v. Maryland, 378 U.S. 315

that it is a constitution we are expounding…a constitution intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.

1964, Bell v. Maryland, 378 U.S. 315

M'Culloch v. Maryland, 4 Wheat. 316, 407, 415. Today, as throughout the history of the Court, we should remember that,

1964, Bell v. Maryland, 378 U.S. 315

in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For, in setting up an enduring framework of government, they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses.

1964, Bell v. Maryland, 378 U.S. 315

United States v. Classic, 313 U.S. 299, 316. [378 U.S. 316]

V

1964, Bell v. Maryland, 378 U.S. 316

In my view, the historical evidence demonstrates that the traditional rights of access to places of public accommodation were quite familiar to Congressmen and to the general public, who naturally assumed that the Fourteenth Amendment extended these traditional rights to Negroes. But even if the historical evidence were not as convincing as I believe it to be, the logic of Brown v. Board of Education, 347 U.S. 483, based as it was on the fundamental principle of constitutional interpretation proclaimed by Chief Justice Marshall, 36 requires that petitioners' claim be sustained.

1964, Bell v. Maryland, 378 U.S. 316

In Brown, after stating that the available history was "inconclusive" on the specific issue of segregated public schools, the Court went on to say:

1964, Bell v. Maryland, 378 U.S. 316

In approaching this problem, we cannot turn the clock back to 1868, when the Amendment was adopted, or even to 1896, when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

1964, Bell v. Maryland, 378 U.S. 316

347 U.S. at 492-493. The dissent makes no effort to assess the status of places of public accommodation "in the light of" their "full development and…present place" in the life of American citizens. In failing to adhere to that approach, the dissent ignores a pervasive principle of constitutional adjudication, and departs from the ultimate logic of Brown. As Mr. Justice Holmes so aptly said:

1964, Bell v. Maryland, 378 U.S. 316

[W]hen we are dealing with words that also are a constituent act, like the Constitution of the United [378 U.S. 317] States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century, and has cost their successors much sweat and blood, to prove that they created a nation. The case before us must be considered in the light of our whole experience, and not merely in that of what was said a hundred years ago.

1964, Bell v. Maryland, 378 U.S. 317

Missouri v. Holland, 252 U.S. 416, 433.

CONCLUSION

1964, Bell v. Maryland, 378 U.S. 317

The constitutional right of all Americans to be treated as equal members of the community with respect to public accommodations is a civil right granted by the people in the Constitution—a right which "is too important in our free society to be stripped of judicial protection." Cf. Wesberry v. Sanders, 376 U.S. 1, 7; Baker v. Carr, 369 U.S. 186. This is not to suggest that Congress lacks authority under § 5 of the Fourteenth Amendment, or under the Commerce Clause, Art. I, § 8, to implement the rights protected by § 1 of the Fourteenth Amendment. In the give and take of the legislative process, Congress can fashion a law drawing the guidelines necessary and appropriate to facilitate practical administration and to distinguish between genuinely public and private accommodations. In contrast, we can pass only on justiciable issues coming here on a case-to-case basis.

1964, Bell v. Maryland, 378 U.S. 317

It is, and should be, more true today than it was over a century ago that "[t]he great advantage of the Americans is that…they are born equal," 37 and that, in the eyes of the law, they "are all of the same estate." The [378 U.S. 318] first Chief Justice of the United States, John Jay, spoke of the "free air" of American life. The great purpose of the Fourteenth Amendment is to keep it free and equal. Under the Constitution, no American can, or should, be denied rights fundamental to freedom and citizenship. I therefore join in reversing these trespass convictions.

BLACK, J., dissenting

1964, Bell v. Maryland, 378 U.S. 318

MR. JUSTICE BLACK, with whom MR. JUSTICE HARLAN and MR. JUSTICE WHITE, join, dissenting.

1964, Bell v. Maryland, 378 U.S. 318

This case does not involve the constitutionality of any existing or proposed state or federal legislation requiring restaurant owners to serve people without regard to color. The crucial issue which the case does present, but which the Court does not decide, is whether the Fourteenth Amendment, of itself, forbids a State to enforce its trespass laws to convict a person who comes into a privately owned restaurant, is told that, because of his color, he will not be served, and, over the owner's protest, refuses to leave. We dissent from the Court's refusal to decide that question. For reasons stated, we think that the question should be decided, and that the Fourteenth Amendment does not forbid this application of a State's trespass laws.

1964, Bell v. Maryland, 378 U.S. 318

The petitioners were convicted in a Maryland state court on a charge that they "unlawfully did enter upon and cross over the land, premises and private property" of the Hooper Food Co., Inc., "after having been duly notified by Albert Warfel, who was then and there the servant and agent for Hooper Food Co.," not to do so, in violation of Maryland's criminal trespass statute. 1 The [378 U.S. 319] conviction was based on a record showing in summary that:

1964, Bell v. Maryland, 378 U.S. 319

A group of fifteen to twenty Negro students, including petitioners, went to Hooper's Restaurant to engage in what their counsel describes as a "sit-in protest" because the restaurant would not serve Negroes. The hostess, on orders of Mr. Hooper, he president of the corporation owning the restaurant, 2 told them, "solely on the basis of their color," that she would not serve them. Petitioners refused to leave when requested by the hostess and the manager; instead, they went to tables, took seats, and refused to leave, insisting that they be served. On orders of the owner, the police were called, but they advised the manager that a warrant would be necessary before they could arrest petitioners. The manager then went to the police station and swore out the warrants. Petitioners had remained in the restaurant, in all, an hour and a half, testifying at their trial that they had stayed knowing they would be arrested—that being arrested was part of their "technique" in these demonstrations. [378 U.S. 320]

1964, Bell v. Maryland, 378 U.S. 320

The Maryland Court of Appeals affirmed the convictions, rejecting petitioners' contentions urged in both courts that Maryland had (1) denied them equal protection and due process under the Fourteenth Amendment by applying its trespass statute to enforce the restaurant owner's policy and practice of racial discrimination, and (2) denied them freedom of expression guaranteed by the Constitution by punishing them for remaining at the restaurant, which they were doing as a protest against the owner's practice of refusing service to Negroes. 3 This case, Barr v. City of Columbia, 378 U.S. 146, and Bouie v. City of Columbia, 378 U.S. 347, all raised these same two constitutional questions, which we granted certiorari to decide. 4 The Solicitor General has filed amicus briefs and participated in oral argument in these cases; while he joins in asking reversal of all the convictions, his arguments vary in significant respects from those of the petitioners. We would reject the contentions of the petitioners and of the Solicitor General in this case, and affirm the judgment of the Maryland court.

I

1964, Bell v. Maryland, 378 U.S. 320

On the same day that petitioners filed the petition for certiorari in this case, Baltimore enacted an ordinance forbidding privately owned restaurants to refuse to serve Negroes because of their color. 5 Nearly a year later, Maryland, without repealing the state trespass law petitioners violated, passed a law applicable to Baltimore and some other localities making such discrimination by restaurant [378 U.S. 321] owners unlawful. 6 We agree that the general judicial rule or practice in Maryland and elsewhere, as pointed out in the Court's opinion, is that a new statute repealing an old criminal law will, in the absence of a general or special saving clause, be interpreted as barring pending prosecutions under the old law. Although Maryland long has had a general saving clause clearly declaring that prosecutions brought under a subsequently repealed statute shall not be barred, the Court advances many arguments why the Maryland Court of Appeals could, and perhaps would, so the Court says, hold that the new ordinance and statute nevertheless bar these prosecutions. On the premise that the Maryland court might hold this way, and because we could thereby avoid passing upon the constitutionality of the State's trespass laws, the Court, without deciding the crucial constitutional questions which brought this case here, instead sends the case back to the state court to consider the effect of the new ordinance and statute.

1964, Bell v. Maryland, 378 U.S. 321

We agree that this Court has power, with or without deciding the constitutional questions, to remand the case for the Maryland Court of Appeals to decide the state question as to whether the convictions should be set aside and the prosecutions abated because of the new laws. But, as the cases cited by the Court recognize, our question is not one of power to take this action, but of whether we should. And the Maryland court would be equally free to give petitioners the benefit of any rights they have growing out of the new law whether we upheld the trespass statute and affirmed or refused to pass upon its validity at this time. For, of course, our affirmance of the state court's holding that the Maryland trespass [378 U.S. 322] statute is constitutional as applied would in no way hamper or bar decision of further state questions which the Maryland court might deem relevant to protect the rights of the petitioners in accord with Maryland law. Recognition of this power of state courts after we affirm their holdings on federal questions is a commonplace occurrence. See, e.g., Piza Hermanos v. Caldentey, 231 U.S. 690, 692 (1914); Fidelity Ins. Trust & Safe Deposit Co. v. McClain, 178 U.S. 113, 114 (1900).

1964, Bell v. Maryland, 378 U.S. 322

Nor do we agree that, because of the new state question, we should vacate the judgment in order to avoid deciding the constitutionality of the trespass statute as applied. We fully recognize the salutary general judicial practice of not unnecessarily reaching out to decide constitutional questions. But this is neither a constitutional nor a statutory requirement. Nor does the principle, properly understood and applied, impose a rigid, arbitrary, and inexorable command that courts should never decide a constitutional question in any single case if subtle ingenuity can think up any conceivable technique that might, if utilized, offer a distant possibility of avoiding decision. Here, we believe the constitutionality of this trespass statute should be decided.

1964, Bell v. Maryland, 378 U.S. 322

This case is but one of five involving the same kind of sit-in trespass problems we selected out of a large and growing group of pending cases to decide this very question. We have today granted certiorari in two more of this group of cases. 7 We know that many similar cases are now on the way, and that many others are bound to follow. We [378 U.S. 323] know, as do all others, that the conditions and feelings that brought on these demonstrations still exist, and that rights of private property owners, on the one hand, and demonstrators, on the other, largely depend at this time on whether state trespass laws can constitutionally be applied under these circumstances. Since this question is, as we have pointed out, squarely presented in this very case and is involved in other cases pending here and others bound to come, we think it is wholly unfair to demonstrators and property owners alike, as well as against the public interest, not to decide it now. Since Marbury v. Madison, 1 Cranch. 137 (1803), it has been this Court's recognized responsibility and duty to decide constitutional questions properly and necessarily before it. That case and others have stressed the duty of judges to act with the greatest caution before frustrating legislation by striking it down as unconstitutional. We should feel constrained to decide this question even if we thought the state law invalid. In this case, however, we believe that the state law is a valid exercise of state legislative power, that the question is properly before us, and that the national interest imperatively calls for an authoritative decision of the question by this Court. Under these circumstances, we think that it would be an unjustified abdication of our duty to leave the question undiscussed. This we are not willing to do. So we proceed to state our views on the merits of the constitutional challenges to the Maryland law.

II

1964, Bell v. Maryland, 378 U.S. 323

Although the question was neither raised nor decided in the courts below, petitioners contend that the Maryland statute is void for vagueness under the Due Process Clause of the Fourteenth Amendment because its language gave no fair warning that "sit-ins" staged over a restaurant owner's protest were prohibited by the statute. [378 U.S. 324] The challenged statutory language makes it an offense for any person to

1964, Bell v. Maryland, 378 U.S. 324

enter upon or cross over the land, premises or private property of any person or persons in this State after having been duly notified by the owner or his agent not to do so….

1964, Bell v. Maryland, 378 U.S. 324

Petitioners say that this language plainly means that an entry upon another's property is an offense only if the owner's notice has been given before the intruder is physically on the property; that the notice to petitioners that they were not wanted was given only after they had stepped from the street into the restaurant; and that the statute, as applied to them, was void either because (1) there was no evidence to support the charge of entry after notice not to do so, or because (2) the statute failed to warn that it could be violated by remaining on property after having been told to leave. As to (1), in view of the evidence and petitioners' statements at the trial, it is hard to take seriously a contention that petitioners were not fully aware, before they ever entered the restaurant, that it was the restaurant owner's firmly established policy and practice not to serve Negroes. The whole purpose of the "sit-in" was to protest that policy. (2) Be that as it may, the Court of Appeals of Maryland held that "the statutory references to `entry upon or crossing over' cover the case of remaining upon land after notice to leave," and the trial court found, with very strong evidentiary support, that, after unequivocal notice to petitioners that they would not be seated or served, they

1964, Bell v. Maryland, 378 U.S. 324

persisted in their demands and, brushing by the hostess, took seats at various tables on the main floor and at the counter in the basement.

1964, Bell v. Maryland, 378 U.S. 324

We are unable to say that holding this conduct barred by the Maryland statute was an unreasonable interpretation of the statute, or one which could have deceived or even surprised petitioners or others who [378 U.S. 325] wanted to understand and obey it. It would certainly be stretching the rule against ambiguous statutes very far indeed to hold that the statutory language misled these petitioners as to the Act's meaning, in the face of evidence showing a prior series of demonstrations by Negroes, including some of petitioners, and in view of the fact that the group which included petitioners came prepared to picket Hooper and actually courted arrest, the better to protest his refusal to serve colored people.

1964, Bell v. Maryland, 378 U.S. 325

We reject the contention that the statute, as construed, is void for vagueness. In doing so, we do not overlook or disregard the view expressed in other cases that statutes which, in regulating conduct, may indirectly touch the areas of freedom of expression should be construed narrowly where necessary to protect that freedom. 8 And we do not doubt that one purpose of these "sit-ins" was to express a vigorous protest against Hooper's policy of not serving Negroes. 9 But it is wholly clear that the Maryland statute here is directed not against what petitioners said, but against what they did—remaining on the premises of another after having been warned to leave, conduct which States have traditionally prohibited in this country. 10 And none of our prior cases has held that a person's right to freedom of expression carries with it a right to force a private property owner to furnish his property as a platform to criticize the property owner's use of that property. Cf. Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949). We believe that the statute as construed and applied is not void for vagueness. [378 U.S. 326]

III

1964, Bell v. Maryland, 378 U.S. 326

Section 1 of the Fourteenth Amendment provides in part:

1964, Bell v. Maryland, 378 U.S. 326

No State shall…deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

1964, Bell v. Maryland, 378 U.S. 326

This section of the Amendment, unlike other sections, 11 is a prohibition against certain conduct only when done by a State—"state action," as it has come to be known—and "erects no shield against merely private conduct, however discriminatory or wrongful." Shelley v. Kraemer, 334 U.S. 1, 13 (1948). 12 This well established interpretation of section 1 of the Amendment—which all the parties here, including the petitioners and the Solicitor General, accept—means that this section of the Amendment does not, of itself, standing alone, in the absence of some cooperative state action or compulsion, 13 forbid property holders, including restaurant owners, to ban people from entering or remaining upon their premises, even if the owners act out of racial prejudice. But "the prohibitions of the amendment extend to all action of the State denying equal protection of the laws," whether "by its legislative, its executive, or its judicial authorities." Virginia v. Rives, 100 U.S. 313, 318 (1880). The Amendment thus forbids all kinds of state action, by all state agencies and officers, that discriminate [378 U.S. 327] against persons on account of their race. 14 It was this kind of state action that was held invalid in Brown v. Board of Education, 347 U.S. 483 (1954), Peterson v. City of Greenville, 373 U.S. 244 (1963); Lombard v. Louisiana, 373 U.S. 267 (1963); and Griffin v. County School Board, 377 U.S. 218 (1964), and that this Court today holds invalid in Robinson v. Florida, 378 U.S. 153.

1964, Bell v. Maryland, 378 U.S. 327

Petitioners, but not the Solicitor General, contend that their conviction for trespass under the state statute was, by itself, the kind of discriminatory state action forbidden by the Fourteenth Amendment. This contention, on its face, has plausibility when considered along with general statements to the effect that, under the Amendment, forbidden "state action" may be that of the Judicial, as well as of the Legislative or Executive, Branch of Government. But a mechanical application of the Fourteenth Amendment to this case cannot survive analysis. The Amendment does not forbid a State to prosecute for crimes committed against a person or his property, however prejudiced or narrow the victim's views may be. Nor can whatever prejudice and bigotry the victim of a crime may have be automatically attributed to the State that prosecutes. Such a doctrine would not only be based on a fiction; it would also severely handicap a State's efforts to maintain a peaceful and orderly society. Our society has put its trust in a system of criminal laws to punish lawless conduct. To avert personal feuds and violent brawls, it has led its people to believe and expect that wrongs against them will be vindicated in the courts. Instead of attempting to take the law into their own hands, people have been taught to call for police protection to protect their rights wherever possible. 15 It would [378 U.S. 328] betray our whole plan for a tranquil and orderly society to say that a citizen, because of his personal prejudices, habits attitudes, or beliefs, is cast outside the law's protection, and cannot call for the aid of officers sworn to uphold the law and preserve the peace. The worst citizen, no less than the best, is entitled to equal protection of the laws of his State and of his Nation. None of our past cases justifies reading the Fourteenth Amendment in a way that might well penalize citizens who are law-abiding enough to call upon the law and its officers for protection instead of using their own physical strength or dangerous weapons to preserve their rights.

1964, Bell v. Maryland, 378 U.S. 328

In contending that the State's prosecution of petitioners for trespass is state action forbidden by the Fourteenth Amendment, petitioners rely chiefly on Shelley v. Kraemer, supra. That reliance is misplaced. Shelley held that the Fourteenth Amendment was violated by a State's enforcement of restrictive covenants providing that certain pieces of real estate should not be used or occupied by Negroes, Orientals, or any other non-Caucasians, either as owners or tenants, and that, in case of use or occupancy by such proscribed classes, the title of any person so using or occupying it should be divested. Many briefs were filed in that case by the parties and by amici curiae. To support the holding that state [378 U.S. 329] enforcement of the agreements constituted prohibited state action even though the agreements were made by private persons to whom, if they act alone, the Amendment does not apply, two chief grounds were urged: (1) this type of agreement constituted a restraint on alienation of property, sometimes in perpetuity, which, if valid, was in reality the equivalent of, and had the effect of, state and municipal zoning laws, accomplishing the same kind of racial discrimination as if the State had passed a statute instead of leaving this objective to be accomplished by a system of private contracts, enforced by the State. See Marsh v. Alabama, 326 U.S. 501 (1946); Terry v. Adams, 345 U.S. 461 (1953); cf. Yick Wo v. Hopkins, 118 U.S. 356 (1886); Nashville, C. & St.L. R. Co. v. Browning, 310 U.S. 362 (1940). 16 (2) Nearly all the briefs in Shelley which asked invalidation of the restrictive covenants iterated and reiterated that judicial enforcement of this system of covenants was forbidden state action because the right of a citizen to own, use, enjoy, occupy, and dispose of property is a federal right protected by the Civil Rights Acts of 1866 and 1870, validly passed pursuant to congressional power authorized by section 5 of the Fourteenth Amendment. 17 This [378 U.S. 330] argument was buttressed by citation of many cases, some of which are referred to in this Court's opinion in Buchanan v. Warley, 245 U.S. 60 (1917). In that case, this Court, acting under the Fourteenth Amendment and the Civil Rights Acts of 1866 and 1870, struck down a city ordinance which zoned property on the basis of race, stating, 245 U.S. at 81,

1964, Bell v. Maryland, 378 U.S. 330

The right which the ordinance annulled was the civil right of a white man to dispose of his property if he saw fit to do so to a person of color and of a colored person to make such disposition to a white person.

1964, Bell v. Maryland, 378 U.S. 330

Buchanan v. Warley was heavily relied on by this Court in Shelley v. Kraemer, supra, where this statement from Buchanan was quoted:

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The Fourteenth Amendment and these statutes [of 1866 and 1870] enacted in furtherance of its purpose operate to qualify and entitle a colored man to acquire property without state legislation discriminating against him solely because of color.

1964, Bell v. Maryland, 378 U.S. 330

334 U.S. at 11-12. And the Court in Shelley went on to cite with approval two later decisions of this Court which, relying on Buchanan v. Warley, had invalidated other city ordinances. 18

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It seems pretty clear that the reason judicial enforcement of the restrictive covenants in Shelley was deemed state action was not merely the fact that a state court had acted, but rather that it had acted

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to deny to petitioners, on the grounds of race or color, the enjoyment of property rights in premises which petitioners are willing and financially able to acquire and which the grantors are willing to sell.

1964, Bell v. Maryland, 378 U.S. 330

334 U.S. at 19. In other words, this Court held that state enforcement of the covenants had the effect of denying to the parties their federally guaranteed right to own, occupy, enjoy, and use their property without regard to race or color. Thus, the line of cases from Buchanan through Shelley establishes these [378 U.S. 331] propositions: (1) When an owner of property is willing to sell and a would-be purchaser is willing to buy, then the Civil Rights Act of 1866, which gives all persons the same right to "inherit, purchase, lease, sell, hold, and convey" property, prohibits a State, whether through its legislature, executive, or judiciary, from preventing the sale on the grounds of the race or color of one of the parties. Shelley v. Kraemer, supra, 334 U.S. at 19. (2) Once a person has become a property owner, then he acquires all the rights that go with ownership: "the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land." Buchanan v. Warley, supra, 245 U.S. at 74. This means that the property owner may, in the absence of a valid statute forbidding it, sell his property to whom he pleases and admit to that property whom he will; so long as both parties are willing parties, then the principles stated in Buchanan and Shelley protect this right. But equally, when one party is unwilling, as when the property owner chooses not to sell to a particular person or not to admit that person, then, as this Court emphasized in Buchanan, he is entitled to rely on the guarantee of due process of law—that is, "law of the land"—to protect his free use and enjoyment of property and to know that only by valid legislation, passed pursuant to some constitutional grant of power, can anyone disturb this free use. But petitioners here would have us hold that, despite the absence of any valid statute restricting the use of his property, the owner of Hooper's restaurant in Baltimore must not be accorded the same federally guaranteed right to occupy, enjoy, and use property given to the parties in Buchanan and Shelley; instead, petitioners would have us say that Hooper's federal right must be cut down, and he must be compelled—though no statute said he must—to allow people to force their way into his restaurant and remain there over his protest. We cannot subscribe to [378 U.S. 332] such a mutilating, one-sided interpretation of federal guarantees the very heart of which is equal treatment under law to all. We must never forget that the Fourteenth Amendment protects "life, liberty, or property" of all people generally, not just some people's "life," some people's "liberty," and some kinds of "property."

1964, Bell v. Maryland, 378 U.S. 332

In concluding that mere judicial enforcement of the trespass law is not sufficient to impute to Maryland Hooper's refusal to serve Negroes, we are in accord with the Solicitor General's views as we understand them. He takes it for granted

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that the mere fact of State intervention through the courts or other public authority in order to provide sanctions for a private decision is not enough to implicate the State for the purposes of the Fourteenth Amendment…. Where the only State involvement is color-blind support for every property owner's exercise of the normal right to choose his business visitors or social guests, proof that the particular property owner was motivated by racial or religious prejudice is not enough to convict the State of denying equal protection of the laws.

1964, Bell v. Maryland, 378 U.S. 332

The Solicitor General also says:

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The preservation of a free and pluralistic society would seem to require substantial freedom for private choice in social, business and professional associations. Freedom of choice means the liberty to be wrong as well as right, to be mean as well as noble, to be vicious as well as kind. And even if that view were questioned, the philosophy of federalism leaves an area for choice to the States and their people, when the State is not otherwise involved, instead of vesting the only power of effective decision in the federal courts. [378 U.S. 333]

1964, Bell v. Maryland, 378 U.S. 333

We, like the Solicitor General, reject the argument that the State's protection of Hooper's desire to choose customers on the basis of race by prosecuting trespassers is enough, standing alone, to deprive Hooper of his right to operate the property in his own way. But we disagree with the contention that there are other circumstances which, added to the State's prosecution for trespass, justify a finding of state action. There is no Maryland law, no municipal ordinance, and no official proclamation or action of any kind that shows the slightest state coercion of, or encouragement to, Hooper to bar Negroes from his restaurant. 19 Neither the State, the city, nor any of their agencies has leased publicly owned property to Hooper. 20 It is true that the State and city regulate the restaurants—but not by compelling restaurants to deny service to customers because of their race. License fees are collected, but this licensing has no relationship to race. Under such circumstances, to hold that a State must be held to have participated in prejudicial conduct of its licensees is too big a jump for us to take. Businesses owned by private persons do not become agencies of the State because they are licensed; to hold that they do would be completely to negate all our private ownership concepts and practices.

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Neither the parties nor the Solicitor General, at least with respect to Maryland, has been able to find the present existence of any state law or local ordinance, and state court or administrative ruling, or any other official state conduct which could possibly have had any coercive influence on Hooper's racial practices. Yet, despite a complete absence of any sort of proof or even respectable [378 U.S. 334] speculation that Maryland in any way instigated or encouraged Hooper's refusal to serve Negroes, it is argued at length that Hooper's practice should be classified as "state action." This contention rests on a long narrative of historical events, both before and since the Civil War, to show that, in Maryland, and indeed in the whole South, state laws and state actions have been a part of a pattern of racial segregation in the conduct of business, social, religious, and other activities. This pattern of segregation hardly needs historical references to prove it. The argument is made that the trespass conviction should be labeled "state action" because the "momentum" of Maryland's "past legislation" is still substantial in the realm of public accommodations. To that extent, the Solicitor General argues, "a State which has drawn a color line may not suddenly assert that it is color blind." We cannot accept such an ex post facto argument to hold the application here of Maryland's trespass law unconstitutional. Nor can we appreciate the fairness or justice of holding the present generation of Marylanders responsible for what their ancestors did in other days 21—even if we had the right to substitute our own ideas of what the Fourteenth Amendment ought to be for what it was written and adopted to achieve.

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There is another objection to accepting this argument. If it were accepted, we would have one Fourteenth Amendment for the South and quite a different and more lenient one for the other parts of the country. Present "state action" in this area of constitutional rights would [378 U.S. 335] be governed by past history in the South—by present conduct in the North and West. Our Constitution was not written to be read that way, and we will not do it.

IV

1964, Bell v. Maryland, 378 U.S. 335

Our Brother GOLDBERG, in his opinion, argues that the Fourteenth Amendment, of its own force and without the need of congressional legislation, prohibits privately owned restaurants from discriminating on account of color or race. His argument runs something like this: (1) Congress understood the "Anglo-American" common law, as it then existed in the several States, to prohibit owners of inns and other establishments open to the public from discriminating on account of race; (2) in passing the Civil Rights Act of 1866 and other civil rights legislation, Congress meant access to such establishments to be among the "civil rights" protected; (3) finally, those who framed and passed the Fourteenth Amendment intended it, of its own force, to assure persons of all races equal access to privately owned inns and other accommodations. In making this argument, the opinion refers us to three state supreme court cases and to congressional debates on various post-Civil War civil rights bills. However, not only does the very material cited furnish scant, and often contradictory, support for the first two propositions (about the common law and the Reconstruction era statutes), but, even more important, the material furnishes absolutely none for the third proposition, which is the issue in the case.

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In the first place, there was considerable doubt and argument concerning what the common law in the 1860's required even of carriers and innkeepers, and still more concerning what it required of owners of other establishments. For example, in Senate debates in 1864 on a proposal to amend the charter of the street railway company in the District of Columbia to prohibit it from excluding [378 U.S. 336] any person from its cars on account of color—a debate cited in MR. JUSTICE GOLDBERG's opinion—one Senator thought that the common law would give a remedy to any Negro excluded from a street car, 22 while another argued that "it was universally conceded that railroad companies, steamboat proprietors, coach lines, had the right to make this regulation" requiring Negroes to ride in separate cars. 23 Senator Sumner of Massachusetts, one of the chief proponents of legislation of this type, admitted that there was "doubt" both as to what the street railway's existing charter required and as to what the common law required; therefore, he proposed that, since the common law had "fallen into disuse" or "become disputable," Congress should act: "[L]et the rights of colored persons be placed under the protection of positive statute…. " 24

1964, Bell v. Maryland, 378 U.S. 336

Second, it is not at all clear that, in the statutes relied on—the Civil Rights Act of 1866 and the Supplementary Freedmen's Bureau Act—Congress meant for those statutes to guarantee Negroes access to establishments [378 U.S. 337] otherwise open to the general public. 25 For example, in the House debates on the Civil Rights bill of 1866 cited, not one of the speakers mentioned privately owned accommodations. 26 Neither the text of the bill, 27 [378 U.S. 338] nor, for example, the enumeration by a leading supporter of the bill of what "civil rights" the bill would protect, 28 even mentioned inns or other such facilities. Hence, we are pointed to nothing in the legislative history which gives rise to an inference that the proponents of the Civil Rights Act of 1866 meant to include as a "civil right" a right to demand service at a privately owned restaurant or other privately owned establishment. And, if the 1866 Act did impose a statutory duty on innkeepers and others, then it is strange indeed that Senator Sumner, in 1872, thought that an Act of Congress was necessary to require hotels, carriers, theatres, and other places to receive all races, and even 29 more strange that Congress felt obliged in 1875 to pass the Civil Rights Act of that year explicitly prohibiting discrimination by inns, conveyances, theatres, and other places of public amusement. 30

1964, Bell v. Maryland, 378 U.S. 338

Finally, and controlling here, there is nothing whatever in the material cited to support the proposition that the Fourteenth Amendment, without congressional legislation, prohibits owners of restaurants and other places to refuse service to Negroes. We are cited, only in passing, to general statements made in the House of Representatives to the effect that the Fourteenth Amendment was meant to incorporate the "principles" of the Civil Rights Act of 1866. 31 Whether "principles" are the same thing as "provisions" we are not told. But we have noted the serious doubt that the Civil Rights Act of 1866 even dealt with access to privately owned facilities. And it is revealing that in not one of the passages cited from the debates on the Fourteenth Amendment did any speaker suggest that the Amendment was designed, [378 U.S. 339] of itself, to assure all races equal treatment at inns and other privately owned establishments.

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Apart from the one passing reference just mentioned above to the debates on the Fourteenth Amendment, a reference which we have shown had no relevance whatever to whom restaurants should serve, every one of the passages cited deals entirely with proposed legislation—not with the Amendments. 32 It should be obvious that what may have been proposed in connection with passage of one statute or another is altogether irrelevant to the question of what the Fourteenth Amendment does in the absence of legislation. It is interesting to note that, in 1872, some years after the passage of the Fourteenth Amendment, Senator Sumner, always an indefatigable proponent of statutes of this kind, proposed in a debate to which we are cited a bill to give all citizens, regardless of color, equal enjoyment of carriers, hotels, theatres, and certain other places. He submitted that, as to hotels and carriers (but not as to theatres and places of amusement), the bill "simply reenforce[d]" the common law; 33 it is [378 U.S. 340] significant that he did not argue that the bill would enforce a right already protected by the Fourteenth Amendment itself—the stronger argument, had it been available to him. Similarly, in an 1874 debate on a bill to give all citizens, regardless of color, equal enjoyment of inns, public conveyances, theatres, places of public amusement, common schools, and cemeteries (a debate also cited), Senator Pratt argued that the bill gave the same rights as the common law, but would be a more effective remedy. 34 Again, it is significant that, like Sumner in the 1872 debates, Pratt suggested as precedent for the bill only his belief that the common law required equal treatment; he never intimated that the Fourteenth Amendment laid down such a requirement.

1964, Bell v. Maryland, 378 U.S. 340

We have confined ourselves entirely to those debates cited in Brother GOLDBERG's opinion the better to show how, even on its own evidence, the opinion's argument that the Fourteenth Amendment, without more, prohibits discrimination by restaurants and other such places rests on a wholly inadequate historical foundation. When read and analyzed, the argument is shown to rest entirely on what speakers are said to have believed bills and statutes of the time were meant to do. Such proof fails entirely when the question is not what statutes did, but rather what the Constitution does. Nor are the three state cases 35 relied on any better evidence, for all three [378 U.S. 341] dealt with state antidiscrimination statutes, not one purported to interpret the Fourteenth Amendment. 36 And, if we are to speak of cases decided at that time, we should recall that this Court, composed of Justices appointed by Presidents Lincoln, Grant, Hayes, Garfield, and Arthur, held, in a series of constitutional interpretations beginning with the Slaughter-House Cases, 16 Wall. 36 (1873), that the Amendment, of itself, was directed at state action only, and that it did not displace the power of the state and federal legislative bodies to regulate the affairs of privately owned businesses. 37

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We are admonished that, in deciding this case, we should remember that "it is a constitution we are expounding." 38 [378 U.S. 342] We conclude as we do because we remember that it is a Constitution, and that it is our duty "to bow with respectful submission to its provisions." 39 And, in recalling that it is a Constitution "intended to endure for ages to come," 40 we also remember that the Founders wisely provided the means for that endurance: changes in the Constitution, when thought necessary, are to be proposed by Congress or conventions and ratified by the States. The Founders gave no such amending power to this Court. Cf. Ex parte parte Virginia, 100 U.S. 339, 345-346 (1880). Our duty is simply to interpret the Constitution, and, in doing so, the test of constitutionality is not whether a law is offensive to our conscience or to the "good old common law," 41 but whether it is offensive to the Constitution. Confining ourselves to our constitutional duty to construe, not to rewrite or amend, the Constitution, we believe that Section 1 of the Fourteenth Amendment does not bar Maryland from enforcing its trespass laws so long as it does so with impartiality.

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This Court has done much in carrying out its solemn duty to protect people from unlawful discrimination. And it will, of course, continue to carry out this duty in the future as it has in the past. 42 But the Fourteenth [378 U.S. 343] Amendment of itself does not compel either a black man or a white man running his own private business to trade with anyone else against his will. We do not believe that Section 1 of the Fourteenth Amendment was written or designed to interfere with a storekeeper's right to choose his customers or with a property owner's right to choose his social or business associates, so long as he does not run counter to valid state 43 or federal regulation. The case before us does not involve the power of the Congress to pass a law compelling privately owned businesses to refrain from discrimination on the basis of race and to trade with all if they trade with any. We express no views as to the power of Congress, acting under one or another provision of the Constitution, to prevent racial discrimination in the operation of privately owned businesses, nor upon any particular form of legislation to that end. Our sole conclusion is that Section 1 of the Fourteenth Amendment, standing alone, does not prohibit privately owned restaurants from choosing their own customers. It does not destroy what has until very recently been universally recognized in this country as the unchallenged right of a man who owns a business to run the business in his own way so long as some valid regulatory statute does not tell him to do otherwise. 44 [378 U.S. 344]

V

1964, Bell v. Maryland, 378 U.S. 344

Petitioners, but not the Solicitor General, contend that their convictions for trespass deny them the right of freedom of expression guaranteed by the Constitution. They argue that their

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expression (asking for service) was entirely appropriate to the time and place at which it occurred. They did not shout or obstruct the conduct of business. There were no speeches, picket signs, handbills or other forms of expression in the store possibly inappropriate to the time and place. Rather, they offered to purchase food in a place and at a time set aside for such transactions. Their protest demonstration was a part of the "free trade in ideas" (Abrams v. United States, 250 U.S. 616, 630, Holmes, J., dissenting)….

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Their argument comes down to this: that, since petitioners did not shout, obstruct Hooper's business (which the record refutes), make speeches, or display picket signs, handbills, or other means of communication, they had a perfect constitutional right to assemble and remain in the restaurant, over the owner's continuing objections, for the purpose of expressing themselves by language and "demonstrations" bespeaking their hostility to Hooper's refusal to serve Negroes. This Court's prior cases do not support such a privilege growing out of the constitutional rights of speech and assembly. Unquestionably petitioners [378 U.S. 345] had a constitutional right to express these views wherever they had an unquestioned legal right to be. Cf. Marsh v. Alabama, supra. But there is the rub in this case. The contention that petitioners had a constitutional right to enter or to stay on Hooper's premises against his will because, if there, they would have had a constitutional right to express their desire to have restaurant service over Hooper's protest is a bootstrap argument. The right to freedom of expression is a right to express views—not a right to force other people to supply a platform or a pulpit. It is argued that this supposed constitutional right to invade other people's property would not mean that a man's home, his private club, or his church could be forcibly entered or used against his will—only his store or place of business which he has himself "opened to the public" by selling goods or services for money. In the first place, that argument assumes that Hooper's restaurant had been opened to the public. But the whole quarrel of petitioners with Hooper was that, instead of being open to all, the restaurant refused service to Negroes. Furthermore, legislative bodies with power to act could, of course, draw lines like this, but if the Constitution itself fixes its own lines, as is argued, legislative bodies are powerless to change them, and homeowners, churches, private clubs, and other property owners would have to await case-by-case determination by this Court before they knew who had a constitutional right to trespass on their property. And even if the supposed constitutional right is confined to places where goods and services are offered for sale, it must be realized that such a constitutional rule would apply to all businesses and professions alike. A statute can be drafted to create such exceptions as legislators think wise, but a constitutional rule could as well be applied to the smallest business as to the largest, to the most personal professional relationship as to the most impersonal business, [378 U.S. 346] to a family business conducted on a man's farm or in his home as to business carried on elsewhere.

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A great purpose of freedom of speech and press is to provide a forum for settlement of acrimonious disputes peaceably, without resort to intimidation, force, or violence. The experience of ages points to the inexorable fact that people are frequently stirred to violence when property which the law recognizes as theirs is forcibly invaded or occupied by others. Trespass laws are born of this experience. They have been, and doubtless still are, important features of any government dedicated, as this country is, to a rule of law. Whatever power it may allow the States or grant to the Congress to regulate the use of private property, the Constitution does not confer upon any group the right to substitute rule by force for rule by law. Force leads to violence, violence to mob conflicts, and these to rule by the strongest groups with control of the most deadly weapons. Our Constitution, noble work of wise men, was designed—all of it—to chart a quite different course: to "establish Justice, insure domestic Tranquility…and secure the Blessings of Liberty to ourselves and our Posterity." At times, the rule of law seems too slow to some for the settlement of their grievances. But it is the plan our Nation has chosen to preserve both "Liberty" and equality for all. On that plan we have put our trust and staked our future. This constitutional rule of law has served us well. Maryland's trespass law does not depart from it. Nor shall we.

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We would affirm.

Footnotes

BRENNAN, J., lead opinion (Footnotes)

1964, Bell v. Maryland, 378 U.S. 346

1. Another public accommodations law was enacted by the Maryland Legislature on March 14, 1964, and signed by the Governor on April 7, 1964. This statute reenacts the quoted provision from the 1963 enactment and gives it statewide application, eliminating the county exclusions. The new statute was scheduled to go into effect on June 1, 1964, but its operation has apparently been suspended by the filing of petitions seeking a referendum. See Md.Const., Art. XIV; Baltimore Sun, May 31, 1964, p. 22, col. 1. Meanwhile, the Baltimore City ordinance and the 1963 state law, both of which are applicable to Baltimore City, where Hooper's restaurant is located, remain in effect.

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2. The rule has also been consistently recognized and applied by this Court. Thus, in United States v. Schooner Peggy, 1 Cranch 103, 110, Chief Justice Marshall held:

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It is in the general true that the province of an appellate court is only to enquire whether a judgment when rendered was erroneous or not. But if, subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. If the law be constitutional,…I know of no court which can contest its obligation…. In such a case, the court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside.

1964, Bell v. Maryland, 378 U.S. 346

See also Yeaton v. United States, 5 Cranch 281, 283; Maryland for Use of Washington County v. Baltimore & O. R Co., 3 How. 534, 552; United States v. Tynen, 11 Wall. 88, 95; United States v. Reisinger, 128 U.S. 398, 401; United States v. Chambers, 291 U.S. 217, 222-223; Massey v. United States, 291 U.S. 608.

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3. Thus, the statewide public accommodations law enacted in 1964, see note 1, supra, is entitled "An Act to repeal and reenact, with amendments…," the 1963 Act, and provides expressly at several points that certain portions of the 1963 Act—none of which is here relevant—are "hereby repealed." But the 1964 enactment, like the 1963 enactment and the Baltimore City ordinance, contains no reference whatever to the trespass law, much less a statement that that law is being in any respect "repealed" or "amended."

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4. The Maryland case law under the saving clause is meager, and sheds little if any light on the present question. The clause has been construed only twice since its enactment in 1912, and neither case seems directly relevant here. State v. Clifton, 177 Md. 572, 10 A.2d 703 (1940); State v. Kennerly, 204 Md. 412, 104 A.2d 632, 106 A.2d 90 (1954). In two other cases, the clause was ignored. State to Use of Prince George's County Comm'rs v. American Bonding Co., 128 Md. 268, 97 A. 529 (1916); Green v. State, 170 Md. 134, 183 A. 526 (1936). The failure to apply the clause in these cases was explained by the Court of Appeals in the Clifton case, supra, 177 Md. at 576-577, 10 A.2d at 705, on the basis that "in neither of those proceedings did it appear that any penalty, forfeiture, or liability had actually been incurred." This may indicate a narrow construction of the clause, since the language of the clause would seem to have applied to both cases. Also indicative of a narrow construction is the statement of the Court of Appeals in the Kennerly case, supra, that the saving clause is "merely an aid to interpretation, stating the general rule against repeals by implication in more specific form." 204 Md. at 417, 104 A.2d at 634. Thus, if the case law has any pertinence, it supports a narrow construction of the saving clause, and hence a conclusion that the clause is inapplicable here.

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5. See also Metzger Motor Car Co. v. Parrott, 233 U.S. 36; New York ex rel. Whitman v. Wilson, 318 U.S. 688; State Tax Comm'n of Utah v. Van Cott, 306 U.S. 511; Roth v. Delano, 338 U.S. 226, 231; Williams v. Georgia, 349 U.S. 375, 390-391; Trunkline Gas Co. v. Hardin County, 375 U.S. 8.

DOUGLAS, J., separate opinion (Footnotes)

1964, Bell v. Maryland, 378 U.S. 346

1. See Appendix II.

1964, Bell v. Maryland, 378 U.S. 346

2. See Appendix I.

1964, Bell v. Maryland, 378 U.S. 346

3. For accounts of the Black Codes see Fleming, The Sequel of Appomattox (1919), pp. 94-98; Sen.Ex.Doc.No.6, 39th Cong., 2d Sess.; I Oberholtzer, A History of the United States Since the Civil War (1917), pp. 126-127, 136-137, 175. They are summarized as follows by Morison and Commager, The Growth of the American Republic (1950), pp. 17-18:

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These black codes provided for relationships between the whites and the blacks in harmony with realities—as the whites understood them—rather than with abstract theory. They conferred upon the freedmen fairly extensive privileges, gave them the essential rights of citizens to contract, sue and be sued, own and inherit property, and testify in court, and made some provision for education. In no instance were the freedmen accorded the vote or made eligible for juries, and, for the most part, they were not permitted to testify against white men. Because of their alleged aversion to steady work, they were required to have some steady occupation, and subjected to special penalties for violation of labor contracts. Vagrancy and apprenticeship laws were especially harsh, and lent themselves readily to the establishment of a system of peonage. The penal codes provided harsher and more arbitrary punishments for blacks than for whites, and some states permitted individual masters to administer corporal punishment to "refractory servants." Negroes were not allowed to bear arms or to appear in all public places, and there were special laws governing the domestic relations of the blacks. In some states, laws closing to the freedmen every occupation save domestic and agricultural service betrayed a poor white jealousy of the Negro artisan. Most codes, however, included special provision to protect the Negro from undue exploitation and swindling. On the whole, the black codes corresponded fairly closely to the essential fact that nearly four million ex-slaves needed special attention until they were ready to mingle in free society on more equal terms. But, in such states as South Carolina and Mississippi, there was clearly evident a desire to keep the freedmen in a permanent position of tutelage, if not of peonage.

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4. Other "relics of slavery" have recently come before this Court. In Hamilton v. Alabama, 376 U.S. 650, we reversed a judgment of contempt imposed on a Negro witness under these circumstances:

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Cross examination by Solicitor Rayburn:

1964, Bell v. Maryland, 378 U.S. 346

Q. What is your name, please?

1964, Bell v. Maryland, 378 U.S. 346

A. Miss Mary Hamilton

1964, Bell v. Maryland, 378 U.S. 346

Q. Mary, I believe—you were arrested—who were you arrested by?

1964, Bell v. Maryland, 378 U.S. 346

A. My name is Miss Hamilton. Please address me correctly.

1964, Bell v. Maryland, 378 U.S. 346

Q. Who were you arrested by, Mary?

1964, Bell v. Maryland, 378 U.S. 346

A. I will not answer a question—

1964, Bell v. Maryland, 378 U.S. 346

By Attorney Amaker: The witness's name is Miss Hamilton.

1964, Bell v. Maryland, 378 U.S. 346

A.—your question until I am addressed correctly.

1964, Bell v. Maryland, 378 U.S. 346

The Court: Answer the question.

1964, Bell v. Maryland, 378 U.S. 346

The Witness: I will not answer them unless I am addressed correctly.

1964, Bell v. Maryland, 378 U.S. 346

The Court: You are in contempt of court—

1964, Bell v. Maryland, 378 U.S. 346

Attorney Conley: Your Honor—your Honor—

1964, Bell v. Maryland, 378 U.S. 346

The Court: You are in contempt of this court, and you are sentenced to five days in jail and a fifty dollar fine.

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Additional relics of slavery are mirrored in recent decisions: Brown v. Board of Education, 347 U.S. 483 (segregated schools); Johnson v. Virginia, 373 U.S. 61 (segregated courtroom); Peterson v. Greenville, 373 U.S. 244, and Lombard v. Louisiana, 373 U.S. 267 (segregated restaurants); Wright v. Georgia, 373 U.S. 284, and Watson v. Memphis, 373 U.S. 526 (segregated public parks).

1964, Bell v. Maryland, 378 U.S. 346

5. Wright, The Sit-in Movement: Progress Report and Prognosis, 9 Wayne L.Rev. 445, 450 (1963).

DOUGLAS, J., separate opinion (Footnotes)

1964, Bell v. Maryland, 378 U.S. 346

1. The conventional claims of corporate management are stated in Ginzberg and Berg, Democratic Values and the Rights of Management (1963), pp. 153-154:

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The founding fathers, despite some differences of opinion among them, were of one mind when it came to fundamentals—the best guarantee of freedom was the retention by the individual of the broadest possible scope for decisionmaking. And early in the nation's history, when the Supreme Court decided that the corporation possessed many of the same rights as individuals, continuity was maintained in basic structure; the corporate owner as well as the individual had wide scope for decisionmaking. In recent decades, another extension of this trend became manifest. The agents of owners—the managers—were able to subsume for themselves the authorities inherent in ownership. The historical record, then, is clear. The right to do what one likes with his property lies at the very foundation of our historical experience. This is a basis for management's growing concern with the restrictions and limitations which have increasingly come to characterize an arena where the widest scope for individual initiative previously prevailed.

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2.

1964, Bell v. Maryland, 378 U.S. 346

Fred Harvey, president of Harvey's Department Store in Nashville, says that when his store desegregated its lunch counters in 1960, only 13 charge accounts were closed out of 60,000. "The greatest surprise I ever had was the apparent `so-what' attitude of white customers," says Mr. Harvey.

1964, Bell v. Maryland, 378 U.S. 346

Even where business losses occur, they usually are only temporary. At the 120-room Peachtree Manor Hotel in Atlanta, owner Irving H. Goldstein says his business dropped off 15% when the hotel desegregated a year ago. "But now we are only slightly behind a year ago, and we can see we are beginning to recapture the business we initially lost," declares Mr. Goldstein.

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William F. Davoren, owner of the Brownie Drug Co. in Huntsville, Ala., reports that, though his business fell a bit for several weeks after lunch counters were desegregated, he's now picked up all that he lost. Says he: "I could name a dozen people who regarded it as a personal affront when I started serving Negroes, but have come back as if nothing had happened."

1964, Bell v. Maryland, 378 U.S. 346

Even a segregation-minded businessman in Huntsville agrees that white customers frequently have short memories when it comes to the race question. W. T. Hutchens, general manager of three Walgreen stores there, says he held out when most lunch counter operators gave in to sit-in pressures last July. In one shopping center where his competition desegregated, Mr. Hutchens says his business shot up sharply, and the store's lunch counter volume registered a 12% gain for the year. However, this year, business has dropped back to pre-integration levels "because a lot of people have forgotten" the defiant role his stores played during the sit-ins, he adds.

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Some Southern businessmen who have desegregated say they have picked up extra business as a result of the move.

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At Raleigh, N.C., where Gino's Restaurant was desegregated this year, owner Jack Griffiths reports only eight whites have walked out after learning the establishment served Negroes, and he says, "we're getting plenty of customers to replace the hard-headed ones."

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In Dallas, integration of hotels and restaurants has "opened up an entirely new area of convention prospects," according to Ray Bennison, convention manager of the Chamber of Commerce. "This year we've probably added $8 million to $10 million of future bookings because we're integrated," Mr. Bennison says.

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Wall Street Journal, July 15, 1963, pp. 1, 12.

1964, Bell v. Maryland, 378 U.S. 346

As recently stated by John Perry:

1964, Bell v. Maryland, 378 U.S. 346

The manager has become accustomed to seeing well dressed Negroes in good restaurants, on planes and trains, in church, in hotel lobbies at United Fund meetings, on television at his university club. Only a few years ago, if he met a Negro at some civic or political meeting, he understood that the man was there because he was a Negro; he was a kind of exhibit. Today it is much more likely that the Negro is there because of his position or profession. It makes a difference that everyone feels.

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The manager is aware that companies other than his are changing. He sees it happening. He reads about it. It is talked about, usually off the record and informally at business gatherings. So, in due course, questions are shaped in his mind: "How can we keep in step? How can we change without making a big deal of it? Can we do it without a lot of uproar?"

1964, Bell v. Maryland, 378 U.S. 346

Business-Next Target for Integration, March-April, 1963, Harvard Business Rev., pp. 104, 111.

1964, Bell v. Maryland, 378 U.S. 346

3. The New York Times stated the idea editorially in an analogous situation on October 31, 1963. P. 32:

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When it comes to speaking out on business matters, Roger Blough, chairman of the United States Steel Corporation, does not mince words.

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Mr. Blough is a firm believer in freedom of action for corporate management, a position he made clear in his battle with the Administration last year. But he also has put some severe limits on the exercise of corporate responsibility, for he rejects the suggestion that U.S. Steel, the biggest employer in Birmingham, Ala., should use its economic influence to erase racial tensions. Mr. Blough feels that U.S. Steel has fulfilled its responsibilities by following a nondiscriminatory hiring policy in Birmingham, and looks upon any other measures as both "repugnant" and "quite beyond what a corporation should do" to improve conditions.

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This hands-off strategy surely underestimates the potential influence of a corporation as big as U.S. Steel, particularly at the local level. It could, without affecting its profit margins adversely or getting itself directly involved in politics, actively work with those groups in Birmingham trying to better race relations. Steel is not sold on the retail level, so U.S. Steel has not been faced with the economic pressure used against the branches of national chain stores.

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Many corporations have belatedly recognized that it is in their own self-interest to promote an improvement in Negro opportunities. As one of the nation's biggest corporations, U.S. Steel and its shareholders have as great a stake in eliminating the economic imbalances associated with racial discrimination as any company. Corporate responsibility is not easy to define or to measure, but, in refusing to take a stand in Birmingham, Mr. Blough appears to have a rather narrow, limited concept of his influence.

DOUGLAS, J., separate opinion (Footnotes)

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\* The only "sit-in" cases not involving a corporation are Barr v. City of Columbia, 378 U.S. 146, and Daniels v. Virginia, 374 U.S. 500. In Barr, the business establishment was the Taylor Street Pharmacy, which apparently is a partnership; in Daniels, it was the 403 Restaurant in Alexandria, Virginia, an individual proprietorship.

DOUGLAS, J., separate opinion (Footnotes)

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\* A division into stores with or without fountains, furnished for the United States, is not furnished for individual States.

DOUGLAS, J., separate opinion (Footnotes)

1964, Bell v. Maryland, 378 U.S. 346

1. Alaska was admitted to the Union in 1959 with these laws on its books.

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2. Hospitals are not enumerated in the law; however, a reasonable interpretation of the broad language contained in the public accommodations law could include various health facilities.

1964, Bell v. Maryland, 378 U.S. 346

3. The law appears to be limited to business schools.

1964, Bell v. Maryland, 378 U.S. 346

4. Hospitals where operations (surgical) are performed are required to render emergency or first aid to any applicant if the accident or injury complained of could cause death or severe injury.

1964, Bell v. Maryland, 378 U.S. 346

5. In 1963, the Governor issued an executive order requiring all executive departments and agencies whose functions relate to the supervising or licensing of persons or organizations doing business to take all lawful action necessary to prevent racial or religious discrimination.

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6. In 1963, the law exempted 11 counties; in 1964, the coverage was extended to include all of the counties. See ante, p. 229, n. 1.

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7. See 1963 Mich.Atty.Gen. opinion holding that the State Commission on Civil Rights has plenary authority in housing.

1964, Bell v. Maryland, 378 U.S. 346

8. The statute does not cover housing per se, but it prohibits persons engaged in the business from discriminating.

1964, Bell v. Maryland, 378 U.S. 346

9. The statute relates to vocational, professional, and trade schools.

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10. In 1962, a Washington, lower court held that a real estate broker is within the public accommodations law.

GOLDBERG, J., concurring (Footnotes)

1964, Bell v. Maryland, 378 U.S. 346

1. See generally Flack, The Adoption of the Fourteenth Amendment (1908); Harris, The Quest for Equality (1960).

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2. E.g., Anderson v. Martin, 375 U.S. 399; Goss v. Board of Education, 373 U.S. 683; Watson v. City of Memphis, 373 U.S. 526; Lombard v. Louisiana, 373 U.S. 267; Peterson v. City of Greenville, 373 U.S. 244; Johnson v. Virginia, 373 U.S. 61; Turner v. City of Memphis, 369 U.S. 350; Burton v. Wilmington Parking Authority, 365 U.S. 715; Boynton v. Virginia, 364 U.S. 454; Gomillion v. Lightfoot, 364 U.S. 339; Cooper v. Aaron, 358 U.S. 1. As Professor Freund has observed, Brown and the decisions that followed it

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were not an abrupt departure in constitutional law or a novel interpretation of the guarantee of equal protection of the laws. The old doctrine of "separate but equal," announced in 1896, had been steadily eroded for at least a generation before the school cases, in the way that precedents are whittled down until they finally collapse.

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Freund, The Supreme Court of the United States (1961), p. 173. See, e.g., Missouri ex rel. Gaines v. Canada, 305 U.S. 337; Sweatt v. Painter, 339 U.S. 629; McLaurin v. Oklahoma State Regents, 339 U.S. 637.

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3. See supra, note 2.

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4. See, e.g., Cong.Globe, 38th Cong., 1st Sess., 839; Cong.Globe, 38th Cong., 1st Sess., 1156-1157; Cong.Globe, 42d Cong., 2d Sess., 381-383; 2 Cong.Rec. 4081-4082. For the general attitude of post-Civil War Congresses toward discrimination in places of public accommodation, see Frank and Munro, The Original Understanding of "Equal Protection of the Laws," 50 Col.L.Rev. 131, 150-153 (1950).

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5. The Civil Rights Act of 1866, 14 Stat. 27, which was the precursor of the Fourteenth Amendment, did not specifically enumerate such rights but, like the Fourteenth Amendment, was nevertheless understood to open to Negroes places of public accommodation. See Flack, op. cit., supra, note 1 at 45 (opinion of the press); Frank and Munro, supra, note 4 at 150-153; Lewis, The Sit-In Cases: Great Expectations, 1963 Sup.Ct.Rev. 101, 145-146. See also Coger v. The North West. Union Packet Co., 37 Iowa 145; Ferguson v. Gies, 82 Mich. 358, 46 N.W. 718. The Government, in its brief in this Court, has agreed with these authorities:

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[W]e may feel sure that any member of Congress would have answered affirmatively if he had been asked in 1868 whether the Civil Rights Act of 1866 and the Fourteenth Amendment would have the effect of securing Negroes the same right as other members of the public to use hotels, trains and public conveyances.

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6. Justice Simrall, a Kentuckian by birth, was a plantation owner and a prominent Mississippi lawyer and Mississippi State Legislator before the Civil War. Shortly before the war, he accepted a chair of law at the University of Louisville; he continued in that position until the beginning of the war, when he returned to his plantation in Mississippi. He subsequently served for nine years on the Mississippi Supreme Court, the last three years serving as Chief Justice. He later lectured at the University of Mississippi, and, in 1890, was elected a member of the Constitutional Convention of Mississippi and served as chairman of the judiciary committee. 5 National Cyclopaedia of American Biography (1907), 456; 1 Rowland, Courts, Judges, and Lawyers of Mississippi 1798-1935 (1935), 98-99.

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7. Cong.Globe, 39th Cong., 1st Sess. at 2459, 2462, 2465, 2467, 2538; Flack, op. cit. supra, note 1 at 94; Harris, op. cit. supra, note 1 at 30-40; McKitrick, Andrew Johnson and Reconstruction (1960), 326-363; Gressman, The Unhappy History of Civil Rights Legislation, 50 Mich.L.Rev. 1323, 1328-1332 (1952). A majority of the courts that considered the Act of 1866 had accepted its constitutionality. United States v. Rhodes, 27 Fed.Cas. p. 785 (No. 16,151); In re Turner, 24 Fed.Cas. p. 337 (No. 14,247); Smith v. Moody, 26 Ind. 299; Hart v. Hoss & Elder, 26 La.Ann. 90. Contra, People v. Brady, 40 Cal. 198 (compare People v. Washington, 36 Cal. 658); Bowlin v. Commonwealth, 65 Ky. 5.

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8. As MR. JUSTICE BLACK pointed out in the Appendix to his dissent in Adamson v. California, 332 U.S. 46, 68, 107-108:

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Both proponents and opponents of § 1 of the (Fourteenth) amendment spoke of its relation to the Civil Rights Bill which had been previously passed over the President's veto. Some considered that the amendment settled any doubts there might be as to the constitutionality of the Civil Rights Bill. Cong.Globe (39th Cong., 1st Sess.,) 2511, 2896. Others maintained that the Civil Rights Bill would be unconstitutional unless and until the amendment was adopted. Cong.Globe, 2461, 2502, 2506, 2513, 2961, 2513. Some thought that amendment was nothing but the Civil Rights (Bill) "in another shape." Cong.Globe, 2459, 2462, 2465, 2467, 2498, 2502.

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9. Cong.Globe, 39th Cong., 1st Sess. at 684 (Senator Sumner).

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10. Id. at 322 (Senator Trumbull). The recurrent references to the right "to go and come at pleasure" as being "among the natural rights of free men" reflect the common understanding that the concepts of liberty and citizenship embraced the right to freedom of movement, the effective right to travel freely. See id., 41-43, 111, 475. Blackstone had stated that the "personal liberty of individuals" embraced

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the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law.

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1 Blackstone, Commentaries (Lewis ed. 1902), 134. This heritage was correctly described in Kent v. Dulles, 357 U.S. 116, 125-127:

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The right to travel is a part of the "liberty" of which the citizen cannot be deprived without due process of law under the Fifth [and Fourteenth Amendments]…. In Anglo-Saxon law, that right was emerging at least as early as the Magna Carta…. Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values. See Crandall v. Nevada, 6 Wall. 35, 44; Williams v. Fears, 179 U.S. 270, 274; Edwards v. California, 314 U.S. 160.

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See also Aptheker v. Secretary of State, 378 U.S. 500. This right to move freely has always been thought to be and is now more than ever inextricably linked with the right of the citizen to be accepted and to be treated equally in places of public accommodation. See the opinion of MR. JUSTICE DOUGLAS, ante at 250-251.

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11. Cong.Globe, 39th Cong., 1st Sess. at 474 (Senator Trumbull).

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12. Id. at 111 (Senator Wilson). See infra at note 17.

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13. E.g., id. at 476, 599, 606, 1117-1118, 1151, 1157, 1159, 1264.

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14. Frank and Munro, supra, note 4 at 148-149:

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One central theme emerges from the talk of "social equality": there are two kinds of relations of men, those that are controlled by the law and those that are controlled by purely personal choice. The former involves civil rights, the latter social rights. There are statements by proponents of the Amendment from which a different definition could be taken, but this seems to be the usual one.

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See infra at notes 16, 32.

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15. Cong.Globe, 39th Cong., 1st Sess., 936. (Emphasis added.) See also id. at 541, 916, App. 70.

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16. The court continued:

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Without doubting that social rights and privileges are not within the protection of the laws and constitutional provisions in question, we are satisfied that the rights and privileges which were denied plaintiff are not within that class. She was refused accommodations equal to those enjoyed by white passengers…. She was unobjectionable in deportment and character…. She complains not because she was deprived of the society of white persons. Certainly no one will claim that the passengers in the cabin of a steamboat are there in the character of members of what is called society. Their companionship as travelers is not esteemed by any class of our people to create social relations…. The plaintiff…claimed no social privilege, but substantial privileges pertaining to her property and the protection of her person. It cannot be doubted that she was excluded from the table and cabin…because of prejudice entertained against her race…. The object of the amendments of the federal constitution and of the statutes above referred to is to relieve citizens of the black race from the effects of this prejudice, to protect them in person and property from its spirit. The Slaughter House Cases[, 16 Wall. 36]. We are disposed to construe these laws according to their very spirit and intent, so that equal rights and equal protection shall be secured to all regardless of color or nationality.

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Id. at 157-158. See also Ferguson v. Gies, 82 Mich. 358, 46 N.W. 718.

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17. The treatise defined an innkeeper as "the keeper of a common inn for the lodging and entertainment of travelers and passengers…. " Story, Commentaries on the Law of Bailments (Schouler, 9th ed., 1878), § 475. 3 Blackstone, op. cit. supra, note 10 at 166, stated a more general rule:

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[I]f an innkeeper or other victualler hangs out a sign and opens his house for travelers, it is an implied engagement to entertain all persons who travel that way, and upon this universal assumpsit an action on the case will lie against him for damages if he, without good reason, refuses to admit a traveler.

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(Emphasis added.) In Tidswell, The Inn-keeper's Legal Guide (1864), p. 22, a "victualling house" is defined as a place "where people are provided with food and liquors, but not with lodgings," and in 3 Stroud, Judicial Dictionary (1903), as "a house where persons are provided with victuals, but without lodging."

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Regardless, however, of the precise content of state common law rules and the legal status of restaurants at the time of the adoption of the Fourteenth Amendment, the spirit of the common law was both familiar and apparent. In 1701, in Lane v. Cotton, 12 Mod. 472, 484-485, Holt, C.J., had declared:

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[W]herever any subject takes upon himself a public trust for the benefit of the rest of his fellow subjects, he is eo ipso bound to serve the subject in all the things that are within the reach and comprehension of such an office, under pain of an action against him…. If. on the road. a shoe fall off my horse, and I come to a smith to have one put on, and the smith refuse to do it, an action will lie against him, because he has made profession of a trade which is for the public good, and has thereby exposed and vested an interest of himself in all the king's subjects that will employ him in the way of his trade. If an innkeeper refuse to entertain a guest where his house is not full, an action will lie against him and so against a carrier, if his horses be not loaded, and he refuse to take a packet proper to be sent by a carrier…. If the inn be full, or the carrier's horses laden, the action would not lie for such refusal; but one that has made profession of a public employment is bound to the utmost extent of that employment to serve the public.

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See Munn v. Illinois, 94 U.S. 113, 126-130 (referring to the duties traditionally imposed on one who pursues a public employment and exercises "a sort of public office").

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Furthermore, it should be pointed out that the Framers of the Fourteenth Amendment, and the men who debated the Civil Rights Acts of 1866 and 1875, were not thinking only in terms of existing common law duties, but were thinking more generally of the customary expectations of white citizens with respect to places which were considered public and which were in various ways regulated by laws. See infra at 298-305. Finally, as the Court acknowledged in Strauder v. West Virginia, 100 U.S. 303, 310, the "Fourteenth Amendment makes no attempt to enumerate the rights it designed to protect," for those who adopted it were conscious that a constitutional "principle, to be vital, must be capable of wider application than the mischief which gave it birth." Weems v. United States, 217 U.S. 349, 373. See infra at 315.

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18. Similarly, in 1874, Senator Pratt said:

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No one reading the Constitution can deny that every colored man is a citizen, and, as such, so far as legislation may go, entitled to equal rights and privileges with white people. Can it be doubted that, for a denial of any of the privileges or accommodations enumerated in the bill [proposed supplement to the Civil Rights Act of 1866], he could maintain a suit at common law against the innkeeper, the public carrier, or proprietor or lessee of the theater who withheld them? Suppose a colored man presents himself at a public inn, kept for the accommodation of the public, is decently clad and behaves himself well and is ready to pay the customary charges for rest and refreshment, and is either refused admittance or treated as an inferior guest—placed at the second table and consigned to the garret, or compelled to make his couch upon the floor—does anyone doubt that, upon an appeal to the courts, the law, if justly administered, would pronounce the innkeeper responsible to him in damages for the unjust discrimination? I suppose not. Prejudice in the jury box might deny him substantial damages, but about the law in the matter, there can be no two opinions. The same is true of public carriers on land or water. Their engagement with the public is to carry all persons who seek conveyance on their cars or boats to the extent of their facilities for certain established fares, and all persons who behave themselves and are not afflicted with any contagious disease are entitled to equal accommodations where they pay equal fares.

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But, it is asked, if the law be as you lay it down, where the necessity for this legislation, since the courts are open to all? My answer is that the remedy is inadequate and too expensive, and involves too much loss of time and patience to pursue it. When a man is traveling, and far from home, it does not pay to sue every innkeeper who, or railroad company which, insults him by unjust discrimination. Practically the remedy is worthless.

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2 Cong.Rec. 4081-4082.

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19. The statute specifically referred to

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the full and equal accommodations, advantages, facilities, and privileges of inns, restaurants, eatinghouses, barbershops, public conveyances on land and water, theaters, and all other places of public accommodation and amusement, subject only to the conditions and limitations established by law, and applicable alike to all citizens.

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82 Mich. 358, 364, 46 N.W. 718, 720.

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20. The court also emphasized that the right under consideration was clearly a "civil," as distinguished from a "social," right. See 82 Mich. at 363, 367-368, 46 N.W. at 720-721; see also supra at notes 13-14, 16 and infra at note 32.

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21. After the Civil War, Southern States enacted the so-called "Black Codes" imposing disabilities reducing the emancipated Negroes to the status of "slaves of society," even though they were no longer the chattels of individual masters. See Cong.Globe, 39th Cong., 1st Sess., 39, 516-517; opinion of MR. JUSTICE DOUGLAS, ante at 247, n. 3. For the substance of these codes, see 1 Fleming, Documentary History of Reconstruction (1906), 273-312; McPherson, The Political History of the United States During the Period of Reconstruction (1871), 29-44.

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22. See Lewis, supra, note 5 at 146:

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It was assumed by more than a few members of Congress that theaters and places of amusement would be or could be opened to all as a result either of the Equal Protection Clause or the Privileges and Immunities Clause. Why would the framers believe this? Some mentioned the law's regulation of such enterprises, but this is not enough. Some other standard must delineate between the regulated who must offer equal treatment and those who need not. Whites did not have a legal right to demand admittance to [such] enterprises, but they were admitted. Perhaps this observed conduct was confused with required conduct, just as the observed status of the citizens of all free governments—the governments that Washington, J., could observe—was mistaken for inherent rights to the status. The important point is that the framers, or some of them, believed the Amendment would open places of public accommodation, and study of the debates reveals this belief to be the observed expectations of the majority, tantamount in practice to legal rights….

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23. E.g., The Supplementary Freedmen's Bureau Act, Cong.Globe, 39th Cong., 1st Sess., 318; The Civil Rights Act of 1866, 14 Stat. 27; The Enforcement Act of 1870, 16 Stat. 140; The Civil Rights Act of April 20, 1871, 17 Stat. 13; 42 U.S.C. § 1983. See also the language of the Civil Rights Cases, 109 U.S. 3, 17 (quoted infra at note 25).

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24. Of the five cases involved in the Civil Rights Cases, two concerned theatres, two concerned inns or hotels, and one concerned a common carrier. In United States v. Nichols (involving a Missouri inn or hotel), the Solicitor General said: "I premise that upon the subject of inns the common law is in force in Missouri…. " Brief for the United States, Nos. 1, 2, 4, 460, October Term, 1882, p. 8. In United States v. Ryan (a California theatre), and in United States v. Stanley (a Kansas inn or hotel), it seems that common law duties applied as well as state antidiscrimination laws. Calif.Laws 1897, p. 137; Kan.Laws 1874, p. 82. In United States v. Singleton (New York opera house), a state statute barred racial discrimination by "theaters, and other places of amusement." N.Y.Laws 1873, p. 303; Laws 1881, p. 541. In Robinson v. Memphis (a Tennessee railroad parlor car), the legal duties were less clear. The events occurred in 1879, and the trial was held in 1880. The common law duty of carriers had existed in Tennessee and, from what appears in the record, was assumed by the trial judge, in charging the jury, to exist at the time of trial. However, in 1875, Tennessee had repealed the common law rule, Laws 1875, p. 216, and, in 1881, the State amended the law to require a carrier to furnish separate but equal first-class accommodations, Laws 1881, p. 211.

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25. Reasoning from this same basic assumption, the Court said that Congress lacked the power to enact such legislation:

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[U]ntil some State law has been passed, or some State action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected by the Fourteenth Amendment, no legislation of the United States under said amendment, nor any proceeding under such legislation, can be called into activity, for the prohibitions of the amendment are against State laws and acts done under State authority.

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109 U.S. at 13. And again:

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[I]t is proper to state that civil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual, unsupported by any such authority, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true…; but, if not sanctioned in some way by the State…, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress.

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Id. at 17. (Emphasis added.)

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The argument of the Attorney General of Mississippi in Donnell v. State, 48 Miss. 661, explicitly related the State's new public accommodations law to the Thirteenth and Fourteenth Amendments. He stated that the Amendments conferred a national "power to enforce, "by appropriate legislation," these rights, privileges and immunities of citizenship upon the newly enfranchised class…"; he then concluded that "the legislature of this state has sought, by this [antidiscrimination] act, to render any interference by congress unnecessary." Id. at 668. This view seems to accord with the assumption underlying the Civil Rights Cases.

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26. Woodward, The Strange Career of Jim Crow (1955), 15-26, points out that segregation in its modern and pervasive form is a relatively recent phenomenon. Although the speed of the movement varied, it was not until 1904, for example, that Maryland, the respondent in this case, extended Jim Crow legislation to railroad coaches and other common carriers. Md.Laws 1904, c. 110, p. 188; Md.Laws 1908, c. 248, p. 88. In the 1870's, Negroes in Baltimore, Maryland, successfully challenged attempts to segregate transit facilities. See Fields v. Baltimore City Passenger R. Co., reported in Baltimore American, Nov. 14, 1871, p. 4 col. 3; Baltimore Sun, Nov. 13, 1871, p. 4, col. 2.

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27. Not until 1887 did Florida, the appellee in Robinson v. Florida, 378 U.S. 153, enact a statute requiring separate railroad passenger facilities for the two races, Fla.Laws 1887, c. 3743, p. 116. The State, in following a pattern that was not unique, had not immediately repealed its reconstruction antidiscrimination statute. Fla.Digest 1881, c. 19, pp. 171-172; see Fla.Laws 1891, c. 4055, p. 92; Fla.Rev.Stat.1892, p. viii.

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28. This Court has frequently held that rights and liberties protected by the Fourteenth Amendment prevail over state common law, as well as statutory, rules.

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The fact that [a State's] policy is expressed by the judicial organ…rather than by the legislature, we have repeatedly ruled to be immaterial…. "[R]ights under [the Fourteenth] amendment turn on the power of the state, no matter by what organ it acts." Missouri v. Dockery, 191 U.S. 165, 170-171.

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Hughes v. Superior Court, 339 U.S. 460, 466-467. See also Ex parte Virginia, 100 U.S. 339, 346-347; American Federation of Labor v. Swing, 312 U.S. 321; New York Times Co. v. Sullivan, 376 U.S. 254, 265.

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29. Letter from Justice Bradley to Circuit Judge (later Justice) William B. Woods (unpublished draft), Mar. 12, 1871, in the Bradley Papers on file, The New Jersey Historical Society, Newark, New Jersey; Supplemental Brief for the United States as Amicus Curiae, Nos. 6, 9, 10, 12 and 60, October Term, 1963, pp. 75-76. For a convenient source of excerpts, see Roche, Civil Liberty in the Age of Enterprise, 31 U. of Chi.L.Rev. 103, 108-110 (1963). See notes 30-31, infra.

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30. A comparison of the 1871 Bradley-Woods correspondence (and the opinion that Judge Woods later wrote, see note 31, infra) with Justice Bradley's 1883 opinion in the Civil Rights Cases indicates that, in some respects, the Justice modified his views. Attached to a draft of a letter to Judge Woods was a note, apparently written subsequently, by Justice Bradley stating that:

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The views expressed in the foregoing letters were much modified by subsequent reflection so far as relates to the power of Congress to pass laws for enforcing social equality between the races.

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The careful wording of this note, limiting itself to "the power of Congress to pass laws," supports the conclusion that Justice Bradley had only modified, not abandoned, his fundamental views, and that the Civil Rights Cases should be read, as they were written, to rest on an explicit assumption as to the legal rights which the States were affirmatively protecting.

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31. The background of this correspondence and the subsequent opinion of Judge Woods in United States v. Hall, 26 Fed.Cas. p. 79 (Cas. No. 15,282), are significant. The correspondence on the subject apparently began in December, 1870, when Judge Woods wrote Justice Bradley concerning the constitutional questions raised by an indictment filed by the United States under the Enforcement Act of 1870, 16 Stat. 140. The indictment charged that the defendants "did unlawfully and feloniously band and conspire together, with intent to injure, oppress, threaten and intimidate" certain citizens in their exercise of their "right of freedom of speech" and in "their free exercise and enjoyment of the right and privilege to peaceably assemble." The prosecution was instituted in a federal court in Alabama against private individuals whose conduct had in no way involved or been sanctioned by state action.

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In May of 1871, after corresponding with Justice Bradley, Judge Woods delivered an opinion upholding the federal statute and the indictment. The judge declared that the rights allegedly infringed were protected under the Privileges and Immunities Clause of the Fourteenth Amendment:

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We think…that the right of freedom of speech, and the other rights enumerated in the first eight articles of amendment to the constitution of the United States, are the privileges and immunities of citizens of the United States, that they are secured by the constitution….

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26 Fed.Cas. at p. 82. This position is similar to that of Justice Bradley, two years later, dissenting in the Slaughter-House Cases, 16 Wall. 36, 111, 118-119. More important for present purposes, however, is the fact that in analyzing the problem of "private" (nonstate) action, Judge Woods' reasoning and language follow that of Justice Bradley's letters. The judge concluded that under the Fourteenth Amendment Congress could adopt legislation:

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to protect the fundamental rights of citizens of the United States against unfriendly or insufficient state legislation, for the fourteenth amendment not only prohibits the making or enforcing of laws which shall abridge the privileges of the citizen, but prohibits the states from denying to all persons within its jurisdiction the equal protection of the laws. Denying includes inaction as well as action, and denying the equal protection of the laws includes the omission to protect, as well as the omission to pass laws for protection.

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26 Fed.Cas. at p. 81.

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32. The approach is reflected in the reasoning stated by the Supreme Court of Michigan in 1890:

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Socially, people may do as they please within the law, and whites may associate together, as may blacks, and exclude whom they please from their dwellings and private grounds; but there can be no separation in public places between people on account of their color alone which the law will sanction.

\* \* \* \*

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The man who goes either by himself or with his family to a public place must expect to meet and mingle with all classes of people. He cannot ask, to suit his caprice or prejudice or social views, that this or that man shall be excluded because he does not wish to associate with them. He may draw his social line as closely as he chooses at home, or in other private places, but he connot [sic] in a public place carry the privacy of his home with him, or ask that people not as good or great as he is shall step aside when he appears.

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Ferguson v. Gies, 82 Mich. at 363, 367-368, 46 N.W. at 720, 721. See supra at notes 13-14.

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33. Cf. Munn v. Illinois, 94 U.S. 113, 125-126:

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Looking, then, to the common law, from whence came the [property] right which the Constitution protects, we find that, when private property is "affected with a public interest, it ceases to be juris privati only." This was said by Lord Chief Justice Hale more than two hundred years ago in his treatise De Portibus Maris, 1 Harg.Law Tracts, 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large.

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34. See Lewis, supra, note 5 at 148.

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35. See supra at note 17.

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36. See Bickel, The Original Understanding and the Segregation Decision, 69 Harv.L.Rev. 1 (1955).

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37. 2 De Tocqueville, Democracy in America (Bradley ed. 1948), 101.

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1.

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Any person or persons who shall enter upon or cross over the land, premises or private property of any person or persons in this State after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor….

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Md.Code, Art. 27, § 577.

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2. Mr. Hooper testified this as to his reasons for adopting his policy:

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I set at the table with him and two other people and reasoned and talked to him why my policy was not yet one of integration, and told him that I had two hundred employees, and half of them were colored. I thought as much of them as I did the white employees. I invited them back in my kitchen if they'd like to go back and talk to them. I wanted to prove to them it wasn't my policy, my personal prejudice, we were not, that I had valuable colored employees and I thought just as much of them. I tried to reason with these leaders, told them that, as long as my customers were deciding who they wanted to eat with, I'm at the mercy of my customers. I'm trying to do what they want. If they fail to come in, these people are not paying my expenses, and my bills. They didn't want to go back and talk to my colored employees. because every one of them are in sympathy with me, and, that is, we're in sympathy with what their objectives are, with what they are trying to abolish….

1964, Bell v. Maryland, 378 U.S. 346

3. 227 Md. 302, 176 A.2d 771 (1962).

1964, Bell v. Maryland, 378 U.S. 346

4. 374 U.S. 805 (1963). Probable jurisdiction was noted in Robinson v. Florida, 374 U.S. 803 (1963), rev'd, 378 U.S. 153. Certiorari had already been granted in Griffin v. Maryland, 370 U.S. 935 (1962), rev'd, 378 U.S. 130.

1964, Bell v. Maryland, 378 U.S. 346

5. Ordinance No. 1249, June 8, 1962, adding § 10A to Art. 14A, Baltimore City Code (1950 ed.).

1964, Bell v. Maryland, 378 U.S. 346

6. Md.Acts 1963, c. 227, Art. 49B Md.Code § 11 (enacted March 29, 1963, effective June 1, 1963). A later accommodations law, of state-wide coverage, was enacted, Md.Acts 1964, Sp.Sess., c. 29, § 1, but will not take effect unless approved by referendum.

1964, Bell v. Maryland, 378 U.S. 346

7. Hamm v. City of Rock Hill, 377 U.S. 988; Lupper v. Arkansas, 377 U.S. 989. The same question was presented, but is not decided, in seven other cases which the Court today disposes of in various ways. See Drews v. Maryland, 378 U.S. 547; Williams v. North Carolina, 378 U.S. 548; Fox v. North Carolina, 378 U.S. 587; Mitchell v. City of Charleston, 378 U.S. 551,; Ford v. Tennessee, 377 U.S. 994; Green v. Virginia, 378 U.S. 550; Harris v. Virginia, 378 U.S. 552.

1964, Bell v. Maryland, 378 U.S. 346

8. Winters v. New York, 333 U.S. 507, 512 (1948); Cantwell v. Connecticut, 310 U.S. 296, 307-308 (1940).

1964, Bell v. Maryland, 378 U.S. 346

9. See Garner v. Louisiana, 368 U.S. 157, 185 (1961) (Harlan, J., concurring).

1964, Bell v. Maryland, 378 U.S. 346

10. See Martin v. City of Struthers, 319 U.S. 141, 147 and n. 10 (1943).

1964, Bell v. Maryland, 378 U.S. 346

11. E.g., § 5: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

1964, Bell v. Maryland, 378 U.S. 346

12. Citing Civil Rights Cases, 109 U.S. 3 (1883); United States v. Harris, 106 U.S. 629 (1883); United States v. Cruikshank, 92 U.S. 542 (1876).

1964, Bell v. Maryland, 378 U.S. 346

13. See Burton v. Wilmington Parking Authority, 365 U.S. 15 (1961).

1964, Bell v. Maryland, 378 U.S. 346

14. See Shelley v. Kraemer, supra, 334 U.S. at 14-15 (1948), particularly notes 13 and 14.

1964, Bell v. Maryland, 378 U.S. 346

15. The use in this country of trespass laws, both civil and criminal, to allow people to substitute the processes of the law for force and violence has an ancient origin in England. Land law was once bound up with the notion of "seisin," a term connoting "peace and quiet." 2 Pollock and Maitland, The History of English Law Before the Time of Edward I (2d ed. 1909), 29, 30. As Coke put it, "he who is in possession may sit down in rest and quiet…. " 6 Co.Rep. 57b. To vindicate this right to undisturbed use and enjoyment of one's property, the law of trespass came into being. The leading historians of the early English law have observed the constant interplay between "our law of possession and trespass," and have concluded that, since "to allow men to make forcible entries on land…is to invite violence," the trespass laws' protection of possession "is a prohibition of self-help in the interest of public order." 2 Pollock and Maitland, supra, at 31, 41.

1964, Bell v. Maryland, 378 U.S. 346

16. On this subject, the Solicitor General in his brief says:

1964, Bell v. Maryland, 378 U.S. 346

The series of covenants becomes in effect a local zoning ordinance binding those in the area subject to the restriction without their consent. Cf. Buchanan v. Warley, 245 U.S. 60. Where the State has delegated to private persons a power so similar to lawmaking authority, its exercise may fairly be held subject to constitutional restrictions.

1964, Bell v. Maryland, 378 U.S. 346

17. 42 U.S.C. § 1982, deriving from 14 Stat. 27, § 1 (1866), provides:

1964, Bell v. Maryland, 378 U.S. 346

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

1964, Bell v. Maryland, 378 U.S. 346

42 U.S.C. § 1981, deriving from 16 Stat. 144, § 16(1870), provides:

1964, Bell v. Maryland, 378 U.S. 346

All persons within the jurisdiction of the United States shall have the same right…to make and enforce contracts…as is enjoyed by white citizens….

1964, Bell v. Maryland, 378 U.S. 346

The constitutionality of these statutes was recognized in Virginia v. Rives, 100 U.S. 313, 317-318 (1880), and in Buchanan v. Warley, 245 U.S. 60, 79-80 (1917).

1964, Bell v. Maryland, 378 U.S. 346

18. Harmon v. Tyler, 273 U.S. 668 (1927); Richmond v. Deans, 281 U.S. 704 (1938).

1964, Bell v. Maryland, 378 U.S. 346

19. Compare Robinson v. Florida, ante, p. 153; Peterson v. City of Greenville, 373 U.S. 244 (1963); Lombard v. Louisiana, 373 U.S. 267 (1963).

1964, Bell v. Maryland, 378 U.S. 346

20. Compare Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961).

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21. In fact, as pointed out in Part I of this opinion, Maryland has recently passed a law prohibiting racial discrimination in restaurants in Baltimore and some other parts of the State, and Baltimore has enacted a similar ordinance. Still another Maryland antidiscrimination law, of statewide application, has been enacted, but is subject to referendum. See note 6, supra.

1964, Bell v. Maryland, 378 U.S. 346

22. Cong.Globe, 38th Cong., 1st Sess., 1159 (1864) (Senator Morrill).

1964, Bell v. Maryland, 378 U.S. 346

23. Id. at 1157-1158 (Senator Saulsbury).

1964, Bell v. Maryland, 378 U.S. 346

24. Id. at 1158. In response to a question put by Senator Carlile of Virginia, Sumner stated that it had taken a statute to assure Negroes equal treatment in Massachusetts:

1964, Bell v. Maryland, 378 U.S. 346

That whole question, after much discussion in Massachusetts, has been settled by legislation, and the rights of every colored person are placed on an equality with those of white persons. They have the same right with white persons to ride in every public conveyance in the Commonwealth. It was done by positive legislation twenty-one years ago.

1964, Bell v. Maryland, 378 U.S. 346

Ibid. (Emphasis supplied.) A few minutes later, Senator Davis of Kentucky asked Sumner directly if it was not true that what treatment was extended to colored people by "public hotels" incorporated by the Commonwealth of Massachusetts was left to "the judgment and discretion of the proprietors and managers of the hotels." Sumner, who had answered immediately preceding statements by Davis, left this one unchallenged. Id. at 1161.

1964, Bell v. Maryland, 378 U.S. 346

25. A number of the remarks quoted as having been made in relation to Negroes' access to privately owned accommodations in fact dealt with other questions altogether. For example, Senator Trumbull of Illinois is quoted, ante, p. 293, as having said that the Negro should have the right "to go where he pleases." It is implied that such remarks cast light on the question of access to privately owned accommodations. In fact, the statement, made in the course of a debate on a bill (S. 60) to enlarge the powers of the Freedmen's Bureau related solely to Black Laws that had been enacted in some of the Southern States. Trumbull attacked the "slave codes" which "prevented the colored man going from home," and he urged that Congress nullify all laws which would not permit the colored man "to go where he pleases." Cong.Globe, 39th Cong., 1st Sess., 322 (1866). Similarly, in another debate, on a bill (S. 9) for the protection of freedmen, Senator Wilson of Massachusetts had just told the Senate about such laws as that of Mississippi which provided that any freedman who quit his job "without good cause" during the term of his employment should, upon affidavit of the employer, be arrested and carried back to the employer. Speaking of such relics of slavery, Wilson said that freedmen were "as free as I am to work when they please, to play when they please, to go where they please…. " Id. at 41. Senator Trumbull then joined the debate, wondering if S. 9 went far enough, and saying that, to prevent States "from enslaving, under any pretense," the freedmen, he might introduce his own bill to ensure the right of freedmen to "go and come when they please." Id. at 43. It was to the Black Laws—and not anything remotely to do with accommodations—that Wilson, Trumbull, and others addressed their statements. Moreover, in the debate on S. 9, Senator Trumbull expressly referred to the Thirteenth Amendment as the constitutional basis both for the pending bill and for his own bill, ibid., showing that the Senate's concern was with state laws restricting the movement of, and in effect re-enslaving, colored people.

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26. Cong.Globe, 39th Cong., 1st Sess., 474-476 (1866) (Trumbull of Illinois), 599 (Trumbull), 606 (Trumbull), 1117 (Wilson of Iowa), 1151 (Thayer of Pennsylvania), 1154 (Thayer), 1157 (Thornton of Minnesota), 1159 (Windom of Minnesota).

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27. See id. at 211-212.

1964, Bell v. Maryland, 378 U.S. 346

28. Id. at 1151 (Thayer).

1964, Bell v. Maryland, 378 U.S. 346

29. Cong.Globe, 42d Cong., 2d Sess., 381-383 (1872).

1964, Bell v. Maryland, 378 U.S. 346

30. 18 Stat. 335.

1964, Bell v. Maryland, 378 U.S. 346

31. Cong.Globe, 39th Cong., 1st Sess., 2459, 2462, 2465, 2467, 2538 (1866).

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32. Cong.Globe, 38th Cong., 1st Sess., 839 (1864) (debate on bill to repeal law prohibiting colored persons from carrying the mail); Cong.Globe, 38th Cong., 1st Sess., 1156-1157 (1864) (debate on amending the charter of the Metropolitan Railroad Co.); Cong.Globe, 39th Cong., 1st Sess., 322, 541, 916, 936 (1866) (debate on bill to amend the Freedmen's Bureau Act, S. 60); Cong.Globe, 39th Cong., 1st Sess., 474-476, 599, 606, 1117-1118, 1151, 1154, 1157, 1159, 1263 (1866) (debate on the Civil Rights Act of 1866, S. 61); Cong.Globe, 39th Cong., 1st Sess., 41, 111 (1866) (debate on bill for the protection of freedmen from Black Codes, S. 9); Cong.Globe, 42d Cong., 2d Sess., 381-383 (1872) (debate on Sumner's amendment to bill removing political and civil disabilities on ex-Confederates, H.R. 380); 2 Cong.Rec. 4081-4082 (1874) (debate on bill to give all citizens equal enjoyment of inns, etc., S. 1). On cited passage, Cong.Globe, 39th Cong., 1st Sess., 684 (1866), consists of remarks made in debate on a proposed constitutional amendment having to do with apportionment of representation, H.R. 51.

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33. Cong.Globe, 42d Cong., 2d Sess., 383 (1872).

1964, Bell v. Maryland, 378 U.S. 346

34. 2 Cong.Rec. 4081 (1874).

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35. Donnell v. State, 48 Miss. 661 (1873); Coger v. North West. Union Packet Co., 37 Iowa 145 (1873); Ferguson v. Gies, 82 Mich. 358, 46 N.W. 718 (1890). The Mississippi case does contain this observation pertinent to a court's duty to confine itself to deciding cases and interpreting constitutions and statutes and to leave the legislating to legislatures:

1964, Bell v. Maryland, 378 U.S. 346

Events of such vast magnitude and influence now and hereafter, have gone into history within the last ten years, that the public mind is not yet quite prepared to consider them calmly and dispas[s]ionately. To the judiciary, which ought at all times to be calm, deliberate and firm, especially so when the public thought and sentiment are at all excited beyond the normal tone, is committed the high trust of declaring what are the rules of conduct and propriety prescribed by the supreme authority, and what are the rights of individuals under them. As to the policy of legislation, the judiciary have nothing to do. That is wisely left with the lawmaking department of the government.

1964, Bell v. Maryland, 378 U.S. 346

48 Miss. at 675.

1964, Bell v. Maryland, 378 U.S. 346

36. The Attorney General of Mississippi is quoted as having argued in Donnell v. State, 48 Miss. 661 (1873), that the Mississippi Legislature had "sought, by this (antidiscrimination) act, to render any interference by congress unnecessary." Ante, p. 307, n. 25. This very statement shows that the Mississippi Attorney General thought in 1873, as we believe today, that the Fourteenth Amendment did not of itself guarantee access to privately owned facilities, and that it took legislation, such as that of Mississippi, to guarantee such access.

1964, Bell v. Maryland, 378 U.S. 346

37. Brother GOLDBERG's opinion in this case relies on Munn v. Illinois, 94 U.S. 113, which discussed the common law rule that "when private property is devoted to a public use, it is subject to public regulation." Id., at 130. This statement in Munn related, of course, to the extent to which a legislature constitutionally can regulate private property. Munn therefore is not remotely relevant here, for, in this case, the problem is not what legislatures can do, but rather what the Constitution itself does. And in fact this Court some years ago rejected the notion that a State must depend upon some rationalization such as "affected with a public interest" in order for legislatures to regulate private businesses. See Nebbia v. New York, 291 U.S. 502 (1934).

1964, Bell v. Maryland, 378 U.S. 346

38. McCulloch v. Maryland, 4 Wheat. 316, 407 (1819). (Emphasis in original.)

1964, Bell v. Maryland, 378 U.S. 346

39. Cohens v. Virginia, 6 Wheat. 264, 377 (1821).

1964, Bell v. Maryland, 378 U.S. 346

40. McCulloch v. Maryland, 4 Wheat. 316, 415 (1819).

1964, Bell v. Maryland, 378 U.S. 346

41. That the English common law was not thought altogether "good" in this country is suggested by the complaints of the Declaration of Independence, by the Virginia and Kentucky Resolutions, and by observations of Thomas Jefferson. The Jeffersonian Cyclopedia 163 (Foley ed. 1900).

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42. It is said that our holding "does not do justice" to a Constitution which is color blind, and to this Court's decision in Brown v. Board of Education, 347 U.S. 483 (1954). Ante, pp. 287-288. We agree, of course, that the Fourteenth Amendment is "color blind" in the sense that it outlaws all state laws which discriminate merely on account of color. This was the basis upon which the Court struck down state laws requiring school segregation in Brown v. Board of Education, supra. But there was no possible intimation in Brown or in any other of our past decisions that this Court would construe the Fourteenth Amendment as requiring restaurant owners to serve all races. Nor has there been any intimation that the Court should or would expand the Fourteenth Amendment because of a belief that it does not in our judgment go far enough.

1964, Bell v. Maryland, 378 U.S. 346

43. Cf. Colorado Anti-Discrimination Comm'n v. Continental Air Lines, Inc., 372 U.S. 714 (1963).

1964, Bell v. Maryland, 378 U.S. 346

44. The opinion of our Brother GOLDBERG characterizes our argument as being that the Constitution "permits" Negroes to be denied access to restaurants on account of their color. We fear that this statement might mislead some readers. Precisely put, our position is that the Constitution of itself does not prohibit discrimination by those who sell goods and services. There, is of course, a crucial difference between the argument—which we do make—that that Constitution itself does not prohibit private sellers of goods or services from choosing their own customers, and the argument—which we do not make—that the Constitution affirmatively creates a right to discriminate which neither state nor federal legislation could impair.

Escobedo v. Illinois, 1964

Title: Escobedo v. Illinois

Author: U.S. Supreme Court

Date: June 22, 1964

Source: 378 U.S. 478

This case was argued April 29, 1964, and was decided June 22, 1964.

CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Syllabus

1964, Escobedo v. Illinois, 378 U.S. 478

Petitioner, a 22-year-old of Mexican extraction, was arrested with his sister and taken to police headquarters for interrogation in connection with the fatal shooting, about 11 days before, of his brother-in-law. He had been arrested shortly after the shooting, but had made no statement, and was released after his lawyer obtained a writ of habeas corpus from a state court. Petitioner made several requests to see his lawyer, who, though present in the building, and despite persistent efforts, was refused access to his client. Petitioner was not advised by the police of his right to remain silent and, after persistent questioning by the police, made a damaging statement to an Assistant State's Attorney which was admitted at the trial. Convicted of murder, he appealed to the State Supreme Court, which affirmed the conviction.

1964, Escobedo v. Illinois, 378 U.S. 478

Held: Under the circumstances of this case, where a police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect in police custody who has been refused an opportunity to consult with his counsel and who has not been warned of his constitutional right to keep silent, the accused has been denied the assistance of counsel in violation of the Sixth and Fourteenth Amendments, and no statement extracted by the police during the interrogation may be used against him at a trial. Crooker v. California, 357 U.S. 433, and Cicenia v. Lagay, 357 U.S. 504, distinguished, and, to the extent that they may be inconsistent with the instant case, they are not controlling. Pp. 479-492.

1964, Escobedo v. Illinois, 378 U.S. 478

28 Ill.2d 41, 190 N.E.2d 825, reversed and remanded. [378 U.S. 479]

GOLDBERG, J., lead opinion

1964, Escobedo v. Illinois, 378 U.S. 479

MR. JUSTICE GOLDBERG delivered the opinion of the Court.

1964, Escobedo v. Illinois, 378 U.S. 479

The critical question in this case is whether, under the circumstances, the refusal by the police to honor petitioner's request to consult with his lawyer during the course of an interrogation constitutes a denial of "the Assistance of Counsel" in violation of the Sixth Amendment to the Constitution as "made obligatory upon the States by the Fourteenth Amendment," Gideon v. Wainwright, 372 U.S. 335, 342, and thereby renders inadmissible in a state criminal trial any incriminating statement elicited by the police during the interrogation.

1964, Escobedo v. Illinois, 378 U.S. 479

On the night of January 19, 1960, petitioner's brother-in-law was fatally shot. In the early hours of the next morning, at 2:30 a.m., petitioner was arrested without a warrant and interrogated. Petitioner made no statement to the police, and was released at 5 that afternoon pursuant to a state court writ of habeas corpus obtained by Mr. Warren Wolfson, a lawyer who had been retained by petitioner.

1964, Escobedo v. Illinois, 378 U.S. 479

On January 30, Benedict DiGerlando, who was then in police custody and who was later indicted for the murder along with petitioner, told the police that petitioner had fired the fatal shots. Between 8 and 9 that evening, petitioner and his sister, the widow of the deceased, were arrested and taken to police headquarters. En route to the police station, the police "had handcuffed the defendant behind his back," and "one of the arresting officers told defendant that DiGerlando had named him as the one who shot" the deceased. Petitioner testified, without contradiction, that the "detectives said they had us pretty well, up pretty tight, and we might as well admit to this crime," and that he replied, "I am sorry, but I would like to have advice from my lawyer." A police officer testified that, although petitioner was not formally charged, "he was in custody" and "couldn't walk out the door." [378 U.S. 480]

1964, Escobedo v. Illinois, 378 U.S. 480

Shortly after petitioner reached police headquarters, his retained lawyer arrived. The lawyer described the ensuing events in the following terms:

1964, Escobedo v. Illinois, 378 U.S. 480

On that day, I received a phone call [from "the mother of another defendant"] and, pursuant to that phone call, I went to the Detective Bureau at 11th and State. The first person I talked to was the Sergeant on duty at the Bureau Desk, Sergeant Pidgeon. I asked Sergeant Pidgeon for permission to speak to my client, Danny Escobedo…. Sergeant Pidgeon made a call to the Bureau lockup and informed me that the boy had been taken from the lockup to the Homicide Bureau. This was between 9:30 and 10:00 in the evening. Before I went anywhere, he called the Homicide Bureau and told them there was an attorney waiting to see Escobedo. He told me I could not see him. Then I went upstairs to the Homicide Bureau. There were several Homicide Detectives around, and I talked to them. I identified myself as Escobedo's attorney and asked permission to see him. They said I could not…. The police officer told me to see Chief Flynn, who was on duty. I identified myself to Chief Flynn and asked permission to see my client. He said I could not…. I think it was approximately 11:00 o'clock. He said I couldn't see him because they hadn't completed questioning…. [F]or a second or two, I spotted him in an office in the Homicide Bureau. The door was open, and I could see through the office…. I waved to him and he waved back, and then the door was closed by one of the officers at Homicide. 1 There were four or five officers milling [378 U.S. 481] around the Homicide Detail that night. As to whether I talked to Captain Flynn any later that day, I waited around for another hour or two and went back again and renewed by [sic] request to see my client. He again told me I could not…. I filed an official complaint with Commissioner Phelan of the Chicago Police Department. I had a conversation with every police officer I could find. I was told at Homicide that I couldn't see him and I would have to get a writ of habeas corpus. I left the Homicide Bureau and from the Detective Bureau at 11th and State at approximately 1:00 A.M. [Sunday morning]. I had no opportunity to talk to my client that night. I quoted to Captain Flynn the Section of the Criminal Code which allows an attorney the right to see his client. 2

1964, Escobedo v. Illinois, 378 U.S. 481

Petitioner testified that, during the course of the interrogation, he repeatedly asked to speak to his lawyer, and that the police said that his lawyer "didn't want to see" him. The testimony of the police officers confirmed these accounts in substantial detail.

1964, Escobedo v. Illinois, 378 U.S. 481

Notwithstanding repeated requests by each, petitioner and his retained lawyer were afforded no opportunity to consult during the course of the entire interrogation. At one point, as previously noted, petitioner and his attorney came into each other's view for a few moments, but the attorney was quickly ushered away. Petitioner testified "that he heard a detective telling the attorney the latter would not be allowed to talk to [him] `until they [378 U.S. 482] were done,'" and that he heard the attorney being refused permission to remain in the adjoining room. A police officer testified that he had told the lawyer that he could not see petitioner until "we were through interrogating" him.

1964, Escobedo v. Illinois, 378 U.S. 482

There is testimony by the police that, during the interrogation, petitioner, a 22-year-old of Mexican extraction with no record of previous experience with the police, "was handcuffed" 3 in a standing position and that he "was nervous, he had circles under his eyes, and he was upset" and was "agitated" because "he had not slept well in over a week."

1964, Escobedo v. Illinois, 378 U.S. 482

It is undisputed that, during the course of the interrogation, Officer Montejano, who "grew up" in petitioner's neighborhood, who knew his family, and who uses "Spanish language in [his] police work," conferred alone with petitioner "for about a quarter of an hour…. " Petitioner testified that the officer said to him "in Spanish that my sister and I could go home if I pinned it on Benedict DiGerlando," that

1964, Escobedo v. Illinois, 378 U.S. 482

he would see to it that we would go home and be held only as witnesses, if anything, if we had made a statement against DiGerlando…that we would be able to go home that night.

1964, Escobedo v. Illinois, 378 U.S. 482

Petitioner testified that he made the statement in issue because of this assurance. Officer Montejano denied offering any such assurance.

1964, Escobedo v. Illinois, 378 U.S. 482

A police officer testified that, during the interrogation, the following occurred:

1964, Escobedo v. Illinois, 378 U.S. 482

I informed him of what DiGerlando told me, and, when I did, he told me that DiGerlando was [lying], and I said, "Would you care to tell DiGerlando that?" and he said, "Yes, I will." So I [378 U.S. 483] brought…Escobedo in and he confronted DiGerlando and he told him that he was lying and said, "I didn't shoot Manuel, you did it."

1964, Escobedo v. Illinois, 378 U.S. 483

In this way, petitioner for the first time admitted to some knowledge of the crime. After that, he made additional statements further implicating himself in the murder plot. At this point, an Assistant State's Attorney, Theodore J. Cooper, was summoned "to take" a statement. Mr. Cooper, an experienced lawyer who was assigned to the Homicide Division to take "statements from some defendants and some prisoners that they had in custody," "took" petitioner's statement by asking carefully framed questions apparently designed to assure the admissibility into evidence of the resulting answers. Mr. Cooper testified that he did not advise petitioner of his constitutional rights, and it is undisputed that no one during the course of the interrogation so advised him.

1964, Escobedo v. Illinois, 378 U.S. 483

Petitioner moved both before and during trial to suppress the incriminating statement, but the motions were denied. Petitioner was convicted of murder, and he appealed the conviction.

1964, Escobedo v. Illinois, 378 U.S. 483

The Supreme Court of Illinois, in its original opinion of February 1, 1963, held the statement inadmissible and reversed the conviction. The court said:

1964, Escobedo v. Illinois, 378 U.S. 483

[I]t seems manifest to us, from the undisputed evidence and the circumstances surrounding defendant at the time of his statement and shortly prior thereto, that the defendant understood he would be permitted to go home if he gave the statement, and would be granted an immunity from prosecution.

1964, Escobedo v. Illinois, 378 U.S. 483

Compare Lynumn v. Illinois, 372 U.S. 528. The State petitioned for, and the court granted, rehearing. The court then affirmed the conviction. It said:

1964, Escobedo v. Illinois, 378 U.S. 483

[T]he [378 U.S. 484] officer denied making the promise and the trier of fact believed him. We find no reason for disturbing the trial court's finding that the confession was voluntary. 4

1964, Escobedo v. Illinois, 378 U.S. 484

28 Ill.2d 41, 45-46, 190 N.E.2d 825, 827. The court also held, on the authority of this Court's decisions in Crooker v. California, 357 U.S. 433, and Cicenia v. Lagay, 357 U.S. 504, that the confession was admissible even though "it was obtained after he had requested the assistance of counsel, which request was denied." 28 Ill.2d at 46, 190 N.E.2d at 827. We granted a writ of certiorari to consider whether the petitioner's statement was constitutionally admissible at his trial. 375 U.S. 902. We conclude, for the reasons stated below, that it was not and, accordingly, we reverse the judgment of conviction. In Massiah v. United States, 377 U.S. 201, this Court observed that

1964, Escobedo v. Illinois, 378 U.S. 484

a Constitution which guarantees a defendant the aid of counsel at…trial could surely vouchsafe no less to an indicted defendant under interrogation by the police in a completely extrajudicial proceeding. Anything less…might deny a defendant "effective representation by counsel at the only stage when [378 U.S. 485] legal aid and advice would help him."

1964, Escobedo v. Illinois, 378 U.S. 485

Id. at 204, quoting DOUGLAS, J., concurring in Spano v. New York, 360 U.S. 315, 326.

1964, Escobedo v. Illinois, 378 U.S. 485

The interrogation here was conducted before petitioner was formally indicted. But in the context of this case, that fact should make no difference. When petitioner requested, and was denied, an opportunity to consult with his lawyer, the investigation had ceased to be a general investigation of "an unsolved crime." Spano v New York, 360 U.S. 315, 327 (STEWART, J., concurring). Petitioner had become the accused, and the purpose of the interrogation was to "get him" to confess his guilt despite his constitutional right not to do so. At the time of his arrest and throughout the course of the interrogation, the police told petitioner that they had convincing evidence that he had fired the fatal shots. Without informing him of his absolute right to remain silent in the face of this accusation, the police urged him to make a statement. 5 As this Court observed many years ago:

1964, Escobedo v. Illinois, 378 U.S. 485

It cannot be doubted that, placed in the position in which the accused was when the statement was made to him that the other suspected person had charged him with crime, the result was to produce upon his mind the fear that, if he remained silent, it would be considered an admission of guilt, and therefore render certain his being committed for trial as the guilty person, and it cannot be conceived that the converse impression would not also have naturally [378 U.S. 486] arisen, that, by denying there was hope of removing the suspicion from himself.

1964, Escobedo v. Illinois, 378 U.S. 486

Bram v. United States, 168 U.S. 532, 562. Petitioner, a layman, was undoubtedly unaware that, under Illinois law, an admission of "mere" complicity in the murder plot was legally as damaging as an admission of firing of the fatal shots. Illinois v. Escobedo, 28 Ill.2d 41, 190 N.E.2d 825. The "guiding hand of counsel" was essential to advise petitioner of his rights in this delicate situation. Powell v. Alabama, 287 U.S. 45, 69. This was the "stage when legal aid and advice" were most critical to petitioner. Massiah v. United States, supra, at 204. It was a stage surely as critical as was the arraignment in Hamilton v. Alabama, 368 U.S. 52, and the preliminary hearing in White v. Maryland, 373 U.S. 59. What happened at this interrogation could certainly "affect the whole trial," Hamilton v. Alabama, supra, at 54, since rights "may be as irretrievably lost, if not then and there asserted, as they are when an accused represented by counsel waives a right for strategic purposes." Ibid. It would exalt form over substance to make the right to counsel, under these circumstances, depend on whether, at the time of the interrogation, the authorities had secured a formal indictment. Petitioner had, for all practical purposes, already been charged with murder.

1964, Escobedo v. Illinois, 378 U.S. 486

The New York Court of Appeals, whose decisions this Court cited with approval in Massiah, 377 U.S. 201, at 205, has recently recognized that, under circumstances such as those here, no meaningful distinction can be drawn between interrogation of an accused before and after formal indictment. In People v. Donovan, 13 N.Y.2d 148, 193 N.E.2d 628, that court, in an opinion by Judge Fuld, held that a

1964, Escobedo v. Illinois, 378 U.S. 486

confession taken from a defendant, during a period of detention [prior to indictment], after his attorney had requested and been denied access [378 U.S. 487] to him

1964, Escobedo v. Illinois, 378 U.S. 487

could not be used against him in a criminal trial. 6 Id. at 151, 193 N.E.2d at 629. The court observed that it

1964, Escobedo v. Illinois, 378 U.S. 487

would be highly incongruous if our system of justice permitted the district attorney, the lawyer representing the State, to extract a confession from the accused while his own lawyer, seeking to speak with him, was kept from him by the police.

1964, Escobedo v. Illinois, 378 U.S. 487

Id. at 152, 193 N.E.2d at 629. 7

1964, Escobedo v. Illinois, 378 U.S. 487

In Gideon v. Wainwright, 372 U.S. 335, we held that every person accused of a crime, whether state or federal, is entitled to a lawyer at trial. 8 The rule sought by the State here, however, would make the trial no more than an appeal from the interrogation, and the

1964, Escobedo v. Illinois, 378 U.S. 487

right to use counsel at the formal trial [would be] a very hollow thing [if], for all practical purposes, the conviction is already assured by pretrial examination.

1964, Escobedo v. Illinois, 378 U.S. 487

In re Groban, 352 U.S. [378 U.S. 488] 330, 344 (BLACK, J., dissenting). 9

1964, Escobedo v. Illinois, 378 U.S. 488

One can imagine a cynical prosecutor saying: "Let them have the most illustrious counsel now. They can't escape the noose. There is nothing that counsel can do for them at the trial."

1964, Escobedo v. Illinois, 378 U.S. 488

Ex parte Sullivan, 107 F.Supp. 514, 517-518.

1964, Escobedo v. Illinois, 378 U.S. 488

It is argued that, if the right to counsel is afforded prior to indictment, the number of confessions obtained by the police will diminish significantly, because most confessions are obtained during the period between arrest and indictment, 10 and "any lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances." Watts v. Indiana, 338 U.S. 49, 59 (Jackson, J., concurring in part and dissenting in part). This argument, of course, cuts two ways. The fact that many confessions are obtained during this period points up its critical nature as a "stage when legal aid and advice" are surely needed. Massiah v. United States, supra, at 204; Hamilton v. Alabama, supra; White v. Maryland, supra. The right to counsel would indeed be hollow if it began at a period when few confessions were obtained. There is necessarily a direct relationship between the importance of a stage to the police in their quest for a confession and the criticalness of that stage to the accused in his need for legal advice. Our Constitution, unlike some others, strikes the balance in favor of the right of the accused to be advised by his lawyer of his privilege against self-incrimination. See Note, 73 Yale L.J. 1000, 1048-1051 (1964).

1964, Escobedo v. Illinois, 378 U.S. 488

We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement [378 U.S. 489] which comes to depend on the "confession" will, in the long run, be less reliable 11 and more subject to abuses 12 than a system which depends on extrinsic evidence independently secured through skillful investigation. As Dean Wigmore so wisely said:

1964, Escobedo v. Illinois, 378 U.S. 489

[A]ny system of administration which permits the prosecution to trust habitually to compulsory self-disclosure as a source of proof must itself suffer morally thereby. The inclination develops to rely mainly upon such evidence, and to be satisfied with an incomplete investigation of the other sources. The exercise of the power to extract answers begets a forgetfulness of the just limitations of that power. The simple and peaceful process of questioning breeds a readiness to resort to bullying and to physical force and torture. If there is a right to an answer, there soon seems to be a right to the expected answer—that is, to a confession of guilt. Thus, the legitimate use grows into the unjust abuse; ultimately, the innocent are jeopardized by the encroachments of a bad system. Such seems to have been the course of experience in those legal systems where the privilege was not recognized.

1964, Escobedo v. Illinois, 378 U.S. 489

8 Wigmore, Evidence (3d ed.1940), 309. (Emphasis in original.) [378 U.S. 490] This Court also has recognized that

1964, Escobedo v. Illinois, 378 U.S. 490

history amply shows that confessions have often been extorted to save law enforcement officials the trouble and effort of obtaining valid and independent evidence….

1964, Escobedo v. Illinois, 378 U.S. 490

Haynes v. Washington, 373 U.S. 503, 519.

1964, Escobedo v. Illinois, 378 U.S. 490

We have also learned the companion lesson of history that no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights. No system worth preserving should have to fear that, if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. 13 If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system. 14

1964, Escobedo v. Illinois, 378 U.S. 490

We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime, but has begun to focus on a particular suspect, the suspect [378 U.S. 491] has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied "the Assistance of Counsel" in violation of the Sixth Amendment to the Constitution as "made obligatory upon the States by the Fourteenth Amendment," Gideon v. Wainwright, 372 U.S. at 342, and that no statement elicited by the police during the interrogation may be used against him at a criminal trial.

1964, Escobedo v. Illinois, 378 U.S. 491

Crooker v. California, 357 U.S. 433, does not compel a contrary result. In that case, the Court merely rejected the absolute rule sought by petitioner, that

1964, Escobedo v. Illinois, 378 U.S. 491

every state denial of a request to contact counsel [is] an infringement of the constitutional right without regard to the circumstances of the case.

1964, Escobedo v. Illinois, 378 U.S. 491

Id. at 440. (Emphasis in original.) In its place, the following rule was announced:

1964, Escobedo v. Illinois, 378 U.S. 491

[S]tate refusal of a request to engage counsel violates due process not only if the accused is deprived of counsel at trial on the merits,…but also if he is deprived of counsel for any part of the pretrial proceedings, provided that he is so prejudiced thereby as to infect his subsequent trial with an absence of "that fundamental fairness essential to the very concept of justice…. " The latter determination necessarily depends upon all the circumstances of the case.

1964, Escobedo v. Illinois, 378 U.S. 491

357 U.S. at 439-440. (Emphasis added.) The Court, applying "these principles" to "the sum total of the circumstances [there] during the time petitioner was without counsel," id. at 440, concluded that he had not been fundamentally prejudiced by the denial of his request for counsel. Among the critical circumstances which distinguish that case from this one are that the petitioner there, but not here, was explicitly advised by the police of his constitutional right to remain silent and [378 U.S. 492] not to "say anything" in response to the questions, id. at 437, and that petitioner there, but not here, was a well educated man who had studied criminal law while attending law school for a year. The Court's opinion in Cicenia v. Lagay, 357 U.S. 504, decided the same day, merely said that the "contention that petitioner had a constitutional right to confer with counsel is disposed of by Crooker v. California.…" That case adds nothing, therefore, to Crooker. In any event, to the extent that Cicenia or Crooker may be inconsistent with the principles announced today, they are not to be regarded as controlling. 15

1964, Escobedo v. Illinois, 378 U.S. 492

Nothing we have said today affects the powers of the police to investigate "an unsolved crime," Spano v. New York, 360 U.S. 315, 327 (STEWART, J., concurring), by gathering information from witnesses and by other "proper investigative efforts." Haynes v. Washington, 373 U.S. 503, 519. We hold only that, when the process shifts from investigatory to accusatory—when its focus is on the accused and its purpose is to elicit a confession—our adversary system begins to operate, and, under the circumstances here, the accused must be permitted to consult with his lawyer.

1964, Escobedo v. Illinois, 378 U.S. 492

The judgment of the Illinois Supreme Court is reversed, and the case remanded for proceedings not inconsistent with this opinion.

1964, Escobedo v. Illinois, 378 U.S. 492

Reversed and remanded.

HARLAN, J., dissenting

1964, Escobedo v. Illinois, 378 U.S. 492

MR. JUSTICE HARLAN, dissenting.

1964, Escobedo v. Illinois, 378 U.S. 492

I would affirm the judgment of the Supreme Court of Illinois on the basis of Cicenia v. Lagay, 357 U.S. 504, [378 U.S. 493] decided by this Court only six years ago. Like my Brother WHITE, post, p. 495, I think the rule announced today is most ill-conceived, and that it seriously and unjustifiably fetters perfectly legitimate methods of criminal law enforcement.

STEWART, J., dissenting

1964, Escobedo v. Illinois, 378 U.S. 493

MR. JUSTICE STEWART, dissenting.

1964, Escobedo v. Illinois, 378 U.S. 493

I think this case is directly controlled by Cicenia v. Lagay, 357 U.S. 504, and I would therefore affirm the judgment.

1964, Escobedo v. Illinois, 378 U.S. 493

Massiah v. United States, 377 U.S. 201, is not in point here. In that case, a federal grand jury had indicted Massiah. He had retained a lawyer and entered a formal plea of not guilty. Under our system of federal justice, an indictment and arraignment are followed by a trial, at which the Sixth Amendment guarantees the defendant the assistance of counsel.\* But Massiah was released on bail, and thereafter agents of the Federal Government deliberately elicited incriminating statements from him in the absence of his lawyer. We held that the use of these statements against him at his trial denied him the basic protections of the Sixth Amendment guarantee. Putting to one side the fact that the case now before us is not a federal case, the vital fact remains that this case does not involve the deliberate interrogation of a defendant after the initiation of judicial proceedings against him. The Court disregards this basic difference between the present case and Massiah's, with the bland assertion that "that fact should make no difference." Ante, p. 485.

1964, Escobedo v. Illinois, 378 U.S. 493

It is "that fact," I submit, which makes all the difference. Under our system of criminal justice, the institution of formal, meaningful judicial proceedings, by way of indictment, information, or arraignment, marks the [378 U.S. 494] point at which a criminal investigation has ended and adversary proceedings have commenced. It is at this point that the constitutional guarantees attach which pertain to a criminal trial. Among those guarantees are the right to a speedy trial, the right of confrontation, and the right to trial by jury. Another is the guarantee of the assistance of counsel. Gideon v. Wainwright, 372 U.S. 335; Hamilton v. Alabama, 368 U.S. 52; White v. Maryland, 373 U.S. 59.

1964, Escobedo v. Illinois, 378 U.S. 494

The confession which the Court today holds inadmissible was a voluntary one. It was given during the course of a perfectly legitimate police investigation of an unsolved murder. The Court says that what happened during this investigation "affected" the trial. I had always supposed that the whole purpose of a police investigation of a murder was to "affect" the trial of the murderer, and that it would be only an incompetent, unsuccessful, or corrupt investigation which would not do so. The Court further says that the Illinois police officers did not advise the petitioner of his "constitutional rights" before he confessed to the murder. This Court has never held that the Constitution requires the police to give any "advice" under circumstances such as these.

1964, Escobedo v. Illinois, 378 U.S. 494

Supported by no stronger authority than its own rhetoric, the Court today converts a routine police investigation of an unsolved murder into a distorted analogue of a judicial trial. It imports into this investigation constitutional concepts historically applicable only after the onset of formal prosecutorial proceedings. By doing so, I think the Court perverts those precious constitutional guarantees, and frustrates the vital interests of society in preserving the legitimate and proper function of honest and purposeful police investigation.

1964, Escobedo v. Illinois, 378 U.S. 494

Like my Brother CLARK, I cannot escape the logic of my Brother WHITE's conclusions as to the extraordinary implications which emanate from the Court's opinion in [378 U.S. 495] this case, and I share their views as to the untold and highly unfortunate impact today's decision may have upon the fair administration of criminal justice. I can only hope we have completely misunderstood what the Court has said.

WHITE, J., dissenting

1964, Escobedo v. Illinois, 378 U.S. 495

MR. JUSTICE WHITE, with whom MR. JUSTICE CLARK and MR. JUSTICE STEWART join, dissenting.

1964, Escobedo v. Illinois, 378 U.S. 495

In Massiah v. United States, 377 U.S. 201, the Court held that, as of the date of the indictment, the prosecution is dissentitled to secure admissions from the accused. The Court now moves that date back to the time when the prosecution begins to "focus" on the accused. Although the opinion purports to be limited to the facts of this case, it would be naive to think that the new constitutional right announced will depend upon whether the accused has retained his own counsel, cf. Gideon v. Wainwright, 372 U.S. 335; Griffin v. Illinois, 351 U.S. 12; Douglas v. California, 372 U.S. 353, or has asked to consult with counsel in the course of interrogation. Cf. Carnley v. Cochran, 369 U.S. 506. At the very least, the Court holds that, once the accused becomes a suspect and, presumably, is arrested, any admission made to the police thereafter is inadmissible in evidence unless the accused has waived his right to counsel. The decision is thus another major step in the direction of the goal which the Court seemingly has in mind—to bar from evidence all admissions obtained from an individual suspected of crime, whether involuntarily made or not. It does, of course, put us one step "ahead" of the English judges who have had the good sense to leave the matter a discretionary one with the trial court.\* I reject this step and [378 U.S. 496] the invitation to go farther which the Court has now issued.

1964, Escobedo v. Illinois, 378 U.S. 496

By abandoning the voluntary-involuntary test for admissibility of confessions, the Court seems driven by the notion that it is uncivilized law enforcement to use an accused's own admissions against him at his trial. It attempts to find a home for this new and nebulous rule of due process by attaching it to the right to counsel guaranteed in the federal system by the Sixth Amendment and binding upon the States by virtue of the due process guarantee of the Fourteenth Amendment. Gideon v. Wainwright, supra. The right to counsel now not only entitles the accused to counsel's advice and aid in preparing for trial, but stands as an impenetrable barrier to any interrogation once the accused has become a suspect. From that very moment, apparently his right to counsel attaches, a rule wholly unworkable and impossible to administer unless police cars are equipped with public defenders and undercover agents and police informants have defense counsel at their side. I would not abandon the Court's prior cases defining with some care and analysis the circumstances requiring the presence or aid of counsel and substitute the amorphous and wholly unworkable principle that counsel is constitutionally required whenever he would or could be helpful. Hamilton v. Alabama, 368 U.S. 52; White v. Maryland, 373 U.S. 59; Gideon v. [378 U.S. 497] Wainwright, supra. These cases dealt with the requirement of counsel at proceedings in which definable rights could be won or lost, not with stages where probative evidence might be obtained. Under this new approach, one might just as well argue that a potential defendant is constitutionally entitled to a lawyer before, not after, he commits a crime, since it is then that crucial incriminating evidence is put within the reach of the Government by the would-be accused. Until now, there simply has been no right guaranteed by the Federal Constitution to be free from the use at trial of a voluntary admission made prior to indictment.

1964, Escobedo v. Illinois, 378 U.S. 497

It is incongruous to assume that the provision for counsel in the Sixth Amendment was meant to amend or supersede the self-incrimination provision of the Fifth Amendment, which is now applicable to the States. Malloy v. Hogan, 378 U.S. 1. That amendment addresses itself to the very issue of incriminating admissions of an accused and resolves it by proscribing only compelled statements. Neither the Framers, the constitutional language, a century of decisions of this Court, nor Professor Wigmore provides an iota of support for the idea that an accused has an absolute constitutional right not to answer even in the absence of compulsion—the constitutional right not to incriminate himself by making voluntary disclosures.

1964, Escobedo v. Illinois, 378 U.S. 497

Today's decision cannot be squared with other provisions of the Constitution which, in my view, define the system of criminal justice this Court is empowered to administer. The Fourth Amendment permits upon probable cause even compulsory searches of the suspect and his possessions and the use of the fruits of the search at trial, all in the absence of counsel. The Fifth Amendment and state constitutional provisions authorize, indeed require, inquisitorial grand jury proceedings at which a potential defendant, in the absence of counsel, [378 U.S. 498] is shielded against no more than compulsory incrimination. Mulloney v. United States, 79 F.2d 566, 578 (C.A. 1st Cir.); United States v. Benjamin, 120 F.2d 521, 522 (C.A.2d Cir.); United States v. Scully, 225 F.2d 113, 115 (C.A.2d Cir.); United States v. Gilboy, 160 F.Supp. 442 (D.C.M.D.Pa.). A grand jury witness, who may be a suspect, is interrogated and his answers, at least until today, are admissible in evidence at trial. And these provisions have been thought of as constitutional safeguards to persons suspected of an offense. Furthermore, until now, the Constitution has permitted the accused to be fingerprinted and to be identified in a lineup or in the courtroom itself.

1964, Escobedo v. Illinois, 378 U.S. 498

The Court chooses to ignore these matters, and to rely on the virtues and morality of a system of criminal law enforcement which does not depend on the "confession." No such judgment is to be found in the Constitution. It might be appropriate for a legislature to provide that a suspect should not be consulted during a criminal investigation; that an accused should never be called before a grand jury to answer, even if he wants to, what may well be incriminating questions, and that no person, whether he be a suspect, guilty criminal or innocent bystander, should be put to the ordeal of responding to orderly noncompulsory inquiry by the State. But this is not the system our Constitution requires. The only "inquisitions" the Constitution forbids are those which compel incrimination. Escobedo's statements were not compelled, and the Court does not hold that they were.

1964, Escobedo v. Illinois, 378 U.S. 498

This new American judges' rule, which is to be applied in both federal and state courts, is perhaps thought to be a necessary safeguard against the possibility of extorted confessions. To this extent, it reflects a deep-seated distrust of law enforcement officers everywhere, unsupported by relevant data or current material based upon our own [378 U.S. 499] experience. Obviously law enforcement officers can make mistakes and exceed their authority, as today's decision shows that even judges can do, but I have somewhat more faith than the Court evidently has in the ability and desire of prosecutors and of the power of the appellate courts to discern and correct such violations of the law.

1964, Escobedo v. Illinois, 378 U.S. 499

The Court may be concerned with a narrower matter: the unknowing defendant who responds to police questioning because he mistakenly believes that he must and that his admissions will not be used against him. But this worry hardly calls for the broadside the Court has now fired. The failure to inform an accused that he need not answer and that his answers may be used against him is very relevant indeed to whether the disclosures are compelled. Cases in this Court, to say the least, have never placed a premium on ignorance of constitutional rights. If an accused is told he must answer and does not know better, it would be very doubtful that the resulting admissions could be used against him. When the accused has not been informed of his rights at all, the Court characteristically and properly looks very closely at the surrounding circumstances. See Ward v. Texas, 316 U.S. 547; Haley v. Ohio, 332 U.S. 596; Payne v. Arkansas, 356 U.S. 560. I would continue to do so. But, in this case, Danny Escobedo knew full well that he did not have to answer, and knew full well that his lawyer had advised him not to answer.

1964, Escobedo v. Illinois, 378 U.S. 499

I do not suggest for a moment that law enforcement will be destroyed by the rule announced today. The need for peace and order is too insistent for that. But it will be crippled, and its task made a great deal more difficult, all, in my opinion, for unsound, unstated reasons which can find no home in any of the provisions of the Constitution.

Footnotes

GOLDBERG, J., lead opinion (Footnotes)

1964, Escobedo v. Illinois, 378 U.S. 499

1. Petitioner testified that this ambiguous gesture "could have meant most anything," but that he "took it upon [his] own to think that [the lawyer was telling him] not to say anything," and that the lawyer "wanted to talk" to him.

1964, Escobedo v. Illinois, 378 U.S. 499

2. The statute then in effect provided in pertinent part that:

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All public officers…having the custody of any person…restrained of his liberty for any alleged cause whatever, shall, except in cases of imminent danger of escape, admit any practicing attorney…whom such person…may desire to see or consult….

1964, Escobedo v. Illinois, 378 U.S. 499

Ill.Rev.Stat. (1959), c. 38, § 477. Repealed as of Jan. 1, 1964, by Act approved Aug. 14, 1963, H.B. No. 851.

1964, Escobedo v. Illinois, 378 U.S. 499

3. The trial judge justified the handcuffing on the ground that it "is ordinary police procedure."

1964, Escobedo v. Illinois, 378 U.S. 499

4. Compare Haynes v. Washington, 373 U.S. 503, 515 (decided on the same day as the decision of the Illinois Supreme Court here), where we said:

1964, Escobedo v. Illinois, 378 U.S. 499

Our conclusion is in no way foreclosed, as the State contends, by the fact that the state trial judge or the jury may have reached a different result on this issue.

1964, Escobedo v. Illinois, 378 U.S. 499

It is well settled that the duty of constitutional adjudication resting upon this Court requires that the question whether the Due Process Clause of the Fourteenth Amendment has been violated by admission into evidence of a coerced confession be the subject of an independent determination here, see, e.g., Ashcraft v. Tennessee, 322 U.S. 143, 147-148; "we cannot escape the responsibility of making our own examination of the record," Spano v. New York, 360 U.S. 315, 316.

1964, Escobedo v. Illinois, 378 U.S. 499

(Emphasis in original.)

1964, Escobedo v. Illinois, 378 U.S. 499

5. Although there is testimony in the record that petitioner and his lawyer had previously discussed what petitioner should do in the event of interrogation, there is no evidence that they discussed what petitioner should, or could, do in the face of a false accusation that he had fired the fatal bullets.

1964, Escobedo v. Illinois, 378 U.S. 499

6. The English Judges' Rules also recognize that a functional, rather than a formal, test must be applied, and that, under circumstances such as those here, no special significance should be attached to formal indictment. The applicable Rule does not permit the police to question an accused, except in certain extremely limited situations not relevant here, at any time after the defendant "has been charged or informed that he my be prosecuted." [1964] Crim.L.Rev. 166-170 (emphasis supplied). Although voluntary statements obtained in violation of these rules are not automatically excluded from evidence, the judge may, in the exercise of his discretion, exclude them.

1964, Escobedo v. Illinois, 378 U.S. 499

Recent cases suggest that perhaps the judges have been tightening up, [and, almost] inevitably, the effect of the new Rules will be to stimulate this tendency.

1964, Escobedo v. Illinois, 378 U.S. 499

Id. at 182.

1964, Escobedo v. Illinois, 378 U.S. 499

7. Canon 9 of the American Bar Association's Canon of Professional Ethics provides that:

1964, Escobedo v. Illinois, 378 U.S. 499

A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

1964, Escobedo v. Illinois, 378 U.S. 499

See Broeder, Wong Sun v. United States: A Study in Faith and Hope, 42 Neb.L.Rev. 483, 599-604.

1964, Escobedo v. Illinois, 378 U.S. 499

8. Twenty-two States, including Illinois, urged us so to hold.

1964, Escobedo v. Illinois, 378 U.S. 499

9. The Soviet criminal code does not permit a lawyer to be present during the investigation. The Soviet trial has thus been aptly described as "an appeal from the pretrial investigation." Feifer, Justice in Moscow (1964), 86.

1964, Escobedo v. Illinois, 378 U.S. 499

10. See Barrett, Police Practices and the Law—From Arrest to Release or Charge, 50 Cal.L.Rev. 11, 43 (1962).

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11. See Committee Print, Subcommittee to Investigate Administration of the Internal Security Act, Senate Committee on the Judiciary, 85th Cong., 1st Sess., reporting and analyzing the proceedings at the XXth Congress of the Communist Party of the Soviet Union, February 25, 1956, exposing the false confessions obtained during the Stalin purges of the 1930's. See also Miller v. United States, 320 F.2d 767, 772-773 (opinion of Chief Judge Bazelon); Lifton, Thought Reform and the Psychology of Totalism (1961); Rogge, Why Men Confess (1959); Schein, Coercive Persuasion (1961).

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12. See Stephen, History of the Criminal Law, quoted in 8 Wigmore, Evidence (3d ed.1940), 312; Report and Recommendations of the Commissioners' Committee on Police Arrests for Investigation, District of Columbia (1962).

1964, Escobedo v. Illinois, 378 U.S. 499

13. Cf. Report of Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice (1963), 10-11:

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The survival of our system of criminal justice and the values which it advances depends upon a constant, searching, and creative questioning of official decisions and assertions of authority at all stages of the process…. Persons [denied access to counsel] are incapable of providing the challenges that are indispensable to satisfactory operation of the system. The loss to the interests of accused individuals, occasioned by these failures, are great and apparent. It is also clear that a situation in which persons are required to contest a serious accusation but are denied access to the tools of contest is offensive to fairness and equity. Beyond these considerations, however, is the fact that [this situation is] detrimental to the proper functioning of the system of justice, and that the loss in vitality of the adversary system thereby occasioned significantly endangers the basic interests of a free community.

1964, Escobedo v. Illinois, 378 U.S. 499

14. The accused may, of course, intelligently and knowingly waive his privilege against self-incrimination and his right to counsel either at a pretrial stage or at the trial. See Johnson v. Zerbst, 304 U.S. 458. But no knowing and intelligent waiver of any constitutional right can be said to have occurred under the circumstances of this case.

1964, Escobedo v. Illinois, 378 U.S. 499

15. The authority of Cicenia v. Lagay, 357 U.S. 504, and Crooker v. California, 357 U.S. 433, was weakened by the subsequent decisions of this Court in Hamilton v. Alabama, 368 U.S. 52, White v. Maryland, 373 U.S. 59, and Massiah v. United States, 377 U.S. 201 (as the dissenting opinion in the last-cited case recognized).

STEWART, J., dissenting (Footnotes)

1964, Escobedo v. Illinois, 378 U.S. 499

\* "In all criminal prosecutions, the accused shall enjoy the right…to have the Assistance of Counsel for his defence."

WHITE, J., dissenting (Footnotes)

1964, Escobedo v. Illinois, 378 U.S. 499

\*

1964, Escobedo v. Illinois, 378 U.S. 499

[I]t seems from reported cases that the judges have given up enforcing their own rules, for it is no longer the practice to exclude evidence obtained by questioning in custody…. A traditional principle of "fairness" to criminals, which has quite possibly lost some of the reason for its existence, is maintained in words while it is disregarded in fact….

1964, Escobedo v. Illinois, 378 U.S. 499

The reader may be expecting at this point a vigorous denunciation of the police and of the judges, and a plea for a return to the Judges' Rules as interpreted in 1930. What has to be considered, however, is whether these Rules are a workable part of the machinery of justice. Perhaps the truth is that the Rules have been abandoned, by tacit consent, just because they are an unreasonable restriction upon the activities of the police in bringing criminals to book.

1964, Escobedo v. Illinois, 378 U.S. 499

Williams, Questioning by the Police: Some Practical Considerations, [1960] Crim.L.Rev. 325, 331-332. See also [1964] Crim.L.Rev. 161-182.

President Johnson's Remarks Upon Signing the Civil Rights Bill, 1964

Title: President Johnson's Remarks Upon Signing the Civil Rights Bill

Author: Lyndon B. Johnson

Date: July 2, 1964

Source: Public Papers of the Presidents, Johnson, 1963-1964, p.842-844

[Broadcast by radio and television from the East Room at the White House at 6:45 p.m.]

Public Papers of LBJ, 1963-1964, p.842

My fellow Americans:

Public Papers of LBJ, 1963-1964, p.842

I am about to sign into law the Civil Rights Act of 1964. I want to take this occasion to talk to you about what that law means to every American.

Public Papers of LBJ, 1963-1964, p.842

One hundred and eighty-eight years ago this week a small band of valiant men began a long struggle for freedom. They pledged their lives, their fortunes, and their sacred honor not only to found a nation, but to forge an ideal of freedom—not only for political independence, but for personal liberty—not only to eliminate foreign rule, but to establish the rule of justice in the affairs of men.

Public Papers of LBJ, 1963-1964, p.842

That struggle was a turning point in our history. Today in far corners of distant continents, the ideals of those American patriots still shape the struggles of men who hunger for freedom.

Public Papers of LBJ, 1963-1964, p.842

This is a proud triumph. Yet those who founded our country knew that freedom would be secure only if each generation fought to renew and enlarge its meaning. From the minutemen at Concord to the soldiers in Viet-Nam, each generation has been equal to that trust.

Public Papers of LBJ, 1963-1964, p.842

Americans of every race and color have died in battle to protect our freedom. Americans of every race and color have worked to build a nation of widening opportunities. Now our generation of Americans has been called on to continue the unending search for justice within our own borders.

Public Papers of LBJ, 1963-1964, p.842

We believe that all men are created equal. Yet many are denied equal treatment.

Public Papers of LBJ, 1963-1964, p.842

We believe that all men have certain unalienable rights. Yet many Americans do not enjoy those rights.

Public Papers of LBJ, 1963-1964, p.842

We believe that all men are entitled to the blessings of liberty. Yet millions are being deprived of those blessings—not because of their own failures, but because of the color of their skin.

Public Papers of LBJ, 1963-1964, p.842

The reasons are deeply imbedded in history and tradition and the nature of man. We can understand—without rancor or hatred—how this all happened.

Public Papers of LBJ, 1963-1964, p.842–p.843

But it cannot continue. Our Constitution, [p.843] the foundation of our Republic, forbids it. The principles of our freedom forbid it. Morality forbids it. And the law I will sign tonight forbids it.

Public Papers of LBJ, 1963-1964, p.843

That law is the product of months of the most careful debate and discussion. It was proposed more than one year ago by our late and beloved President John F. Kennedy. It received the bipartisan support of more than two-thirds of the Members of both the House and the Senate. An overwhelming majority of Republicans as well as Democrats voted for it.

Public Papers of LBJ, 1963-1964, p.843

It has received the thoughtful support of tens of thousands of civic and religious leaders in all parts of this Nation. And it is supported by the great majority of the American people.

Public Papers of LBJ, 1963-1964, p.843

The purpose of the law is simple.

Public Papers of LBJ, 1963-1964, p.843

It does not restrict the freedom of any American, so long as he respects the rights of others.

Public Papers of LBJ, 1963-1964, p.843

It does not give special treatment to any citizen.

Public Papers of LBJ, 1963-1964, p.843

It does say the only limit to a man's hope for happiness, and for the future of his children, shall be his own ability.

Public Papers of LBJ, 1963-1964, p.843

It does say that there are those who are equal before God shall now also be equal in the polling booths, in the classrooms, in the factories, and in hotels, restaurants, movie theaters, and other places that provide service to the public.

Public Papers of LBJ, 1963-1964, p.843

I am taking steps to implement the law under my constitutional obligation to "take care that the laws are faithfully executed."

Public Papers of LBJ, 1963-1964, p.843

First, I will send to the Senate my nomination of LeRoy Collins to be Director of the Community Relations Service. Governor Collins will bring the experience of a long career of distinguished public service to the task of helping communities solve problems of human relations through reason and commonsense.

Public Papers of LBJ, 1963-1964, p.843

Second, I shall appoint an advisory committee of distinguished Americans to assist Governor Collins in his assignment.

Public Papers of LBJ, 1963-1964, p.843

Third, I am sending Congress a request for supplemental appropriations to pay for necessary costs of implementing the law, and asking for immediate action.

Public Papers of LBJ, 1963-1964, p.843

Fourth, already today in a meeting of my Cabinet this afternoon I directed the agencies of this Government to fully discharge the new responsibilities imposed upon them by the law and to do it without delay, and to keep me personally informed of their progress.

Public Papers of LBJ, 1963-1964, p.843

Fifth, I am asking appropriate officials to meet with representative groups to promote greater understanding of the law and to achieve a spirit of compliance.

Public Papers of LBJ, 1963-1964, p.843

We must not approach the observance and enforcement of this law in a vengeful spirit. Its purpose is not to punish. Its purpose is not to divide, but to end divisions—divisions which have all lasted too long. Its purpose is national, not regional.

Public Papers of LBJ, 1963-1964, p.843

Its purpose is to promote a more abiding commitment to freedom, a more constant pursuit of justice, and a deeper respect for human dignity.

Public Papers of LBJ, 1963-1964, p.843

We will achieve these goals because most Americans are law-abiding citizens who want to do what is right.

Public Papers of LBJ, 1963-1964, p.843

This is why the Civil Rights Act relies first on voluntary compliance, then on the efforts of local communities and States to secure the rights of citizens. It provides for the national authority to step in only when others cannot or will not do the job.

Public Papers of LBJ, 1963-1964, p.843

This Civil Rights Act is a challenge to all of us to go to work in our communities and our States, in our homes and in our hearts, to eliminate the last vestiges of injustice in our beloved country.

Public Papers of LBJ, 1963-1964, p.843–p.844

So tonight I urge every public official, every religious leader, every business and [p.844] professional man, every workingman, every housewife—I urge every American—to join in this effort to bring justice and hope to all our people—and to bring peace to our land.

Public Papers of LBJ, 1963-1964, p.844

My fellow citizens, we have come now to a time of testing. We must not fail.

Public Papers of LBJ, 1963-1964, p.844

Let us close the springs of racial poison. Let us pray for wise and understanding hearts. Let us lay aside irrelevant differences and make our Nation whole. Let us hasten that day when our unmeasured strength and our unbounded spirit will be free to do the great works ordained for this Nation by the just and wise God who is the Father of us all.

Public Papers of LBJ, 1963-1964, p.844

Thank you and good night.

Public Papers of LBJ, 1963-1964, p.844

NOTE: The Civil Rights Act of 1964 is Public Law 88-352 (78 Stat. 241).

Democratic Platform of 1964

Title: Democratic Platform of 1964

Author: Democratic Party

Date: 1964

Source: National Party Platforms, pp.641-672

One Nation, One People

Democratic Platform of 1964, p.641

America is One Nation, One People. The welfare, progress, security and survival of each of us reside in the common good—the sharing of responsibilities as well as benefits by all our people.

Democratic Platform of 1964, p.641

Democracy in America rests on the confidence that people can be trusted with freedom. It comes from the connection that we will find in freedom a unity of purpose stronger than all our differences.

Democratic Platform of 1964, p.641

We have drawn upon that unity when the forces of ignorance, hate, and fear fired an assassin's bullet at the nation's heart, incited violence in our land, and attacked the outposts of freedom around the world.

Democratic Platform of 1964, p.641

Because of this unity, those who traffic in fear, hate, falsehood, and violence have failed to undermine our people's deep love of truth and quiet faith in freedom.

Democratic Platform of 1964, p.641

Our program for the future is to make the national purpose—the human purpose of us all—fulfill our individual needs.

Democratic Platform of 1964, p.641

Accordingly, we offer this platform as a covenant of unity.

Democratic Platform of 1964, p.642

[p.642] We invite all to join us who believe that narrow partisanship takes too small account of the size of our task, the penalties for failure and the boundless rewards to all our people for success.

Democratic Platform of 1964, p.642

We offer as the goal of this covenant peace for all nations and freedom for all peoples.

Peace

Democratic Platform of 1964, p.642

Peace should be the first concern of all governments as it is the prayer of all men.

Democratic Platform of 1964, p.642

At the start of the third decade of the nuclear age, the preservation of peace requires the strength to wage war and the wisdom to avoid it. The search for peace requires the utmost intelligence, the clearest vision, and a strong sense of reality.

Democratic Platform of 1964, p.642

Because for four years our nation has patiently demonstrated these qualities and persistently used them, the world is closer to peace today than it was in 1960.

Democratic Platform of 1964, p.642

In 1960, freedom was on the defensive. The Communists—doubting both our strength and our will to use it—pressed forward in Southeast Asia, Latin America, Central Africa and Berlin.

Democratic Platform of 1964, p.642

President Kennedy and Vice President Johnson set out to remove any question of our power or our will. In the Cuban crisis of 1962 the Communist offensive shattered on the rock of President Kennedy's determination—and our ability—to defend the peace.

Democratic Platform of 1964, p.642

Two years later, President Johnson responded to another Communist challenge, this time in the Gulf of Tonkin. Once again power exercised with restraint repulsed Communist aggression and strengthened the cause of freedom.

Democratic Platform of 1964, p.642

Responsible leadership, unafraid but refusing to take needless risk, has turned the tide in freedom's favor. No nation, old or new, has joined the Communist bloc since Cuba during the preceding Republican Administration. Battered by economic failures, challenged by recent American achievements in space, torn by the Chinese-Russian rift, and faced with American strength and courage—international Communism has lost its unity and momentum.

National Defense

Democratic Platform of 1964, p.642

By the end of 1960, military strategy was being shaped by the dictates of arbitrary budget ceilings instead of the real needs of national security. There were, for example, too few ground and air forces to fight limited war, although such wars were a means to continued Communist expansion.

Democratic Platform of 1964, p.642

Since then, and at the lowest possible cost, we have created a balanced, versatile, powerful defense establishment, capable of countering aggression across the entire spectrum of conflict, from nuclear confrontation to guerrilla subversion.

Democratic Platform of 1964, p.642

We have increased our intercontinental ballistic missiles and Polaris missiles from fewer than 100 to more than 1,000, more than four times the force of the Soviet Union. We have increased the number of combat ready divisions from 11 to 16.

Democratic Platform of 1964, p.642

Until such time as there can be an enforceable treaty providing for inspected and verified disarmament, we must, and we will, maintain our military strength, as the sword and shield of freedom and the guarantor of peace.

Democratic Platform of 1964, p.642

Specifically, we must and we will:

Democratic Platform of 1964, p.642

Continue the overwhelming supremacy of our Strategic Nuclear Forces.

Democratic Platform of 1964, p.642

Strengthen further our forces for discouraging limited wars and fighting subversion.

Democratic Platform of 1964, p.642

Maintain the world's largest research and development effort, which has initiated more than 200 new programs since 1961, to ensure continued American leadership in weapons systems and equipment.

Democratic Platform of 1964, p.642

Continue the nationwide Civil Defense program as an important part of our national security.

Democratic Platform of 1964, p.642

Pursue our examination of the Selective Service program to make certain that it is continued only as long as it is necessary and that we meet our military manpower needs without social or economic injustice.

Democratic Platform of 1964, p.642

Attract to the military services the highest caliber of career men and women and make certain they are adequately paid and adequately housed.

Democratic Platform of 1964, p.642

Maintain our Cost Reduction Program, to ensure a dollar's worth of defense for every dollar spent, and minimize the disruptive effects of changes in defense spending.

Building the Peace

Democratic Platform of 1964, p.642

As citizens of the United States, we are determined that it be the most powerful nation on earth.

Democratic Platform of 1964, p.642

As citizens of the world, we insist that this power be exercised with the utmost responsibility.

Democratic Platform of 1964, p.642

Control of the use of nuclear weapons must remain solely with the highest elected official in the country—the President of the United States.

Democratic Platform of 1964, p.643

Through our policy of never negotiating from [p.643] fear but never fearing to negotiate, we are slowly but surely approaching the point where effective international agreements providing for inspection and control can begin to lift the crushing burden of armaments off the backs of the people of the world.

Democratic Platform of 1964, p.643

In the Nuclear Test Ban Treaty, signed now by over 100 nations, we have written our commitment to limitations on the arms race, consistent with our security. Reduced production of nuclear materials for weapons purposes has been announced and nuclear weapons have been barred from outer space.

Democratic Platform of 1964, p.643

Already the air we and our children breathe is freer of nuclear contamination.

Democratic Platform of 1964, p.643

We are determined to continue all-out efforts through fully-enforceable measures to halt and reverse the arms race and bring to an end the era of nuclear terror.

Democratic Platform of 1964, p.643

We will maintain our solemn commitment to the United Nations, with its constituent agencies, working to strengthen it as a more effective instrument for peace, for preventing or resolving international disputes, and for building free nations through economic, technical, and cultural development. We continue to oppose the admission of Red China to the United Nations.

Democratic Platform of 1964, p.643

We believe in increased partnership with our friends and associates in the community which spans the North Atlantic. In every possible way we will work to strengthen our ties and increase our cooperation, building always more firmly on the sure foundation of the NATO treaty.

Democratic Platform of 1964, p.643

We pledge unflagging devotion to our commitments to freedom from Berlin to South Vietnam. We will:

Democratic Platform of 1964, p.643

Help the people of developing nations in Asia, Africa and Latin America raise their standards of living and create conditions in which freedom and independence can flourish.

Democratic Platform of 1964, p.643

Place increased priority on private enterprise and development loans as we continue to improve our mutual assistance programs.

Democratic Platform of 1964, p.643

Work for the attainment of peace in the Near East as an urgent goal, using our best efforts to prevent a military unbalance, to encourage arms reductions and the use of national resources for internal development and to encourage the re-settlement of Arab refugees in lands where there is room and opportunity. The problems of political adjustment between Israel and the Arab countries can and must be peacefully resolved and the territorial integrity of every nation respected.

Democratic Platform of 1964, p.643

Support the partnership of free American Republics in the Alliance for Progress.

Democratic Platform of 1964, p.643

Move actively to carry out the Resolution of the Organization of American States to further isolate Castroism and speed the restoration of freedom and responsibility in Cuba.

Democratic Platform of 1964, p.643

Support our friends in and around the rim of the Pacific, and encourage a growing understanding among peoples, expansion of cultural exchanges, and strengthening of ties.

Democratic Platform of 1964, p.643

Oppose aggression and the use of force or the threat of force against any nation.

Democratic Platform of 1964, p.643

Encourage by all peaceful means the growing independence of the captive peoples living under Communism and hasten the day that Albania, Bulgaria, Czechoslovakia, East Germany, Estonia, Hungary, Latavia, Lithuania, Poland, Rumania and the other captive nations will achieve full freedom and self-determination. We deplore Communist oppression of Jews and other minorities.

Democratic Platform of 1964, p.643

Encourage expansion of our economic ties with other nations of the world and eliminate unjustifiable tariff and non-tariff barriers, under authority of the Trade Expansion Act of 1962. Expand the Peace Corps.

Democratic Platform of 1964, p.643

Use even more of our Food for Peace.

The Conquest of Space

Democratic Platform of 1964, p.643

In four vigorous years we have moved to the forefront of space exploration. The United States must never again settle for second place in the race for tomorrow's frontiers.

Democratic Platform of 1964, p.643

We will continue the rapid development of space technology for peaceful uses.

Democratic Platform of 1964, p.643

We will encourage private industry to increase its efforts in space research.

Democratic Platform of 1964, p.643

We will continue to ensure that any race in space is won for freedom and for peace.

The Leadership We Offer

Democratic Platform of 1964, p.643

The complications and dangers in our restless, constantly changing world require of us consummate understanding and experience. One rash act, one thoughtless decision, one unchecked reaction—and cities could become smoldering ruins and farms parched wasteland.

Democratic Platform of 1964, p.644

The leadership we offer has already been tested [p.644] in the crucible of crisis and challenge. To this Nation and to all the world we reaffirm President Johnson's resolve to "…use every resource at the command of the Government…and the people…to find the road to peace."

Democratic Platform of 1964, p.644

We offer this platform as a guide for that journey.

Freedom and Well Being

Democratic Platform of 1964, p.644

There can be full freedom only when all of our people have opportunity for education to the full extent of their ability to learn, followed by the opportunity to employ their learning in the creation of something of value to themselves and to the nation.

The Individual

Democratic Platform of 1964, p.644

Our task is to make the national purpose serve the human purpose: that every person shall have the opportunity to become all that he or she is capable of becoming.

Democratic Platform of 1964, p.644

We believe that knowledge is essential to individual freedom and to the conduct of a free society. We believe that education is the surest and most profitable investment a nation can make.

Democratic Platform of 1964, p.644

Regardless of family financial status, therefore, education should be open to every boy or girl in America up to the highest level which he or she is able to master.

Democratic Platform of 1964, p.644

In an economy which will offer fewer and fewer places for the unskilled, there must be a wide variety of educational opportunities so that every young American, on leaving school, will have acquired the training to take a useful and rewarding place in our society.

Democratic Platform of 1964, p.644

It is increasingly clear that more of our educational resources must be directed to pre-school training as well as to junior college, college and post-graduate study.

Democratic Platform of 1964, p.644

The demands on the already inadequate sources of state and local revenues place a serious limitation on education. New methods of financial aid must be explored, including the channeling of federally collected revenues to all levels of education, and, to the extent permitted by the Constitution, to all schools. Only in this way can our educational programs achieve excellence throughout the nation, a goal that must be achieved without interfering with local control and direction of education.

Democratic Platform of 1964, p.644

In order to insure that all students who can meet the requirements for college entrance can continue their education, we propose an expanded program of public scholarships, guaranteed loans, and work-study grants.

Democratic Platform of 1964, p.644

We shall develop the potential of the Armed Forces for training young men who might otherwise be rejected for military service because their work skills are underdeveloped.

Democratic Platform of 1964, p.644

The health of the people is important to the strength and purpose of our country and is a proper part of our common concern.

Democratic Platform of 1964, p.644

In a nation that lacks neither compassion nor resources, the needless suffering of people who cannot afford adequate medical care is intolerable:

Democratic Platform of 1964, p.644

We will continue to fight until we have succeeded in including hospital care for older Americans in the Social Security program, and have insured adequate assistance to those elderly people suffering from mental illness and mental retardation.

Democratic Platform of 1964, p.644

We will go forward with research into the causes and cures of disease, accidents, mental illness and mental retardation.

Democratic Platform of 1964, p.644

We will further expand our health facilities, especially medical schools, hospitals, and research laboratories.

Democratic Platform of 1964, p.644

America's veterans who served their Nation so well must, in turn, be served fairly by a grateful Nation. First-rate hospitals and medical care must be provided veterans with service-connected injuries and disabilities, and their compensation rates must insure an adequate standard of living. The National Service Life Insurance program should be reopened for those who have lost their insurance coverage, and an equitable and just pension system must help meet the need of those disabled veterans and their survivors who require financial assistance.

Democracy of Opportunity

Democratic Platform of 1964, p.644

The variety of our people is the source of our strength and ought not to be a cause of disunity or discord. The rights of all our citizens must be protected and all the laws of our land obeyed if America is to he safe for democracy.

Democratic Platform of 1964, p.644

The Civil Rights Act of 1964 deserves and requires full observance by every American and fair, effective enforcement if there is any default.

Democratic Platform of 1964, p.644

Resting upon a national consensus expressed by the overwhelming support of both parties, this new [p.645] law impairs the rights of no American; it affirms the rights of all Americans. Its purpose is not to divide, but to end division; not to curtail the opportunities of any, but to increase opportunities for all; not to punish, but to promote further our commitment to freedom, the pursuit of justice, and a deeper respect for human dignity.

Democratic Platform of 1964, p.645

We reaffirm our belief that lawless disregard for the rights of others is wrong—whether used to deny equal rights or to obtain equal rights.

Democratic Platform of 1964, p.645

We cannot and will not tolerate lawlessness. We can and will seek to eliminate its economic and social causes.

Democratic Platform of 1964, p.645

True democracy of opportunity will not be served by establishing quotas based on the same false distinctions we seek to erase, nor can the effects of prejudice be neutralized by the expedient of preferential practices.

Democratic Platform of 1964, p.645

The immigration laws must be revised to permit families to be reunited, to welcome the persecuted and oppressed, and to eliminate the discriminatory provisions which base admission upon national origins.

Democratic Platform of 1964, p.645

We will support legislation to carry forward the progress already made toward full equality of opportunity for women as well as men.

Democratic Platform of 1964, p.645

We will strive to eliminate discrimination against older Americans, especially in their employment.

Democratic Platform of 1964, p.645

Ending discrimination based on race, age, sex, or national origin demands not only equal opportunity but the opportunity to be equal. We are concerned not only with people's right to be free, but also with their ability to use their freedom. We will:

Democratic Platform of 1964, p.645

Carry the War on Poverty forward as a total war against the causes of human want.

Democratic Platform of 1964, p.645

Move forward with programs to restore those areas, such as Appalachia, which the Nation's progress has by-passed.

Democratic Platform of 1964, p.645

Help the physically handicapped and mentally disadvantaged develop to the full limit of their capabilities.

Democratic Platform of 1964, p.645

Enhance the security of older Americans by encouraging private retirement and welfare programs, offering opportunities like those provided for the young under the Economic Opportunities Act of 1964, and expanding decent housing which older citizens can afford.

Democratic Platform of 1964, p.645

Assist our Indian people to improve their standard of living and attain self-sufficiency, the privileges of equal citizenship, and full participation in American life.

Democratic Platform of 1964, p.645

The Social Security program, initiated and developed under the National leadership of the Democratic Party and in the face of ceaseless partisan opposition, contributes greatly to the strength of the Nation. We must insure that those who have contributed to the system shall share in the steady increase in our standard of living by adjusting benefit levels.

Democratic Platform of 1964, p.645

We hold firmly to the conviction, long embraced by Democratic Administrations, that the advancing years of life should bring not fear and loneliness, but security, meaning, and satisfaction.

Democratic Platform of 1964, p.645

We will encourage further support for the arts, giving people a better chance to use increased leisure and recognizing that the achievements of art are an index of the greatness of a civilization.

Democratic Platform of 1964, p.645

We will encourage the advance of science and technology—for its material rewards, and for its contribution to an understanding of the universe and ourselves.

The Economy

Democratic Platform of 1964, p.645

The American free enterprise system is one of the great achievements of the human mind and spirit. It has developed by a combination of the energetic efforts of working men and women, bold private initiative, the profit motive and wise public policy, until it is now the productive marvel of mankind.

Democratic Platform of 1964, p.645

In spite of this, at the outset of 1961, America was in the depths of the fourth postwar recession.

Democratic Platform of 1964, p.645

Since then, in 42 months of uninterrupted expansion under Presidents Kennedy and Johnson, we have achieved the longest and strongest peace-time prosperity in modern history:

Democratic Platform of 1964, p.645

Almost four million jobs have been added to the economy—almost 1 1/2 million since last December.

Democratic Platform of 1964, p.645

Workers' earnings and corporate profits are at the highest level in history.

Democratic Platform of 1964, p.645

Prices have been more stable than in any other industrial nation in the free world.

Democratic Platform of 1964, p.645

This did not just happen. It has come about because we have wisely and prudently used our increasing understanding of how the economy works.

Democratic Platform of 1964, p.645

It is the national purpose, and our commitment, to continue this expansion of the American economy toward its potential, without a recession, with [p.646] continued stability, and with an extension of the benefits of this growth and prosperity to those who have not fully shared in them.

Democratic Platform of 1964, p.646

This will require continuation of flexible and innovative fiscal, monetary, and debt management policies, recognizing the importance of low interest rates.

Democratic Platform of 1964, p.646

We will seek further tax reduction—and in the process we need to remove inequities in our present tax laws. In particular we should carefully review all our excise taxes and eliminate those that are obsolete. Consideration should be given to the development of fiscal policies which would provide revenue sources to hard-pressed state and local governments to assist them with their responsibilities.

Democratic Platform of 1964, p.646

Every penny of Federal spending must be accounted for in terms of the strictest economy, efficiency and integrity. We pledge to continue a frugal government, getting a dollar's value for a dollar spent, and a government worthy of the citizen's confidence.

Democratic Platform of 1964, p.646

Our goal is a balanced budget in a balanced economy.

Democratic Platform of 1964, p.646

Our enviable record of price stability must be maintained—through sound fiscal and monetary policies and the encouragement of responsible private wage and price policies. Stability is essential to protect our citizens—particularly the retired and handicapped—from the ravages of inflation. It is also essential to maintain confidence in the American dollar; this confidence has been restored in the past four years through sound policies.

Democratic Platform of 1964, p.646

Radical changes in technology and automation contribute to increased productivity and a higher standard of living. They must not penalize the few while benefiting the many. We maintain that any man or woman displaced by a machine or by technological change should have the opportunity, without penalty, to another job. Our common responsibility is to see that this right is fulfilled.

Democratic Platform of 1964, p.646

Full employment is an end in itself and must be insisted upon as a priority objective.

Democratic Platform of 1964, p.646

It is the national purpose, and our commitment, that every man or woman who is willing and able to work is entitled to a job and to a fair wage for doing it.

Democratic Platform of 1964, p.646

The coverage of the Fair Labor Standards Act must be extended to all workers employed in industries affecting interstate commerce, and the minimum wage level and coverage increased to assure those at the bottom of the economic scale a fairer share in the benefits of an ever-rising standard of American living.

Democratic Platform of 1964, p.646

Overtime payment requirements must be increased to assure maximum employment consistent with business efficiency. The matter of the length of work periods should be given continuing consideration.

Democratic Platform of 1964, p.646

The unemployment insurance program must be basically revised to meet the needs of the unemployed and of the economy, and to assure that this program meets the standards the nation's experience dictates.

Democratic Platform of 1964, p.646

Agricultural and migratory workers must be given legal protection and economic encouragement.

Democratic Platform of 1964, p.646

We must develop fully our most precious resource—our manpower. Training and retraining programs must be expanded. A broad-gauge manpower program must be developed which will not only satisfy the needs of the economy but will also give work its maximum meaning in the pattern of human life.

Democratic Platform of 1964, p.646

We will stimulate as well as protect small business, the seedbed of free enterprise and a major source of employment in our economy.

Democratic Platform of 1964, p.646

The antitrust laws must be vigorously enforced. Our population, which is growing rapidly and becoming increasingly mobile, and our expanding economy are placing greater demands upon our transportation system than ever before. We must have fast, safe, and economic modes of transportation. Each mode should be encouraged to develop in accordance with its maximum utility, available at the lowest cost under the principles of fair competition. A strong and efficient American Flag merchant marine is essential to peace-time commerce and defense emergencies.

Democratic Platform of 1964, p.646

The industrial democracy of free, private collective bargaining and the security of American trade unions must be strengthened by repealing Section 14(b) of the Taft-Hartley Act. The present inequitable restrictions on the right to organize and to strike and picket peaceably must also be eliminated.

Democratic Platform of 1964, p.646

In order to protect the hard earned dollars of American consumers, as well as promote their basic consumer rights, we will make full use of existing authority, and continue to promote efforts on behalf of consumers by industry, voluntary organizations, [p.647] and state and local governments. Where protection is essential, we will enact legislation to protect the safety of consumers and to provide them with essential information. We will continue to insist that our drugs and medicines are safe and effective, that our food and cosmetics are free from harm, that merchandise is labeled and packaged honestly and that the true cost of credit is disclosed.

Democratic Platform of 1964, p.647

It is the national purpose, and our commitment to increase the freedom and effectiveness of the essential private forces and processes in the economy.

Rural America

Democratic Platform of 1964, p.647

The roots of our economy and our life as a people lie deep in the soil of America's farm land. Our policies and programs must continue to recognize the significant role of agricultural and rural life.

Democratic Platform of 1964, p.647

To achieve the goals of higher incomes to the farm and ranch, particularly the family-sized farm, lower prices for the consumer, and lower costs to the government, we will continue to carry forward this three-dimensional program.

Democratic Platform of 1964, p.647

1. Commodity Programs to strengthen the farm income structure and reach the goal of parity of income in every aspect of American agriculture. We will continue to explore and develop new domestic and foreign markets for the products of our farms and ranches.

Democratic Platform of 1964, p.647

2. Consumer Programs including expansion of the Food Stamp Program and the school lunch and other surplus food programs, and acceleration of research into new industrial uses of farm products, in order to assure maximum use of and abundance of wholesome foods at fair prices here and abroad. We will also study new low-cost methods and techniques of food distribution for the benefit of our housewives to better feed their families.

Democratic Platform of 1964, p.647

3. Community Programs and agricultural cooperatives to assure rural America decent housing, economic security and full partnership in the building of the great society. We pledge our continued support of the rural telephone program and the Rural Electrification Administration, which are among the great contributions of the Democratic Party to the well-being and comfort of rural America.

The Nation's Natural Resources

Democratic Platform of 1964, p.647

America's bountiful supply of natural resources has been one of the major factors in achieving our position of world leadership, in developing the greatest industrial machine in the world's history, and in providing a richer and more complete life for every American. But these resources are not inexhaustible. With our vastly expanding population—an estimated 325 million people by the end of the century—there is an ever-increasing responsibility to use and conserve our resources wisely and prudently if we are to fulfill our obligation to the trust we hold for future generations. Building on the unsurpassed conservation record of the past four years, we shall:

Democratic Platform of 1964, p.647

Continue the quickened pace of comprehensive development of river basins in every section of the country, employing multi-purpose projects such as flood control, irrigation and reclamation, power generation, navigation, municipal water supply, fish and wildlife enhancement and recreation, where appropriate to realize the fullest possible benefits.

Democratic Platform of 1964, p.647

Provide the people of this nation a balanced outdoor recreation program to add to their health and well-being, including the addition or improved management of national parks, forests, lake shores, seashores and recreation areas.

Democratic Platform of 1964, p.647

Preserve for us and our posterity through the means provided by the Wilderness Act of 1964 millions of acres of primitive and wilderness areas, including countless beautiful lakes and streams. Increase our stock of wildlife and fish. Continue and strengthen the dynamic program inaugurated to assure fair treatment for American fishermen and the preservation of fishing rights.

Democratic Platform of 1964, p.647

Continue to support balanced land and forest development through intensive forest management on a multiple-use and sustained yield basis, reforestation of burned land, providing public access roads, range improvement, watershed management, concern for small business operations and recreational uses.

Democratic Platform of 1964, p.647

Unlock the resources of the sea through a strong oceanography program.

Democratic Platform of 1964, p.647

Continue the attack we have launched on the polluted air that envelops our cities and on eliminating the pollution of our rivers and streams.

Democratic Platform of 1964, p.648

Intensify our efforts to solve the critical water [p.648] problems of many sections of this country by desalinization.

Democratic Platform of 1964, p.648

Sustain and promote strong, vigorous domestic minerals, metals, petroleum and fuels industries.

Democratic Platform of 1964, p.648

Increase the efficient use of electrical power through regional inter-ties and more extensive use of high voltage transmission.

Democratic Platform of 1964, p.648

Continue to promote the development of new and improved methods of generating electric power, such as the recent important gains in the field of atomic energy and the Passamaquoddy tidal power project.

Democratic Platform of 1964, p.648

Preserve the T.V.A., which has played such an instrumental role in the revitalization of the area it serves and which has been the inspiration for regional development programs throughout the world.

The City

Democratic Platform of 1964, p.648

The vitality of our cities is essential to the healthy growth of American civilization. In the next 40 years urban populations will double, the area of city land will double and we will have to construct houses, highways and facilities equal to all those built since this country was first settled.

Democratic Platform of 1964, p.648

Now is the time to redouble our efforts, with full cooperation among local, state and federal governments, for these objectives:

Democratic Platform of 1964, p.648

The goal of our housing program must be a decent home for every American family.

Democratic Platform of 1964, p.648

Special effort must be made in our cities to provide wholesome living for our young people. We must press the fight against narcotics and, through the war against poverty, increase educational and employment opportunities, turning juvenile delinquents into good citizens and tax-users into tax payers.

Democratic Platform of 1964, p.648

We will continue to assist broad community and regional development, urban renewal, mass transit, open space and other programs for our metropolitan areas. We will offer such aid without impairing local Administration through unnecessary Federal interference.

Democratic Platform of 1964, p.648

Because our cities and suburbs are so important to the welfare of all our people, we believe a department devoted to urban affairs should be added to the President's cabinet.

The Government

Democratic Platform of 1964, p.648

We, the people, are the government.

Democratic Platform of 1964, p.648

The Democratic Party believes, as Thomas Jefferson first stated that "the care of human life and happiness is the first and only legitimate object of good government:"

Democratic Platform of 1964, p.648

The government's business is the people's business. Information about public affairs must continue to be freely available to the Congress and to the public.

Democratic Platform of 1964, p.648

Every person who participates in the government must be held to a standard of ethics which permits no compromise with the principles of absolute honesty and the maintenance of undivided loyalty to the public interest.

Democratic Platform of 1964, p.648

The Congress of the United States should revise its rules and procedures to assure majority rule after reasonable debate and to guarantee that major legislative proposals of the President can be brought to a vote after reasonable consideration in committee.

Democratic Platform of 1964, p.648

We support home rule for the District of Columbia. The seat of our government shall be a workshop for democracy, a pilot-plant for freedom, and a place of incomparable beauty.

Democratic Platform of 1964, p.648

We also support a constitutional amendment giving the District voting representation in Congress and, pending such action, the enactment of legislation providing for a non-voting delegate from District of Columbia to the House of Representatives.

Democratic Platform of 1964, p.648

We support the right of the people of the Virgin Islands to the fullest measure of self-government, including the right to elect their Governor.

Democratic Platform of 1964, p.648

The people of Puerto Rico and the people of the United States enjoy a unique relationship that has contributed greatly to the remarkable economic and political development of Puerto Rico. We look forward to the report on that relationship by a commission composed of members from Puerto Rico and the United States, and we are confident that it will contribute to the further enhancement of Puerto Rico and the benefit that flows from the principles of self-determination.

Democratic Platform of 1964, p.648

The Democratic Party holds to the belief that government in the United States—local, state and federal—was created in order to serve the people. Each level of government has appropriate powers and each has specific responsibilities. The first responsibility of government at every level is to protect the basic freedoms of the people. No government at any level can properly complain of [p.649] violation of its power, if it fails to meet its responsibilities.

Democratic Platform of 1964, p.649

The federal government exists not to grow larger, but to enlarge the individual potential and achievement of the people.

Democratic Platform of 1964, p.649

The federal government exists not to subordinate the states, but to support them.

Democratic Platform of 1964, p.649

All of us are Americans. All of us are free men. Ultimately there can be no effective restraint on the powers of government at any level save as Americans exercising their duties as citizens insist upon and maintain free, democratic processes of our constitutional system.

One Nation, One People

Democratic Platform of 1964, p.649

On November 22, 1963, John Fitzgerald Kennedy was shot down in our land.

Democratic Platform of 1964, p.649

We honor his memory best—and as he would wish—by devoting ourselves anew to the larger purposes for which he lived.

Democratic Platform of 1964, p.649

Of first priority is our renewed commitments to the values and ideals of democracy.

Democratic Platform of 1964, p.649

We are firmly pledged to continue the Nation's march towards the goals of equal opportunity and equal treatment for all Americans regardless of race, creed, color or national origin.

Democratic Platform of 1964, p.649

We cannot tolerate violence anywhere in our land—north, south, east or west. Resort to lawlessness is anarchy and must be opposed by the Government and all thoughtful citizens.

Democratic Platform of 1964, p.649

We must expose, wherever it exists, the advocacy of hatred which creates the clear and present danger of violence.

Democratic Platform of 1964, p.649

We condemn extremism, whether from the Right or Left, including the extreme tactics of such organizations as the Communist Party, the Ku Klux Klan and the John Birch Society.

Democratic Platform of 1964, p.649

We know what violence and hate can do. We have seen the tragic consequences of misguided zeal and twisted logic.

Democratic Platform of 1964, p.649

The time has come now for all of us to understand and respect one another, and to seek the unity of spirit and purpose from which our future greatness will grow—for only as we work together with the object of liberty and justice for all will the peace and freedom of each of us be secured.

Democratic Platform of 1964, p.649

These are the principles which command our cause and strengthen our effort as we cross the new frontier and enter upon the great society.

An Accounting of Stewardship, 1961—1964

Democratic Platform of 1964, p.649

One hundred and twenty-four years ago, in 1840, the Democratic National Convention meeting in Baltimore adopted the first platform in the history of a national political party. The principles stated in that platform are as valid as ever:

Democratic Platform of 1964, p.649

"Resolved, That the liberal principles embodied by Jefferson in the Declaration of Independence, and sanctioned in the Constitution, which makes ours the land of liberty, and the asylum of the oppressed of every nation, have ever been cardinal principles in the democratic faith."

Democratic Platform of 1964, p.649

One hundred and twenty years later, in 1960, our nation had grown from 26 to 50 states, our people from 17 million to 179 million.

Democratic Platform of 1964, p.649

That year, in Los Angeles, the Democratic National Convention adopted a platform which reflected, in its attention to 38 specific subjects, the volume of unfinished business of the American people which had piled up to the point of national crisis.

Democratic Platform of 1964, p.649

The platform declared that as a Party we would put the people's business first, and stated in plain terms how we proposed to get on with it.

Democratic Platform of 1964, p.649

Four year have passed, and the time has come for the people to measure our performance against our pledges.

Democratic Platform of 1964, p.649

We welcome the comparison; we seek it.

Democratic Platform of 1964, p.649

For the record is one of four years of unrelenting effort, and unprecedented achievement—not by a political party, but by a people.

The Record

National Defense

Democratic Platform of 1964, p.649

In 1960, we proposed to—

Democratic Platform of 1964, p.649

"Recast our military capacity in order to provide forces and weapons of a diversity, balance, and mobility sufficient in quantity and quality to deter both limited and general aggression." Since January 1961, we have achieved:

Democratic Platform of 1964, p.649

A 150% increase in the number of nuclear war-heads and a 200% increase in total megatonnage available in the Strategic Alert Forces.

Democratic Platform of 1964, p.649

A 60% increase in the tactical nuclear strength in Western Europe.

Democratic Platform of 1964, p.649

A 45% increase in the number of combat-ready Army divisions.

Democratic Platform of 1964, p.649

A 15,000 man increase in the strength of the Marine Corps.

Democratic Platform of 1964, p.650

[p.650] A 75% increase in airlift capability.

Democratic Platform of 1964, p.650

A 100% increase in ship construction to modernize our fleet.

Democratic Platform of 1964, p.650

A 44% increase in the number of tactical fighter squadrons.

Democratic Platform of 1964, p.650

An 800% increase in the special forces trained to deal with counter-insurgency threats. In 1960, we proposed to create—

Democratic Platform of 1964, p.650

"Deterrent military power such that the Soviet and Chinese leaders will have no doubt that an attack on the United States would surely be followed by their own destruction."

Democratic Platform of 1964, p.650

Since 1961, we have increased the intercontinental ballistic missiles and Polaris missiles in our arsenal from fewer than 100 to more than 1,000.

Democratic Platform of 1964, p.650

Our Strategic Alert Forces now have about 1,100 bombers, including 550 on 15-minute alert, many of which are equipped with decoy missiles and other penetration aids to assure that they will reach their targets.

Democratic Platform of 1964, p.650

In 1960, we proposed—

Democratic Platform of 1964, p.650

"Continuous modernization of our forces through intensified research and development, including essential programs slowed down, terminated, suspended, or neglected for lack of budgetary support."

Democratic Platform of 1964, p.650

Since 1961, we have—

Democratic Platform of 1964, p.650

Increased funds for research and development by 50% over the 1957-60 level.

Democratic Platform of 1964, p.650

Added 208 major new research and development projects including 77 weapons programs with costs exceeding $10 million each, among which are the SR-71 long-range, manned, supersonic strategic military reconnaissance aircraft, the NIKE-X anti-ballistic missile system, the A7A navy attack aircraft, and the F-111 fighter-bomber and a new main battle tank.

Democratic Platform of 1964, p.650

Increased, by more than 1,000%, the funds for the development of counter-insurgency weapons and equipment, from less than $10 million to over $103 million per year.

Democratic Platform of 1964, p.650

In 1960, we proposed—

Democratic Platform of 1964, p.650

"Balanced conventional military forces which will permit a response graded to the intensity of any threats of aggressive force." Since 1961, we have—

Democratic Platform of 1964, p.650

Increased the regular strength of the Army by 100,000 men, and the numbers of combat-ready Army divisions from 11 to 16.

Democratic Platform of 1964, p.650

Increased the number of tactical fighter squadrons from 55 to 79 and have substantially increased the procurement of tactical fighters.

Democratic Platform of 1964, p.650

Trained over 100,000 officers in counter-insurgency skills necessary to fight guerilla and anti-guerilla warfare, and increased our special forces trained to deal with counter-insurgency by 800%.

Democratic Platform of 1964, p.650

Acquired balanced stocks of combat consumables for all our forces so that they can engage in combat for sustained periods of time.

Democratic Platform of 1964, p.650

In reconstructing the nation's defense establishment, the Administration has insisted that the services be guided by these three precepts: Buy only what we need.

Democratic Platform of 1964, p.650

Buy only at the lowest sound price.

Democratic Platform of 1964, p.650

Reduce operating costs through standardization, consolidation, and termination of unnecessary operations.

Democratic Platform of 1964, p.650

As a result, our expanded and reconstituted defense force has cost billions of dollars less than it would have cost under previous inefficient and un-businesslike methods of procurement and operation. These savings amounted to more than $1 billion in the fiscal year 1963, and to $2.5 billion in the fiscal year just completed. Furthermore, under the cost reduction program we have established, we will be saving $4.6 billion each year, every year, by Fiscal Year 1968.

Democratic Platform of 1964, p.650

We have successfully met the challenges of Berlin and Cuba, and attacks upon our Naval forces on the high seas, thus decreasing the prospect of further such challenges and brightening the outlook for peace.

Arms Control

Democratic Platform of 1964, p.650

In 1960, we proposed—

Democratic Platform of 1964, p.650

"A national peace agency for disarmament planning and research to muster the scientific ingenuity, coordination, continuity, and seriousness of purpose which are now lacking in our arms control efforts."

Democratic Platform of 1964, p.650

In 1961, the United States became the first nation in the world to establish an "agency for peace"—the Arms Control and Disarmament Agency.

Democratic Platform of 1964, p.650

This agency is charged by law with the development of a realistic arms control and disarmament policy to promote national security and provide an impetus towards a world free from the threat of war. Working closely with the senior military leaders of the Department of Defense, [p.651] the Arms Control and Disarmament Agency has enabled the United States to lead the world in a new, continuous, hard-headed and purposeful discussion, negotiation and planning of disarmament. In 1960, we proposed—

Democratic Platform of 1964, p.651

"To develop responsible proposals that will help break the deadlock on arms control."

Democratic Platform of 1964, p.651

In the aftermath of the Cuban crisis the United States pressed its advantage to seek a new breakthrough for peace, On June 10, 1963, at American University, President Kennedy called on the Soviet leadership to join in concrete steps to abate the nuclear arms race. After careful negotiations experienced American negotiators reached agreement with the Russians on a Nuclear Test Ban Treaty—an event that will be marked forever in the history of mankind as a first step on the difficult road of arms control.

Democratic Platform of 1964, p.651

One hundred and six nations signed or acceded to the treaty.

Democratic Platform of 1964, p.651

In the United States it was supported by the Joint Chiefs of Staff, and ratified in the Senate by an 80-20 vote.

Democratic Platform of 1964, p.651

To insure the effectiveness of our nuclear development program in accord with the momentous Test Ban Treaty, the Joint Chiefs of Staff recommended, and the Administration has undertaken:

Democratic Platform of 1964, p.651

A comprehensive program of underground testing of nuclear explosives.

Democratic Platform of 1964, p.651

Maintenance of modern nuclear laboratory facilities.

Democratic Platform of 1964, p.651

Preparations to test in the atmosphere if essential to national security, or if the treaty is violated by the Soviet Union.

Democratic Platform of 1964, p.651

Continuous improvement of our means for detecting violations and other nuclear activities elsewhere in the world.

Democratic Platform of 1964, p.651

In 1960, we proposed—

Democratic Platform of 1964, p.651

"To the extent we can secure the adoption of effective arms control agreements, vast resources will be freed for peaceful use."

Democratic Platform of 1964, p.651

In January and April 1964, President Johnson announced cutbacks in the production of nuclear materials: twenty percent in plutonium production and forty percent in enriched uranium. When the USSR followed this United States initiative with a similar announcement, the President welcomed the response as giving hope "that the world may yet, one day, live without the fear of war."

Instruments of Foreign Policy

Democratic Platform of 1964, p.651

In 1960, we proposed that—

Democratic Platform of 1964, p.651

"American foreign policy in all its aspects must be attuned to our world of change.

Democratic Platform of 1964, p.651

"We will recruit officials whose experience, humanity and dedication fit them for the task of effectively representing America abroad.

Democratic Platform of 1964, p.651

"We will provide a more sensitive and creative direction to our overseas information program."

Democratic Platform of 1964, p.651

Since 1961, the Department of State has had its self-respect restored, and has been vitalized by more vigorous recruitment and more intensive training of foreign service officers representing all elements of the American people.

Democratic Platform of 1964, p.651

Forty days after taking office President Kennedy established the Peace Corps. The world did not change overnight. Neither will it ever be quite the same again. The foreign minister of one large Asian nation has called the Peace Corps "the most powerful idea in recent times."

Democratic Platform of 1964, p.651

One hundred thousand Americans have volunteered for the Peace Corps. Nine thousand have served in a total of 45 countries.

Democratic Platform of 1964, p.651

Nearly every country to which volunteers have been sent has asked for more. Two dozen new countries are on the waiting list.

Democratic Platform of 1964, p.651

Volunteer organizations on the Peace Corps model are already operating in 12 countries and there has been a great expansion of volunteer service in many others.

Democratic Platform of 1964, p.651

An International Secretariat for Volunteer Service is working in 32 economically advanced and developing nations.

Democratic Platform of 1964, p.651

The United States Information Agency has been transformed into a powerful, effective and respected weapon of the free world. The new nations of the world have come to know an America that is not afraid to tell the truth about itself—and so can be believed when it tells the truth about Communist imperialism.

World Trade

Democratic Platform of 1964, p.651

In 1960, we said—

Democratic Platform of 1964, p.651

"…We shall expand world trade in every responsible way.

Democratic Platform of 1964, p.651

"Since all Americans share the benefits of this policy, its costs should not be the burden of a few. We shall support practical measures to case the necessary adjustments of industries and communities [p.652] which may be unavoidably hurt by increases in imports.

Democratic Platform of 1964, p.652

"Our government should press for reduction of foreign barriers on the sale of the products of American industry and agriculture."

Democratic Platform of 1964, p.652

This pledge was fulfilled in the Trade Expansion Act of 1962.

Democratic Platform of 1964, p.652

The Trade Expansion Act of 1962, gives the President power to negotiate a 50 percent across-the-board cut in tariff barriers to take place over a five-year period.

Democratic Platform of 1964, p.652

Exports have expanded over 10 percent—by over $2 billion—since 1961.

Democratic Platform of 1964, p.652

Foreign trade now provides jobs for more than 4 million workers.

Democratic Platform of 1964, p.652

Negotiations now underway will permit American businessmen and farmers to take advantage of the greatest trading opportunity in history—the rapidly expanding European market.

Democratic Platform of 1964, p.652

The Trade Expansion Act provides for worker training and moving allowances, and for loans, tax rebates and technical assistance for businesses if increased imports resulting from concessions granted in trade agreements result in unemployment or loss of business.

Democratic Platform of 1964, p.652

Where American agriculture or industrial products have been unfairly treated in order to favor domestic products, prompt and forceful action has been taken to break down such barriers. These efforts have opened new United States export opportunities for fruits and vegetables, and numerous other agricultural and manufactured products to Europe and Japan.

Democratic Platform of 1964, p.652

The Long Term Cotton Textile Agreement of 1962 protects the textile and garment industry against disruptive competition from imports of cotton textiles. The Cotton Act of 1964 enables American manufacturers to buy cotton at the world market price, so they can compete in selling their products at home and abroad.

Immigration

Democratic Platform of 1964, p.652

In 1960, we proposed to—

Democratic Platform of 1964, p.652

"Adjust our immigration, nationality and refugee policies to eliminate discrimination and to enable members of scattered families abroad to be united with relatives already in our midst.

Democratic Platform of 1964, p.652

"The national-origins quota system of limiting immigration contradicts the founding principles of this nation. It is inconsistent with our belief in the rights of men."

Democratic Platform of 1964, p.652

The immigration law amendments proposed by the Administration, and now before Congress, by abolishing the national-origin quota system, will eliminate discrimination based upon race and place of birth and will facilitate the reunion of families.

Democratic Platform of 1964, p.652

The Cuban Refugee Program begun in 1961 has resettled over 81,000 refugees, who are now self-supporting members of 1,800 American communities. The Chinese Refugee Program, begun in 1962, provides for the admission to the United States of 12,000 Hong Kong refugees from Red China.

The Underdeveloped World

Democratic Platform of 1964, p.652

In 1960, we pledged—

Democratic Platform of 1964, p.652

"To the non-Communist nations of Asia, Africa, and Latin America: We shall create with you working partnerships based on mutual respect and understanding" and "will revamp and refocus the objectives, emphasis and allocation of our foreign assistance programs."

Democratic Platform of 1964, p.652

In 1961, the administration created the Agency for International Development, combining the three separate agencies that had handled foreign assistance activities into an orderly and efficient instrument of national policy.

Democratic Platform of 1964, p.652

Since 1961, foreign aid has been conducted on a spartan, cost conscious basis, with emphasis on self-help, reform and performance as conditions of American help.

Democratic Platform of 1964, p.652

These new policies are showing significant returns.

Democratic Platform of 1964, p.652

Since the beginning of the Marshall Plan in 1948, U. S. economic assistance has been begun and ended in 17 countries. In 14 other countries in Asia, Africa and Latin America, the transition to economic self-support is well under way, and U. S. assistance is now phasing out. In the 1965 AID program, 90 percent of economic assistance will go to just 25 countries.

Democratic Platform of 1964, p.652

In 1960, only 41 percent of aid-financed commodities were purchased in America. In 1964, under AID, 85 percent of all aid-financed commodities were U. S. supplied.

Democratic Platform of 1964, p.652

The foreign aid appropriation of $8.5 billion for fiscal year 1965 represents the smallest burden on U. S. resources that has been proposed since foreign aid began after World War II.

Democratic Platform of 1964, p.652

Since 1961, the United States has insisted that our allies in Europe and Japan must share responsibility [p.653] in the field of foreign assistance, particularly to their former colonies. They have responded with major programs. Several nations now contribute a larger share of their gross national production to foreign assistance than does the United States.

Democratic Platform of 1964, p.653

The Alliance for Progress, launched at the Conference of Punta del Este in Uraguay in 1961, has emerged as the greatest undertaking of social reform and international cooperation in the history of the Western Hemisphere.

Democratic Platform of 1964, p.653

The American republics agreed to work together "To make the benefits of economic progress available to all citizens of all economic and social groups through a more equitable distribution of national income, raising more rapidly the income and standard of living of the needier sectors of the population, at the same time that a higher proportion of the national product is devoted to investment."

Democratic Platform of 1964, p.653

The results so far:

Democratic Platform of 1964, p.653

Major tax reform legislation has been adopted in eight countries.

Democratic Platform of 1964, p.653

Agrarian reform legislation has been introduced in twelve countries, and agricultural credit, technical assistance and resettlement projects are going forward in sixteen countries.

Democratic Platform of 1964, p.653

Fifteen countries have self-help housing programs, and savings and loan legislation has been adopted by nine countries.

Democratic Platform of 1964, p.653

Private or public development banks have been established or are being established in eight countries, providing new sources of capital for the small businessman.

Democratic Platform of 1964, p.653

Education budgets have risen by almost 13 percent a year, and five million more children are going to school. U. S. aid has helped build 23,000 schoolrooms.

Democratic Platform of 1964, p.653

A Latin American school lunch program is feeding 10 million children at least one good meal every day, and the program will reach 12 million by the end of the year.

Democratic Platform of 1964, p.653

The Alliance for Progress has immeasurably strengthened the collective will of the nations of the Western Hemisphere to resist the massive efforts of Communist subversion that conquered Cuba in 1959 and then headed for the mainland. In 1960, we urged—

Democratic Platform of 1964, p.653

"…Continued economic assistance to Israel and the Arab peoples to help them raise their living standards.

Democratic Platform of 1964, p.653

"We pledge our best efforts for peace in the Middle East by seeking to prevent an arms race while guarding against the dangers of a military imbalance resulting from Soviet arms shipments."

Democratic Platform of 1964, p.653

In the period since that pledge was made the New East has come closer to peace and stability than at any time since World War II.

Democratic Platform of 1964, p.653

Economic and technical assistance to Israel and Arab nations continues at a high level, although with more and more emphasis on loans as against grants. The United States is determined to help bring the revolution in the technology of desalinization to the aid of the desert regions of this area.

The Atlantic Community

Democratic Platform of 1964, p.653

In 1960, we said—

Democratic Platform of 1964, p.653

"To our friends and associates in the Atlantic Community: We propose a broader partnership that goes beyond our common fears to recognize the depth and sweep of our common political, economic, and cultural interests."

Democratic Platform of 1964, p.653

In 1961, the United States ratified the conventions creating the Organization for Economic Cooperation and Development, a body made up of ourselves, Canada and 18 European States which carries forward on a permanent basis the detailed cooperation and mutual assistance that began with the Marshall Plan.

Democratic Platform of 1964, p.653

Since 1961, we have progressed in the building of mutual confidence, unity, and strength. NATO has frequently been used for consultation on foreign policy issues. Strong Atlantic unity emerged in response to Soviet threats in Berlin and in Cuba. Current trade negotiations reflect the value of the Trade Expansion Act and the utility of arrangements for economic cooperation. NATO military forces are stronger in both nuclear and conventional weapons.

Democratic Platform of 1964, p.653

The United States has actively supported the proposal to create a multilateral, mix-manned, seaborne nuclear missile force which could give all NATO countries a direct share in NATO's nuclear deterrent without proliferating the number of independent, national nuclear forces.

The Communist World

Democratic Platform of 1964, p.653

In 1960, we said—

Democratic Platform of 1964, p.653

"To the rulers of the Communist World: We confidently accept your challenge to competition in every field of human effort.

Democratic Platform of 1964, p.654

[p.654] "We believe your Communist ideology to be sterile, unsound, and doomed to failure…

Democratic Platform of 1964, p.654

"…We are prepared to negotiate with you whenever and wherever there is a realistic possibility of progress without sacrifice of principle.

Democratic Platform of 1964, p.654

"But we will use all the will, power, resources, and energy at our command to resist the further encroachment of Communism on freedom—whether at Berlin, Formosa or new points of pressure as yet undisclosed."

Democratic Platform of 1964, p.654

Following the launching of Sputnik in 1957, the Soviet Union began a world-wide offensive. Russian achievements in space were hailed as the forerunners of triumph on earth.

Democratic Platform of 1964, p.654

Now, seven years later, the Communist influence has failed in its efforts to win Africa. Of the 31 African nations formed since World War II, not one has chosen Communism.

Democratic Platform of 1964, p.654

Khrushchev had to back down on his threat to sign a peace treaty with East Germany. Access to West Berlin remains free.

Democratic Platform of 1964, p.654

In Latin America, the Alliance for Progress has begun to reduce the poverty and distress on which Communism breeds.

Democratic Platform of 1964, p.654

In Japan, where anti-American riots in 1960 prevented a visit from the President, relations with the United States have been markedly improved.

Democratic Platform of 1964, p.654

In the United Nations the integrity of the office of Secretary General was preserved despite the Soviet attack on it through the Troika proposal.

Democratic Platform of 1964, p.654

When Red China attacked India, the U. S. promptly came to India's aid with modern infantry supplies and equipment.

Democratic Platform of 1964, p.654

On the battlefield of the Cold War one engagement after another has been fought and won.

Democratic Platform of 1964, p.654

Frustrated in its plans to nibble away at country after country, the Soviet Union conceived a bold stroke designed to reverse the trend against it. With extreme stealth Soviet intermediate range and medium range offensive missiles were brought into Cuba in 1962.

Democratic Platform of 1964, p.654

Shortly after the missiles arrived in Cuba, and before any of them became operational, they were discovered and photographed by U. S. reconnaissance flights.

Democratic Platform of 1964, p.654

The U. S. response was carefully planned and prepared, and calmly, deliberately, but effectively executed. On October 22, President Kennedy called on the Soviet Union to dismantle and remove the weapons from Cuba. He ordered a strict quarantine on Cuba enforced by the U. S. Navy.

Democratic Platform of 1964, p.654

The Organization of American States acted swiftly and decisively by a unanimous vote of 20 to 0 to authorize strong measures, including the use of force, to ensure that the missiles were withdrawn from Cuba and not re-introduced.

Democratic Platform of 1964, p.654

At the end of a tense week Khrushchev caved in before this demonstration of Western power and determination. Soviet ships, closely observed by U. S. pilots, loaded all the missiles and headed back to Russia. U. S. firmness also compelled withdrawal of the IL-28 bombers.

Democratic Platform of 1964, p.654

A turning point of the Cold War had been reached.

Democratic Platform of 1964, p.654

The record of world events in the past year reflects the vigor and successes of U. S. policy:

Democratic Platform of 1964, p.654

Berlin, October-November 1963. Communist efforts to interfere with free Western access to Berlin were successfully rebuffed.

Democratic Platform of 1964, p.654

Venezuela, March 1964. Despite the threats and terror tactics of Castro-inspired agitators, over 90 percent of the people voted in the election that chose President Leoni to succeed Romulo Betancourt—the first democratic succession in that office in Venezuela in Venezuela's history.

Democratic Platform of 1964, p.654

Panama, 1964. Patient negotiation achieved a resumption of diplomatic relations, which had been severed after the riots in January; President Johnson achieved a dignified and an honorable solution of the crisis.

Democratic Platform of 1964, p.654

Vietnam, August 1964. Faced with sudden unprovoked attacks by Communist PT boats on American destroyers on the high sea, President Johnson ordered a sharp immediate retaliation on the hostile vessels and their supporting facilities.

Democratic Platform of 1964, p.654

Speaking on that occasion, the President said: "Aggression—deliberate, willful and systematic aggression has unmasked its face to the world. The world remembers—the world must never forget—that aggression unchallenged is aggression unleashed.

Democratic Platform of 1964, p.654

"We of the United States have not forgotten.

Democratic Platform of 1964, p.654

"That is why we have answered this aggression with action."

Democratic Platform of 1964, p.654

Cuba, 1961-1964. Cuba and Castro have been virtually isolated in the Hemisphere.

Democratic Platform of 1964, p.654

Only 2 out of 20 OAS countries maintain diplomatic relations with Cuba.

Democratic Platform of 1964, p.654

Cuban trade with the Free World has dropped sharply from the 1958 level.

Democratic Platform of 1964, p.655

[p.655] Free world shipping to Cuba has fallen sharply. Isolation of Cuba by air has tightened greatly.

Democratic Platform of 1964, p.655

Hundreds of thousands of Cubans have left the island or have indicated their desire to come to the United States.

Democratic Platform of 1964, p.655

The Castro regime has been suspended from participation in the OAS.

Democratic Platform of 1964, p.655

The Cuban economy is deteriorating: the standard of living is 20 percent below pre-Castro levels, with many items rationed; industrial output is stagnant; sugar production is at the lowest level since the 1940's.

The United Nations

Democratic Platform of 1964, p.655

In 1960, we pledged—

Democratic Platform of 1964, p.655

"To our fellow members of the United Nations: we shall strengthen our commitments in this, our great continuing institution for conciliation and the growth of a world community."

Democratic Platform of 1964, p.655

Over the past four years the Administration has fulfilled this pledge as one of the central purposes of foreign policy.

Democratic Platform of 1964, p.655

During that time the United States has supported—and frequently led—efforts within the United Nations.

Democratic Platform of 1964, p.655

—to strengthen its capacity as peacekeeper and peacemaker—with the result that the UN remained on guard on armistice lines in Korea, Kashmir and the Middle East; preserved peace in the Congo, West New Guinea and Cyprus; provided a forum for the U. S. during crises in the Caribbean and the Gulf of Tonkin; began to develop a flexible call-up system for emergency peace-keeping forces; and moved toward a revival of the Security Council as the primary organ for peace and security without loss of the residual powers of the General Assembly.

Democratic Platform of 1964, p.655

—to discover and exploit areas of common interest for the reduction of world dangers and world tensions—with the result that the orbiting of weapons of mass destruction has been banned and legal principles adopted for the use of outer space; projects of scientific cooperation in meteorology, oceanography, Antarctic exploration and peaceful uses of atomic energy, have been promoted; and the search for further moves toward arms control have been pursued to supplement the limited test ban treaty.

Democratic Platform of 1964, p.655

—to further the work of the United Nations in improving the lot of mankind—with the result that the Decade of Development has been launched; the World Food Program undertaken; aid to children extended; projects to promote economic and social progress in the developing world have been expanded; and the impact of technology and world trade upon development has been explored.

Democratic Platform of 1964, p.655

—to maintain the integrity of the organization—its Charter and its Secretariat—with the result that the Troika proposal was defeated; the functions of the Secretary-General have been kept intact; the authority of the General Assembly to levy assessments for peacekeeping has been sustained despite attempted financial vetoes by Communist and other members.

Democratic Platform of 1964, p.655

In fulfilling its pledge to the United Nations, the Administration has helped to strengthen peace, to promote progress, and to find areas of international agreement and cooperation.

Economic Growth

Democratic Platform of 1964, p.655

In 1960, we said—

Democratic Platform of 1964, p.655

"The new Democratic Administration will confidently proceed to unshackle American enterprise and to free American labor, industrial leadership, and capital, to create an abundance that will outstrip any other system.

Democratic Platform of 1964, p.655

"We Democrats believe that our economy can and must grow at an average rate of 5 percent annually, almost twice as fast as our average annual rate since 1953. We pledge ourselves to policies that will achieve this goal without inflation."

Democratic Platform of 1964, p.655

In January 1961, the nation was at the bottom of the fourth recession of the postwar period—the third in the eight-year period, 1953-60. More men and women were out of work than at any time since the Great Depression of the 1930's. In February 1961, the unemployment rate was 6.8 percent, with a total of 5,705,000 unemployed.

Democratic Platform of 1964, p.655

Today we are in the midst of the longest peace-time expansion in our history, during the past 42 months of unbroken economic expansion:

Democratic Platform of 1964, p.655

Our economic growth rate has risen now to over 5 percent—twice the average rate for the 1953-60 period.

Democratic Platform of 1964, p.655

3,900,000 jobs have been added to the economy, and the unemployment rate was down in July 1964 to 4.9 percent.

Democratic Platform of 1964, p.655

The Gross National Product has risen by $120 billion in less than four years! No nation in peace-time history has ever added so much to its wealth in so short a time.

Democratic Platform of 1964, p.656

[p.656] The average manufacturing worker's weekly earnings rose from $89 in January 1961, to $103 in July 1964—an increase of over 15 percent.

Democratic Platform of 1964, p.656

Industrial production has increased 28 percent; average operating rates in manufacturing have risen from 78 percent of capacity to 87 percent.

Democratic Platform of 1964, p.656

Profits after taxes have increased 62 percent—from an annual rate of $19.2 billion in early 1961 to an estimated $31.2 billion in early 1964.

Democratic Platform of 1964, p.656

Total private investment has increased by 43 percent—from an annual rate of $61 billion in early 1961 to $87 billion in the spring of 1964.

Democratic Platform of 1964, p.656

There are a million and a half more Americans at work today than there were a year ago.

Democratic Platform of 1964, p.656

Our present prosperity was brought about by the enterprise of American business, the skills of the American work force, and by wise public policies.

Democratic Platform of 1964, p.656

The provision in the Revenue Act of 1962 for a credit for new investment in machinery and equipment, and the liberalization of depreciation allowance by administrative ruling, resulted in a reduction of $2.5 billion in business taxes.

Democratic Platform of 1964, p.656

The Revenue Act of 1964 cut individual income taxes by more than $9 billion, increasing consumer purchasing power by that amount; and corporate taxes were cut another $2.5 billion, with the effect of increasing investment incentives. Overall individual Federal income taxes were cut an average of 19 percent; taxpayers earning $3,000 or less received an average 40 percent cut.

Democratic Platform of 1964, p.656

The Temporary Extended Unemployment Compensation Act of 1961 provided $800 million to 2.8 million jobless workers who had exhausted their benefits.

Democratic Platform of 1964, p.656

The Area Redevelopment Act of 1961 has meant a $227 million Federal investment in economically hard-hit areas, creating 110,000 new jobs in private enterprise.

Democratic Platform of 1964, p.656

The Accelerated Public Works Act of 1962 added $900 million for urgently needed State and local government construction projects.

An End to Tight Money

Democratic Platform of 1964, p.656

In 1960, we proposed—

Democratic Platform of 1964, p.656

"As the first step in speeding economic growth, a Democratic president will put an end to the present high interest, tight money policy.

Democratic Platform of 1964, p.656

"This policy has failed in its stated purpose—to keep prices down. It has given us two recessions within five years, bankrupted many of our farmers, produced a record number of business failures, and added billions of dollars in unnecessary higher interest charges to government budgets and the cost of living."

Democratic Platform of 1964, p.656

Since 1961, we have maintained the free flow of credit so vital to industry, home buyers, and State and local governments.

Democratic Platform of 1964, p.656

Immediately, in February 1961, the Federal Housing Agency interest rate was cut from 5 3/4% percent to 5 1/2 percent. It is now down to 5 1/4 percent.

Democratic Platform of 1964, p.656

Today's home buyer will pay about $1,700 less for FHA-insured financing of a 3O-year $15,000 home mortgage than he would have had he taken the mortgage in 1960.

Democratic Platform of 1964, p.656

Today after 42 months of expansion, conventional home mortgage rates are lower than they were in January 1961, in the midst of a recession. So are borrowing costs for our States and municipalities, and for long-term corporate issues.

Democratic Platform of 1964, p.656

Short-term interest rates have been brought into reasonable balance with interest rates abroad, reducing or eliminating incentives to place short-term funds abroad and thus reducing gold outflow.

Democratic Platform of 1964, p.656

We have prudently lengthened the average maturity of the Federal debt, in contrast to the steady shortening that characterized the 1950's.

Control of Inflation

Democratic Platform of 1964, p.656

In 1960, we asserted—

Democratic Platform of 1964, p.656

"The American consumer has a right to fair prices. We are determined to secure that right.

Democratic Platform of 1964, p.656

"A fair share of the gains from increasing productivity in many industries should be passed on to the consumer through price reductions."

Democratic Platform of 1964, p.656

Today, after 42 months of economic expansion, wholesale prices are lower than they were in January 1961, in the midst of a recession! The Wholesale Price Index was 101.0 in January 1961; in July 1964, it is 100.4.

Democratic Platform of 1964, p.656

The Consumer Price Index, which measures the price of goods and services families purchase, has been brought back to stability, averaging now less than 1.3% increase per year—as compared, for example, with an increase rate about three times this large in the European common market countries.

Democratic Platform of 1964, p.656

Since January 1961, the increase in average after-tax family income has been twice the increase in prices.

Democratic Platform of 1964, p.657

The Administration has established guideposts [p.657] for price and wage movements alike, based primarily on productivity developments, and designed to protect the economy against inflation.

Democratic Platform of 1964, p.657

In the single year, 1960, the overall balance of payments deficit reached $3.9 billion, and we lost $1.7 billion in gold. Now for 1964, the prospective balance of payments deficit has been cut to $2 billion, and the gold outflow has ceased.

Full Employment

Democratic Platform of 1964, p.657

In 1960, we reaffirmed our—

Democratic Platform of 1964, p.657

"support of full employment as a paramount objective of national policy."

Democratic Platform of 1964, p.657

In July 1964, total employment in the United States rose to the historic peak of 72,400,000 jobs. This represents an increase of 3,900,000 jobs in 42 months.

Democratic Platform of 1964, p.657

In the past twelve months, total civilian employment has increased by 1,600,000 jobs, and nonfarm employment by 1,700,000. Most of this job expansion has occurred in the past eight months.

Democratic Platform of 1964, p.657

In July 1964, the jobless total was one-half million below a year ago, and was at its lowest July level since 1959.

Democratic Platform of 1964, p.657

In July, 1964, the overall unemployment rate was 4.9%—compared with 6.5% in January 1961; and the jobless rate for men who are heads of families was down to 2.7%.

Democratic Platform of 1964, p.657

There have been more than a million full-time jobs added to the private profit sector of the economy in the past 12 months. This is the largest increase in any one-year period in the past decade.

Democratic Platform of 1964, p.657

We have brought ourselves now within reach of the full employment objective.

Aid to Depressed Areas

Democratic Platform of 1964, p.657

In 1960, we recognized that—

Democratic Platform of 1964, p.657

"General economic measures will not alone solve the problems of localities which suffer some special disadvantage. To bring prosperity to these depressed areas and to enable them to make their full contribution to the national welfare, specially directed action is needed."

Democratic Platform of 1964, p.657

The Area Redevelopment Administration was created in 1961 to help depressed areas organize their human and material resources for economic growth. Since its establishment, the ARA has:

Democratic Platform of 1964, p.657

Approved 512 financial assistance projects involving a Federal investment of $243.5 million.

Democratic Platform of 1964, p.657

Created, in partnership with local government, private workers and other investors, 118,000 new jobs in private enterprise,

Democratic Platform of 1964, p.657

Provided retraining programs, with tuition and subsistence, for 37,327 jobless workers, equipping them with new skills to fill available jobs in their areas.

Democratic Platform of 1964, p.657

In 1961, Congress authorized $900 million for the Accelerated Public Works Program to speed construction of urgently needed public facilities and increase employment in areas which had failed to recover from previous recessions.

Democratic Platform of 1964, p.657

Between October 1962, when the first appropriations were made available, and April 1, 1964, 7,762 projects, involving an estimated 2,500,000 man-months of employment, were approved.

Democratic Platform of 1964, p.657

In early 1961, there were 101 major areas in the United States in which unemployment was 6 percent or more, discounting seasonal or temporary factors. By July 1964, this number had been cut two-thirds, to a total of 35.

Democratic Platform of 1964, p.657

The concept of "depressed areas" has been broadened in these 3 1/2 years to include clear recognition of the inequity and waste of poverty wherever it exists, and in the Economic Opportunity Act of 1964 the nation has declared, in historic terms, a War on Poverty.

Democratic Platform of 1964, p.657

Title I of the Economic Opportunity Act creates the Job Corps, Work-Training programs, and Work-Study programs to provide useful work for about 400,000 young men and women. Job Corps volunteers will receive work and vocational training, part of which will involve conservation work in rural areas. The Work-Training, or Neighborhood Youth Corps program, is open to young persons living at home, including those who need jobs in order to remain in school. The Work-Study programs will enable youth from poor families to earn enough income to enable them to attend college.

Democratic Platform of 1964, p.657

Title II of the Act authorized $340 million for the Community Action programs to stimulate urban and rural communities to mobilize their resources to combat poverty through programs designed especially to meet local needs.

Democratic Platform of 1964, p.657

Title III provides for special programs to combat poverty in rural areas, including loans up to $1,500 for low income farmers, and loans up to $2,500 for families, to finance non-agricultural enterprises which will enable such families to supplement their incomes. This section of the law provides funds for housing, sanitation education, [p.658] and day care of children of migrant farm workers.

Democratic Platform of 1964, p.658

Title IV of the Act provides for loans up to $25,000 for small businesses to create jobs for the long-term unemployed.

Democratic Platform of 1964, p.658

Title V of the Act provides constructive work experience and other needed training to persons who are unable to support or care for themselves or their families.

Democratic Platform of 1964, p.658

The Report of the President's Appalachian Regional Commission, submitted to President Johnson in April 1964, proposed a wide-ranging development program. The Appalachian Redevelopment Act, now before Congress, provides for more than $1.1 billion investment in needed basic facilities in the area, together with a regional organization to help generate the full development potential of the human and material resources of this mountain area.

Democratic Platform of 1964, p.658

Registration and regulation of migrant labor crew chiefs has been provided to require that crew chiefs or labor brokers, who act on behalf of domestic migrant labor and operate across state lines, shall be registered, show financial responsibility, and meet certain requirements as to moral character and honest dealing with their clients.

Discrimination in Employment

Democratic Platform of 1964, p.658

In 1960, we insisted that—

Democratic Platform of 1964, p.658

"The right to a job requires action to break down artificial and arbitrary barriers to employment based on age, race, sex, religion, or national origin."

Democratic Platform of 1964, p.658

The great Civil Rights Act of 1964 is the strongest and most important law against discrimination in employment in the history of the United States.

Democratic Platform of 1964, p.658

It states unequivocally that "It shall be an unlawful employment practice for an employer…an employment agency…or a labor organization" to discriminate against any person because of his or her "race, color, religion, sex, or national origin."

Democratic Platform of 1964, p.658

On March 6, 1961, President Kennedy issued an Executive Order establishing the President's Committee on Equal Employment Opportunity to combat racial discrimination in the employment policies of Government agencies and private firms holding Government contracts. Then-Vice President Johnson, in his capacity as Chairman of the new Committee, assumed personal direction of this program.

Democratic Platform of 1964, p.658

As a consequence of the enforcement of the Executive Order, not only has discrimination been eliminated in the Federal Government, but strong affirmative measures have been taken to extend meaningful equality of opportunity to compete for Federal employment to all citizens.

Democratic Platform of 1964, p.658

The private employers of 8,076,422 men and women, and trade unions with 12,500,000 members, have signed public agreements establishing non-discriminatory practices.

Democratic Platform of 1964, p.658

The Equal Pay Act of 1963 guarantees equal pay to women doing the same work as men, by requiring employers who are covered by the Fair Labor Standards Act to pay equal wages for equal work, regardless of the sex of their workers.

Democratic Platform of 1964, p.658

Executive Order 11141, issued by President Johnson on February 12, 1964, establishes for the first time in history a public policy that "contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of their employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age…"

Collective Bargaining

Democratic Platform of 1964, p.658

In 1960, we pledged—

Democratic Platform of 1964, p.658

"an affirmative labor policy which will encourage free collective bargaining through the growth and development of free and responsible unions."

Democratic Platform of 1964, p.658

These have been good years for labor-management relations. Time lost from strikes is at the lowest point in history.

Democratic Platform of 1964, p.658

The President's Advisory Committee on Labor-Management Policy, made up of distinguished leaders of business and trade unions, has spoken out consistently in favor of creative and constructive solutions to common problems.

Democratic Platform of 1964, p.658

Executive Order 10988, issued by President Kennedy on January 17, 1962, extended the rights of union recognition to Federal employees—a goal which some employee organizations had been trying to reach for three quarters of a century.

Democratic Platform of 1964, p.658

In the spring of 1964, under President Johnson's personal leadership, the five-year-old railroad dispute that would have resulted in a critical nation-wide strike, was at last ended—by free collective bargaining. A cause many thought lost was won; industrial self-government was saved from a disastrous setback.[p.659]

Planning for Automation

Democratic Platform of 1964, p.659

In 1960, we proposed to—

Democratic Platform of 1964, p.659

"provide the government leadership necessary to insure that the blessings of automation do not become burdens of widespread unemployment. For the young and the technologically displaced workers, we will provide the opportunity for training and retraining that equips them for jobs to be filled."

Democratic Platform of 1964, p.659

The Manpower Development and Training Act of 1962 provides for the training or retraining of unemployed or underemployed people, particularly those threatened or displaced by technological advances. The 1963 amendments to the Act emphasize the problem of youth employment.

Democratic Platform of 1964, p.659

In the two years of the administration of this program, training projects for 240,471 persons have been approved, and more than 54,000 persons have completed their training.

Democratic Platform of 1964, p.659

Under the Manpower Development and Training Act an active manpower policy is being developed to keep the nation ahead of the problems of automation.

Democratic Platform of 1964, p.659

Congress has now enacted, in August 1964, legislation creating a National Commission on Technology, Automation and Economic Progress to undertake a searching inquiry into the problems created by automation, and means by which they can be prevented or solved.

Democratic Platform of 1964, p.659

In its own activities, the Federal Government has taken full account of human considerations in instituting technological developments.

Minimum Wages

Democratic Platform of 1964, p.659

In 1960, we pledged—

Democratic Platform of 1964, p.659

"To raise the minimum wage to $1.25 an hour and to extend coverage to several million workers not now covered."

Democratic Platform of 1964, p.659

The Fair Labor Standards Act Amendments of 1961 raised the minimum wage to $1.25 over a three-year period, and extended the coverage of the Act to 3.6 million additional workers.

Democratic Platform of 1964, p.659

The Administration has proposed further amendments to the Fair Labor Standards Act, which are now before the Congress, and which would extend minimum wage coverage to near three quarters of a million workers in laundry, and dry cleaning establishments. Overtime coverage would be extended to an additional 2.6 million workers.

Democratic Platform of 1964, p.659

It has proposed a Fringe Benefit amendment to the Bacon-Davis law to provide that the cost of fringe benefits should be included in the definition of "prevailing wage" under the Bacon-Davis law, so that wage rates required in government construction contracts will be in accord with prevailing practice.

Agriculture

Democratic Platform of 1964, p.659

In 1960, we said—

Democratic Platform of 1964, p.659

"In every way we will seek to help the men, women, and children whose livelihood comes from the soil to achieve better housing, education, and decent earnings and working conditions."

Democratic Platform of 1964, p.659

This is the record:

Democratic Platform of 1964, p.659

Total net farm income in 1961-63 averaged nearly a billion dollars a year higher than in 1960.

Democratic Platform of 1964, p.659

Total net income per farm was 18 percent higher in 1963 than in 1960.

Democratic Platform of 1964, p.659

Farm purchasing power, or gross farm income, rose from $37.9 billion in 1960 to nearly $42 billion in 1963.

Democratic Platform of 1964, p.659

Percent of family income spent for food today has declined. In 1960, 20 percent of disposable family income was spent for food. This has now been reduced to less than 19 percent.

Democratic Platform of 1964, p.659

Grain surpluses have been brought down to manageable levels; wheat surpluses this year will be the lowest since 1958, and feed grains have been reduced from 80 to 70 million tons.

Democratic Platform of 1964, p.659

Reduction of wheat and feed grain surpluses from their 1960 levels to present levels has resulted in an accumulated savings of about a quarter of a billion dollars in storage, transportation, interest and other costs.

Democratic Platform of 1964, p.659

Total farm exports have increased 35 percent in 4 years, and have reached a record high in fiscal 1964 of $6.1 billion.

Democratic Platform of 1964, p.659

Credit resources administered by the Farmers Home Administration are up 141 percent over 1960, and are averaging now $687 million a year.

Democratic Platform of 1964, p.659

Commodity programs to strengthen the farm income structure and reach the goal of parity of income in every aspect of American agriculture. We also cite the parity program providing American cotton to American factories and processes at the same price at which they are exported.

Democratic Platform of 1964, p.660

The Rural Areas Development program has [p.660] helped create an estimated 125,000 new jobs, and more than 12,000 projects in the process of approval will provide new employment for as many as 200,000 persons.

Democratic Platform of 1964, p.660

Participation in the Agricultural Conservation Program has increased 20 percent since 1960.

Democratic Platform of 1964, p.660

More than 20,000 farmers have received technical help to develop recreation as an income-making "crop" on land which had been producing surpluses.

Democratic Platform of 1964, p.660

Over 600 rural Communities have been aided in providing modern water services.

Democratic Platform of 1964, p.660

During the winter of 1964, a special lunch program was instituted for 315 schools and 12,000 children in rural areas where families have extremely low incomes.

Democratic Platform of 1964, p.660

Since January 1, 1961, $1.1 billion in electric loans has been made by the Rural Electrification Administration, to rural electric cooperatives, or some $350 million more than in the previous 3 1/2 years. Improved service, as a result, has meant customer savings of $7.5 million a year.

Democratic Platform of 1964, p.660

American farmers, in 1964, have protected crop investments totaling $500.5 million with Federal All-Risk Crop Insurance—more than double the amount of insurance in force three years ago, and an all-time record.

Democratic Platform of 1964, p.660

Soil and water conservation activities in the past 3 1/2 years have shown a constant upward trend in their contributions to the physical, social and economic welfare of rural areas.

Democratic Platform of 1964, p.660

289 new small upstream watershed projects were authorized.

Democratic Platform of 1964, p.660

8,000 local soil and water conservation districts have updated their long-range programs to reflect the broadened concepts of economic development.

Democratic Platform of 1964, p.660

The Great Plains Conservation Program has been extended for 10 years and 36 counties have been added to the program.

Democratic Platform of 1964, p.660

In June 1964, Congress authorized the creation of a National Commission on Food Marketing to investigate the operation of the food industry from producer to consumer.

Democratic Platform of 1964, p.660

On January 24, 1961, President Kennedy established by executive order, the Food for Peace program to utilize America's agricultural abundance "to promote the interests of peace…and to play an important role in helping to provide a more adequate diet for peoples all around the world."

Democratic Platform of 1964, p.660

In the last 3 1/2 years, over $5 billion worth of surplus farm commodities went overseas under Public Law 480 programs. This is one and one-half billion dollars more than during the previous 3 1/2 years.

Small Business

Democratic Platform of 1964, p.660

In 1960, we pledged—

Democratic Platform of 1964, p.660

"Action to aid small business in obtaining credit and equity capital at reasonable rates.

Democratic Platform of 1964, p.660

"Protection of the public against the growth of monopoly.

Democratic Platform of 1964, p.660

"A more equitable share of government contracts to small and independent business."

Democratic Platform of 1964, p.660

Through liberalizing amendments to the Small Business Investment Act in 1961 and 1964, and special tax considerations, the investment of equity capital and long term loan funds in small businesses has been greatly accelerated by privately owned and operated small business investment companies licensed under that Act. Moreover, since January 1961, over 21,000 small businesses have obtained SBA business loans, totalling over $1.14 billion, as a result of liberalized and simplified procedures.

Democratic Platform of 1964, p.660

The Federal Trade Commission has stepped up its activities to promote free and fair competition in business, and to safeguard the consuming public against both monopolistic and deceptive practices.

Democratic Platform of 1964, p.660

The reorganized Antitrust Division of the Department of Justice has directed special emphasis to price fixing, particularly on consumer products, by large companies who distribute through small companies. These include eye glasses, salad oil, flour, cosmetics, swimsuits, bread, milk, and even sneakers.

Democratic Platform of 1964, p.660

Since January 1961, some 166,000 government contracts, worth $6.2 billion have been set aside for small business. In the preceding 3 1/2 years there were 77,838 contracts set aside, with a worth of $2.9 billion.

Democratic Platform of 1964, p.660

HOUSING

Democratic Platform of 1964, p.660

In 1960 we proposed—

Democratic Platform of 1964, p.660

"To make possible the building of 2,000,000 homes a year in wholesome neighborhoods, the home building industry should be aided by special mortgage assistance, with low interest rates, long-term mortgage periods and reduced down payments.

Democratic Platform of 1964, p.661

"There will still be need for a substantial low-rent [p.661] public housing program authorizing as many units as local communities require and are prepared to build."

Democratic Platform of 1964, p.661

The Housing Act of 1961 provides many of the necessary new and improved tools for providing housing for low and moderate income families, and for housing for the elderly.

Democratic Platform of 1964, p.661

For the 3 1/2 year period ending June 30, 1964, some 5.3 million new units of public and private housing have been built at a cost of approximately $65 billion. The construction rate has risen above 1.5 million units a year, with an annual output of over $20 billion, and we are moving close now to the goal of 2 million a year.

Democratic Platform of 1964, p.661

Since January 1961, nearly 400 local housing authorities have been formed to provide housing for low income families. More than 100,000 new units have been approved for construction, at an annual rate about three times that of 1960.

Democratic Platform of 1964, p.661

The annual rate of grant assistance for Urban Renewal has risen from $262 million per year (1956 through 1961 ) to a rate of better than $630 million during the past 12 months.

Democratic Platform of 1964, p.661

in the past 3 1/2 years, more than 750 new urban renewal transactions have been approved, equal to nearly 90 percent of the number approved for the entire period from 1949 to 1960.

Democratic Platform of 1964, p.661

Cities with community urban renewal programs jumped from a cumulative total of seven in December 1960 to 118 by mid-1964.

Democratic Platform of 1964, p.661

To house families whose income is not quite low enough to qualify for public housing, a new rental housing program providing a "below market" interest rate (currently 3 7/8%) insured by FHA, has been made available. Mortgage purchase funds have been allocated for about 78,000 such rental units.

Democratic Platform of 1964, p.661

Reflecting the fuller recognition of the special equities and needs of older people:

Democratic Platform of 1964, p.661

FHA mortgage insurance written on housing projects for the elderly since 1961 has provided more than 3 times as many units as were being provided prior to that time.

Democratic Platform of 1964, p.661

Low rent public housing under Federal assistance is being provided senior citizens at an annual rate more than twice that for 1960.

Democratic Platform of 1964, p.661

Direct loan authorizations for housing for the elderly increased from $50 million in 1961 to $275 million in 1963.

Democratic Platform of 1964, p.661

Maximum loan amounts have been increased to 100% of development cost.

Democratic Platform of 1964, p.661

The Housing Act of 1961 expanded and strengthened the Federal program in this area.

Democratic Platform of 1964, p.661

The Senior Citizens Housing Act of 1962 moved us another long step forward.

Democratic Platform of 1964, p.661

Applications for the provision of nursing homes increased from 80 in January 1961 to more than 580 by the middle of 1964, involving more than 50,000 beds for community nursing homes.

Democratic Platform of 1964, p.661

Assistance has been given for more than 1,000 college housing projects including housing for more than 290,000 students and faculty, plus dining halls and other school facilities.

Democratic Platform of 1964, p.661

The 1963 Executive Order on Equal Opportunity in Housing assures that the benefits of Federal housing programs and assistance are available without discrimination as to race, color, creed or national origin.

Health

Democratic Platform of 1964, p.661

In 1960, we proposed to—

Democratic Platform of 1964, p.661

"Provide medical care benefits for the aged as part of the time-tested social security system.

Democratic Platform of 1964, p.661

"Step up medical research on the major killers and crippling diseases.

Democratic Platform of 1964, p.661

"Expand and improve the Hill-Burton hospital construction program.

Democratic Platform of 1964, p.661

"Federal aid for construction, expanding and modernizing schools of medicine, dentistry, nursing and public health.

Democratic Platform of 1964, p.661

"Greatly increased federal support for psychiatric research and training and community mental health programs."

Democratic Platform of 1964, p.661

More health legislation has been enacted during the past 8 1/2 years than during any other period in American history.

Democratic Platform of 1964, p.661

The Community Health Services and Facilities Act of 1961 has made possible 149 projects for testing and demonstrating new or improved services in nursing homes, home care services, central information and referral centers; and providing additional personnel to serve the chronically ill and aged. It has also provided additional federal funds for the construction of nursing homes.

Democratic Platform of 1964, p.661

The Hill-Burton Amendments of 1964, extend the program of Federal grants for construction of hospitals, public health centers, long-term facilities, rehabilitation facilities and diagnostic or treatment centers for five additional years. For the first time provision is made for the modernization and renovation of hospitals and health facilities. Funds for the construction of nursing homes [p.662] and other long-term care facilities are substantially increased.

Democratic Platform of 1964, p.662

The Mental Retardation Facilities and Community Mental Health Construction Act of 1963, authorized grants of $150,000,000 to States for constructing community Mental Health Centers, which emphasize the new approach to the care of the mentally ill, centered on care and treatment in the patients' home communities. Thirty-six States have already budgeted more than 75% of their share of Federal funds for planning these new systems.

Democratic Platform of 1964, p.662

The Maternal and Child Health and Mental Retardation Planning Amendments of 1963, along with the Mental Retardation Facilities and Community Mental Health Construction Act of 1963, authorized a broad program to prevent, treat, and ameliorate mental retardation. The program provides States and communities needed research, manpower developments, and facilities for health, education rehabilitation, and vocational services to the retarded.

Democratic Platform of 1964, p.662

As part of the Federal Government's program to employ the mentally retarded in suitable Federal jobs, the State rehabilitation agencies are certifying persons as qualified for specific suitable Federal jobs. A rising number of placements already made in Federal installations over the country constitutes an encouraging start.

Democratic Platform of 1964, p.662

The current need for another 200,000 qualified teachers for the estimated 6 million handicapped children of school age, has been recognized in legislation authorizing grants in aid for the training of professional personnel.

Democratic Platform of 1964, p.662

Other legislation provides funds for training teachers of the deaf.

Democratic Platform of 1964, p.662

A 1962 amendment to the Public Health Act authorizes a new program of project grants to help meet critical health needs of domestic migratory workers and their families through establishment of family health service clinics.

Democratic Platform of 1964, p.662

Forty-nine projects in 24 States have received grants to assist an estimated 300,000 migrant workers.

Democratic Platform of 1964, p.662

One out of every ten migrant laborers is estimated to have received some health services through these projects.

Democratic Platform of 1964, p.662

The National Institute of Child Health and Human Development, authorized in 1962, is now supporting research and training in eight major areas.

Democratic Platform of 1964, p.662

The National Institute of General Medical Sciences, also authorized in 1962, gives recognition to the significance of research training in the sciences basic to medicine. Two thousand research projects are currently being supported.

Democratic Platform of 1964, p.662

A $2 million Radiological Health Grant Program was established in 1962 to provide matching grants to assist States in assuming responsibility for adequate radiation control and protection. During Fiscal Year 1964, forty-nine States and Puerto Rico and the Virgin Islands participated.

Democratic Platform of 1964, p.662

After two years of scientific evaluation of research and findings, the Report of the Surgeon General's Advisory Committee on Smoking and Health was released in January 1964, calling attention to the health hazards of smoking. An information clearinghouse and a public education program directed toward preventing young people from acquiring the smoking habit are being developed.

A Program for the Aging

Democratic Platform of 1964, p.662

In 1960, we proposed to—

Democratic Platform of 1964, p.662

"End the neglect of our older citizens. They deserve lives of usefulness, dignity, independence, and participation. We shall assure them not only health care, but employment for those who want to work, decent housing, and recreation."

Democratic Platform of 1964, p.662

The Social Security Act Amendments of 1961 broadened benefits to 5.3 million persons, increased minimum benefits for retired workers from $33 to $40 per month, permitted men as well as women to begin collecting reduced benefits at age 62.

Democratic Platform of 1964, p.662

The Social Security program now provides $1.3 billion in benefits each month to 19.5 million persons. One out of every ten Americans receives a Social Security check every month.

Democratic Platform of 1964, p.662

The Welfare and Pension Plans Disclosure Act Amendments of 1962 put "enforcement teeth" into this measure, protecting workers' assets in pension programs.

Democratic Platform of 1964, p.662

The Housing Act of 1961 increased the scope of Federal housing aids for the elderly by raising from $50 million to $125 million the authorization for low-interest-rate direct loans. In 1962, this was raised further to $225 million and in 1963 to $275 million.

Democratic Platform of 1964, p.662

Insurance written by the Federal Housing Administration for mortgage insurance for the elderly [p.663] since 1961 provides three times as many units as during the preceding Administration.

Democratic Platform of 1964, p.663

Low rent public housing under Federal assistance has been provided senior citizens at an annual rate more than twice that for 1960.

Democratic Platform of 1964, p.663

The Community Health Services and Facilities Act of 1961 raised the ceiling on appropriations for the construction of nursing homes under the Hill-Burton legislation from $10 million to $20 million; and authorized $10 million per year for a 5-year program of special project grants for the development of new or improved methods of providing health services outside the hospital for the chronically ill or aged.

Democratic Platform of 1964, p.663

Executive Order 11114, issued by President Johnson on February 12, 1964, establishes for the first time the policy of non-discrimination in employment based on age by Federal contractors.

Welfare

Democratic Platform of 1964, p.663

In 1960, we proposed to—

Democratic Platform of 1964, p.663

"Permit workers who are totally and permanently disabled to retire at any age, removing the arbitrary requirement that the worker be 50 years of age.

Democratic Platform of 1964, p.663

"Amend the law so that after six months of total disability, a worker will be eligible for disability benefits, with restorative services to enable the worker to return to work.

Democratic Platform of 1964, p.663

"Continued support of legislation for the rehabilitation of physically handicapped persons and improvement of employment opportunities for them.

Democratic Platform of 1964, p.663

"Persons in need who are inadequately protected by social insurance are cared for by the states and local communities under public assistance programs. The Federal Government, which now shares the cost of aid to some of these, should share in all, and benefits should be made available without regard to residence.

Democratic Platform of 1964, p.663

"Uniform minimum standards throughout the nation for coverage, duration, and amount of unemployment insurance benefits.

Democratic Platform of 1964, p.663

"Legislation which will guarantee to women equality of rights under the law, including equal pay for equal work.

Democratic Platform of 1964, p.663

"The Child Welfare Program and other services already established under the Social Security Act should be expanded. Federal leadership is required in the nationwide campaign to prevent and control juvenile delinquency.

Democratic Platform of 1964, p.663

"A federal bureau of inter-group relations to help solve problems of discrimination in housing, education, employment and community opportunities in general. The bureau would assist in the solution of problems arising from the resettlement of immigrants and migrants within our own country, and in resolving religious, social and other tensions where they arise."

Democratic Platform of 1964, p.663

The 1961 Public Assistance Amendments, extended aid for the first time to families with dependent children in which the parent is unemployed. Currently, 18 States have adopted this program. Aid is being provided to about 75,000 families with nearly 280,000 children.

Democratic Platform of 1964, p.663

The food stamp program is providing improved purchasing powers and a better diet for families and persons receiving general assistance.

Democratic Platform of 1964, p.663

The 1962 Public Welfare amendments provide the authority and financial resources for a new approach to the problems of prolonged dependency and some of the special needs of children.

Democratic Platform of 1964, p.663

Under these enactments and related provisions: 49 States have now qualified for increased Federal financial aid to provide help to families with economic and social problems, and to assist families dependent on public assistance back to economic independence.

Democratic Platform of 1964, p.663

9 pilot projects have been initiated to help children stay in school.

Democratic Platform of 1964, p.663

41 demonstration projects have been designed to improve public assistance operations and to find ways of helping low-income families and individuals to become independent.

Democratic Platform of 1964, p.663

18,000 unemployed fathers in needy families are currently on community work and training projects.

Democratic Platform of 1964, p.663

Three million children are now covered by the program of aid to families with dependent children; and under the 1962 amendments these children receive, in addition to financial assistance, other needed help toward normal growth and development.

Democratic Platform of 1964, p.663

46 States now have approved plans for day care services.

Democratic Platform of 1964, p.663

Grants for research and demonstrations in child welfare were first awarded in 1962, and 62 projects have since been approved.

Democratic Platform of 1964, p.663

Starting for the first time in 1963, grants for training child welfare workers have been made to 58 institutions of higher learning.

Democratic Platform of 1964, p.664

[p.664] Approximately 453,000 older persons received medical assistance under the Kerr-Mills program in fiscal year 1964.

Democratic Platform of 1964, p.664

The Temporary Extended Unemployment Compensation Act of 1961 provided 13 additional weeks of benefits to the long-term unemployed. 2.8 million jobless workers received $800 million in assistance.

Democratic Platform of 1964, p.664

The Juvenile Delinquency and Youth Offenses Control Act of 1961 made possible the establishment of training centers at 12 universities. By the end of fiscal year 1964, the program will have reached 12,500 trainees for work in delinquency prevention and control.

Democratic Platform of 1964, p.664

The Equal Pay Act of 1963 and the work of the President's Commission on the Status of Women, which reported to the President that same year, were events of historic importance in the struggle for equal opportunity and full partnership for women. The inclusion of women in the employment provisions of the Civil Rights Act of 1964 makes equality in employment at long last the law of the land.

Democratic Platform of 1964, p.664

Title X of the Civil Rights Act of 1964 establishes a Community Relations Service "to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin…"

Education

Democratic Platform of 1964, p.664

In 1960, we pledged—

Democratic Platform of 1964, p.664

"We believe that America can meet its educational obligations only with generous federal financial support, within the traditional framework of local control. The assistance will take the form of federal grants to States for educational purposes they deem most pressing, including classroom construction and teachers' salaries. It will include aid for the construction of academic facilities as well as dormitories at colleges and universities.

Democratic Platform of 1964, p.664

"We pledge further federal support for all phases of vocational education for youth and adults; for libraries and adult education; for realizing the potential of educational television; and for exchange of students and teachers with other nations.

Democratic Platform of 1964, p.664

"As part of a broader concern for young people we recommend establishment of a Youth Conservation Corps, to give underprivileged young people a rewarding experience in a healthful environment."

Democratic Platform of 1964, p.664

The Higher Education Facilities Act of 1963 provides $1.2 billion for college construction over a three-year period. Over 2,000 institutions are eligible to benefit from its provisions in helping them meet current enrollment increases of 350,000 students each year.

Democratic Platform of 1964, p.664

The Health Professions Educational Assistance Act of 1963 will increase the number of professional health personnel through construction grants for health teaching facilities, and through low-interest student loans to assist up to 10,000 students of medicine, dentistry, or osteopathy to pay for their high-cost education.

Democratic Platform of 1964, p.664

The Vocational Education Act of 1963 authorizes a $956 million increase in Federal support for vocational education over the next five fiscal years—1964 through 1968. It is estimated that 7,000,000 students will be enrolled in vocational education in 1968, an increase of about 3,000,000 over present annual enrollment.

Democratic Platform of 1964, p.664

Legislation approved in 1963, which increased authorization for loans to needy students for college education, will mean that in the coming school year approximately 280,000 students will be borrowing about $142 million from the loan funds to help pay for their higher education, as compared with 115,450 students borrowing $50,152,000 in 1960.

Democratic Platform of 1964, p.664

In the last three fiscal years, there have been grants of $153.1 million in Federal funds to the States for purchases of equipment and materials, and remodeling classrooms to strengthen instruction in science, mathematics, and modern foreign languages.

Democratic Platform of 1964, p.664

A $32 million program of grants to help establish non-commercial educational television stations was approved in 1962. Thirty-seven grants have been approved, totaling $6.1 million—18 for new stations and 19 for expansion.

Democratic Platform of 1964, p.664

The Library Services and Construction Act of 1964 broadened Federal aid to cover urban as well as rural areas, and to provide construction grants in addition to other library services. The new legislation increased the authorization for Federal aid to develop libraries from $7.5 million to the present level of $25 million and included a new program of assistance for public library construction, with an appropriation for Fiscal Year 1965 of $30 million.

Democratic Platform of 1964, p.665

[p.665] The Youth Conservation Corps envisioned by the 1960 proposal is provided for under Title I of the Economic Opportunity Act of 1964.

Natural Resources

Democratic Platform of 1964, p.665

In 1960, we said—

Democratic Platform of 1964, p.665

"A thin layer of earth, a few inches of rain, and a blanket of air makes human life possible on our planet."

Democratic Platform of 1964, p.665

"Sound public policy must assure that these essential resources will be available to provide the good life for our children and future generations."

Democratic Platform of 1964, p.665

After the 1960 election President Kennedy and President Johnson implemented this platform by a whole series of new conservation policies and programs, some of which emanated from the first White House Conference on Conservation called by any President since the 1908 conference called by President Theodore Roosevelt.

Democratic Platform of 1964, p.665

During this Administration two historic conservation measures were enacted. These were:

Democratic Platform of 1964, p.665

The Wilderness Bill and the Land and Water Conservation Fund Bill which will together do more to help conserve outdoor America than any legislation passed in a generation.

Democratic Platform of 1964, p.665

In addition to this landmark legislation new emphasis has been placed on science as the modern midwife of conservation, and new impetus has been given across the board in the conservation of natural resources.

In the field of water conservation

Democratic Platform of 1964, p.665

Twenty-one new major water resources projects have been authorized or started in the West;

Democratic Platform of 1964, p.665

A high-water mark has been achieved in the annual level of national investment in water resource projects;

Democratic Platform of 1964, p.665

The saline water conversion effort has been quadrupled, and should achieve a dramatic cost-breakthrough during the next Administration.

In electric power

Democratic Platform of 1964, p.665

Ending 16 years of argument, a bold plan was developed under President Johnson's personal leadership to interconnect the electric power systems of the Pacific Northwest and the Southwest, thus providing benefits for power users in 11 Western States; under this plan, construction will soon begin on the first direct current long-distance lines in the United States, stretching all the way from the Columbia River to Los Angeles—and a new era of public and private power cooperation will commence.

Democratic Platform of 1964, p.665

Federal hydroelectric generating capacity has been increased by 2,600,000 kilowatts, and 5,150,000 kilowatts of non-Federal capacity has been licensed by the Federal Power Commission.

Democratic Platform of 1964, p.665

3,350 miles of vital transmission lines have been added to Federal systems and about 25,000 miles of new transmission lines have also been built by non-Federal power systems.

Democratic Platform of 1964, p.665

The FPC has conducted a National Power Survey to encourage both public and private power companies to join in power pools which are bringing lower cost electricity to consumers throughout the nation.

Democratic Platform of 1964, p.665

The world's largest atomic electric power plant (at Hanford, Washington) was funded and will soon be generating as much power as two Bonneville dams.

Democratic Platform of 1964, p.665

Federal REA loans have made it possible to open up the lignite coal fields of the Dakotas, and to exploit the coal fields of Western Colorado.

Democratic Platform of 1964, p.665

In addition, the Congress authorized the Delaware Basin Compact to permit the multi-purpose development of that river, and the Senate ratified the Columbia River Treaty which enables the joint U.S.-Canadian development of the full potential of that great river to begin later this year.

In outdoor recreation

Democratic Platform of 1964, p.665

The Congress created three superb new national seashores at Cape Cod (Massachusetts), Padre Island (Texas) and Point Reyes (California).

Democratic Platform of 1964, p.665

Pioneering a new park concept, Ozark Rivers National Riverway (Missouri) was established as the first river preservation national park in the Nation, and 12 other major new additions to the Park System were recommended for action by future Congresses.

Democratic Platform of 1964, p.665

A Bureau of Outdoor Recreation was created. As a vital part of the war on poverty, during the next year, 20 thousand young Americans will set to work in conservation camps across the land tackling the big backlog of work in the land and water areas owned by all of the people.

In the conservation and development of mineral resources

Democratic Platform of 1964, p.665

Research helped coal production surge upward, and there were initiated a series of action steps [p.666] (including activation of the huge Rifle, Colorado, research center) which will lead to the orderly development of the vast oil shale resources of the Colorado plateau.

For wildlife

Democratic Platform of 1964, p.666

Enactment of the Wetlands Bill of 1961 made it possible to create more new Waterfowl Refuges (27) than during any previous four-year period in our history.

Democratic Platform of 1964, p.666

The Clean Air Act of 1963 is already providing the first full-scale attack on the air pollution problems that blight living conditions in so many of our cities.

Democratic Platform of 1964, p.666

Enactment of the Federal Water Pollution Control Act of 1961 launched the first massive attack on this conservation problem which has already resulted in 1,300 municipal waste treatment plans and the approval of projects that have improved the water quality in 18,000 miles of streams that provide water for 22 million people.

Cities and Their Suburbs

Democratic Platform of 1964, p.666

In 1960, we declared—

Democratic Platform of 1964, p.666

"A new Democratic administration will expand Federal programs to aid urban communities to clear their slums, dispose of their sewage, educate their children, transport suburban commuters to and from their jobs, and combat juvenile delinquency."

Democratic Platform of 1964, p.666

The Housing Act of 1961 marked the beginning of a new era of Federal commitment to the problems of a nation in which three-fourths of the population has come to live in urban areas.

Democratic Platform of 1964, p.666

Under that Act, funds available for urban planning grants were increased by $55 million and a new $50 million Federal grant program to assist localities in the acquisition of permanent open space land to be used as parks and playgrounds was established.

Democratic Platform of 1964, p.666

The Housing Act of 1961 and the Area Redevelopment Act of 1961 authorized public facilities loans of $600 million.

Democratic Platform of 1964, p.666

The Juvenile Delinquency and Youth Offenses Control Act of 1961 launched a broad attack on youth problems by financing demonstration projects, training personnel in delinquency work, and providing technical assistance for community youth programs.

Democratic Platform of 1964, p.666

In 1960, we pledged—

Democratic Platform of 1964, p.666

"Federal aid for comprehensive metropolitan

Democratic Platform of 1964, p.666

transportation programs, including bus and rail mass transit, commuter railroads as well as highway programs and construction of civil airports."

Democratic Platform of 1964, p.666

The Housing Act of 1961 launched the first efforts to help metropolitan and other urban areas solve their mass transportation problems; 75 million in loans and demonstration grants were provided to States and localities to construct and improve mass transportation systems.

Democratic Platform of 1964, p.666

The Urban Mass Transportation Act of 1964 establishes a new long-range program for this purpose and authorizes $375 million in Federal grants, over 3 years, for capital construction and improvement which local transit systems cannot otherwise finance.

Transportation

Democratic Platform of 1964, p.666

In 1960, we observed—

Democratic Platform of 1964, p.666

"Over the past seven years we have watched the steady weakening of the Nation's transportation system, and we noted the need for a national transportation policy.'"

Democratic Platform of 1964, p.666

The National Transportation policy was enunciated in the first Presidential message ever to be sent to the Congress dealing solely with transportation.

Democratic Platform of 1964, p.666

The Highway Act of 1961 resolved the lagging problem of financing the 41,000 mile interstate highway program, and the finished construction rate has almost doubled.

Democratic Platform of 1964, p.666

The Federal Maritime Commission has been established as an independent agency to guard against prejudice or discrimination harmful to the growth of U. S. World Trade.

Democratic Platform of 1964, p.666

The Maritime Administration, U. S. Department of Commerce, was set up to give its full attention to promoting a vigorous policy of strengthening and modernizing our merchant fleet. Seventy big modern cargo and cargo-passenger ships have been added to the U.S. merchant fleet. The Savannah, the world's first nuclear-powered merchant ship, is now on her first foreign voyage.

Democratic Platform of 1964, p.666

The far-reaching decision has been made that the United States will design and build a supersonic air transport plane—and thereby maintain our leadership position in international aviation. Congress has provided $60 million for the development of detailed designs. Twenty airlines already have placed orders.

Democratic Platform of 1964, p.666

On August 13, President Johnson signed a new highway bill to provide better primary and secondary [p.667] highways on a 50/50 basis with the states. In addition, it will support needed efforts to improve forest highways, public land roads and national park roads.

Science

Democratic Platform of 1964, p.667

In 1960, we declared—

Democratic Platform of 1964, p.667

"We will recognize the special role of our Federal Government in support of basic and applied research," mentioning in particular Space, Atomic Energy, and Oceanography.

Space

Democratic Platform of 1964, p.667

Since 1961, the United States has pressed vigorously forward with a 10-year, $35-billion national space program for clear leadership in space exploration, space use, and all important aspects of space science and technology.

Democratic Platform of 1964, p.667

Already this program has enabled the United States to challenge the early Soviet challenge in space booster power and to effectively counter the Soviet bid for recognition as the world's leading nation in science and technology.

Democratic Platform of 1964, p.667

In the years 1961-1964, the United States has Successfully flown the Saturn I rocket, putting into orbit the heaviest payloads of the space age to date.

Democratic Platform of 1964, p.667

Moved rapidly forward with much more powerful launch vehicles, the Saturn IB and the Saturn V. The Saturn IB, scheduled to fly in 1966, will be able to orbit a payload of 16 tons; and Saturn V, scheduled to fly in 1967 or 1968, will be able to orbit 120 tons or send 45 tons to the moon or 35 tons to Mars or Venus.

Democratic Platform of 1964, p.667

Mastered the difficult technology of using liquid hydrogen as a space rocket fuel in the Centaur upper stage rocket and the Saturn I second stage—assuring American leadership in space science and manned space flight in this decade.

Democratic Platform of 1964, p.667

Successfully completed six manned space flights in Project Mercury, acquiring 54 hours of space flight experience.

Democratic Platform of 1964, p.667

Successfully flight-tested the two-man Gemini spacecraft and Titan II space rocket so that manned Gemini flights can begin late in 1964 or early in 1965.

Democratic Platform of 1964, p.667

Developed the three-man Apollo spacecraft which will be able to spend up to two months in earth orbit, operate out to a quarter of a million miles from earth, and land our first astronaut-explorers on the moon.

Democratic Platform of 1964, p.667

Taken all actions to conduct a series of manned space flights in the Gemini and Apollo programs which will give the United States some 5,000 man-hours of flight experience in earth orbit, develop U. S. capabilities for rendezvous and joining of spacecraft in orbit, and prove out man's ability to perform valuable missions during long stays in space.

Democratic Platform of 1964, p.667

Made man's first close-up observations of another planet during the highly successful Mariner II fly-by of Venus.

Democratic Platform of 1964, p.667

Obtained the first close-up pictures of the moon, taken and relayed to earth by Ranger VII.

Democratic Platform of 1964, p.667

Initiated an ambitious long-range program for scientific investigations in space utilizing large, versatile spacecraft called Orbiting Observatories for geophysical, solar and stellar studies.

Democratic Platform of 1964, p.667

Operated the world's first weather satellites (Tiros).

Democratic Platform of 1964, p.667

Set up, under the Communications Satellite Act of 1962, the Communications Satellite Corporation, which is well on the way to establishing a global satellite communications system to provide reliable, low-cost telephone, telegraph, and television services to all parts of the world.

Democratic Platform of 1964, p.667

In short, the United States has matched rapid progress in manned space flight with a balanced program for scientific investigations in space, practical uses of space, and advanced research and technological pioneering to assure that the new challenges of space in the next decade can also be met, and U. S. leadership maintained.

Atomic Energy

Democratic Platform of 1964, p.667

The number of civilian nuclear power plants has increased from 3 to 14 since January 1961; and now the advent of economic nuclear power provides utilities a wider choice of competitive power sources in many sections of the country.

Democratic Platform of 1964, p.667

The world's largest nuclear power reactor, the Atomic Energy Commission's Production Reactor near Richland, Washington, achieved a controlled, self-sustained nuclear reaction on December 31, 1963.

Democratic Platform of 1964, p.667

The first deep-sea anchored, automatic weather station powered by nuclear energy has gone into unattended operation in the Gulf of Mexico, and the first lighthouse powered by nuclear energy flashes now in Chesapeake Bay.

Democratic Platform of 1964, p.667

Nuclear energy was extended to space for the first time in 1961. Compact nuclear generators [p.668] supplied part of the power for instruments in two satellites, and in 1963 provided all of the power needs of two other satellites.

Democratic Platform of 1964, p.668

Vigorous support has been given to basic research in atomic energy. The world's highest energy accelerator, the AGS, has come into productive operation.

Oceanography

Democratic Platform of 1964, p.668

For the first time in history the United States is building a fleet expressly designed for oceanographic research. Since 1961, 29 ships have been completed or are currently under construction. Shoreside facilities and training programs have been established as part of a major government-wide effort, begun in 1961, to capture the enormous potential rewards of research in this area which until now have been almost as remote and inaccessible as space itself.

Government Operations

Democratic Platform of 1964, p.668

"We shall reform the processes of government in all branches—executive, legislative, and judicial. We will clean out corruption and conflicts of interest, and improve government services."

Democratic Platform of 1964, p.668

This Administration has brought the personnel, morale, ethics, and performance of the Federal service to a point of high excellence. To accomplish this transformation it made improvements in a broad range of activities affecting the operation of the government.

Democratic Platform of 1964, p.668

The conflict of interest laws were strengthened by the first major revision in a century. The comprehensive new law eliminates ambiguities and inconsistencies in existing laws, and increases the range of government matters in which conflict of interest is prohibited. In addition, President Kennedy issued an Executive Order which established more rigid standards of conduct for Federal officials and employees.

Democratic Platform of 1964, p.668

The regulatory agencies were made more effective by reorganization programs and by the appointment of highly-qualified officials, dedicated to protecting the public interest.

Democratic Platform of 1964, p.668

The Department of Justice has cracked down effectively on organized crime under new anti-racketeering statutes, has uncovered and prosecuted important foreign spies, and has made progress toward more effective procedures for protecting the rights of poor defendants to bail and counsel.

Democratic Platform of 1964, p.668

Federal Employee Organizations, many of which have existed for over half a century, were at last extended formal recognition under Executive Order 10988, issued by President Kennedy.

Democratic Platform of 1964, p.668

The Federal Pay Raise Act of 1964 updated the pay structure for Federal employees on a basis of equal salary rates for comparable levels of work in private industry. Completing the reforms initiated in the Act of 1962, it provided for long-needed increases in salary for top level Government administrators upon whom major responsibility for program results must rest. In President Johnson's words, this law established a basis for a standard of "brilliance" and "excellence" in the Federal Government.

Congressional Procedures

Democratic Platform of 1964, p.668

In 1960, we urged action—

Democratic Platform of 1964, p.668

"To improve Congressional procedures so that majority rule prevails."

Democratic Platform of 1964, p.668

In 1961, the House Rules Committee was enlarged from 12 to 15 members, making it more representative of the views of the majority, and thereby enabling much important legislation to be reported to the floor for a vote by the entire House membership.

Democratic Platform of 1964, p.668

In 1964, for the first time in history, the Senate voted to limit debate on a civil rights measure, thus permitting the Civil Rights Act to come to a vote, and thereby to be enacted.

Consumers

Democratic Platform of 1964, p.668

In 1960, we proposed—

Democratic Platform of 1964, p.668

"Effective Government representation and protection" for consumers.

Democratic Platform of 1964, p.668

In 1962, President Kennedy became the first Chief Executive to send a message to Congress on consumer matters.

Democratic Platform of 1964, p.668

This Executive action was closely followed by the creation of a Consumer Advisory Council.

Democratic Platform of 1964, p.668

In 1964, President Johnson appointed the first Special Assistant to the President for Consumer Affairs, and created a new President's Committee on Consumer Interests.

Democratic Platform of 1964, p.668

The Kefauver-Harris Drug Amendments of 1962 were the most far-reaching improvements in the Food, Drug and Cosmetics Act since 1938. Under these amendments:

Democratic Platform of 1964, p.668

Effective legal tools were provided to insure greater safety in connection with the manufacture, distribution and use of drugs.

Democratic Platform of 1964, p.669

[p.669] Vital safeguards were added for drug research and manufacture.

Democratic Platform of 1964, p.669

Interstate distribution of new drugs for testing was barred until an adequate plan of investigation was made available to the Food and Drug Administration.

Democratic Platform of 1964, p.669

Domestic drug manufacturing establishments will now be required to register annually and be inspected by the FDA at least once a year.

Democratic Platform of 1964, p.669

The Administration has vigorously supported Truth-in-Lending, Truth-in-Packaging, and Truth-in-Securities bills.

Democratic Platform of 1964, p.669

The titles of these bills explain their objectives. Together, they form a triple armor of protection: for buyers of packaged goods, from prevailing deceptive practices; for borrowers of money, from hidden and unscrupulous interest and carrying charges; and for investors in securities from unfair practices threatening to vital savings. The first two bills are still awaiting Congressional action; the third is now a law.

Democratic Platform of 1964, p.669

The upward spiral in the price of natural gas which took place in the decade of the 1950's has been halted by vigorous regulatory action of the Federal Power Commission and the nation's 36 million consumers of natural gas have benefited from rate reductions and refunds in excess of $600 million. Natural gas moving largely in interstate pipelines now supplies almost a third of the nation's energy requirements. Regulation to insure its availability in ample supply and at reasonable prices is an important consumer protection function which is now being effectively discharged.

Veterans Affairs

Democratic Platform of 1964, p.669

In 1960, we proposed—

Democratic Platform of 1964, p.669

"Adequate compensation for those with service-connected disabilities," and "pensions adequate for a full and dignified life for disabled and distressed veterans and for needy survivors of deceased veterans."

Democratic Platform of 1964, p.669

Since 1961, we have achieved:

Democratic Platform of 1964, p.669

Increased disability payments for veterans with service-connected disabilities. In the first year alone, this increase provided veterans with additional payments of about $98 million.

Democratic Platform of 1964, p.669

An increase of about 10 percent a month in the compensation for widows, children, and parents of veterans who died of service-connected disabilities.

Democratic Platform of 1964, p.669

An increase from $112 to $150 a month in the dependency and indemnity compensation payable to widows of veterans who died of service-connected disabilities.

Democratic Platform of 1964, p.669

Increased compensation benefits to veterans disabled by blindness, deafness, and kidney disorders, and increased benefits to widows and orphans of veterans whose deaths were service-connected.

Democratic Platform of 1964, p.669

In 1960, we endorsed—

Democratic Platform of 1964, p.669

"Expanded programs of vocational rehabilitation for disabled veterans, and education for orphans of servicemen."

Democratic Platform of 1964, p.669

Since 1961, vocational rehabilitation and training has enabled thousands of GI's to choose occupations and acquire valuable training. For the first time, veterans with peacetime service-connected disabilities have been afforded vocational rehabilitation training. In addition, vocational rehabilitation was extended to blinded World War II and Korean conflict veterans, and war orphans' educational assistance was extended in behalf of certain reservists called to active duty.

Democratic Platform of 1964, p.669

In 1960, we stated—

Democratic Platform of 1964, p.669

"The quality of medical care furnished to the disabled veterans has deteriorated…. We shall work for all increased availability of facilities for all veterans in need and we shall move with particular urgency to fulfill the need for expanded domiciliary and nursing-home facilities."

Democratic Platform of 1964, p.669

Since 1961, we have—

Democratic Platform of 1964, p.669

Approved the construction of new, modern hospitals, a number of which are being built near medical schools to improve veterans' care and research.

Democratic Platform of 1964, p.669

Added more full-time doctors to the VA staff, bringing it to an all-time high of nearly 5,000.

Democratic Platform of 1964, p.669

Provided hospital and medical care, including out-patient treatment, to peacetime ex-servicemen for service-connected disabilities on the same basis furnished war veterans.

Democratic Platform of 1964, p.669

Stepped up medical research programs, which have made outstanding contributions to American medicine.

Democratic Platform of 1964, p.669

In 1960, we pledged—

Democratic Platform of 1964, p.669

"We shall continue the veterans home loan guarantee and direct loan programs and education benefits patterned after the GI Bill of Rights."

Democratic Platform of 1964, p.669

Since 1961, legislation has extended veterans home loans for both World War II and Korean conflict veterans. The GI Bill of Rights for Korean [p.670] veterans was also extended for the benefit of certain reservists called to active duty.

Democratic Platform of 1964, p.670

Despite this considerably increased activity, the Veterans Administration has reduced its operating costs.

American Indians

Democratic Platform of 1964, p.670

In 1960, we pledged—

Democratic Platform of 1964, p.670

"Prompt adoption of a program to assist Indian tribes in the full development of their human and natural resources and to advance the health, education and economic well-being of Indian citizens while preserving their cultural heritage."

Democratic Platform of 1964, p.670

In these 3 1/2 years:

Democratic Platform of 1964, p.670

New classrooms have been provided for more than 7,000 Indian children; summer educational programs have been expanded tenfold so they now serve more than 20,000 students; and a special institute to train artistically gifted Indian youth has been established.

Democratic Platform of 1964, p.670

Indian enrollment in vocational training programs has been doubled.

Democratic Platform of 1964, p.670

For the first time in history, Federal low-rent housing programs have been launched on Indian reservations, and more than 3,100 new housing units have now been authorized.

Democratic Platform of 1964, p.670

Industrial plants offering employment opportunities for thousands of Indians are being opened on Indian reservations.

Democratic Platform of 1964, p.670

Accelerated Public Works projects on 89 reservations in 21 States have provided nearly 30,000 man-months of employment.

Democratic Platform of 1964, p.670

The Vocational Education Act and the Adult Indian Vocational Training Act have been amended to provide improved training for Indians.

The Arts

Democratic Platform of 1964, p.670

In 1960, we observed—

Democratic Platform of 1964, p.670

"The arts flourish where there is freedom and where individual initiative and imagination are encouraged."

Democratic Platform of 1964, p.670

No single quality of the new Administration was more immediately evident to the Nation and the world than the recognition it gave to American artists.

Democratic Platform of 1964, p.670

President Kennedy early created an advisory commission to assist in the growth and development of the arts, and the Administration secured amendments to the Educational and Cultural Exchange Act to improve the quality and effectiveness of the international educational and cultural exchange programs. This past year, the John F. Kennedy Center for the Performing Arts was established to stimulate widespread interest in the arts.

Democratic Platform of 1964, p.670

On Washington's Birthday 1963, President Kennedy, by Executive Order, created a new Presidential Medal of Freedom as the highest civil honor conferred by the President in peace time upon persons who have made distinctive contributions to the security and national interest of the United States, to world peace, or to cultural activities. Henceforth, those men and women selected by the President for the Medal will be announced annually on the Fourth of July and will be presented with medals at an appropriate White House ceremony.

Democratic Platform of 1964, p.670

In his address to the University of Michigan in May 1964, President Johnson proposed that we begin to build the Great Society first of all in the cities of America, restoring the beauty and dignity which urban centers have lost.

Democratic Platform of 1964, p.670

That same month the President's Council on Pennsylvania Avenue presented to him a sweeping proposal for the reconstruction of the center of the City of Washington. The proposal has been hailed as "a blueprint for glory…a realistic and far-seeing redevelopment scheme that may be Washington's last chance to save its 'Avenue of Presidents.'"

Civil Liberties

Democratic Platform of 1964, p.670

In 1960, we reaffirmed—

Democratic Platform of 1964, p.670

"Our dedication to the Bill of Rights. Freedom and civil liberties, far from being incompatible with security, are vital to our national strength."

Democratic Platform of 1964, p.670

The era of fear and suspicion brought on by accusations, true and false, of subversive activities and security risks has passed. The good sense of the American people, and the overwhelming loyalty of our citizenry have combined to restore balance and calm to security activities, without in any way diminishing the scope or effectiveness of those activities.

Democratic Platform of 1964, p.670

The Administration has jealously guarded the right of each American to protect his good name. Except in those instances where the national security is overriding, confrontation of the accuser is now required in all loyalty hearings. Individuals [p.671] whose loyalty is being questioned must also be notified of the charges in sufficient time for them to prepare their defense.

Democratic Platform of 1964, p.671

The Criminal Justice Act of 1964, now before the President for signature, will for the first time in history ensure that poor defendants in criminal cases will have competent legal counsel in defending themselves in Federal courts.

Fiscal Responsibility

Democratic Platform of 1964, p.671

In 1960, we promised—

Democratic Platform of 1964, p.671

"We shall end the gross waste in Federal expenditures which needlessly raises the budgets of many Government agencies."

Democratic Platform of 1964, p.671

Since 1961, we have moved boldly and directly to eliminate waste and duplication wherever it occurs.

Democratic Platform of 1964, p.671

For example, the Department of Defense has embarked on a far-reaching program to realize savings through improvements in its efficiency and management. This program has already produced savings of more than $1 billion in Fiscal Year 1963 and $2.5 billion in the Fiscal Year just completed. By 1964, it is expected that the program will produce yearly savings of over $4 billion.

Democratic Platform of 1964, p.671

At the close of the past Fiscal Year Federal employment had been reduced by 22,000 over the total one year earlier. The 1965 budget calls for lower expenditures than in the preceding year—only the second time such a feat has been accomplished in the past 10 years. In 1960, we pledged—

Democratic Platform of 1964, p.671

"We shall collect the billions in taxes which are owed to the Federal Government but are not now collected."

Democratic Platform of 1964, p.671

To handle additional work in income tax collection, 3,971 new employees were added to the Internal Revenue Service by the Congress in fiscal 1961; 2,817 new positions were added in fiscal 1963; and about 1,000 more in fiscal 1964. The additional revenue which these employees will produce will far exceed the cost of their employment.

Democratic Platform of 1964, p.671

In 1960, we pledged—

Democratic Platform of 1964, p.671

"We shall close the loopholes in the tax laws by which certain privileged groups legally escape their fair share of taxation."

Democratic Platform of 1964, p.671

The Revenue Acts of 1962 and 1964 eliminated more loopholes than all the revenue legislation from 1941 to 1962 combined. They raised $1.7 billion annually in new revenue, nine times the sum raised in this manner during the 1953-60 period. These bills sharply limited expense account abuses, special preferences to U. S. firms and individuals operating abroad, escapes from taxation through personal holding companies and many other unjustified advantages.

Civil Rights

Democratic Platform of 1964, p.671

In 1960, we pledged—

Democratic Platform of 1964, p.671

"We shall…seek to create an affirmative new atmosphere in which to deal with racial divisions and inequalities which threaten both the integrity of our democratic faith and the proposition on which our Nation was founded—that all men are created equal."

Democratic Platform of 1964, p.671

That pledge was made from the deepest moral conviction.

Democratic Platform of 1964, p.671

It was carried out on the same basis.

Democratic Platform of 1964, p.671

From the establishment of the President's Committee on Equal Employment Opportunity, under the chairmanship of the then Vice President Lyndon B. Johnson, on March 6, 1961 to this moment, the efforts of the Administration to provide full and equal civil rights for all Americans have never relaxed.

Democratic Platform of 1964, p.671

The high point of achievement in this effort was reached with the passage of the Civil Rights Act of 1964, the greatest civil rights measure in the history of the American people.

Democratic Platform of 1964, p.671

This landmark of our Democracy bars discrimination in the use of public accommodations, in employment, and in the administering of Federally-assisted programs. It makes available effective procedures for assuring the right to vote in Federal elections, directs Federal technical and financial assistance to local public school systems in desegregation, and strengthens the Civil Rights Commission. This comprehensive legislation resolves many of the festering conflicts which had been a source of irritating uncertainty, and smooths the way for favorable resolution of these problems.

Democratic Platform of 1964, p.671

We have also insisted upon non-discrimination in apprenticeship, and have made free, unsegregated access a condition for Federal financial assistance to public libraries, programs for training of teachers of the handicapped, counseling, guidance [p.672] and foreign language institutes, adult civil defense classes, and manpower development and training programs.

Democratic Platform of 1964, p.672

In supporting construction of Hill-Burton hospitals, mental retardation and community health facilities, we have required non-discrimination in admission and provision of services and granting of staff privileges.

Democratic Platform of 1964, p.672

We have been equally firm in opposing any policy of quotas or "discrimination in reverse," and all other arbitrary or irrelevant distinctions in American life.

Democratic Platform of 1964, p.672

This, then, is the accounting of our stewardship. The 1960 platform was not directed to any one sector or group of Americans with particular interests.

Democratic Platform of 1964, p.672

It proclaimed, rather, the Rights of Man.

Democratic Platform of 1964, p.672

The platform asserted the essential fact of that moment in our history—that the next administration to take office would face as never before the "responsibility and opportunity to call forth the greatness of the American people."

Democratic Platform of 1964, p.672

That responsibility was met; that opportunity was seized, The years since have been times of towering achievement.

Democratic Platform of 1964, p.672

We are proud to have been a part of this history. The task of leadership is to lead, and that has been our purpose. But the achievements of the nation over this period outreach the contribution of any party; they are the work of the American people.

Democratic Platform of 1964, p.672

In the 1,000 days of John F. Kennedy, in the eventful and culminating months of Lyndon B. Johnson, there has been born a new American greatness.

Democratic Platform of 1964, p.672

Let us continue.

Republican Platform of 1964

Title: Republican Platform of 1964

Author: Republican Party

Date: 1964

Source: National Party Platforms, pp.677-690

"For the People" Section One

For a Free People

Republican Platform of 1964, p.677

Humanity is tormented once again by an age-old issue—is man to live in dignity and freedom under God or be enslaved—are men in government to serve, or are they to master, their fellow men?

Republican Platform of 1964, p.677

It befalls us now to resolve this issue anew—perhaps this time for centuries to come. Nor can we evade the issue here at home. Even in this Constitutional Republic, for two centuries the beacon of liberty the world over, individual freedom retreats under the mounting assault of expanding centralized power. Fiscal and economic excesses, too long indulged, already have eroded and threatened the greatest experiment in self-government mankind has known.

Republican Platform of 1964, p.677

We Republicans claim no monopoly of love of freedom. But we challenge as unwise the course the Democrats have charted; we challenge as dangerous the steps they plan along the way; and we deplore as self-defeating and harmful many of the moves already taken.

Republican Platform of 1964, p.677

Dominant in their council are leaders whose words extol human liberty, but whose deeds have persistently delimited the scope of liberty and sapped its vitality. Year after year, in the name of benevolence, these leaders have sought the enlargement of Federal power. Year after year, in the guise of concern for others, they have lavishly expended the resources of their fellow citizens. And year after year freedom, diversity and individual, local and state responsibility have given way to regimentation, conformity and subservience to central power.

Republican Platform of 1964, p.677

We Republicans hold that a leadership so misguided weakens liberty in America and the world. We hold that the glittering enticements so invitingly proffered the people, at their own expense, will inevitably bring disillusionment and true disappointment in place of promised happiness. Such leaders are Federal extremists—impulsive in the use of national power, improvident in the management of public funds, thoughtless as to the long-term effects of their acts on individual freedom and creative, competitive enterprise. Men so recklessly disposed cannot be safely entrusted with authority over their fellow citizens.

Republican Platform of 1964, p.677

To Republicans, liberty is still today man's most precious possession. For every citizen, and for the generations to come, we Republicans vow that it shall be preserved.

Republican Platform of 1964, p.677

In substantiation of this belief the Republican Party submits this platform. To the American people it is our solemn bond.

To Stay Free

Republican Platform of 1964, p.677

The shape of the future is our paramount concern. Much of today's moral decline and drift—much of the prevailing preoccupation with physical and material comforts of life—much of today's crass political appeals to the appetites of the citizenry—can be traced to a leadership grown demagogic and materialistic through indifference to national ideals rounded in devoutly held religious faith. The Republican Party seeks not to renounce this heritage of faith and high purpose; rather, we are determined to reaffirm and reapply it. So doing, these will be our guides:

Republican Platform of 1964, p.677

1. Every person has the right to govern himself, to fix his own goals, and to make his own way with a minimum of governmental interference.

Republican Platform of 1964, p.677

2. It is for government to foster and maintain an environment of freedom encouraging every individual to develop to the fullest his God-given powers of mind, heart and body; and, beyond this, government should undertake only needful things, rightly of public concern, which the citizen cannot himself accomplish.

Republican Platform of 1964, p.677

We Republicans hold that these two principles must regain their primacy in our government's relations, not only with the American people, but also with nations and peoples everywhere in the world.

Republican Platform of 1964, p.677

3. Within our Republic the Federal Government should act only in areas where it has Constitutional authority to act, and then only in respect to proven needs where individuals and local or state governments will not or cannot adequately perform. Great power, whether governmental or private, political or economic, must be so checked, balanced and restrained and, where necessary, so [p.678] dispersed as to prevent it from becoming a threat to freedom any place in the land.

Republican Platform of 1964, p.678

4. It is a high mission of government to help assure equal opportunity for all, affording every citizen an equal chance at the starting line but never determining who is to win or lose. But government must also reflect the nation's compassionate concern for those who are unable, through no fault of their own, to provide adequately for themselves.

Republican Platform of 1964, p.678

5. Government must be restrained in its demands upon and its use of the resources of the people, remembering that it is not the creator but the steward of the wealth it uses; that its goals must ever discipline its means; and that service to all the people, never to selfish or partisan ends, must be the abiding purpose of men entrusted with public power.

Deeds Not Words

Republican Platform of 1964, p.678

The future we pledge, then, for freedom, by faithful adherence to these guides. Let the people compare these guides with those of the Democratic Party, then test, not the words of the two Parties, but their performance during the past four years of Democratic control. Let the people ask:

Republican Platform of 1964, p.678

Is the Republic stronger today or wiser than when the present Administration took office four years ago?

Republican Platform of 1964, p.678

Is its guardianship of freedom more respected at home and throughout the world?

Republican Platform of 1964, p.678

For these four years the leaders of the Democratic Party have been entrusted with the nation's executive power and overwhelmingly in control of the Congress. The question must be asked: Have these leaders successfully advanced the purposes of this mightiest nation mankind has known?

Republican Platform of 1964, p.678

Tragically, in each instance, the answer must be "no."

Republican Platform of 1964, p.678

Let the Democratic Party stand accused.

Section Two

Failures of Foreign Policy

Republican Platform of 1964, p.678

This Democratic Administration has been, from its beginning, not the master but the prisoner of major events. The will and dependability of its leadership, even for the defense of the free world, have come to be questioned in every area of the globe.

Disregard of Allies

Republican Platform of 1964, p.678

This Administration has neglected to consult with America's allies on critical matters at critical times, leading to lack of confidence, lack of respect and disintegrating alliances.

Republican Platform of 1964, p.678

It has permitted an erosion of NATO force and unity, alienating most of its member nations by negotiating with the common foe behind their backs. It has offered concessions to the Communists while according our allies little understanding, patience, or cooperation.

Republican Platform of 1964, p.678

This Administration has created discord and distrust by failing to develop a nuclear policy for NATO.

Republican Platform of 1964, p.678

It has provoked crises of confidence with our oldest friends, including England and France, by bungling such major projects as Skybolt and NATO's nuclear needs.

Republican Platform of 1964, p.678

It has allowed other great alliances—SEATO and CENTO—also to deteriorate, by failing to provide the leadership required for their revitalization and by neglecting their cooperation in keeping the peace.

Weakness Before Communism

Republican Platform of 1964, p.678

This Administration has sought accommodations with Communism without adequate safeguards and compensating gains for freedom. It has alienated proven allies by opening a "hot line" first with a sworn enemy rather than with a proven friend, and in general pursued a risky path such as began at Munich a quarter century ago.

Republican Platform of 1964, p.678

It has misled the American people and forfeited a priceless opportunity to win concessions for freedom by mishandling sales of farm commodities to Communists. At first it disavowed any intent to subsidize prices or use credit; later it demanded such authority and forced the Democrats in Congress to acquiesce. At first it hinted at concessions for freedom in return for wheat sold to Russia; later it obtained no concessions at all. At first it pledged not to breach restraints on trade with Communist countries in other parts of the world; later it stimulated such trade itself, and thus it encouraged trade with Cuba by America's oldest friends.

Republican Platform of 1964, p.678

This Administration has collaborated with Indonesian imperialism by helping it to acquire territory belonging to the Netherlands and control over the Papuan people.

Republican Platform of 1964, p.679

It has abetted further Communist takeover in [p.679] Laos, weakly accepted Communist violations of the Geneva Agreement, which the present Administration perpetrated, and increased Soviet influence in Southeast Asia.

Republican Platform of 1964, p.679

It has encouraged an increase of aggression in South Vietnam by appearing to set limits on America's willingness to act—and then, in the deepening struggle, it has sacrificed the lives of American and allied fighting men by denial of modern equipment.

Republican Platform of 1964, p.679

This Administration has permitted the shooting down of American pilots, the mistreatment of American citizens, and the destruction of American property to become hallmarks of Communist arrogance.

Republican Platform of 1964, p.679

It has stood by as a wire barricade in Berlin became a wall of shame, defacing that great city, humiliating every American, and disgracing free men everywhere.

Republican Platform of 1964, p.679

It has turned its back on the captive peoples of Eastern Europe, abandoning their cause in the United Nations and in the official utterances of our government.

Republican Platform of 1964, p.679

This Administration has forever blackened our nation's honor at the Bay of Pigs, bungling the invasion plan and leaving brave men on Cuban beaches to be shot down. Later the forsaken survivors were ransomed, and Communism was allowed to march deeper into Latin America.

Republican Platform of 1964, p.679

It has turned a deaf ear to pleas from throughout the Western Hemisphere for decisive American leadership to seal off subversion from the Soviet base just off our shore.

Republican Platform of 1964, p.679

It has increased the long-term troubles for America by retreating from its pledge to obtain on-the-spot proof of the withdrawal of Soviet offensive weapons from Cuba.

Republican Platform of 1964, p.679

It left vacant for many critical months the high posts of ambassador in Panama and with the Organization of American States, and thus it failed to anticipate and forestall the anti-American violence that burst forth in Panama.

Undermining the United Nations

Republican Platform of 1964, p.679

This Administration has failed to provide forceful, effective leadership in the United Nations.

Republican Platform of 1964, p.679

It has weakened the power and influence of this world organization by failing to demand basic improvements in its procedures to guard against its becoming merely a forum of anti-Western insult and abuse.

Republican Platform of 1964, p.679

It has refused to insist upon enforcement of the United Nations' rules governing financial support though such enforcement is supported by an advisory opinion of the International Court of Justice.

Republican Platform of 1964, p.679

It has shouldered virtually the full costs of the United Nations' occupation of the Congo, only to have the ousted leadership asked back when United Nations forces had withdrawn.

Forsaking America's Interests

Republican Platform of 1964, p.679

This Administration has subsidized various forms of socialism throughout the world, to the jeopardy of individual freedom and private enterprise.

Republican Platform of 1964, p.679

It has proved itself inept and weak in international trade negotiations, allowing the loss of opportunities historically open to American enterprise and bargaining away markets indispensable to prosperity of American farms.

Failure of National Security Planning

Losing a Critical Lead

Republican Platform of 1964, p.679

This Administration has delayed research and development in advanced weapons systems and thus confronted the American people with a fearsome possibility that Soviet advances, in the decade of the 1970's, may surpass America's present lead. Its misuse of "cost effectiveness" has stifled the creativity of the nation's military, scientific and industrial communities.

Republican Platform of 1964, p.679

It has failed to originate a single new major strategic weapons system after inheriting from a Republican Administration the most powerful military force of all time. It has concealed a lack of qualitative advance for the 1970's by speaking of a quantitative strength which by then will be obsolete. It has not demonstrated the foresight necessary to prepare a strategic strength which in future years will deter war.

Republican Platform of 1964, p.679

It has endangered security by downgrading efforts to prepare defenses against enemy ballistic missiles. It has retarded our own military development for near and outer space, while the enemy's development moves on.

Invitations to Disaster

Republican Platform of 1964, p.679

This Administration has adopted policies which will lead to a potentially fatal parity of power with Communism instead of continued military superiority for the United States.

Republican Platform of 1964, p.680

It has permitted disarmament negotiations to [p.680] proceed without adequate consideration of military judgment-a procedure which tends to bring about, in effect, a unilateral curtailment of American arms rendered the more dangerous by the Administration's discounting known Soviet advances in nuclear weaponry.

Republican Platform of 1964, p.680

It has failed to take minimum safeguards against possible consequences of the limited nuclear test ban treaty, including advanced underground tests where permissible and full readiness to test elsewhere should the need arise.

Distortions and Blackouts

Republican Platform of 1964, p.680

This Administration has adopted the policies of news management and unjustifiable secrecy, in the guise of guarding the nation's security; it has shown a contempt of the right of the people to know the truth.

Republican Platform of 1964, p.680

This Administration, while claiming major defense savings, has in fact raised defense spending by billions of dollars a year, and yet has short-changed critical areas.

Undermining Morale

Republican Platform of 1964, p.680

This Administration has weakened the bonds of confidence and understanding between civilian leaders and the nation's top military professionals. It has bypassed seasoned military judgment in vital national security policy decisions.

Republican Platform of 1964, p.680

It has permitted non-military considerations, political as well as spurious economic arguments, to reverse professional judgment on major weapons and equipment such as the controversial TFX, the X-22, and the nuclear carrier.

Republican Platform of 1964, p.680

In sum, both in military and foreign affairs, the Democratic record all the world around is one of disappointment and reverses for freedom.

Republican Platform of 1964, p.680

And this record is no better at home.

Failures at Home

Inability to Create Jobs

Republican Platform of 1964, p.680

This Administration has failed to honor its pledges to assure good jobs, full prosperity and a rapidly growing economy for all the American people:

Republican Platform of 1964, p.680

—failing to reduce unemployment to four percent, falling far short of its announced goal every single month of its tenure in office; and

Republican Platform of 1964, p.680

—despite glowing promises, allowing a disheartening increase in long-term and youth unemployment.

Republican Platform of 1964, p.680

This Administration has failed to apply Republican-initiated retraining programs where most needed particularly where they could afford new economic opportunities to Negro citizens. It has preferred, instead, divisive political proposals.

Republican Platform of 1964, p.680

It has demonstrated its inability to measure up to the challenge of automation which, wisely guided, will enrich the lives of all people. Administration approaches have been negative and unproductive, as for example the proposed penalties upon the use of overtime. Such penalties would serve only to spread existing unemployment and injure those who create jobs.

Republican Platform of 1964, p.680

It has failed to perform its responsibility under Republican amendments to the Manpower Training Act. It has neglected, for example, the basic requirement of developing a dictionary of labor skills which are locally, regionally and nationally in short supply, even though many thousands of jobs are unfilled today for lack of qualified applicants.

Failing the Poor

Republican Platform of 1964, p.680

This Administration has refused to take practical free enterprise measures to help the poor. Under the last Republican Administration, the percentage of poor in the country dropped encouragingly from 28% to 21%. By contrast, the present Administration, despite a massive increase in the Federal bureaucracy, has managed a mere two percentage point reduction.

Republican Platform of 1964, p.680

This Administration has proposed a so-called war on poverty which characteristically overlaps, and often contradicts, the 42 existing Federal poverty programs. It would dangerously centralize Federal controls and bypass effective state, local and private programs.

Republican Platform of 1964, p.680

It has demonstrated little concern for the acute problems created for the poor by inflation. Consumer prices have increased in the past three and a half years by almost 5%, amounting in effect to a 5% national sales tax on the purchases of a family living on fixed income.

Republican Platform of 1964, p.680

Under housing and urban renewal programs, notably in the Nation's Capital, it has created new slums by forcing the poor from their homes to make room for luxury apartments, while neglecting the vital need for adequate relocation assistance.[p.681]

Retarding Enterprises

Republican Platform of 1964, p.681

This Administration has violently thrust Federal power into the free market in such areas as steel prices, thus establishing precedents which in future years could critically wound free enterprise in the United States.

Republican Platform of 1964, p.681

It has so discouraged private enterprise that the annual increase in the number of businesses has plummeted from the Republican level of 70,000 a year to 47,000 a year.

Republican Platform of 1964, p.681

It has allowed the rate of business failures to rise higher under its leadership than in any period since depression days.

Republican Platform of 1964, p.681

It has aggravated the problems of small business by multiplying Federal record-keeping requirements and has hurt thousands of small businessmen by forcing up their costs.

Republican Platform of 1964, p.681

This Administration has curtailed, through such agencies as the National Labor Relations Board, the simple, basic right of Americans voluntarily to go into or to go out of business.

Republican Platform of 1964, p.681

It has failed to stimulate new housing and attract more private capital into the field. In the past three years it has fallen short by 1,500,000 units of meeting its pledge of 2,000,000 new homes each year.

Republican Platform of 1964, p.681

It has sought to weaken the patent system which is so largely responsible for America's progress in technology, medicine and science.

Republican Platform of 1964, p.681

It has required private electric power companies to submit to unreasonable Federal controls as a condition to the utilization of rights-of-way over public lands. It has sought to advance, without Congressional authorization, a vastly expensive nationwide electrical transmission grid.

Betrayal of the Farmer

Republican Platform of 1964, p.681

This Administration has refused, incredibly, to honor the clear mandate of American wheat farmers, in the largest farm referendum ever held, to free them of rigid Federal controls and to restore their birthright to make their own management decisions.

Republican Platform of 1964, p.681

It has strangled the Republican rural development program with red tape and neglected its most essential ingredient, local initiative.

Republican Platform of 1964, p.681

It has broken its major promises to farm people, dropping the parity ratio to its lowest level since 1939. It has dumped surplus stocks so as to lower farm income and increase the vicious cost-price squeeze on the farmer.

Republican Platform of 1964, p.681

It has evidenced hostility toward American livestock producers by proposals to establish mandatory marketing quotas on all livestock, to fine and imprison dairy farmers failing to maintain Federally-acceptable records, and to establish a subsidized grazing cropland conversion program. It has allowed imports of beef and other meat products to rise to an all-time high during a slump in cattle prices which was aggravated by government grain sales.

Neglect of Natural Resources

Republican Platform of 1964, p.681

This Administration has delayed the expeditious handling of oil shale patent applications and the early development of a domestic oil shale industry. It has allowed the deterioration of the domestic mining and petroleum industries including displacement of domestic markets by foreign imports. It has failed to protect the American fishing industry and has retreated from policies providing equitable sharing of international fishing grounds.

Fiscal Irresponsibility

Republican Platform of 1964, p.681

This Administration has misled the American people by such budget manipulations as crowding spending into the previous fiscal year, presenting a proposal to sell off $2.3 billion in government assets as a cot in spending, and using bookkeeping devices to make expenditures seem smaller than they actually are.

Republican Platform of 1964, p.681

It has, despite pledges of economy, burdened this nation with four unbalanced budgets in a row, creating deficits totaling $26 billion, with still more debt to come, reflecting a rate of sustained deficit spending unmatched in peacetime.

Republican Platform of 1964, p.681

It has failed to establish sensible priorities for Federal fluids. In consequence, it has undertaken needlessly expensive crash programs, as for example accelerating a trip to the moon, to the neglect of other critical needs such as research into health and the increasingly serious problems of air and water pollution and urban crowding.

Republican Platform of 1964, p.681

This Administration has continued to endanger retirement under Social Security for millions of citizens; it has attempted to overload the System with costly, unrelated programs which ignore the dangers of overly regressive taxation and the unfairness of forcing the poor to finance such programs for the rich.

Republican Platform of 1964, p.681

It has demanded the elimination of a substantial portion of personal income tax deductions for [p.682] charitable and church contributions, for real property taxes paid by home owners, and for interest payments. The elimination of these deductions would impose great hardship upon millions of our citizens and discourage the growth of some of the finest organizations in America.

Republican Platform of 1964, p.682

This Administration has impeded investigations of suspected wrongdoing which might implicate public officials in the highest offices in the land. It has thus aroused justifiable resentment against those who use the high road of public service as the low road to illicitly acquired wealth.

Republican Platform of 1964, p.682

It has permitted the quality and morale of the postal system to deteriorate and drastically restricted its services. It has made the Post Office almost inaccessible to millions of working people, reduced the once admired Parcel Post System to a national laughing stock—and yet it is intimated that Americans may soon have to pay 8¢ for a first-class postage stamp.

Republican Platform of 1964, p.682

It has resisted personal income tax credits for education, always preferring the route leading to Federal control over our schools. Some leading Democrats have even campaigned politically in favor of such tax credits while voting against them in Congress.

Republican Platform of 1964, p.682

Contrary to the intent of the Manpower Training Act, it has sought to extend Department of Labor influence over vocational education.

Discord and Discontent

Republican Platform of 1964, p.682

This Administration has exploited interracial tensions by extravagant campaign promises, without fulfillment, playing on the just aspirations of the minority groups, encouraging disorderly and lawless elements, and ineffectually administering the laws.

Republican Platform of 1964, p.682

It has subjected career civil servants and part-time Federal employees, including employees of the Agriculture Department, to political pressures harmful to the integrity of the entire Federal service. It has weakened veterans' preference in Federal jobs.

Republican Platform of 1964, p.682

It has made Federal intervention, even on the Presidential level, a standard operating practice in labor disputes, thus menacing the entire system of free collective bargaining.

Republican Platform of 1964, p.682

It has resorted to police state tactics, using the great power of Federal Departments and agencies, to compel compliance with Administration desires, notably in the steel price dispute. The Department of Justice, in particular, has been used improperly to achieve partisan political, economic, and legislative goals. This abuse of power should be the subject of a Congressional investigation.

Weakening Responsibility

Republican Platform of 1964, p.682

This Administration has moved, through such undertakings as its so-called war on poverty, accelerated public works and the New Communities Program in the 1964 housing proposal, to establish new Federal offices duplicating existing agencies, bypassing the state capitals, thrusting aside local government, and siphoning off to Washington the administration of private citizen and community affairs.

Republican Platform of 1964, p.682

It has undermined the Federally assisted, State-operated medical and hospital assistance program, while using—and abusing—Federal authority to force a compulsory hospital program upon the people and the Congress.

Republican Platform of 1964, p.682

This enumeration is necessarily incomplete. It does not exhaust the catalog of misdeeds and failures of the present Administration. And let the nation realize that the full impact of these many ill-conceived and ill-fated activities of the Democratic Administration is yet to come.

Section Three

The Republican Alternative

Republican Platform of 1964, p.682

We Republicans are not content to record Democratic misdeeds and failures. We now offer policies and programs new in conception and dynamic in operation. These we urge to recapture initiative for freedom at home and abroad and to rebuild our strength at home.

Republican Platform of 1964, p.682

Nor is this a new role. Republican Presidents from Abraham Lincoln to Dwight D. Eisenhower stand as witness that Republican leadership is steadfast in principle, clear in purpose and committed to progress. The many achievements of the Eisenhower Administration in strengthening peace abroad and the well-being of all at home have been unmatched in recent times. A new Republican Administration will stand proudly on this record.

Republican Platform of 1964, p.682

We do not submit, in this platform, extravagant promises to be cynically cast aside after election day. Rather, we offer examples of Republican initiatives in areas of overriding concern to the whole nation—North, South, East and West-which befit a truly national party. In the interest of brevity, we do not repeat the commitments of [p.683] the 1960 Republican Platform, "Building a Better America," and the 1962 "Declaration of Republican Principle and Policy." We incorporate into this Platform as pledges renewed those commitments which are relevant to the problems of 1964.

Republican Platform of 1964, p.683

These, then, will be our guides, and these our additional pledges, in meeting the nation's needs.

Faith in the Individual

Republican Platform of 1964, p.683

1. We Republicans shall first rely on the individual's right and capacity to advance his own economic well-being, to control the fruits of his efforts and to plan his own and his family's future; and, where government is rightly involved, we shall assist the individual in surmounting urgent problems beyond his own power and responsibility to control. For instance, we pledge:

Republican Platform of 1964, p.683

—enlargement of employment opportunities for urban and rural citizens, with emphasis on training programs to equip them with needed skills; improved job information and placement services; and research and extension services channeled toward helping rural people improve their opportunities;

Republican Platform of 1964, p.683

—tax credits and other methods of assistance to help needy senior citizens meet the costs of medical and hospital insurance;

Republican Platform of 1964, p.683

—a strong, sound system of Social Security, with improved benefits to our people;

Republican Platform of 1964, p.683

—continued Federal support for a sound research program aimed at both the prevention and cure of diseases, and intensified efforts to secure prompt and effective application of the results of research. This will include emphasis on mental illness, drug addiction, alcoholism, cancer, heart disease and other diseases of increasing incidence;

Republican Platform of 1964, p.683

—revision of the Social Security laws to allow higher earnings, without loss of benefits, by our elderly people;

Republican Platform of 1964, p.683

—full coverage of all medical and hospital costs for the needy elderly people, financed by general revenues through broader implementation of Federal-State plans, rather than the compulsory Democratic scheme covering only a small percentage of such costs, for everyone regardless of need;

Republican Platform of 1964, p.683

—adoption and implementation of a fair and adequate program for providing necessary supplemental farm labor for producing and harvesting agricultural commodities;

Republican Platform of 1964, p.683

—tax credits for those burdened by the expenses of college education;

Republican Platform of 1964, p.683

—vocational rehabilitation, through cooperation between government—Federal and State—and industry, for the mentally and physically handicapped, the chronically unemployed and the poverty-stricken;

Republican Platform of 1964, p.683

—incentives for employers to hire teenagers, including broadening of temporary exemptions under the minimum wage law;

Republican Platform of 1964, p.683

—to repeal the Administration's wheat certificate "bread-tax" on consumers, so burdensome to low-income families and overwhelmingly rejected by farmers;

Republican Platform of 1964, p.683

—revision of present non-service-connected pension programs to provide increased benefits for low income pensioners, with emphasis on rehabilitation, nursing homes and World War I veterans;

Republican Platform of 1964, p.683

—re-evaluation of the armed forces' manpower procurement programs with the goal of replacing involuntary inductions as soon as possible by an efficient voluntary system, offering real career incentives;

Republican Platform of 1964, p.683

—enactment of legislation, despite Democratic opposition, to curb the flow through the mails of obscene materials which has flourished into a multimillion dollar obscenity racket;

Republican Platform of 1964, p.683

—support of a Constitutional amendment permitting those individuals and groups who choose to do so to exercise their religion freely in public places, provided religious exercises are not prepared or prescribed by the state or political subdivision thereof and no person's participation therein is coerced, thus preserving the traditional separation of church and state;

Republican Platform of 1964, p.683

—full implementation and faithful execution of the Civil Rights Act of 1964, and all other civil rights statutes, to assure equal rights and opportunities guaranteed by the Constitution to every citizen;

Republican Platform of 1964, p.683

—improvements of civil rights statutes adequate to changing needs of our times;

Republican Platform of 1964, p.683

—such additional administrative or legislative actions as may be required to end the denial, for whatever unlawful reason, of the right to vote;

Republican Platform of 1964, p.683

—immigration legislation seeking to re-unite families and continuation of the "Fair Share" Refugee Program;

Republican Platform of 1964, p.683

—continued opposition to discrimination based on race, creed, national origin or sex. We recognize that the elimination of any such discrimination is a matter of heart, conscience, and education, as well as of equal rights under law.

Republican Platform of 1964, p.684

[p.684] In all such programs, where Federal initiative is properly involved to relieve or prevent misfortune or meet overpowering need, it will be the Republican way to move promptly and energetically, and wherever possible to provide assistance of a kind enabling the individual to gain or regain the capability to make his own way and to have a fair chance to achieve his own goals. In all matters relating to human rights it will be the Republican way fully to implement all applicable laws and never to lose sight of the intense need for advancing peaceful progress in human relations in our land. The Party of Abraham Lincoln will proudly and faithfully live up to its heritage of equal rights and equal opportunities for all.

Republican Platform of 1964, p.684

In furtherance of our faith in the individual, we also pledge prudent, responsible management of the government's fiscal affairs to protect the individual against the evils of spendthrift government—protecting most of all the needy and fixed-income families against the cruelest tax, inflation—and protecting every citizen against the high taxes forced by excessive spending, in order that each individual may keep more of his earnings for his own and his family's use. For instance, we pledge:

Republican Platform of 1964, p.684

—a reduction of not less than five billion dollars in the present level of Federal spending;

Republican Platform of 1964, p.684

—an end to chronic deficit financing, proudly reaffirming our belief in a balanced budget;

Republican Platform of 1964, p.684

—further reduction in individual and corporate tax rates as fiscal discipline is restored;

Republican Platform of 1964, p.684

—repayments on the public debt;

Republican Platform of 1964, p.684

—maintenance of an administrative, legislative and regulatory climate encouraging job-building enterprise to help assure every individual a real chance for a good job;

Republican Platform of 1964, p.684

—wise, firm and responsible conduct of the nation's foreign affairs, backed by military forces kept modern, strong and ready, thereby assuring every individual of a future promising peace.

Republican Platform of 1964, p.684

In all such matters it will be the Republican way so to conduct the affairs of government as to give the individual citizen the maximum assurance of a peaceful and prosperous future, freed of the discouragement and hardship produced by wasteful and ineffectual government.

Republican Platform of 1964, p.684

In furtherance of our faith in the individual, we also pledge the maximum restraint of Federal intrusions into matters more productively left to the individual. For instance, we pledge:

Republican Platform of 1964, p.684

—to continue Republican sponsorship of practical Federal-State-local programs which will effectively treat the needs of the poor, while resisting, direct Federal handouts that erode away individual self-reliance and self-respect and perpetuate dependency;

Republican Platform of 1964, p.684

—to continue the advancement of education on all levels, through such programs as selective aid to higher education, strengthened State and local tax resources, including tax credits for college education, while resisting the Democratic efforts which endanger local control of schools;

Republican Platform of 1964, p.684

—to help assure equal opportunity and a good education for all, while opposing Federally-sponsored "inverse discrimination," whether by the shifting of jobs, or the abandonment of neighborhood schools, for reasons of race;

Republican Platform of 1964, p.684

—to provide our farmers, who have contributed so much to the strength of our nation, with the maximum opportunity to exercise their own management decisions on their own farms, while resisting all efforts to impose upon them further Federal controls;

Republican Platform of 1964, p.684

—to establish realistic priorities for the concentration of Federal spending in the most productive and creative areas, such as education, job training, vocational rehabilitation, educational research, oceanography, and the wise development and use of natural resources in the water as well as on land, while resisting Democratic efforts to spend wastefully and indiscriminately;

Republican Platform of 1964, p.684

—to open avenues of peaceful progress in solving racial controversies while discouraging lawlessness and violence.

Republican Platform of 1964, p.684

In all such matters, it will be the Republican way to assure the individual of maximum freedom as government meets its proper responsibilities, while resisting the Democratic obsession to impose from above, uniform and rigid schemes for meeting varied and complex human problems.

Faith in the Competitive System

Republican Platform of 1964, p.684

2. We Republicans shall vigorously protect the dynamo of economic growth—free, competitive enterprise—that has made America the envy of the world. For instance, we pledge:

Republican Platform of 1964, p.684

—removal of the wartime Federal excise taxes, favored by the Democratic Administration, on pens, pencils, jewelry, cosmetics, luggage, handbags, wallets and toiletries;

Republican Platform of 1964, p.685

—assistance to small business by simplifying [p.685] Federal and State tax and regulatory requirements, fostering the availability of longer term credit at fair terms and equity capital for small firms, encouraging strong State programs to foster small business, establishing more effective measures to assure a sharing by small business in Federal procurement, and promoting wider export opportunities;

Republican Platform of 1964, p.685

—an end to power-grabbing regulatory actions, such as the reach by the Federal Trade Commission for injunctive powers and the ceaseless pressing by the White House, the Food and Drug Administration and Federal Trade Commission to dominate consumer decisions in the market place;

Republican Platform of 1964, p.685

—returning the consumer to the driver's seat as the chief regulator and chief beneficiary of a free economy, by resisting excessive concentration of power, whether public or private;

Republican Platform of 1964, p.685

—a drastic reduction in burdensome Federal paperwork and overlapping regulations, which weigh heavily on small businessmen struggling to compete and to provide jobs;

Republican Platform of 1964, p.685

—a determined drive, through tough, realistic negotiations, to remove the many discriminatory and restrictive trade practices of foreign nations;

Republican Platform of 1964, p.685

—greater emphasis on overseas sales of surplus farm commodities to friendly countries through long-term credits repayable in dollars under the Republican Food for Peace program;

Republican Platform of 1964, p.685

—dedication to freedom of expression for all news media, to the right of access by such media to public proceedings, and to the independence of radio, television and other news-gathering media from excessive government control;

Republican Platform of 1964, p.685

—improvement, and full and fair enforcement, of the anti-trust statutes, coupled with long-overdue clarification of Federal policies and interpretations relating thereto in order to strengthen competition and protect the consumer and small business;

Republican Platform of 1964, p.685

—constant opposition to any form of unregulated monopoly, whether business or labor;

Republican Platform of 1964, p.685

—meaningful safeguards against irreparable injuries to any domestic industries by disruptive surges of imports, such as in the case of beef and other meat products, textiles, oil, glass, coal, lumber and steel;

Republican Platform of 1964, p.685

—enactment of law, such as the Democratic Administration vetoed in the 88th Congress, requiring that labels of imported items clearly disclose their foreign origin;

Republican Platform of 1964, p.685

—completely reorganize the National Labor Relations Board to assure impartial protection of the rights of the public, employees and employers, ending the defiance of Congress by the present Board;

Republican Platform of 1964, p.685

—the redevelopment of an atmosphere of confidence throughout the government and across the nation, in which vigorous competition can flourish.

Republican Platform of 1964, p.685

In all such matters it will be the Republican way to support, not harass—to encourage, not restrain—to build confidence, not threaten—to provide stability, not unrest—to speed genuine growth, not conjure up statistical fantasies and to assure that all actions of government apply fairly to every element of the nation's economy.

Republican Platform of 1964, p.685

In furtherance of our faith in the competitive system, we also pledge:

Republican Platform of 1964, p.685

—a continual re-examination and reduction of government competition with private business, consistent with the recommendations of the second Hoover Commission;

Republican Platform of 1964, p.685

—elimination of excessive bureaucracy;

Republican Platform of 1964, p.685

—full protection of the integrity of the career governmental services, military and civilian, coupled with adequate pay scales;

Republican Platform of 1964, p.685

—maximum reliance upon subordinate levels of government and individual citizens to meet the nation's needs, in place of establishing even more Federal agencies to burden the people.

Republican Platform of 1964, p.685

In all such matters relating to Federal administration it will be the Republican way to provide maximum service for each tax dollar expended, watchfully superintend the size and scope of Federal activities, and assure an administration always fair, efficient and cooperatively disposed toward every element of our competitive system.

Faith in Limited Government

Republican Platform of 1964, p.685

3. We Republicans shall insist that the Federal Government have effective but limited powers, that it be frugal and efficient, and that it fully meet its Constitutional responsibilities to all the American people. For instance, we pledge:

Republican Platform of 1964, p.685

—restoration of collective bargaining responsibility to labor and management, minimizing third party intervention and preventing any agency of government from becoming an advocate for any private economic interest;

Republican Platform of 1964, p.685

—development of truly voluntary commodity programs for commercial agriculture, including payments in kind out of government-owned surpluses, [p.686] diversion of unneeded land to conservation uses, price supports free of political manipulation in order to stimulate and attain fair market prices, together with adequate credit facilities and continued support of farm-owned and operated cooperatives including rural electric and telephone facilities, while resisting all efforts to make the farmer dependent, for his economic survival, upon either compensatory payments by the Federal Government or upon the whim of the Secretary of Agriculture;

Republican Platform of 1964, p.686

—full cooperation of all governmental levels and private enterprise in advancing the balanced use of the nation's natural resources to provide for man's multiple needs;

Republican Platform of 1964, p.686

—continuing review of public-land laws and policies to assure maximum opportunity for all beneficial uses of the public lands; including the development of mineral resources;

Republican Platform of 1964, p.686

—comprehensive water-resource planning and development, including projects for our growing cities, expanded research in desalinization of water, and continued support of multi-purpose reclamation projects;

Republican Platform of 1964, p.686

—support of sustained yield management of our forests and expanded research for control of forest insects, disease, and forest fires;

Republican Platform of 1964, p.686

—protection of traditional domestic fishing grounds and other actions, including tax incentives, to encourage modernization of fishing vessels, and improve processing and marketing practices;

Republican Platform of 1964, p.686

—continued tax support to encourage exploration and development of domestic sources of minerals and metals, with reasonable depletion allowances;

Republican Platform of 1964, p.686

—stabilization of present oil programs, private development of atomic power, increased coal research and expansion of coal exports;

Republican Platform of 1964, p.686

—a replanning of the present space program to provide for a more orderly, yet aggressively pursued, step-by-step development, remaining alert to the danger of overdiversion of skilled personnel in critical shortage from other vital areas such as health, industry, education and science;

Republican Platform of 1964, p.686

In furtherance of our faith in limited, frugal and efficient government we also pledge:

Republican Platform of 1964, p.686

—credit against Federal taxes for specified State and local taxes paid, and a transfer to the States of excise and other Federal tax sources, to reinforce the fiscal strength of State and local governments so that they may better meet rising school costs and other pressing urban and suburban problems such as transportation, housing, water systems and juvenile delinquency;

Republican Platform of 1964, p.686

—emphasis upon channeling more private capital into sound urban development projects and private housing;

Republican Platform of 1964, p.686

—critical re-examination and major overhaul of all Federal grant-in-aid programs with a view to channeling such programs through the States, discontinuing those no longer required and adjusting others in a determined effort to restore the unique balance and creative energy of the traditional American system of government;

Republican Platform of 1964, p.686

—revitalization of municipal and county governments throughout America by encouraging them, and private citizens as well, to develop new solutions of their major concerns through a streamlining and modernizing of state and local processes of government, and by a renewed consciousness of their ability to reach these solutions, not through Federal action, but through their own capabilities;

Republican Platform of 1964, p.686

—support of a Constitutional amendment, as well as legislation, enabling States having bicameral legislatures to apportion one House on bases of their choosing, including factors other than population;

Republican Platform of 1964, p.686

—complete reform of the tax structure, to include simplification as well as lower rates to strengthen individual and business incentives;

Republican Platform of 1964, p.686

—effective budgetary reform, improved Congressional appropriation procedures, and full implementation of the anti-deficiency statute;

Republican Platform of 1964, p.686

—a wide-ranging reform of other Congressional procedures, including the provision of adequate professional staff assistance for the minority membership on Congressional Committees, to insure that the power and prestige of Congress remain adequate to the needs of the times;

Republican Platform of 1964, p.686

—high priority for the solution of the nation's balance of payment difficulties to assure unquestioned confidence in the dollar, maintenance of the competitiveness of American products in domestic and foreign markets, expansion of exports, stimulation of foreign tourism in the United States, greater foreign sharing of mutual security burdens abroad, a drastic reorganization and redirection of the entire foreign aid effort, gradual reductions in overseas U.S. forces as manpower can be replaced by increased firepower; and strengthening of the [p.687] international monetary system without sacrifice of our freedom of policy making.

Republican Platform of 1964, p.687

In all such matters it will be the Republican way to achieve not feigned but genuine savings, allowing a reduction of the public debt and additional tax reductions while meeting the proper responsibilities of government. We pledge an especially determined effort to help strengthen the ability of State and local governments to meet the broad range of needs facing the nation's urban and suburban communities.

Section Four

Freedom Abroad

Republican Platform of 1964, p.687

The Republican commitment to individual freedom applies no less abroad.

Republican Platform of 1964, p.687

America must advance freedom throughout the world as a vital condition of orderly human progress, universal justice, and the security of the American people.

Republican Platform of 1964, p.687

The supreme challenge to this policy is an atheistic imperialism-Communism.

Republican Platform of 1964, p.687

Our nation's leadership must be judged by—indeed, American independence and even survival are dependent upon—the stand it takes toward Communism.

Republican Platform of 1964, p.687

That stand must be: victory for freedom. There can be no peace, there can be no security, until this goal is won.

Republican Platform of 1964, p.687

As long as Communist leaders remain ideologically fixed upon ruling the world, there can be no lesser goal. This is the supreme test of America's foreign policy. It must not be defaulted. In the balance is human liberty everyplace on earth.

Reducing the Risks of War

Republican Platform of 1964, p.687

A dynamic strategy aimed at victory pressing always for initiatives for freedom, rejecting always appeasement and withdrawal-reduces the risk of nuclear war. It is a nation's vacillation, not firmness, that tempts an aggressor into war. It is accommodation, not opposition, that encourages a hostile nation to remain hostile and to remain aggressive.

Republican Platform of 1964, p.687

The road to peace is a road not of fawning amiability but of strength and respect. Republicans judge foreign policy by its success in advancing freedom and justice, not by its effect on international prestige polls.

Republican Platform of 1964, p.687

In making foreign policy, these will be our guidelines:

Trusting Ourselves and Our Friends

Republican Platform of 1964, p.687

1. Secrecy in foreign policy must be at a minimum, public understanding at a maximum. Our own citizens, rather than those of other nations, should be accorded primary trust.

Republican Platform of 1964, p.687

2. Consultation with our allies should take precedence over direct negotiations with Communist powers. The bypassing of our allies has contributed greatly to the shattering of free world unity and to the loss of free world continuity in opposing Communism.

Communism's Course

Republican Platform of 1964, p.687

3. We reject the notion that Communism has abandoned its goal of world domination, or that fat and well fed Communists are less dangerous than lean and hungry ones. We also reject the notion that the United States should take sides in the Sino-Soviet rift.

Republican Platform of 1964, p.687

Republican foreign policy starts with the assumption that Communism is the enemy of this nation in every sense until it can prove that its enmity has been abandoned.

Republican Platform of 1964, p.687

4. We hold that trade with Communist countries should not be directed toward the enhancement of their power and influence but could only be justified if it would serve to diminish their power.

Republican Platform of 1964, p.687

5. We are opposed to the recognition of Red China. We oppose its admission into the United Nations. We steadfastly support free China.

Republican Platform of 1964, p.687

6. In negotiations with Communists, Republicans will probe tirelessly for reasonable, practicable and trustworthy agreements. However, we will never abandon insistence on advantages for the free world.

Republican Platform of 1964, p.687

7. Republicans will continue to work for the realization of the Open Skies policy proposed in 1955 by President Eisenhower. Only open societies offer real hope of confidence among nations.

Communism's Captives

Republican Platform of 1964, p.687

8. Republicans reaffirm their long-standing commitment to a course leading to eventual liberation of the Communist dominated nations of Eastern Europe, Asia and Latin America, including the peoples of Hungary, Poland, East Germany, Czechoslovakia, Rumania, Albania, Bulgaria, Latvia, Lithuania, Estonia, Armenia, Ukraine, Yugoslavia, and its Serbian, Croatian and Slovene peoples, Cuba, mainland China, and many others. [p.688] We condemn the persecution of minorities, such as the Jews, within Communist borders.

The United Nations

Republican Platform of 1964, p.688

9. Republicans support the United Nations. However, we will never rest in our efforts to revitalize its original purpose.

Republican Platform of 1964, p.688

We will press for a change in the method of voting in the General Assembly and in the specialized agencies that will reflect population disparities among the member states and recognize differing abilities and willingness to meet the obligations of the Charter. We will insist upon General Assembly acceptance of the International Court of Justice advisory opinion, upholding denial of the votes of member nations which refuse to meet properly levied assessments, so that the United Nations will more accurately reflect the power realities of the world. Further to assure the carrying out of these recommendations and to correct the above abuses, we urge the calling of an amending convention of the United Nations by the year 1967.

Republican Platform of 1964, p.688

Republicans will never surrender to any international group the responsibility of the United States for its sovereignty, its own security, and the leadership of the free world.

NATO: The Great Shield

Republican Platform of 1964, p.688

10. Republicans regard NATO as indispensable for the prevention of war and the protection of freedom. NATO's unity and vitality have alarmingly deteriorated under the present Administration. It is a keystone of Republican foreign policy to revitalize the Alliance.

Republican Platform of 1964, p.688

To hasten its restoration, Republican leadership will move immediately to establish an international commission, comprised of individuals of high competence in NATO affairs, whether in or out of government, to explore and recommend effective new ways to strengthen alliance participation and fulfillment.

Freedom's Further Demands

Republican Platform of 1964, p.688

11. To our nation's associates in SEATO and CENTO, Republicans pledge reciprocal dedication of purpose and revitalized interest. These great alliances, with NATO, must be returned to the forefront of foreign policy planning. A strengthened alliance system is equally necessary in the Western Hemisphere.

Republican Platform of 1964, p.688

This will remain our constant purpose: Republicans will labor tirelessly with free men everywhere and in every circumstance toward the defeat of Communism and victory for freedom.

The Geography of Freedom

Republican Platform of 1964, p.688

12. In diverse regions of the world, Republicans will make clear to any hostile nation that the United States will increase the costs and risks of aggression to make them outweigh hopes for gain. It was just such a communication and determination by the Eisenhower Republican Administration that produced the 1953 Korean Armistice, The same strategy can win victory for freedom and stop further aggression in Southeast Asia.

Republican Platform of 1964, p.688

We will move decisively to assure victory in South Vietnam. While confining the conflict as closely as possible, America must move to end the fighting in a reasonable time and provide guarantees against further aggression. We must make it clear to the Communist world that, when conflict is forced with America, it will end only in victory for freedom.

Republican Platform of 1964, p.688

We will demand that the Berlin Wall be taken down prior to the resumption of any negotiations with the Soviet Union on the status of forces in, or treaties affecting, Germany.

Republican Platform of 1964, p.688

We will reassure our German friends that the United States will not accept any plan for the future of Germany which lacks firm assurance of a free election on reunification.

Republican Platform of 1964, p.688

We will urge the immediate implementation of the Caracas Declaration of Solidarity against international Communist intervention endorsed in 1954 by the Organization of American States during the Eisenhower Administration, which Declaration, in accordance with the historic Monroe Doctrine, our nation's official policy since 1823, opposes domination of any of our neighbor-nations by any power outside this Hemisphere.

Republican Platform of 1964, p.688

We will vigorously press our OAS partners to join the United States in restoring a free and independent government in Cuba, stopping the spread of Sino-Soviet subversion, forcing the withdrawal of the foreign military presence now in Latin America, and preventing future intrusions. We Republicans will recognize a Cuban government in exile; we will support its efforts to regain the independence of its homeland; we will assist Cuban freedom fighters in carrying on guerrilla [p.689] warfare against the Communist regime; we will work for an economic boycott by all nations of the free world in trade with Cuba; and we will encourage free elections in Cuba after liberty and stability are restored.

Republican Platform of 1964, p.689

We will consider raising the economic participation of the Republic of Panama in the operation of the Panama Canal and assure the safety of Americans in the area. We will reaffirm this nation's treaty rights and study the feasibility of a substitute, sea-level canal at an appropriate location including the feasibility of nuclear excavation.

Republican Platform of 1964, p.689

Republicans will make clear to all Communists now supporting or planning to support guerrilla and subversive activities, that henceforth there will be no privileged sanctuaries to protect those who disrupt the peace of the world. We will make clear that blockade, interception of logistical support, and diplomatic and economic pressure are appropriate United States counters to deliberate breaches of the peace.

Republican Platform of 1964, p.689

We will make clear to all Communist leaders everywhere that aggressive actions, including those in the German air corridors, will be grounds for re-evaluation of any and all trade or diplomatic relations currently to Communism's advantage.

Republican Platform of 1964, p.689

We will take the cold war offensive on all fronts, including, for example, a reinvigorated USIA. It will broadcast not our weaknesses but our strengths. It will mount a psychological warfare attack on behalf of freedom and against Communist doctrine and imperialism.

Republican Platform of 1964, p.689

Republicans will recast foreign aid programs. We will see that all will serve the cause of freedom. We will see that none bolster and sustain anti-American regimes; we will increase the use of private capital on a partnership basis with foreign nationals, as a means of fostering independence and mutual respect but we assert that property of American Nationals must not be ex-propriated by any foreign government without prompt and adequate compensation as contemplated by international law.

Republican Platform of 1964, p.689

Respecting the Middle East, and in addition to our reaffirmed pledges of 1960 concerning this area, we will so direct our economic and military assistance as to help maintain stability in this region and prevent an imbalance of arms.

Republican Platform of 1964, p.689

Finally, we will improve the efficiency and coordination of the foreign service, and provide adequate allowance for foreign service personnel.

The Development of Freedom

Republican Platform of 1964, p.689

13. Freedom's wealth must never support freedom's decline, always its growth. America's tax revenues derived from free enterprise sources must never be employed in support of socialism. America must assist young and underdeveloped nations. In the process, however, we must not sacrifice the trust of old friends.

Republican Platform of 1964, p.689

Our assistance, also, must be conditional upon self-help and progress toward the development of free institutions. We favor the establishment in underdeveloped nations of an economic and political climate that will encourage the investment of local capital and attract the investment of foreign capital.

Freedom's Shield—and Sword

Republican Platform of 1964, p.689

Finally, Republicans pledge to keep the nation's sword sharp, ready, and dependable.

Republican Platform of 1964, p.689

We will maintain a superior, not merely equal, military capability as long as the Communist drive for world domination continues. It will be a capability of balanced force, superior in all its arms, maintaining flexibility for effective performance in the rapidly changing science of war.

Republican Platform of 1964, p.689

Republicans will never unilaterally disarm America.

Republican Platform of 1964, p.689

We will demand that any arms reduction plan worthy of consideration guarantee reliable inspection. We will demand that any such plan assure this nation of sufficient strength, step by step, to forestall and defend against possible violations.

Republican Platform of 1964, p.689

We will take every step necessary to carry forward the vital military research and development programs. We will pursue these programs as absolutely necessary to assure our nation of superior strength in the 1970's.

Republican Platform of 1964, p.689

We will revitalize research and development programs needed to enable the nation to develop advanced new weapons systems, strategic as well as tactical.

Republican Platform of 1964, p.689

We will include the fields of anti-submarine warfare, astronautics and aeronautics, special guerrilla forces, and such other defense systems required to keep America ready for any threat.

Republican Platform of 1964, p.689

We will fully implement such safeguards as our security requires under the limited nuclear test ban treaty. We will conduct advanced tests in permissible areas, maintain facilities to test elsewhere in case of violations, and develop to the fullest [p.690] our ability to detect Communist transgressions. Additionally, we will regularly review the status of nuclear weaponry under the limited nuclear test ban to assure this nation's protection. We shall also provide sensible, continuing reviews of the treaty itself.

Republican Platform of 1964, p.690

We will end "second-best" weapons policies. We will end the false economies which place price ahead of the performance upon which American lives may depend. Republicans will bring an end once again to the "peak and valley" defense planning, so costly in morale and strength as well as in dollars. We will prepare a practical civil defense program.

Republican Platform of 1964, p.690

We will restore the morale of our armed forces by upgrading military professionalism, and we will allow professional dissent while insuring that strong and sound civilian authority controls objective decision-making.

Republican Platform of 1964, p.690

We will return the Joint Chiefs of Staff to their lawful status as the President's principal military advisors. We will insure that an effective planning and operations staff is restored to the National Security Council.

Republican Platform of 1964, p.690

We will reconsecrate this nation to human liberty, assuring the freedom of our people, and rallying mankind to a new crusade for freedom all around the world.

Republican Platform of 1964, p.690

We Republicans, with the help of Almighty God, will keep those who would bury America aware that this nation has the strength and also the will to defend its every interest. Those interests, we shall make clear, include the preservation and expansion of freedom—and ultimately its victory—everyplace on earth.

Republican Platform of 1964, p.690

We do not offer the easy way. We offer dedication and perseverance, leading to victory. This is our Platform. This is the Republican way.

President Johnson's Report to the American People Following Renewed Aggression in the Gulf of Tonkin, 1964

Title: President Johnson's Report to the American People Following Renewed Aggression in the Gulf of Tonkin

Author: Lyndon B. Johnson

Date: August 4, 1964

Source: Public Papers of the Presidents, Johnson, 1963-1964, pp.927-928

[Delivered by radio and television from the Fish Room at the White House at 11 :36 p.m., e.d.t.]

Public Papers of LBJ, 1963-1964, p.927

My fellow Americans:

Public Papers of LBJ, 1963-1964, p.927

As President and Commander in Chief, it is my duty to the American people to report that renewed hostile actions against United States ships on the high seas in the Gulf of Tonkin have today required me to order the military forces of the United States to take action in reply.

Public Papers of LBJ, 1963-1964, p.927

The initial attack on the destroyer 'Maddox, on August 2, was repeated today by a number of hostile vessels attacking two U.S. destroyers with torpedoes. The destroyers and supporting aircraft acted at once on the orders I gave after the initial act of aggression. We believe at least two of the attacking boats were sunk. There were no U.S. losses.

Public Papers of LBJ, 1963-1964, p.927

The performance of commanders and crews in this engagement is in the highest tradition of the United States Navy. But repeated acts of violence against the Armed Forces of the United States must be met not only with alert defense, but with positive reply. That reply is being given as I speak to you tonight. Air action is now in execution against gunboats and certain supporting facilities in North Viet-Nam which have been used in these hostile operations.

Public Papers of LBJ, 1963-1964, p.927

In the larger sense this new act of aggression, aimed directly at our own forces, again brings home to all of us in the United States the importance of the struggle for peace and security in southeast Asia. Aggression by terror against the peaceful villagers of South Viet-Nam has now been joined by open aggression on the high seas against the United States of America.

Public Papers of LBJ, 1963-1964, p.927

The determination of all Americans to carry out our full commitment to the people and to the government of South Viet-Nam will be redoubled by this outrage. Yet our response, for the present, will be limited and fitting. We Americans know, although others appear to forget, the risks of spreading conflict. We still seek no wider war.

Public Papers of LBJ, 1963-1964, p.927

I have instructed the Secretary of State to make this position totally clear to friends and to adversaries and, indeed, to all. I have instructed Ambassador Stevenson to raise this matter immediately and urgently before the Security Council of the United Nations. Finally, I have today met with the leaders of both parties in the Congress of the United States and I have informed them that I shall immediately request the Congress to pass a resolution making it clear that our Government is united in its determination to take all necessary measures in support of freedom and in defense of peace in southeast Asia.

Public Papers of LBJ, 1963-1964, p.927–p.928

I have been given encouraging assurance by these leaders of both parties that such a resolution will be promptly introduced, freely and expeditiously debated, and passed [p.928] with overwhelming support. And just a few minutes ago I was able to reach Senator Goldwater and I am glad to say that he has expressed his support of the statement that I am making to you tonight.

Public Papers of LBJ, 1963-1964, p.928

It is a solemn responsibility to have to or der even limited military action by forces whose overall strength is as vast and as awesome as those of the United States of America, but it is my considered conviction, shared throughout your Government, that firmness in the right is indispensable today for peace; that firmness will always be measured. Its mission is peace.

Public Papers of LBJ, 1963-1964, p.928

NOTE: The President began speaking at 11 :36 p.m., eastern daylight time.

Public Papers of LBJ, 1963-1964, p.928

For the President's special message to Congress, see Item 500. For his remarks upon signing the joint resolution in support of freedom and in defense of peace in southeast Asia see Item 507.

President Johnson's Special Message to the Congress on U.S. Policy in Southeast Asia, 1964

Title: President Johnson's Special Message to the Congress on U.S. Policy in Southeast Asia

Author: Lyndon B. Johnson

Date: August 5, 1964

Source: Public Papers of the Presidents, Johnson, 1963-1964, pp.930-932

Public Papers of LBJ, 1963-1964, p.930

To the Congress of the United States:

Public Papers of LBJ, 1963-1964, p.930

Last night I announced to the American people that the North Vietnamese regime had conducted further deliberate attacks against US naval vessels operating in international waters, and that I had therefore directed air action against gun boats and supporting facilities used in these hostile operations. This air action has now been carried out with substantial damage to the boats and facilities. Two US aircraft were lost in the action.

Public Papers of LBJ, 1963-1964, p.930

After consultation with the leaders of both parties in the Congress, I further announced a decision to ask the Congress for a Resolution expressing the unity and determination of the United States in supporting freedom and in protecting peace in Southeast Asia.

Public Papers of LBJ, 1963-1964, p.930

These latest actions of the North Vietnamese regime have given a new and grave turn to the already serious situation in Southeast Asia. Our commitments in that area are well known to the Congress. They were first made in 1954 by President Eisenhower. They were further defined in the Southeast Asia Collective Defense Treaty approved by the Senate in February 1955.

Public Papers of LBJ, 1963-1964, p.930

This Treaty with its accompanying protocol obligates the United States and other members to act in accordance with their Constitutional processes to meet Communist aggression against any of the parties or protocol states.

Public Papers of LBJ, 1963-1964, p.930

Our policy in Southeast Asia has been consistent and unchanged since 1954. I summarized it on June 2 in four simple propositions:

Public Papers of LBJ, 1963-1964, p.931

1. America keeps her word. Here as elsewhere, we must and shall honor our commitments.

Public Papers of LBJ, 1963-1964, p.931

2. The issue is the future of Southeast Asia as a whole. A threat to any nation in that region is a threat to all, and a threat to us.

Public Papers of LBJ, 1963-1964, p.931

3. Our purpose is peace. We have no military, political or territorial ambitions in the area.

Public Papers of LBJ, 1963-1964, p.931

4. This is not just a jungle war, but a struggle for freedom on every front of human activity. Our military and economic assistance to South Vietnam and Laos in particular has the purpose of helping these countries to repel aggression and strengthen their independence.

Public Papers of LBJ, 1963-1964, p.931

The threat to the free nations of Southeast Asia has long been clear. The North Vietnamese regime has constantly sought to take over South Vietnam and Laos. This Communist regime has violated the Geneva Accords for Vietnam. It has systematically conducted a campaign of subversion, which includes the direction, training, and supply of personnel and arms for the conduct of guerrilla warfare in South Vietnamese territory. In Laos, the North Vietnamese regime has maintained military forces, used Laotian territory for infiltration into South Vietnam, and most recently carried out combat operations—all in direct violation of the Geneva Agreements of 1962.

Public Papers of LBJ, 1963-1964, p.931

In recent months, the actions of the North Vietnamese regime have become steadily more threatening. In May, following new acts of Communist aggression in Laos, the United States undertook reconnaissance flights over Laotian territory, at the request of the Government of Laos. These flights had the essential mission of determining the situation in territory where Communist forces were preventing inspection by the International Control Commission. When the Communists attacked these aircraft, I responded by furnishing escort fighters with instructions to fire when fired upon. Thus, these latest North Vietnamese attacks on our naval vessels are not the first direct attack on armed forces of the United States.

Public Papers of LBJ, 1963-1964, p.931

As President of the United States I have concluded that I should now ask the Congress, on its part, to join in affirming the national determination that all such attacks will be met, and that the U.S. will continue in its basic policy of assisting the free nations of the area to defend their freedom.

Public Papers of LBJ, 1963-1964, p.931

As I have repeatedly made clear, the United States intends no rashness, and seeks no wider war. We must make it clear to all that the United States is united in its determination to bring about the end of Communist subversion and aggression in the area. We seek the full and effective restoration of the international agreements signed in Geneva in 1954, with respect to South Vietnam, and again in Geneva in 1962, with respect to Laos.

Public Papers of LBJ, 1963-1964, p.931

I recommend a Resolution expressing the support of the Congress for all necessary action to protect our armed forces and to assist nations covered by the SEATO Treaty. At the same time, I assure the Congress that we shall continue readily to explore any avenues of political solution that will effectively guarantee the removal of Communist subversion and the preservation of the independence of the nations of the area.

Public Papers of LBJ, 1963-1964, p.931–p.932

The Resolution could well be based upon similar resolutions enacted by the Congress in the past—to meet the threat to Formosa in 1955, to meet the threat to the Middle East in 1957, and to meet the threat in Cuba in 1962. It could state in the simplest terms the resolve and support of the Congress for action to deal appropriately with attacks against our armed forces and to defend freedom and preserve peace in southeast Asia [p.932] in accordance with the obligations of the United States under the southeast Asia Treaty. I urge the Congress to enact such a Resolution promptly and thus to give convincing evidence to the aggressive Communist nations, and to the world as a whole, that our policy in southeast Asia will be carried forward—and that the peace and security of the area will be preserved.

Public Papers of LBJ, 1963-1964, p.932

The events of this week would in any event have made the passage of a Congressional Resolution essential. But there is an additional reason for doing so at a time when we are entering on three months of political campaigning. Hostile nations must understand that in such a period the United States will continue to protect its national interests, and that in these matters there is no division among us.

LYNDON B. JOHNSON

Public Papers of LBJ, 1963-1964, p.932

NOTE: A joint resolution "to promote the maintenance of international peace and security in southeast Asia" was approved by the President on August 10 (see Item 507).

Statement by President Johnson on the Passage of the Joint Resolution on Southeast Asia, 1964

Title: Statement by President Johnson on the Passage of the Joint Resolution on Southeast Asia

Author: Lyndon B. Johnson

Date: August 7, 1964

Source: Public Papers of the Presidents, Johnson, 1963-1964, p.936

Public Papers of LBJ, 1963-1964, p.936

THE 414-to-nothing House vote and the 88-to-2 Senate vote on the passage of the Joint Resolution on Southeast Asia is a demonstration to all the world of the unity of all Americans. They prove our determination to defend our own forces, to prevent aggression, and to work firmly and steadily for peace and security in the area.

Public Papers of LBJ, 1963-1964, p.936

I am sure the American people join me in expressing the deepest appreciation to the leaders and Members of both parties, in both Houses of Congress, for their patriotic, resolute, and rapid action.

Public Papers of LBJ, 1963-1964, p.936

NOTE: This statement was read by the Press Secretary to the President, George E. Reedy, at his news conference held at the White House at 1:40 p.m. on August 7, 1964.

President Johnson's Remarks Upon Signing the Economic Opportunity Act, 1964

Title: President Johnson's Remarks Upon Signing the Economic Opportunity Act

Author: Lyndon B. Johnson

Date: August 20, 1964

Source: Public Papers of the Presidents, Johnson, 1963-1964, pp.988-990

Public Papers of LBJ, 1963-1964, p.988

My fellow Americans:

Public Papers of LBJ, 1963-1964, p.988

On this occasion the American people and our American system are making history.

Public Papers of LBJ, 1963-1964, p.988

For so long as man has lived on this earth poverty has been his curse.

Public Papers of LBJ, 1963-1964, p.988–p.989

On every continent in every age men have [p.989] sought escape from poverty's oppression.

Public Papers of LBJ, 1963-1964, p.989

Today for the first time in all the history of the human race, a great nation is able to make and is willing to make a commitment to eradicate poverty among its people.

Public Papers of LBJ, 1963-1964, p.989

Whatever our situation in life, whatever our partisan affiliation, we can be grateful and proud that we are able to pledge ourselves this morning to this historic course. We can be especially proud of the nature of the commitments that we are making.

Public Papers of LBJ, 1963-1964, p.989

This is not in any sense a cynical proposal to exploit the poor with a promise of a handout or a dole.

Public Papers of LBJ, 1963-1964, p.989

We know—we learned long ago—that answer is no answer.

Public Papers of LBJ, 1963-1964, p.989

The measure before me this morning for signature offers the answer that its title implies—the answer of opportunity. For the purpose of the Economic Opportunity Act of 1964 is to offer opportunity, not an opiate.

Public Papers of LBJ, 1963-1964, p.989

For the million young men and women who are out of school and who are out of work, this program will permit us to take them off the streets, put them into work training programs, to prepare them for productive lives, not wasted lives.

Public Papers of LBJ, 1963-1964, p.989

In this same sound, sensible, and responsible way we will reach into all the pockets of poverty and help our people find their footing for a long climb toward a better way of life.

Public Papers of LBJ, 1963-1964, p.989

We will work with them through our communities all over the country to develop comprehensive community action programs—with remedial education, with job training, with retraining, with health and employment counseling, with neighborhood improvement. We will strike at poverty's roots.

Public Papers of LBJ, 1963-1964, p.989

This is by no means a program confined just to our cities. Rural America is afflicted deeply by rural poverty, and this program will help poor farmers get back on their feet and help poor farmers stay on their farms.

Public Papers of LBJ, 1963-1964, p.989

It will help those small businessmen who live on the borderline of poverty. It will help the unemployed heads of families maintain their skills and learn new skills.

Public Papers of LBJ, 1963-1964, p.989

In helping others, all of us will really be helping ourselves. For this bill will permit us to give our young people an opportunity to work here at home in constructive ways as volunteers, going to war against poverty instead of going to war against foreign enemies.

Public Papers of LBJ, 1963-1964, p.989

All of this will be done through a program which is prudent and practical, which is consistent with our national ideals.

Public Papers of LBJ, 1963-1964, p.989

Every dollar authorized in this bill was contained in the budget request that I sent to the Congress last January. Every dollar spent will result in savings to the country and especially to the local taxpayers in the cost of crime, welfare, of health, and of police protection.

Public Papers of LBJ, 1963-1964, p.989

We are not content to accept the endless growth of relief rolls or welfare rolls. We want to offer the forgotten fifth of our people opportunity and not doles.

Public Papers of LBJ, 1963-1964, p.989

That is what this measure does for our times.

Public Papers of LBJ, 1963-1964, p.989

Our American answer to poverty is not to make the poor more secure in their poverty but to reach down and to help them lift themselves out of the ruts of poverty and move with the large majority along the high road of hope and prosperity.

Public Papers of LBJ, 1963-1964, p.989

The days of the dole in our country are numbered. I firmly believe that as of this moment a new day of opportunity is dawning and a new era of progress is opening for us all.

Public Papers of LBJ, 1963-1964, p.989–p.990

And to you men and women in the Congress who fought so long, so hard to help bring about this legislation, to you private [p.990] citizens in labor and in business who lent us a helping hand, to Sargent Shriver and that band of loyal men and women who made up this task force that brings our dream into a reality today, we say "Thank you" for all the American people. In the days and years to come, those who have an opportunity to participate in this program will vindicate your thinking and vindicate your action.

Public Papers of LBJ, 1963-1964, p.990

Thank you very much.

Public Papers of LBJ, 1963-1964, p.990

NOTE: The President spoke in midmorning in the Rose Garden at the White House. Among those attending the ceremony were Members of Congress who sponsored the bill and other supporters of the antipoverty program. The President specifically referred to Sargent Shriver, Director of the Peace Corps, who was later appointed Director of the Office of Economic Opportunity.

Public Papers of LBJ, 1963-1964, p.990

As enacted, the bill (S. 2642) is Public Law 88452 (78 Stat. 508).

Public Papers of LBJ, 1963-1964, p.990

Earlier, on August 12, the White House released the text of a letter from the President to the Speaker of the House requesting appropriations to support activities authorized by the Economic Opportunity Act, together with a letter from the Director of the Bureau of the Budget outlining details of the appropriation. The Supplemental Appropriation Act, 1965 (Public Law 88-635, 78 Stat. 1023), authorizing the appropriations, was approved by the President on October 7, 1964.

President Johnson's Letter to the Chief Justice Upon Receipt of the Warren Commission Report, 1964

Title: President Johnson's Letter to the Chief Justice Upon Receipt of the Warren Commission Report

Author: Lyndon B. Johnson

Date: September 24, 1964

Source: Public Papers of the Presidents, Johnson, 1963-1964, pp.1116-1117

Public Papers of LBJ, 1963-1964, p.1116

Dear Mr. Chief Justice:

Public Papers of LBJ, 1963-1964, p.1116

You have today submitted to me the report of the Commission which I appointed on November 29 last to report on the assassination of President John F. Kennedy. The submission of this report fulfills the assignment which I gave to the Commission, and accordingly I now discharge the Commission with my heartfelt thanks.

Public Papers of LBJ, 1963-1964, p.1116

In my service as President, nothing has impressed me more than the readiness of outstanding Americans to respond to calls for service to their country. There has been no more striking example of this great American strength than the service of the seven extraordinarily distinguished members of your Commission. I send thanks to you all, as I also send thanks to your General Counsel, Mr. Lee Rankin, and to all those who have assisted in your work.

Public Papers of LBJ, 1963-1964, p.1116

Your Commission, I know, has been guided throughout by a determination to find and to tell the whole truth of these terrible events. This is our obligation to the good name of the United States of America and to all men everywhere who respect our nation—and above all to the memory of President Kennedy.

Public Papers of LBJ, 1963-1964, p.1116

I have given instructions for the prompt publication of this report to the American people and to the world. I myself shall give it the most careful study. I commend it to the attention of all Americans and all our friends everywhere.

Public Papers of LBJ, 1963-1964, p.1116

Let me thank you again for all that you have done. You have earned the gratitude of your countrymen.

Sincerely,

LYNDON B. JOHNSON

[The Honorable Earl Warren, The Chief Justice, United States Supreme Court, Washington, D.C.]

Public Papers of LBJ, 1963-1964, p.1117

NOTE: The report is entitled "Report of the President's Commission on the Assassination of President John F. Kennedy" (888 pp., Government Printing Office, 1964).

Public Papers of LBJ, 1963-1964, p.1117

The Commission, of which the Chief Justice of the United States served as Chairman, was appointed by Executive Order 11130 (Item 15, above; see also Item 14).

President Johnson's Special Message to the Congress: The American Promise, 1965

Title: President Johnson's Special Message to the Congress: The American Promise

Author: Lyndon B. Johnson

Date: March 15, 1965

Source: Public Papers of the Presidents, Johnson, 1965, p.281

[As delivered in person before a joint session at 9:02 p.m.]

Public Papers of LBJ, 1965, p.281

Mr. Speaker, Mr. President, Members of the Congress:

Public Papers of LBJ, 1965, p.281

I speak tonight for the dignity of man and the destiny of democracy.

Public Papers of LBJ, 1965, p.281

I urge every member of both parties, Americans of all religions and of all colors, from every section of this country, to join me in that cause.

Public Papers of LBJ, 1965, p.281

At times history and fate meet at a single time in a single place to shape a turning point in man's unending search for freedom. So it was at Lexington and Concord. So it was a century ago at Appomattox. So it was last week in Selma, Alabama.

Public Papers of LBJ, 1965, p.281

There, long-suffering men and women peacefully protested the denial of their rights as Americans. Many were brutally assaulted. One good man, a man of God, was killed.

Public Papers of LBJ, 1965, p.281

There is no cause for pride in what has happened in Selma. There is no cause for self-satisfaction in the long denial of equal rights of millions of Americans. But there is cause for hope and for faith in our democracy in what is happening here tonight.

Public Papers of LBJ, 1965, p.281

For the cries of pain and the hymns and protests of oppressed people have summoned into convocation all the majesty of this great Government—the Government of the greatest Nation on earth.

Public Papers of LBJ, 1965, p.281

Our mission is at once the oldest and the most basic of this country: to right wrong, to do justice, to serve man.

Public Papers of LBJ, 1965, p.281

In our time we have come to live with moments of great crisis. Our lives have been marked with debate about great issues; issues of war and peace, issues of prosperity and depression. But rarely in any time does an issue lay bare the secret heart of America itself. Rarely are we met with a challenge, not to our growth or abundance, our welfare or our security, but rather to the values and the purposes and the meaning of our beloved Nation.

Public Papers of LBJ, 1965, p.281

The issue of equal rights for American Negroes is such an issue. And should we defeat every enemy, should we double our wealth and conquer the stars, and still be unequal to this issue, then we will have failed as a people and as a nation.

Public Papers of LBJ, 1965, p.282

For with a country as with a person, "What is a man profited, if he shall gain the whole world, and lose his own soul ?"

Public Papers of LBJ, 1965, p.282

There is no Negro problem. There is no Southern problem. There is no Northern problem. There is only an American problem. And we are met here tonight as Americans—not as Democrats or Republicans-we are met here as Americans to solve that problem.

Public Papers of LBJ, 1965, p.282

This was the first nation in the history of the world to be founded with a purpose. The great phrases of that purpose still sound in every American heart, North and South: "All men are created equal"—"government by consent of the governed"—"give me liberty or give me death." Well, those are not just clever words, or those are not just empty theories. In their name Americans have fought and died for two centuries, and tonight around the world they stand there as guardians of our liberty, risking their lives.

Public Papers of LBJ, 1965, p.282

Those words are a promise to every citizen that he shall share in the dignity of man. This dignity cannot be found in a man's possessions; it cannot be found in his power, or in his position. It really rests on his right to be treated as a man equal in opportunity to all others. It says that he shall share in freedom, he shall choose his leaders, educate his children, and provide for his family according to his ability and his merits as a human being.

Public Papers of LBJ, 1965, p.282

To apply any other test—to deny a man his hopes because of his color or race, his religion or the place of his birth—is not only to do injustice, it is to deny America and to dishonor the dead who gave their lives for American freedom.

THE RIGHT TO VOTE

Public Papers of LBJ, 1965, p.282

Our fathers believed that if this noble view of the rights of man was to flourish, it must be rooted in democracy. The most basic right of all was the right to choose your own leaders. The history of this country, in large measure, is the history of the expansion of that right to all of our people.

Public Papers of LBJ, 1965, p.282

Many of the issues of civil rights are very complex and most difficult. But about this there can and should be no argument. Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty we have to ensure that right.

Public Papers of LBJ, 1965, p.282

Yet the harsh fact is that in many places in this country men and women are kept from voting simply because they are Negroes.

Public Papers of LBJ, 1965, p.282

Every device of which human ingenuity is capable has been used to deny this right. The Negro citizen may go to register only to be told that the day is wrong, or the hour is late, or the official in charge is absent. And if he persists, and if he manages to present himself to the registrar, he may be disqualified because he did not spell out his middle name or because he abbreviated a word on the application.

Public Papers of LBJ, 1965, p.282

And if he manages to fill out an application he is given a test. The registrar is the sole judge of whether he passes this test. He may be asked to recite the entire Constitution, or explain the most complex provisions of State law. And even a college degree cannot be used to prove that he can read and write.

Public Papers of LBJ, 1965, p.282

For the fact is that the only way to pass these barriers is to show a white skin.

Experience has clearly shown that the existing process of law cannot overcome systematic and ingenious discrimination. No law that we now have on the books-and I have helped to put three of them there—can ensure the right to vote when local officials are determined to deny it.

Public Papers of LBJ, 1965, p.283

In such a case our duty must be clear to all of us. The Constitution says that no person shall be kept from voting because of his race or his color. We have all sworn an oath before God to support and to defend that Constitution. We must now act in obedience to that oath.

GUARANTEEING THE RIGHT TO VOTE

Public Papers of LBJ, 1965, p.283

Wednesday I will send to Congress a law designed to eliminate illegal barriers to the right to vote.

The broad principles of that bill will be in the hands of the Democratic and Republican leaders tomorrow. After they have reviewed it, it will come here formally as a bill. I am grateful for this opportunity to come here tonight at the invitation of the leadership to reason with my friends, to give them my views, and to visit with my former colleagues.

Public Papers of LBJ, 1965, p.283

I have had prepared a more comprehensive analysis of the legislation which I had intended to transmit to the clerk tomorrow but which I will submit to the clerks tonight. But I want to really discuss with you now briefly the main proposals of this legislation,

Public Papers of LBJ, 1965, p.283

This bill will strike down restrictions to voting in all elections—Federal, State, and local—which have been used to deny Negroes the right to vote.

Public Papers of LBJ, 1965, p.283

This bill will establish a simple, uniform standard which cannot be used, however ingenious the effort, to flout our Constitution.

Public Papers of LBJ, 1965, p.283

It will provide for citizens to be registered by officials of the United States Government if the State officials refuse to register them.

It will eliminate tedious, unnecessary lawsuits which delay the right to vote.

Public Papers of LBJ, 1965, p.283

Finally, this legislation will ensure that properly registered individuals are not prohibited from voting.

I will welcome the suggestions from all of the Members of Congress—I have no doubt that I will get some—on ways and means to strengthen this law and to make it effective. But experience has plainly shown that this is the only path to carry out the command of the Constitution.

Public Papers of LBJ, 1965, p.283

To those who seek to avoid action by their National Government in their own communities; who want to and who seek to maintain purely local control over elections, the answer is simple:

Public Papers of LBJ, 1965, p.283

Open your polling places to all your people.

Allow men and women to register and vote whatever the color of their skin.

Public Papers of LBJ, 1965, p.283

Extend the rights of citizenship to every citizen of this land.

THE NEED FOR ACTION

Public Papers of LBJ, 1965, p.283

There is no constitutional issue here. The command of the Constitution is plain.

Public Papers of LBJ, 1965, p.283

There is no moral issue. It is wrong—deadly wrong—to deny any of your fellow Americans the right to vote in this country.

Public Papers of LBJ, 1965, p.283

There is no issue of States rights or national rights. There is only the struggle for human rights.

Public Papers of LBJ, 1965, p.283

I have not the slightest doubt what will be your answer.

Public Papers of LBJ, 1965, p.283

The last time a President sent a civil rights bill to the Congress it contained a provision to protect voting rights in Federal elections. That civil rights bill was passed after 8 long months of debate. And when that bill came to my desk from the Congress for my signature, the heart of the voting provision had been eliminated.

Public Papers of LBJ, 1965, p.283

This time, on this issue, there must be no delay, no hesitation and no compromise with our purpose.

Public Papers of LBJ, 1965, p.283–p.284

We cannot, we must not, refuse to protect the right of every American to vote in every election that he may desire to participate in. [p.284] And we ought not and we cannot and we must not wait another 8 months before we get a bill. We have already waited a hundred years and more, and the time for waiting is gone.

Public Papers of LBJ, 1965, p.284

So I ask you to join me in working long hours—nights and weekends, if necessary-to pass this bill. And I don't make that request lightly. For from the window where I sit with the problems of our country I recognize that outside this chamber is the outraged conscience of a nation, the grave concern of many nations, and the harsh judgment of history on our acts.

WE SHALL OVERCOME

Public Papers of LBJ, 1965, p.284

But even if we pass this bill, the battle will not be over. What happened in Selma is part of a far larger movement which reaches into every section and State of America. It is the effort of American Negroes to secure for themselves the full blessings of American life.

Public Papers of LBJ, 1965, p.284

Their cause must be our cause too. Because it is not just Negroes, but really it is all of us, who must overcome the crippling legacy of bigotry and injustice. And we shall overcome.

Public Papers of LBJ, 1965, p.284

As a man whose roots go deeply into Southern soil I know how agonizing racial feelings are. I know how difficult it is to reshape the attitudes and the structure of our society.

But a century has passed, more than a hundred years, since the Negro was freed. And he is not fully free tonight.

Public Papers of LBJ, 1965, p.284

It was more than a hundred years ago that Abraham Lincoln, a great President of another party, signed the Emancipation Proclamation, but emancipation is a proclamation and not a fact.

Public Papers of LBJ, 1965, p.284

A century has passed, more than a hundred years, since equality was promised. And yet the Negro is not equal.

A century has passed since the day of promise. And the promise is unkept.

Public Papers of LBJ, 1965, p.284

The time of justice has now come. I tell you that I believe sincerely that no force can hold it back. It is right in the eyes of man and God that it should come. And when it does, I think that day will brighten the lives of every American.

Public Papers of LBJ, 1965, p.284

For Negroes are not the only victims. How many white children have gone uneducated, how many white families have lived in stark poverty, how many white lives have been scarred by fear, because we have wasted our energy and our substance to maintain the barriers of hatred and terror?

Public Papers of LBJ, 1965, p.284

So I say to all of you here, and to all in the Nation tonight, that those who appeal to you to hold on to the past do so at the cost of denying you your future.

Public Papers of LBJ, 1965, p.284

This great, rich, restless country can offer opportunity and education and hope to all: black and white, North and South, sharecropper and city dweller. These are the enemies: poverty, ignorance, disease. They are the enemies and not our fellow man, not our neighbor. And these enemies too, poverty, disease and ignorance, we shall over, come.

AN AMERICAN PROBLEM

Public Papers of LBJ, 1965, p.284

Now let none of us in any sections look with prideful righteousness on the troubles in another section, or on the problems of our neighbors. There is really no part of America where the promise of equality has been fully kept. In Buffalo as well as in Birmingham, in Philadelphia as well as in Selma, Americans are struggling for the fruits of freedom.

Public Papers of LBJ, 1965, p.284–p.285

This is one Nation. What happens in Selma or in Cincinnati is a matter of legitimate concern to every American. But let each of us look within our own hearts and [p.285] our own communities, and let each of us put our shoulder to the wheel to root out injustice wherever it exists.

Public Papers of LBJ, 1965, p.285

As we meet here in this peaceful, historic chamber tonight, men from the South, some of whom were at Iwo Jima, men from the North who have carried Old Glory to far corners of the world and brought it back without a stain on it, men from the East and from the West, are all fighting together without regard to religion, or color, or region, in Viet-Nam. Men from every region fought for us across the world 20 years ago.

Public Papers of LBJ, 1965, p.285

And in these common dangers and these common sacrifices the South made its contribution of honor and gallantry no less than any other region of the great Republic-and in some instances, a great many of them, more.

Public Papers of LBJ, 1965, p.285

And I have not the slightest doubt that good men from everywhere in this country, from the Great Lakes to the Gulf of Mexico, from the Golden Gate to the harbors along the Atlantic, will rally together now in this cause to vindicate the freedom of all Americans. For all of us owe this duty; and I believe that all of us will respond to it.

Public Papers of LBJ, 1965, p.285

Your President makes that request of every American.

PROGRESS THROUGH THE DEMOCRATIC PROCESS

Public Papers of LBJ, 1965, p.285

The real hero of this struggle is the American Negro. His actions and protests, his courage to risk safety and even to risk his life, have awakened the conscience of this Nation. His demonstrations have been designed to call attention to injustice, designed to provoke change, designed to stir reform.

Public Papers of LBJ, 1965, p.285

He has called upon us to make good the promise of America. And who among us can say that we would have made the same progress were it not for his persistent bravery, and his faith in American democracy.

Public Papers of LBJ, 1965, p.285

For at the real heart of battle for equality is a deep-seated belief in the democratic process. Equality depends not on the force of arms or tear gas but upon the force of moral right; not on recourse to violence but on respect for law and order.

Public Papers of LBJ, 1965, p.285

There have been many pressures upon your President and there will be others as the days come and go. But I pledge you tonight that we intend to fight this battle where it should be fought: in the courts, and in the Congress, and in the hearts of men.

Public Papers of LBJ, 1965, p.285

We must preserve the right of free speech and the right of free assembly. But the right of free speech does not carry with it, as has been said, the right to holier fire in a crowded theater. We must preserve the right to free assembly, but free assembly does not carry with it the right to block public thoroughfares to traffic.

Public Papers of LBJ, 1965, p.285

We do have a right to protest, and a right to march under conditions that do not infringe the constitutional rights of our neighbors. And I intend to protect all those rights as long as I am permitted to serve in this office.

Public Papers of LBJ, 1965, p.285

We will guard against violence, knowing it strikes from our hands the very weapons which we seek—progress, obedience to law, and belief in American values.

Public Papers of LBJ, 1965, p.285

In Selma as elsewhere we seek and pray for peace. We seek order. We seek unity. But we will not accept the peace of stifled rights, or the order imposed by fear, or the unity that stifles protest. For peace cannot be purchased at the cost of liberty.

Public Papers of LBJ, 1965, p.285–p.286

In Selma tonight, as in every—and we had a good day there—as in every city, we are working for just and peaceful settlement. We must all remember that after this speech I am making tonight, after the police and the FBI and the Marshals have all gone, and after you have promptly passed this bill, the [p.286] people of Selma and the other cities of the Nation must still live and work together. And when the attention of the Nation has gone elsewhere they must try to heal the wounds and to build a new community.

Public Papers of LBJ, 1965, p.286

This cannot be easily done on a battleground of violence, as the history of the South itself shows. It is in recognition of this that men of both races have shown such an outstandingly impressive responsibility in recent days—last Tuesday, again today,

RIGHTS MUST BE OPPORTUNITIES

Public Papers of LBJ, 1965, p.286

The bill that I am presenting to you will be known as a civil rights bill. But, in a larger sense, most of the program I am recommending is a civil rights program. Its object is to open the city of hope to all people of all races.

Public Papers of LBJ, 1965, p.286

Because all Americans just must have the right to vote. And we are going to give them that right.

All Americans must have the privileges of citizenship regardless of race. And they are going to have those privileges of citizenship regardless of race.

Public Papers of LBJ, 1965, p.286

But I would like to caution you and remind you that to exercise these privileges takes much more than just legal right. It requires a trained mind and a healthy body. It requires a decent home, and the chance to find a job, and the opportunity to escape from the clutches of poverty.

Public Papers of LBJ, 1965, p.286

Of course, people cannot contribute to the Nation if they are never taught to read or write, if their bodies are stunted from hunger, if their sickness goes untended, if their life is spent in hopeless poverty just drawing a welfare check.

Public Papers of LBJ, 1965, p.286

So we want to open the gates to opportunity. But we are also going to give all our people, black and white, the help that they need to walk through those gates.

THE PURPOSE OF THIS GOVERNMENT

Public Papers of LBJ, 1965, p.286

My first job after college was as a teacher in Cotulla, Tex., in a small Mexican-American school. Few of them could speak English, and I couldn't speak much Spanish. My students were poor and they often came to class without breakfast, hungry. They knew even in their youth the pain of prejudice. They never seemed to know why people disliked them. But they knew it was so, because I saw it in their eyes. I often walked home late in the afternoon, after the classes were finished, wishing there was more that I could do. But all I knew was to teach them the little that I knew, hoping that it might help them against the hardships that lay ahead.

Public Papers of LBJ, 1965, p.286

Somehow you never forget what poverty and hatred can do when you see its scars on the hopeful face of a young child.

Public Papers of LBJ, 1965, p.286

I never thought then, in 1928, that I would be standing here in 1965. It never even occurred to me in my fondest dreams that I might have the chance to help the sons and daughters of those students and to help people like them all over this country.

Public Papers of LBJ, 1965, p.286

But now I do have that chance—and I'll let you in on a secret—I mean to use it. And I hope that you will use it with me.

Public Papers of LBJ, 1965, p.286

This is the richest and most powerful country which ever occupied the globe. The might of past empires is little compared to ours. But I do not want to be the President who built empires, or sought grandeur, or extended dominion.

Public Papers of LBJ, 1965, p.286

I want to be the President who educated young children to the wonders of their world. I want to be the President who helped to feed the hungry and to prepare them to be taxpayers instead of taxeaters.

Public Papers of LBJ, 1965, p.286–p.287

I want to be the President who helped the poor to find their own way and who protected the right of every citizen to vote in [p.287] every election.

Public Papers of LBJ, 1965, p.287

I want to be the President who helped to end hatred among his fellow men and who promoted love among the people of all races and all regions and all parties.

Public Papers of LBJ, 1965, p.287

I want to be the President who helped to end war among the brothers of this earth.

Public Papers of LBJ, 1965, p.287

And so at the request of your beloved Speaker and the Senator from Montana; the majority leader, the Senator from Illinois; the minority leader, Mr. McCulloch, and other Members of both parties, I came here tonight—not as President Roosevelt came down one time in person to veto a bonus bill, not as President Truman came down one time to urge the passage of a railroad bill—but I came down here to ask you to share this task with me and to share it with the people that we both work for. I want this to be the Congress, Republicans and Democrats alike, which did all these things for all these people.

Public Papers of LBJ, 1965, p.287

Beyond this great chamber, out yonder in 50 States, are the people that we serve. Who can tell what deep and unspoken hopes are in their hearts tonight as they sit there and listen. We all can guess, from our own lives, how difficult they often find their own pursuit of happiness, how many problems each little family has. They look most of all to themselves for their futures. But I think that they also look to each of us.

Public Papers of LBJ, 1965, p.287

Above the pyramid on the great seal of the United States it says—in Latin—"God has favored our undertaking."

Public Papers of LBJ, 1965, p.287

God will not favor everything that we do. It is rather our duty to divine His will. But I cannot help believing that He truly understands and that He really favors the undertaking that we begin here tonight.

Public Papers of LBJ, 1965, p.287

NOTE: The address was broadcast nationally. See also Items 108, 109, 409.

President Johnson's Address at Johns Hopkins University: "Peace Without Conquest", 1965

Title: President Johnson's Address at Johns Hopkins University: "Peace Without Conquest"

Author: Lyndon B. Johnson

Date: April 7, 1965

Source: Public Papers of the Presidents, Johnson, 1965, pp.394-399

Public Papers of LBJ, 1965, p.394

Mr. Garland, Senator Brewster, Senator Tydings, Members of the congressional delegation, members of the faculty of Johns Hopkins, student body, my fellow Americans:

Public Papers of LBJ, 1965, p.394

Last week 17 nations sent their views to some two dozen countries having an interest in southeast Asia. We are joining those 17 countries 1 and stating our American policy tonight which we believe will contribute toward peace in this area of the world.

1 The text of the reply to the 17-nation declaration of March 15 was released by the White House on April 8, 1965. The 17-nation declaration and the U.S. reply are printed in the Department of State Bulletin (vol. 52, p. 610).

Public Papers of LBJ, 1965, p.394

I have come here to review once again with my own people the views of the American Government.

Public Papers of LBJ, 1965, p.394

Tonight Americans and Asians are dying for a world where each people may choose its own path to change.

Public Papers of LBJ, 1965, p.394

This is the principle for which our ancestors fought in the valleys of Pennsylvania. It is the principle for which our sons fight tonight in the jungles of Viet-Nam.

Public Papers of LBJ, 1965, p.394

Viet-Nam is far away from this quiet campus. We have no territory there, nor do we seek any. The war is dirty and brutal and difficult. And some 400 young men, born into an America that is bursting with opportunity and promise, have ended their lives on Viet-Nam's steaming soil.

Public Papers of LBJ, 1965, p.394

Why must we take this painful road?

Public Papers of LBJ, 1965, p.394

Why must this Nation hazard its ease, and its interest, and its power for the sake of a people so far away?

Public Papers of LBJ, 1965, p.394

We fight because we must fight if we are to live in a world where every country can shape its own destiny. And only in such a world will our own freedom be finally secure.

Public Papers of LBJ, 1965, p.394

This kind of world will never be built by bombs or bullets. Yet the infirmities of man are such that force must often precede reason, and the waste of war, the works of peace.

Public Papers of LBJ, 1965, p.394

We wish that this were not so. But we must deal with the world as it is, if it is ever to be as we wish.

THE NATURE OF THE CONFLICT

Public Papers of LBJ, 1965, p.394

The world as it is in Asia is not a serene or peaceful place.

Public Papers of LBJ, 1965, p.394

The first reality is that North Viet-Nam has attacked the independent nation of South Viet-Nam. Its object is total conquest.

Public Papers of LBJ, 1965, p.394

Of course, some of the people of South Viet-Nam are participating in attack on their own government. But trained men and supplies, orders and arms, flow in a constant stream from north to south.

Public Papers of LBJ, 1965, p.394

This support is the heartbeat of the war.

Public Papers of LBJ, 1965, p.394

And it is a war of unparalleled brutality. Simple farmers are the targets of assassination and kidnapping. Women and children are strangled in the night because their men are loyal to their government. And help less villages are ravaged by sneak attacks. Large-scale raids are conducted on towns, and terror strikes in the heart of cities.

Public Papers of LBJ, 1965, p.394–p.395

The confused nature of this conflict cannot [p.395] mask the fact that it is the new face of an old enemy.

Public Papers of LBJ, 1965, p.395

Over this war—and all Asia—is another reality: the deepening shadow of Communist China. The rulers in Hanoi are urged on by Peking. This is a regime which has destroyed freedom in Tibet, which has attacked India, and has been condemned by the United Nations for aggression in Korea. It is a nation which is helping the forces of violence in almost every continent. The contest in Viet-Nam is part of a wider pattern of aggressive purposes.

WHY ARE WE IN VIET-NAM ?

Public Papers of LBJ, 1965, p.395

Why are these realities our concern? Why are we in South Viet-Nam ?

Public Papers of LBJ, 1965, p.395

We are there because we have a promise to keep. Since 1954 every American President has offered support to the people of South Viet-Nam. We have helped to build, and we have helped to defend. Thus, over many years, we have made a national pledge to he!p South Viet-Nam defend its independence.

Public Papers of LBJ, 1965, p.395

And I intend to keep that promise.

Public Papers of LBJ, 1965, p.395

To dishonor that pledge, to abandon this small and brave nation to its enemies, and to the terror that must follow, would be an unforgivable wrong.

Public Papers of LBJ, 1965, p.395

We are also there to strengthen world order. Around the globe, from Berlin to Thailand, are people whose well-being rests, in part, on the belief that they can count on us if they are attacked. To leave Viet-Nam to its fate would shake the confidence of all these people in the value of an American commitment and in the value of America's word. The result would be increased unrest and instability, and even wider war.

Public Papers of LBJ, 1965, p.395

We are also there because there are great stakes in the balance. Let no one think for a moment that retreat from Viet-Nam would bring an end to conflict. The battle would be renewed in one country and then another. The central lesson of our time is that the appetite of aggression is never satisfied. To withdraw from one battlefield means only to prepare for the next. We must say in southeast Asia—as we did in Europe—in the words of the Bible: "Hitherto shalt thou come, but no further."

Public Papers of LBJ, 1965, p.395

There are those who say that all our effort there will be futile—that China's power is such that it is bound to dominate all southeast Asia. But there is no end to that argument until all of the nations of Asia are swallowed up.

Public Papers of LBJ, 1965, p.395

There are those who wonder why we have a responsibility there. Well, we have it there for the same reason that we have a responsibility for the defense of Europe. World War II was fought in both Europe and Asia, and when it ended we found ourselves with continued responsibility for the defense of freedom.

OUR OBJECTIVE IN VIET-NAM

Public Papers of LBJ, 1965, p.395

Our objective is the independence of South Viet-Nam, and its freedom from attack. We want nothing for ourselves—only that the people of South Viet-Nam be allowed to guide their own country in their own way.

Public Papers of LBJ, 1965, p.395

We will do everything necessary to reach that objective. And we will do only what is absolutely necessary.

Public Papers of LBJ, 1965, p.395

In recent months attacks on South Viet-Nam were stepped up. Thus, it became necessary for us to increase our response and to make attacks by air. This is not a change of purpose. It is a change in what we believe that purpose requires.

Public Papers of LBJ, 1965, p.395

We do this in order to slow down aggression.

Public Papers of LBJ, 1965, p.395–p.396

We do this to increase the confidence of the brave people of South Viet-Nam who [p.396] have bravely borne this brutal battle for so many years with so many casualties.

Public Papers of LBJ, 1965, p.396

And we do this to convince the leaders of North Viet-Nam—and all who seek to share their conquest—of a very simple fact: We will not be defeated. We will not grow tired.

Public Papers of LBJ, 1965, p.396

We will not withdraw, either openly or under the cloak of a meaningless agreement.

Public Papers of LBJ, 1965, p.396

We know that air attacks alone will not accomplish all of these purposes. But it is our best and prayerful judgment that they are a necessary part of the surest road to peace.

Public Papers of LBJ, 1965, p.396

We hope that peace will come swiftly. But that is in the hands of others besides ourselves. And we must be prepared for a long continued conflict. It will require patience as well as bravery, the will to endure as well as the will to resist.

Public Papers of LBJ, 1965, p.396

I wish it were possible to convince others with words of what we now find it necessary to say with guns and planes: Armed hostility is futile. Our resources are equal to any challenge. Because we fight for values and we fight for principles, rather than territory or colonies, our patience and our determination are unending.

Public Papers of LBJ, 1965, p.396

Once this is clear, then it should also be clear that the only path for reasonable men is the path of peaceful settlement.

Public Papers of LBJ, 1965, p.396

Such peace demands an independent South Viet-Nam—securely guaranteed and able to shape its own relationships to all others-free from outside interference—tied to no alliance—a military base for no other country.

Public Papers of LBJ, 1965, p.396

These are the essentials of any final settlement.

Public Papers of LBJ, 1965, p.396

We will never be second in the search for such a peaceful settlement in Viet-Nam.

Public Papers of LBJ, 1965, p.396

There may be many ways to this kind of peace: in discussion or negotiation with the governments concerned; in large groups or in small ones; in the reaffirmation of old agreements or their strengthening with new ones.

Public Papers of LBJ, 1965, p.396

We have stated this position over and over again, fifty times and more, to friend and foe alike. And we remain ready, with this purpose, for unconditional discussions.

Public Papers of LBJ, 1965, p.396

And until that bright and necessary day of peace we will try to keep conflict from spreading. We have no desire to see thousands die in battle—Asians or Americans. We have no desire to devastate that which the people of North Viet-Nam have built with toil and sacrifice. We will use our power with restraint and with all the wisdom that we can command. But we will use it.

Public Papers of LBJ, 1965, p.396

This war, like most wars, is filled with terrible irony. For what do the people of North Viet-Nam want? They want what their neighbors also desire: food for their hunger; health for their bodies; a chance to learn; progress for their country; and an end to the bondage of material misery. And they would find all these things far more readily in peaceful association with others than in the endless course of battle.

A COOPERATIVE EFFORT FOR DEVELOPMENT

Public Papers of LBJ, 1965, p.396

These countries of southeast Asia are homes for millions of impoverished people. Each day these people rise at dawn and struggle through until the night to wrestle existence from the soil. They are often wracked by disease, plagued by hunger, and death comes at the early age of 40.

Public Papers of LBJ, 1965, p.396–p.397

Stability and peace do not come easily in such a land. Neither independence nor human dignity will ever be won, though, by arms alone. It also requires the work of peace. The American people have helped generously in times past in these works. Now there must be a much more massive effort to improve the life of man in that [p.397] conflict-torn corner of our world.

Public Papers of LBJ, 1965, p.397

The first step is for the countries of southeast Asia to associate themselves in a greatly expanded cooperative effort for development. We would hope that North Viet-Nam would take its place in the common effort just as soon as peaceful cooperation is possible.

Public Papers of LBJ, 1965, p.397

The United Nations is already actively engaged in development in this area. As far back as 1961 I conferred with our authorities in Viet-Nam in connection with their work there. And I would hope tonight that the Secretary General of the United Nations could use the prestige of his great office, and his deep knowledge of Asia, to initiate, as soon as possible, with the countries of that area, a plan for cooperation in increased development.

Public Papers of LBJ, 1965, p.397

For our part I will ask the Congress to join in a billion dollar American investment in this effort as soon as it is underway.

Public Papers of LBJ, 1965, p.397

And I would hope that all other industrialized countries, including the Soviet Union, will join in this effort to replace despair with hope, and terror with progress.

Public Papers of LBJ, 1965, p.397

The task is nothing less than to enrich the hopes and the existence of more than a hundred million people. And there is much to be done.

Public Papers of LBJ, 1965, p.397

The vast Mekong River can provide food and water and power on a scale to dwarf even our own TVA.

Public Papers of LBJ, 1965, p.397

The wonders of modern medicine can be spread through villages where thousands die every year from lack of care.

Public Papers of LBJ, 1965, p.397

Schools can be established to train people in the skills that are needed to manage the process of development.

Public Papers of LBJ, 1965, p.397

And these objectives, and more, are within the reach of a cooperative and determined effort.

Public Papers of LBJ, 1965, p.397

I also intend to expand and speed up a program to make available our farm surpluses to assist in feeding and clothing the needy in Asia. We should not allow people to go hungry and wear rags while our own warehouses overflow with an abundance of wheat and corn, rice and cotton.

Public Papers of LBJ, 1965, p.397

So I will very shortly name a special team of outstanding, patriotic, distinguished Americans to inaugurate our participation in these programs. This team will be headed by Mr. Eugene Black, the very able former President of the World Bank.

Public Papers of LBJ, 1965, p.397

In areas that are still ripped by conflict, of course development will not be easy. Peace will be necessary for final success. But we cannot and must not wait for peace to begin this job.

THE DREAM OF WORLD ORDER

Public Papers of LBJ, 1965, p.397

This will be a disorderly planet for a long time. In Asia, as elsewhere, the forces of the modern world are shaking old ways and uprooting ancient civilizations. There will be turbulence and struggle and even violence. Great social change—as we see in our own country now—does not always come without conflict.

Public Papers of LBJ, 1965, p.397

We must also expect that nations will on occasion be in dispute with us. It may be because we are rich, or powerful; or because we have made some mistakes; or because they honestly fear our intentions. However, no nation need ever fear that we desire their land, or to impose our will, or to dictate their institutions.

Public Papers of LBJ, 1965, p.397

But we will always oppose the effort of one nation to conquer another nation.

Public Papers of LBJ, 1965, p.397

We will do this because our own security is at stake.

Public Papers of LBJ, 1965, p.397

But there is more to it than that. For our generation has a dream. It is a very old dream. But we have the power and now we have the opportunity to make that dream come true.

Public Papers of LBJ, 1965, p.397–p.398

For centuries nations have struggled [p.398] among each other. But we dream of a world where disputes are settled by law and reason. And we will try to make it so.

Public Papers of LBJ, 1965, p.398

For most of history men have hated and killed one another in battle. But we dream of an end to war. And we will try to make it so.

Public Papers of LBJ, 1965, p.398

For all existence most men have lived in poverty, threatened by hunger. But we dream of a world where all are fed and charged with hope. And we will help to make it so.

Public Papers of LBJ, 1965, p.398

The ordinary men and women of North Viet-Nam and South Viet-Nam—of China and India—of Russia and America—are brave people. They are filled with the same proportions of hate and fear, of love and hope. Most of them want the same things for themselves and their families. Most of them do not want their sons to ever die in battle, or to see their homes, or the homes of others, destroyed.

Public Papers of LBJ, 1965, p.398

Well, this can be their world yet. Man now has the knowledge—always before denied—to make this planet serve the real needs of the people who live on it.

Public Papers of LBJ, 1965, p.398

I know this will not be easy. I know how difficult it is for reason to guide passion, and love to master hate. The complexities of this world do not bow easily to pure and consistent answers.

Public Papers of LBJ, 1965, p.398

But the simple truths are there just the same. We must all try to follow them as best we can.

CONCLUSION

Public Papers of LBJ, 1965, p.398

We often say how impressive power is. But I do not find it impressive at all. The guns and the bombs, the rockets and the warships, are all symbols of human failure. They are necessary symbols. They protect what we cherish. But they are witness to human folly.

Public Papers of LBJ, 1965, p.398

A dam built across a great river is impressive.

Public Papers of LBJ, 1965, p.398

In the countryside where I was born, and where I live, I have seen the night illuminated, and the kitchens warmed, and the homes heated, where once the cheerless night and the ceaseless cold held sway. And all this happened because electricity came to our area along the humming wires of the REA. Electrification of the countryside—yes, that, too, is impressive.

Public Papers of LBJ, 1965, p.398

A rich harvest in a hungry land is impressive.

Public Papers of LBJ, 1965, p.398

The sight of healthy children in a classroom is impressive.

Public Papers of LBJ, 1965, p.398

These—not mighty arms—are the achievements which the American Nation believes to be impressive.

Public Papers of LBJ, 1965, p.398

And, if we are steadfast, the time may come when all other nations will also find it so.

Public Papers of LBJ, 1965, p.398

Every night before I turn out the lights to sleep I ask myself this question: Have I done everything that I can do to unite this country? Have I done everything I can to help unite the world, to try to bring peace and hope to all the peoples of the world? Have I done enough?

Public Papers of LBJ, 1965, p.398

Ask yourselves that question in your homes—and in this hall tonight. Have we, each of us, all done all we could? Have we done enough?

Public Papers of LBJ, 1965, p.398

We may well be living in the time foretold many years ago when it was said: "I call heaven and earth to record this day against you, that I have set before you life and death, blessing and cursing: therefore choose life, that both thou and thy seed may live."

Public Papers of LBJ, 1965, p.398

This generation of the world must choose: destroy or build, kill or aid, hate or understand.

Public Papers of LBJ, 1965, p.398

We can do all these things on a scale never dreamed of before.

Public Papers of LBJ, 1965, p.399

Well, we will choose life. In so doing we will prevail over the enemies within man, and over the natural enemies of all mankind.

Public Papers of LBJ, 1965, p.399

To Dr. Eisenhower and Mr. Garland, and this great institution, Johns Hopkins, I thank you for this opportunity to convey my thoughts to you and to the American people.

Public Papers of LBJ, 1965, p.399

Good night.

Public Papers of LBJ, 1965, p.399

NOTE: The President spoke at 9 p.m. in Shriver Hall Auditorium at Johns Hopkins University, Baltimore, Md. In his opening words, he referred to Charles S. Garland, Chairman of the University's Board of Trustees, and Senators Daniel B. Brewster and Joseph D. Tydings of Maryland.

Public Papers of LBJ, 1965, p.399

Later he referred to Dr. Milton Eisenhower, President of Johns Hopkins University, and Eugene Black, former President of the World Bank and adviser to the President on southeast Asia social and economic development.

Public Papers of LBJ, 1965, p.399

Earlier, on the same day, the White House released the text of the statements, made to the press in the Theater at the White House, by George W. Ball, Under Secretary of State, Robert S. McNamara, Secretary of Defense, and McGeorge Bundy, Special Assistant to the President, which defined the context of the President's speech.

President Johnson's Report to the American People on the Situation in the Dominican Republic, 1965

Title: President Johnson's Report to the American People on the Situation in the Dominican Republic

Author: Lyndon B. Johnson

Date: May 2, 1965

Source: Public Papers of the Presidents, Johnson, 1965, pp.469-474

[The Presidents remarks were delivered by radio and television.]

Public Papers of LBJ, 1965, p.469

Good evening, ladies and gentlemen:

Public Papers of LBJ, 1965, p.469

I have just come from a meeting with the leaders of both parties in the Congress which was held in the Cabinet Room in the White House. I briefed them on the facts of the situation in the Dominican Republic. I want to make those same facts known to all the American people and to all the world.

Public Papers of LBJ, 1965, p.469

There are times in the affairs of nations when great principles are tested in an ordeal of conflict and danger. This is such a time for the American nations.

Public Papers of LBJ, 1965, p.469

At stake are the lives of thousands, the liberty of a nation, and the principles and the values of all the American Republics. That is why the hopes and the concern of this entire hemisphere are, on this Sabbath-Sunday, focused on the Dominican Republic.

Public Papers of LBJ, 1965, p.470

In the dark mist of conflict and violence, revolution and confusion, it is not easy to find clear and unclouded truths.

Public Papers of LBJ, 1965, p.470

But certain things are clear. And they require equally clear action. To understand, I think it is necessary to begin with the events of 8 or 9 days ago.

Public Papers of LBJ, 1965, p.470

Last week our observers warned of an approaching political storm in the Dominican Republic. I immediately asked our Ambassador to return to Washington at once so that we might discuss the situation and might plan a course of conduct. But events soon outran our hopes for peace.

Public Papers of LBJ, 1965, p.470

Saturday, April 24th—8 days ago—while Ambassador Bennett was conferring with the highest officials of your Government, revolution erupted in the Dominican Republic. Elements of the military forces of that country overthrew their government. However, the rebels themselves were divided. Some wanted to restore former President Juan Bosch. Others opposed his restoration. President Bosch, elected after the fall of Trujillo and his assassination, had been driven from office by an earlier revolution in the Dominican Republic.

Public Papers of LBJ, 1965, p.470

Those who opposed Mr. Bosch's return formed a military committee in an effort to control that country. The others took to the street and they began to lead a revolt on behalf of President Bosch. Control and effective government dissolved in conflict and confusion.

Public Papers of LBJ, 1965, p.470

Meanwhile the United States was making a constant effort to restore peace. From Saturday afternoon onward, our embassy urged a cease-fire, and I and all the officials of the American Government worked with every weapon at our command to achieve it.

Public Papers of LBJ, 1965, p.470

On Tuesday the situation of turmoil was presented to the peace committee of the Organization of American States.

Public Papers of LBJ, 1965, p.470

On Wednesday the entire Council of the Organization of American States received a full report from the Dominican Ambassador.

Public Papers of LBJ, 1965, p.470

Meanwhile, all this time, from Saturday to Wednesday, the danger was mounting. Even though we were deeply saddened by bloodshed and violence in a close and friendly neighbor, we had no desire to interfere in the affairs of a sister republic.

Public Papers of LBJ, 1965, p.470

On Wednesday afternoon, there was no longer any choice for the man who is your President. I was sitting in my little office reviewing the world situation with Secretary Rusk, Secretary McNamara, and Mr. McGeorge Bundy. Shortly after 3 o'clock I received a cable from our Ambassador and he said that things were in danger, he had been informed that the chief of police and the governmental authorities could no longer protect us. We immediately started the necessary conference calls to be prepared.

Public Papers of LBJ, 1965, p.470

At 5:14, almost 2 hours later, we received a cable that was labeled "critic," a word that is reserved for only the most urgent and immediate matters of national security.

Public Papers of LBJ, 1965, p.470

The cable reported that Dominican law enforcement and military officials had informed our embassy that the situation was completely out of control and that the police and the Government could no longer give any guarantee concerning the safety of Americans or of any foreign nationals.

Public Papers of LBJ, 1965, p.470

Ambassador Bennett, who is one of our most experienced Foreign Service officers, went on in that cable to say that only an immediate landing of American forces could safeguard and protect the lives of thousands of Americans and thousands of other citizens of some 30 other countries. Ambassador Bennett urged your President to order an immediate landing.

Public Papers of LBJ, 1965, p.470–p.471

In this situation hesitation and vacillation could mean death for many of our people, as well as many of the citizens of other lands. I thought that we could not and we did [p.471] not hesitate. Our forces, American forces, were ordered in immediately to protect American lives. They have done that. They have attacked no one, and although some of our servicemen gave their lives, not a single American civilian and the civilian of any other nation, as a result of this protection, lost their lives.

Public Papers of LBJ, 1965, p.471

There may be those in our own country who say that such action was good but we should have waited, or we should have delayed, or we should have consulted further, or we should have called a meeting. But from the very beginning, the United States, at my instructions, had worked for a cease-fire beginning the Saturday the revolution took place. The matter was before the OAS peace committee on Tuesday, at our suggestion. It was before the full Council on Wednesday and when I made my announcement to the American people that evening, I announced then that I was notifying the Council.

Public Papers of LBJ, 1965, p.471

When that cable arrived, when our entire country team in the Dominican Republic, made up of nine men—one from the Army, Navy, and Air Force, our Ambassador, our AID man and others—said to your President unanimously: "Mr. President, if you do not send forces immediately, men and women-Americans and those of other lands—will die in the streets"—well, I knew there was no time to talk, to consult, or to delay. For in this situation delay itself would be decision-the decision to risk and to lose the lives of thousands of Americans and thousands of innocent people from all lands.

Public Papers of LBJ, 1965, p.471

I want you to know that it is not a light or an easy matter to send our American boys to another country, but I do not think that the American people expect their President to hesitate or to vacillate in the face of danger just because the decision is hard when life is in peril.

Public Papers of LBJ, 1965, p.471

Meanwhile, the revolutionary movement took a tragic turn. Communist leaders, many of them trained in Cuba, seeing a chance to increase disorder, to gain a foothold, joined the revolution. They took increasing control. And what began as a popular democratic revolution, committed to democracy and social justice, very shortly moved and was taken over and really seized and placed into the hands of a band of Communist conspirators.

Public Papers of LBJ, 1965, p.471

Many of the original leaders of the rebellion, the followers of President Bosch, took refuge in foreign embassies because they had been superseded by other evil forces, and the Secretary General of the rebel government, Martinez Francisco, appealed for a cease-fire. But he was ignored. The revolution was now in other and dangerous hands.

Public Papers of LBJ, 1965, p.471

When these new and ominous developments emerged, the OAS met again and it met at the request of the United States. I am glad to say that they responded wisely and decisively. A five-nation OAS team is now in the Dominican Republic acting to achieve a cease-fire to ensure the safety of innocent people, to restore normal conditions, and to open a path to democratic process.

Public Papers of LBJ, 1965, p.471

That is the situation now.

Public Papers of LBJ, 1965, p.471

I plead, therefore, with every person and every country in this hemisphere that would choose to do so, to contact their ambassador and the Dominican Republic directly and to get firsthand evidence of the horrors and the hardship, the violence and the terror, and the international conspiracy from which U.S. servicemen have rescued the people of more than 30 nations from that war-torn island.

Public Papers of LBJ, 1965, p.471–p.472

Earlier today I ordered two additional battalions—2,000 extra men—to proceed immediately to the Dominican Republic. In the meeting that I just concluded with the [p.472] congressional leaders following that meeting I directed the Secretary of Defense and the Chairman of the Joint Chiefs of Staff to issue instructions to land an additional 4,500 men at the earliest possible moment. The distribution of food to people who have not eaten for days, the need of medical supplies and attention for the sick and wounded, the health requirements to avoid an epidemic because there are hundreds that have been dead for days that are now in the streets, and that further protection of the security of each individual that is caught on that island require the attention of the additional forces which I have ordered to proceed to the Dominican Republic.

Public Papers of LBJ, 1965, p.472

In addition, our servicemen have already, since they landed on Wednesday night, evacuated 3,000 persons from 30 countries in the world from this little island. But more than 5,000 people, 1,500 of whom are Americans-the others are foreign nationals—are tonight awaiting evacuation as I speak. We just must get on with that job immediately.

Public Papers of LBJ, 1965, p.472

The American nations cannot, must not, and will not permit the establishment of another Communist government in the Western Hemisphere. This was the unanimous view of all the American nations when, in January 1962, they declared, and I quote: "The principles of communism are incompatible with the principles of the inter-American system."

Public Papers of LBJ, 1965, p.472

This is what our beloved President John F. Kennedy meant when, less than a week before his death, he told us: "We in this hemisphere must also use every resource at our command to prevent the establishment of another Cuba in this hemisphere."

Public Papers of LBJ, 1965, p.472

This is and this will be the common action and the common purpose of the democratic forces of the hemisphere. For the danger is also a common danger, and the principles are common principles.

Public Papers of LBJ, 1965, p.472

So we have acted to summon the resources of this entire hemisphere to this task. We have sent, on my instructions night before last, special emissaries such as Ambassador Moscoso of Puerto Rico, our very able Ambassador Averell Harriman, and others to Latin America to explain the situation, to tell them the truth, and to warn them that joint action is necessary. We are in contact with such distinguished Latin American statesmen as Romulo Betancourt and Jose Figueres. We are seeking their wisdom and their counsel and their advice. We have also maintained communication with President Bosch, who has chosen to remain in Puerto Rico.

Public Papers of LBJ, 1965, p.472

We have been consulting with the Organization of American States, and our distinguished Ambassador, than whom there is no better—Ambassador Bunker—has been reporting to them at great length all the actions of this Government and we have been acting in conformity with their decisions.

Public Papers of LBJ, 1965, p.472

We know that many who are now in revolt do not seek a Communist tyranny. We think it is tragic indeed that their high motives have been misused by a small band of conspirators who receive their directions from abroad.

Public Papers of LBJ, 1965, p.472–p.473

To those who fight only for liberty and justice and progress I want to join with the Organization of American States in saying, in appealing to you tonight, to lay down your arms, and to assure you there is nothing to fear. The road is open for you to share in building a Dominican democracy and we in America are ready and anxious and willing to help you. Your courage and your dedication are qualities which your country and all the hemisphere need for the future. You are needed to help shape that future. And neither we nor any other nation in this hemisphere can or should take it upon itself to ever interfere with the affairs [p.473] of your country or any other country.

Public Papers of LBJ, 1965, p.473

We believe that change comes and we are glad it does, and it should come through peaceful process. But revolution in any country is a matter for that country to deal with. It becomes a matter calling for hemispheric action only—repeat—only when the object is the establishment of a communistic dictatorship.

Public Papers of LBJ, 1965, p.473

Let me also make clear tonight that we support no single man or any single group of men in the Dominican Republic. Our goal is a simple one. We are there to save the lives of our citizens and to save the lives of all people. Our goal, in keeping with the great principles of the inter-American system, is to help prevent another Communist state in this hemisphere. And we would like to do this without bloodshed or without large-scale fighting.

Public Papers of LBJ, 1965, p.473

The form and the nature of a free Dominican government, I assure you, is solely a matter for the Dominican people, but we do know what kind of government we hope to see in the Dominican Republic. For that is carefully spelled out in the treaties and the agreements which make up the fabric of the entire inter-American system. It is expressed, time and time again, in the words of our statesmen and in the values and hopes which bind us all together.

Public Papers of LBJ, 1965, p.473

We hope to see a government freely chosen by the will of all the people.

Public Papers of LBJ, 1965, p.473

We hope to see a government dedicated to social justice for every single citizen.

Public Papers of LBJ, 1965, p.473

We hope to see a government working, every hour of every day, to feeding the hungry, to educating the ignorant, to healing the sick—a government whose only concern is the progress and the elevation and the welfare of all the people.

Public Papers of LBJ, 1965, p.473

For more than 3 decades the people of that tragic little island suffered under the weight of one of the most brutal and despotic dictatorships in the history of the Americas. We enthusiastically supported condemnation of that government by the Organization of American States. We joined in applying sanctions and when Trujillo was assassinated by his fellow citizens we immediately acted to protect freedom and to prevent a new tyranny. And since that time we have taken the resources from all of our people, at some sacrifice to many, and we have helped them with food and with other resources, with the Peace Corps volunteers, with the AID technicians. We have helped them in the effort to build a new order of progress.

Public Papers of LBJ, 1965, p.473

How sad it is tonight that a people so long oppressed should once again be the targets of the forces of tyranny. Their long misery must weigh heavily on the heart of every citizen of this hemisphere. So I think it is our mutual responsibility to help the people of the Dominican Republic toward the day when they can freely choose the path of liberty and justice and progress. This is required of us by the agreements that we are party to and that we have signed. This is required of us by the values which bind us together.

Public Papers of LBJ, 1965, p.473

Simon Bolivar once wrote from exile: "The veil has been torn asunder. We have already seen the light and it is not our desire to be thrust back into the darkness."

Public Papers of LBJ, 1965, p.473

Well, after decades of night the Dominican people have seen a more hopeful light and I know that the nations of this hemisphere will not let them be thrust back into the darkness.

Public Papers of LBJ, 1965, p.473–p.474

And before I leave you, my fellow Americans, I want to say this personal word: I know that no American serviceman wants to kill anyone. I know that no American President wants to give an order which [p.474] brings shooting and casualties and death. I want you to know and I want the world to know that as long as I am President of this country, we are going to defend ourselves. We will defend our soldiers against attackers. We will honor our treaties. We will keep our commitments. We will defend our Nation against all those who seek to destroy not only the United States but every free country of this hemisphere. We do not want to bury anyone as I have said so many times before. But we do not intend to be buried.

Public Papers of LBJ, 1965, p.474

Thank you. God bless you. Good night.

Public Papers of LBJ, 1965, p.474

NOTE: The President spoke at 10 p.m. from the Theater at the White House. During his remarks he referred to, among others, W. Tapley Bennett, Jr., United States Ambassador to the Dominican Republic, Dean Rusk, Secretary of State, Robert S. McNamara, Secretary of Defense, McGeorge Bundy, Special Assistant to the President, Gen. Earle G. Wheeler, Chairman of the Joint Chiefs of Staff, Teodoro Moscoso, consultant to the President and former U.S. Representative on the Inter-American Committee for the Alliance for Progress, Romulo Betancourt, former President of Brazil, Jose Figueres, former President of Costa Rica, and Ellsworth Bunker, United States Ambassador to the Organization of American States.

President Johnson's Commencement Address at Howard University: "To Fulfill These Rights", 1965

Title: President Johnson's Commencement Address at Howard University: "To Fulfill These Rights"

Author: Lyndon B. Johnson

Date: June 4, 1965

Source: Public Papers of the Presidents, Johnson, 1965, pp.635-640

Public Papers of LBJ, 1965, p.635

Dr. Nabrit, my fellow Americans:

Public Papers of LBJ, 1965, p.635

I am delighted at the chance to speak at this important and this historic institution. Howard has long been an outstanding center for the education of Negro Americans. Its students are of every race and color and they come from many countries of the world. It is truly a working example of democratic excellence.

Public Papers of LBJ, 1965, p.635

Our earth is the home of revolution. In every corner of every continent men charged with hope contend with ancient ways in the pursuit of justice. They reach for the newest of weapons to realize the oldest of dreams, that each may walk in freedom and pride, stretching his talents, enjoying the fruits of the earth.

Public Papers of LBJ, 1965, p.635

Our enemies may occasionally seize the day of change, but it is the banner of our revolution they take. And our own future is linked to this process of swift and turbulent change in many lands in the world. But nothing in any country touches us more profoundly, and nothing is more freighted with meaning for our own destiny than the revolution of the Negro American.

Public Papers of LBJ, 1965, p.635

In far too many ways American Negroes have been another nation: deprived of freedom, crippled by hatred, the doors of opportunity closed to hope.

Public Papers of LBJ, 1965, p.635–p.636

In our time change has come to this Nation, too. The American Negro, acting with impressive restraint, has peacefully protested and marched, entered the courtrooms and the seats of government, demanding a justice that has long been denied. The voice of the Negro was the call to action. But it is a tribute to America that, once aroused, the [p.636] courts and the Congress, the President and most of the people, have been the allies of progress.

LEGAL PROTECTION FOR HUMAN RIGHTS

Public Papers of LBJ, 1965, p.636

Thus we have seen the high court of the country declare that discrimination based on race was repugnant to the Constitution, and therefore void. We have seen in 1957, and 1960, and again in 1964, the first civil rights legislation in this Nation in almost an entire century.

Public Papers of LBJ, 1965, p.636

As majority leader of the United States Senate, I helped to guide two of these bills through the Senate. And, as your President, I was proud to sign the third. And now very soon we will have the fourth—a new law guaranteeing every American the right to vote.

Public Papers of LBJ, 1965, p.636

No act of my entire administration will give me greater satisfaction than the day when my signature makes this bill, too, the law of this land.

Public Papers of LBJ, 1965, p.636

The voting rights bill will be the latest, and among the most important, in a long series of victories. But this victory—as Winston Churchill said of another triumph for freedom—"is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning."

Public Papers of LBJ, 1965, p.636

That beginning is freedom; and the barriers to that freedom are tumbling down. Freedom is the right to share, share fully and equally, in American society—to vote, to hold a job, to enter a public place, to go to school. It is the right to be treated in every part of our national life as a person equal in dignity and promise to all others.

FREEDOM IS NOT ENOUGH

Public Papers of LBJ, 1965, p.636

But freedom is not enough. You do not wipe away the scars of centuries by saying: Now you are free to go where you want, and do as you desire, and choose the leaders you please.

Public Papers of LBJ, 1965, p.636

You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, "you are free to compete with all the others," and still justly believe that you have been completely fair.

Public Papers of LBJ, 1965, p.636

Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates.

Public Papers of LBJ, 1965, p.636

This is the next and the more profound stage of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result.

Public Papers of LBJ, 1965, p.636

For the task is to give 20 million Negroes the same chance as every other American to learn and grow, to work and share in society, to develop their abilities—physical, mental and spiritual, and to pursue their individual happiness.

Public Papers of LBJ, 1965, p.636

To this end equal opportunity is essential, but not enough, not enough. Men and women of all races are born with the same range of abilities. But ability is not just the product of birth. Ability is stretched or stunted by the family that you live with, and the neighborhood you live in—by the school you go to and the poverty or the richness of your surroundings. It is the product of a hundred unseen forces playing upon the little infant, the child, and finally the man.

PROGRESS FOR SOME

Public Papers of LBJ, 1965, p.636

This graduating class at Howard University is witness to the indomitable determination of the Negro American to win his way in American life.

Public Papers of LBJ, 1965, p.636–p.637

The number of Negroes in schools of higher learning has almost doubled in 15 [p.637] years. The number of nonwhite professional workers has more than doubled in 10 years. The median income of Negro college women tonight exceeds that of white college women. And there are also the enormous accomplishments of distinguished individual Negroes—many of them graduates of this institution, and one of them the first lady ambassador in the history of the United States.

Public Papers of LBJ, 1965, p.637

These are proud and impressive achievements. But they tell only the story of a growing middle class minority, steadily narrowing the gap between them and their white counterparts.

A WIDENING GULF

Public Papers of LBJ, 1965, p.637

But for the great majority of Negro Americans-the poor, the unemployed, the uprooted, and the dispossessed—there is a much grimmer story. They still, as we meet here tonight, are another nation. Despite the court orders and the laws, despite the legislative victories and the speeches, for them the walls are rising and the gulf is widening.

Public Papers of LBJ, 1965, p.637

Here are some of the facts of this American failure.

Public Papers of LBJ, 1965, p.637

Thirty-five years ago the rate of unemployment for Negroes and whites was about the same. Tonight the Negro rate is twice as high.

Public Papers of LBJ, 1965, p.637

In 1948 the 8 percent unemployment rate for Negro teenage boys was actually less than that of whites. By last year that rate had grown to 23 percent, as against 13 percent for whites unemployed.

Public Papers of LBJ, 1965, p.637

Between 1949 and 1959, the income of Negro men relative to white men declined in every section of this country. From 1952 to 1963 the median income of Negro families compared to white actually dropped from 57 percent to 53 percent.

Public Papers of LBJ, 1965, p.637

In the years 1955 through 1957, 22 percent of experienced Negro workers were out of work at some time during the year. In 1961 through 1963 that proportion had soared to 29 percent.

Public Papers of LBJ, 1965, p.637

Since 1947 the number of white families living in poverty has decreased 27 percent while the number of poorer nonwhite families decreased only 3 percent.

Public Papers of LBJ, 1965, p.637

The infant mortality of nonwhites in 1940 was 70 percent greater than whites. Twenty-two years later it was 90 percent greater.

Public Papers of LBJ, 1965, p.637

Moreover, the isolation of Negro from white communities is increasing, rather than decreasing as Negroes crowd into the central cities and become a city within a city.

Public Papers of LBJ, 1965, p.637

Of course Negro Americans as well as white Americans have shared in our rising national abundance. But the harsh fact of the matter is that in the battle for true equality too many—far too many—are losing ground every day.

THE CAUSES OF INEQUALITY

Public Papers of LBJ, 1965, p.637

We are not completely sure why this is. We know the causes are complex and subtle. But we do know the two broad basic reasons. And we do know that we have to act.

Public Papers of LBJ, 1965, p.637

First, Negroes are trapped—as many whites are trapped—'m inherited, gate-less poverty. They lack training and skills. They are shut in, in slums, without decent medical care. Private and public poverty combine to cripple their capacities.

Public Papers of LBJ, 1965, p.637

We are trying to attack these evils through our poverty program, through our education program, through our medical care and our other health programs, and a dozen more of the Great Society programs that are aimed at the root causes of this poverty.

Public Papers of LBJ, 1965, p.637–p.638

We will increase, and we will accelerate, [p.638] and we will broaden this attack in years to come until this most enduring of foes finally yields to our unyielding will.

Public Papers of LBJ, 1965, p.638

But there is a second cause—much more difficult to explain, more deeply grounded, more desperate in its force. It is the devastating heritage of long years of slavery; and a century of oppression, hatred, and injustice.

SPECIAL NATURE OF NEGRO POVERTY

Public Papers of LBJ, 1965, p.638

For Negro poverty is not white poverty. Many of its causes and many of its cures are the same. But there are differences-deep, corrosive, obstinate differences—radiating painful roots into the community, and into the family, and the nature of the individual.

Public Papers of LBJ, 1965, p.638

These differences are not racial differences. They are solely and simply the consequence of ancient brutality, past injustice, and present prejudice. They are anguishing to observe. For the Negro they are a constant reminder of oppression. For the white they are a constant reminder of guilt. But they must be faced and they must be dealt with and they must be overcome, if we are ever to reach the time when the only difference between Negroes and whites is the color of their skin.

Public Papers of LBJ, 1965, p.638

Nor can we find a complete answer in the experience of other American minorities. They made a valiant and a largely successful effort to emerge from poverty and prejudice.

Public Papers of LBJ, 1965, p.638

The Negro, like these others, will have to rely mostly upon his own efforts. But he just can not do it alone. For they did not have the heritage of centuries to overcome, and they did not have a cultural tradition which had been twisted and battered by endless years of hatred and hopelessness, nor were they excluded—these others—because of race or color—a feeling whose dark intensity is matched by no other prejudice in our society.

Public Papers of LBJ, 1965, p.638

Nor can these differences be understood as isolated infirmities. They are a seamless web. They cause each other. They result from each other. They reinforce each other.

Public Papers of LBJ, 1965, p.638

Much of the Negro community is buried under a blanket of history and circumstance. It is not a lasting solution to lift just one corner of that blanket. We must stand on all sides and we must raise the entire cover if we are to liberate our fellow citizens.

THE ROOTS OF INJUSTICE

Public Papers of LBJ, 1965, p.638

One of the differences is the increased concentration of Negroes in our cities. More than 73 percent of all Negroes live in urban areas compared with less than 70 percent of the whites. Most of these Negroes live in slums. Most of these Negroes live together—a separated people.

Public Papers of LBJ, 1965, p.638

Men are shaped by their world. When it is a world of decay, ringed by an invisible wall, when escape is arduous and uncertain, and the saving pressures of a more hopeful society are unknown, it can cripple the youth and it can desolate the men.

Public Papers of LBJ, 1965, p.638

There is also the burden that a dark skin can add to the search for a productive place in our society. Unemployment strikes most swiftly and broadly at the Negro, and this burden erodes hope. Blighted hope breeds despair. Despair brings indifferences to the learning which offers a way out. And despair, coupled with indifferences, is often the source of destructive rebellion against the fabric of society.

Public Papers of LBJ, 1965, p.638–p.639

There is also the lacerating hurt of early collision with white hatred or prejudice, distaste or condescension. Other groups have felt similar intolerance. But success and achievement could wipe it away. They do not change the color of a man's skin. I have seen this uncomprehending pain in the eyes of the little, young Mexican-American [p.639] schoolchildren that I taught many years ago. But it can be overcome. But, for many, the wounds are always open.

FAMILY BREAKDOWN

Public Papers of LBJ, 1965, p.639

Perhaps most important—its influence radiating to every part of life—is the breakdown of the Negro family structure. For this, most of all, white America must accept responsibility. It flows from centuries of oppression and persecution of the Negro man. It flows from the long years of degradation and discrimination, which have attacked his dignity and assaulted his ability to produce for his family.

Public Papers of LBJ, 1965, p.639

This, too, is not pleasant to look upon. But it must be faced by those whose serious intent is to improve the life of all Americans.

Public Papers of LBJ, 1965, p.639

Only a minority—less than half—of all Negro children reach the age of 18 having lived all their lives with both of their parents. At this moment, tonight, little less than two-thirds are at home with both of their parents. Probably a majority of all Negro children receive federally-aided public assistance sometime during their childhood.

Public Papers of LBJ, 1965, p.639

The family is the cornerstone of our society. More than any other force it shapes the attitude, the hopes, the ambitions, and the values of the child. And when the family collapses it is the children that are usually damaged. When it happens on a massive scale the community itself is crippled.

Public Papers of LBJ, 1965, p.639

So, unless we work to strengthen the family, to create conditions under which most parents will stay together—all the rest: schools, and playgrounds, and public assistance, and private concern, will never be enough to cut completely the circle of despair and deprivation.

TO FULFILL THESE RIGHTS

Public Papers of LBJ, 1965, p.639

There is no single easy answer to all of these problems.

Public Papers of LBJ, 1965, p.639

Jobs are part of the answer. They bring the income which permits a man to provide for his family.

Public Papers of LBJ, 1965, p.639

Decent homes in decent surroundings and a chance to learn—an equal chance to learn-are part of the answer.

Public Papers of LBJ, 1965, p.639

Welfare and social programs better designed to hold families together are part of the answer.

Public Papers of LBJ, 1965, p.639

Care for the sick is part of the answer.

Public Papers of LBJ, 1965, p.639

An understanding heart by all Americans is another big part of the answer.

Public Papers of LBJ, 1965, p.639

And to all of these fronts—and a dozen more—I will dedicate the expanding efforts of the Johnson administration.

Public Papers of LBJ, 1965, p.639

But there are other answers that are still to be found. Nor do we fully understand even all of the problems. Therefore, I want to announce tonight that this fall I intend to call a White House conference of scholars, and experts, and outstanding Negro leaders—men of both races—and officials of Government at every level.

Public Papers of LBJ, 1965, p.639

This White House conference's theme and title will be "To Fulfill These Rights."

Public Papers of LBJ, 1965, p.639

Its object will be to help the American Negro fulfill the rights which, after the long time of injustice, he is finally about to secure.

Public Papers of LBJ, 1965, p.639

To move beyond opportunity to achievement.

Public Papers of LBJ, 1965, p.639

To shatter forever not only the barriers of law and public practice, but the walls which bound the condition of many by the color of his skin.

Public Papers of LBJ, 1965, p.639

To dissolve, as best we can, the antique enmities of the heart which diminish the holder, divide the great democracy, and do wrong—great wrong—to the children of God.

Public Papers of LBJ, 1965, p.640

And I pledge you tonight that this will be a chief goal of my administration, and of my program next year, and in the years to come. And I hope, and I pray, and I believe, it will be a part of the program of all America.

WHAT IS JUSTICE

Public Papers of LBJ, 1965, p.640

For what is justice?

Public Papers of LBJ, 1965, p.640

It is to fulfill the fair expectations of man.

Public Papers of LBJ, 1965, p.640

Thus, American justice is a very special thing. For, from the first, this has been a land of towering expectations. It was to be a nation where each man could be ruled by the common consent of all—enshrined in law, given life by institutions, guided by men themselves subject to its rule. And all—all of every station and origin—would be touched equally in obligation and in liberty.

Public Papers of LBJ, 1965, p.640

Beyond the law lay the land. It was a rich land, glowing with more abundant promise than man had ever seen. Here, unlike any place yet known, all were to share the harvest.

Public Papers of LBJ, 1965, p.640

And beyond this was the dignity of man. Each could become whatever his qualities of mind and spirit would permit—to strive, to seek, and, if he could, to find his happiness.

Public Papers of LBJ, 1965, p.640

This is American justice. We have pursued it faithfully to the edge of our imperfections, and we have failed to find it for the American Negro.

Public Papers of LBJ, 1965, p.640

So, it is the glorious opportunity of this generation to end the one huge wrong of the American Nation and, in so doing, to find America for ourselves, with the same immense thrill of discovery which gripped those who first began to realize that here, at last, was a home for freedom.

Public Papers of LBJ, 1965, p.640

All it will take is for all of us to understand what this country is and what this country must become.

Public Papers of LBJ, 1965, p.640

The Scripture promises: "I shall light a candle of understanding in thine heart, which shall not be put out."

Public Papers of LBJ, 1965, p.640

Together, and with millions more, we can light that candle of understanding in the heart of all America.

Public Papers of LBJ, 1965, p.640

And, once lit, it will never again go out.

Public Papers of LBJ, 1965, p.640

NOTE: The President spoke at 6:35 p.m. on the Main Quadrangle in front of the library at Howard University in Washington, after being awarded an honorary degree of doctor of laws. His opening words referred to Dr. James M. Nabrit, It., President of the University. During his remarks he referred to Mrs. Patricia Harris, U.S. Ambassador to Luxembourg and former associate professor of law at Howard University.

Public Papers of LBJ, 1965, p.640

The Voting Rights Act of 1965 was approved by the President on August 6, 1965 (see Item 409).

Public Papers of LBJ, 1965, p.640

See also Items 548, 613.

Griswold v. Connecticut, 1965

Title: Griswold v. Connecticut

Author: U.S. Supreme Court

Date: June 7, 1965

Source: 381 U.S. 479

This case was argued March 29-30, 1965, and was decided June 7, 1965.

APPEAL FROM THE SUPREME COURT

OF ERRORS OF CONNECTICUT

Syllabus

1965, Griswold v. Connecticut, 381 U.S. 479

Appellants, the Executive Director of the Planned Parenthood League of Connecticut, and its medical director, a licensed physician, were convicted as accessories for giving married persons information and medical advice on how to prevent conception and, following examination, prescribing a contraceptive device or material for the wife's use. A Connecticut statute makes it a crime for any person to use any drug or article to prevent conception. Appellants claimed that the accessory statute, as applied, violated the Fourteenth Amendment. An intermediate appellate court and the State's highest court affirmed the judgment.

1965, Griswold v. Connecticut, 381 U.S. 479

Held:

1965, Griswold v. Connecticut, 381 U.S. 479

1. Appellants have standing to assert the constitutional rights of the married people. Tileston v. Ullman, 318 U.S. 44, distinguished. P. 481.

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2. The Connecticut statute forbidding use of contraceptives violates the right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights. Pp. 481-486.

1965, Griswold v. Connecticut, 381 U.S. 479

151 Conn. 544, 200 A.2d 479, reversed. [381 U.S. 480]

DOUGLAS, J., lead opinion

1965, Griswold v. Connecticut, 381 U.S. 480

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

1965, Griswold v. Connecticut, 381 U.S. 480

Appellant Griswold is Executive Director of the Planned Parenthood League of Connecticut. Appellant Buxton is a licensed physician and a professor at the Yale Medical School who served as Medical Director for the League at its Center in New Haven—a center open and operating from November 1 to November 10, 1961, when appellants were arrested.

1965, Griswold v. Connecticut, 381 U.S. 480

They gave information, instruction, and medical advice to married persons as to the means of preventing conception. They examined the wife and prescribed the best contraceptive device or material for her use. Fees were usually charged, although some couples were serviced free.

1965, Griswold v. Connecticut, 381 U.S. 480

The statutes whose constitutionality is involved in this appeal are §§ 53-32 and 54-196 of the General Statutes of Connecticut (1958 rev.). The former provides:

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Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned.

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Section 54-196 provides:

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Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender.

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The appellants were found guilty as accessories and fined $100 each, against the claim that the accessory statute, as so applied, violated the Fourteenth Amendment. The Appellate Division of the Circuit Court affirmed. The Supreme Court of Errors affirmed that judgment. 151 Conn. 544, 200 A.2d 479. We noted probable jurisdiction. 379 U.S. 926. [381 U.S. 481]

1965, Griswold v. Connecticut, 381 U.S. 481

We think that appellants have standing to raise the constitutional rights of the married people with whom they had a professional relationship. Tileston v. Ullman, 318 U.S. 44, is different, for there the plaintiff seeking to represent others asked for a declaratory Judgment. In that situation, we thought that the requirements of standing should be strict, lest the standards of "case or controversy" in Article III of the Constitution become blurred. Here, those doubts are removed by reason of a criminal conviction for serving married couples in violation of an aiding-and-abetting statute. Certainly the accessory should have standing to assert that the offense which he is charged with assisting is not, or cannot constitutionally be, a crime.

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This case is more akin to Truax v. Raich, 239 U.S. 33, where an employee was permitted to assert the rights of his employer; to Pierce v. Society of Sisters, 268 U.S. 510, where the owners of private schools were entitled to assert the rights of potential pupils and their parents, and to Barrows v. Jackson, 346 U.S. 249, where a white defendant, party to a racially restrictive covenant, who was being sued for damages by the covenantors because she had conveyed her property to Negroes, was allowed to raise the issue that enforcement of the covenant violated the rights of prospective Negro purchasers to equal protection, although no Negro was a party to the suit. And see Meyer v. Nebraska, 262 U.S. 390; Adler v. Board of Education, 342 U.S. 485; NAACP v. Alabama, 357 U.S. 449; NAACP v. Button, 371 U.S. 415. The rights of husband and wife, pressed here, are likely to be diluted or adversely affected unless those rights are considered in a suit involving those who have this kind of confidential relation to them.

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Coming to the merits, we are met with a wide range of questions that implicate the Due Process Clause of the Fourteenth Amendment. Overtones of some arguments [381 U.S. 482] suggest that Lochner v. New York, 198 U.S. 45, should be our guide. But we decline that invitation, as we did in West Coast Hotel Co. v. Parrish, 300 U.S. 379; Olsen v. Nebraska, 313 U.S. 236; Lincoln Union v. Northwestern Co., 335 U.S. 525; Williamson v. Lee Optical Co., 348 U.S. 483; Giboney v. Empire Storage Co., 336 U.S. 490. We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions. This law, however, operates directly on an intimate relation of husband and wife and their physician's role in one aspect of that relation.

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The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents' choice—whether public or private or parochial—is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights.

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By Pierce v. Society of Sisters, supra, the right to educate one's children as one chooses is made applicable to the States by the force of the First and Fourteenth Amendments. By Meyer v. Nebraska, supra, the same dignity is given the right to study the German language in a private school. In other words, the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read (Martin v. Struthers, 319 U.S. 141, 143) and freedom of inquiry, freedom of thought, and freedom to teach (see Wiemann v. Updegraff, 344 U.S. 183, 195)—indeed, the freedom of the entire university community. Sweezy v. New Hampshire, 354 U.S. 234, 249-250, 261-263; Barenblatt v. United States, 360 U.S. 109, 112; Baggett v. Bullitt, 377 U.S. 360, 369. Without [381 U.S. 483] those peripheral rights, the specific rights would be less secure. And so we reaffirm the principle of the Pierce and the Meyer cases.

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In NAACP v. Alabama, 357 U.S. 449, 462 we protected the "freedom to associate and privacy in one's associations," noting that freedom of association was a peripheral First Amendment right. Disclosure of membership lists of a constitutionally valid association, we held, was invalid

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as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association.

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Ibid. In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion. In like context, we have protected forms of "association" that are not political in the customary sense, but pertain to the social, legal, and economic benefit of the members. NAACP v. Button, 371 U.S. 415, 430-431. In Schware v. Board of Bar Examiners, 353 U.S. 232, we held it not permissible to bar a lawyer from practice because he had once been a member of the Communist Party. The man's "association with that Party" was not shown to be "anything more than a political faith in a political party" (id. at 244), and was not action of a kind proving bad moral character. Id. at 245-246.

1965, Griswold v. Connecticut, 381 U.S. 483

Those cases involved more than the "right of assembly"—a right that extends to all, irrespective of their race or ideology. De Jonge v. Oregon, 299 U.S. 353. The right of "association," like the right of belief (Board of Education v. Barnette, 319 U.S. 624), is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. Association in that context is a form of expression of opinion, and, while it is not expressly included in the First Amendment, its existence is necessary in making the express guarantees fully meaningful. [381 U.S. 484]

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The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. See Poe v. Ullman, 367 U.S. 497, 516-522 (dissenting opinion). Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment, in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner, is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment, in its Self-Incrimination Clause, enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

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The Fourth and Fifth Amendments were described in Boyd v. United States, 116 U.S. 616, 630, as protection against all governmental invasions "of the sanctity of a man's home and the privacies of life."\* We recently referred [381 U.S. 485] in Mapp v. Ohio, 367 U.S. 643, 656, to the Fourth Amendment as creating a "right to privacy, no less important than any other right carefully an particularly reserved to the people." See Beaney, The Constitutional Right to Privacy, 1962 Sup.Ct.Rev. 212; Griswold, The Right to be Let Alone, 55 Nw.U.L.Rev. 216 (1960).

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We have had many controversies over these penumbral rights of "privacy and repose." See, e.g., Breard v. Alexandria, 341 U.S. 622, 626, 644; Public Utilities Comm'n v. Pollak, 343 U.S. 451; Monroe v. Pape, 365 U.S. 167; Lanza v. New York, 370 U.S. 139; Frank v. Maryland, 359 U.S. 360; Skinner v. Oklahoma, 316 U.S. 535, 541. These cases bear witness that the right of privacy which presses for recognition here is a legitimate one.

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The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives, rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a

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governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.

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NAACP v. Alabama, 377 U.S. 288, 307. Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The [381 U.S. 486] very idea is repulsive to the notions of privacy surrounding the marriage relationship.

1965, Griswold v. Connecticut, 381 U.S. 486

We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

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Reversed.

GOLDBERG, J., concurring

1965, Griswold v. Connecticut, 381 U.S. 486

MR. JUSTICE GOLDBERG, whom THE CHIEF JUSTICE and MR. JUSTICE BRENNAN join, concurring.

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I agree with the Court that Connecticut's birth control law unconstitutionally intrudes upon the right of marital privacy, and I join in its opinion and judgment. Although I have not accepted the view that "due process," as used in the Fourteenth Amendment, incorporates all of the first eight Amendments (see my concurring opinion in Pointer v. Texas, 380 U.S. 400, 410, and the dissenting opinion of MR. JUSTICE BRENNAN in Cohen v. Hurley, 366 U.S. 117, 154), I do agree that the concept of liberty protects those personal rights that are fundamental, and is not confined to the specific terms of the Bill of Rights. My conclusion that the concept of liberty is not so restricted, and that it embraces the right of marital privacy, though that right is not mentioned explicitly in the Constitution, 1 is supported both by numerous [381 U.S. 487] decisions of this Court, referred to in the Court's opinion, and by the language and history of the Ninth Amendment. In reaching the conclusion that the right of marital privacy is protected as being within the protected penumbra of specific guarantees of the Bill of Rights, the Court refers to the Ninth Amendment, ante at 484. I add these words to emphasize the relevance of that Amendment to the Court's holding.

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The Court stated many years ago that the Due Process Clause protects those liberties that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental." Snyder v. Massachusetts, 291 U.S. 7, 105. In Gitlow v. New York, 268 U.S. 652, 666, the Court said:

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For present purposes, we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States.

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(Emphasis added.) [381 U.S. 488] And, in Meyer v. Nebraska, 262 U.S. 390, 399, the Court, referring to the Fourteenth Amendment, stated:

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While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also [for example,] the right…to marry, establish a home and bring up children….

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This Court, in a series of decisions, has held that the Fourteenth Amendment absorbs and applies to the States those specifics of the first eight amendments which express fundamental personal rights. 2 The language and history of the Ninth Amendment reveal that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments. The Ninth Amendment reads, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The Amendment is almost entirely the work of James Madison. It was introduced in Congress by him, and passed the House and Senate with little or no debate and virtually no change in language. It was proffered to quiet expressed fears that a bill of specifically enumerated rights 3 could not be sufficiently broad to cover all essential [381 U.S. 489] rights, and that the specific mention of certain rights would be interpreted as a denial that others were protected. 4

1965, Griswold v. Connecticut, 381 U.S. 489

In presenting the proposed Amendment, Madison said:

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It has been objected also against a bill of rights that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration, and it might follow, by implication, that those rights which were not singled out were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system, but I conceive that it may be guarded against. I have attempted it, as gentlemen may see by turning to the [381 U.S. 490] last clause of the fourth resolution [the Ninth Amendment].

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I Annals of Congress 439 (Gales and Seaton ed. 1834). Mr. Justice Story wrote of this argument against a bill of rights and the meaning of the Ninth Amendment:

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In regard to…[a] suggestion, that the affirmance of certain rights might disparage others, or might lead to argumentative implications in favor of other powers, it might be sufficient to say that such a course of reasoning could never be sustained upon any solid basis…. But a conclusive answer is that such an attempt may be interdicted (as it has been) by a positive declaration in such a bill of rights that the enumeration of certain rights shall not be construed to deny or disparage others retained by the people.

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II Story, Commentaries on the Constitution of the United States 626-627 (5th ed. 1891). He further stated, referring to the Ninth Amendment:

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This clause was manifestly introduced to prevent any perverse or ingenious misapplication of the well known maxim that an affirmation in particular cases implies a negation in all others, and, e converso, that a negation in particular cases implies an affirmation in all others.

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Id. at 651. These statements of Madison and Story make clear that the Framers did not intend that the first eight amendments be construed to exhaust the basic and fundamental rights which the Constitution guaranteed to the people. 5

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While this Court has had little occasion to interpret the Ninth Amendment, 6 "[i]t cannot be presumed that any [381 U.S. 491] clause in the constitution is intended to be without effect." Marbury v. Madison, 1 Cranch. 137, 174. In interpreting the Constitution, "real effect should be given to all the words it uses." Myers v. United States, 272 U.S. 52, 151. The Ninth Amendment to the Constitution may be regarded by some as a recent discovery, and may be forgotten by others, but, since 1791, it has been a basic part of the Constitution which we are sworn to uphold. To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments to the Constitution is to ignore the Ninth Amendment, and to give it no effect whatsoever. Moreover, a judicial construction that this fundamental right is not protected by the Constitution because it is not mentioned in explicit terms by one of the first eight amendments or elsewhere in the Constitution would violate the Ninth Amendment, which specifically states that [381 U.S. 492] "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." (Emphasis added.)

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A dissenting opinion suggests that my interpretation of the Ninth Amendment somehow "broaden[s] the powers of this Court." Post at 520. With all due respect, I believe that it misses the import of what I am saying. I do not take the position of my Brother BLACK in his dissent in Adamson v. California, 332 U.S. 46, 68, that the entire Bill of Rights is incorporated in the Fourteenth Amendment, and I do not mean to imply that the Ninth Amendment is applied against the States by the Fourteenth. Nor do I mean to state that the Ninth Amendment constitutes an independent source of rights protected from infringement by either the States or the Federal Government. Rather, the Ninth Amendment shows a belief of the Constitution's authors that fundamental rights exist that are not expressly enumerated in the first eight amendments, and an intent that the list of rights included there not be deemed exhaustive. As any student of this Court's opinions knows, this Court has held, often unanimously, that the Fifth and Fourteenth Amendments protect certain fundamental personal liberties from abridgment by the Federal Government or the States. See, e.g., Bolling v. Sharpe, 347 U.S. 497; Aptheker v. Secretary of State, 378 U.S. 500; Kent v. Dulles, 357 U.S. 116, Cantwell v. Connecticut, 310 U.S. 296; NAACP v. Alabama, 357 U.S. 449; Gideon v. Wainwright, 372 U.S. 335; New York Times Co. v. Sullivan, 376 U.S. 254. The Ninth Amendment simply shows the intent of the Constitution's authors that other fundamental personal rights should not be denied such protection or disparaged in any other way simply because they are not specifically listed in the first eight constitutional amendments. I do not see how this broadens the authority [381 U.S. 493] of the Court; rather it serves to support what this Court has been doing in protecting fundamental rights.

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Nor am I turning somersaults with history in arguing that the Ninth Amendment is relevant in a case dealing with a State's infringement of a fundamental right. While the Ninth Amendment—and indeed the entire Bill of Rights—originally concerned restrictions upon federal power, the subsequently enacted Fourteenth Amendment prohibits the States as well from abridging fundamental personal liberties. And the Ninth Amendment, in indicating that not all such liberties are specifically mentioned in the first eight amendments, is surely relevant in showing the existence of other fundamental personal rights, now protected from state, as well as federal, infringement. In sum, the Ninth Amendment simply lends strong support to the view that the "liberty" protected by the Fifth and Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentioned in the first eight amendments. Cf. United Public Workers v. Mitchell, 330 U.S. 75, 94-95.

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In determining which rights are fundamental, judges are not left at large to decide cases in light of their personal and private notions. Rather, they must look to the "traditions and [collective] conscience of our people" to determine whether a principle is "so rooted [there]…as to be ranked as fundamental." Snyder v. Massachusetts, 291 U.S. 97, 105. The inquiry is whether a right involved

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is of such a character that it cannot be denied without violating those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions."…

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Powell v. Alabama, 287 U.S. 45, 67. "Liberty" also "gains content from the emanations of…specific [constitutional] guarantees," and "from experience with the requirements of a free society." Poe [381 U.S. 494] v. Ullman, 367 U.S. 497, 517 (dissenting opinion of MR. JUSTICE DOUGLAS). 7

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I agree fully with the Court that, applying these tests, the right of privacy is a fundamental personal right, emanating "from the totality of the constitutional scheme under which we live." Id. at 521. Mr. Justice Brandeis, dissenting in Olmstead v. United States, 277 U.S. 438, 478, comprehensively summarized the principles underlying the Constitution's guarantees of privacy:

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The protection guaranteed by the [Fourth and Fifth] Amendments is much broader in scope. The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. [381 U.S. 495]

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The Connecticut statutes here involved deal with a particularly important and sensitive area of privacy—that of the marital relation and the marital home. This Court recognized in Meyer v. Nebraska, supra, that the right "to marry, establish a home and bring up children" was an essential part of the liberty guaranteed by the Fourteenth Amendment. 262 U.S. at 399. In Pierce v. Society of Sisters, 268 U.S. 510, the Court held unconstitutional an Oregon Act which forbade parents from sending their children to private schools because such an act "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control." 268 U.S. at 534-535. As this Court said in Prince v. Massachusetts, 321 U.S. 158, at 166, the Meyer and Pierce decisions "have respected the private realm of family life which the state cannot enter."

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I agree with MR. JUSTICE HARLAN's statement in his dissenting opinion in Poe v. Ullman, 367 U.S. 497, 551-552:

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Certainly the safeguarding of the home does not follow merely from the sanctity of property rights. The home derives its preeminence as the seat of family life. And the integrity of that life is something so fundamental that it has been found to draw to its protection the principles of more than one explicitly granted Constitutional right…. Of this whole "private realm of family life," it is difficult to imagine what is more private or more intimate than a husband and wife's marital relations.

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The entire fabric of the Constitution and the purposes that clearly underlie its specific guarantees demonstrate that the rights to marital privacy and to marry and raise a family are of similar order and magnitude as the fundamental rights specifically protected.

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Although the Constitution does not speak in so many words of the right of privacy in marriage, I cannot believe that it offers these fundamental rights no protection. The fact that no particular provision of the Constitution [381 U.S. 496] explicitly forbids the State from disrupting the traditional relation of the family—a relation as old and as fundamental as our entire civilization—surely does not show that the Government was meant to have the power to do so. Rather, as the Ninth Amendment expressly recognizes, there are fundamental personal rights such as this one, which are protected from abridgment by the Government, though not specifically mentioned in the Constitution.

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My Brother STEWART, while characterizing the Connecticut birth control law as "an uncommonly silly law," post at 527, would nevertheless let it stand on the ground that it is not for the courts to "`substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.'" Post at 528. Elsewhere, I have stated that,

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[w]hile I quite agree with Mr. Justice Brandeis that…"a…State may…serve as a laboratory, and try novel social and economic experiments," New State Ice Co. v. Liebmann, 285 U.S. 262, 280, 311 (dissenting opinion), I do not believe that this includes the power to experiment with the fundamental liberties of citizens…. 8

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The vice of the dissenters' views is that it would permit such experimentation by the States in the area of the fundamental personal rights of its citizens. I cannot agree that the Constitution grants such power either to the States or to the Federal Government.

1965, Griswold v. Connecticut, 381 U.S. 496

The logic of the dissents would sanction federal or state legislation that seems to me even more plainly unconstitutional than the statute before us. Surely the Government, absent a showing of a compelling subordinating state interest, could not decree that all husbands and wives must be sterilized after two children have been born [381 U.S. 497] to them. Yet, by their reasoning, such an invasion of marital privacy would not be subject to constitutional challenge, because, while it might be "silly," no provision of the Constitution specifically prevents the Government from curtailing the marital right to bear children and raise a family. While it may shock some of my Brethren that the Court today holds that the Constitution protects the right of marital privacy, in my view, it is far more shocking to believe that the personal liberty guaranteed by the Constitution does not include protection against such totalitarian limitation of family size, which is at complete variance with our constitutional concepts. Yet if, upon a showing of a slender basis of rationality, a law outlawing voluntary birth control by married persons is valid, then, by the same reasoning, a law requiring compulsory birth control also would seem to be valid. In my view, however, both types of law would unjustifiably intrude upon rights of marital privacy which are constitutionally protected.

1965, Griswold v. Connecticut, 381 U.S. 497

In a long series of cases, this Court has held that, where fundamental personal liberties are involved, they may not be abridged by the States simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose.

1965, Griswold v. Connecticut, 381 U.S. 497

Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling,

1965, Griswold v. Connecticut, 381 U.S. 497

Bates v. Little Rock, 361 U.S. 516, 524. The law must be shown "necessary, and not merely rationally related, to the accomplishment of a permissible state policy." McLaughlin v. Florida, 379 U.S. 184, 196. See Schneider v. Irvington, 308 U.S. 147, 161.

1965, Griswold v. Connecticut, 381 U.S. 497

Although the Connecticut birth control law obviously encroaches upon a fundamental personal liberty, the State does not show that the law serves any "subordinating [state] interest which is compelling," or that it is "necessary [381 U.S. 498] …to the accomplishment of a permissible state policy." The State, at most, argues that there is some rational relation between this statute and what is admittedly a legitimate subject of state concern—the discouraging of extramarital relations. It says that preventing the use of birth control devices by married persons helps prevent the indulgence by some in such extramarital relations. The rationality of this justification is dubious, particularly in light of the admitted widespread availability to all persons in the State of Connecticut. unmarried as well as married, of birth control devices for the prevention of disease, as distinguished from the prevention of conception, see Tileston v. Ullman, 129 Conn. 84, 26 A.2d 582. But, in any event, it is clear that the state interest in safeguarding marital fidelity can be served by a more discriminately tailored statute which does not, like the present one, sweep unnecessarily broadly, reaching far beyond the evil sought to be dealt with and intruding upon the privacy of all married couples. See Aptheker v. Secretary of State, 378 U.S. 500, 514; NAACP v. Alabama, 377 U.S. 288, 307-308; McLaughlin v. Florida, supra, at 196. Here, as elsewhere, "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." NAACP v. Button, 371 U.S. 415, 438. The State of Connecticut does have statutes, the constitutionality of which is beyond doubt, which prohibit adultery and fornication. See Conn.Gen.Stat. §§ 53-218, 53-219 et seq. These statutes demonstrate that means for achieving the same basic purpose of protecting marital fidelity are available to Connecticut without the need to "invade the area of protected freedoms." NAACP v. Alabama, supra, at 307. See McLaughlin v. Florida, supra, at 196.

1965, Griswold v. Connecticut, 381 U.S. 498

Finally, it should be said of the Court's holding today that it in no way interferes with a State's proper regulation [381 U.S. 499] of sexual promiscuity or misconduct. As my Brother HARLAN so well stated in his dissenting opinion in Poe v. Ullman, supra, at 553.

1965, Griswold v. Connecticut, 381 U.S. 499

Adultery, homosexuality and the like are sexual intimacies which the State forbids…, but the intimacy of husband and wife is necessarily an essential and accepted feature of the institution of marriage, an institution which the State not only must allow, but which, always and in every age, it has fostered and protected. It is one thing when the State exerts its power either to forbid extramarital sexuality…or to say who may marry, but it is quite another when, having acknowledged a marriage and the intimacies inherent in it, it undertakes to regulate by means of the criminal law the details of that intimacy.

1965, Griswold v. Connecticut, 381 U.S. 499

In sum, I believe that the right of privacy in the marital relation is fundamental and basic—a personal right "retained by the people" within the meaning of the Ninth Amendment. Connecticut cannot constitutionally abridge this fundamental right, which is protected by the Fourteenth Amendment from infringement by the States. I agree with the Court that petitioners' convictions must therefore be reversed.

HARLAN, J., concurring

1965, Griswold v. Connecticut, 381 U.S. 499

MR. JUSTICE HARLAN, concurring in the judgment.

1965, Griswold v. Connecticut, 381 U.S. 499

I fully agree with the judgment of reversal, but find myself unable to join the Court's opinion. The reason is that it seems to me to evince an approach to this case very much like that taken by my Brothers BLACK and STEWART in dissent, namely: the Due Process Clause of the Fourteenth Amendment does not touch this Connecticut statute unless the enactment is found to violate some right assured by the letter or penumbra of the Bill of Rights. [381 U.S. 500]

1965, Griswold v. Connecticut, 381 U.S. 500

In other words, what I find implicit in the Court's opinion is that the "incorporation" doctrine may be used to restrict the reach of Fourteenth Amendment Due Process. For me, this is just as unacceptable constitutional doctrine as is the use of the "incorporation" approach to impose upon the States all the requirements of the Bill of Rights as found in the provisions of the first eight amendments and in the decisions of this Court interpreting them. See, e.g., my concurring opinions in Pointer v. Texas, 380 U.S. 400, 408, and Griffin v. California, 380 U.S. 609, 615, and my dissenting opinion in Poe v. Ullman, 367 U.S. 497, 522, at pp. 539-545.

1965, Griswold v. Connecticut, 381 U.S. 500

In my view, the proper constitutional inquiry in this case is whether this Connecticut statute infringes the Due Process Clause of the Fourteenth Amendment because the enactment violates basic values "implicit in the concept of ordered liberty," Palko v. Connecticut, 302 U.S. 319, 325. For reasons stated at length in my dissenting opinion in Poe v. Ullman, supra, I believe that it does. While the relevant inquiry may be aided by resort to one or more of the provisions of the Bill of Rights, it is not dependent on them or any of their radiations. The Due Process Clause of the Fourteenth Amendment stands, in my opinion, on its own bottom.

1965, Griswold v. Connecticut, 381 U.S. 500

A further observation seems in order respecting the justification of my Brothers BLACK and STEWART for their "incorporation" approach to this case. Their approach does not rest on historical reasons, which are, of course, wholly lacking (see Fairman, Does the Fourteenth Amendment Incorporate the Bill of Rights? The Original Understanding, 2 Stan.L.Rev. 5 (1949)), but on the thesis that, by limiting the content of the Due Process Clause of the Fourteenth Amendment to the protection of rights which can be found elsewhere in the Constitution, in this instance, in the Bill of Rights, judges will thus be confined to "interpretation" of specific constitutional [381 U.S. 501] provisions, and will thereby be restrained from introducing their own notions of constitutional right and wrong into the "vague contours of the Due Process Clause." Rochin v. California, 342 U.S. 165, 170. While I could not more heartily agree that judicial "self-restraint" is an indispensable ingredient of sound constitutional adjudication, I do submit that the formula suggested for achieving it is more hollow than real. "Specific" provisions of the Constitution, no less than "due process," lend themselves as readily to "personal" interpretations by judges whose constitutional outlook is simply to keep the Constitution in supposed "tune with the times" (post, p. 522). Need one go further than to recall last Term's reapportionment cases, Wesberry v. Sanders, 376 U.S. 1, and Reynolds v. Sims, 377 U.S. 533, where a majority of the Court "interpreted" "by the People" (Art. I, § 2) and "equal protection" (Amdt. 14) to command "one person, one vote," an interpretation that was made in the face of irrefutable and still unanswered history to the contrary? See my dissenting opinions in those cases, 376 U.S. at 20; 377 U.S. at 589.

1965, Griswold v. Connecticut, 381 U.S. 501

Judicial self-restraint will not, I suggest, be brought about in the "due process" area by the historically unfounded incorporation formula long advanced by my Brother BLACK, and now in part espoused by my Brother STEWART. It will be achieved in this area, as in other constitutional areas, only by continual insistence upon respect for the teachings of history, solid recognition of the basic values that underlie our society, and wise appreciation of the great roles that the doctrines of federalism and separation of powers have played in establishing and preserving American freedoms. See Adamson v. California, 332 U.S. 46, 59 (Mr. Justice Frankfurter, concurring). Adherence to these principles will not, of course, obviate all constitutional differences of opinion among judges, nor should it. Their continued recognition [381 U.S. 502] will, however, go farther toward keeping most judges from roaming at large in the constitutional field than will the interpolation into the Constitution of an artificial and largely illusory restriction on the content of the Due Process Clause.\*

WHITE, J., concurring

1965, Griswold v. Connecticut, 381 U.S. 502

MR. JUSTICE WHITE, concurring in the judgment.

1965, Griswold v. Connecticut, 381 U.S. 502

In my view, this Connecticut law, as applied to married couples, deprives them of "liberty" without due process of law, as that concept is used in the Fourteenth Amendment. I therefore concur in the judgment of the Court reversing these convictions under Connecticut's aiding and abetting statute.

1965, Griswold v. Connecticut, 381 U.S. 502

It would be unduly repetitious, and belaboring the obvious, to expound on the impact of this statute on the liberty guaranteed by the Fourteenth Amendment against arbitrary or capricious denials or on the nature of this liberty. Suffice it to say that this is not the first time this Court has had occasion to articulate that the liberty entitled to protection under the Fourteenth Amendment includes the right "to marry, establish a home and bring up children," Meyer v. Nebraska, 262 U.S. 390, 399, and "the liberty…to direct the upbringing and education of children," Pierce v. Society of Sisters, 268 U.S. 510, 534-535, and that these are among "the basic civil rights of man." Skinner v. Oklahoma, 316 U.S. 535, 541. These decisions affirm that there is a "realm of family life which the state cannot enter" without substantial justification. Prince v. Massachusetts, 321 U.S. 158, 166. Surely the right invoked in this case, to be free of regulation of the intimacies of [381 U.S. 503] the marriage relationship,

1965, Griswold v. Connecticut, 381 U.S. 503

come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.

1965, Griswold v. Connecticut, 381 U.S. 503

Kovacs v. Cooper, 336 U.S. 77, 95 (opinion of Frankfurter, J.).

1965, Griswold v. Connecticut, 381 U.S. 503

The Connecticut anti-contraceptive statute deals rather substantially with this relationship. For it forbids all married persons the right to use birth control devices, regardless of whether their use is dictated by considerations of family planning, Trubek v. Ullman, 147 Conn. 633, 165 A.2d 158, health, or indeed even of life itself. Buxton v. Ullman, 147 Conn. 48, 156 A.2d 508. The anti-use statute, together with the general aiding and abetting statute, prohibits doctors from affording advice to married persons on proper and effective methods of birth control. Tileston v. Ullman, 129 Conn. 84, 26 A.2d 582. And the clear effect of these statutes, as enforced, is to deny disadvantaged citizens of Connecticut, those without either adequate knowledge or resources to obtain private counseling, access to medical assistance and up-to-date information in respect to proper methods of birth control. State v. Nelson, 126 Conn. 412, 11 A.2d 856; State v. Griswold, 151 Conn. 544, 200 A.2d 479. In my view, a statute with these effects bears a substantial burden of justification when attacked under the Fourteenth Amendment. Yick Wo v. Hopkins, 118 U.S. 356; Skinner v. Oklahoma, 316 U.S. 535; Schware v. Board of Bar Examiners, 353 U.S. 232; McLaughlin v. Florida, 379 U.S. 184, 192.

1965, Griswold v. Connecticut, 381 U.S. 503

An examination of the justification offered, however, cannot be avoided by saying that the Connecticut anti-use statute invades a protected area of privacy and association or that it demeans the marriage relationship. The nature of the right invaded is pertinent, to be sure, for statutes regulating sensitive areas of liberty do, under [381 U.S. 504] the cases of this Court, require "strict scrutiny," Skinner v. Oklahoma, 316 U.S. 535, 541, and "must be viewed in the light of less drastic means for achieving the same basic purpose." Shelton v. Tucker, 364 U.S. 479, 488.

1965, Griswold v. Connecticut, 381 U.S. 504

Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling.

1965, Griswold v. Connecticut, 381 U.S. 504

Bates v. Little Rock, 361 U.S. 516, 524. See also McLaughlin v. Florida, 379 U.S. 184. But such statutes, if reasonably necessary for the effectuation of a legitimate and substantial state interest, and not arbitrary or capricious in application, are not invalid under the Due Process Clause. Zemel v. Rusk, 381 U.S. 1.\* [381 U.S. 505]

1965, Griswold v. Connecticut, 381 U.S. 505

As I read the opinions of the Connecticut courts and the argument of Connecticut in this Court, the State claims but one justification for its anti-use statute. Cf. Allied Stores of Ohio v. Bowers, 358 U.S. 522, 530; Martin v. Walton, 368 U.S. 25, 28 (DOUGLAS, J., dissenting). There is no serious contention that Connecticut thinks the use of artificial or external methods of contraception immoral or unwise in itself, or that the anti-use statute is founded upon any policy of promoting population expansion. Rather, the statute is said to serve the State's policy against all forms of promiscuous or illicit sexual relationships, be they premarital or extramarital, concededly a permissible and legitimate legislative goal.

1965, Griswold v. Connecticut, 381 U.S. 505

Without taking issue with the premise that the fear of conception operates as a deterrent to such relationships in addition to the criminal proscriptions Connecticut has against such conduct, I wholly fail to see how the ban on the use of contraceptives by married couples in any way reinforces the State's ban on illicit sexual relationships. See Schware v. Board of Bar Examiners, 353 U.S. 232, 239. Connecticut does not bar the importation or possession of contraceptive devices; they are not considered contraband material under state law, State v. Certain Contraceptive Materials, 126 Conn. 428, 11 A.2d 863, and their availability in that State is not seriously disputed. The only way Connecticut seeks to limit or control the availability of such devices is through its general aiding and abetting statute, whose operation in this context has [381 U.S. 506] been quite obviously ineffective, and whose most serious use has been against birth control clinics rendering advice to married, rather than unmarried, persons. Cf. Yick Wo v. Hopkins, 118 U.S. 356. Indeed, after over 80 years of the State's proscription of use, the legality of the sale of such devices to prevent disease has never been expressly passed upon, although it appears that sales have long occurred and have only infrequently been challenged. This "undeviating policy…throughout all the long years…bespeaks more than prosecutorial paralysis." Poe v. Ullman, 367 U.S. 497, 502. Moreover, it would appear that the sale of contraceptives to prevent disease is plainly legal under Connecticut law.

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In these circumstances, one is rather hard pressed to explain how the ban on use by married persons in any way prevents use of such devices by persons engaging in illicit sexual relations, and thereby contributes to the State's policy against such relationships. Neither the state courts nor the State before the bar of this Court has tendered such an explanation. It is purely fanciful to believe that the broad proscription on use facilitates discovery of use by persons engaging in a prohibited relationship, or for some other reason makes such use more unlikely, and thus can be supported by any sort of administrative consideration. Perhaps the theory is that the flat ban on use prevents married people from possessing contraceptives and, without the ready availability of such devices for use in the marital relationship, there will be no or less temptation to use them in extramarital ones. This reasoning rests on the premise that married people will comply with the ban in regard to their marital relationship, notwithstanding total nonenforcement in this context and apparent nonenforcibility, but will not comply with criminal statutes prohibiting extramarital affairs and the anti-use statute in respect to illicit sexual relationships, a premise whose validity has not been [381 U.S. 507] demonstrated and whose intrinsic validity is not very evident. At most, the broad ban is of marginal utility to the declared objective. A statute limiting its prohibition on use to persons engaging in the prohibited relationship would serve the end posited by Connecticut in the same way, and with the same effectiveness or ineffectiveness, as the broad anti-use statute under attack in this case. I find nothing in this record justifying the sweeping scope of this statute, with its telling effect on the freedoms of married persons, and therefore conclude that it deprives such persons of liberty without due process of law.

BLACK, J., dissenting

1965, Griswold v. Connecticut, 381 U.S. 507

MR. JUSTICE BLACK, with whom MR. JUSTICE STEWART joins, dissenting.

1965, Griswold v. Connecticut, 381 U.S. 507

I agree with my Brother STEWART's dissenting opinion. And, like him, I do not to any extent whatever base my view that this Connecticut law is constitutional on a belief that the law is wise, or that its policy is a good one. In order that there may be no room at all to doubt why I vote as I do, I feel constrained to add that the law is every bit as offensive to me as it is to my Brethren of the majority and my Brothers HARLAN, WHITE and GOLDBERG, who, reciting reasons why it is offensive to them, hold it unconstitutional. There is no single one of the graphic and eloquent strictures and criticisms fired at the policy of this Connecticut law either by the Court's opinion or by those of my concurring Brethren to which I cannot subscribe—except their conclusion that the evil qualities they see in the law make it unconstitutional.

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Had the doctor defendant here, or even the nondoctor defendant, been convicted for doing nothing more than expressing opinions to persons coming to the clinic that certain contraceptive devices, medicines or practices would do them good and would be desirable, or for telling people how devices could be used, I can think of no reasons at this time why their expressions of views would not be [381 U.S. 508] protected by the First and Fourteenth Amendments, which guarantee freedom of speech. Cf. Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1; NAACP v. Button, 371 U.S. 415. But speech is one thing; conduct and physical activities are quite another. See, e.g., Cox v. Louisiana, 379 U.S. 536, 554-555; Cox v. Louisiana, 379 U.S. 559, 563-564; id. 575-584 (concurring opinion); Giboney v. Empire Storage & Ice Co., 336 U.S. 490; cf. Reynolds v. United States, 98 U.S. 145, 163-164. The two defendants here were active participants in an organization which gave physical examinations to women, advised them what kind of contraceptive devices or medicines would most likely be satisfactory for them, and then supplied the devices themselves, all for a graduated scale of fees, based on the family income. Thus, these defendants admittedly engaged with others in a planned course of conduct to help people violate the Connecticut law. Merely because some speech was used in carrying on that conduct—just as, in ordinary life, some speech accompanies most kinds of conduct—we are not, in my view, justified in holding that the First Amendment forbids the State to punish their conduct. Strongly as I desire to protect all First Amendment freedoms, I am unable to stretch the Amendment so as to afford protection to the conduct of these defendants in violating the Connecticut law. What would be the constitutional fate of the law if hereafter applied to punish nothing but speech is, as I have said, quite another matter. The Court talks about a constitutional "right of privacy" as though there is some constitutional provision or provisions forbidding any law ever to be passed which might abridge the "privacy" of individuals. But there is not. There are, of course, guarantees in certain specific constitutional provisions which are designed in part to protect privacy at certain times and places with respect to certain activities. Such, for example, is the Fourth [381 U.S. 509] Amendment's guarantee against "unreasonable searches and seizures." But I think it belittles that Amendment to talk about it as though it protects nothing but "privacy." To treat it that way is to give it a niggardly interpretation, not the kind of liberal reading I think any Bill of Rights provision should be given. The average man would very likely not have his feelings soothed any more by having his property seized openly than by having it seized privately and by stealth. He simply wants his property left alone. And a person can be just as much, if not more, irritated, annoyed and injured by an unceremonious public arrest by a policeman as he is by a seizure in the privacy of his office or home.

1965, Griswold v. Connecticut, 381 U.S. 509

One of the most effective ways of diluting or expanding a constitutionally guaranteed right is to substitute for the crucial word or words of a constitutional guarantee another word or words, more or less flexible and more or less restricted in meaning. This fact is well illustrated by the use of the term "right of privacy" as a comprehensive substitute for the Fourth Amendment's guarantee against "unreasonable searches and seizures." "Privacy" is a broad, abstract and ambiguous concept which can easily be shrunken in meaning but which can also, on the other hand, easily be interpreted as a constitutional ban against many things other than searches and seizures. I have expressed the view many times that First Amendment freedoms, for example, have suffered from a failure of the courts to stick to the simple language of the First Amendment in construing it, instead of invoking multitudes of words substituted for those the Framers used. See, e.g., New York Times Co. v. Sullivan, 376 U.S. 254, 293 (concurring opinion); cases collected in City of El Paso v. Simmons, 379 U.S. 497, 517, n. 1 (dissenting opinion); Black, The Bill of Rights, 35 N.Y.U.L.Rev. 865. For these reasons, I get nowhere in this case by talk about a constitutional "right of privacy" as an emanation from [381 U.S. 510] one or more constitutional provisions. 1 I like my privacy as well as the next one, but I am nevertheless compelled to admit that government has a right to. invade it unless prohibited by some specific constitutional provision. For these reasons, I cannot agree with the Court's judgment and the reasons it gives for holding this Connecticut law unconstitutional.

1965, Griswold v. Connecticut, 381 U.S. 510

This brings me to the arguments made by my Brothers HARLAN, WHITE and GOLDBERG for invalidating the Connecticut law. Brothers HARLAN 2 and WHITE would invalidate it by reliance on the Due Process Clause of the Fourteenth Amendment, but Brother GOLDBERG, while agreeing with Brother HARLAN, relies also on the Ninth Amendment. I have no doubt that the Connecticut law could be applied in such a way as to abridge freedom of [381 U.S. 511] speech and press, and therefore violate the First and Fourteenth Amendments. My disagreement with the Court's opinion holding that there is such a violation here is a narrow one, relating to the application of the First Amendment to the facts and circumstances of this particular case. But my disagreement with Brothers HARLAN, WHITE and GOLDBERG is more basic. I think that, if properly construed, neither the Due Process Clause nor the Ninth Amendment, nor both together, could under any circumstances be a proper basis for invalidating the Connecticut law. I discuss the due process and Ninth Amendment arguments together because, on analysis, they turn out to be the same thing—merely using different words to claim for this Court and the federal judiciary power to invalidate any legislative act which the judges find irrational, unreasonable or offensive.

1965, Griswold v. Connecticut, 381 U.S. 511

The due process argument which my Brothers HARLAN and WHITE adopt here is based, as their opinions indicate, on the premise that this Court is vested with power to invalidate all state laws that it considers to be arbitrary, capricious, unreasonable, or oppressive, or on this Court's belief that a particular state law under scrutiny has no "rational or justifying" purpose, or is offensive to a "sense of fairness and justice." 3 If these formulas based on "natural justice," or others which mean the same thing, 4 are to prevail, they require judges to determine [381 U.S. 512] what is or is not constitutional on the basis of their own appraisal of what laws are unwise or unnecessary. The power to make such decisions is, of course, that of a legislative body. Surely it has to be admitted that no provision of the Constitution specifically gives such blanket power to courts to exercise such a supervisory veto over the wisdom and value of legislative policies and to hold unconstitutional those laws which they believe unwise or dangerous. I readily admit that no legislative body, state or national, should pass laws that can justly be given any [381 U.S. 513] of the invidious labels invoked as constitutional excuses to strike down state laws. But perhaps it is not too much to say that no legislative body ever does pass laws without believing that they will accomplish a sane, rational, wise and justifiable purpose. While I completely subscribe to the holding of Marbury v. Madison, 1 Cranch. 137, and subsequent cases, that our Court has constitutional power to strike down statutes, state or federal, that violate commands of the Federal Constitution, I do not believe that we are granted power by the Due Process Clause or any other constitutional provision or provisions to measure constitutionality by our belief that legislation is arbitrary, capricious or unreasonable, or accomplishes no justifiable purpose, or is offensive to our own notions of "civilized standards of conduct." 5 Such an appraisal of the wisdom of legislation is an attribute of the power to make laws, not of the power to interpret them. The use by federal courts of such a formula or doctrine or whatnot to veto federal or state laws simply takes away from Congress and States the power to make laws based on their own judgment of fairness and wisdom, and transfers that power to this Court for ultimate determination—a power which was specifically denied to federal courts by the convention that framed the Constitution. 6 [381 U.S. 514]

1965, Griswold v. Connecticut, 381 U.S. 514

Of the cases on which my Brothers WHITE and GOLDBERG rely so heavily, undoubtedly the reasoning of two of them supports their result here—as would that of a number of others which they do not bother to name, e.g., [381 U.S. 515] Lochner v. New York, 198 U.S. 45, Coppage v. Kansas, 236 U.S. 1, Jay Burns Baking Co. v. Bryan, 264 U.S. 504, and Adkins v. Children's Hospital, 261 U.S. 525. The two they do cite and quote from, Meyer v. Nebraska, 262 U.S. 390, and Pierce v. Society of Sisters, 268 U.S. 510, were both decided in opinions by Mr. Justice McReynolds which elaborated the same natural law due process philosophy found in Lochner v. New York, supra, one of the cases on which he relied in Meyer, along with such other long-discredited decisions as, e.g., Adams v. Tanner, 244 U.S. 590, and Adkins v. Children's Hospital, supra. Meyer held unconstitutional, as an "arbitrary" and unreasonable interference with the right of a teacher to carry on his occupation and of parents to hire him, a [381 U.S. 516] state law forbidding the teaching of modern foreign languages to young children in the schools. 7 And in Pierce, relying principally on Meyer, Mr. Justice McReynolds said that a state law requiring that all children attend public schools interfered unconstitutionally with the property rights of private school corporations because it was an "arbitrary, unreasonable and unlawful interference" which threatened "destruction of their business and property." 268 U.S. at 536. Without expressing an opinion as to whether either of those cases reached a correct result in light of our later decisions applying the First Amendment to the States through the Fourteenth, 8 I merely point out that the reasoning stated in Meyer and Pierce was the same natural law due process philosophy which many later opinions repudiated, and which I cannot accept. Brothers WHITE and GOLDBERG also cite other cases, such as NAACP v. Button, 371 U.S. 415, Shelton v. Tucker, 364 U.S. 479, and Schneider v. State, 308 U.S. 147, which held that States in regulating conduct could not, consistently with the First Amendment as applied to them by the Fourteenth, pass unnecessarily broad laws which might indirectly infringe on First Amendment freedoms. 9 See Brotherhood of Railroad Trainmen v. Virginia ex rel. [381 U.S. 517] Virginia State Bar, 377 U.S. 1, 7-8. 10 Brothers WHITE and GOLDBERG now apparently would start from this requirement that laws be narrowly drafted so as not to curtail free speech and assembly, and extend it limitlessly to require States to justify any law restricting "liberty" as my Brethren define "liberty." This would mean at the [381 U.S. 518] very least, I suppose, that every state criminal statute—since it must inevitably curtail "liberty" to some extent—would be suspect, and would have to be Justified to this Court. 11

1965, Griswold v. Connecticut, 381 U.S. 518

My Brother GOLDBERG has adopted the recent discovery 12 that the Ninth Amendment as well as the Due Process Clause can be used by this Court as authority to strike down all state legislation which this Court thinks [381 U.S. 519] violates "fundamental principles of liberty and justice," or is contrary to the "traditions and [collective] conscience of our people." He also states, without proof satisfactory to me, that, in making decisions on this basis, judges will not consider "their personal and private notions." One may ask how they can avoid considering them. Our Court certainly has no machinery with which to take a Gallup Poll. 13 And the scientific miracles of this age have not yet produced a gadget which the Court can use to determine what traditions are rooted in the "[collective] conscience of our people." Moreover, one would certainly have to look far beyond the language of the Ninth Amendment 14 to find that the Framers vested in this Court any such awesome veto powers over lawmaking, either by the States or by the Congress. Nor does anything in the history of the Amendment offer any support for such a shocking doctrine. The whole history of the adoption of the Constitution and Bill of Rights points the other way, and the very material quoted by my Brother GOLDBERG shows that the Ninth Amendment was intended to protect against the idea that, "by enumerating particular exceptions to the grant of power" to the Federal Government, "those rights which were not singled out were intended to be assigned into the hands of the General Government [the United States], and were consequently [381 U.S. 520] insecure." 15 That Amendment was passed not to broaden the powers of this Court or any other department of "the General Government," but, as every student of history knows, to assure the people that the Constitution in all its provisions was intended to limit the Federal Government to the powers granted expressly or by necessary implication. If any broad, unlimited power to hold laws unconstitutional because they offend what this Court conceives to be the "[collective] conscience of our people" is vested in this Court by the Ninth Amendment, the Fourteenth Amendment, or any other provision of the Constitution, it was not given by the Framers, but rather has been bestowed on the Court by the Court. This fact is perhaps responsible for the peculiar phenomenon that, for a period of a century and a half, no serious suggestion was ever made that the Ninth Amendment, enacted to protect state powers against federal invasion, could be used as a weapon of federal power to prevent state legislatures from passing laws they consider appropriate to govern local affairs. Use of any such broad, unbounded judicial authority would make of this Court's members a day-to-day constitutional convention.

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I repeat, so as not to be misunderstood, that this Court does have power, which it should exercise, to hold laws unconstitutional where they are forbidden by the Federal Constitution. My point is that there is no provision [381 U.S. 521] of the Constitution which either expressly or impliedly vests power in this Court to sit as a supervisory agency over acts of duly constituted legislative bodies and set aside their laws because of the Court's belief that the legislative policies adopted are unreasonable, unwise, arbitrary, capricious or irrational. The adoption of such a loose flexible. uncontrolled standard for holding laws unconstitutional, if ever it is finally achieved, will amount to a great unconstitutional shift of power to the courts which I believe and am constrained to say will be bad for the courts, and worse for the country. Subjecting federal and state laws to such an unrestrained and unrestrainable judicial control as to the wisdom of legislative enactments would, I fear, jeopardize the separation of governmental powers that the Framers set up, and, at the same time, threaten to take away much of the power of States to govern themselves which the Constitution plainly intended them to have. 16 [381 U.S. 522]

1965, Griswold v. Connecticut, 381 U.S. 522

I realize that many good and able men have eloquently spoken and written, sometimes in rhapsodical strains, about the duty of this Court to keep the Constitution in tune with the times. The idea is that the Constitution must be changed from time to time, and that this Court is charged with a duty to make those changes. For myself, I must, with all deference, reject that philosophy. The Constitution makers knew the need for change, and provided for it. Amendments suggested by the people's elected representatives can be submitted to the people or their selected agents for ratification. That method of change was good for our Fathers, and, being somewhat old-fashioned, I must add it is good enough for me. And so I cannot rely on the Due Process Clause or the Ninth Amendment or any mysterious and uncertain natural law concept as a reason for striking down this state law. The Due Process Clause, with an "arbitrary and capricious" or "shocking to the conscience" formula, was liberally used by this Court to strike down economic legislation in the early decades of this century, threatening, many people thought, the tranquility and stability of the Nation. See, e.g., Lochner v. New York, 198 U.S. 45. That formula, based on subjective considerations of "natural justice," is no less dangerous when used to enforce this Court's views about personal rights than those about economic rights. I had thought that we had laid that formula, as a means for striking down state legislation, to rest once and for all in cases like West Coast Hotel Co. v. Parrish, 300 U.S. 379; Olsen v. Nebraska ex rel. Western Reference & Bond Assn., 313 U.S. 236, and many other [381 U.S. 523] opinions. 17 See also Lochner v. New York, 198 U.S. 45, 74 (Holmes, J., dissenting).

1965, Griswold v. Connecticut, 381 U.S. 523

In Ferguson v. Skrupa, 372 U.S. 726, 730, this Court two years ago said, in an opinion joined by all the Justices but one, 18 that

1965, Griswold v. Connecticut, 381 U.S. 523

The doctrine that prevailed in Lochner, Coppage, Adkins, Burns, and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.

1965, Griswold v. Connecticut, 381 U.S. 523

And only six weeks ago, without even bothering to hear argument, this Court overruled Tyson & Brother v. Banton, 273 U.S. 418, which had held state laws regulating ticket brokers to be a denial of due process of law. 19 Gold [381 U.S. 524] v. DiCarlo, 380 U.S. 520. I find April's holding hard to square with what my concurring Brethren urge today. They would reinstate the Lochner, Coppage, Adkins, Burns line of cases, cases from which this Court recoiled after the 1930's, and which had been, I thought, totally discredited until now. Apparently my Brethren have less quarrel with state economic regulations than former Justices of their persuasion had. But any limitation upon their using the natural law due process philosophy to strike down any state law, dealing with any activity whatever, will obviously be only self-imposed. 20

1965, Griswold v. Connecticut, 381 U.S. 524

In 1798, when this Court was asked to hold another Connecticut law unconstitutional, Justice Iredell said:

1965, Griswold v. Connecticut, 381 U.S. 524

[I]t has been the policy of all the American states which have individually framed their state constitutions since the revolution, and of the people of the United States when they framed the Federal Constitution, to define with precision the objects of the legislative power, and to restrain its exercise within marked and settled boundaries. If any act of Congress, or of the Legislature of a state, violates those constitutional provisions, it is unquestionably void, though I admit that, as the authority to declare it void is of a delicate and awful nature, the Court will never resort to that authority but in a clear and urgent case. If, on the other hand, the Legislature of the Union, or the Legislature of any member of the Union, shall pass a law within the [381 U.S. 525] general scope of their constitutional power, the Court cannot pronounce it to be void, merely because it is, in their judgment, contrary to the principles of natural justice. The ideas of natural justice are regulated by no fixed standard: the ablest and the purest men have differed upon the subject, and all that the Court could properly say in such an event would be that the Legislature (possessed of an equal right of opinion) had passed an act which, in the opinion of the judges, was inconsistent with the abstract principles of natural justice.

1965, Griswold v. Connecticut, 381 U.S. 525

Calder v. Bull, 3 Dall. 386, 399 (emphasis in original). I would adhere to that constitutional philosophy in passing on this Connecticut law today. I am not persuaded to deviate from the view which I stated in 1947 in Adamson v. California, 332 U.S. 46, 90-92 (dissenting opinion):

1965, Griswold v. Connecticut, 381 U.S. 525

Since Marbury v. Madison, 1 Cranch. 137, was decided, the practice has been firmly established, for better or worse, that courts can strike down legislative enactments which violate the Constitution. This process, of course, involves interpretation, and since words can have many meanings, interpretation obviously may result in contraction or extension of the original purpose of a constitutional provision, thereby affecting policy. But to pass upon the constitutionality of statutes by looking to the particular standards enumerated in the Bill of Rights and other parts of the Constitution is one thing; to invalidate statutes because of application of "natural law" deemed to be above and undefined by the Constitution is another.

1965, Griswold v. Connecticut, 381 U.S. 525

In the one instance, courts, proceeding within clearly marked constitutional boundaries, seek to execute policies written into the Constitution; in the other, they roam at will in the limitless [381 U.S. 526] area of their own beliefs as to reasonableness, and actually select policies, a responsibility which the Constitution entrusts to the legislative representatives of the people.

1965, Griswold v. Connecticut, 381 U.S. 526

Federal Power Commission v. Pipeline Co., 315 U.S. 575, 599, 601, n.4. 21

1965, Griswold v. Connecticut, 381 U.S. 526

(Footnotes omitted.) The late Judge Learned Hand, after emphasizing his view that judges should not use the due process formula suggested in the concurring opinions today or any other formula like it to invalidate legislation offensive to their "personal preferences," 22 made the statement, with which I fully agree, that:

1965, Griswold v. Connecticut, 381 U.S. 526

For myself, it would be most irksome to be ruled by a bevy of Platonic Guardians, even if I [381 U.S. 527] knew how to choose them, which I assuredly do not. 23

1965, Griswold v. Connecticut, 381 U.S. 527

So far as I am concerned, Connecticut's law, as applied here, is not forbidden by any provision of the Federal Constitution as that Constitution was written, and I would therefore affirm.

STEWART, J., dissenting

1965, Griswold v. Connecticut, 381 U.S. 527

MR. JUSTICE STEWART, whom MR. JUSTICE BLACK joins, dissenting.

1965, Griswold v. Connecticut, 381 U.S. 527

Since 1879, Connecticut has had on its books a law which forbids the use of contraceptives by anyone. I think this is an uncommonly silly law. As a practical matter, the law is obviously unenforceable, except in the oblique context of the present case. As a philosophical matter, I believe the use of contraceptives in the relationship of marriage should be left to personal and private choice, based upon each individual's moral, ethical, and religious beliefs. As a matter of social policy, I think professional counsel about methods of birth control should be available to all, so that each individual's choice can be meaningfully made. But we are not asked in this case to say whether we think this law is unwise, or even asinine. We are asked to hold that it violates the United States Constitution. And that I cannot do.

1965, Griswold v. Connecticut, 381 U.S. 527

In the course of its opinion, the Court refers to no less than six Amendments to the Constitution: the First, the Third, the Fourth, the Fifth, the Ninth, and the Fourteenth. [381 U.S. 528] But the Court does not say which of these Amendments, if any, it thinks is infringed by this Connecticut law.

1965, Griswold v. Connecticut, 381 U.S. 528

We are told that the Due Process Clause of the Fourteenth Amendment is not, as such, the "guide" in this case. With that much, I agree. There is no claim that this law, duly enacted by the Connecticut Legislature, is unconstitutionally vague. There is no claim that the appellants were denied any of the elements of procedural due process at their trial, so as to make their convictions constitutionally invalid. And, as the Court says, the day has long passed since the Due Process Clause was regarded as a proper instrument for determining "the wisdom, need, and propriety" of state laws. Compare Lochner v. New York, 198 U.S. 45, with Ferguson v. Skrupa, 372 U.S. 726. My Brothers HARLAN and WHITE to the contrary,

1965, Griswold v. Connecticut, 381 U.S. 528

[w]e have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.

1965, Griswold v. Connecticut, 381 U.S. 528

Ferguson v. Skrupa, supra, at 730

1965, Griswold v. Connecticut, 381 U.S. 528

As to the First, Third, Fourth, and Fifth Amendments, I can find nothing in any of them to invalidate this Connecticut law, even assuming that all those Amendments are fully applicable against the States. 1 It has [381 U.S. 529] not even been argued that this is a law "respecting an establishment of religion, or prohibiting the free exercise thereof." 2 And surely, unless the solemn process of constitutional adjudication is to descend to the level of a play on words, there is not involved here any abridgment of

1965, Griswold v. Connecticut, 381 U.S. 529

the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. 3

1965, Griswold v. Connecticut, 381 U.S. 529

No soldier has been quartered in any house. 4 There has been no search, and no seizure. 5 Nobody has been compelled to be a witness against himself. 6

1965, Griswold v. Connecticut, 381 U.S. 529

The Court also quotes the Ninth Amendment, and my Brother GOLDBERG's concurring opinion relies heavily upon it. But to say that the Ninth Amendment has anything to do with this case is to turn somersaults with history. The Ninth Amendment, like its companion, the Tenth, which this Court held "states but a truism that all is retained which has not been surrendered," United States v. Darby, 312 U.S. 100, 124, was framed by James Madison and adopted by the States simply to make clear that the adoption of the Bill of Rights did not alter the plan that [381 U.S. 530] the Federal Government was to be a government of express and limited powers, and that all rights and powers not delegated to it were retained by the people and the individual States. Until today, no member of this Court has ever suggested that the Ninth Amendment meant anything else, and the idea that a federal court could ever use the Ninth Amendment to annul a law passed by the elected representatives of the people of the State of Connecticut would have caused James Madison no little wonder.

1965, Griswold v. Connecticut, 381 U.S. 530

What provision of the Constitution, then, does make this state law invalid? The Court says it is the right of privacy "created by several fundamental constitutional guarantees." With all deference, I can find no such general right of privacy in the Bill of Rights, in any other part of the Constitution, or in any case ever before decided by this Court. 7

1965, Griswold v. Connecticut, 381 U.S. 530

At the oral argument in this case, we were told that the Connecticut law does not "conform to current community standards." But it is not the function of this Court to decide cases on the basis of community standards. We are here to decide cases "agreeably to the Constitution and laws of the United States." It is the essence of judicial [381 U.S. 531] duty to subordinate our own personal views, our own ideas of what legislation is wise and what is not. If, as I should surely hope, the law before us does not reflect he standards of the people of Connecticut, the people of Connecticut can freely exercise their true Ninth and Tenth Amendment rights to persuade their elected representatives to repeal it. That is the constitutional way to take this law off the books. 8

Footnotes

DOUGLAS, J., lead opinion (Footnotes)

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\* The Court said in full about this right of privacy:

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The principles laid down in this opinion [by Lord Camden in Entick v. Carrington, 19 How.St.Tr. 1029] affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court, with its adventitious circumstances; they apply to all invasions on the part of the government and its employes of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence—it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment. Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods is within the condemnation of that judgment. In this regard, the Fourth and Fifth Amendments run almost into each other.

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116 U.S. at 630.

GOLDBERG, J., concurring (Footnotes)

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1. My Brother STEWART dissents on the ground that he

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can find no…general right of privacy in the Bill of Rights, in any other part of the Constitution, or in any case ever before decided by this Court.

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Post at 530. He would require a more explicit guarantee than the one which the Court derives from several constitutional amendments. This Court, however, has never held that the Bill of Rights or the Fourteenth Amendment protects only those rights that the Constitution specifically mentions by name. See, e.g., Bolling v. Sharpe, 347 U.S. 497; Aptheker v. Secretary of State, 378 U.S. 500; Kent v. Dulles, 357 U.S. 116; Carrington v. Rash, 380 U.S. 89, 96; Schware v. Board of Bar Examiners, 353 U.S. 232; NAACP v. Alabama, 360 U.S. 240; Pierce v. Society of Sisters, 268 U.S. 510; Meyer v. Nebraska, 262 U.S. 390. To the contrary, this Court, for example, in Bolling v. Sharpe, supra, while recognizing that the Fifth Amendment does not contain the "explicit safeguard" of an equal protection clause, id. at 499, nevertheless derived an equal protection principle from that Amendment's Due Process Clause. And in Schware v. Board of Bar Examiners, supra, the Court held that the Fourteenth Amendment protects from arbitrary state action the right to pursue an occupation, such as the practice of law.

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2. See, e.g., Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226; Gitlow v. New York, supra; Cantwell v. Connecticut, 310 U.S. 296; Wolf v. Colorado, 338 U.S. 25; Robinson v. California, 370 U.S. 660; Gideon v. Wainwright, 372 U.S. 335; Malloy v. Hogan, 378 U.S. 1; Pointer v. Texas, supra; Griffin v. California, 380 U.S. 609.

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3. Madison himself had previously pointed out the dangers of inaccuracy resulting from the fact that "no language is so copious as to supply words and phrases for every complex idea." The Federalist, No. 37 (Cooke ed.1961) at 236.

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4. Alexander Hamilton was opposed to a bill of rights on the ground that it was unnecessary, because the Federal Government was a government of delegated powers, and it was not granted the power to intrude upon fundamental personal rights. The Federalist, No. 84 (Cooke ed.1961), at 578-579. He also argued,

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I go further, and affirm that bills of rights, in the sense and in the extent in which they are contended for, are not only unnecessary in the proposed constitution, but would even be dangerous. They would contain various exceptions to powers which are not granted, and, on this very account, would afford a colourable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretence for claiming that power.

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Id. at 579. The Ninth Amendment, and the Tenth Amendment, which provides,

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The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,

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were apparently also designed in part to meet the above-quoted argument of Hamilton.

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5. The Tenth Amendment similarly made clear that the States and the people retained all those powers not expressly delegated to the Federal Government.

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6. This Amendment has been referred to as "The Forgotten Ninth Amendment," in a book with that title by Bennett B. Patterson (1955). Other commentary on the Ninth Amendment includes Redlich, Are There "Certain Rights…Retained by the People"? 37 N.Y.U.L.Rev. 787 (1962), and Kelsey, The Ninth Amendment of the Federal Constitution, 11 Ind.L.J. 309 (1936). As far as I am aware, until today, this Court has referred to the Ninth Amendment only in United Public Workers v. Mitchell, 330 U.S. 75, 94-95; Tennessee Electric Power Co. v. TVA, 306 U.S. 118, 143-144, and Ashwander v. TVA, 297 U.S. 288, 330-331. See also Calder v. Bull, 3 Dall. 386, 388; Loan Assn. v. Topeka, 20 Wall. 655, 662-663.

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In United Public Workers v. Mitchell, supra, at 94-95, the Court stated:

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We accept appellants' contention that the nature of political rights reserved to the people by the Ninth and Tenth Amendments [is] involved. The right claimed as inviolate may be stated as the right of a citizen to act as a party official or worker to further his own political views. Thus, we have a measure of interference by the Hatch Act and the Rules with what otherwise would be the freedom of the civil servant under the First, Ninth and Tenth Amendments. And, if we look upon due process as a guarantee of freedom in those fields, there is a corresponding impairment of that right under the Fifth Amendment.

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7. In light of the tests enunciated in these cases, it cannot be said that a judge's responsibility to determine whether a right is basic and fundamental in this sense vests him with unrestricted personal discretion. In fact, a hesitancy to allow too broad a discretion was a substantial reason leading me to conclude, in Pointer v. Texas, supra, at 413-414, that those rights absorbed by the Fourteenth Amendment and applied to the States because they are fundamental apply with equal force and to the same extent against both federal and state governments. In Pointer, I said that the contrary view would require

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this Court to make the extremely subjective and excessively discretionary determination as to whether a practice, forbidden the Federal Government by a fundamental constitutional guarantee, is, as viewed in the factual circumstances surrounding each individual case, sufficiently repugnant to the notion of due process as to be forbidden the States.

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Id. at 413.

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8. Pointer v. Texas, supra at 413. See also the discussion of my Brother DOUGLAS, Poe v. Ullman, supra, at 517-518 (dissenting opinion).

HARLAN, J., concurring (Footnotes)

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\* Indeed, my Brother BLACK, in arguing his thesis, is forced to lay aside a host of cases in which the Court has recognized fundamental rights in the Fourteenth Amendment without specific reliance upon the Bill of Rights. Post, p. 512, n. 4.

WHITE, J., concurring (Footnotes)

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\* Dissenting opinions assert that the liberty guaranteed by the Due Process Clause is limited to a guarantee against unduly vague statutes and against procedural unfairness at trial. Under this view, the Court is without authority to ascertain whether a challenged statute, or its application, has a permissible purpose, and whether the manner of regulation bears a rational or justifying relationship to this purpose. A long line of cases makes very clear that this has not been the view of this Court. Dent v. West Virginia, 129 U.S. 114; Jacobson v. Massachusetts, 197 U.S. 11; Douglas v. Noble, 261 U.S. 165; Meyer v. Nebraska, 262 U.S. 390; Pierce v. Society of Sisters, 268 U.S. 510; Schware v. Board of Bar Examiners, 353 U.S. 232; Aptheker v. Secretary of State, 378 U.S. 500; Zemel v. Rusk, 381 U.S. 1.

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The traditional due process test was well articulated and applied in Schware v. Board of Bar Examiners, supra, a case which placed no reliance on the specific guarantees of the Bill of Rights.

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A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. Dent v. West Virginia, 129 U.S. 114. Cf. Slochower v. Board of Education, 350 U.S. 551; Wieman v. Updegraff, 344 U.S. 183. And see Ex parte Secombe, 19 How. 9, 13. A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. Douglas v. Noble, 261 U.S. 165; Cummings v. Missouri, 4 Wall. 277, 319-320. Cf. Nebbia v. New York, 291 U.S. 502. Obviously an applicant could not be excluded merely because he was a Republican, or a Negro, or a member of a particular church. Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory.

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353 U.S. at 238-239. Cf. Martin v. Walton, 368 U.S. 25, 26 (DOUGLAS, J., dissenting).

BLACK, J., dissenting (Footnotes)

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1. The phrase "right to privacy" appears first to have gained currency from an article written by Messrs. Warren and (later Mr. Justice) Brandeis in 1890 which urged that States should give some form of tort relief to persons whose private affairs were exploited by others. The Right to Privacy, 4 Harv.L.Rev.193. Largely as a result of this article, some States have passed statutes creating such a cause of action, and, in others, state courts have done the same thing by exercising their powers as courts of common law. See generally, 41 Am.Jur. 926-927. Thus, the Supreme Court of Georgia, in granting a cause of action for damages to a man whose picture had been used in a newspaper advertisement without his consent, said that "A right of privacy in matters purely private is…derived from natural law," and that

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The conclusion reached by us seems to be…thoroughly in accord with natural justice, with the principles of the law of every civilized nation, and especially with the elastic principles of the common law….

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Pavesich v. New England Life Ins. Co., 122 Ga.190, 194, 218, 50 S.E. 68, 70, 80. Observing that "the right of privacy…presses for recognition here," today this Court, which I did not understand to have power to sit as a court of common law, now appears to be exalting a phrase which Warren and Brandeis used in discussing grounds for tort relief, to the level of a constitutional rule which prevents state legislatures from passing any law deemed by this Court to interfere with "privacy."

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2. Brother HARLAN's views are spelled out at greater length in his dissenting opinion in Poe v. Ullman, 367 U.S. 497, 539-555.

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3. Indeed, Brother WHITE appears to have gone beyond past pronouncements of the natural law due process theory, which at least said that the Court should exercise this unlimited power to declare state acts unconstitutional with "restraint." He now says that, instead of being presumed constitutional (see Munn v. Illinois, 94 U.S. 113, 123; compare Adkins v. Children's Hospital, 261 U.S. 525, 544), the statute here "bears a substantial burden of justification when attacked under the Fourteenth Amendment."

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4. A collection of the catchwords and catch phrases invoked by judges who would strike down under the Fourteenth Amendment laws which offend their notions of natural justice would fill many pages. Thus, it has been said that this Court can forbid state action which "shocks the conscience," Rochin v. California, 342 U.S. 165, 172, sufficiently to "shock itself into the protective arms of the Constitution," Irvine v. California, 347 U.S. 128, 138 (concurring opinion). It has been urged that States may not run counter to the "decencies of civilized conduct," Rochin, supra, at 173, or "some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental," Snyder v. Massachusetts, 291 U.S. 97, 105, or to "those canons of decency and fairness which express the notions of justice of English-speaking peoples," Malinski v. New York, 324 U.S. 401, 417 (concurring opinion), or to "the community's sense of fair play and decency," Rochin, supra, at 173. It has been said that we must decide whether a state law is "fair, reasonable and appropriate," or is rather

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an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into…contracts,

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Lochner v. New York, 198 U.S. 45, 56. States, under this philosophy, cannot act in conflict with "deeply rooted feelings of the community," Haley v. Ohio, 332 U.S. 596, 604 (separate opinion), or with "fundamental notions of fairness and justice," id. 607. See also, e.g., Wolf v. Colorado, 338 U.S. 25, 27 ("rights…basic to our free society"); Hebert v. Louisiana, 272 U.S. 312, 316 ("fundamental principles of liberty and justice"); Adkins v. Children's Hospital, 261 U.S. 525, 561 ("arbitrary restraint of…liberties"); Betts v. Brady, 316 U.S. 455, 462 ("denial of fundamental fairness, shocking to the universal sense of justice"); Poe v. Ullman, 367 U.S. 497, 539 (dissenting opinion) ("intolerable and unjustifiable"). Perhaps the clearest, frankest, and briefest explanation of how this due process approach works is the statement in another case handed down today that this Court is to invoke the Due Process Clause to strike down state procedures or laws which it can "not tolerate." Linkletter v. Walker, post, p. 618, at 631.

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5. See Hand, The Bill of Rights (1958) 70: .

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[J]udges are seldom content merely to annul the particular solution before them; they do not, indeed they may not, say that, taking all things into consideration, the legislators' solution is too strong for the judicial stomach. On the contrary, they wrap up their veto in a protective veil of adjectives such as "arbitrary," "artificial," "normal," "reasonable," "inherent," "fundamental," or "essential," whose office usually, though quite innocently, is to disguise what they are doing and impute to it a derivation far more impressive than their personal preferences, which are all that, in fact, lie behind the decision.

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See also Rochin v. California, 342 U.S. 165, 174 (concurring opinion). But see Linkletter v. Walker, supra, n. 4, at 631.

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6. This Court held in Marbury v. Madison, 1 Cranch. 137, that this Court has power to invalidate laws on the ground that they exceed the constitutional power of Congress or violate some specific prohibition of the Constitution. See also Fletcher v. Peck, 6 Cranch 87. But the Constitutional Convention did, on at least two occasions, reject proposals which would have given the federal judiciary a part in recommending laws or in vetoing as bad or unwise the legislation passed by the Congress. Edmund Randolph of Virginia proposed that the President

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…and a convenient number of the National Judiciary ought to compose a council of revision with authority to examine every act of the National Legislature before it shall operate, & every act of a particular Legislature before a Negative thereon shall be final, and that the dissent of the said Council shall amount to a rejection, unless the Act of the National Legislature be again passed, or that of a particular Legislature be again negatived by \_\_\_ [original wording illegible] of the members of each branch.

1965, Griswold v. Connecticut, 381 U.S. 531

1 The Records of the Federal Convention of 1787 (Farrand ed.1911) 21.

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In support of a plan of this kind, James Wilson of Pennsylvania argued that:

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…It had been said that the Judges, as expositors of the Laws, would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the Judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive, and yet not be so unconstitutional as to justify the Judges in refusing to give them effect. Let them have a share in the Revisionary power, and they will have an opportunity of taking notice of these characters of a law, and of counteracting, by the weight of their opinions the improper views of the Legislature.

1965, Griswold v. Connecticut, 381 U.S. 531

2 id. at 73.

1965, Griswold v. Connecticut, 381 U.S. 531

Nathaniel Gorham of Massachusetts

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did not see the advantage of employing the Judges in this way. As Judges, they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures.

1965, Griswold v. Connecticut, 381 U.S. 531

Ibid. Elbridge Gerry of Massachusetts likewise opposed the proposal for a council of revision:

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…He relied, for his part, on the Representatives of the people as the guardians of their Rights & interests. It [the proposal] was making the Expositors of the Laws the Legislators, which ought never to be done.

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Id. at 75. And, at another point:

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Mr. Gerry doubts whether the Judiciary ought to form a part of it [the proposed council of revision], as they will have a sufficient check agst. encroachments on their own department by their exposition of the laws, which involved a power of deciding on their Constitutionality…. It was quite foreign from the nature of ye. office to make them judges of the policy of public measures.

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1 Id. at 97-98. Madison supported the proposal on the ground that "a Check [on the legislature] is necessary." Id. at 108. John Dickinson of Delaware opposed it on the ground that "the Judges must interpret the Laws; they ought not to be legislators." Ibid. The proposal for a council of revision was defeated. The following proposal was also advanced:

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To assist the President in conducting the Public affairs, there shall be a Council of State composed of the following officers—1. The Chief Justice of the Supreme Court, who shall from time to time recommend such alterations of and additions to the laws of the U.S. as may in his opinion be necessary to the due administration of Justice, and such as may promote useful learning and inculcate sound morality throughout the Union….

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2 id. at 342. This proposal too was rejected.

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7. In Meyer, in the very same sentence quoted in part by my Brethren in which he asserted that the Due Process Clause gave an abstract and inviolable right "to marry, establish a home and bring up children," Mr. Justice McReynolds also asserted the heretofore discredited doctrine that the Due Process Clause prevented States from interfering with "the right of the individual to contract." 262 U.S. at 399.

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8. Compare Poe v. Ullman, 367 U.S. at 53-54 (HARLAN, J., dissenting).

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9. The Court has also said that, in view of the Fourteenth Amendment's major purpose of eliminating state-enforced racial discrimination, this Court will scrutinize carefully any law embodying a racial classification to make sure that it does not deny equal protection of the laws. See McLaughlin v. Florida, 379 U.S. 184.

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10. None of the other cases decided in the past 25 years which Brothers WHITE and GOLDBERG cite can justly be read as holding that judges have power to use a natural law due process formula to strike down all state laws which they think are unwise, dangerous, or irrational. Prince v. Massachusetts, 321 U.S. 158, upheld a state law forbidding minors from selling publications on the streets. Kent v. Dulles, 357 U.S. 116, recognized the power of Congress to restrict travel outside the country so long as it accorded persons the procedural safeguards of due process and did not violate any other specific constitutional provision. Schware v. Board of Bar Examiners, 353 U.S. 232, held simply that a State could not, consistently with due process, refuse a lawyer a license to practice law on the basis of a finding that he was morally unfit when there was no evidence in the record, 353 U.S. at 246-247, to support such a finding. Compare Thompson v. City of Louisville, 362 U.S. 199, in which the Court relied in part on Schware. See also Konigsberg v. State Bar, 353 U.S. 252. And Bolling v. Sharpe, 347 U.S. 497, merely recognized what had been the understanding from the beginning of the country, an understanding shared by many of the draftsmen of the Fourteenth Amendment, that the whole Bill of Rights, including the Due Process Clause of the Fifth Amendment, was a guarantee that all persons would receive equal treatment under the law. Compare Chambers v. Florida, 309 U.S. 227, 240-241. With one exception, the other modern cases relied on by my Brethren were decided either solely under the Equal Protection Clause of the Fourteenth Amendment or under the First Amendment, made applicable to the States by the Fourteenth, some of the latter group involving the right of association which this Court has held to be a part of the rights of speech, press and assembly guaranteed by the First Amendment. As for Aptheker v. Secretary of State, 378 U.S. 500, I am compelled to say that, if that decision was written or intended to bring about the abrupt and drastic reversal in the course of constitutional adjudication which is now attributed to it, the change was certainly made in a very quiet and unprovocative manner, without any attempt to justify it.

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11. Compare Adkins v. Children's Hospital, 261 U.S. 525, 568 (Holmes, J., dissenting):

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The earlier decisions upon the same words [the Due Process Clause] in the Fourteenth Amendment began within our memory, and went no farther than an unpretentious assertion of the liberty to follow the ordinary callings. Later, that innocuous generality was expanded into the dogma, Liberty of Contract. Contract is not specially mentioned in the text that we have to construe. It is merely an example of doing what you want to do, embodied in the word liberty. But pretty much all law consists in forbidding men to do some things that they want to do, and contract is no more exempt from law than other acts.

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12. See Patterson, The Forgotten Ninth Amendment (1955). Mr. Patterson urges that the Ninth Amendment be used to protect unspecified "natural and inalienable rights." P. 4. The Introduction by Roscoe Pound states that "there is a marked revival of natural law ideas throughout the world. Interest in the Ninth Amendment is a symptom of that revival." P. iii.

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In Redlich, Are There "Certain Rights…Retained by the People"?, 37 N.Y.U.L.Rev. 787, Professor Redlich, in advocating reliance on the Ninth and Tenth Amendments to invalidate the Connecticut law before us, frankly states:

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But for one who feels that the marriage relationship should be beyond the reach of a state law forbidding the use of contraceptives, the birth control case poses a troublesome and challenging problem of constitutional interpretation. He may find himself saying, "The law is unconstitutional—but why?" There are two possible paths to travel in finding the answer. One is to revert to a frankly flexible due process concept even on matters that do not involve specific constitutional prohibitions. The other is to attempt to evolve a new constitutional framework within which to meet this and similar problems which are likely to arise.

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Id. at 798.

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13. Of course, one cannot be oblivious to the fact that Mr. Gallup has already published the results of a poll which he says show that 46% of the people in this country believe schools should teach about birth control. Washington Post, May 21, 1965, p. 2, col. 1. I can hardly believe, however, that Brother GOLDBERG would view 46% of the persons polled as so overwhelming a proportion that this Court may now rely on it to declare that the Connecticut law infringes "fundamental" rights, and overrule the longstanding view of the people of Connecticut expressed through their elected representatives.

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14. U.S.Const., Amend. IX, provides:

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

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15. 1 Annals of Congress 439. See also II Story, Commentaries on the Constitution of the United States (5th ed. 1891):

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This clause was manifestly introduced to prevent any perverse or ingenious misapplication of the well known maxim that an affirmation in particular cases implies a negation in all others; and, e converso, that a negation in particular cases implies an affirmation in all others. The maxim, rightly understood, is perfectly sound and safe; but it has often been strangely forced from its natural meaning into the support of the most dangerous political heresies.

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Id. at 651 (footnote omitted).

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16. Justice Holmes, in one of his last dissents, written in reply to Mr. Justice McReynolds' opinion for the Court in Baldwin v. Missouri, 281 U.S. 586, solemnly warned against a due process formula apparently approved by my concurring Brethren today. He said:

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I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States. As the decisions now stand, I see hardly any limit but the sky to the invalidating of those rights if they happen to strike a majority of this Court as for any reason undesirable. I cannot believe that the Amendment was intended to give us carte blanche to embody our economic or moral beliefs in its prohibitions. Yet I can think of no narrower reason that seems to me to justify the present and the earlier decisions to which I have referred. Of course, the words "due process of law," if taken in their literal meaning, have no application to this case, and while it is too late to deny that they have been given a much more extended and artificial signification, still we ought to remember the great caution shown by the Constitution in limiting the power of the States, and should be slow to construe the clause in the Fourteenth Amendment as committing to the Court, with no guide but the Court's own discretion, the validity of whatever laws the States may pass.

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281 U.S. at 595. See 2 Holmes-Pollock Letters (Howe ed.1941) 267-268.

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17. E.g., in Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421, 423, this Court held that

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Our recent decisions make plain that we do not sit as a superlegislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare.

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Compare Gardner v. Massachusetts, 305 U.S. 559, which the Court today apparently overrules, which held that a challenge under the Federal Constitution to a state law forbidding the sale or furnishing of contraceptives did not raise a substantial federal question.

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18. Brother HARLAN, who has consistently stated his belief in the power of courts to strike down laws which they consider arbitrary or unreasonable, see, e.g., Poe v. Ullman, 367 U.S. 497, 539-555 (dissenting opinion), did not join the Court's opinion in Ferguson v. Skrupa.

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19. Justice Holmes, dissenting in Tyson, said:

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I think the proper course is to recognize that a state legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution of the United States or of the State, and that Courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain.

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273 U.S. at 446.

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20. Compare Nicchia v. New York, 254 U.S. 228, 231, upholding a New York dog-licensing statute on the ground that it did not "deprive dog owners of liberty without due process of law." And, as I said concurring in Rochin v. California, 342 U.S. 165, 175,

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I believe that faithful adherence to the specific guarantees in the Bill of Rights insures a more permanent protection of individual liberty than that which can be afforded by the nebulous standards

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urged by my concurring Brethren today.

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21. Gideon v. Wainwright, 372 U.S. 335, and similar cases applying specific Bill of Rights provisions to the States do not, in my view, stand for the proposition that this Court can rely on its own concept of "ordered liberty" or "shocking the conscience" or natural law to decide what laws it will permit state legislatures to enact. Gideon, in applying to state prosecutions the Sixth Amendment's guarantee of right to counsel, followed Palko v. Connecticut, 302 U.S. 319, which had held that specific provisions of the Bill of Rights, rather than the Bill of Rights as a whole, would be selectively applied to the States. While expressing my own belief (not shared by MR. JUSTICE STEWART) that all the provisions of the Bill of Rights were made applicable to the States by the Fourteenth Amendment, in my dissent in Adamson v. California, 332 U.S. 46, 89, I also said:

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If the choice must be between the selective process of the Palko decision applying some of the Bill of Rights to the States, or the Twining rule applying none of them, I would choose the Palko selective process.

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Gideon and similar cases merely followed the Palko rule, which, in Adamson, I agreed to follow if necessary to make Bill of Rights safeguards applicable to the States. See also Pointer v. Texas, 380 U.S. 400; Malloy v. Hogan, 378 U.S. 1.

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22. Hand, The Bill of Rights (1958) 70. See note 5, supra. See generally id. at 35-45.

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23. Id. at 73. While Judge Hand condemned as unjustified the invalidation of state laws under the natural law due process formula, see id. at 35-45, he also expressed the view that this Court, in a number of cases, had gone too far in holding legislation to be in violation of specific guarantees of the Bill of Rights. Although I agree with his criticism of use of the due process formula, I do not agree with all the views he expressed about construing the specific guarantees of the Bill of Rights.

STEWART, J., dissenting (Footnotes)

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1. The Amendments in question were, as everyone knows, originally adopted as limitations upon the power of the newly created Federal Government, not as limitations upon the powers of the individual States. But the Court has held that many of the provisions of the first eight amendments are fully embraced by the Fourteenth Amendment as limitations upon state action, and some members of the Court have held the view that the adoption of the Fourteenth Amendment made every provision of the first eight amendments fully applicable against the States. See Adamson v. California, 332 U.S. 46, 68 (dissenting opinion of MR. JUSTICE BLACK).

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2. U.S. Constitution, Amendment I. To be sure, the injunction contained in the Connecticut statute coincides with the doctrine of certain religious faiths. But if that were enough to invalidate a law under the provisions of the First Amendment relating to religion, then most criminal laws would be invalidated. See, e.g., the Ten Commandments. The Bible, Exodus 20:2-17 (King James).

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3. U.S. Constitution, Amendment I. If all the appellants had done was to advise people that they thought the use of contraceptives was desirable, or even to counsel their use, the appellants would, of course, have a substantial First Amendment claim. But their activities went far beyond mere advocacy. They prescribed specific contraceptive devices and furnished patients with the prescribed contraceptive materials.

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4. U.S. Constitution, Amendment III.

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5. U.S. Constitution, Amendment IV.

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6. U.S. Constitution, Amendment V.

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7. Cases like Shelton v. Tucker, 364 U.S. 479 and Bates v. Little Rock, 361 U.S. 516, relied upon in the concurring opinions today, dealt with true First Amendment rights of association, and are wholly inapposite here. See also, e.g., NAACP v. Alabama, 357 U.S. 449; Edwards v. South Carolina, 372 U.S. 229. Our decision in McLaughlin v. Florida, 379 U.S. 184, is equally far afield. That case held invalid under the Equal Protection Clause, a state criminal law which discriminated against Negroes.

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The Court does not say how far the new constitutional right of privacy announced today extends. See, e.g., Mueller, Legal Regulation of Sexual Conduct, at 127; Ploscowe, Sex and the Law, at 189. I suppose, however, that, even after today, a State can constitutionally still punish at least some offenses which are not committed in public.

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8. See Reynolds v. Sims, 377 U.S. 533, 562. The Connecticut House of Representatives recently passed a bill (House Bill No. 2462) repealing the birth control law. The State Senate has apparently not yet acted on the measure, and today is relieved of that responsibility by the Court. New Haven Journal-Courier, Wed., May 19, 1965, p. 1, col. 4, and p. 13, col. 7.

President Johnson's Remarks With President Truman at the Signing in Independence of the Medicare Bill, 1965

Title: President Johnson's Remarks With President Truman at the Signing in Independence of the Medicare Bill

Author: Lyndon B. Johnson

Date: July 30, 1965

Source: Public Papers of the Presidents, Johnson, 1965, pp.811-815

Public Papers of LBJ, 1965, p.811

PRESIDENT TRUMAN. Thank you very much. I am glad you like the President. I like him too. He is one of the finest men I ever ran across.

Public Papers of LBJ, 1965, p.811

Mr. President, Mrs. Johnson, distinguished guests:

Public Papers of LBJ, 1965, p.811

You have done me a great honor in coming here today, and you have made me a very, very happy man.

Public Papers of LBJ, 1965, p.811

This is an important hour for the Nation, for those of our citizens who have completed their tour of duty and have moved to the sidelines. These are the days that we are trying to celebrate for them. These people are our prideful responsibility and they are entitled, among other benefits, to the best medical protection available.

Public Papers of LBJ, 1965, p.811

Not one of these, our citizens, should ever be abandoned to the indignity of charity. Charity is indignity when you have to have it. But we don't want these people to have anything to do with charity and we don't want them to have any idea of hopeless despair.

Public Papers of LBJ, 1965, p.811

Mr. President, I am glad to have lived this long and to witness today the signing of the Medicare bill which puts this Nation right where it needs to be, to be right. Your inspired leadership and a responsive forward-looking Congress have made it historically possible for this day to come about.

Public Papers of LBJ, 1965, p.811

Thank all of you most highly for coming here. It is an honor I haven't had for, well, quite awhile, I'll say that to you, but here it is:

Public Papers of LBJ, 1965, p.811

Ladies and gentlemen, the President of the United States.

Public Papers of LBJ, 1965, p.811

THE PRESIDENT. President and Mrs. Truman, Secretary Celebrezze, Senator Mansfield, Senator Symington, Senator Long, Governor Hearnes, Senator Anderson and Congressman King of the Anderson-King team, Congressman Mills and Senator Long of the Mills-Long team, our beloved Vice President who worked in the vineyard many years to see this day come to pass, and all of my dear friends in the Congress—both Democrats and Republicans:

Public Papers of LBJ, 1965, p.811

The people of the United States love and voted for Harry Truman, not because he gave them hell—but because he gave them hope.

Public Papers of LBJ, 1965, p.811–p.812

I believe today that all America shares my joy that he is present now when the hope that he offered becomes a reality for [p.812] millions of our fellow citizens.

Public Papers of LBJ, 1965, p.812

I am so proud that this has come to pass in the Johnson administration. But it was really Harry Truman of Missouri who planted the seeds of compassion and duty which have today flowered into care for the sick, and serenity for the fearful.

Public Papers of LBJ, 1965, p.812

Many men can make many proposals. Many men can draft many laws. But few have the piercing and humane eye which can see beyond the words to the people that they touch. Few can see past the speeches and the political battles to the doctor over there that is tending the infirm, and to the hospital that is receiving those in anguish, or feel in their heart painful wrath at the injustice which denies the miracle of healing to the old and to the poor. And fewer still have the courage to stake reputation, and position, and the effort of a lifetime upon such a cause when there are so few that share it.

Public Papers of LBJ, 1965, p.812

But it is just such men who illuminate the life and the history of a nation. And so, President Harry Truman, it is in tribute not to you, but to the America that you represent, that we have come here to pay our love and our respects to you today. For a country can be known by the quality of the men it honors. By praising you, and by carrying forward your dreams, we really reaffirm the greatness of America.

Public Papers of LBJ, 1965, p.812

It was a generation ago that Harry Truman said, and I quote him: "Millions of our citizens do not now have a full measure of opportunity to achieve and to enjoy good health. Millions do not now have protection or security against the economic effects of sickness. And the time has now arrived for action to help them attain that opportunity and to help them get that protection."

Public Papers of LBJ, 1965, p.812

Well, today, Mr. President, and my fellow Americans, we are taking such action—20 years later. And we are doing that under the great leadership of men like John McCormack, our Speaker; Carl Albert, our majority leader; our very able and beloved majority leader of the Senate, Mike Mansfield; and distinguished Members of the Ways and Means and Finance Committees of the House and Senate—of both parties, Democratic and Republican.

Public Papers of LBJ, 1965, p.812

Because the need for this action is plain; and it is so clear indeed that we marvel not simply at the passage of this bill, but what we marvel at is that it took so many years to pass it. And I am so glad that Aime Forand is here to see it finally passed and signed—one of the first authors.

Public Papers of LBJ, 1965, p.812

There are more than 18 million Americans over the age of 65. Most of them have low incomes. Most of them are threatened by illness and medical expenses that they cannot afford.

Public Papers of LBJ, 1965, p.812

And through this new law, Mr. President, every citizen will be able, in his productive years when he is earning, to insure himself against the ravages of illness in his old age.

Public Papers of LBJ, 1965, p.812

This insurance will help pay for care in hospitals, in skilled nursing homes, or in the home. And under a separate plan it will help meet the fees of the doctors.

Public Papers of LBJ, 1965, p.812

Now here is how the plan will affect you.

Public Papers of LBJ, 1965, p.812–p.813

During your working years, the people of America—you—will contribute through the social security program a small amount each payday for hospital insurance protection. For example, the average worker in 1966 will contribute about $1.50 per month. The employer will contribute a similar amount. And this will provide the funds to pay up to 90 days of hospital care for each illness, plus diagnostic care, and up to 100 home health visits after you are 65. And beginning in 1967, you will also be covered for up to 100 days of care in a skilled nursing [p.813] home after a period of hospital care.

Public Papers of LBJ, 1965, p.813

And under a separate plan, when you are 65—that the Congress originated itself, in its own good judgment—you may be covered for medical and surgical fees whether you are in or out of the hospital. You will pay $3 per month after you are 65 and your Government will contribute an equal amount.

Public Papers of LBJ, 1965, p.813

The benefits under the law are as varied and broad as the marvelous modern medicine itself. If it has a few defects—such as the method of payment of certain specialists-then I am confident those can be quickly remedied and I hope they will be.

Public Papers of LBJ, 1965, p.813

No longer will older Americans be denied the healing miracle of modern medicine. No longer will illness crush and destroy the savings that they have so carefully put away over a lifetime so that they might enjoy dignity in their later years. No longer will young families see their own incomes, and their own hopes, eaten away simply because they are carrying out their deep moral obligations to their parents, and to their uncles, and their aunts.

Public Papers of LBJ, 1965, p.813

And no longer will this Nation refuse the hand of justice to those who have given a lifetime of service and wisdom and labor to the progress of this progressive country.

Public Papers of LBJ, 1965, p.813

And this bill, Mr. President, is even broader than that. It will increase social security benefits for all of our older Americans. It will improve a wide range of health and medical services for Americans of all ages.

Public Papers of LBJ, 1965, p.813

In 1935 when the man that both of us loved so much, Franklin Delano Roosevelt, signed the Social Security Act, he said it was, and I quote him, "a cornerstone in a structure which is being built but it is by no means complete."

Public Papers of LBJ, 1965, p.813

Well, perhaps no single act in the entire administration of the beloved Franklin D. Roosevelt really did more to win him the illustrious place in history that he has as did the laying of that cornerstone. And I am so happy that his oldest son Jimmy could be here to share with us the joy that is ours today. And those who share this day will also be remembered for making the most important addition to that structure, and you are making it in this bill, the most important addition that has been made in three decades.

Public Papers of LBJ, 1965, p.813

History shapes men, but it is a necessary faith of leadership that men can help shape history. There are many who led us to this historic day. Not out of courtesy or deference, but from the gratitude and remembrance which is our country's debt, if I may be pardoned for taking a moment, I want to call a part of the honor roll: it is the able leadership in both Houses of the Congress.

Public Papers of LBJ, 1965, p.813

Congressman Celler, Chairman of the Judiciary Committee, introduced the hospital insurance in 1952. Aime Forand from Rhode Island, then Congressman, introduced it in the House. Senator Clinton Anderson from New Mexico fought for Medicare through the years in the Senate. Congressman Cecil King of California carried on the battle in the House. The legislative genius of the Chairman of the Ways and Means Committee, Congressman Wilbur Mills, and the effective and able work of Senator Russell Long, together transformed this desire into victory.

Public Papers of LBJ, 1965, p.813

And those devoted public servants, former Secretary, Senator Ribicoff; present Secretary, Tony Celebrezze; Under Secretary Wilbur Cohen; the Democratic whip of the House, Hale Boggs on the Ways and Means Committee; and really the White House's best legislator, Larry O'Brien, gave not just endless days and months and, yes, years of patience—but they gave their hearts—to passing this bill.

Public Papers of LBJ, 1965, p.813–p.814

Let us also remember those who sadly [p.814] cannot share this time for triumph. For it is their triumph too. It is the victory of great Members of Congress that are not with us, like John Dingell, Sr., and Robert Wagner, late a Member of the Senate, and James Murray of Montana.

Public Papers of LBJ, 1965, p.814

And there is also John Fitzgerald Kennedy, who fought in the Senate and took his case to the people, and never yielded in pursuit, but was not spared to see the final concourse of the forces that he had helped to loose.

Public Papers of LBJ, 1965, p.814

But it all started really with the man from Independence. And so, as it is fitting that we should, we have come back here to his home to complete what he began.

Public Papers of LBJ, 1965, p.814

President Harry Truman, as any President must, made many decisions of great moment; although he always made them frankly and with a courage and a clarity that few men have ever shared. The immense and the intricate questions of freedom and survival were caught up many times in the web of Harry Truman's judgment. And this is in the tradition of leadership.

Public Papers of LBJ, 1965, p.814

But there is another tradition that we share today. It calls upon us never to be indifferent toward despair. It commands us never to turn away from helplessness. It directs us never to ignore or to spurn those who suffer untended in a land that is bursting with abundance.

Public Papers of LBJ, 1965, p.814

I said to Senator Smathers, the whip of the Democrats in the Senate, who worked with us in the Finance Committee on this legislation—I said, the highest traditions of the medical profession are really directed to the ends that we are trying to serve. And it was only yesterday, at the request of some of my friends, I met with the leaders of the American Medical Association to seek their assistance in advancing the cause of one of the greatest professions of all—the medical profession—in helping us to maintain and to improve the health of all Americans.

Public Papers of LBJ, 1965, p.814

And this is not just our tradition—or the tradition of the Democratic Party—or even the tradition of the Nation. It is as old as the day it was first commanded: "Thou shalt open thine hand wide unto thy brother, to thy poor, to thy needy, in thy land."

Public Papers of LBJ, 1965, p.814

And just think, Mr. President, because of this document—and the long years of struggle which so many have put into creating it—in this town, and a thousand other towns like it, there are men and women in pain who will now find ease. There are those, alone in suffering who will now hear the sound of some approaching footsteps coming to help. There are those fearing the terrible darkness of despairing poverty—despite their long years of labor and expectation—who will now look up to see the light of hope and realization.

Public Papers of LBJ, 1965, p.814

There just can be no satisfaction, nor any act of leadership, that gives greater satisfaction than this.

Public Papers of LBJ, 1965, p.814

And perhaps you alone, President Truman, perhaps you alone can fully know just how grateful I am for this day.

Public Papers of LBJ, 1965, p.814

NOTE: The President spoke at 2:55 p.m. in the auditorium of the Harry S. Truman Library in Independence, Mo. In his opening words he referred to former President and Mrs. Harry S. Truman, Secretary of Health, Education, and Welfare Anthony J. Celebrezze, Senator Mike Mansfield of Montana, majority leader of the Senate, Senator Stuart Symington and Senator Edward V. Long of Missouri, Governor Warren E. Hearnes of Missouri, Senator Clinton P. Anderson of New Mexico, Representative Cecil R. King of California, Representative Wilbur D. Mills of Arkansas, Senator Russell B. Long of Louisiana, and Vice President Hubert H. Humphrey.

Public Papers of LBJ, 1965, p.814–p.815

During his remarks the President referred to, among others, Representative John W. McCormack of Massachusetts, Speaker of the House of Representatives, Representative Carl Albert of Oklahoma, majority leader of the House of Representatives, Aime Forand, Representative from Rhode Island 1937-1939 and 1941-1961, Representative Emanuel Celler of New York, Senator Abraham Ribicoff of [p.815] Connecticut, former Secretary of Health, Education, and Welfare, Under Secretary of Health, Education, and Welfare Wilbur J. Cohen, Representative Hale Boggs of Louisiana, Lawrence F. O'Brien, Special Assistant to the president, John D. Dingell, Representative from Michigan 1933-1955, Robert F. Wagner, Senator from New York 1927-1949, James E. Murray; Senator from Montana 1934-1961, and Senator George A. Smathers of Florida.

Public Papers of LBJ, 1965, p.815

As enacted, the Medicare bill (H.R. 6675) is Public Law 89-97 (79 Stat. 286).

Public Papers of LBJ, 1965, p.815

On July 25, 1965, the White House released a report to the President from Secretary Celebrezze in response to the President's request for organizational changes in the Social Security Administration in preparation for administering the Medicare program.

Public Papers of LBJ, 1965, p.815

The report stated that the reorganization would accomplish the following major purposes:

Public Papers of LBJ, 1965, p.815

"It establishes new units in the Administration with special responsibility for hospital and supplementary medical insurance programs;

Public Papers of LBJ, 1965, p.815

"It changes some existing units, giving them additional responsibilities under new programs;

Public Papers of LBJ, 1965, p.815

"It centers data processing and transmission activities in a central headquarters in the Administration;

Public Papers of LBJ, 1965, p.815

"It strengthens upper-level management in the Administration, makes the field service of the Administration more responsive to directions from headquarters, and improves coordination between Administration units."

Public Papers of LBJ, 1965, p.815

The text of Secretary Celebrezze's report is printed in the Weekly Compilation of Presidential Documents (vol. 1, p. 6).

United States v. Seeger, 1965

Title: United States v. Seeger

Author: U.S. Supreme Court

Date: March 8, 1965

Source: 380 U.S. 163

This case was argued November 16-17, 1964, and was decided March 8, 1965, together with No. 51, United States v. Jakobson, on certiorari to the same court, and No. 29, Peter v. United States, on certiorari to the United States Court of Appeals for the Ninth Circuit.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Syllabus

1965, United States v. Seeger, 380 U.S. 163

These three cases involve the exemption claims under § 6(j) of the Universal Military Training and Service Act of conscientious objectors who did not belong to an orthodox religious sect. Section 6(j) excepts from combatant service in the armed forces those who are conscientiously opposed to participation in war by reason of their "religious training and belief," i.e., belief in an individual's relation to a Supreme Being involving duties beyond a human relationship but not essentially political, sociological, or philosophical views or a merely personal moral code. In all the cases, convictions were obtained in the District Courts for refusal to submit to induction in the armed forces; in Nos. 50 and 51 the Court of Appeals reversed, and in No. 29, the conviction was affirmed.

1965, United States v. Seeger, 380 U.S. 163

Held:

1965, United States v. Seeger, 380 U.S. 163

1. The test of religious belief within the meaning of the exemption in § 6(j) is whether it is a sincere and meaningful belief occupying in the life of its possessor a place parallel to that filled by the God of those admittedly qualified for the exemption. Pp. 173-180.

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(a) The exemption does not cover those who oppose war from a merely personal moral code, nor those who decide that war is wrong on the basis of essentially political, sociological or economic considerations, rather than religious belief. P. 173.

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(b) There is no issue here of atheistic beliefs, and, accordingly, the decision does not deal with that question. Pp. 173-174.

1965, United States v. Seeger, 380 U.S. 163

(c) This test accords with long established legislative policy of equal treatment for those whose objection to military service is based on religious beliefs. Pp. 177-180.

1965, United States v. Seeger, 380 U.S. 163

2. Local boards and courts are to decide whether the objector's beliefs are sincerely held and whether they are, in his own scheme of things, religious; they are not to require proof of the religious [380 U.S. 164] doctrines, nor are they to reject beliefs because they are not comprehensible. Pp. 184-185.

1965, United States v. Seeger, 380 U.S. 164

3. Under the broad construction applicable to § 6(j), the applications involved in these cases, none of which was based on merely personal moral codes, qualified for exemption. Pp. 185-188.

1965, United States v. Seeger, 380 U.S. 164

326 F.2d 846 and 325 F.2d 409 affirmed; 324 F.2d 173 reversed.

CLARK, J., lead opinion

1965, United States v. Seeger, 380 U.S. 164

MR. JUSTICE CLARK delivered the opinion of the Court.

1965, United States v. Seeger, 380 U.S. 164

These cases involve claims of conscientious objectors under § 6(j) of the Universal Military Training and Service Act, 50 U.S.C.App. § 456(j) (1958 ed.), which exempts from combatant training and service in the armed forces of the United States those persons who, by [380 U.S. 165] reason of their religious training and belief, are conscientiously opposed to participation in war in any form. The cases were consolidated for argument, and we consider them together although each involves different facts and circumstances. The parties raise the basic question of the constitutionality of the section which defines the term "religious training and belief," as used in the Act, as

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an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but [not including] essentially political, sociological, or philosophical views or a merely personal moral code.

1965, United States v. Seeger, 380 U.S. 165

The constitutional attack is launched under the First Amendment's Establishment and Free Exercise Clauses and is twofold: (1) the section does not exempt nonreligious conscientious objectors; and (2) it discriminates between different forms of religious expression in violation of the Due Process Clause of the Fifth Amendment. Jakobson (No. 51) and Peter (No. 29) also claim that their beliefs come within the meaning of the section. Jakobson claims that he meets the standards of § 6(j) because his opposition to war is based on belief in a Supreme Reality, and is therefore an obligation superior to one resulting from man's relationship to his fellow man. Peter contends that his opposition to war derives from his acceptance of the existence of a universal power beyond that of man, and that this acceptance, in fact, constitutes belief in a Supreme Being, qualifying him for exemption. We granted certiorari in each of the cases because of their importance in the administration of the Act. 377 U.S. 922.

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We have concluded that Congress, in using the expression "Supreme Being," rather than the designation "God," was merely clarifying the meaning of religious training and belief so as to embrace all religions and to exclude essentially political, sociological, or philosophical views. We believe that, under this construction, the test of belief [380 U.S. 166] "in a relation to a Supreme Being" is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption. Where such beliefs have parallel positions in the lives of their respective holders, we cannot say that one is "in a relation to a Supreme Being" and the other is not. We have concluded that the beliefs of the objectors in these cases meet these criteria, and, accordingly, we affirm the judgments in Nos. 50 and 51 and reverse the judgment in No. 29.

THE FACTS IN THE CASES

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No. 50: Seeger was convicted in the District Court for the Southern District of New York of having refused to submit to induction in the armed forces. He was originally classified 1-A in 1953 by his local board, but this classification was changed in 1955 to 2-S (student), and he remained in this status until 1958, when he was reclassified 1-A. He first claimed exemption as a conscientious objector in 1957, after successive annual renewals of his student classification. Although he did not adopt verbatim the printed Selective Service System form, he declared that he was conscientiously opposed to participation in war in any form by reason of his "religious" belief; that he preferred to leave the question as to his belief in a Supreme Being open, "rather than answer `yes' or `no'"; that his "skepticism or disbelief in the existence of God" did "not necessarily mean lack of faith in anything whatsoever"; that his was a "belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed." R. 69-70, 73. He cited such personages as Plato, Aristotle and Spinoza for support of his ethical belief in intellectual and moral integrity "without belief in God, except in the remotest sense." R. 73. His belief was found to be sincere, honest, [380 U.S. 167] and made in good faith, and his conscientious objection to be based upon individual training and belief, both of which included research in religious and cultural fields. Seeger's claim, however, was denied solely because it was not based upon a "belief in a relation to a Supreme Being" as required by § 6(j) of the Act. At trial, Seeger's counsel admitted that Seeger's belief was not in relation to a Supreme Being as commonly understood, but contended that he was entitled to the exemption because, "under the present law, Mr. Seeger's position would also include definitions of religion which have been stated more recently," R. 49, and could be "accommodated" under the definition of religious training and belief in the Act, R. 53. He was convicted, and the Court of Appeals reversed, holding that the Supreme Being requirement of the section distinguished "between internally derived and externally compelled beliefs," and was therefore an "impermissible classification" under the Due Process Clause of the Fifth Amendment. 326 F.2d 846.

1965, United States v. Seeger, 380 U.S. 167

No. 51: Jakobson was also convicted in the Southern District of New York on a charge of refusing to submit to induction. On his appeal, the Court of Appeals reversed on the ground that rejection of his claim may have rested on the factual finding, erroneously made, that he did not believe in a Supreme Being, as required by § 6(j). 325 F.2d 409.

1965, United States v. Seeger, 380 U.S. 167

Jakobson was originally classified 1-A in 1953, and intermittently enjoyed a student classification until 1956. It was not until April, 1958, that he made claim to noncombatant classification (1-A-O) as a conscientious objector. He stated on the Selective Service System form that he believed in a "Supreme Being" who was "Creator of Man" in the sense of being "ultimately responsible for the existence of" man, and who was "the Supreme Reality" of which "the existence of man is the result." R. 44. (Emphasis in the original.) He explained that his religious [380 U.S. 168] and social thinking had developed after much meditation and thought. He had concluded that man must be "partly spiritual," and, therefore, "partly akin to the Supreme Reality," and that his "most important religious law" was that "no man ought ever to wilfully sacrifice another man's life as a means to any other end…. " R. 45-46. In December, 1958, he requested a 1-O classification, since he felt that participation in any form of military service would involve him in "too many situations and relationships that would be a strain on [his] conscience that [he felt he] must avoid." R. 70. He submitted a long memorandum of "notes on religion" in which he defined religion as the "sum and essence of one's basic attitudes to the fundamental problems of human existence," R. 72 (emphasis in the original); he said that he believed in "Godness," which was "the Ultimate Cause for the fact of the Being of the Universe"; that to deny its existence would but deny the existence of the universe, because "anything that Is, has an Ultimate Cause for its Being." R. 73. There was a relationship to Godness, he stated, in two directions, i.e., "vertically, towards Godness directly," and "horizontally, towards Godness through Mankind and the World." R. 74. He accepted the latter one. The Board classified him 1-A-O, and Jakobson appealed. The hearing officer found that the claim was based upon a personal moral code, and that he was not sincere in his claim. The Appeal Board classified him 1-A. It did not indicate upon what ground it based its decision, i.e., insincerity or a conclusion that his belief was only a personal moral code. The Court of Appeals reversed, finding that his claim came within the requirements of § 6(j). Because it could not determine whether the Appeal Board had found that Jakobson's beliefs failed to come within the statutory definition, or whether it had concluded that he lacked sincerity, it directed dismissal of the indictment. [380 U.S. 169]

1965, United States v. Seeger, 380 U.S. 169

No. 29: Forest Britt Peter was convicted in the Northern District of California on a charge of refusing to submit to induction. In his Selective Service System form, he stated that he was not a member of a religious sect or organization; he failed to execute section VII of the questionnaire, but attached to it a quotation expressing opposition to war, in which he stated that he concurred. In a later form, he hedged the question as to his belief in a Supreme Being by saying that it depended on the definition, and he appended a statement that he felt it a violation of his moral code to take human life, and that he considered this belief superior to his obligation to the state. As to whether his conviction was religious, he quoted with approval Reverend John Haynes Holmes' definition of religion as

1965, United States v. Seeger, 380 U.S. 169

the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands…; [it] is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best.

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R. 27. The source of his conviction he attributed to reading and meditation "in our democratic American culture, with its values derived from the western religious and philosophical tradition." Ibid. As to his belief in a Supreme Being, Peter stated that he supposed "you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use." R. 11. In 1959, he was classified 1-A, although there was no evidence in the record that he was not sincere in his beliefs. After his conviction for failure to report for induction the Court of Appeals, assuming arguendo that he was sincere, affirmed, 324 F.2d 173.

BACKGROUND OF § 6(j)

1965, United States v. Seeger, 380 U.S. 169

Chief Justice Hughes, in his opinion in United States v. Macintosh, 283 U.S. 605 (1931), enunciated the rationale behind the long recognition of conscientious objection [380 U.S. 170] to participation in war accorded by Congress in our various conscription laws when he declared that, "in the forum of conscience, duty to a moral power higher than the state has always been maintained." At 633 (dissenting opinion). In a similar vein, Harlan Fiske Stone, later Chief Justice, drew from the Nation's past when he declared that

1965, United States v. Seeger, 380 U.S. 170

both morals and sound policy require that the state should not violate the conscience of the individual. All our history gives confirmation to the view that liberty of conscience has a moral and social value which makes it worthy of preservation at the hands of the state. So deep in its significance and vital, indeed, is it to the integrity of man's moral and spiritual nature that nothing short of the self-preservation of the state should warrant its violation; and it may well be questioned whether the state which preserves its life by a settled policy of violation of the conscience of the individual will not in fact ultimately lose it by the process.

1965, United States v. Seeger, 380 U.S. 170

Stone, The Conscientious Objector, 21 Col.Univ.Q. 253, 269 (1919).

1965, United States v. Seeger, 380 U.S. 170

Governmental recognition of the moral dilemma posed for persons of certain religious faiths by the call to arms came early in the history of this country. Various methods of ameliorating their difficulty were adopted by the Colonies, and were later perpetuated in state statutes and constitutions. Thus, by the time of the Civil War, there existed a state pattern of exempting conscientious objectors on religious grounds. In the Federal Militia Act of 1862, control of conscription was left primarily in the States. However, General Order No. 99, issued by the Adjutant General pursuant to that Act, provided for striking from the conscription list those who were exempted by the States; it also established a commutation or substitution system fashioned from earlier state enactments. With the Federal Conscription Act of 1863, [380 U.S. 171] which enacted the commutation and substitution provisions of General Order No. 99, the Federal Government occupied the field entirely, and, in the 1864 Draft Act, 13 Stat. 9, it extended exemptions to those conscientious objectors who were members of religious denominations opposed to the bearing of arms and who were prohibited from doing so by the articles of faith of their denominations. Selective Service System Monograph No. 11, Conscientious Objection 40-41 (1950). In that same year, the Confederacy exempted certain pacifist sects from military duty. Id. at 46.

1965, United States v. Seeger, 380 U.S. 171

The need for conscription did not again arise until World War I. The Draft Act of 1917, 40 Stat. 76, 78, afforded exemptions to conscientious objectors who were affiliated with a

1965, United States v. Seeger, 380 U.S. 171

well recognized religious sect or organization [then] organized and existing and whose existing creed or principles [forbade] its members to participate in war in any form….

1965, United States v. Seeger, 380 U.S. 171

The Act required that all persons be inducted into the armed services, but allowed the conscientious objectors to perform noncombatant service in capacities designated by the President of the United States. Although the 1917 Act excused religious objectors only, in December, 1917, the Secretary of War instructed that "personal scruples against war" be considered as constituting "conscientious objection." Selective Service System Monograph No. 11, Conscientious Objection at 54-55 (1950). This Act, including its conscientious objector provisions, was upheld against constitutional attack in the Selective Draft Law Cases, 245 U.S. 366, 389-390 (1918).

1965, United States v. Seeger, 380 U.S. 171

In adopting the 1940 Selective Training and Service Act, Congress broadened the exemption afforded in the 1917 Act by making it unnecessary to belong to a pacifist religious sect if the claimant's own opposition to war was based on "religious training and belief." 54 Stat. 889. Those found to be within the exemption were [380 U.S. 172] not inducted into the armed services, but were assigned to noncombatant service under the supervision of the Selective Service System. The Congress recognized that one might be religious without belonging to an organized church just as surely as minority members of a faith not opposed to war might, through religious reading, reach a conviction against participation in war. Congress Looks at the Conscientious Objector (National Service Board for Religious Objectors, 1943) 71, 79, 83, 87, 88, 89. Indeed, the consensus of the witnesses appearing before the congressional committees was that individual belief—rather than membership in a church or sect—determined the duties that God imposed upon a person in his everyday conduct, and that "there is a higher loyalty than loyalty to this country, loyalty to God." Id. at 29-31. See also the proposals which were made to the House Military Affairs Committee but rejected. Id. at 21-23, 82-83, 85. Thus, while shifting the test from membership in such a church to one's individual belief, the Congress nevertheless continued its historic practice of excusing from armed service those who believed that they owed an obligation, superior to that due the state, of not participating in war in any form.

1965, United States v. Seeger, 380 U.S. 172

Between 1940 and 1948, two courts of appeals 1 held that the phrase "religious training and belief" did not include philosophical, social or political policy. Then, in 1948, the Congress amended the language of the statute and declared that "religious training and belief" was to be defined as

1965, United States v. Seeger, 380 U.S. 172

an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but [not including] essentially political, sociological, or philosophical views or a merely personal moral code.

1965, United States v. Seeger, 380 U.S. 172

The only significant mention of [380 U.S. 173] this change in the provision appears in the report of the Senate Armed Services Committee recommending adoption. It said simply this:

1965, United States v. Seeger, 380 U.S. 173

This section reenacts substantially the same provisions as were found in subsection 5(g) of the 1940 act. Exemption extends to anyone who, because of religious training and belief in his relation to a Supreme Being, is conscientiously opposed to combatant military service or to both combatant and noncombatant military service. (See United States v. Berman (sic), 156 F.2d 377, certiorari denied, 329 U.S. 795).

1965, United States v. Seeger, 380 U.S. 173

S.Rep.No. 1268, 80th Cong., 2d Sess., 14; U.S.Code Cong. Service 1948, p. 2002.

INTERPRETATION OF § 6(j)

1965, United States v. Seeger, 380 U.S. 173

1. The crux of the problem lies in the phrase "religious training and belief," which Congress has defined as "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation." In assigning meaning to this statutory language, we may narrow the inquiry by noting briefly those scruples expressly excepted from the definition. The section excludes those persons who, disavowing religious belief, decide on the basis of essentially political, sociological or economic considerations that war is wrong and that they will have no part of it. These judgments have historically been reserved for the Government, and, in matters which can be said to fall within these areas, the conviction of the individual has never been permitted to override that of the state. United States v. Macintosh, supra (dissenting opinion). The statute further excludes those whose opposition to war stems from a "merely personal moral code," a phrase to which we shall have occasion to turn later in discussing the application of § 6(j) to these cases. We also pause to take note of what is not involved in this litigation. No party claims to be an atheist, or attacks the statute on this ground. The question is not, therefore, one between theistic and atheistic beliefs. We do not deal with [380 U.S. 174] or intimate any decision on that situation in these cases. Nor do the parties claim the monotheistic belief that there is but one God; what they claim (with the possible exception of Seeger, who bases his position here not on factual, but on purely constitutional, grounds) is that they adhere to theism, which is the "Belief in the existence of a god or gods;…Belief in superhuman powers or spiritual agencies in one or many gods," as opposed to atheism. 2 Our question, therefore, is the narrow one: does the term "Supreme Being," as used in § 6(j), mean the orthodox God or the broader concept of a power or being, or a faith, "to which all else is subordinate or upon which all else is ultimately dependent"? Webster's New International Dictionary (Second Edition). In considering this question, we resolve it solely in relation to the language of § 6(j), and not otherwise.

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2. Few would quarrel, we think, with the proposition that in no field of human endeavor has the tool of language proved so inadequate in the communication of ideas as it has in dealing with the fundamental questions of man's predicament in life, in death, or in final judgment and retribution. This fact makes the task of discerning the intent of Congress in using the phrase "Supreme Being" a complex one. Nor is it made the easier by the richness and variety of spiritual life in our country. Over 250 sects inhabit our land. Some believe in a purely personal God, some in a supernatural deity; others think of religion as a way of life envisioning, as its ultimate goal, the day when all men can live together in perfect understanding and peace. There are those who think of God as the depth of our being; others, such as the Buddhists, strive for a state of lasting rest through self-denial and inner purification; in Hindu philosophy, the Supreme Being is [380 U.S. 175] the transcendental reality which is truth, knowledge and bliss. Even those religious groups which have traditionally opposed war in every form have splintered into various denominations: from 1940 to 1947, there were four denominations using the name "Friends," Selective Service System Monograph No. 11, Conscientious Objection 13 (1950); the "Church of the Brethren" was the official name of the oldest and largest church body of four denominations composed of those commonly called Brethren, id. at 11; and the "Mennonite Church" was the largest of 17 denominations, including the Amish and Hutterites, grouped as "Mennonite bodies" in the 1936 report on the Census of Religious Bodies, id. at 9. This vast panoply of beliefs reveals the magnitude of the problem which faced the Congress when it set about providing an exemption from armed service. It also emphasizes the care that Congress realized was necessary in the fashioning of an exemption which would be in keeping with its long established policy of not picking and choosing among religious beliefs.

1965, United States v. Seeger, 380 U.S. 175

In spite of the elusive nature of the inquiry, we are not without certain guidelines. In amending the 1940 Act, Congress adopted almost intact the language of Chief Justice Hughes in United States v. Macintosh, supra:

1965, United States v. Seeger, 380 U.S. 175

The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation.

1965, United States v. Seeger, 380 U.S. 175

At 633-634. (Emphasis supplied.)

1965, United States v. Seeger, 380 U.S. 175

By comparing the statutory definition with those words, however, it becomes readily apparent that the Congress deliberately broaden them by substituting the phrase "Supreme Being" for the appellation "God." And, in so doing, it is also significant that Congress did not elaborate on the form or nature of this higher authority which it chose to designate as "Supreme Being." By so refraining, it must have had in mind the admonitions of the Chief [380 U.S. 176] Justice when he said in the same opinion that even the word "God" had myriad meanings for men of faith:

1965, United States v. Seeger, 380 U.S. 176

[P]utting aside dogmas with their particular conceptions of deity, freedom of conscience itself implies respect for an innate conviction of paramount duty. The battle for religious liberty has been fought and won with respect to religious beliefs and practices, which are not in conflict with good order, upon the very ground of the supremacy of conscience within its proper field.

1965, United States v. Seeger, 380 U.S. 176

At 634.

1965, United States v. Seeger, 380 U.S. 176

Moreover, the Senate Report on the bill specifically states that § 6(j) was intended to reenact "substantially the same provisions as were found" in the 1940 Act. That statute, of course, refers to "religious training and belief," without more. Admittedly, all of the parties here purport to base their objection on religious belief. It appears, therefore, that we need only look to this clear statement of congressional intent as set out in the report. Under the 1940 Act, it was necessary only to have a conviction based upon religious training and belief; we believe that is all that is required here. Within that phrase would come all sincere religious beliefs which are based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent. The test might be stated in these words: a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition. This construction avoids imputing to Congress an intent to classify different religious beliefs, exempting some and excluding others, and is in accord with the well established congressional policy of equal treatment for those whose opposition to service is grounded in their religious tenets. [380 U.S. 177]

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3. The Government takes the position that, since Berman v. United States, supra, was cited in the Senate Report on the 1948 Act, Congress must have desired to adopt the Berman interpretation of what constitutes "religious belief." Such a claim, however, will not bear scrutiny. First, we think it clear that an explicit statement of congressional intent deserves more weight than the parenthetical citation of a case which might stand for a number of things. Congress specifically stated that it intended to reenact substantially the same provisions as were found in the 1940 Act. Moreover, the history of that Act reveals no evidence of a desire to restrict the concept of religious belief. On the contrary, the Chairman of the House Military Affairs Committee, which reported out the 1940 exemption provisions, stated:

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We heard the conscientious objectors and all of their representatives that we could possible hear, and, summing it all up, their whole objection to the bill, aside from their objection to compulsory military training, was based upon the right of conscientious objection and, in most instances, to the right of the ministerial students to continue in their studies, and we have provided ample protection for those classes and those groups.

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86 Cong.Rec. 11368 (1940). During the House debate on the bill, Mr. Faddis of Pennsylvania made the following statement:

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We have made provision to take care of conscientious objectors. I am sure the committee has had all the sympathy in the world with those who appeared claiming to have religious scruples against rendering military service in its various degrees. Some appeared who had conscientious scruples against handling lethal weapons, but who had no [380 U.S. 178] scruples against performing other duties which did not actually bring them into combat. Others appeared who claimed to have conscientious scruples against participating in any of the activities that would go along with the Army. The committee took all of these into consideration, and has written a bill which, I believe, will take care of all the reasonable objections of this class of people.

1965, United States v. Seeger, 380 U.S. 178

86 Cong.Rec. 11418 (1940). Thus, the history of the Act belies the notion that it was to be restrictive in application and available only to those believing in a traditional God.

1965, United States v. Seeger, 380 U.S. 178

As for the citation to Berman, it might mean a number of things. But we think that Congress' action in citing it must be construed in such a way as to make it consistent with its express statement that it meant substantially to reenact the 1940 provision. As far as we can find, there is not one word to indicate congressional concern over any conflict between Kauten and Berman. Surely, if it thought that two clashing interpretations as to what amounted to "religious belief" had to be resolved, it would have said so somewhere in its deliberations. Thus, we think that, rather than citing Berman for what it said "religious belief" was, Congress cited it for what it said "religious belief" was not. For both Kauten and Berman hold in common the conclusion that exemption must be denied to those whose beliefs are political, social or philosophical in nature, rather than religious. Both, in fact, denied exemption on that very ground. It seems more likely, therefore, that it was this point which led Congress to cite Berman. The first part of the § 6(j) definition—belief in a relation to a Supreme Being—was indeed set out in Berman, with the exception that the court used the word "God," rather than "Supreme Being." However, as the Government recognizes, Berman took that language word for word from Macintosh. Far from [380 U.S. 179] requiring a conclusion contrary to the one we reach here, Chief Justice Hughes' opinion, as we have pointed out, supports our interpretation.

1965, United States v. Seeger, 380 U.S. 179

Admittedly, the second half of the statutory definition—the rejection of sociological and moral views—was taken directly from Berman. But, as we have noted, this same view was adhered to in United States v. Kauten, supra. Indeed, the Selective Service System has stated its view of the cases' significance in these terms:

1965, United States v. Seeger, 380 U.S. 179

The United States v. Kauten and Herman Berman v. United States cases ruled that a valid conscientious objector claim to exemption must be based solely on "religious training and belief," and not on philosophical, political, social, or other grounds….

1965, United States v. Seeger, 380 U.S. 179

Selective Service System Monograph No. 11, Conscientious Objection 337 (1950). See id. at 278. That the conclusions of the Selective Service System are not to be taken lightly is evidenced in this statement by Senator Gurney, Chairman of the Senate Armed Services Committee and sponsor of the Senate bill containing the present version of § 6(j):

1965, United States v. Seeger, 380 U.S. 179

The bill which is now pending follows the 1940 act, with very few technical amendments, worked out by those in Selective Service who had charge of the conscientious objector problem during the war.

1965, United States v. Seeger, 380 U.S. 179

94 Cong.Rec. 7305 (1948). Thus, we conclude that, in enacting § 6(j), Congress simply made explicit what the courts of appeals had correctly found implicit in the 1940 Act. Moreover, it is perfectly reasonable that Congress should have selected Berman for its citation, since this Court denied certiorari in that case, a circumstance not present in Kauten.

1965, United States v. Seeger, 380 U.S. 179

Section 6(j), then, is no more than a clarification of the 1940 provision involving only certain "technical amendments," to use the words of Senator Gurney. As such, it continues the congressional policy of providing exemption from military service for those whose opposition [380 U.S. 180] is based on grounds that can fairly be said to be "religious." 3 To hold otherwise would not only fly in the face of Congress' entire action in the past; it would ignore the historic position of our country on this issue since its founding.

1965, United States v. Seeger, 380 U.S. 180

4. Moreover, we believe this construction embraces the ever-broadening understanding of the modern religious community. The eminent Protestant theologian, Dr. Paul Tillich, whose views the Government concedes would come within the statute, identifies God not as a projection "out there" or beyond the skies, but as the ground of our very being. The Court of Appeals stated in No. 51 that Jakobson's views "parallel [those of] this eminent theologian rather strikingly." 325 F.2d at 415-416. In his book, Systematic Theology, Dr. Tillich says:

1965, United States v. Seeger, 380 U.S. 180

I have written of the God above the God of theism…. In such a state [of self-affirmation], the God of both religious and theological language disappears. But something remains, namely, the seriousness of that doubt in which meaning within meaninglessness is affirmed. The source of this affirmation of meaning within meaninglessness, of certitude within doubt, is not the God of traditional theism, but the "God above God," the power of being, which works through those who have no name for it, not even the name God.

1965, United States v. Seeger, 380 U.S. 180

II Systematic Theology 12 (1957). [380 U.S. 181]

1965, United States v. Seeger, 380 U.S. 181

Another eminent cleric, the Bishop of Woolwich, John A. T. Robinson, in his book, Honest To God (1963), states:

1965, United States v. Seeger, 380 U.S. 181

The Bible speaks of a God "up there." No doubt its picture of a three-decker universe, of "the heaven above, the earth beneath, and the waters under the earth," was once taken quite literally….

1965, United States v. Seeger, 380 U.S. 181

At 11.

1965, United States v. Seeger, 380 U.S. 181

[Later,] in place of a God who is literally or physically "up there," we have accepted, as part of our mental furniture, a God who is spiritually or metaphysically "out there."…But now it seems there is no room for him, not merely in the inn, but in the entire universe: for there are no vacant places left. In reality, of course, our new view of the universe had made not the slightest difference….

1965, United States v. Seeger, 380 U.S. 181

At 13-14.

1965, United States v. Seeger, 380 U.S. 181

But the idea of a God spiritually or metaphysically "out there" dies very much harder. Indeed, most people would be seriously disturbed by the thought that it should need to die at all. For it is their God, and they have nothing to put in its place…. Every one of us lives with some mental picture of a God "out there," a God who "exists" above and beyond the world he made, a God "to" whom we pray and to whom we "go" when we die.

1965, United States v. Seeger, 380 U.S. 181

At 14.

1965, United States v. Seeger, 380 U.S. 181

But the signs are that we are reaching the point at which the whole conception of a God "out there," which has served us so well since the collapse of the three-decker universe, is itself becoming more of a hindrance than a help.

1965, United States v. Seeger, 380 U.S. 181

At 15-16. (Emphasis in original.)

1965, United States v. Seeger, 380 U.S. 181

The Schema of the recent Ecumenical Council included a most significant declaration on religion: 4 [380 U.S. 182]

1965, United States v. Seeger, 380 U.S. 182

The community of all peoples is one. One is their origin, for God made the entire human race live on all the face of the earth. One, too, is their ultimate end, God. Men expect from the various religions answers to the riddles of the human condition: What is man? What is the meaning and purpose of our lives? What is the moral good and what is sin? What are death, judgment, and retribution after death?

\* \* \* \*

1965, United States v. Seeger, 380 U.S. 182

Ever since primordial days, numerous peoples have had a certain perception of that hidden power which hovers over the course of things and over the events that make up the lives of men; some have even come to know of a Supreme Being and Father. Religions in an advanced culture have been able to use more refined concepts and a more developed language in their struggle for an answer to man's religious questions.

\* \* \* \*

1965, United States v. Seeger, 380 U.S. 182

Nothing that is true and holy in these religions is scorned by the Catholic Church. Ceaselessly the Church proclaims Christ, "the Way, the Truth, and the Life," in whom God reconciled all things to Himself. The Church regards with sincere reverence those ways of action and of life, precepts and teachings which, although they differ from the ones she sets forth, reflect nonetheless a ray of that Truth which enlightens all men.

1965, United States v. Seeger, 380 U.S. 182

Dr. David Saville Muzzey, a leader in the Ethical Culture Movement, states in his book, Ethics As a Religion (1951), that "[e]verybody except the avowed atheists (and they are comparatively few) believes in some kind of God," and that

1965, United States v. Seeger, 380 U.S. 182

The proper question to ask, therefore, is [380 U.S. 183] not the futile one, Do you believe in God? but rather, What kind of God do you believe in?

1965, United States v. Seeger, 380 U.S. 183

Id. at 86-87. Dr. Muzzey attempts to answer that question:

1965, United States v. Seeger, 380 U.S. 183

Instead of positing a personal God, whose existence man can neither prove nor disprove, the ethical concept is founded on human experience. It is anthropocentric, not theocentric. Religion, for all the various definitions that have been given of it, must surely mean the devotion of man to the highest ideal that he can conceive. And that ideal is a community of spirits in which the latent moral potentialities of men shall have been elicited by their reciprocal endeavors to cultivate the best in their fellow men. What ultimate reality is we do not know; but we have the faith that it expresses itself in the human world as the power which inspires in men moral purpose.

1965, United States v. Seeger, 380 U.S. 183

At 95.

1965, United States v. Seeger, 380 U.S. 183

Thus, the "God" that we love is not the figure on the great white throne, but the perfect pattern, envisioned by faith, of humanity as it should be, purged of the evil elements which retard its progress toward "the knowledge, love and practice of the right."

1965, United States v. Seeger, 380 U.S. 183

At 98.

1965, United States v. Seeger, 380 U.S. 183

These are but a few of the views that comprise the broad spectrum of religious beliefs found among us. But they demonstrate very clearly the diverse manners in which beliefs, equally paramount in the lives of their possessors, may be articulated. They further reveal the difficulties inherent in placing too narrow a construction on the provisions of § 6(j), and thereby lend conclusive support to the construction which we today find that Congress intended.

1965, United States v. Seeger, 380 U.S. 183

5. We recognize the difficulties that have always faced the trier of fact in these cases. We hope that the test that we lay down proves less onerous. The examiner is furnished [380 U.S. 184] a standard that permits consideration of criteria with which he has had considerable experience. While the applicant's words may differ, the test is simple of application. It is essentially an objective one, namely, does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption?

1965, United States v. Seeger, 380 U.S. 184

Moreover, it must be remembered that, in resolving these exemption problems, one deals with the beliefs of different individuals who will articulate them in a multitude of ways. In such an intensely personal area, of course, the claim of the registrant that his belief is an essential part of a religious faith must be given great weight. Recognition of this was implicit in this language, cited by the Berman court from State v. Amana Society, 132 Iowa 304, 109 N.W. 894 (1906):

1965, United States v. Seeger, 380 U.S. 184

Surely a scheme of life designed to obviate [man's inhumanity to man], and, by removing temptations and all the allurements of ambition and avarice, to nurture the virtues of unselfishness, patience, love, and service, ought not to be denounced as not pertaining to religion when its devotees regard it as an essential tenet of their religious faith.

1965, United States v. Seeger, 380 U.S. 184

132 Iowa at 315, 109 N.W. at 898, cited in Berman v. United States, 156 F.2d 377, 381. (Emphasis by the Court of Appeals.) The validity of what he believes cannot be questioned. Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant's "Supreme Being" or the truth of his concepts. But these are inquiries foreclosed to Government. As MR. JUSTICE DOUGLAS stated in United States v. Ballard, 322 U.S. 78, 86 (1944):

1965, United States v. Seeger, 380 U.S. 184

Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others.

1965, United States v. Seeger, 380 U.S. 184

Local [380 U.S. 185] boards and courts in this sense are not free to reject beliefs because they consider them "incomprehensible." Their task is to decide whether the beliefs professed by a registrant are sincerely held, and whether they are, in his own scheme of things, religious.

1965, United States v. Seeger, 380 U.S. 185

But we hasten to emphasize that, while the "truth" of a belief is not open to question, there remains the significant question whether it is "truly held." This is the threshold question of sincerity which must be resolved in every case. It is, of course, a question of fact—a prime consideration to the validity of every claim for exemption as a conscientious objector. The Act provides a comprehensive scheme for assisting the Appeal Boards in making this determination, placing at their service the facilities of the Department of Justice, including the Federal Bureau of Investigation and hearing officers. Finally, we would point out that, in Estep v. United States, 327 U.S. 114, (1946), this Court held that:

1965, United States v. Seeger, 380 U.S. 185

The provision making the decisions of the local boards "final" means to us that Congress chose not to give administrative action under this Act the customary scope of judicial review which obtains under other statutes. It means that the courts are not to weigh the evidence to determine whether the classification made by the local boards was justified. The decisions of the local boards made in conformity with the regulations are final, even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant.

1965, United States v. Seeger, 380 U.S. 185

At 122-123.

APPLICATION OF § 6(j) TO THE INSTANT CASES

1965, United States v. Seeger, 380 U.S. 185

As we noted earlier, the statutory definition excepts those registrants whose beliefs are based on a "merely personal moral code." The records in these cases, however, [380 U.S. 186] show that at no time did any one of the applicants suggest that his objection was based on a "merely personal moral code." Indeed, at the outset, each of them claimed in his application that his objection was based on a religious belief. We have construed the statutory definition broadly, and it follows that any exception to it must be interpreted narrowly. The use by Congress of the words "merely personal" seems to us to restrict the exception to a moral code which is not only personal, but which is the sole basis for the registrant's belief, and is in no way related to a Supreme Being. It follows, therefore, that, if the claimed religious beliefs of the respective registrants in these cases meet the test that we lay down, then their objections cannot be based on a "merely personal" moral code.

1965, United States v. Seeger, 380 U.S. 186

In Seeger, No. 50, the Court of Appeals failed to find sufficient "externally compelled beliefs." However, it did find that

1965, United States v. Seeger, 380 U.S. 186

it would seem impossible to say with assurance that [Seeger] is not bowing to "external commands" in virtually the same sense as is the objector who defers to the will of a supernatural power.

1965, United States v. Seeger, 380 U.S. 186

326 F.2d at 853. It found little distinction between Jakobson's devotion to a mystical force of "Godness" and Seeger's compulsion to "goodness." Of course, as we have said, the statute does not distinguish between externally and internally derived beliefs. Such a determination would, as the Court of Appeals observed, prove impossible as a practical matter, and we have found that Congress intended no such distinction.

1965, United States v. Seeger, 380 U.S. 186

The Court of Appeals also found that there was no question of the applicant's sincerity. He was a product of a devout Roman Catholic home; he was a close student of Quaker beliefs from which he said "much of [his] thought is derived"; he approved of their opposition to war in any form; he devoted his spare hours to the American [380 U.S. 187] Friends Service Committee, and was assigned to hospital duty.

1965, United States v. Seeger, 380 U.S. 187

In summary, Seeger professed "religious belief" and "religious faith." He did not disavow any belief "in a relation to a Supreme Being"; indeed, he stated that "the cosmic order does, perhaps, suggest a creative intelligence." He decried the tremendous "spiritual" price man must pay for his willingness to destroy human life. In light of his beliefs and the unquestioned sincerity with which he held them, we think the Board, had it applied the test we propose today, would have granted him the exemption. We think it clear that the beliefs which prompted his objection occupy the same place in his life as the belief in a traditional deity holds in the lives of his friends, the Quakers. We are reminded once more of Dr. Tillich's thoughts:

1965, United States v. Seeger, 380 U.S. 187

And if that word [God] has not much meaning for you, translate it, and speak of the depths of your life, of the source of your being, or your ultimate concern, of what you take seriously without any reservation. Perhaps, in order to do so, you must forget everything traditional that you have learned about God….

1965, United States v. Seeger, 380 U.S. 187

Tillich, The Shaking of the Foundations. 57 (1948). (Emphasis supplied.) It may be that Seeger did not clearly demonstrate what his beliefs were with regard to the usual understanding of the term "Supreme Being." But, as we have said, Congress did not intend that to be the test. We therefore affirm the judgment in No. 50.

1965, United States v. Seeger, 380 U.S. 187

In Jakobson, No. 51, the Court of Appeals found that the registrant demonstrated that his belief as to opposition to war was related to a Supreme Being. We agree, and affirm that judgment.

1965, United States v. Seeger, 380 U.S. 187

We reach a like conclusion in No. 29. It will be remembered that Peter acknowledged "some power manifest in [380 U.S. 188] nature…the supreme expression" that helps man in ordering his life. As to whether he would call that belief in a Supreme Being, he replied, "you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use." We think that, under the test we establish here, the Board would grant the exemption to Peter, and we therefore reverse the judgment in No. 29.

1965, United States v. Seeger, 380 U.S. 188

It is so ordered.

DOUGLAS, J., concurring

1965, United States v. Seeger, 380 U.S. 188

MR. JUSTICE DOUGLAS, concurring.

1965, United States v. Seeger, 380 U.S. 188

If I read the statute differently from the Court, I would have difficulties. For then those who embraced one religious faith, rather than another, would be subject to penalties; and that kind of discrimination, as we held in Sherbert v. Verner, 374 U.S. 398, would violate the Free Exercise Clause of the First Amendment. It would also result in a denial of equal protection by preferring some religions over others—an invidious discrimination that would run afoul of the Due Process Clause of the Fifth Amendment. See Bolling v. Sharpe, 347 U.S. 497.

1965, United States v. Seeger, 380 U.S. 188

The legislative history of this Act leaves much in the dark. But it is, in my opinion, not a tour de force if we construe the words "Supreme Being" to include the cosmos, as well as an anthropomorphic entity. If it is a tour de force so to hold, it is no more so than other instances where we have gone to extremes to construe an Act of Congress to save it from demise on constitutional grounds. In a more extreme case than the present one, we said that the words of a statute may be strained "in the candid service of avoiding a serious constitutional doubt." United States v. Rumely, 345 U.S. 41, 47. 1 [380 U.S. 189]

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The words "a Supreme Being" have no narrow technical meaning in the field of religion. Long before the birth of our Judeo-Christian civilization, the idea of God had taken hold in many forms. Mention of only two—Hinduism and Buddhism—illustrates the fluidity and evanescent scope of the concept. In the Hindu religion, the Supreme Being is conceived in the forms of several cult Deities. The chief of these, which stand for the Hindu Triad, are Brahma, Vishnu and Siva. Another Deity, and the one most widely worshipped, is Sakti, the Mother Goddess, conceived as power, both destructive and creative. Though Hindu religion encompasses the worship of many Deities, it believes in only one single God, the eternally existent One Being, with his manifold attributes and manifestations. This idea is expressed in Digveda, the earliest sacred text of the Hindus, in verse 46 of a hymn attributed to the mythical seer Dirghatamas (Rigveda, I, 164):

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They call it Indra, Mitra, Varuna and Agni

1965, United States v. Seeger, 380 U.S. 189

And also heavenly beautiful Garutman:

1965, United States v. Seeger, 380 U.S. 189

The Real is One, though sages name it variously—

1965, United States v. Seeger, 380 U.S. 189

They call it Agni, Yama, Matarisvan.

1965, United States v. Seeger, 380 U.S. 189

See Smart, Reasons and Faiths p. 35, n. 1 (1958); 32 Harvard Oriental Series pp. 434-435. (Lanman, ed. 1925). See generally 31 and 32 id.; Editors of Life Magazine, The World's Great Religions Vol. 1, pp. 17-48 (1963).

1965, United States v. Seeger, 380 U.S. 189

Indian philosophy, which comprises several schools of thought, has advanced different theories of the nature of the Supreme Being. According to the Upanisads, Hindu sacred texts, the Supreme Being is described as the power which creates and sustains everything, and to which the created things return upon dissolution. The word which is commonly used in the Upanisads to indicate the Supreme Being is Brahman. Philosophically, the [380 U.S. 190] Supreme Being is the transcendental Reality which is Truth, Knowledge, and Bliss. It is the source of the entire universe. In this aspect, Brahman is Isvara, a personal Lord and Creator of the universe, an object of worship. But, in the view of one school of thought, that of Sankara, even this is an imperfect and limited conception of Brahman which must be transcended: to think of Brahman as the Creator of the material world is necessarily to form a concept infected with illusion, or maya—which is what the world really is, in highest truth. Ultimately, mystically, Brahman must be understood as without attributes, as neti neti (not this, not that). See Smart, op. cit., supra, p. 133.

1965, United States v. Seeger, 380 U.S. 190

Buddhism—whose advent marked the reform of Hinduism—continued somewhat the same concept. As stated by Nancy Wilson Ross,

1965, United States v. Seeger, 380 U.S. 190

God—if I may borrow that word for a moment—the universe, and man are one indissoluble existence, one total whole. Only THIS-capital THIS—is. Anything and everything that appears to use as an individual entity or phenomenon, whether it be a planet or an atom, a mouse or a man, is but a temporary manifestation of THIS in form; every activity that takes place, whether it be birth or death, loving or eating breakfast, is but a temporary manifestation of THIS in activity. When we look at things this way, naturally we cannot believe that each individual person has been endowed with a special and individual soul or self. Each one of us is but a cell, as it were, in the body of the Great Self, a cell that comes into being, performs its functions, and passes away, transformed into another manifestation. Though we have temporary individuality, that temporary, limited individuality is not either a true self or our true self. Our true self is the Great Self; our true body is the Body of Reality, or the Dharmakaya, to give it its technical Buddhist name.

1965, United States v. Seeger, 380 U.S. 190

The World of Zen, p. 18 (1960). [380 U.S. 191]

1965, United States v. Seeger, 380 U.S. 191

Does a Buddhist believe in "God" or a "Supreme Being"? That, of course, depends on how one defines "God," as one eminent student of Buddhism has explained:

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It has often been suggested that Buddhism is an atheistic system of thought, and this assumption has given rise to quite a number of discussions. Some have claimed that, since Buddhism knew no God, it could not be a religion; others, that, since Buddhism obviously was a religion which knew no God, the belief in God was not essential to religion. These discussions assume that God is an unambiguous term, which is by no means the case.

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Conze, Buddhism, pp. 38-39 (1959). Dr. Conze then says that, if "God" is taken to mean a personal Creator of the universe, then the Buddhist has no interest in the concept. Id., p. 39. But if "God" means something like the state of oneness with God as described by some Christian mystics, then the Buddhist surely believes in "God," since this state is almost indistinguishable from the Buddhist concept of Nirvana, "the supreme Reality;…the eternal, hidden and incomprehensible Peace." Id., pp. 39-40. And, finally, if "God" means one of the many Deities in an at least superficially polytheistic religion like Hinduism, then Buddhism tolerates a belief in many Gods:

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the Buddhists believe that a Faith can be kept alive only if it can be adapted to the mental habits of the average person. In consequence, we find that, in the earlier Scriptures, the deities of Brahmanism are taken for granted, and that, later on, the Buddhists adopted the local Gods of any district to which they came.

1965, United States v. Seeger, 380 U.S. 191

Id., p. 42.

1965, United States v. Seeger, 380 U.S. 191

When the present Act was adopted in 1948, we were a nation of Buddhists, Confucianists, and Taoists, as well as Christians. Hawaii, then a Territory, was indeed filled with Buddhists, Buddhism being "probably the major [380 U.S. 192] faith, if Protestantism and Roman Catholicism are deemed different faiths." Stokes and Pfeffer, Church and State in the United States, p. 560 (1964). Organized Buddhism first came to Hawaii in 1887 when Japanese laborers were brought to work on the plantations. There are now numerous Buddhist sects in Hawaii, and the temple of the Shin sect in Honolulu is said to have the largest congregation of any religious organization in the city. See Mulholland, Religion in Hawaii pp. 44-50 (1961).

1965, United States v. Seeger, 380 U.S. 192

In the continental United States, Buddhism is found "in real strength" in Utah, Arizona, Washington, Oregon, and California.

1965, United States v. Seeger, 380 U.S. 192

Most of the Buddhists in the United States are Japanese or Japanese-Americans; however, there are "English" departments in San Francisco, Los Angeles, and Tacoma.

1965, United States v. Seeger, 380 U.S. 192

Mead, Handbook of Denominations, p. 61 (1961). The Buddhist Churches of North America, organized in 1914 as the Buddhist Mission of North America and incorporated under the present name in 1942, represent the Jodo Shinshu Sect of Buddhism in this country. This sect is the only Buddhist group reporting information to the annual Yearbook of American Churches. In 1961, the latest year for which figures are available, this group alone had 55 churches and an inclusive membership of 60,000; it maintained 89 church schools, with a total enrollment of 11,150. Yearbook of American Churches, p. 30 (1965). According to one source, the total number of Buddhists of all sects in North America is 171,000. See World Almanac, p. 636 (1965).

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When the Congress spoke in the vague general terms of a Supreme Being, I cannot, therefore, assume that it was so parochial as to use the words in the narrow sense urged on us. I would attribute tolerance and sophistication to the Congress, commensurate with the religious complexion of our communities. In sum, I agree with the Court that any person opposed to war on the basis of a sincere belief, which, in his life, fills the same place as a belief [380 U.S. 193] in God fills in the life of an orthodox religionist, is entitled to exemption under the statute. None comes to us an avowedly irreligious person or as an atheist; 2 one as a sincere believer in "goodness and virtue for their own sakes." His questions and doubts on theological issues, and his wonder, are no more alien to the statutory standard than are the awe-inspired questions of a devout Buddhist.

Footnotes

CLARK, J., lead opinion (Footnotes)

1965, United States v. Seeger, 380 U.S. 193

1. See United States v. Kauten, 133 F.2d 703 (C.A.2d Cir. 1943); Berman v. United States, 156 F.2d 377 (C.A.9th Cir. 1946).

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2. See Webster's New International Dictionary (Second Edition); Webster's New Collegiate Dictionary (1949).

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3. A definition of "religious training and belief" identical to that in § 6(j) is found in § 337 of the Immigration and Nationality Act, 66 Stat. 258, 8 U.S.C. § 1448(a) (1958 ed.). It is noteworthy that, in connection with this Act, the Senate Special Subcommittee to Investigate Immigration and Naturalization stated:

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The subcommittee realizes and respects the fact that the question of whether or not a person must bear arms in defense of his country may be one which invades the province of religion and personal conscience.

1965, United States v. Seeger, 380 U.S. 193

Thus, it recommended that an alien not be required to vow to bear arms when he asserted "his opposition to participation in war in any form because of his personal religious training and belief." S.Rep. No. 1515, 81st Cong., 2d Sess., 742, 746.

1965, United States v. Seeger, 380 U.S. 193

4. Draft declaration on the Church's relations with non-Christians, Council Daybook, Vatican II, 3d Sess., p. 282, N.C.W.C., Washington, D.C., 1965.

DOUGLAS, J., concurring (Footnotes)

1965, United States v. Seeger, 380 U.S. 193

1. And see Crowell v. Benson, 285 U.S. 22, 62; Ullmann v. United States, 350 U.S. 422, 433; Ashwander v. TVA, 297 U.S. 288, 341, 348 (concurring opinion).

1965, United States v. Seeger, 380 U.S. 193

2. If he was an atheist, quite different problems would be presented. Cf. Torcaso v. Watkins, 367 U.S. 488.

President Johnson's Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act, 1965

Title: President Johnson's Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act

Author: Lyndon B. Johnson

Date: August 6, 1965

Source: Public Papers of the Presidents, Johnson, 1965, pp.840-843

Public Papers of LBJ, 1965, p.840

Mr. Vice President, Mr. Speaker, Members of Congress, members of the Cabinet, distinguished guests, my fellow Americans:

Public Papers of LBJ, 1965, p.840

Today is a triumph for freedom as huge as any victory that has ever been won on any battlefield. Yet to seize the meaning of this day, we must recall darker times.

Public Papers of LBJ, 1965, p.840

Three and a half centuries ago the first Negroes arrived at Jamestown. They did not arrive in brave ships in search of a home for freedom. They did not mingle fear and joy, in expectation that in this New World anything would be possible to a man strong enough to reach for it.

Public Papers of LBJ, 1965, p.840

They came in darkness and they came in chains.

Public Papers of LBJ, 1965, p.840

And today we strike away the last major shackle of those fierce and ancient bonds. Today the Negro story and the American story fuse and blend.

Public Papers of LBJ, 1965, p.840

And let us remember that it was not always so. The stories of our Nation and of the American Negro are like two great rivers. Welling up from that tiny Jamestown spring they flow through the centuries along divided channels.

Public Papers of LBJ, 1965, p.840

When pioneers subdued a continent to the need of man, they did not tame it for the Negro. When the Liberty Bell rang out in Philadelphia, it did not toll for the Negro. When Andrew Jackson threw open the doors of democracy, they did not open for the Negro.

Public Papers of LBJ, 1965, p.840

It was only at Appomattox, a century ago, that an American victory was also a Negro victory. And the two rivers—one shining with promise, the other dark-stained with oppression—began to move toward one another.

THE PROMISE KEPT

Public Papers of LBJ, 1965, p.840–p.841

Yet, for almost a century the promise of that day was not fulfilled. Today is a [p.841] towering and certain mark that, in this generation, that promise will be kept. In our time the two currents will finally mingle and rush as one great stream across the uncertain and the marvelous years of the America that is yet to come.

Public Papers of LBJ, 1965, p.841

This act flows from a clear and simple wrong. Its only purpose is to right that wrong. Millions of Americans are denied the right to vote because of their color. This law will ensure them the right to vote. The wrong is one which no American, in his heart, can justify. The right is one which no American, true to our principles, can deny.

Public Papers of LBJ, 1965, p.841

In 1957, as the leader of the majority in the United States Senate, speaking in support of legislation to guarantee the right of all men to vote, I said, "This right to vote is the basic right without which all others are meaningless. It gives people, people as individuals, control over their own destinies."

Public Papers of LBJ, 1965, p.841

Last year I said, "Until every qualified person regardless of…the color of his skin has the right, unquestioned and unrestrained, to go in and cast his ballot in every precinct in this great land of ours, I am not going to be satisfied."

Public Papers of LBJ, 1965, p.841

Immediately after the election I directed the Attorney General to explore, as rapidly as possible, the ways to ensure the right to vote.

Public Papers of LBJ, 1965, p.841

And then last March, with the outrage of Selma still fresh, I came down to this Capitol one evening and asked the Congress and the people for swift and for sweeping action to guarantee to every man and woman the right to vote. In less than 48 hours I sent the Voting Rights Act of 1965 to the Congress. In little more than 4 months the Congress, with overwhelming majorities, enacted one of the most monumental laws in the entire history of American freedom.

THE WAITING IS GONE

Public Papers of LBJ, 1965, p.841

The Members of the Congress, and the many private citizens, who worked to shape and pass this bill will share a place of honor in our history for this one act alone.

Public Papers of LBJ, 1965, p.841

There were those who said this is an old injustice, and there is no need to hurry. But 95 years have passed since the 15th amendment gave all Negroes the right to vote.

Public Papers of LBJ, 1965, p.841

And the time for waiting is gone.

Public Papers of LBJ, 1965, p.841

There were those who said smaller and more gradual measures should be tried. But they had been tried. For years and years they had been tried, and tried, and tried, and they had failed, and failed, and failed.

Public Papers of LBJ, 1965, p.841

And the time for failure is gone.

Public Papers of LBJ, 1965, p.841

There were those who said that this is a many-sided and very complex problem. But however viewed, the denial of the right to vote is still a deadly wrong.

Public Papers of LBJ, 1965, p.841

And the time for injustice has gone.

Public Papers of LBJ, 1965, p.841

This law covers many pages. But the heart of the act is plain. Wherever, by clear and objective standards, States and counties are using regulations, or laws, or tests to deny the right to vote, then they will be struck down. If it is dear that State officials still intend to discriminate, then Federal examiners will be sent in to register all eligible voters. When the prospect of discrimination is gone, the examiners will be immediately withdrawn.

Public Papers of LBJ, 1965, p.841

And, under this act, if any county anywhere in this Nation does not want Federal intervention it need only open its polling places to all of its people.

THE GOVERNMENT ACTS

Public Papers of LBJ, 1965, p.841

This good Congress, the 89th Congress, acted swiftly in passing this act. I intend to act with equal dispatch in enforcing this act.

Public Papers of LBJ, 1965, p.842

And tomorrow at 1 p.m., the Attorney General has been directed to file a lawsuit challenging the constitutionality of the poll tax in the State of Mississippi. This will begin the legal process which, I confidently believe, will very soon prohibit any State from requiring the payment of money in order to exercise the right to vote.

Public Papers of LBJ, 1965, p.842

And also by tomorrow the Justice Department, through publication in the Federal Register, will have officially certified the States where discrimination exists.

Public Papers of LBJ, 1965, p.842

I have, in addition, requested the Department of Justice to work all through this weekend so that on Monday morning next, they can designate many counties where past experience clearly shows that Federal action is necessary and required. And by Tuesday morning, trained Federal examiners will be at work registering eligible men and women in 10 to 15 counties.

Public Papers of LBJ, 1965, p.842

And on that same day, next Tuesday, additional poll tax suits will be filed in the States of Texas, Alabama, and Virginia.

Public Papers of LBJ, 1965, p.842

And I pledge you that we will not delay, or we will not hesitate, or we will not turn aside until Americans of every race and color and origin in this country have the same right as all others to share in the process of democracy.

Public Papers of LBJ, 1965, p.842

So, through this act, and its enforcement, an important instrument of freedom passes into the hands of millions of our citizens. But that instrument must be used. Presidents and Congresses, laws and lawsuits can open the doors to the polling places and open the doors to the wondrous rewards which await the wise use of the ballot.

THE VOTE BECOMES JUSTICE

Public Papers of LBJ, 1965, p.842

But only the individual Negro, and all others who have been denied the right to vote, can really walk through those doors, and can use that right, and can transform the vote into an instrument of justice and fulfillment.

Public Papers of LBJ, 1965, p.842

So, let me now say to every Negro in this country: You must register. You must vote. You must learn, so your choice advances your interest and the interest of our beloved Nation. Your future, and your children's future, depend upon it, and I don't believe that you are going to let them down.

Public Papers of LBJ, 1965, p.842

This act is not only a victory for Negro leadership. This act is a great challenge to that leadership. It is a challenge which cannot be met simply by protests and demonstrations. It means that dedicated leaders must work around the clock to teach people their rights and their responsibilities and to lead them to exercise those rights and to fulfill those responsibilities and those duties to their country.

Public Papers of LBJ, 1965, p.842

If you do this, then you will find, as others have found before you, that the vote is the most powerful instrument ever devised by man for breaking down injustice and destroying the terrible walls which imprison men because they are different from other men.

THE LAST OF THE BARRIERS TUMBLE

Public Papers of LBJ, 1965, p.842

Today what is perhaps the last of the legal barriers is tumbling. There will be many actions and many difficulties before the rights woven into law are also woven into the fabric of our Nation. But the struggle for equality must now move toward a different battlefield.

Public Papers of LBJ, 1965, p.842–p.843

It is nothing less than granting every American Negro his freedom to enter the mainstream of American life: not the conformity that blurs enriching differences of [p.843] culture and tradition, but rather the opportunity that gives each a chance to choose.

Public Papers of LBJ, 1965, p.843

For centuries of oppression and hatred have already taken their painful toll. It can be seen throughout our land in men without skills, in children without fathers, in families that are imprisoned in slums and in poverty.

RIGHTS ARE NOT ENOUGH

Public Papers of LBJ, 1965, p.843

For it is not enough just to give men rights. They must be able to use those rights in their personal pursuit of happiness. The wounds and the weaknesses, the outward walls and the inward scars which diminish achievement are the work of American society. We must all now help to end them-help to end them through expanding programs already devised and through new ones to search out and forever end the special handicaps of those who are black in a Nation that happens to be mostly white.

Public Papers of LBJ, 1965, p.843

So, it is for this purpose—to fulfill the rights that we now secure—that I have already called a White House conference to meet here in the Nation's Capital this fall.

Public Papers of LBJ, 1965, p.843

So, we will move step by step—often painfully but, I think, with clear vision—along the path toward American freedom.

Public Papers of LBJ, 1965, p.843

It is difficult to fight for freedom. But I also know how difficult it can be to bend long years of habit and custom to grant it. There is no room for injustice anywhere in the American mansion. But there is always room for understanding toward those who see the old ways crumbling. And to them today I say simply this: It must come. It is right that it should come. And when it has, you will find that a burden has been lifted from your shoulders, too.

Public Papers of LBJ, 1965, p.843

It is not just a question of guilt, although there is that. It is that men cannot live with a lie and not be stained by it.

DIGNITY IS NOT JUST A WORD

Public Papers of LBJ, 1965, p.843

The central fact of American civilization-one so hard for others to understand—is that freedom and justice and the dignity of man are not just words to us. We believe in them. Under all the growth and the tumult and abundance, we believe. And so, as long as some among us are oppressed—and we are part of that oppression—it must blunt our faith and sap the strength of our high purpose.

Public Papers of LBJ, 1965, p.843

Thus, this is a victory for the freedom of the American Negro. But it is also a victory for the freedom of the American Nation. And every family across this great, entire, searching land will live stronger in liberty, will live more splendid in expectation, and will be prouder to be American because of the act that you have passed that I will sign today.

Thank you.

Public Papers of LBJ, 1965, p.843

NOTE: The President spoke at 12:05 p.m. in the Rotunda at the Capitol, prior to signing the bill. In his opening words he referred to Vice President Hubert H. Humphrey, President of the Senate, and Representative John W. McCormack of Massachusetts, Speaker of the House of Representatives.

Public Papers of LBJ, 1965, p.843

As enacted, the Voting Rights Act of 1965 is Public Law 89-110 (79 Stat. 437).

Public Papers of LBJ, 1965, p.843

Reports to the President on the implementation of the act, prepared by the Attorney General and the Chairman of the Civil Service Commission, were made public by the White House on August 5, August 14, and August 21. They are printed in the Weekly Compilation of Presidential Documents (vol. 1, pp. 51, 92, 125).

Public Papers of LBJ, 1965, p.843

The determinations of the Attorney General are printed in the Federal Register of August 7 and August 10, 1965 (30 F.R. 9897, 9970).

South Carolina v. Katzenbach, 1966

Title: South Carolina v. Katzenbach

Author: U.S. Supreme Court

Date: March 7, 1966

Source: 383 U.S. 301

This case was argued January 17-18, 1966, and was decided March 7, 1966.

ON BILL OF COMPLAINT

Syllabus

1966, South Carolina v. Katzenbach, 383 U.S. 301

Invoking the Court's original jurisdiction under Art. III, § 2, of the Constitution, South Carolina filed a bill of complaint seeking a declaration of unconstitutionality as to certain provisions of the Voting Rights Act of 1965 and an injunction against their enforcement by defendant, the Attorney General. The Act's key features, aimed at areas where voting discrimination has been most flagrant, are: (1) A coverage formula or "triggering mechanism" in § 4(b) determining applicability of its substantive provisions; (2) provision in § 4(a) for temporary suspension of a State's voting tests or devices; (3) procedure in § 5 for review of new voting rules, and (4) a program in §§ 6(b), 7, 9, and 13(a) for using federal examiners to qualify applicants for registration who are thereafter entitled to vote in all elections. These remedial sections automatically apply to any State or its subdivision which the Attorney General has determined maintained on November 1, 1964, a registration or voting "test or device" (a literacy, educational, character, or voucher requirement as defined in § 4(c)) and in which, according to the Census Director's determination, less than half the voting-age residents were registered or voted in the 1964 presidential election. Statutory coverage may be terminated by a declaratory judgment of a three-judge District of Columbia District Court that, for the preceding five years, racially discriminatory voting tests or devices have not been used

1966, South Carolina v. Katzenbach, 383 U.S. 301

No person in a covered area may be denied voting rights because of failure to comply with a test or device. § 4(a). Following administrative determinations, enforcement was temporarily suspended of South Carolina's literacy test, as well as of tests and devices in certain other areas. The Act further provides in § 5 that, during the suspension period, a State or subdivision may not apply new voting rules unless the Attorney General has interposed no objection within 60 days of their submission to him, or a three-judge District of Columbia District Court has issued a declaratory judgment that such rules are not racially discriminatory. South Carolina wishes to apply a recent amendment to its voting laws without following these procedures. In [383 U.S. 302] any political subdivision where tests or devices have been suspended, the Civil Service Commission shall appoint voting examiners whenever the Attorney General has, after considering specified factors, duly certified receiving complaints of official racial voting discrimination from at least 20 residents or that the examiners' appointment is otherwise necessary under the Fifteenth Amendment. § 6(b). Examiners are to transmit to the appropriate officials the names of applicants they find qualified, and such persons may vote in any election after 45 days following transmission of their names. § 7(b). Removal by the examiners of names from voting lists is provided on loss of eligibility or on successful challenge under prescribed procedures. § 7(d). The use of examiners is terminated if requested by the Attorney General or the political subdivision has obtained a declaratory judgment as specified in § 13(a). Following certification by the Attorney General, federal examiners were appointed in two South Carolina counties, as well as elsewhere in other States. Subsidiary cures for persistent voting discrimination and other special provisions are also contained in the Act. In addition to a general assault on the Act as unconstitutionally encroaching on States' rights, specific constitutional challenges by plaintiff and certain amici curiae are: the coverage formula violates the principle of equality between the States, denies due process through an invalid presumption, bars judicial review of administrative findings, is a bill of attainder, and legislatively adjudicates guilt; the review of new voting rules infringes Art. III by directing the District Court to issue advisory opinions; the assignment of federal examiners violates due process by foreclosing judicial review of administrative findings and impairs the separation of powers by giving the Attorney General judicial functions; the challenge procedure denies due process on account of its speed, and provisions for adjudication in the District of Columbia abridge due process by limiting litigation to a distant forum.

1966, South Carolina v. Katzenbach, 383 U.S. 302

Held:

1966, South Carolina v. Katzenbach, 383 U.S. 302

1. This Court's judicial review does not cover portions of the Voting Rights Act of 1965 not challenged by plaintiff; nor does it extend to the Act's criminal provisions, as to which South Carolina's challenge is premature. Pp. 316-317.

1966, South Carolina v. Katzenbach, 383 U.S. 302

2. The sections of the Act properly before this Court are a valid effectuation of the Fifteenth Amendment. Pp. 308-337.

1966, South Carolina v. Katzenbach, 383 U.S. 302

(a) The Act's voluminous legislative history discloses unremitting and ingenious defiance in certain parts of the country of [383 U.S. 303] the Fifteenth Amendment (see paragraphs (b)-(d), infra) which Congress concluded called for sterner and more elaborate measures than those previously used. P. 309.

1966, South Carolina v. Katzenbach, 383 U.S. 303

(b) Beginning in 1890, a few years before repeal of most of the legislation to enforce the Fifteenth Amendment, Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Virginia enacted tests, still in use, specifically designed to prevent Negroes from voting while permitting white persons to vote. Pp. 310-311.

1966, South Carolina v. Katzenbach, 383 U.S. 303

(c) A variety of methods was used thereafter to keep Negroes from voting, one of the principal means being through racially discriminatory application of voting tests. Pp. 311-313.

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(d) Case-by-case litigation against voting discrimination under the Civil Rights Acts of 1957, 1960, and 1964, has not appreciably increased Negro registration. Voting suits have been onerous to prepare, protracted, and, where successful, have often been followed by a shift in discriminatory devices, defiance or evasion of court orders. Pp. 313-315.

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(e) A State is not a "person" within the meaning of the Due Process Clause of the Fifth Amendment; nor does it have standing to invoke the Bill of Attainder Clause of Art. I or the principle of separation of powers, which exist only to protect private individuals or groups. Pp. 323-324.

1966, South Carolina v. Katzenbach, 383 U.S. 303

(f) Congress, as against the reserved powers of the States, may use any rational means to effectuate the constitutional prohibition of racial voting discrimination. P. 324.

1966, South Carolina v. Katzenbach, 383 U.S. 303

(g) The Fifteenth Amendment, which is self-executing, supersedes contrary exertions of state power, and its enforcement is not confined to judicial invalidation of racially discriminatory state statutes and procedures or to general legislative prohibitions against violations of the Amendment. Pp. 325, 327.

1966, South Carolina v. Katzenbach, 383 U.S. 303

(h) Congress, whose power to enforce the Fifteenth Amendment has repeatedly been upheld in the past, is free to use whatever means are appropriate to carry out the objects of the Constitution. McCulloch v. Maryland, 4 Wheat. 316; Ex parte Virginia, 100 U.S. 339, 345-346. Pp. 326-37.

1966, South Carolina v. Katzenbach, 383 U.S. 303

(i) Having determined case-by-case litigation inadequate to deal with racial voting discrimination, Congress has ample authority to prescribe remedies not requiring prior adjudication. P. 328. [383 U.S. 304]

1966, South Carolina v. Katzenbach, 383 U.S. 304

(j) Congress is well within its powers in focusing upon the geographic areas where substantial racial voting discrimination had occurred. Pp. 328-329.

1966, South Carolina v. Katzenbach, 383 U.S. 304

(k) Congress had reliable evidence of voting discrimination in a great majority of the areas covered by § 4(b) of the Act, and is warranted in inferring a significant danger of racial voting discrimination in the few other areas to which the formula in § 4(b) applies. Pp. 329-330.

1966, South Carolina v. Katzenbach, 383 U.S. 304

(l) The coverage formula is rational in theory, since tests or devices have so long been used for disenfranchisement, and a lower voting rate obviously results from such disenfranchisement. P. 330.

1966, South Carolina v. Katzenbach, 383 U.S. 304

(m) The coverage formula is rational as being aimed at areas where widespread discrimination has existed through misuse of tests or devices even though it excludes certain areas where there is voting discrimination through other means. The Act, moreover, strengthens existing remedies for such discrimination in those other areas. Pp. 330-331.

1966, South Carolina v. Katzenbach, 383 U.S. 304

(n) The provision for termination at the benefit of the States of § 4(b) coverage adequately deals with possible overbreadth; nor is the burden of proof imposed on the States unreasonable. Pp. 331-332.

1966, South Carolina v. Katzenbach, 383 U.S. 304

(o) Limiting litigation to a single court in the District of Columbia is a permissible exercise of power under Art. III, § 1, of the Constitution, previously exercised by Congress on other occasions. Pp. 331-332.

1966, South Carolina v. Katzenbach, 383 U.S. 304

(p) The Act's bar of judicial review of findings of the Attorney General and Census Director as to objective data is not unreasonable. This Court has sanctioned withdrawal of judicial review of administrative determinations in numerous other situations. Pp. 332-333.

1966, South Carolina v. Katzenbach, 383 U.S. 304

(q) Congress has power to suspend literacy tests, it having found that such tests were used for discriminatory purposes in most of the States covered; their continuance, even if fairly administered, would freeze the effect of past discrimination, and re-registration of all voters would be too harsh an alternative. Such States cannot sincerely complain of electoral dilution by Negro illiterates when they long permitted white illiterates to vote. P. 334.

1966, South Carolina v. Katzenbach, 383 U.S. 304

(r) Congress is warranted in suspending, pending federal scrutiny, new voting regulations in view of the way in which some States have previously employed new rules to circumvent adverse federal court decrees. P. 335. [383 U.S. 305]

1966, South Carolina v. Katzenbach, 383 U.S. 305

(s) The provision whereby a State whose voting laws have been suspended under § 4(a) must obtain judicial review of an Amendment to such laws by the District Court for the District of Columbia presents a "controversy" under Art. III of the Constitution, and therefore does not involve an advisory opinion contravening that provision. P. 335.

1966, South Carolina v. Katzenbach, 383 U.S. 305

(t) The procedure for appointing federal examiners is an appropriate congressional response to the local tactics used to defy or evade federal court decrees. The challenge procedures contain precautionary features against error or fraud, and are amply warranted in view of Congress' knowledge of harassing challenging tactics against registered Negroes. P. 336.

1966, South Carolina v. Katzenbach, 383 U.S. 305

(u) Section 6(b) has adequate standards to guide determination by the Attorney General in his selection of areas where federal examiners are to be appointed, and the termination procedures in § 13(b) provide for indirect judicial review. Pp. 336-337.

1966, South Carolina v. Katzenbach, 383 U.S. 305

Bill of complaint dismissed. [383 U.S. 307]

WARREN, J., lead opinion

1966, South Carolina v. Katzenbach, 383 U.S. 307

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

1966, South Carolina v. Katzenbach, 383 U.S. 307

By leave of the Court, 382 U.S. 898, South Carolina has filed a bill of complaint, seeking a declaration that selected provisions of the Voting Rights Act of 1965 1 violate the Federal Constitution, and asking for an injunction against enforcement of these provisions by the Attorney General. Original jurisdiction is founded on the presence of a controversy between a State and a citizen of another State under Art. III, § 2, of the Constitution. See Georgia v. Pennsylvania R. Co., 324 U.S. 439. Because no issues of fact were raised in the complaint, and because of South Carolina's desire to obtain a ruling prior to its primary elections in June, 1966, we dispensed with appointment of a special master and expedited our hearing of the case.

1966, South Carolina v. Katzenbach, 383 U.S. 307

Recognizing that the questions presented were of urgent concern to the entire country, we invited all of the States to participate in this proceeding as friends of the Court. A majority responded by submitting or joining in briefs on the merits, some supporting South Carolina and others the Attorney General. 2 Seven of these States [383 U.S. 308] also requested and received permission to argue the case orally at our hearing. Without exception, despite the emotional overtones of the proceeding, the briefs and oral arguments were temperate, lawyerlike and constructive. All viewpoints on the issues have been fully developed, and this additional assistance has been most helpful to the Court.

1966, South Carolina v. Katzenbach, 383 U.S. 308

The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century. The Act creates stringent new remedies for voting discrimination where it persists on a pervasive scale, and, in addition, the statute strengthens existing remedies for pockets of voting discrimination elsewhere in the country. Congress assumed the power to prescribe these remedies from § 2 of the Fifteenth Amendment, which authorizes the National Legislature to effectuate by "appropriate" measures the constitutional prohibition against racial discrimination in voting. We hold that the sections of the Act which are properly before us, are an appropriate means for carrying out Congress' constitutional responsibilities, and are consonant with all other provisions of the Constitution. We therefore deny South Carolina's request that enforcement of these sections of the Act be enjoined.

I

1966, South Carolina v. Katzenbach, 383 U.S. 308

The constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects. Before enacting the measure, Congress explored with great care the problem of racial discrimination in voting. The House and Senate Committees on the Judiciary each held hearings for nine days and received testimony from a total of 67 witnesses. 3 [383 U.S. 309] More than three full days were consumed discussing the bill on the floor of the House, while the debate in the Senate covered 26 days in all. 4 At the close of these deliberations, the verdict of both chambers was overwhelming. The House approved the bill by a vote of 328-74, and the measure passed the Senate by a margin of 79-18.

1966, South Carolina v. Katzenbach, 383 U.S. 309

Two points emerge vividly from the voluminous legislative history of the Act contained in the committee hearings and floor debates. First: Congress felt itself confronted by an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution. Second: Congress concluded that the unsuccessful remedies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures in order to satisfy the clear commands of the Fifteenth Amendment. We pause here to summarize the majority reports of the House and Senate Committees, which document in considerable detail the factual basis for these reactions by Congress. 5 See H.R.Rep. No. 439, 89th Cong., 1st Sess., 8-16 (hereinafter cited as House Report); S.Rep. No. 162, pt. 3, 89th Cong., 1st Sess., 3-16 (hereinafter cited as Senate Report). [383 U.S. 310]

1966, South Carolina v. Katzenbach, 383 U.S. 310

The Fifteenth Amendment to the Constitution was ratified in 1870. Promptly thereafter, Congress passed the Enforcement Act of 1870, 6 which made it a crime for public officers and private persons to obstruct exercise of the right to vote. The statute was amended in the following year 7 to provide for detailed federal supervision of the electoral process, from registration to the certification of returns. As the years passed and fervor for racial equality waned, enforcement of the laws became spotty and ineffective, and most of their provisions were repealed in 1894. 8 The remnants have had little significance in the recently renewed battle against voting discrimination.

1966, South Carolina v. Katzenbach, 383 U.S. 310

Meanwhile, beginning in 1890, the States of Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia enacted tests still in use which were specifically designed to prevent Negroes from voting. 9 Typically, they made the ability to read and write [383 U.S. 311] a registration qualification and also required completion of a registration form. These laws were based on the fact that, as of 1890, in each of the named States, more than two-thirds of the adult Negroes were illiterate, while less than one-quarter of the adult whites were unable to read or write. 10 At the same time, alternate tests were prescribed in all of the named States to assure that white illiterates would not be deprived of the franchise. These included grandfather clauses, property qualifications, "good character" tests, and the requirement that registrants "understand" or "interpret" certain matter.

1966, South Carolina v. Katzenbach, 383 U.S. 311

The course of subsequent Fifteenth Amendment litigation in this Court demonstrates the variety and persistence of these and similar institutions designed to deprive Negroes of the right to vote. Grandfather clauses were invalidated in Guinn v. United States, 238 U.S. 347, and Myers v. Anderson, 238 U.S. 368. Procedural hurdles were struck down in Lane v. Wilson, 307 U.S. 268. The white primary was outlawed in Smith v. Allwright, 321 U.S. 649, and Terry v. Adams, 345 U.S. 461. Improper challenges were nullified in United States v. Thomas, 362 U.S. 58. Racial gerrymandering was forbidden by Gomillion v. Lightfoot, 364 U.S. 339. Finally, discriminatory application of voting tests was condemned in Schnell v. Davis, 336 U.S. 933; Alabama [383 U.S. 312] v. United States, 371 U.S. 37, and Louisiana v. United States, 380 U.S. 145.

1966, South Carolina v. Katzenbach, 383 U.S. 312

According to the evidence in recent Justice Department voting suits, the latter stratagem is now the principal method used to bar Negroes from the polls. Discriminatory administration of voting qualifications has been found in all eight Alabama cases, in all nine Louisiana cases, and in all nine Mississippi cases which have gone to final judgment. 11 Moreover, in almost all of these cases, the courts have held that the discrimination was pursuant to a widespread "pattern or practice." White applicants for registration have often been excused altogether from the literacy and understanding tests, or have been given easy versions, have received extensive help from voting officials, and have been registered despite serious errors in their answers. 12 Negroes, on the other hand, have typically been required to pass difficult versions of all the tests, without any outside assistance and without the slightest error. 13 The good-morals requirement [383 U.S. 313] is so vague and subjective that it has constituted an open invitation to abuse at the hands of voting officials. 14 Negroes obliged to obtain vouchers from registered voters have found it virtually impossible to comply in areas where almost no Negroes are on the rolls. 15

1966, South Carolina v. Katzenbach, 383 U.S. 313

In recent years, Congress has repeatedly tried to cope with the problem by facilitating case-by-case litigation against voting discrimination. The Civil Rights Act of 1957 16 authorized the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds. Perfecting amendments in the Civil Rights Act of 1960 17 permitted the joinder of States as parties defendant, gave the Attorney General access to local voting records, and authorized courts to register voters in areas of systematic discrimination. Title I of the Civil Rights Act of 1964 18 expedited the hearing of voting cases before three-judge courts and outlawed some of the tactics used to disqualify Negroes from voting in federal elections.

1966, South Carolina v. Katzenbach, 383 U.S. 313

Despite the earnest efforts of the Justice Department and of many federal judges, these new laws have done little to cure the problem of voting discrimination. According to estimates by the Attorney General during hearings on the Act, registration of voting-age Negroes in Alabama rose only from 14.2% to 19.4% between 1958 and 1964; in Louisiana, it barely inched ahead from 31.7% to 31.8% between 1956 and 1965, and in Mississippi it increased only from 4.4% to 6.4% between 1954 and 1964. In each instance, registration of voting-age whites ran roughly 50 percentage points or more ahead of Negro registration. [383 U.S. 314]

1966, South Carolina v. Katzenbach, 383 U.S. 314

The previous legislation has proved ineffective for a number of reasons. Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees, or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. 19 Alternatively, certain local officials have defied and evaded court orders or have simply closed their registration offices to freeze the voting rolls. 20 The provision of the 1960 law authorizing registration by federal officers has had little impact on local maladministration, because of its procedural complexities. During the hearings and debates on the Act, Selma, Alabama, was repeatedly referred to as the preeminent example of the ineffectiveness of existing legislation. In Dallas County, of which Selma is the seat, there were four years of litigation by the Justice Department and two findings by the federal courts of widespread voting discrimination. Yet, in those four years, Negro registration [383 U.S. 315] rose only from 156 to 383, although there are approximately 15,000 Negroes of voting age in the county. Any possibility that these figures were attributable to political apathy was dispelled by the protest demonstrations in Selma in the early months of 1965. The House Committee on the Judiciary summed up the reaction of Congress to these developments in the following words:

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The litigation in Dallas County took more than 4 years to open the door to the exercise of constitutional rights conferred almost a century ago. The problem on a national scale is that the difficulties experienced in suits in Dallas County have been encountered over and over again under existing voting laws. Four years is too long. The burden is too heavy—the wrong to our citizens is too serious—the damage to our national conscience is too great not to adopt more effective measures than exist today.

1966, South Carolina v. Katzenbach, 383 U.S. 315

Such is the essential justification for the pending bill.

1966, South Carolina v. Katzenbach, 383 U.S. 315

House Report 11.

II

1966, South Carolina v. Katzenbach, 383 U.S. 315

The Voting Rights Act of 1965 reflects Congress' firm intention to rid the country of racial discrimination in voting. 21 The heart of the Act is a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant. Section 4(a)-(d) lays down a formula defining the States and political subdivisions to which these new remedies apply. The first of the remedies, contained in § 4(a), is the suspension of literacy tests and similar voting qualifications for a period of five years from the last occurrence of substantial voting discrimination. Section 5 prescribes a second [383 U.S. 316] remedy, the suspension of all new voting regulations pending review by federal authorities to determine whether their use would perpetuate voting discrimination. The third remedy, covered in §§ 6(b), 7, 9, and 13(a), is the assignment of federal examiners on certification by the Attorney General to list qualified applicants who are thereafter entitled to vote in all elections.

1966, South Carolina v. Katzenbach, 383 U.S. 316

Other provisions of the Act prescribe subsidiary cures for persistent voting discrimination. Section 8 authorizes the appointment of federal poll-watchers in places to which federal examiners have already been assigned. Section 10(d) excuses those made eligible to vote in sections of the country covered by § 4(b) of the Act from paying accumulated past poll taxes for state and local elections. Section 12(e) provides for balloting by persons denied access to the polls in areas where federal examiners have been appointed.

1966, South Carolina v. Katzenbach, 383 U.S. 316

The remaining remedial portions of the Act are aimed at voting discrimination in any area of the country where it may occur. Section 2 broadly prohibits the use of voting rules to abridge exercise of the franchise on racial grounds. Sections 3, 6(a), and 13(b) strengthen existing procedures for attacking voting discrimination by means of litigation. Section 4(e) excuses citizens educated in American schools conducted in a foreign language from passing English language literacy tests. Section 10(a)-(c) facilitates constitutional litigation challenging the imposition of all poll taxes for state and local elections. Sections 11 and 12(a)-(d) authorize civil and criminal sanctions against interference with the exercise of rights guaranteed by the Act.

1966, South Carolina v. Katzenbach, 383 U.S. 316

At the outset, we emphasize that only some of the many portions of the Act are properly before us. South Carolina has not challenged §§ 2, 3, 4(e), 6(a), 8, 10, 12(d) and (e), 13(b), and other miscellaneous provisions having nothing to do with this lawsuit. Judicial review of these sections must await subsequent litigation. 22 [383 U.S. 317] In addition, we find that South Carolina's attack on §§ 11 and 12(a)-(c) is premature. No person has yet been subjected to, or even threatened with, the criminal sanctions which these sections of the Act authorize. See United States v. Raines, 362 U.S. 17, 224. Consequently, the only sections of the Act to be reviewed at this time are §§ 4(a)-(d), 5, 6(b), 7, 9, 13(a), and certain procedural portions of § 14, all of which are presently in actual operation in South Carolina. We turn now to a detailed description of these provisions and their present status.

1966, South Carolina v. Katzenbach, 383 U.S. 317

Coverage formula.

1966, South Carolina v. Katzenbach, 383 U.S. 317

The remedial sections of the Act assailed by South Carolina automatically apply to any State, or to any separate political subdivision such as a county or parish, for which two findings have been made: (1) the Attorney General has determined that, on November 1, 1964, it maintained a "test or device," and (2) the Director of the Census has determined that less than 50% of its voting-age residents were registered on November 1, 1964, or voted in the presidential election of November 1964. These findings are not reviewable in any court, and are final upon publication in the Federal Register. § 4(b). As used throughout the Act, the phrase "test or device" means any requirement that a registrant or voter must

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(1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications [383 U.S. 318] by the voucher of registered voters or members of any other class.

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§ 4(c).

1966, South Carolina v. Katzenbach, 383 U.S. 318

Statutory coverage of a State or political subdivision under 4(b) is terminated if the area obtains a declaratory judgment from the District Court for the District of Columbia determining that tests and devices have not been used during the preceding five years to abridge the franchise on racial grounds. The Attorney General shall consent to entry of the judgment if he has no reason to believe that the facts are otherwise. § 4(a). For the purposes of this section, tests and devices are not deemed to have been used in a forbidden manner if the incidents of discrimination are few in number and have been promptly corrected, if their continuing effects have been abated, and if they are unlikely to recur in the future. § 4(d). On the other hand, no area may obtain a declaratory judgment for five years after the final decision of a federal court (other than the denial of a judgment under this section of the Act), determining that discrimination through the use of tests or devices has occurred anywhere in the State or political subdivision. These declaratory judgment actions are to be heard by a three-judge panel, with direct appeal to this Court. § 4(a).

1966, South Carolina v. Katzenbach, 383 U.S. 318

South Carolina was brought within the coverage formula of the Act on August 7, 1965, pursuant to appropriate administrative determinations which have not been challenged in this proceeding. 23 On the same day, coverage was also extended to Alabama, Alaska, Georgia, Louisiana, Mississippi, Virginia, 26 counties in North Carolina, and one county in Arizona. 24 Two more counties in Arizona, one county in Hawaii, and one county in Idaho were added to the list on November 19, 1965. 25 [383 U.S. 319] Thus far, Alaska, the three Arizona counties, and the single county in Idaho have asked the District Court for the District of Columbia to grant a declaratory judgment terminating statutory coverage. 26

1966, South Carolina v. Katzenbach, 383 U.S. 319

Suspension of tests

1966, South Carolina v. Katzenbach, 383 U.S. 319

In a State or political subdivision covered by § 4(b) of the Act, no person may be denied the right to vote in any election because of his failure to comply with a "test or device." § 4(a).

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On account of this provision, South Carolina is temporarily barred from enforcing the portion of its voting laws which requires every applicant for registration to show that he:

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Can both read and write any section of [the State] Constitution submitted to [him] by the registration officer or can show that he owns, and has paid all taxes collectible during the previous year on, property in this State assessed at three hundred dollars or more.

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S.C.Code Ann. § 262(4) (1965 Supp.). The Attorney General has determined that the property qualification is inseparable from the literacy test, 27 and South Carolina makes no objection to this finding. Similar tests and devices have been temporarily suspended in the other sections of the country listed above. 28

1966, South Carolina v. Katzenbach, 383 U.S. 319

Review of new rules

1966, South Carolina v. Katzenbach, 383 U.S. 319

In a State or political subdivision covered by § 4(b) of the Act, no person may be denied the right to vote in any election because of his failure to comply with a voting qualification or procedure different from those in force on [383 U.S. 320] November 1, 1964. This suspension of new rules is terminated, however, under either of the following circumstances: (1) if the area has submitted the rules to the Attorney General and he has not interposed an objection within 60 days, or (2) if the area has obtained a declaratory judgment from the District Court for the District of Columbia determining that the rules will not abridge the franchise on racial grounds. These declaratory judgment actions are to be heard by a three-judge panel, with direct appeal to this Court. § 5.

1966, South Carolina v. Katzenbach, 383 U.S. 320

South Carolina altered its voting laws in 1965 to extend the closing hour at polling places from 6 p.m. to 7 p.m. 29 The State has not sought judicial review of this change in the District Court for the District of Columbia, nor has it submitted the new rule to the Attorney General for his scrutiny, although, at our hearing, the Attorney General announced that he does not challenge the amendment. There are indications in the record that other sections of the country listed above have also altered their voting laws since November 1, 1964. 30

1966, South Carolina v. Katzenbach, 383 U.S. 320

Federal examiners.

1966, South Carolina v. Katzenbach, 383 U.S. 320

In any political subdivision covered by § 4(b) of the Act, the Civil Service Commission shall appoint voting examiners whenever the Attorney General certifies either of the following facts: (1) that he has received meritorious written complaints from at least 20 residents alleging that they have been disenfranchised under color of law because of their race, or (2) that the appointment of examiners is otherwise necessary to effectuate the guarantees of the Fifteenth Amendment. In making the latter determination, the Attorney General must consider, among other factors, whether the registration ratio of non-whites to whites seems reasonably attributable to [383 U.S. 321] racial discrimination, or whether there is substantial evidence of good faith efforts to comply with the Fifteenth Amendment. § 6(b). These certifications are not reviewable in any court, and are effective upon publication in the Federal Register. § 4(b).

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The examiners who have been appointed are to test the voting qualifications of applicants according to regulations of the Civil Service Commission prescribing times, places, procedures, and forms. §§ 7(a) and 9(b). Any person who meets the voting requirements of state law, insofar as these have not been suspended by the Act, must promptly be placed on a list of eligible voters. Examiners are to transmit their lists at least once a month to the appropriate state or local officials, who in turn are required to place the listed names on the official voting rolls. Any person listed by an examiner is entitled to vote in all elections held more than 45 days after his name has been transmitted. § 7(b).

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A person shall be removed from the voting list by an examiner if he has lost his eligibility under valid state law, or if he has been successfully challenged through the procedure prescribed in § 9(a) of the Act. § 7(d). The challenge must be filed at the office within the State designated by the Civil Service Commission; must be submitted within 10 days after the listing is made available for public inspection; must be supported by the affidavits of at least two people having personal knowledge of the relevant facts, and must be served on the person challenged by mail or at his residence. A hearing officer appointed by the Civil Service Commission shall hear the challenge and render a decision within 15 days after the challenge is filed. A petition for review of the hearing officer's decision must be submitted within an additional 15 days after service of the decision on the person seeking review. The court of appeals for the circuit in which the person challenged resides is to [383 U.S. 322] hear the petition and affirm the hearing officer's decision unless it is clearly erroneous. Any person listed by an examiner is entitled to vote pending a final decision o the hearing officer or the court. § 9(a).

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The listing procedures in a political subdivision are terminated under either of the following circumstances: (1) if the Attorney General informs the Civil Service Commission that all persons listed by examiners have been placed on the official voting rolls, and that there is no longer reasonable cause to fear abridgment of the franchise on racial grounds, or (2) if the political subdivision has obtained a declaratory judgment from the District Court for the District of Columbia, ascertaining the same facts which govern termination by the Attorney General, and the Director of the Census has determined that more than 50% of the non-white residents of voting age are registered to vote. A political subdivision may petition the Attorney General to terminate listing procedures or to authorize the necessary census, and the District Court itself shall request the census if the Attorney General's refusal to do so is arbitrary or unreasonable. § 13(a). The determinations by the Director of the Census are not reviewable in any court, and are final upon publication in the Federal Register. § 4(b).

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On October 30, 1965, the Attorney General certified the need for federal examiners in two South Carolina counties, 31 and examiners appointed by the Civil Service Commission have been serving there since November 8, 1965. Examiners have also been assigned to 11 counties in Alabama, five parishes in Louisiana, and 19 counties in Mississippi. 32 The examiners are listing people found eligible to vote, and the challenge procedure has been [383 U.S. 323] employed extensively. 33 No political subdivision has yet sought to have federal examiners withdrawn through the Attorney General or the District Court for the District of Columbia.

III

1966, South Carolina v. Katzenbach, 383 U.S. 323

These provisions of the Voting Rights Act of 1965 are challenged on the fundamental ground that they exceed the powers of Congress and encroach on an area reserved to the States by the Constitution. South Carolina and certain of the amici curiae also attack specific sections of the Act for more particular reasons. They argue that the coverage formula prescribed in § 4(a)-(d) violates the principle of the equality of States, denies due process by employing an invalid presumption and by barring judicial review of administrative findings, constitutes a forbidden bill of attainder, and impairs the separation of powers by adjudicating guilt through legislation. They claim that the review of new voting rules required in § 5 infringes Article III by directing the District Court to issue advisory opinions. They contend that the assignment of federal examiners authorized in § 6(b) abridges due process by precluding judicial review of administrative findings, and impairs the separation of powers by giving the Attorney General judicial functions; also that the challenge procedure prescribed in § 9 denies due process on account of its speed. Finally, South Carolina and certain of the amici curiae maintain that §§ 4(a) and 5, buttressed by § 14(b) of the Act, abridge due process by limiting litigation to a distant forum.

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Some of these contentions may be dismissed at the outset. The word "person" in the context of the Due Process Clause of the Fifth Amendment cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union, and, to our knowledge, [383 U.S. 324] this has never been done by any court. See International Shoe Co. v. Cocreham, 246 La. 244, 266, 164 So.2d 314, 322, n. 5; cf. United States v. City of Jackson, 318 F.2d 1, 8 (C.A. 5th Cir.). Likewise, courts have consistently regarded the Bill of Attainder Clause of Article I and the principle of the separation of powers only as protections for individual persons and private groups, those who are peculiarly vulnerable to nonjudicial determinations of guilt. See United States v. Brown, 381 U.S. 437; Ex parte Garland, 4 Wall. 333. Nor does a State have standing as the parent of its citizens to invoke these constitutional provisions against the Federal Government, the ultimate parens patriae of every American citizen. Massachusetts v. Mellon, 262 U.S. 447, 485-486; Florida v. Mellon, 273 U.S. 12, 18. The objections to the Act which are raised under these provisions may therefore be considered only as additional aspects of the basic question presented by the case: has Congress exercised its powers under the Fifteenth Amendment in an appropriate manner with relation to the States?

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The ground rules for resolving this question are clear. The language and purpose of the Fifteenth Amendment, the prior decisions construing its several provisions, and the general doctrines of constitutional interpretation all point to one fundamental principle. As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting. Cf. our rulings last Term, sustaining Title II of the Civil Rights Act of 1964, in Heart of Atlanta Motel v. United States, 379 U.S. 241, 258-259, 261-262, and Katzenbach v. McClung, 379 U.S. 294, 303-304. We turn now to a more detailed description of the standards which govern our review of the Act [383 U.S. 325]

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Section 1 of the Fifteenth Amendment declares that

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[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

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This declaration has always been treated as self-executing, and has repeatedly been construed, without further legislative specification, to invalidate state voting qualifications or procedures which are discriminatory on their face or in practice. See Neal v. Delaware, 103 U.S. 370; Guinn v. United States, 238 U.S. 347; Myers v. Anderson, 238 U.S. 368; Lane v. Wilson, 307 U.S. 268; Smith v. Allwright, 321 U.S. 649; Schnell v. Davis, 336 U.S. 933; Terry v. Adams, 345 U.S. 461; United States v. Thomas, 362 U.S. 58; Gomillion v. Lightfoot, 364 U.S. 339; Alabama v. United States, 371 U.S. 37; Louisiana v. United States, 380 U.S. 145. These decisions have been rendered with full respect for the general rule, reiterated last Term in Carrington v. Rash, 380 U.S. 89, 91, that States "have broad powers to determine the conditions under which the right of suffrage may be exercised." The gist of the matter is that the Fifteenth Amendment supersedes contrary exertions of state power.

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When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.

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Gomillion v. Lightfoot, 364 U.S. at 347.

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South Carolina contends that the cases cited above are precedents only for the authority of the judiciary to strike down state statutes and procedures—that to allow an exercise of this authority by Congress would be to rob the courts of their rightful constitutional role. On the contrary, § 2 of the Fifteenth Amendment expressly declares that "Congress shall have power to enforce this article by appropriate legislation." By adding this [383 U.S. 326] authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in § 1.

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It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the [Civil War] amendments fully effective.

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Ex parte Virginia, 100 U.S. 339, 345. Accordingly, in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting.

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Congress has repeatedly exercised these powers in the past, and its enactments have repeatedly been upheld. For recent examples, see the Civil Rights Act of 1957, which was sustained in United States v. Raines, 362 U.S. 17; United States v. Thomas, supra, and Hannah v. Larche, 363 U.S. 420, and the Civil Rights Act of 1960, which was upheld in Alabama v. United States, supra; Louisiana v. United States, supra, and United States v. Mississippi, 380 U.S. 128. On the rare occasions when the Court has found an unconstitutional exercise of these powers, in its opinion Congress had attacked evils not comprehended by the Fifteenth Amendment. See United States v. Reese, 92 U.S. 214; James v. Bowman, 190 U.S. 127.

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The basic test to be applied in a case involving § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States. Chief Justice Marshall laid down the classic formulation, 50 years before the Fifteenth Amendment was ratified:

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Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

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McCulloch v. Maryland, 4 Wheat. 316, 421. [383 U.S. 327] The Court has subsequently echoed his language in describing each of the Civil War Amendments:

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Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

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Ex parte Virginia, 100 U.S. at 345-346. This language was again employed, nearly 50 years later, with reference to Congress' related authority under § 2 of the Eighteenth Amendment. James Everard's Breweries v. Day, 265 U.S. 545, 558-559.

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We therefore reject South Carolina's argument that Congress may appropriately do no more than to forbid violations of the Fifteenth Amendment in general terms—that the task of fashioning specific remedies or of applying them to particular localities must necessarily be left entirely to the courts. Congress is not circumscribed by any such artificial rules under § 2 of the Fifteenth Amendment. In the oft-repeated words of Chief Justice Marshall, referring to another specific legislative authorization in the Constitution,

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This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution.

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Gibbons v. Ogden, 9 Wheat. 1, 196.

IV

1966, South Carolina v. Katzenbach, 383 U.S. 327

Congress exercised its authority under the Fifteenth Amendment in an inventive manner when it enacted the Voting Rights Act of 1965. First: the measure prescribes remedies for voting discrimination which go into [383 U.S. 328] effect without any need for prior adjudication. This was clearly a legitimate response to the problem, for which there is ample precedent under other constitutional provisions. See Katzenbach v. McClung, 379 U.S. 294, 302-304; United States v. Darby, 312 U.S. 100, 120-121. Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. 34 After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims. The question remains, of course, whether the specific remedies prescribed in the Act were an appropriate means of combating the evil, and to this question we shall presently address ourselves.

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Second: the Act intentionally confines these remedies to a small number of States and political subdivisions which, in most instances, were familiar to Congress by name. 35 This, too, was a permissible method of dealing with the problem. Congress had learned that substantial voting discrimination presently occurs in certain sections of the country, and it knew no way of accurately forecasting whether the evil might spread elsewhere in the future. 36 In acceptable legislative fashion, Congress chose to limit its attention to the geographic areas where immediate action seemed necessary. See McGowan v. Maryland, 366 U.S. 420, 427; Salsburg v. Maryland, 346 U.S. 545, 550-554. The doctrine of the equality of States, invoked by South Carolina, does not bar this approach, for that doctrine applies only to the terms [383 U.S. 329] upon which States are admitted to the Union, and not to the remedies for local evils which have subsequently appeared. See Coyle v. Smith, 221 U.S. 559, and cases cited therein.

1966, South Carolina v. Katzenbach, 383 U.S. 329

Coverage formula

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We now consider the related question of whether the specific States and political subdivisions within § 4(b) of the Act were an appropriate target for the new remedies. South Carolina contends that the coverage formula is awkwardly designed in a number of respects, and that it disregards various local conditions which have nothing to do with racial discrimination. These arguments, however, are largely beside the point. 37 Congress began work with reliable evidence of actual voting discrimination in a great majority of the States and political subdivisions affected by the new remedies of the Act. The formula eventually evolved to describe these areas was relevant to the problem of voting discrimination, and Congress was therefore entitled to infer a significant danger of the evil in the few remaining States and political subdivisions covered by § 4(b) of the Act. No more was required to justify the application to these areas of Congress' express powers under the Fifteenth Amendment. Cf. North American Co. v. S.E.C., 327 U.S. 686, 710-711; Assigned Car Cases, 274 U.S. 564, 582-583.

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To be specific, the new remedies of the Act are imposed on three States—Alabama, Louisiana, and Mississippi—in which federal courts have repeatedly found substantial voting discrimination. 38 Section 4(b) of the Act also embraces two other States—Georgia and South Carolina—plus large portions of a third State North Carolina—for which there was more fragmentary evidence of [383 U.S. 330] recent voting discrimination mainly adduced by the Justice Department and the Civil Rights Commission. 39 All of these areas were appropriately subjected to the new remedies. In identifying past evils, Congress obviously may avail itself of information from any probative source. See Heart of Atlanta Motel v. United States, 379 U.S. 241, 252-253; Katzenbach v. McClung, 379 U.S. at 299-301.

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The areas listed above, for which there was evidence of actual voting discrimination, share two characteristics incorporated by Congress into the coverage formula: the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points below the national average. Tests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters. Accordingly, the coverage formula is rational in both practice and theory. It was therefore permissible to impose the new remedies on the few remaining States and political subdivisions covered by the formula, at least in the absence of proof that they have been free of substantial voting discrimination in recent years. Congress is clearly not bound by the rules relating to statutory presumptions in criminal cases when it prescribes civil remedies against other organs of government under § 2 of the Fifteenth Amendment. Compare United States v. Romano, 382 U.S. 136; Tot v. United States, 319 U.S. 463.

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It is irrelevant that the coverage formula excludes certain localities which do not employ voting tests and [383 U.S. 331] devices but for which there is evidence of voting discrimination by other means. Congress had learned that widespread and persistent discrimination in voting during recent years has typically entailed the misuse of tests and devices, and this was the evil for which the new remedies were specifically designed. 40 At the same time, through §§ 3, 6(a), and 13(b) of the Act, Congress strengthened existing remedies for voting discrimination in other areas of the country. Legislation need not deal with all phases of a problem in the same way, so long as the distinctions drawn have some basis in practical experience. See Williamson v. Lee Optical Co., 348 U.S. 483, 488-489; Railway Express Agency v. New York, 336 U.S. 106. There are no States or political subdivisions exempted from coverage under § 4(b) in which the record reveals recent racial discrimination involving tests and devices. This fact confirms the rationality of the formula.

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Acknowledging the possibility of overbreadth, the Act provides for termination of special statutory coverage at the behest of States and political subdivisions in which the danger of substantial voting discrimination has not materialized during the preceding five years. Despite South Carolina's argument to the contrary, Congress might appropriately limit litigation under this provision to a single court in the District of Columbia, pursuant to its constitutional power under Art. III, § 1, to "ordain and establish" inferior federal tribunals. See Bowles v. Willingham, 321 U.S. 503, 510-512; Yakus v. United States, 321 U.S. 414, 427-431; Lockerty v. Phillips, 319 U.S. 182. At the present time, contractual claims against the United States for more than $10,000 must be brought in the Court of Claims, and, until 1662, the District of Columbia was the sole venue of suits against [383 U.S. 332] federal officers officially residing in the Nation's Capital. 41 We have discovered no suggestion that Congress exceeded constitutional bounds in imposing these limitations on litigation against the Federal Government, and the Act is no less reasonable in this respect.

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South Carolina contends that these termination procedures are a nullity because they impose an impossible burden of proof upon States and political subdivisions entitled to relief. As the Attorney General pointed out during hearings on the Act, however, an area need do no more than submit affidavits from voting officials, asserting that they have not been guilty of racial discrimination through the use of tests and devices during the past five years, and then refute whatever evidence to the contrary may be adduced by the Federal Government. 42 Section 4(d) further assures that an area need not disprove each isolated instance of voting discrimination in order to obtain relief in the termination proceedings. The burden of proof is therefore quite bearable, particularly since the relevant facts relating to the conduct of voting officials are peculiarly within the knowledge of the States and political subdivisions themselves. See United States v. New York, N.H. & H. R. Co., 355 U.S. 253, 256, n. 5; cf. SEC v. Ralston Purina Co., 346 U.S. 119, 126.

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The Act bars direct judicial review of the findings by the Attorney General and the Director of the Census which trigger application of the coverage formula. We reject the claim by Alabama as amicus curiae that this provision is invalid because it allows the new remedies of [383 U.S. 333] the Act to be imposed in an arbitrary way. The Court has already permitted Congress to withdraw judicial review of administrative determinations in numerous cases involving the statutory rights of private parties. For example, see United States v. California Eastern Line, 348 U.S. 351; Switchmen's Union v. National Mediation Bd., 320 U.S. 297. In this instance, the findings not subject to review consist of objective statistical determinations by the Census Bureau and a routine analysis of state statutes by the Justice Department. These functions are unlikely to arouse any plausible dispute, as South Carolina apparently concedes. In the event that the formula is improperly applied, the area affected can always go into court and obtain termination of coverage under § 4(b), provided, of course, that it has not been guilty of voting discrimination in recent years. This procedure serves as a partial substitute for direct judicial review.

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Suspension of tests

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We now arrive at consideration of the specific remedies prescribed by the Act for areas included within the coverage formula. South Carolina assails the temporary suspension of existing voting qualifications, reciting the rule laid down by Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45, that literacy tests and related devices are not in themselves contrary to the Fifteenth Amendment. In that very case, however, the Court went on to say,

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Of course, a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot.

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Id. at 53. The record shows that, in most of the States covered by the Act, including South Carolina, various tests and devices have been instituted with the purpose of disenfranchising Negroes, have been framed in such a way as to facilitate this aim, and have been administered [383 U.S. 334] in a discriminatory fashion for many years. 43 Under these circumstances, the Fifteenth Amendment has clearly been violated. See Louisiana v. United States, 380 U.S. 145; Alabama v. United States, 371 U.S. 37; Schnell v. Davis, 336 U.S. 933.

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The Act suspends literacy tests and similar devices for a period of five years from the last occurrence of substantial voting discrimination. This was a legitimate response to the problem, for which there is ample precedent in Fifteenth Amendment cases. Ibid. Underlying the response was the feeling that States and political subdivisions which had been allowing white illiterates to vote for years could not sincerely complain about "dilution" of their electorates through the registration of Negro illiterates. 44 Congress knew that continuance of the tests and devices in use at the present time, no matter how fairly administered in the future, would freeze the effect of past discrimination in favor of unqualified white registrants. 45 Congress permissibly rejected the alternative of requiring a complete re-registration of all voters, believing that this would be too harsh on many whites who had enjoyed the franchise for their entire adult lives. 46

1966, South Carolina v. Katzenbach, 383 U.S. 334

Review of new rules

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The Act suspends new voting regulations pending scrutiny by federal authorities to determine whether their use would violate the Fifteenth Amendment. This may have been an uncommon exercise of congressional power, as South Carolina contends, but the Court has recognized that exceptional conditions can justify legislative measures not otherwise appropriate. See Home [383 U.S. 335] Bldg. & Loan Assn. v. Blaisdell, 290 U.S. 398; Wilson v. New, 243 U.S. 332. Congress knew that some of the States covered by § 4(b) of the Act had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees. 47 Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself. Under the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner.

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For reasons already stated, there was nothing inappropriate about limiting litigation under this provision to the District Court for the District of Columbia, and in putting the burden of proof on the areas seeking relief. Nor has Congress authorized the District Court to issue advisory opinions, in violation of the principles of Article III invoked by Georgia as amicus curiae. The Act automatically suspends the operation of voting regulations enacted after November 1, 1964, and furnishes mechanisms for enforcing the suspension. A State or political subdivision wishing to make use of a recent amendment to its voting laws therefore has a concrete and immediate "controversy" with the Federal Government. Cf. Public Utilities Comm'n v. United States, 355 U.S. 534, 536-539; United States v. California, 332 U.S. 19, 24-25. An appropriate remedy is a judicial determination that continued suspension of the new rule is unnecessary to vindicate rights guaranteed by the Fifteenth Amendment.

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Federal examiners

1966, South Carolina v. Katzenbach, 383 U.S. 335

The Act authorizes the appointment of federal examiners to list qualified applicants who are thereafter [383 U.S. 336] entitled to vote, subject to an expeditious challenge procedure. This was clearly an appropriate response to the problem, closely related to remedies authorized in prior cases. See Alabama v. United States, supra; United States v. Thomas, 362 U.S. 58. In many of the political subdivisions covered by § 4(b) of the Act, voting officials have persistently employed a variety of procedural tactics to deny Negroes the franchise, often in direct defiance or evasion of federal court decrees. 48 Congress realized that merely to suspend voting rules which have been misused or are subject to misuse might leave this localized evil undisturbed. As for the briskness of the challenge procedure, Congress knew that, in some of the areas affected, challenges had been persistently employed to harass registered Negroes. It chose to forestall this abuse, at the same time providing alternative ways for removing persons listed through error or fraud. 49 In addition to the judicial challenge procedure, § 7(d) allows for the removal of names by the examiner himself, and 11(c) makes it a crime to obtain a listing through fraud.

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In recognition of the fact that there were political subdivisions covered by § 4(b) of the Act in which the appointment of federal examiners might be unnecessary, Congress assigned the Attorney General the task of determining the localities to which examiners should be sent. 50 There is no warrant for the claim, asserted by Georgia as amicus curiae, that the Attorney General is free to use this power in an arbitrary fashion, without regard to the purposes of the Act. Section 6(b) sets adequate standards to guide the exercise of his discretion, by directing him to calculate the registration ratio of nonwhites to whites, and to weigh evidence of good faith [383 U.S. 337] efforts to avoid possible voting discrimination. At the same time, the special termination procedures of § 13(a) provide indirect judicial review for the political subdivisions affected, assuring the withdrawal of federal examiners from areas where they are clearly not needed. Cf. Carlson v. Landon, 342 U.S. 524, 542-544; Mulford v. Smith, 307 U.S. 38, 48-49.

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After enduring nearly a century of widespread resistance to the Fifteenth Amendment, Congress has marshalled an array of potent weapons against the evil, with authority in the Attorney General to employ them effectively. Many of the areas directly affected by this development have indicated their willingness to abide by any restraints legitimately imposed upon them. 51 We here hold that the portions of the Voting Rights Act properly before us are a valid means for carrying out the commands of the Fifteenth Amendment. Hopefully, millions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live. We may finally look forward to the day when truly

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[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

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The bill of complaint is

1966, South Carolina v. Katzenbach, 383 U.S. 337

Dismissed.

APPENDIX TO OPINION OF THE COURT

VOTING RIGHTS ACT OF 1965

AN ACT

1966, South Carolina v. Katzenbach, 383 U.S. 337

To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes.

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress [383 U.S. 338] assembled, That this Act shall be known as the "Voting Rights Act of 1965."

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SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

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SEC. 3.(a) Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the guarantees of the fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of any final judgment if the court finds that violations of the fifteenth amendment justifying equitable relief have occurred in such State or subdivision: Provided, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

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(b) If in a proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of [383 U.S. 339] tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

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(c) If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

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SEC. 4.(a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been [383 U.S. 340] made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: Provided, That no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

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An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

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If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment

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(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 percentum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 percentum of such persons voted in the presidential election of November 1964.

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A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

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(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

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(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

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(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant [383 U.S. 342] classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

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(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that, in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

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SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, [383 U.S. 343] or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

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SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that, in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to [383 U.S. 344] enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: Provided, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

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SEC. 7.(a) The examiners for each political subdivision shall, at such places as the Civil Service Commission shall by regulation designate, examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote.

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(b) Any person whom the examiner finds, in accordance with instructions received under section 9(b), to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 9(a) and shall not be the basis for a prosecution under section 12 of this Act. The examiner [383 U.S. 345] shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and, in any event, not later than the forty-fifth day prior to any election. The appropriate State or local election official shall place such names on the official voting list. Any person whose name appears on the examiner's list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): Provided, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

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(c) The examiner shall issue to each person whose name appears on such a list a certificate evidencing his eligibility to vote.

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(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) such person has been successfully challenged in accordance with the procedure prescribed in section 9, or (2) he has been determined by an examiner to have lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States.

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Sec. 8. Whenever an examiner is serving under this Act in any political subdivision, the Civil Service Commission may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose [383 U.S. 346] of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3(a), to the court.

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SEC. 9.(a) Any challenge to a listing on an eligibility list prepared by an examiner shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Civil Service Commission shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision of a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court [383 U.S. 347]

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(b) The times, places, procedures, and form for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the Constitution and laws of the United States with respect to (1) the qualifications required for listing, and (2) loss of eligibility to vote.

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(c) Upon the request of the applicant or the challenger or on its own motion the Civil Service Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter pending before it under the authority of this section. In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony touching the matter under investigation, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

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SEC. 10.(a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons [383 U.S. 348] as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

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(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment and section 2 of the fifteenth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

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(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

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(d) During the pendency of such actions, and thereafter if the courts, notwithstanding this action by the Congress, should declare the requirement of the payment of a poll tax to be constitutional, no citizen of the United States who is a resident of a State or political [383 U.S. 349] subdivision with respect to which determinations have been made under subsection 4(b) and a declaratory judgment has not been entered under subsection 4(a), during the first year he becomes otherwise entitled to vote by reason of registration by State or local officials or listing by an examiner, shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.

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SEC. 11.(a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

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(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

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(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another [383 U.S. 350] individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: Provided, however, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, or Delegates or Commissioners from the territories or possessions, or Resident Commissioner of the Commonwealth of Puerto Rico.

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(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

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SEC. 12.(a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2, 3, 4, 5, 7, or 10 or shall violate section 11(a) or (b), shall be fined not more than $5,000, or imprisoned not more than five years, or both.

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(b) Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both [383 U.S. 351]

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(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3 4, 5, 7, 10, or 11(a) or (b) shall be fined not more than $5,000, or imprisoned not more than five years, or both.

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(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote and (2) to count such votes.

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(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any persons allege to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under this Act or registration by an appropriate election official and (2) their eligibility to vote, they have not been permitted to vote in such election, the examiner shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided [383 U.S. 352] in this subsection shall not preclude any remedy available under State or Federal law.

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(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law

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SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 percentum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision, and (b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney [383 U.S. 353] General's refusal to request such survey or census to be arbitrary or unreasonable.

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SEC. 14.(a) All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C.1995).

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(b) No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

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(c)(1) The terms "vote" or "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

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(2) The term "political subdivision" shall mean any county or parish, except that, where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

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(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 of this Act, subpoenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: Provided, That no writ of subpoena shall issue for witnesses without the District of Columbia at a greater distance than one hundred [383 U.S. 354] miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

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SEC. 15. Section 2004 of the Revised Statutes (42 U.S.C.1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), and as further amended by section 101 of the Civil Rights Act of 1964 (78 Stat. 241), is further amended as follows:

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(a) Delete the word "Federal" wherever it appears in subsections (a) and (c);

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(b) Repeal subsection (f) and designate the present subsections (g) and (h) as (f) and (g), respectively.

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SEC. 16. The Attorney General and the Secretary of Defense, jointly, shall make a full and complete study to determine whether, under the laws or practices of any State or States, there are preconditions to voting, which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote. Such officials shall, jointly, make a report to the Congress not later than June 30, 1966, containing the results of such study, together with a list of any States in which such preconditions exist, and shall include in such report such recommendations for legislation as they deem advisable to prevent discrimination in voting against citizens serving in the Armed Forces of the United States.

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SEC. 17. Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

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SEC. 18. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act [383 U.S. 355]

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SEC 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

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Approved August 6, 1965.

BLACK, J., concurring and dissenting

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MR. JUSTICE BLACK, concurring and dissenting.

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I agree with substantially all of the Court's opinion sustaining the power of Congress under § 2 of the Fifteenth Amendment to suspend state literacy tests and similar voting qualifications and to authorize the Attorney General to secure the appointment of federal examiners to register qualified voters in various sections of the country. Section 1 of the Fifteenth Amendment provides that

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

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In addition to this unequivocal command to the States and the Federal Government that no citizen shall have his right to vote denied or abridged because of race or color, § 2 of the Amendment unmistakably gives Congress specific power to go further and pass appropriate legislation to protect this right to vote against any method of abridgment no matter how subtle. Compare my dissenting opinion in Bell v. Maryland, 378 U.S. 226, 318. I have no doubt whatever as to the power of Congress under § 2 to enact the provisions of the Voting Rights Act of 1965 dealing with the suspension of state voting tests that have been used as notorious means to deny and abridge voting rights on racial grounds. This same congressional power necessarily exists to authorize appointment of federal examiners. I also agree with the judgment of the Court upholding § 4(b) of [383 U.S. 356] the Act which sets out a formula for determining when and where the major remedial sections of the Act take effect. I reach this conclusion, however, for a somewhat different reason than that stated by the Court, which is that "the coverage formula is rational in both practice and theory." I do not base my conclusion on the fact that the formula is rational, for it is enough for me that Congress, by creating this formula, has merely exercised its hitherto unquestioned and undisputed power to decide when, where, and upon what conditions its laws shall go into effect. By stating in specific detail that the major remedial sections of the Act are to be applied in areas where certain conditions exist, and by granting the Attorney General and the Director of the Census unreviewable power to make the mechanical determination of which areas come within the formula of § 4(b), I believe that Congress has acted within its established power to set out preconditions upon which the Act is to go into effect. See, e.g., Martin v. Mott, 12 Wheat.19; United States v. Bush Co., 310 U.S. 371; Hirabayashi v. United States, 320 U.S. 81.

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Though, as I have said, I agree with most of the Court's conclusions, I dissent from its holding that every part of § 5 of the Act is constitutional. Section 4(a), to which § 5 is linked, suspends for five years all literacy tests and similar devices in those States coming within the formula of § 4(b). Section 5 goes on to provide that a State covered by § 4(b) can in no way amend its constitution or laws relating to voting without first trying to persuade the Attorney General of the United States or the Federal District Court for the District of Columbia that the new proposed laws do not have the purpose and will not have the effect of denying the right to vote to citizens on account of their race or color. I think this section is unconstitutional on at least two grounds [383 U.S. 357]

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(a) The Constitution gives federal courts jurisdiction over cases and controversies only. If it can be said that any case or controversy arises under this section which gives the District Court for the District of Columbia jurisdiction to approve or reject state laws or constitutional amendments, then the case or controversy must be between a State and the United States Government. But it is hard for me to believe that a justiciable controversy can arise in the constitutional sense from a desire by the United States Government or some of its officials to determine in advance what legislative provisions a State may enact or what constitutional amendments it may adopt. If this dispute between the Federal Government and the States amounts to a case or controversy, it is a far cry from the traditional constitutional notion of a case or controversy as a dispute over the meaning of enforceable laws or the manner in which they are applied. And if, by this section, Congress has created a case or controversy, and I do not believe it has, then it seems to me that the most appropriate judicial forum for settling these important questions is this Court acting under its original Art. III, 2, jurisdiction to try cases in which a State is a party. 1 At least a trial in this Court would treat the States with the dignity to which they should be entitled as constituent members of our Federal Union.

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The form of words and the manipulation of presumptions used in § 5 to create the illusion of a case or controversy should not be allowed to cloud the effect of that section. By requiring a State to ask a federal court to approve the validity of a proposed law which has in no way become operative, Congress has asked the State to [383 U.S. 358] secure precisely the type of advisory opinion our Constitution forbids. As I have pointed out elsewhere, see my dissenting opinion in Griswold v. Connecticut, 381 U.S. 479, 507, n. 6, pp. 513-515, some of those drafting our Constitution wanted to give the federal courts the power to issue advisory opinions and propose new laws to the legislative body. These suggestions were rejected. We should likewise reject any attempt by Congress to flout constitutional limitations by authorizing federal courts to render advisory opinions when there is no case or controversy before them. Congress has ample power to protect the rights of citizens to vote without resorting to the unnecessarily circuitous, indirect and unconstitutional route it has adopted in this section.

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(b) My second and more basic objection to § 5 is that Congress has here exercised its power under § 2 of the Fifteenth Amendment through the adoption of means that conflict with the most basic principles of the Constitution. As the Court says the limitations of the power granted under § 2 are the same as the limitations imposed on the exercise of any of the powers expressly granted Congress by the Constitution. The classic formulation of these constitutional limitations was stated by Chief Justice Marshall when he said in McCulloch v. Maryland, 4 Wheat. 316, 421,

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Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

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(Emphasis added.) Section 5, by providing that some of the States cannot pass state laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless. One [383 U.S. 359] of the most basic premises upon which our structure of government was founded was that the Federal Government was to have certain specific and limited powers and no others, and all other power was to be reserved either "to the States respectively, or to the people." Certainly if all the provisions of our Constitution which limit the power of the Federal Government and reserve other power to the States are to mean anything, they mean at least that the States have power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg federal authorities to approve them. 2 Moreover, it seems to me that § 5, which gives federal officials power to veto state laws they do not like, is in direct conflict with the clear command of our Constitution that "The United States shall guarantee to every State in this Union a Republican Form of Government." I cannot help but believe that the inevitable effect of any such law which forces any one of the States to entreat federal authorities in far-away places for approval of local laws before they can become effective is to [383 U.S. 360] create the impression that the State or States treated in this way are little more than conquered provinces. And if one law concerning voting can make the States plead for this approval by a distant federal court or the United States Attorney General, other laws on different subjects can force the States to seek the advance approval not only of the Attorney General, but of the President himself, or any other chosen members of his staff. It is inconceivable to me that such a radical degradation of state power was intended in any of the provisions of our Constitution or its Amendments. Of course, I do not mean to cast any doubt whatever upon the indisputable power of the Federal Government to invalidate a state law once enacted and operative on the ground that it intrudes into the area of supreme federal power. But the Federal Government has heretofore always been content to exercise this power to protect federal supremacy by authorizing its agents to bring lawsuits against state officials once an operative state law has created an actual case and controversy. A federal law which assumes the power to compel the States to submit in advance any proposed legislation they have for approval by federal agents approaches dangerously near to wiping the States out as useful and effective units in the government of our country. I cannot agree to any constitutional interpretation that leads inevitably to such a result.

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I see no reason to read into the Constitution meanings it did not have when it was adopted and which have not been put into it since. The proceedings of the original Constitutional Convention show beyond all doubt that the power to veto or negative state laws was denied Congress. On several occasions, proposals were submitted to the convention to grant this power to Congress. These proposals were debated extensively, and on every occasion when submitted for vote, they were overwhelmingly rejected. 3 [383 U.S. 361] The refusal to give Congress this extraordinary power to veto state laws was based on the belief that, if such power resided in Congress, the States would be helpless to function as effective governments. 4 Since that time neither the Fifteenth Amendment nor any other Amendment to the Constitution has given the slightest indication of a purpose to grant Congress the power to veto state laws, either by itself or its agents. Nor does any provision in the Constitution endow the federal courts with power to participate with state legislative bodies in determining what state policies shall be enacted into law. The judicial power to invalidate a law in a case or controversy after the law has become effective is a long way from the power to prevent a State from passing a law. I cannot agree with the Court that Congress—denied a power, in itself, to veto a state law—can delegate this same power to the Attorney General or the District Court for the District of Columbia. For the effect on the States is the same in both cases—they cannot pass their laws without sending their agents to the City of Washington to plead to federal officials for their advance approval.

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In this and other prior Acts Congress has quite properly vested the Attorney General with extremely broad power to protect voting rights of citizens against discrimination on account of race or color. Section 5, viewed in this context, is of very minor importance and, in my judgment, is likely to serve more as an irritant to [383 U.S. 362] the States than as an aid to the enforcement of the Act. I would hold § 5 invalid for the reasons stated above, with full confidence that the Attorney General has ample power to give vigorous, expeditious and effective protection to the voting rights of all citizens. 5

Footnotes

WARREN, J., lead opinion (Footnotes)

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1. 19 Stat. 437, 42 U.S.C. § 1973 (1964 ed., Supp. I).

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2. States supporting South Carolina: Alabama, Georgia, Louisiana, Mississippi, and Virginia. States supporting the Attorney General: California, Illinois, and Massachusetts, joined by Hawaii, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Montana, New Hampshire, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin.

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3. See Hearings on H.R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess. (hereinafter cited as House Hearings); Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess. (hereinafter cited as Senate Hearings).

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4. See the Congressional Record for April 22, 23, 26, 27, 28, 29, 30; May 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26; July 6, 7, 8, 9; August 3 and 4, 1965.

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5. The facts contained in these reports are confirmed, among other sources, by United States v. Louisiana, 225 F.Supp. 353, 363-385 (Wisdom, J.), aff'd, 380 U.S. 145; United States v. Mississippi, 229 F.Supp. 925, 983-997 (dissenting opinion of Brown, J.), rev'd and rem'd, 380 U.S. 128; United States v. Alabama, 192 F.Supp. 677 (Johnson, J.), aff'd, 304 F.2d 583, aff'd, 371 U.S. 37; Comm'n on Civil Rights, Voting in Mississippi; 1963 Comm'n on Civil Rights Rep. Voting; 1961 Comm'n on Civil Rights Rep. Voting, pt. 2; 1959; Comm'n on Civil Rights Rep. pt. 2. See generally Christopher, The Constitutionality of the Voting Rights Act of 1965, 18 Stan.L.Rev. 1; Note, Federal Protection of Negro Voting Rights, 51 Va.L.Rev. 1051.

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6. 16 Stat. 140.

1966, South Carolina v. Katzenbach, 383 U.S. 362

7. 16 Stat. 433.

1966, South Carolina v. Katzenbach, 383 U.S. 362

8. 28 Stat. 36.

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9. The South Carolina Constitutional Convention of 1895 was a leader in the widespread movement to disenfranchise Negroes. Key, Southern Politics, 537-539. Senator Ben Tillman frankly explained to the state delegates the aim of the new literacy test:

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[T]he only thing we can do as patriots and as statesmen is to take from [the "ignorant blacks"] every ballot that we can under the laws of our national government.

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He was equally candid about the exemption from the literacy test for persons who could "understand" and "explain" a section of the state constitution: "There is no particle of fraud or illegality in it. It is just simply showing partiality, perhaps, [laughter,] or discriminating." He described the alternative exemption for persons paying state property taxes in the same vein: "By means of the $300 clause, you simply reach out and take in some more white men and a few more colored men." Journal of the Constitutional Convention of the State of South Carolina 464, 469, 471 (1895). Senator Tillman was the dominant political figure in the state convention, and his entire address merits examination.

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10. Prior to the Civil War, most of the slave States made it a crime to teach Negroes how to read or write. Following the war, these States rapidly instituted racial segregation in their public schools. Throughout the period, free public education in the South had barely begun to develop. See Brown v. Board of Education, 347 U.S. 483, 489-490, n. 4; 1959 Comm'n on Civil Rights Rep. 147-151.

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11. For example, see three voting suits brought against the States themselves: United States v. Alabama, 192 F.Supp. 677, aff'd, 304 F.2d 583, aff'd, 371 U.S. 37; United States v. Louisiana, 225 F.Supp. 353, aff'd, 380 U.S. 145; United States v. Mississippi, 339 F.2d 679.

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12. A white applicant in Louisiana satisfied the registrar of his ability to interpret the state constitution by writing, "FRDUM FOOF SPETGH." United States v. Louisiana, 225 F.Supp. 353, 384. A white applicant in Alabama who had never completed the first grade of school was enrolled after the registrar filled out the entire form for him. United States v. Penton, 212 F.Supp. 193, 210-211.

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13. In Panola County, Mississippi, the registrar required Negroes to interpret the provision of the state constitution concerning "the rate of interest on the fund known as the `Chickasaw School Fund.'" United States v. Due, 332 F.2d 759, 764. In Forrest County, Mississippi, the registrar rejected six Negroes with baccalaureate degrees, three of whom were also Masters of Arts. United States v. Lynd, 301 F.2d 818, 821.

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14. For example, see United States v. Atkins, 323 F.2d 733, 743.

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15. For example, see United States v. Logue, 344 F.2d 290, 292.

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16. 71 Stat. 634.

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17. 74 Stat. 86.

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18. 78 Stat. 241, 42 U.S.C. § 1971 (1964 ed.).

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19. The Court of Appeals for the Fifth Circuit ordered the registrars of Forrest County, Mississippi, to give future Negro applicants the same assistance which white applicants had enjoyed in the past, and to register future Negro applicants despite errors which were not serious enough to disqualify white applicants in the past. The Mississippi Legislature promptly responded by requiring applicants to complete their registration forms without assistance or error, and by adding a good morals and public challenge provision to the registration laws. United States v. Mississippi, 229 F.Supp. 925, 996997 (dissenting opinion).

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20. For example, see United States v. Parker, 236 F.Supp. 511; United States v. Palmer, 230 F.Supp. 716.

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21. For convenient reference, the entire Act is reprinted in an Appendix to this opinion.

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22. Section 4(e) has been challenged in Morgan v. Katzenbach, 247 F. Supp 196, prob. juris. noted, 382 U.S. 1007, and in United States v. County Bd. of Elections, 248 F.Supp. 316. Section 10(a)(c) is involved in United States v. Texas, 252 F.Supp. 234, and in United States v. Alabama, 252 F.Supp. 95; see also Harper v. Virginia State Bd. of Elections, No. 48, 1965 Term, and Butts v. Harrison, No. 655, 1965 Term, which were argued together before this Court on January 25 and 26, 1966.

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23. 30 Fed.Reg. 9897

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24. Ibid.

1966, South Carolina v. Katzenbach, 383 U.S. 362

25. 30 Fed.Reg. 1505.

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26. Alaska v. United States, Civ.Act. 101-66; Apache County v. United States, Civ.Act. 292-66; Elmore County v. United States, Civ.Act. 320-66.

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27. 30 Fed.Reg. 14045-14046.

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28. For a chart of the tests and devices in effect at the time the Act was under consideration, see House Hearings 30-32; Senate Report 42-43.

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29. S.C.Code Ann. § 23-342 (195 Supp.).

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30. Brief for Mississippi as amicus curiae, App.

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31. 30 Fed.Reg. 13850.

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32. 30 Fed.Reg. 9970-9971, 10863, 12363, 12654, 13849-13850, 15837; 31 Fed.Reg. 914.

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33. See Comm'n on Civil Rights, The Voting Rights Act (1965).

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34. House Report 9-11; Senate Report 9.

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35. House Report 13; senate Report 52, 55.

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36. House Hearings 27; Senate Hearings 201.

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37. For Congress' defense of the formula, see House Report 13-14; Senate Report 13-14.

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38. House Report 12; Senate Report 10.

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39. Georgia: House Hearings 160-176; Senate Hearings 1182-1184 1237, 1253, 1300-1301, 1336-1345. North Carolina: Senate Hearings 27-28, 39, 246-248. South Carolina: House Hearings 114-116 196-201; Senate Hearings 1353-1354.

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40. House Hearings 75-77; Senate Hearings 241-243.

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41. Regarding claims against the United States, see 28 U.S.C. §§ 1491, 1346(a) (1964 ed.). Concerning suits against federal officers, see Stroud v. Benson, 254 F.2d 448; H.R.Rep. No. 536, 87th Cong., 1st Sess.; S.Rep. No.1992, 87th Cong., 2d Sess.; 28 U.S.C. § 1391(e) (1964 ed.); 2 Moore, Federal Practice ¶ 4.29 (1964 ed.).

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42. House Hearings 92-93; Senate Hearings 22-27.

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43. House Report 11-13; Senate Report 4-5, 9-12.

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44. House Report 15; Senate Report 15-16.

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45. House Report 15; Senate Report 16.

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46. House Hearings 17; Senate Hearings 22-23.

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47. House Report 111; Senate Report 8, 12.

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48. House Report 16; Senate Report 15.

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49. Senate Hearings 200.

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50. House Report 16

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51. See Comm'n on Civil Rights, The Voting Rights Act (1965).

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1. If § 14(b) of the Act by stating that no court other than the District Court for the District of Columbia shall issue a judgment under § 5 is an attempt to limit the constitutionally created original jurisdiction of this Court, then I think that section is also unconstitutional.

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2. The requirement that States come to Washington to have their laws judged is reminiscent of the deeply resented practices used by the English crown in dealing with the American colonies. One of the abuses complained of most bitterly was the King's practice of holding legislative and judicial proceedings in inconvenient and distant places. The signers of the Declaration of Independence protested that the King

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

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and they objected to the King's "transporting us beyond Seas to be tried for pretended offences." These abuses were fresh in the minds of the Framers of our Constitution, and in part caused them to include in Art. 3, § 2, the provision that criminal trials "shall be held in the State where the said Crimes shall have been committed." Also included in the Sixth Amendment was the requirement that a defendant in a criminal prosecution be tried by a "jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

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3. See Debates in the Federal Convention of 1787 as reported by James Madison in Documents Illustrative of the Formation of the Union of the American States (1927), pp. 605, 789, 856.

1966, South Carolina v. Katzenbach, 383 U.S. 362

4. One speaker expressing what seemed to be the prevailing opinion of the delegates said of the proposal, "Will any State ever agree to be bound hand & foot in this manner. It is worse than making mere corporations of them…. " Id. at 604.

1966, South Carolina v. Katzenbach, 383 U.S. 362

5. Section 19 of the Act provides as follows:

1966, South Carolina v. Katzenbach, 383 U.S. 362

If an provision of this Act or the application thereof to an person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Miranda v. Arizona, 1966

Title: Miranda v. Arizona

Author: U.S. Supreme Court

Date: June 13, 1966

Source: 384 U.S. 436

This case was argued February 28-March 1, 1966, and was decided June 13, 1966, together with No. 760, Vignera v. New York, on certiorari to the Court of Appeals of New York and No. 761, Westover v. United States, on certiorari to the United States Court of Appeals for the Ninth Circuit, both argued February 28-March 1, 1966, and No. 584, California v. Stewart, on certiorari to the Supreme Court of California, argued February 28-March 2, 1966.

CERTIORARI TO THE SUPREME COURT OF ARIZONA

Syllabus

1966, Miranda v. Arizona, 384 U.S. 436

In each of these cases, the defendant, while in police custody, was questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world. None of the defendants was given a full and effective warning of his rights at the outset of the interrogation process. In all four cases, the questioning elicited oral admissions, and, in three of them, signed statements as well, which were admitted at their trials. All defendants were convicted, and all convictions, except in No. 584, were affirmed on appeal.

1966, Miranda v. Arizona, 384 U.S. 436

Held:

1966, Miranda v. Arizona, 384 U.S. 436

1. The prosecution may not use statements, whether exculpatory or inculpatory, stemming from questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way, unless it demonstrates the use of procedural safeguards effective to secure the Fifth Amendment's privilege against self-incrimination. Pp. 444-491.

1966, Miranda v. Arizona, 384 U.S. 436

(a) The atmosphere and environment of incommunicado interrogation as it exists today is inherently intimidating, and works to undermine the privilege against self-incrimination. Unless adequate preventive measures are taken to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice. Pp. 445-458.

1966, Miranda v. Arizona, 384 U.S. 436

(b) The privilege against self-incrimination, which has had a long and expansive historical development, is the essential mainstay of our adversary system, and guarantees to the individual the "right to remain silent unless he chooses to speak in the unfettered exercise of his own will," during a period of custodial interrogation [384 U.S. 437] as well as in the courts or during the course of other official investigations. Pp. 458-465.

1966, Miranda v. Arizona, 384 U.S. 437

(c) The decision in Escobedo v. Illinois, 378 U.S. 478, stressed the need for protective devices to make the process of police interrogation conform to the dictates of the privilege. Pp. 465-466.

1966, Miranda v. Arizona, 384 U.S. 437

(d) In the absence of other effective measures, the following procedures to safeguard the Fifth Amendment privilege must be observed: the person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him. Pp. 467-473.

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(e) If the individual indicates, prior to or during questioning, that he wishes to remain silent, the interrogation must cease; if he states that he wants an attorney, the questioning must cease until an attorney is present. Pp. 473-474.

1966, Miranda v. Arizona, 384 U.S. 437

(f) Where an interrogation is conducted without the presence of an attorney and a statement is taken, a heavy burden rests on the Government to demonstrate that the defendant knowingly and intelligently waived his right to counsel. P. 475.

1966, Miranda v. Arizona, 384 U.S. 437

(g) Where the individual answers some questions during in-custody interrogation, he has not waived his privilege, and may invoke his right to remain silent thereafter. Pp. 475-476.

1966, Miranda v. Arizona, 384 U.S. 437

(h) The warnings required and the waiver needed are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement, inculpatory or exculpatory, made by a defendant. Pp. 476-477.

1966, Miranda v. Arizona, 384 U.S. 437

2. The limitations on the interrogation process required for the protection of the individual's constitutional rights should not cause an undue interference with a proper system of law enforcement, as demonstrated by the procedures of the FBI and the safeguards afforded in other jurisdictions. Pp. 479-491.

1966, Miranda v. Arizona, 384 U.S. 437

3. In each of these cases, the statements were obtained under circumstances that did not meet constitutional standards for protection of the privilege against self-incrimination. Pp. 491-499.

1966, Miranda v. Arizona, 384 U.S. 437

98 Ariz. 18, 401 P.2d 721; 15 N.Y.2d 970, 207 N.E.2d 527; 16 N.Y.2d 614, 209 N.E.2d 110; 342 F.2d 684, reversed; 62 Cal.2d 571, 400 P.2d 97, affirmed. [384 U.S. 439]

WARREN, J., lead opinion

1966, Miranda v. Arizona, 384 U.S. 439

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

1966, Miranda v. Arizona, 384 U.S. 439

The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime. More specifically, we deal with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation and the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself. [384 U.S. 440]

1966, Miranda v. Arizona, 384 U.S. 440

We dealt with certain phases of this problem recently in Escobedo v. Illinois, 378 U.S. 478 (1964). There, as in the four cases before us, law enforcement officials took the defendant into custody and interrogated him in a police station for the purpose of obtaining a confession. The police did not effectively advise him of his right to remain silent or of his right to consult with his attorney. Rather, they confronted him with an alleged accomplice who accused him of having perpetrated a murder. When the defendant denied the accusation and said "I didn't shoot Manuel, you did it," they handcuffed him and took him to an interrogation room. There, while handcuffed and standing, he was questioned for four hours until he confessed. During this interrogation, the police denied his request to speak to his attorney, and they prevented his retained attorney, who had come to the police station, from consulting with him. At his trial, the State, over his objection, introduced the confession against him. We held that the statements thus made were constitutionally inadmissible.

1966, Miranda v. Arizona, 384 U.S. 440

This case has been the subject of judicial interpretation and spirited legal debate since it was decided two years ago. Both state and federal courts, in assessing its implications, have arrived at varying conclusions. 1 A wealth of scholarly material has been written tracing its ramifications and underpinnings. 2 Police and prosecutor [384 U.S. 441] have speculated on its range and desirability. 3 We granted certiorari in these cases, 382 U.S. 924, 925, 937, in order further to explore some facets of the problems thus exposed of applying the privilege against self-incrimination to in-custody interrogation, and to give [384 U.S. 442] concrete constitutional guidelines for law enforcement agencies and courts to follow.

1966, Miranda v. Arizona, 384 U.S. 442

We start here, as we did in Escobedo, with the premise that our holding is not an innovation in our jurisprudence, but is an application of principles long recognized and applied in other settings. We have undertaken a thorough reexamination of the Escobedo decision and the principles it announced, and we reaffirm it. That case was but an explication of basic rights that are enshrined in our Constitution—that "No person…shall be compelled in any criminal case to be a witness against himself," and that "the accused shall…have the Assistance of Counsel"—rights which were put in jeopardy in that case through official overbearing. These precious rights were fixed in our Constitution only after centuries of persecution and struggle. And, in the words of Chief Justice Marshall, they were secured "for ages to come, and…designed to approach immortality as nearly as human institutions can approach it," Cohens v. Virginia, 6 Wheat. 264, 387 (1821).

1966, Miranda v. Arizona, 384 U.S. 442

Over 70 years ago, our predecessors on this Court eloquently stated:

1966, Miranda v. Arizona, 384 U.S. 442

The maxim nemo tenetur seipsum accusare had its origin in a protest against the inquisitorial and manifestly unjust methods of interrogating accused persons, which [have] long obtained in the continental system, and, until the expulsion of the Stuarts from the British throne in 1688 and the erection of additional barriers for the protection of the people against the exercise of arbitrary power, [were] not uncommon even in England. While the admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence, if an accused person be asked to explain his apparent connection with a crime under investigation, the ease with which the [384 U.S. 443] questions put to him may assume an inquisitorial character, the temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner, and to entrap him into fatal contradictions, which is so painfully evident in many of the earlier state trials, notably in those of Sir Nicholas Throckmorton and Udal, the Puritan minister, made the system so odious as to give rise to a demand for its total abolition. The change in the English criminal procedure in that particular seems to be founded upon no statute and no judicial opinion, but upon a general and silent acquiescence of the courts in a popular demand. But, however adopted, it has become firmly embedded in English as well as in American jurisprudence. So deeply did the iniquities of the ancient system impress themselves upon the minds of the American colonists that the States, with one accord, made a denial of the right to question an accused person a part of their fundamental law, so that a maxim, which in England was a mere rule of evidence, became clothed in this country with the impregnability of a constitutional enactment.

1966, Miranda v. Arizona, 384 U.S. 443

Brown v. Walker, 161 U.S. 591, 596-597 (1896). In stating the obligation of the judiciary to apply these constitutional rights, this Court declared in Weems v. United States, 217 U.S. 349, 373 (1910):

1966, Miranda v. Arizona, 384 U.S. 443

…our contemplation cannot be only of what has been, but of what may be. Under any other rule, a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality. And this has been recognized. The [384 U.S. 444] meaning and vitality of the Constitution have developed against narrow and restrictive construction.

1966, Miranda v. Arizona, 384 U.S. 444

This was the spirit in which we delineated, in meaningful language, the manner in which the constitutional rights of the individual could be enforced against overzealous police practices. It was necessary in Escobedo, as here, to insure that what was proclaimed in the Constitution had not become but a "form of words," Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920), in the hands of government officials. And it is in this spirit, consistent with our role as judges, that we adhere to the principles of Escobedo today.

1966, Miranda v. Arizona, 384 U.S. 444

Our holding will be spelled out with some specificity in the pages which follow, but, briefly stated, it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. 4 As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the [384 U.S. 445] process that he wishes to consult with an attorney before speaking, there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

I

1966, Miranda v. Arizona, 384 U.S. 445

The constitutional issue we decide in each of these cases is the admissibility of statements obtained from a defendant questioned while in custody or otherwise deprived of his freedom of action in any significant way. In each, the defendant was questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world. In none of these cases was the defendant given a full and effective warning of his rights at the outset of the interrogation process. In all the cases, the questioning elicited oral admissions, and in three of them, signed statements as well which were admitted at their trials. They all thus share salient features—incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights.

1966, Miranda v. Arizona, 384 U.S. 445

An understanding of the nature and setting of this in-custody interrogation is essential to our decisions today. The difficulty in depicting what transpires at such interrogations stems from the fact that, in this country, they have largely taken place incommunicado. From extensive factual studies undertaken in the early 1930's, including the famous Wickersham Report to Congress by a Presidential Commission, it is clear that police violence and the "third degree" flourished at that time. 5 [384 U.S. 446] In a series of cases decided by this Court long after these studies, the police resorted to physical brutality—beating, hanging, whipping—and to sustained and protracted questioning incommunicado in order to extort confessions. 6 The Commission on Civil Rights in 1961 found much evidence to indicate that "some policemen still resort to physical force to obtain confessions," 1961 Comm'n on Civil Rights Rep. Justice, pt. 5, 17. The use of physical brutality and violence is not, unfortunately, relegated to the past or to any part of the country. Only recently in Kings County, New York, the police brutally beat, kicked and placed lighted cigarette butts on the back of a potential witness under interrogation for the purpose of securing a statement incriminating a third party. People v. Portelli, 15 N.Y.2d 235, 205 N.E.2d 857, 257 N.Y.S.2d 931 (1965). 7 [384 U.S. 447]

1966, Miranda v. Arizona, 384 U.S. 447

The examples given above are undoubtedly the exception now, but they are sufficiently widespread to be the object of concern. Unless a proper limitation upon custodial interrogation is achieved—such as these decisions will advance—there can be no assurance that practices of this nature will be eradicated in the foreseeable future. The conclusion of the Wickersham Commission Report, made over 30 years ago, is still pertinent:

1966, Miranda v. Arizona, 384 U.S. 447

To the contention that the third degree is necessary to get the facts, the reporters aptly reply in the language of the present Lord Chancellor of England (Lord Sankey):

1966, Miranda v. Arizona, 384 U.S. 447

It is not admissible to do a great right by doing a little wrong…. It is not sufficient to do justice by obtaining a proper result by irregular or improper means.

1966, Miranda v. Arizona, 384 U.S. 447

Not only does the use of the third degree involve a flagrant violation of law by the officers of the law, but it involves also the dangers of false confessions, and it tends to make police and prosecutors less zealous in the search for objective evidence. As the New York prosecutor quoted in the report said, "It is a short-cut, and makes the police lazy and unenterprising." Or, as another official quoted remarked: "If you use your fists, you [384 U.S. 448] are not so likely to use your wits." We agree with the conclusion expressed in the report, that

1966, Miranda v. Arizona, 384 U.S. 448

The third degree brutalizes the police, hardens the prisoner against society, and lowers the esteem in which the administration of Justice is held by the public.

1966, Miranda v. Arizona, 384 U.S. 448

IV National Commission on Law Observance and Enforcement, Report on Lawlessness in Law Enforcement 5 (1931).

1966, Miranda v. Arizona, 384 U.S. 448

Again we stress that the modern practice of in-custody interrogation is psychologically, rather than physically, oriented. As we have stated before,

1966, Miranda v. Arizona, 384 U.S. 448

Since Chambers v. Florida, 309 U.S. 227, this Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition.

1966, Miranda v. Arizona, 384 U.S. 448

Blackburn v. Alabama, 361 U.S. 199, 206 (1960). Interrogation still takes place in privacy. Privacy results in secrecy, and this, in turn, results in a gap in our knowledge as to what, in fact, goes on in the interrogation rooms. A valuable source of information about present police practices, however, may be found in various police manuals and texts which document procedures employed with success in the past, and which recommend various other effective tactics. 8 These [384 U.S. 449] texts are used by law enforcement agencies themselves as guides. 9 It should be noted that these texts professedly present the most enlightened and effective means presently used to obtain statements through custodial interrogation. By considering these texts and other data, it is possible to describe procedures observed and noted around the country.

1966, Miranda v. Arizona, 384 U.S. 449

The officers are told by the manuals that the

1966, Miranda v. Arizona, 384 U.S. 449

principal psychological factor contributing to a successful interrogation is privacy—being alone with the person under interrogation. 10

1966, Miranda v. Arizona, 384 U.S. 449

The efficacy of this tactic has been explained as follows:

1966, Miranda v. Arizona, 384 U.S. 449

If at all practicable, the interrogation should take place in the investigator's office or at least in a room of his own choice. The subject should be deprived of every psychological advantage. In his own home, he may be confident, indignant, or recalcitrant. He is more keenly aware of his rights and [384 U.S. 450] more reluctant to tell of his indiscretions or criminal behavior within the walls of his home. Moreover his family and other friends are nearby, their presence lending moral support. In his own office, the investigator possesses all the advantages. The atmosphere suggests the invincibility of the forces of the law. 11

1966, Miranda v. Arizona, 384 U.S. 450

To highlight the isolation and unfamiliar surroundings, the manuals instruct the police to display an air of confidence in the suspect's guilt and, from outward appearance, to maintain only an interest in confirming certain details. The guilt of the subject is to be posited as a fact. The interrogator should direct his comments toward the reasons why the subject committed the act, rather than court failure by asking the subject whether he did it. Like other men, perhaps the subject has had a bad family life, had an unhappy childhood, had too much to drink, had an unrequited desire for women. The officers are instructed to minimize the moral seriousness of the offense, 12 to cast blame on the victim or on society. 13 These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already—that he is guilty. Explanations to the contrary are dismissed and discouraged.

1966, Miranda v. Arizona, 384 U.S. 450

The texts thus stress that the major qualities an interrogator should possess are patience and perseverance. [384 U.S. 451] One writer describes the efficacy of these characteristics in this manner:

1966, Miranda v. Arizona, 384 U.S. 451

In the preceding paragraphs, emphasis has been placed on kindness and stratagems. The investigator will, however, encounter many situations where the sheer weight of his personality will be the deciding factor. Where emotional appeals and tricks are employed to no avail, he must rely on an oppressive atmosphere of dogged persistence. He must interrogate steadily and without relent, leaving the subject no prospect of surcease. He must dominate his subject and overwhelm him with his inexorable will to obtain the truth. He should interrogate for a spell of several hours, pausing only for the subject's necessities in acknowledgment of the need to avoid a charge of duress that can be technically substantiated. In a serious case, the interrogation may continue for days, with the required intervals for food and sleep, but with no respite from the atmosphere of domination. It is possible in this way to induce the subject to talk without resorting to duress or coercion. The method should be used only when the guilt of the subject appears highly probable. 14

1966, Miranda v. Arizona, 384 U.S. 451

The manuals suggest that the suspect be offered legal excuses for his actions in order to obtain an initial admission of guilt. Where there is a suspected revenge killing, for example, the interrogator may say:

1966, Miranda v. Arizona, 384 U.S. 451

Joe, you probably didn't go out looking for this fellow with the purpose of shooting him. My guess is, however, that you expected something from him, and that's why you carried a gun—for your own protection. You knew him for what he was, no good. Then when you met him, he probably started using foul, abusive language and he gave some indication [384 U.S. 452] that he was about to pull a gun on you, and that's when you had to act to save your own life. That's about it, isn't it, Joe? 15

1966, Miranda v. Arizona, 384 U.S. 452

Having then obtained the admission of shooting, the interrogator is advised to refer to circumstantial evidence which negates the self-defense explanation. This should enable him to secure the entire story. One text notes that,

1966, Miranda v. Arizona, 384 U.S. 452

Even if he fails to do so, the inconsistency between the subject's original denial of the shooting and his present admission of at least doing the shooting will serve to deprive him of a self-defense "out" at the time of trial. 16

1966, Miranda v. Arizona, 384 U.S. 452

When the techniques described above prove unavailing, the texts recommend they be alternated with a show of some hostility. One ploy often used has been termed the "friendly-unfriendly," or the "Mutt and Jeff" act:

1966, Miranda v. Arizona, 384 U.S. 452

…In this technique, two agents are employed. Mutt, the relentless investigator, who knows the subject is guilty and is not going to waste any time. He's sent a dozen men away for this crime, and he's going to send the subject away for the full term. Jeff, on the other hand, is obviously a kindhearted man. He has a family himself. He has a brother who was involved in a little scrape like this. He disapproves of Mutt and his tactics, and will arrange to get him off the case if the subject will cooperate. He can't hold Mutt off for very long. The subject would be wise to make a quick decision. The technique is applied by having both investigators present while Mutt acts out his role. Jeff may stand by quietly and demur at some of Mutt's tactics. When Jeff makes his plea for cooperation, Mutt is not present in the room. 17 [384 U.S. 453]

1966, Miranda v. Arizona, 384 U.S. 453

The interrogators sometimes are instructed to induce a confession out of trickery. The technique here is quite effective in crimes which require identification or which run in series. In the identification situation, the interrogator may take a break in his questioning to place the subject among a group of men in a line-up.

1966, Miranda v. Arizona, 384 U.S. 453

The witness or complainant (previously coached, if necessary) studies the line-up and confidently points out the subject as the guilty party. 18

1966, Miranda v. Arizona, 384 U.S. 453

Then the questioning resumes "as though there were now no doubt about the guilt of the subject." A variation on this technique is called the "reverse line-up":

1966, Miranda v. Arizona, 384 U.S. 453

The accused is placed in a line-up, but this time he is identified by several fictitious witnesses or victims who associated him with different offenses. It is expected that the subject will become desperate and confess to the offense under investigation in order to escape from the false accusations. 19

1966, Miranda v. Arizona, 384 U.S. 453

The manuals also contain instructions for police on how to handle the individual who refuses to discuss the matter entirely, or who asks for an attorney or relatives. The examiner is to concede him the right to remain silent.

1966, Miranda v. Arizona, 384 U.S. 453

This usually has a very undermining effect. First of all, he is disappointed in his expectation of an unfavorable reaction on the part of the interrogator. Secondly, a concession of this right to remain silent impresses [384 U.S. 454] the subject with the apparent fairness of his interrogator. 20

1966, Miranda v. Arizona, 384 U.S. 454

After this psychological conditioning, however, the officer is told to point out the incriminating significance of the suspect's refusal to talk:

1966, Miranda v. Arizona, 384 U.S. 454

Joe, you have a right to remain silent. That's your privilege, and I'm the last person in the world who'll try to take it away from you. If that's the way you want to leave this, O. K. But let me ask you this. Suppose you were in my shoes, and I were in yours, and you called me in to ask me about this, and I told you, "I don't want to answer any of your questions." You'd think I had something to hide, and you'd probably be right in thinking that. That's exactly what I'll have to think about you, and so will everybody else. So let's sit here and talk this whole thing over. 21

1966, Miranda v. Arizona, 384 U.S. 454

Few will persist in their initial refusal to talk, it is said, if this monologue is employed correctly.

1966, Miranda v. Arizona, 384 U.S. 454

In the event that the subject wishes to speak to a relative or an attorney, the following advice is tendered:

1966, Miranda v. Arizona, 384 U.S. 454

[T]he interrogator should respond by suggesting that the subject first tell the truth to the interrogator himself, rather than get anyone else involved in the matter. If the request is for an attorney, the interrogator may suggest that the subject save himself or his family the expense of any such professional service, particularly if he is innocent of the offense under investigation. The interrogator may also add, "Joe, I'm only looking for the truth, and if you're telling the truth, that's it. You can handle this by yourself." 22 [384 U.S. 455]

1966, Miranda v. Arizona, 384 U.S. 455

From these representative samples of interrogation techniques, the setting prescribed by the manuals and observed in practice becomes clear. In essence, it is this: to be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must "patiently maneuver himself or his quarry into a position from which the desired objective may be attained." 23 When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights.

1966, Miranda v. Arizona, 384 U.S. 455

Even without employing brutality, the "third degree" or the specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty, and trades on the weakness of individuals. 24 [384 U.S. 456] This fact may be illustrated simply by referring to three confession cases decided by this Court in the Term immediately preceding our Escobedo decision. In Townsend v. Sain, 372 U.S. 293 (1963), the defendant was a 19-year-old heroin addict, described as a "near mental defective," id. at 307-310. The defendant in Lynumn v. Illinois, 372 U.S. 528 (1963), was a woman who confessed to the arresting officer after being importuned to "cooperate" in order to prevent her children from being taken by relief authorities. This Court, as in those cases, reversed the conviction of a defendant in Haynes v. Washington, 373 U.S. 503 (1963), whose persistent request during his interrogation was to phone his wife or attorney. 25 In other settings, these individuals might have exercised their constitutional rights. In the incommunicado police-dominated atmosphere, they succumbed.

1966, Miranda v. Arizona, 384 U.S. 456

In the cases before us today, given this background, we concern ourselves primarily with this interrogation atmosphere and the evils it can bring. In No. 759, Miranda v. Arizona, the police arrested the defendant and took him to a special interrogation room, where they secured a confession. In No. 760, Vignera v. New York, the defendant made oral admissions to the police after interrogation in the afternoon, and then signed an inculpatory statement upon being questioned by an assistant district attorney later the same evening. In No. 761, Westover v. United States, the defendant was handed over to the Federal Bureau of Investigation by [384 U.S. 457] local authorities after they had detained and interrogated him for a lengthy period, both at night and the following morning. After some two hours of questioning, the federal officers had obtained signed statements from the defendant. Lastly, in No. 584, California v. Stewart, the local police held the defendant five days in the station and interrogated him on nine separate occasions before they secured his inculpatory statement.

1966, Miranda v. Arizona, 384 U.S. 457

In these cases, we might not find the defendants' statements to have been involuntary in traditional terms. Our concern for adequate safeguards to protect precious Fifth Amendment rights is, of course, not lessened in the slightest. In each of the cases, the defendant was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures. The potentiality for compulsion is forcefully apparent, for example, in Miranda, where the indigent Mexican defendant was a seriously disturbed individual with pronounced sexual fantasies, and in Stewart, in which the defendant was an indigent Los Angeles Negro who had dropped out of school in the sixth grade. To be sure, the records do not evince overt physical coercion or patent psychological ploys. The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truly the product of free choice.

1966, Miranda v. Arizona, 384 U.S. 457

It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity. 26 The current practice of incommunicado interrogation is at odds with one of our [384 U.S. 458] Nation's most cherished principles—that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.

1966, Miranda v. Arizona, 384 U.S. 458

From the foregoing, we can readily perceive an intimate connection between the privilege against self-incrimination and police custodial questioning. It is fitting to turn to history and precedent underlying the Self-Incrimination Clause to determine its applicability in this situation.

II

1966, Miranda v. Arizona, 384 U.S. 458

We sometimes forget how long it has taken to establish the privilege against self-incrimination, the sources from which it came, and the fervor with which it was defended. Its roots go back into ancient times. 27 Perhaps [384 U.S. 459] the critical historical event shedding light on its origins and evolution was the trial of one John Lilburn, a vocal anti-Stuart Leveller, who was made to take the Star Chamber Oath in 1637. The oath would have bound him to answer to all questions posed to him on any subject. The Trial of John Lilburn and John Wharton, 3 How.St.Tr. 1315 (1637). He resisted the oath and declaimed the proceedings, stating:

1966, Miranda v. Arizona, 384 U.S. 459

Another fundamental right I then contended for was that no man's conscience ought to be racked by oaths imposed to answer to questions concerning himself in matters criminal, or pretended to be so.

1966, Miranda v. Arizona, 384 U.S. 459

Haller & Davies, The Leveller Tracts 1647-1653, p. 454 (1944)

1966, Miranda v. Arizona, 384 U.S. 459

On account of the Lilburn Trial, Parliament abolished the inquisitorial Court of Star Chamber and went further in giving him generous reparation. The lofty principles to which Lilburn had appealed during his trial gained popular acceptance in England. 28 These sentiments worked their way over to the Colonies, and were implanted after great struggle into the Bill of Rights. 29 Those who framed our Constitution and the Bill of Rights were ever aware of subtle encroachments on individual liberty. They knew that

1966, Miranda v. Arizona, 384 U.S. 459

illegitimate and unconstitutional practices get their first footing…by silent approaches and slight deviations from legal modes of procedure.

1966, Miranda v. Arizona, 384 U.S. 459

Boyd v. United States, 116 U.S. 616, 635 (1886). The privilege was elevated to constitutional status, and has always been "as broad as the mischief [384 U.S. 460] against which it seeks to guard." Counselman v. Hitchcock, 142 U.S. 547, 562 (1892). We cannot depart from this noble heritage.

1966, Miranda v. Arizona, 384 U.S. 460

Thus, we may view the historical development of the privilege as one which groped for the proper scope of governmental power over the citizen. As a "noble principle often transcends its origins," the privilege has come rightfully to be recognized in part as an individual's substantive right, a "right to a private enclave where he may lead a private life. That right is the hallmark of our democracy." United States v. Grunewald, 233 F.2d 556, 579, 581-582 (Frank, J., dissenting), rev'd, 353 U.S. 391 (1957). We have recently noted that the privilege against self-incrimination—the essential mainstay of our adversary system—is founded on a complex of values, Murphy v. Waterfront Comm'n, 378 U.S. 52, 55-57, n. 5 (1964); Tehan v. Shott, 382 U.S. 406, 414-415, n. 12 (1966). All these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government—state or federal—must accord to the dignity and integrity of its citizens. To maintain a "fair state-individual balance," to require the government "to shoulder the entire load," 8 Wigmore, Evidence 317 (McNaughton rev.1961), to respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth. Chambers v. Florida, 309 U.S. 227, 235-238 (1940). In sum, the privilege is fulfilled only when the person is guaranteed the right "to remain silent unless he chooses to speak in the unfettered exercise of his own will." Malloy v. Hogan, 378 U.S. 1, 8 (1964).

1966, Miranda v. Arizona, 384 U.S. 460

The question in these cases is whether the privilege is fully applicable during a period of custodial interrogation. [384 U.S. 461] In this Court, the privilege has consistently been accorded a liberal construction. Albertson v. SACB, 382 U.S. 70, 81 (1965); Hoffman v. United States, 341 U.S. 479, 486 (1951); Arndstein v. McCarthy, 254 U.S. 71, 72-73 (1920); Counselman v. Hitchock, 142 U.S. 547, 562 (1892). We are satisfied that all the principles embodied in the privilege apply to informal compulsion exerted by law enforcement officers during in-custody questioning. An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion to speak. As a practical matter, the compulsion to speak in the isolated setting of the police station may well be greater than in courts or other official investigations, where there are often impartial observers to guard against intimidation or trickery. 30

1966, Miranda v. Arizona, 384 U.S. 461

This question, in fact, could have been taken as settled in federal courts almost 70 years ago, when, in Bram v. United States, 168 U.S. 532, 542 (1897), this Court held:

1966, Miranda v. Arizona, 384 U.S. 461

In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment…commanding that no person "shall be compelled in any criminal case to be a witness against himself."

1966, Miranda v. Arizona, 384 U.S. 461

In Bram, the Court reviewed the British and American history and case law and set down the Fifth Amendment standard for compulsion which we implement today:

1966, Miranda v. Arizona, 384 U.S. 461

Much of the confusion which has resulted from the effort to deduce from the adjudged cases what [384 U.S. 462] would be a sufficient quantum of proof to show that a confession was or was not voluntary, has arisen from a misconception of the subject to which the proof must address itself. The rule is not that, in order to render a statement admissible, the proof must be adequate to establish that the particular communications contained in a statement were voluntarily made, but it must be sufficient to establish that the making of the statement was voluntary; that is to say, that from the causes, which the law treats as legally sufficient to engender in the mind of the accused hope or fear in respect to the crime charged, the accused was not involuntarily impelled to make a statement, when, but for the improper influences, he would have remained silent….

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168 U.S. at 549. And see id. at 542.

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The Court has adhered to this reasoning. In 1924, Mr. Justice Brandeis wrote for a unanimous Court in reversing a conviction resting on a compelled confession, Wan v. United States, 266 U.S. 1. He stated:

1966, Miranda v. Arizona, 384 U.S. 462

In the federal courts, the requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat. A confession is voluntary in law if, and only if, it was, in fact, voluntarily made. A confession may have been given voluntarily, although it was made to police officers, while in custody, and in answer to an examination conducted by them. But a confession obtained by compulsion must be excluded whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial proceeding or otherwise. Bram v. United States, 168 U.S. 532.

1966, Miranda v. Arizona, 384 U.S. 462

266 U.S. at 14-15. In addition to the expansive historical development of the privilege and the sound policies which have nurtured [384 U.S. 463] its evolution, judicial precedent thus clearly establishes its application to incommunicado interrogation. In fact, the Government concedes this point as well established in No. 761, Westover v. United States, stating:

1966, Miranda v. Arizona, 384 U.S. 463

We have no doubt…that it is possible for a suspect's Fifth Amendment right to be violated during in-custody questioning by a law enforcement officer. 31

1966, Miranda v. Arizona, 384 U.S. 463

Because of the adoption by Congress of Rule 5(a) of the Federal Rules of Criminal Procedure, and this Court's effectuation of that Rule in McNabb v. United States, 318 U.S. 332 (1943), and Mallory v. United States, 354 U.S. 449 (1957), we have had little occasion in the past quarter century to reach the constitutional issues in dealing with federal interrogations. These supervisory rules, requiring production of an arrested person before a commissioner "without unnecessary delay" and excluding evidence obtained in default of that statutory obligation, were nonetheless responsive to the same considerations of Fifth Amendment policy that unavoidably face us now as to the States. In McNabb, 318 U.S. at 343-344, and in Mallory, 354 U.S. at 455-456, we recognized both the dangers of interrogation and the appropriateness of prophylaxis stemming from the very fact of interrogation itself. 32

1966, Miranda v. Arizona, 384 U.S. 463

Our decision in Malloy v. Hogan, 378 U.S. 1 (1964), necessitates an examination of the scope of the privilege in state cases as well. In Malloy, we squarely held the [384 U.S. 464] privilege applicable to the States, and held that the substantive standards underlying the privilege applied with full force to state court proceedings. There, as in Murphy v. Waterfront Comm'n, 378 U.S. 52 (1964), and Griffin v. California, 380 U.S. 609 (1965), we applied the existing Fifth Amendment standards to the case before us. Aside from the holding itself, the reasoning in Malloy made clear what had already become apparent—that the substantive and procedural safeguards surrounding admissibility of confessions in state cases had become exceedingly exacting, reflecting all the policies embedded in the privilege, 378 U.S. at 7-8. 33 The voluntariness doctrine in the state cases, as Malloy indicates, encompasses all interrogation practices which are likely to exert such pressure upon an individual as to disable him from [384 U.S. 465] making a free and rational choice. 34 The implications of this proposition were elaborated in our decision in Escobedo v. Illinois, 378 U.S. 478, decided one week after Malloy applied the privilege to the States.

1966, Miranda v. Arizona, 384 U.S. 465

Our holding there stressed the fact that the police had not advised the defendant of his constitutional privilege to remain silent at the outset of the interrogation, and we drew attention to that fact at several points in the decision, 378 U.S. at 483, 485, 491. This was no isolated factor, but an essential ingredient in our decision. The entire thrust of police interrogation there, as in all the cases today, was to put the defendant in such an emotional state as to impair his capacity for rational judgment. The abdication of the constitutional privilege—the choice on his part to speak to the police—was not made knowingly or competently because of the failure to apprise him of his rights; the compelling atmosphere of the in-custody interrogation, and not an independent decision on his part, caused the defendant to speak.

1966, Miranda v. Arizona, 384 U.S. 465

A different phase of the Escobedo decision was significant in its attention to the absence of counsel during the questioning. There, as in the cases today, we sought a protective device to dispel the compelling atmosphere of the interrogation. In Escobedo, however, the police did not relieve the defendant of the anxieties which they had created in the interrogation rooms. Rather, they denied his request for the assistance of counsel, 378 U.S. at 481, 488, 491. 35 This heightened his dilemma, and [384 U.S. 466] made his later statements the product of this compulsion. Cf. Haynes v. Washington, 373 U.S. 503, 514 (1963). The denial of the defendant's request for his attorney thus undermined his ability to exercise the privilege—to remain silent if he chose or to speak without any intimidation, blatant or subtle. The presence of counsel, in all the cases before us today, would he the adequate protective device necessary to make the process of police interrogation conform to the dictates of the privilege. His presence would insure that statements made in the government-established atmosphere are not the product of compulsion.

1966, Miranda v. Arizona, 384 U.S. 466

It was in this manner that Escobedo explicated another facet of the pretrial privilege, noted in many of the Court's prior decisions: the protection of rights at trial. 36 That counsel is present when statements are taken from an individual during interrogation obviously enhances the integrity of the factfinding processes in court. The presence of an attorney, and the warnings delivered to the individual, enable the defendant under otherwise compelling circumstances to tell his story without fear, effectively, and in a way that eliminates the evils in the interrogation process. Without the protections flowing from adequate warnings and the rights of counsel,

1966, Miranda v. Arizona, 384 U.S. 466

all the careful safeguards erected around the giving of testimony, whether by an accused or any other witness, would become empty formalities in a procedure where the most compelling possible evidence of guilt, a confession, would have already been obtained at the unsupervised pleasure of the police.

1966, Miranda v. Arizona, 384 U.S. 466

Mapp v. Ohio, 367 U.S. 643, 685 (1961) (HARLAN, J., dissenting). Cf. Pointer v. Texas, 380 U.S. 400 (1965). [384 U.S. 467]

III

1966, Miranda v. Arizona, 384 U.S. 467

Today, then, there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings, and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves. We have concluded that, without proper safeguards, the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights, and the exercise of those rights must be fully honored.

1966, Miranda v. Arizona, 384 U.S. 467

It is impossible for us to foresee the potential alternatives for protecting the privilege which might be devised by Congress or the States in the exercise of their creative rulemaking capacities. Therefore, we cannot say that the Constitution necessarily requires adherence to any particular solution for the inherent compulsions of the interrogation process as it is presently conducted. Our decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform, nor is it intended to have this effect. We encourage Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws. However, unless we are shown other procedures which are at least as effective in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it, the following safeguards must be observed.

1966, Miranda v. Arizona, 384 U.S. 467

At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and [384 U.S. 468] unequivocal terms that he has the right to remain silent. For those unaware of the privilege, the warning is needed simply to make them aware of it—the threshold requirement for an intelligent decision as to its exercise. More important, such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere. It is not just the subnormal or woefully ignorant who succumb to an interrogator's imprecations, whether implied or expressly stated, that the interrogation will continue until a confession is obtained or that silence in the face of accusation is itself damning, and will bode ill when presented to a jury. 37 Further, the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.

1966, Miranda v. Arizona, 384 U.S. 468

The Fifth Amendment privilege is so fundamental to our system of constitutional rule, and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given. Assessments of the knowledge the defendant possessed, based on information [384 U.S. 469] as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation; 38 a warning is a clear-cut fact. More important, whatever the background of the person interrogated, a warning at the time of the interrogation is indispensable to overcome its pressures and to insure that the individual knows he is free to exercise the privilege at that point in time.

1966, Miranda v. Arizona, 384 U.S. 469

The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system—that he is not in the presence of persons acting solely in his interest.

1966, Miranda v. Arizona, 384 U.S. 469

The circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators. Therefore, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today. Our aim is to assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process. A once-stated warning, delivered by those who will conduct the interrogation, cannot itself suffice to that end among those who most require knowledge of their rights. A mere [384 U.S. 470] warning given by the interrogators is not alone sufficient to accomplish that end. Prosecutors themselves claim that the admonishment of the right to remain silent, without more, "will benefit only the recidivist and the professional." Brief for the National District Attorneys Association as amicus curiae, p. 14. Even preliminary advice given to the accused by his own attorney can be swiftly overcome by the secret interrogation process. Cf. Escobedo v. Illinois, 378 U.S. 478, 485, n. 5. Thus, the need for counsel to protect the Fifth Amendment privilege comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires.

1966, Miranda v. Arizona, 384 U.S. 470

The presence of counsel at the interrogation may serve several significant subsidiary functions, as well. If the accused decides to talk to his interrogators, the assistance of counsel can mitigate the dangers of untrustworthiness. With a lawyer present, the likelihood that the police will practice coercion is reduced, and, if coercion is nevertheless exercised, the lawyer can testify to it in court. The presence of a lawyer can also help to guarantee that the accused gives a fully accurate statement to the police, and that the statement is rightly reported by the prosecution at trial. See Crooker v. California, 357 U.S. 433, 443-448 (1958) (DOUGLAS, J., dissenting).

1966, Miranda v. Arizona, 384 U.S. 470

An individual need not make a pre-interrogation request for a lawyer. While such request affirmatively secures his right to have one, his failure to ask for a lawyer does not constitute a waiver. No effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given. The accused who does not know his rights and therefore does not make a request [384 U.S. 471] may be the person who most needs counsel. As the California Supreme Court has aptly put it:

1966, Miranda v. Arizona, 384 U.S. 471

Finally, we must recognize that the imposition of the requirement for the request would discriminate against the defendant who does not know his rights. The defendant who does not ask for counsel is the very defendant who most needs counsel. We cannot penalize a defendant who, not understanding his constitutional rights, does not make the formal request, and, by such failure, demonstrates his helplessness. To require the request would be to favor the defendant whose sophistication or status had fortuitously prompted him to make it.

1966, Miranda v. Arizona, 384 U.S. 471

People v. Dorado, 62 Cal.2d 338, 351, 398 P.2d 361, 369-370, 42 Cal.Rptr. 169, 177-178 (1965) (Tobriner, J.). In Carnley v. Cochran, 369 U.S. 506, 513 (1962), we stated:

1966, Miranda v. Arizona, 384 U.S. 471

[I]t is settled that, where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request.

1966, Miranda v. Arizona, 384 U.S. 471

This proposition applies with equal force in the context of providing counsel to protect an accused's Fifth Amendment privilege in the face of interrogation. 39 Although the role of counsel at trial differs from the role during interrogation, the differences are not relevant to the question whether a request is a prerequisite.

1966, Miranda v. Arizona, 384 U.S. 471

Accordingly, we hold that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate today. As with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation. No amount of [384 U.S. 472] circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead. Only through such a warning is there ascertainable assurance that the accused was aware of this right.

1966, Miranda v. Arizona, 384 U.S. 472

If an individual indicates that he wishes the assistance of counsel before any interrogation occurs, the authorities cannot rationally ignore or deny his request on the basis that the individual does not have or cannot afford a retained attorney. The financial ability of the individual has no relationship to the scope of the rights involved here. The privilege against self-incrimination secured by the Constitution applies to all individuals. The need for counsel in order to protect the privilege exists for the indigent as well as the affluent. In fact, were we to limit these constitutional rights to those who can retain an attorney, our decisions today would be of little significance. The cases before us, as well as the vast majority of confession cases with which we have dealt in the past, involve those unable to retain counsel. 40 While authorities are not required to relieve the accused of his poverty, they have the obligation not to take advantage of indigence in the administration of justice. 41 Denial [384 U.S. 473] of counsel to the indigent at the time of interrogation while allowing an attorney to those who can afford one would be no more supportable by reason or logic than the similar situation at trial and on appeal struck down in Gideon v. Wainwright, 372 U.S. 335 (1963), and Douglas v. California, 372 U.S. 353 (1963).

1966, Miranda v. Arizona, 384 U.S. 473

In order fully to apprise a person interrogated of the extent of his rights under this system, then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that, if he is indigent, a lawyer will be appointed to represent him. Without this additional warning, the admonition of the right to consult with counsel would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one. The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent—the person most often subjected to interrogation—the knowledge that he too has a right to have counsel present. 42 As with the warnings of the right to remain silent and of the general right to counsel, only by effective and express explanation to the indigent of this right can there be assurance that he was truly in a position to exercise it. 43

1966, Miranda v. Arizona, 384 U.S. 473

Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, [384 U.S. 474] at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. 44 At this point, he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning. If the individual cannot obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent.

1966, Miranda v. Arizona, 384 U.S. 474

This does not mean, as some have suggested, that each police station must have a "station house lawyer" present at all times to advise prisoners. It does mean, however, that, if police propose to interrogate a person, they must make known to him that he is entitled to a lawyer and that, if he cannot afford one, a lawyer will be provided for him prior to any interrogation. If authorities conclude that they will not provide counsel during a reasonable period of time in which investigation in the field is carried out, they may refrain from doing so without violating the person's Fifth Amendment privilege so long as they do not question him during that time. [384 U.S. 475]

1966, Miranda v. Arizona, 384 U.S. 475

If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. Escobedo v. Illinois, 378 U.S. 478, 490, n. 14. This Court has always set high standards of proof for the waiver of constitutional rights, Johnson v. Zerbst, 304 U.S. 458 (1938), and we reassert these standards as applied to in-custody interrogation. Since the State is responsible for establishing the isolated circumstances under which the interrogation takes place, and has the only means of making available corroborated evidence of warnings given during incommunicado interrogation, the burden is rightly on its shoulders.

1966, Miranda v. Arizona, 384 U.S. 475

An express statement that the individual is willing to make a statement and does not want an attorney, followed closely by a statement, could constitute a waiver. But a valid waiver will not be presumed simply from the silence of the accused after warnings are given, or simply from the fact that a confession was, in fact, eventually obtained. A statement we made in Carnley v. Cochran, 369 U.S. 506, 516 (1962), is applicable here:

1966, Miranda v. Arizona, 384 U.S. 475

Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver.

1966, Miranda v. Arizona, 384 U.S. 475

See also Glasser v. United States, 315 U.S. 60 (1942). Moreover, where in-custody interrogation is involved, there is no room for the contention that the privilege is waived if the individual answers some questions or gives [384 U.S. 476] some information on his own prior to invoking his right to remain silent when interrogated. 45

1966, Miranda v. Arizona, 384 U.S. 476

Whatever the testimony of the authorities as to waiver of rights by an accused, the fact of lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights. In these circumstances, the fact that the individual eventually made a statement is consistent with the conclusion that the compelling influence of the interrogation finally forced him to do so. It is inconsistent with any notion of a voluntary relinquishment of the privilege. Moreover, any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege. The requirement of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privilege, and not simply a preliminary ritual to existing methods of interrogation.

1966, Miranda v. Arizona, 384 U.S. 476

The warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant. No distinction can be drawn between statements which are direct confessions and statements which amount to "admissions" of part or all of an offense. The privilege against self-incrimination protects the individual from being compelled to incriminate himself in any manner; it does not distinguish degrees of incrimination. Similarly, [384 U.S. 477] for precisely the same reason, no distinction may be drawn between inculpatory statements and statements alleged to be merely "exculpatory." If a statement made were, in fact, truly exculpatory, it would, of course, never be used by the prosecution. In fact, statements merely intended to be exculpatory by the defendant are often used to impeach his testimony at trial or to demonstrate untruths in the statement given under interrogation, and thus to prove guilt by implication. These statements are incriminating in any meaningful sense of the word, and may not be used without the full warnings and effective waiver required for any other statement. In Escobedo itself, the defendant fully intended his accusation of another as the slayer to be exculpatory as to himself.

1966, Miranda v. Arizona, 384 U.S. 477

The principles announced today deal with the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation while in custody at the station or otherwise deprived of his freedom of action in any significant way. It is at this point that our adversary system of criminal proceedings commences, distinguishing itself at the outset from the inquisitorial system recognized in some countries. Under the system of warnings we delineate today, or under any other system which may be devised and found effective, the safeguards to be erected about the privilege must come into play at this point.

1966, Miranda v. Arizona, 384 U.S. 477

Our decision is not intended to hamper the traditional function of police officers in investigating crime. See Escobedo v. Illinois, 378 U.S. 478, 492. When an individual is in custody on probable cause, the police may, of course, seek out evidence in the field to be used at trial against him. Such investigation may include inquiry of persons not under restraint. General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the factfinding process is not affected by our holding. It is an act of [384 U.S. 478] responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations, the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present. 46

1966, Miranda v. Arizona, 384 U.S. 478

In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated. There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, 47 or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment, and their admissibility is not affected by our holding today.

1966, Miranda v. Arizona, 384 U.S. 478

To summarize, we hold that, when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to [384 U.S. 479] protect the privilege, and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that, if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him. 48

IV

1966, Miranda v. Arizona, 384 U.S. 479

A recurrent argument made in these cases is that society's need for interrogation outweighs the privilege. This argument is not unfamiliar to this Court. See, e.g., Chambers v. Florida, 309 U.S. 227, 240-241 (1940). The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged. As Mr. Justice Brandeis once observed:

1966, Miranda v. Arizona, 384 U.S. 479

Decency, security and liberty alike demand that government officials shall be subjected to the same [384 U.S. 480] rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fail to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that, in the administration of the criminal law, the end justifies the means…would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

1966, Miranda v. Arizona, 384 U.S. 480

Olmstead v. United States, 277 U.S. 438, 485 (1928) (dissenting opinion). 49 In this connection, one of our country's distinguished jurists has pointed out: "The quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of its criminal law." 50

1966, Miranda v. Arizona, 384 U.S. 480

If the individual desires to exercise his privilege, he has the right to do so. This is not for the authorities to decide. An attorney may advise his client not to talk to police until he has had an opportunity to investigate the case, or he may wish to be present with his client during any police questioning. In doing so an attorney is merely exercising the good professional judgment he has been taught. This is not cause for considering the attorney a menace to law enforcement. He is merely carrying out what he is sworn to do under his oath—to protect to the extent of his ability the rights of his client. [384 U.S. 481] In fulfilling this responsibility, the attorney plays a vital role in the administration of criminal justice under our Constitution.

1966, Miranda v. Arizona, 384 U.S. 481

In announcing these principles, we are not unmindful of the burdens which law enforcement officials must bear, often under trying circumstances. We also fully recognize the obligation of all citizens to aid in enforcing the criminal laws. This Court, while protecting individual rights, has always given ample latitude to law enforcement agencies in the legitimate exercise of their duties. The limits we have placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement. As we have noted, our decision does not in any way preclude police from carrying out their traditional investigatory functions. Although confessions may play an important role in some convictions, the cases before us present graphic examples of the overstatement of the "need" for confessions. In each case, authorities conducted interrogations ranging up to five days in duration despite the presence, through standard investigating practices, of considerable evidence against each defendant. 51 Further examples are chronicled in our prior cases. See, e.g., Haynes v. Washington, 373 U.S. 503, 518-519 (1963); Rogers v. Richmond, 365 U.S. 534, 541 (1961); Malinski v. New York, 324 U.S. 401,402 (1945). 52 [384 U.S. 482]

1966, Miranda v. Arizona, 384 U.S. 482

It is also urged that an unfettered right to detention for interrogation should be allowed because it will often redound to the benefit of the person questioned. When police inquiry determines that there is no reason to believe that the person has committed any crime, it is said, he will be released without need for further formal procedures. The person who has committed no offense, however, will be better able to clear himself after warnings with counsel present than without. It can be assumed that, in such circumstances, a lawyer would advise his client to talk freely to police in order to clear himself.

1966, Miranda v. Arizona, 384 U.S. 482

Custodial interrogation, by contrast, does not necessarily afford the innocent an opportunity to clear themselves. A serious consequence of the present practice of the interrogation alleged to be beneficial for the innocent is that many arrests "for investigation" subject large numbers of innocent persons to detention and interrogation. In one of the cases before us, No. 584, California v. Stewart, police held four persons, who were in the defendant's house at the time of the arrest, in jail for five days until defendant confessed. At that time, they were finally released. Police stated that there was "no evidence to connect them with any crime." Available statistics on the extent of this practice where it is condoned indicate that these four are far from alone in being subjected to arrest, prolonged detention, and interrogation without the requisite probable cause. 53 [384 U.S. 483]

1966, Miranda v. Arizona, 384 U.S. 483

Over the years, the Federal Bureau of Investigation has compiled an exemplary record of effective law enforcement while advising any suspect or arrested person, at the outset of an interview, that he is not required to make a statement, that any statement may be used against him in court, that the individual may obtain the services of an attorney of his own choice, and, more recently, that he has a right to free counsel if he is unable to pay. 54 A letter received from the Solicitor General in response to a question from the Bench makes it clear that the present pattern of warnings and respect for the [384 U.S. 484] rights of the individual followed as a practice by the FBI is consistent with the procedure which we delineate today. It states:

1966, Miranda v. Arizona, 384 U.S. 484

At the oral argument of the above cause, Mr. Justice Fortas asked whether I could provide certain information as to the practices followed by the Federal Bureau of Investigation. I have directed these questions to the attention of the Director of the Federal Bureau of Investigation, and am submitting herewith a statement of the questions and of the answers which we have received.

1966, Miranda v. Arizona, 384 U.S. 484

(1) When an individual is interviewed by agents of the Bureau, what warning is given to him?

1966, Miranda v. Arizona, 384 U.S. 484

The standard warning long given by Special Agents of the FBI to both suspects and persons under arrest is that the person has a right to say nothing and a right to counsel, and that any statement he does make may be used against him in court. Examples of this warning are to be found in the Westover case at 342 F.2d 684 (1965), and Jackson v. U.S., 337 F.2d 136 (1964), cert. den., 380 U.S. 935.

1966, Miranda v. Arizona, 384 U.S. 484

After passage of the Criminal Justice Act of 1964, which provides free counsel for Federal defendants unable to pay, we added to our instructions to Special Agents the requirement that any person who is under arrest for an offense under FBI jurisdiction, or whose arrest is contemplated following the interview, must also be advised of his right to free counsel if he is unable to pay, and the fact that such counsel will be assigned by the Judge. At the same time, we broadened the right to counsel warning [384 U.S. 485] to read counsel of his own choice, or anyone else with whom he might wish to speak.

1966, Miranda v. Arizona, 384 U.S. 485

(2) When is the warning given?

1966, Miranda v. Arizona, 384 U.S. 485

The FBI warning is given to a suspect at the very outset of the interview, as shown in the Westover case, cited above. The warning may be given to a person arrested as soon as practicable after the arrest, as shown in the Jackson case, also cited above, and in U.S. v. Konigsberg, 336 F.2d 844 (1964), cert. den., 379 U.S. 933, but, in any event, it must precede the interview with the person for a confession or admission of his own guilt.

1966, Miranda v. Arizona, 384 U.S. 485

(3) What is the Bureau's practice in the event that (a) the individual requests counsel and (b) counsel appears?

1966, Miranda v. Arizona, 384 U.S. 485

When the person who has been warned of his right to counsel decides that he wishes to consult with counsel before making a statement, the interview is terminated at that point, Shultz v. U.S., 351 F.2d 287 (1965). It may be continued, however, as to all matters other than the person's own guilt or innocence. If he is indecisive in his request for counsel, there may be some question on whether he did or did not waive counsel. Situations of this kind must necessarily be left to the judgment of the interviewing Agent. For example, in Hiram v. U.S., 354 F.2d 4 (1965), the Agent's conclusion that the person arrested had waived his right to counsel was upheld by the courts.

1966, Miranda v. Arizona, 384 U.S. 485

A person being interviewed and desiring to consult counsel by telephone must be permitted to do so, as shown in Caldwell v. U.S., 351 F.2d 459 (1965). When counsel appears in person, he is permitted to confer with his client in private. [384 U.S. 486]

1966, Miranda v. Arizona, 384 U.S. 486

(4) What is the Bureau's practice if the individual requests counsel, but cannot afford to retain an attorney?

1966, Miranda v. Arizona, 384 U.S. 486

If any person being interviewed after warning of counsel decides that he wishes to consult with counsel before proceeding, further the interview is terminated, as shown above. FBI Agents do not pass judgment on the ability of the person to pay for counsel. They do, however, advise those who have been arrested for an offense under FBI jurisdiction, or whose arrest is contemplated following the interview, of a right to free counsel if they are unable to pay, and the availability of such counsel from the Judge. 55

1966, Miranda v. Arizona, 384 U.S. 486

The practice of the FBI can readily be emulated by state and local enforcement agencies. The argument that the FBI deals with different crimes than are dealt with by state authorities does not mitigate the significance of the FBI experience. 56

1966, Miranda v. Arizona, 384 U.S. 486

The experience in some other countries also suggests that the danger to law enforcement in curbs on interrogation is overplayed. The English procedure, since 1912 under the Judges' Rules, is significant. As recently [384 U.S. 487] strengthened, the Rules require that a cautionary warning be given an accused by a police officer as soon as he has evidence that affords reasonable grounds for suspicion; they also require that any statement made be given by the accused without questioning by police. 57 [384 U.S. 488] The right of the individual to consult with an attorney during this period is expressly recognized. 58

1966, Miranda v. Arizona, 384 U.S. 488

The safeguards present under Scottish law may be even greater than in England. Scottish judicial decisions bar use in evidence of most confessions obtained through police interrogation. 59 In India, confessions made to police not in the presence of a magistrate have been excluded [384 U.S. 489] by rule of evidence since 1872, at a time when it operated under British law. 60 Identical provisions appear in the Evidence Ordinance of Ceylon, enacted in 1895. 61 Similarly, in our country, the Uniform Code of Military Justice has long provided that no suspect may be interrogated without first being warned of his right not to make a statement, and that any statement he makes may be used against him. 62 Denial of the right to consult counsel during interrogation has also been proscribed by military tribunals. 63 There appears to have been no marked detrimental effect on criminal law enforcement in these jurisdictions as a result of these rules. Conditions of law enforcement in our country are sufficiently similar to permit reference to this experience as assurance that lawlessness will not result from warning an individual of his rights or allowing him to exercise them. Moreover, it is consistent with our legal system that we give at least as much protection to these rights as is given in the jurisdictions described. We deal in our country with rights grounded in a specific requirement of the Fifth Amendment of the Constitution, [384 U.S. 490] whereas other jurisdictions arrived at their conclusions on the basis of principles of justice not so specifically defined. 64

1966, Miranda v. Arizona, 384 U.S. 490

It is also urged upon us that we withhold decision on this issue until state legislative bodies and advisory groups have had an opportunity to deal with these problems by rulemaking. 65 We have already pointed out that the Constitution does not require any specific code of procedures for protecting the privilege against self-incrimination during custodial interrogation. Congress and the States are free to develop their own safeguards for the privilege, so long as they are fully as effective as those described above in informing accused persons of their right of silence and in affording a continuous opportunity to exercise it. In any event, however, the issues presented are of constitutional dimensions, and must be determined by the courts. The admissibility of a statement in the face of a claim that it was obtained in violation of the defendant's constitutional rights is an issue the resolution of which has long since been undertaken by this Court. See Hopt v. Utah, 110 U.S. 574 (1884). Judicial solutions to problems of constitutional dimension have evolved decade by decade. As courts have been presented with the need to enforce constitutional rights, they have found means of doing so. That was our responsibility when Escobedo was before us, and it is our [384 U.S. 491] responsibility today. Where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them.

V

1966, Miranda v. Arizona, 384 U.S. 491

Because of the nature of the problem and because of its recurrent significance in numerous cases, we have to this point discussed the relationship of the Fifth Amendment privilege to police interrogation without specific concentration on the facts of the cases before us. We turn now to these facts to consider the application to these cases of the constitutional principles discussed above. In each instance, we have concluded that statements were obtained from the defendant under circumstances that did not meet constitutional standards for protection of the privilege.

1966, Miranda v. Arizona, 384 U.S. 491

No. 759. Miranda v. Arizona

1966, Miranda v. Arizona, 384 U.S. 491

On March 13, 1963, petitioner, Ernesto Miranda, was arrested at his home and taken in custody to a Phoenix police station. He was there identified by the complaining witness. The police then took him to "Interrogation Room No. 2" of the detective bureau. There he was questioned by two police officers. The officers admitted at trial that Miranda was not advised that he had a right to have an attorney present. 66 Two hours later, the [384 U.S. 492] officers emerged from the interrogation room with a written confession signed by Miranda. At the top of the statement was a typed paragraph stating that the confession was made voluntarily, without threats or promises of immunity and "with full knowledge of my legal rights, understanding any statement I make may be used against me." 67

1966, Miranda v. Arizona, 384 U.S. 492

At his trial before a jury, the written confession was admitted into evidence over the objection of defense counsel, and the officers testified to the prior oral confession made by Miranda during the interrogation. Miranda was found guilty of kidnapping and rape. He was sentenced to 20 to 30 years' imprisonment on each count, the sentences to run concurrently. On appeal, the Supreme Court of Arizona held that Miranda's constitutional rights were not violated in obtaining the confession, and affirmed the conviction. 98 Ariz. 18, 401 P.2d 721. In reaching its decision, the court emphasized heavily the fact that Miranda did not specifically request counsel.

1966, Miranda v. Arizona, 384 U.S. 492

We reverse. From the testimony of the officers and by the admission of respondent, it is clear that Miranda was not in any way apprised of his right to consult with an attorney and to have one present during the interrogation, nor was his right not to be compelled to incriminate himself effectively protected in any other manner. Without these warnings, the statements were inadmissible. The mere fact that he signed a statement which contained a typed-in clause stating that he had "full knowledge" of his "legal rights" does not approach the knowing and intelligent waiver required to relinquish constitutional rights. Cf. Haynes v. Washington, 373 U.S. [384 U.S. 493] 503, 512-513 (1963); Haley v. Ohio, 332 U.S. 596, 601 (1948) (opinion of MR JUSTICE DOUGLAS).

1966, Miranda v. Arizona, 384 U.S. 493

No. 760. Vignera v. New York

1966, Miranda v. Arizona, 384 U.S. 493

Petitioner, Michael Vignera, was picked up by New York police on October 14, 1960, in connection with the robbery three days earlier of a Brooklyn dress shop. They took him to the 17th Detective Squad headquarters in Manhattan. Sometime thereafter, he was taken to the 66th Detective Squad. There a detective questioned Vignera with respect to the robbery. Vignera orally admitted the robbery to the detective. The detective was asked on cross-examination at trial by defense counsel whether Vignera was warned of his right to counsel before being interrogated. The prosecution objected to the question, and the trial judge sustained the objection. Thus, the defense was precluded from making any showing that warnings had not been given. While at the 66th Detective Squad, Vignera was identified by the store owner and a saleslady as the man who robbed the dress shop. At about 3 p.m., he was formally arrested. The police then transported him to still another station, the 70th Precinct in Brooklyn, "for detention." At 11 p.m., Vignera was questioned by an assistant district attorney in the presence of a hearing reporter, who transcribed the questions and Vignera's answers. This verbatim account of these proceedings contains no statement of any warnings given by the assistant district attorney. At Vignera's trial on a charge of first degree robbery, the detective testified as to the oral confession. The transcription of the statement taken was also introduced in evidence. At the conclusion of the testimony, the trial judge charged the jury in part as follows:

1966, Miranda v. Arizona, 384 U.S. 493

The law doesn't say that the confession is void or invalidated because the police officer didn't advise the defendant as to his rights. Did you hear what [384 U.S. 494] I said? I am telling you what the law of the State of New York is.

1966, Miranda v. Arizona, 384 U.S. 494

Vignera was found guilty of first degree robbery. He was subsequently adjudged a third-felony offender and sentenced to 30 to 60 years' imprisonment. 68 The conviction was affirmed without opinion by the Appellate Division, Second Department, 21 App.Div.2d 752, 252 N.Y.S.2d 19, and by the Court of Appeals, also without opinion, 15 N.Y.2d 970, 207 N.E.2d 527, 259 N.Y.S.2d 857, remittitur amended, 16 N.Y.2d 614, 209 N.E.2d 110, 261 N.Y. .2d 65. In argument to the Court of Appeals, the State contended that Vignera had no constitutional right to be advised of his right to counsel or his privilege against self-incrimination.

1966, Miranda v. Arizona, 384 U.S. 494

We reverse. The foregoing indicates that Vignera was not warned of any of his rights before the questioning by the detective and by the assistant district attorney. No other steps were taken to protect these rights. Thus, he was not effectively apprised of his Fifth Amendment privilege or of his right to have counsel present, and his statements are inadmissible.

1966, Miranda v. Arizona, 384 U.S. 494

No. 761. Westover v. United States

1966, Miranda v. Arizona, 384 U.S. 494

At approximately 9:45 p.m. on March 20, 1963, petitioner, Carl Calvin Westover, was arrested by local police in Kansas City as a suspect in two Kansas City robberies. A report was also received from the FBI that he was wanted on a felony charge in California. The local authorities took him to a police station and placed him in a line-up on the local charges, and, at about 11:45 p.m., he was booked. Kansas City police interrogated Westover [384 U.S. 495] on the night of his arrest. He denied any knowledge of criminal activities. The next day, local officers interrogated him again throughout the morning. Shortly before noon, they informed the FBI that they were through interrogating Westover and that the FBI could proceed to interrogate him. There is nothing in the record to indicate that Westover was ever given any warning as to his rights by local police. At noon, three special agents of the FBI continued the interrogation in a private interview room of the Kansas City Police Department, this time with respect to the robbery of a savings and loan association and bank in Sacramento, California. After two or two and one-half hours, Westover signed separate confessions to each of these two robberies which had been prepared by one of the agents during the interrogation. At trial, one of the agents testified, and a paragraph on each of the statements states, that the agents advised Westover that he did not have to make a statement, that any statement he made could be used against him, and that he had the right to see an attorney.

1966, Miranda v. Arizona, 384 U.S. 495

Westover was tried by a jury in federal court and convicted of the California robberies. His statements were introduced at trial. He was sentenced to 15 years' imprisonment on each count, the sentences to run consecutively. On appeal, the conviction was affirmed by the Court of Appeals for the Ninth Circuit. 342 F.2d 684.

1966, Miranda v. Arizona, 384 U.S. 495

We reverse. On the facts of this case, we cannot find that Westover knowingly and intelligently waived his right to remain silent and his right to consult with counsel prior to the time he made the statement. 69 At the [384 U.S. 496] time the FBI agents began questioning Westover, he had been in custody for over 14 hours, and had been interrogated at length during that period. The FBI interrogation began immediately upon the conclusion of the interrogation by Kansas City police, and was conducted in local police headquarters. Although the two law enforcement authorities are legally distinct, and the crimes for which they interrogated Westover were different, the impact on him was that of a continuous period of questioning. There is no evidence of any warning given prior to the FBI interrogation, nor is there any evidence of an articulated waiver of rights after the FBI commenced its interrogation. The record simply shows that the defendant did, in fact, confess a short time after being turned over to the FBI following interrogation by local police. Despite the fact that the FBI agents gave warnings at the outset of their interview, from Westover's point of view, the warnings came at the end of the interrogation process. In these circumstances, an intelligent waiver of constitutional rights cannot be assumed.

1966, Miranda v. Arizona, 384 U.S. 496

We do not suggest that law enforcement authorities are precluded from questioning any individual who has been held for a period of time by other authorities and interrogated by them without appropriate warnings. A different case would be presented if an accused were taken into custody by the second authority, removed both in time and place from his original surroundings, and then adequately advised of his rights and given an opportunity to exercise them. But here, the FBI interrogation was conducted immediately following the state interrogation in the same police station—in the same compelling surroundings. Thus, in obtaining a confession from Westover [384 U.S. 497] the federal authorities were the beneficiaries of the pressure applied by the local in-custody interrogation. In these circumstances, the giving of warnings alone was not sufficient to protect the privilege.

1966, Miranda v. Arizona, 384 U.S. 497

No. 584. California v. Stewart

1966, Miranda v. Arizona, 384 U.S. 497

In the course of investigating a series of purse-snatch robberies in which one of the victims had died of injuries inflicted by her assailant, respondent, Roy Allen Stewart, was pointed out to Los Angeles police as the endorser of dividend checks taken in one of the robberies. At about 7:15 p.m., January 31, 1963, police officers went to Stewart's house and arrested him. One of the officers asked Stewart if they could search the house, to which he replied, "Go ahead." The search turned up various items taken from the five robbery victims. At the time of Stewart's arrest, police also arrested Stewart's wife and three other persons who were visiting him. These four were jailed along with Stewart, and were interrogated. Stewart was taken to the University Station of the Los Angeles Police Department, where he was placed in a cell. During the next five days, police interrogated Stewart on nine different occasions. Except during the first interrogation session, when he was confronted with an accusing witness, Stewart was isolated with his interrogators.

1966, Miranda v. Arizona, 384 U.S. 497

During the ninth interrogation session, Stewart admitted that he had robbed the deceased and stated that he had not meant to hurt her. Police then brought Stewart before a magistrate for the first time. Since there was no evidence to connect them with any crime, the police then released the other four persons arrested with him.

1966, Miranda v. Arizona, 384 U.S. 497

Nothing in the record specifically indicates whether Stewart was or was not advised of his right to remain silent or his right to counsel. In a number of instances, [384 U.S. 498] however, the interrogating officers were asked to recount everything that was said during the interrogations. None indicated that Stewart was ever advised of his rights.

1966, Miranda v. Arizona, 384 U.S. 498

Stewart was charged with kidnapping to commit robbery, rape, and murder. At his trial, transcripts of the first interrogation and the confession at the last interrogation were introduced in evidence. The jury found Stewart guilty of robbery and first degree murder, and fixed the penalty as death. On appeal, the Supreme Court of California reversed. 62 Cal.2d 571, 400 P.2d 97, 43 Cal.Rptr. 201. It held that, under this Court's decision in Escobedo, Stewart should have been advised of his right to remain silent and of his right to counsel, and that it would not presume in the face of a silent record that the police advised Stewart of his rights. 70

1966, Miranda v. Arizona, 384 U.S. 498

We affirm. 71 In dealing with custodial interrogation, we will not presume that a defendant has been effectively apprised of his rights and that his privilege against self-incrimination has been adequately safeguarded on a record that does not show that any warnings have been given or that any effective alternative has been employed. Nor can a knowing and intelligent waiver of [384 U.S. 499] these rights be assumed on a silent record. Furthermore, Stewart's steadfast denial of the alleged offenses through eight of the nine interrogations over a period of five days is subject to no other construction than that he was compelled by persistent interrogation to forgo his Fifth Amendment privilege.

1966, Miranda v. Arizona, 384 U.S. 499

Therefore, in accordance with the foregoing, the judgments of the Supreme Court Of Arizona in No. 759, of the New York Court of Appeals in No. 760, and of the Court of Appeals for the Ninth Circuit in No. 761, are reversed. The judgment of the Supreme Court of California in No. 584 is affirmed.

1966, Miranda v. Arizona, 384 U.S. 499

It is so ordered.

CLARK, J., concurring and dissenting

1966, Miranda v. Arizona, 384 U.S. 499

MR. JUSTICE CLARK, dissenting in Nos. 759, 760, and 761, and concurring in the result in No. 584.

1966, Miranda v. Arizona, 384 U.S. 499

It is with regret that I find it necessary to write in these cases. However, I am unable to join the majority because its opinion goes too far on too little, while my dissenting brethren do not go quite far enough. Nor can I join in the Court's criticism of the present practices of police and investigatory agencies as to custodial interrogation. The materials it refers to as "police manuals" 1 are, as I read them, merely writings in this field by professors and some police officers. Not one is shown by the record here to be the official manual of any police department, much less in universal use in crime detection. Moreover, the examples of police brutality mentioned by the Court 2 are rare exceptions to the thousands of cases [384 U.S. 500] that appear every year in the law reports. The police agencies—all the way from municipal and state forces to the federal bureaus—are responsible for law enforcement and public safety in this country. I am proud of their efforts, which, in my view, are not fairly characterized by the Court's opinion.

I

1966, Miranda v. Arizona, 384 U.S. 500

The ipse dixit of the majority has no support in our cases. Indeed, the Court admits that "we might not find the defendants' statements [here] to have been involuntary in traditional terms." Ante, p. 457. In short, the Court has added more to the requirements that the accused is entitled to consult with his lawyer and that he must be given the traditional warning that he may remain silent and that anything that he says may be used against him. Escobedo v. Illinois, 378 U.S. 478, 490-491 (1964). Now the Court fashions a constitutional rule that the police may engage in no custodial interrogation without additionally advising the accused that he has a right under the Fifth Amendment to the presence of counsel during interrogation and that, if he is without funds, counsel will be furnished him. When, at any point during an interrogation, the accused seeks affirmatively or impliedly to invoke his rights to silence or counsel, interrogation must be forgone or postponed. The Court further holds that failure to follow the new procedures requires inexorably the exclusion of any statement by the accused, as well as the fruits thereof. Such a strict constitutional specific inserted at the nerve center of crime detection may well kill the patient. 3 [384 U.S. 501] Since there is at this time a paucity of information and an almost total lack of empirical knowledge on the practical operation of requirements truly comparable to those announced by the majority, I would be more restrained, lest we go too far too fast.

II

1966, Miranda v. Arizona, 384 U.S. 501

Custodial interrogation has long been recognized as "undoubtedly an essential tool in effective law enforcement." Haynes v. Washington, 373 U.S. 503, 515 (1963). Recognition of this fact should put us on guard against the promulgation of doctrinaire rules. Especially is this true where the Court finds that "the Constitution has prescribed" its holding, and where the light of our past cases, from Hopt v. Utah, 110 U.S. 574 (1884), down to Haynes v. Washington, supra, is to [384 U.S. 502] the contrary. Indeed, even in Escobedo, the Court never hinted that an affirmative "waiver" was a prerequisite to questioning; that the burden of proof as to waiver was on the prosecution; that the presence of counsel—absent a waiver—during interrogation was required; that a waiver can be withdrawn at the will of the accused; that counsel must be furnished during an accusatory stage to those unable to pay; nor that admissions and exculpatory statements are "confessions." To require all those things at one gulp should cause the Court to choke over more cases than Crooker v. California, 357 U.S. 433 (1958), and Cicenia v. Lagay, 357 U.S. 504 (1958), which it expressly overrules today.

1966, Miranda v. Arizona, 384 U.S. 502

The rule prior to today—as Mr. Justice Goldberg, the author of the Court's opinion in Escobedo, stated it in Haynes v. Washington—depended upon "a totality of circumstances evidencing an involuntary…admission of guilt." 373 U.S. at 514. And he concluded:

1966, Miranda v. Arizona, 384 U.S. 502

Of course, detection and solution of crime is, at best, a difficult and arduous task requiring determination and persistence on the part of all responsible officers charged with the duty of law enforcement. And certainly we do not mean to suggest that all interrogation of witnesses and suspects is impermissible. Such questioning is undoubtedly an essential tool in effective law enforcement. The line between proper and permissible police conduct and techniques and methods offensive to due process is, at best, a difficult one to draw, particularly in cases such as this, where it is necessary to make fine judgments as to the effect of psychologically coercive pressures and inducements on the mind and will of an accused…. We are here impelled to the conclusion, from all of the facts presented, that the bounds of due process have been exceeded.

1966, Miranda v. Arizona, 384 U.S. 502

Id. at 514-515. [384 U.S. 503]

III

1966, Miranda v. Arizona, 384 U.S. 503

I would continue to follow that rule. Under the "totality of circumstances" rule of which my Brother Goldberg spoke in Haynes, I would consider in each case whether the police officer, prior to custodial interrogation, added the warning that the suspect might have counsel present at the interrogation, and, further, that a court would appoint one at his request if he was too poor to employ counsel. In the absence of warnings, the burden would be on the State to prove that counsel was knowingly and intelligently waived or that, in the totality of the circumstances, including the failure to give the necessary warnings, the confession was clearly voluntary.

1966, Miranda v. Arizona, 384 U.S. 503

Rather than employing the arbitrary Fifth Amendment rule 4 which the Court lays down, I would follow the more pliable dictates of the Due Process Clauses of the Fifth and Fourteenth Amendments which we are accustomed to administering, and which we know from our cases are effective instruments in protecting persons in police custody. In this way, we would not be acting in the dark, nor, in one full sweep, changing the traditional rules of custodial interrogation which this Court has for so long recognized as a justifiable and proper tool in balancing individual rights against the rights of society. It will be soon enough to go further when we are able to appraise with somewhat better accuracy the effect of such a holding.

1966, Miranda v. Arizona, 384 U.S. 503

I would affirm the convictions in Miranda v. Arizona, No. 759; Vignera v. New York, No. 760, and Westover v. United States, No. 761. In each of those cases, I find from the circumstances no warrant for reversal. In [384 U.S. 504] California v. Stewart, No. 584, I would dismiss the writ of certiorari for want of a final judgment, 28 U.S.C. § 1257(3) (1964 ed.); but, if the merits are to be reached, I would affirm on the ground that the State failed to fulfill its burden, in the absence of a showing that appropriate warnings were given, of proving a waiver or a totality of circumstances showing voluntariness. Should there be a retrial, I would leave the State free to attempt to prove these elements.

HARLAN, J., dissenting

1966, Miranda v. Arizona, 384 U.S. 504

MR. JUSTICE HARLAN, whom MR. JUSTICE STEWART and MR. JUSTICE WHITE join, dissenting.

1966, Miranda v. Arizona, 384 U.S. 504

I believe the decision of the Court represents poor constitutional law and entails harmful consequences for the country at large. How serious these consequences may prove to be, only time can tell. But the basic flaws in the Court's justification seem to me readily apparent now, once all sides of the problem are considered.

I. INTRODUCTION

1966, Miranda v. Arizona, 384 U.S. 504

At the outset, it is well to note exactly what is required by the Court's new constitutional code of rules for confessions. The foremost requirement, upon which later admissibility of a confession depends, is that a four-fold warning be given to a person in custody before he is questioned, namely, that he has a right to remain silent, that anything he says may be used against him, that he has a right to have present an attorney during the questioning, and that, if indigent he has a right to a lawyer without charge. To forgo these rights, some affirmative statement of rejection is seemingly required, and threats, tricks, or cajolings to obtain this waiver are forbidden. If, before or during questioning, the suspect seeks to invoke his right to remain silent, interrogation must be forgone or cease; a request for counsel [384 U.S. 505] brings about the same result until a lawyer is procured. Finally, there are a miscellany of minor directives, for example, the burden of proof of waiver is on the State, admissions and exculpatory statements are treated just like confessions, withdrawal of a waiver is always permitted, and so forth. 1

1966, Miranda v. Arizona, 384 U.S. 505

While the fine points of this scheme are far less clear than the Court admits, the tenor is quite apparent. The new rules are not designed to guard against police brutality or other unmistakably banned forms of coercion. Those who use third-degree tactics and deny them in court are equally able and destined to lie as skillfully about warnings and waivers. Rather, the thrust of the new rules is to negate all pressures, to reinforce the nervous or ignorant suspect, and ultimately to discourage any confession at all. The aim, in short, is toward "voluntariness" in a utopian sense, or, to view it from a different angle, voluntariness with a vengeance.

1966, Miranda v. Arizona, 384 U.S. 505

To incorporate this notion into the Constitution requires a strained reading of history and precedent and a disregard of the very pragmatic concerns that alone may on occasion justify such strains. I believe that reasoned examination will show that the Due Process Clauses provide an adequate tool for coping with confessions ,and that, even if the Fifth Amendment privilege against self-incrimination be invoked, its precedents, taken as a whole, do not sustain the present rules. Viewed as a choice based on pure policy, these new rules prove to be a highly debatable, if not one-sided, appraisal of the competing interests, imposed over widespread objection, at the very time when judicial restraint is most called for by the circumstances. [384 U.S. 506]

II. CONSTITUTIONAL PREMISES

1966, Miranda v. Arizona, 384 U.S. 506

It is most fitting to begin an inquiry into the constitutional precedents by surveying the limits on confessions the Court has evolved under the Due Process Clause of the Fourteenth Amendment. This is so because these cases show that there exists a workable and effective means of dealing with confessions in a judicial manner; because the cases are the baseline from which the Court now departs, and so serve to measure the actual, as opposed to the professed, distance it travels, and because examination of them helps reveal how the Court has coasted into its present position.

1966, Miranda v. Arizona, 384 U.S. 506

The earliest confession cases in this Court emerged from federal prosecutions, and were settled on a nonconstitutional basis, the Court adopting the common law rule that the absence of inducements, promises, and threats made a confession voluntary and admissible. Hopt v. Utah, 110 U.S. 574; Pierce v. United States, 160 U.S. 355. While a later case said the Fifth Amendment privilege controlled admissibility, this proposition was not itself developed in subsequent decisions. 2 The Court did, however, heighten the test of admissibility in federal trials to one of voluntariness "in fact," Wan v. [384 U.S. 507] United States, 266 U.S. 1, 14 (quoted, ante p. 462), and then, by and large, left federal judges to apply the same standards the Court began to derive in a string of state court cases.

1966, Miranda v. Arizona, 384 U.S. 507

This new line of decisions, testing admissibility by the Due Process Clause, began in 1936 with Brown v. Mississippi, 297 U.S. 278, and must now embrace somewhat more than 30 full opinions of the Court. 3 While the voluntariness rubric was repeated in many instances, e.g., Lyons v. Oklahoma, 322 U.S. 596, the Court never pinned it down to a single meaning, but, on the contrary, infused it with a number of different values. To travel quickly over the main themes, there was an initial emphasis on reliability, e.g., Ward v. Texas, 316 U.S. 547, supplemented by concern over the legality and fairness of the police practices, e.g., Ashcraft v. Tennessee, 322 U.S. 143, in an "accusatorial" system of law enforcement, Watts v. Indiana, 338 U.S. 49, 54, and eventually by close attention to the individual's state of mind and capacity for effective choice, e.g., Gallegos v. Colorado, 370 U.S. 49. The outcome was a continuing reevaluation on the facts of each case of how much pressure on the suspect was permissible. 4 [384 U.S. 508]

1966, Miranda v. Arizona, 384 U.S. 508

Among the criteria often taken into account were threats or imminent danger, e.g., Payne v. Arkansas, 356 U.S. 560, physical deprivations such as lack of sleep or food, e.g., Reck v. Pate, 367 U.S. 433, repeated or extended interrogation, e.g., Chambers v. Florida, 309 U.S. 227, limits on access to counsel or friends, Crooker v. California, 357 U.S. 433; Cicenia v. Lagay, 357 U.S. 504, length and illegality of detention under state law, e.g., Haynes v. Washington, 373 U.S. 503, and individual weakness or incapacities, Lynumn v. Illinois, 372 U.S. 528. Apart from direct physical coercion, however, no single default or fixed combination of defaults guaranteed exclusion, and synopses of the cases would serve little use, because the overall gauge has been steadily changing, usually in the direction of restricting admissibility. But to mark just what point had been reached before the Court jumped the rails in Escobedo v. Illinois, 378 U.S. 478, it is worth capsulizing the then-recent case of Haynes v. Washington, 373 U.S. 503. There, Haynes had been held some 16 or more hours in violation of state law before signing the disputed confession, had received no warnings of any kind, and, despite requests, had been refused access to his wife or to counsel, the police indicating that access would be allowed after a confession. Emphasizing especially this last inducement and rejecting some contrary indicia of voluntariness, the Court in a 5-to-4 decision, held the confession inadmissible.

1966, Miranda v. Arizona, 384 U.S. 508

There are several relevant lessons to be drawn from this constitutional history. The first is that, with over 25 years of precedent, the Court has developed an elaborate, sophisticated, and sensitive approach to admissibility of confessions. It is "judicial" in its treatment of one case at a time, see Culombe v. Connecticut, 367 U.S. 568, 635 (concurring opinion of THE CHIEF JUSTICE), flexible in its ability to respond to the endless mutations of fact presented, and ever more familiar to the lower courts. [384 U.S. 509] Of course, strict certainty is not obtained in this developing process, but this is often so with constitutional principles, and disagreement is usually confined to that borderland of close cases where it matters least.

1966, Miranda v. Arizona, 384 U.S. 509

The second point is that, in practice and, from time to time, in principle, the Court has given ample recognition to society's interest in suspect questioning as an instrument of law enforcement. Cases countenancing quite significant pressures can be cited without difficulty, 5 and the lower courts may often have been yet more tolerant. Of course, the limitations imposed today were rejected by necessary implication in case after case, the right to warnings having been explicitly rebuffed in this Court many years ago. Powers v. United States, 223 U.S. 303; Wilson v. United States, 162 U.S. 613. As recently as Haynes v. Washington, 373 U.S. 503, 515, the Court openly acknowledged that questioning of witnesses and suspects "is undoubtedly an essential tool in effective law enforcement." Accord, Crooker v. California, 357 U.S. 433, 441.

1966, Miranda v. Arizona, 384 U.S. 509

Finally, the cases disclose that the language in many of the opinions overstates the actual course of decision. It has been said, for example, that an admissible confession must be made by the suspect "in the unfettered exercise of his own will," Malloy v. Hogan, 378 U.S. 1, 8, and that "a prisoner is not `to be made the deluded instrument of his own conviction,'" Culombe v. Connecticut, 367 U.S. 568, 581 (Frankfurter, J., announcing the Court's judgment and an opinion). Though often repeated, such principles are rarely observed in full measure. Even the word "voluntary" may be deemed some [384 U.S. 510] what misleading, especially when one considers many of the confessions that have been brought under its umbrella. See, e.g., supra, n. 5. The tendency to overstate may be laid in part to the flagrant facts often before the Court; but, in any event, one must recognize how it has tempered attitudes and lent some color of authority to the approach now taken by the Court.

1966, Miranda v. Arizona, 384 U.S. 510

I turn now to the Court's asserted reliance on the Fifth Amendment, an approach which I frankly regard as a tromp l'oeil. The Court's opinion, in my view, reveals no adequate basis for extending the Fifth Amendment's privilege against self-incrimination to the police station. Far more important, it fails to show that the Court's new rules are well supported, let alone compelled, by Fifth Amendment precedents. Instead, the new rules actually derive from quotation and analogy drawn from precedents under the Sixth Amendment, which should properly have no bearing on police interrogation.

1966, Miranda v. Arizona, 384 U.S. 510

The Court's opening contention, that the Fifth Amendment governs police station confessions, is perhaps not an impermissible extension of the law but it has little to commend itself in the present circumstances. Historically, the privilege against self-incrimination did not bear at all on the use of extra-legal confessions, for which distinct standards evolved; indeed,

1966, Miranda v. Arizona, 384 U.S. 510

the history of the two principles is wide apart, differing by one hundred years in origin, and derived through separate lines of precedents….

1966, Miranda v. Arizona, 384 U.S. 510

8 Wigmore, Evidence § 2266, at 401 (McNaughton rev.1961). Practice under the two doctrines has also differed in a number of important respects. 6 [384 U.S. 511] Even those who would readily enlarge the privilege must concede some linguistic difficulties, since the Fifth Amendment, in terms, proscribes only compelling any person "in any criminal case to be a witness against himself." Cf. Kamisar, Equal Justice in the Gatehouses and Mansions of American Criminal Procedure, in Criminal Justice in Our Time 1, 25-26 (1965).

1966, Miranda v. Arizona, 384 U.S. 511

Though weighty, I do not say these points and similar ones are conclusive, for, as the Court reiterates, the privilege embodies basic principles always capable of expansion. 7 Certainly the privilege does represent a protective concern for the accused and an emphasis upon accusatorial, rather than inquisitorial, values in law enforcement, although this is similarly true of other limitations such as the grand jury requirement and the reasonable doubt standard. Accusatorial values, however, have openly been absorbed into the due process standard governing confessions; this, indeed, is why, at present, "the kinship of the two rules [governing confessions and self-incrimination] is too apparent for denial." McCormick, Evidence 155 (1954). Since extension of the general principle has already occurred, to insist that the privilege applies as such serves only to carry over inapposite historical details and engaging rhetoric and to obscure the policy choices to be made in regulating confessions.

1966, Miranda v. Arizona, 384 U.S. 511

Having decided that the Fifth Amendment privilege does apply in the police station, the Court reveals that the privilege imposes more exacting restrictions than does the Fourteenth Amendment's voluntariness test. 8 [384 U.S. 512] It then emerges from a discussion of Escobedo that the Fifth Amendment requires, for an admissible confession, that it be given by one distinctly aware of his right not to speak and shielded from "the compelling atmosphere" of interrogation. See ante pp. 465-466. From these key premises, the Court finally develops the safeguards of warning, counsel, and so forth. I do not believe these premises are sustained by precedents under the Fifth Amendment. 9

1966, Miranda v. Arizona, 384 U.S. 512

The more important premise is that pressure on the suspect must be eliminated, though it be only the subtle influence of the atmosphere and surroundings. The Fifth Amendment, however, has never been thought to forbid all pressure to incriminate one's self in the situations covered by it. On the contrary, it has been held that failure to incriminate one's self can result in denial of removal of one's case from state to federal court, Maryland v. Soper, 270 U.S. 9; in refusal of a military commission, Orloff v. Willoughby, 345 U.S. 83; in denial of a discharge in bankruptcy, Kaufman v. Hurwitz, 176 F.2d 210, and in numerous other adverse consequences. See 8 Wigmore, Evidence § 2272, at 441-444, n. 18 (McNaughton rev.1961); Maguire, Evidence of Guilt § 2.062 (1959). This is not to say that, short of jail or torture, any sanction is permissible in any case; policy and history alike may impose sharp limits. See, e.g., [384 U.S. 513] Griffin v. California, 380 U.S. 609. However, the Court's unspoken assumption that any pressure violates the privilege is not supported by the precedents, and it has failed to show why the Fifth Amendment prohibits that relatively mild pressure the Due Process Clause permits.

1966, Miranda v. Arizona, 384 U.S. 513

The Court appears similarly wrong in thinking that precise knowledge of one's rights is a settled prerequisite under the Fifth Amendment to the loss of its protections. A number of lower federal court cases have held that grand jury witnesses need not always be warned of their privilege, e.g., United States v. Scully, 225 F.2d 113, 116, and Wigmore states this to be the better rule for trial witnesses. See 8 Wigmore, Evidence § 2269 (McNaughton rev.1961). Cf. Henry v. Mississippi, 379 U.S. 443, 451-452 (waiver of constitutional rights by counsel despite defendant's ignorance held allowable). No Fifth Amendment precedent is cited for the Court's contrary view. There might, of course, be reasons apart from Fifth Amendment precedent for requiring warning or any other safeguard on questioning, but that is a different matter entirely. See infra pp. 516-517.

1966, Miranda v. Arizona, 384 U.S. 513

A closing word must be said about the Assistance of Counsel Clause of the Sixth Amendment, which is never expressly relied on by the Court, but whose judicial precedents turn out to be linchpins of the confession rules announced today. To support its requirement of a knowing and intelligent waiver, the Court cites Johnson v. Zerbst, 304 U.S. 458, ante p. 475; appointment of counsel for the indigent suspect is tied to Gideon v. Wainwright, 372 U.S. 335, and Douglas v. California, 372 U.S. 353, ante p. 473; the silent-record doctrine is borrowed from Carnley v. Cochran, 369 U.S. 506, ante p. 475, as is the right to an express offer of counsel, ante p. 471. All these cases imparting glosses to the Sixth Amendment concerned counsel at trial or on appeal. While the Court finds no pertinent difference between judicial proceedings and police interrogation, I believe [384 U.S. 514] the differences are so vast as to disqualify wholly the Sixth Amendment precedents as suitable analogies in the present cases. 10

1966, Miranda v. Arizona, 384 U.S. 514

The only attempt in this Court to carry the right to counsel into the stationhouse occurred in Escobedo, the Court repeating several times that that stage was no less "critical" than trial itself. See 378 U.S. 485-488. This is hardly persuasive when we consider that a grand jury inquiry, the filing of a certiorari petition, and certainly the purchase of narcotics by an undercover agent from a prospective defendant may all be equally "critical," yet provision of counsel and advice on that score have never been thought compelled by the Constitution in such cases. The sound reason why this right is so freely extended for a criminal trial is the severe injustice risked by confronting an untrained defendant with a range of technical points of law, evidence, and tactics familiar to the prosecutor, but not to himself. This danger shrinks markedly in the police station, where, indeed, the lawyer, in fulfilling his professional responsibilities, of necessity may become an obstacle to truthfinding. See infra, n. 12. The Court's summary citation of the Sixth Amendment cases here seems to me best described as

1966, Miranda v. Arizona, 384 U.S. 514

the domino method of constitutional adjudication…, wherein every explanatory statement in a previous opinion is made the basis for extension to a wholly different situation.

1966, Miranda v. Arizona, 384 U.S. 514

Friendly, supra, n. 10, at 950.

III. POLICY CONSIDERATIONS

1966, Miranda v. Arizona, 384 U.S. 514

Examined as an expression of public policy, the Court's new regime proves so dubious that there can be no due [384 U.S. 515] compensation for its weakness in constitutional law. The foregoing discussion has shown, I think, how mistaken is the Court in implying that the Constitution has struck the balance in favor of the approach the Court takes. Ante, p. 479. Rather, precedent reveals that the Fourteenth Amendment, in practice, has been construed to strike a different balance, that the Fifth Amendment gives the Court little solid support in this context, and that the Sixth Amendment should have no bearing at all. Legal history has been stretched before to satisfy deep needs of society. In this instance, however, the Court has not and cannot make the powerful showing that its new rules are plainly desirable in the context of our society, something which is surely demanded before those rules are engrafted onto the Constitution and imposed on every State and county in the land.

1966, Miranda v. Arizona, 384 U.S. 515

Without at all subscribing to the generally black picture of police conduct painted by the Court, I think it must be frankly recognized at the outset that police questioning allowable under due process precedents may inherently entail some pressure on the suspect, and may seek advantage in his ignorance or weaknesses. The atmosphere and questioning techniques, proper and fair though they be, can, in themselves, exert a tug on the suspect to confess, and, in this light,

1966, Miranda v. Arizona, 384 U.S. 515

[t]o speak of any confessions of crime made after arrest as being "voluntary" or "uncoerced" is somewhat inaccurate, although traditional. A confession is wholly and incontestably voluntary only if a guilty person gives himself up to the law and becomes his own accuser.

1966, Miranda v. Arizona, 384 U.S. 515

Ashcraft v. Tennessee, 322 U.S. 143, 161 (Jackson, J., dissenting). Until today, the role of the Constitution has been only to sift out undue pressure, not to assure spontaneous confessions. 11 [384 U.S. 516]

1966, Miranda v. Arizona, 384 U.S. 516

The Court's new rules aim to offset these minor pressures and disadvantages intrinsic to any kind of police interrogation. The rules do not serve due process interests in preventing blatant coercion, since, as I noted earlier, they do nothing to contain the policeman who is prepared to lie from the start. The rules work for reliability in confessions almost only in the Pickwickian sense that they can prevent some from being given at all. 12 In short, the benefit of this new regime is simply to lessen or wipe out the inherent compulsion and inequalities to which the Court devotes some nine pages of description. Ante, pp. 448-456.

1966, Miranda v. Arizona, 384 U.S. 516

What the Court largely ignores is that its rules impair, if they will not eventually serve wholly to frustrate, an instrument of law enforcement that has long and quite reasonably been thought worth the price paid for it. 13 There can be little doubt that the Court's new code would markedly decrease the number of confessions. To warn the suspect that he may remain silent and remind him that his confession may be used in court are minor obstructions. To require also an express waiver by the suspect and an end to questioning whenever he demurs [384 U.S. 517] must heavily handicap questioning. And to suggest or provide counsel for the suspect simply invites the end of the interrogation. See supra, n. 12.

1966, Miranda v. Arizona, 384 U.S. 517

How much harm this decision will inflict on law enforcement cannot fairly be predicted with accuracy. Evidence on the role of confessions is notoriously incomplete, see Developments, supra, n. 2, at 941-944, and little is added by the Court's reference to the FBI experience and the resources believed wasted in interrogation. See infra, n. 19, and text. We do know that some crimes cannot be solved without confessions, that ample expert testimony attests to their importance in crime control, 14 and that the Court is taking a real risk with society's welfare in imposing its new regime on the country. The social costs of crime are too great to call the new rules anything but a hazardous experimentation.

1966, Miranda v. Arizona, 384 U.S. 517

While passing over the costs and risks of its experiment, the Court portrays the evils of normal police questioning in terms which I think are exaggerated. Albeit stringently confined by the due process standards, interrogation is no doubt often inconvenient and unpleasant for the suspect. However, it is no less so for a man to be arrested and jailed, to have his house searched, or to stand trial in court, yet all this may properly happen to the most innocent, given probable cause, a warrant, or an indictment. Society has always paid a stiff price for law and order, and peaceful interrogation is not one of the dark moments of the law.

1966, Miranda v. Arizona, 384 U.S. 517

This brief statement of the competing considerations seems to me ample proof that the Court's preference is highly debatable, at best, and therefore not to be read into [384 U.S. 518] the Constitution. However, it may make the analysis more graphic to consider the actual facts of one of the four cases reversed by the Court. Miranda v. Arizona serves best, being neither the hardest nor easiest of the four under the Court's standards. 15

1966, Miranda v. Arizona, 384 U.S. 518

On March 3, 1963, an 18-year-old girl was kidnapped and forcibly raped near Phoenix, Arizona. Ten days later, on the morning of March 13, petitioner Miranda was arrested and taken to the police station. At this time, Miranda was 23 years old, indigent, and educated to the extent of completing half the ninth grade. He had "an emotional illness" of the schizophrenic type, according to the doctor who eventually examined him; the doctor's report also stated that Miranda was "alert and oriented as to time, place, and person," intelligent within normal limits, competent to stand trial, and sane within the legal definition. At the police station, the victim picked Miranda out of a lineup, and two officers then took him into a separate room to interrogate him, starting about 11:30 a.m. Though at first denying his guilt, within a short time, Miranda gave a detailed oral confession, and then wrote out in his own hand and signed a brief statement admitting and describing the crime. All this was accomplished in two hours or less, without any force, threats or promises, and—I will assume this, though the record is uncertain, ante 491-492 and nn 66-67—without any effective warnings at all.

1966, Miranda v. Arizona, 384 U.S. 518

Miranda's oral and written confessions are now held inadmissible under the Court's new rules. One is entitled to feel astonished that the Constitution can be read to produce this result. These confessions were obtained [384 U.S. 519] during brief daytime questioning conducted by two officers and unmarked by any of the traditional indicia of coercion. They assured a conviction for a brutal and unsettling crime, for which the police had and quite possibly could obtain little evidence other than the victim's identifications, evidence which is frequently unreliable. There was, in sum, a legitimate purpose, no perceptible unfairness, and certainly little risk of injustice in the interrogation. Yet the resulting confessions, and the responsible course of police practice they represent, are to be sacrificed to the Court's own finespun conception of fairness, which I seriously doubt is shared by many thinking citizens in this country. 16

1966, Miranda v. Arizona, 384 U.S. 519

The tenor of judicial opinion also falls well short of supporting the Court's new approach. Although Escobedo has widely been interpreted as an open invitation to lower courts to rewrite the law of confessions, a significant heavy majority of the state and federal decisions in point have sought quite narrow interpretations. 17 Of [384 U.S. 520] the courts that have accepted the invitation, it is hard to know how many have felt compelled by their best guess as to this Court's likely construction; but none of the state decisions saw fit to rely on the state privilege against self-incrimination, and no decision at all has gone as far as this Court goes today. 18

1966, Miranda v. Arizona, 384 U.S. 520

It is also instructive to compare the attitude in this case of those responsible for law enforcement with the official views that existed when the Court undertook three major revisions of prosecutorial practice prior to this case, Johnson v. Zerbst, 304 U.S. 458, Mapp v. Ohio, 367 U.S. 643, and Gideon v. Wainwright, 372 U.S. 335. In Johnson, which established that appointed counsel must be offered the indigent in federal criminal trials, the Federal Government all but conceded the basic issue, which had, in fact, been recently fixed as Department of Justice policy. See Beaney, Right to Counsel 29-30, 342 (1955). In Mapp, which imposed the exclusionary rule on the States for Fourth Amendment violations, more than half of the States had themselves already adopted some such rule. See 367 U.S. at 651. In Gideon, which extended Johnson v. Zerbst to the States, an amicus brief was filed by 22 States and Commonwealths urging that course; only two States besides that of the respondent came forward to protest. See 372 U.S. at 345. By contrast, in this case, new restrictions on police [384 U.S. 521] questioning have been opposed by the United States and in an amicus brief signed by 27 States and Commonwealths, not including the three other States which are parties. No State in the country has urged this Court to impose the newly announced rules, nor has any State chosen to go nearly so far on its own.

1966, Miranda v. Arizona, 384 U.S. 521

The Court, in closing its general discussion, invokes the practice in federal and foreign jurisdictions as lending weight to its new curbs on confessions for all the States. A brief resume will suffice to show that none of these jurisdictions has struck so one-sided a balance as the Court does today. Heaviest reliance is placed on the FBI practice. Differing circumstances may make this comparison quite untrustworthy, 19 but, in any event, the FBI falls sensibly short of the Court's formalistic rules. For example, there is no indication that FBI agents must obtain an affirmative "waiver" before they pursue their questioning. Nor is it clear that one invoking his right to silence may not be prevailed upon to change his mind. And the warning as to appointed counsel apparently indicates only that one will be assigned by the judge when the suspect appears before him; the thrust of the Court's rules is to induce the suspect to obtain appointed counsel before continuing the interview. See ante pp. 484-486. Apparently, American military practice, briefly mentioned by the Court, has these same limits, and is still less favorable to the suspect than the FBI warning, making no mention of appointed counsel. Developments, supra, n. 2, at 1084-1089.

1966, Miranda v. Arizona, 384 U.S. 521

The law of the foreign countries described by the Court also reflects a more moderate conception of the rights of [384 U.S. 522] the accused as against those of society when other data are considered. Concededly, the English experience is most relevant. In that country, a caution as to silence, but not counsel, has long been mandated by the "Judges' Rules," which also place other somewhat imprecise limits on police cross-examination of suspects. However, in the court's discretion, confessions can be, and apparently quite frequently are, admitted in evidence despite disregard of the Judges' Rules, so long as they are found voluntary under the common law test. Moreover, the check that exists on the use of pretrial statements is counterbalanced by the evident admissibility of fruits of an illegal confession and by the judge's often-used authority to comment adversely on the defendant's failure to testify. 20 India, Ceylon and Scotland are the other examples chosen by the Court. In India and Ceylon, the general ban on police-adduced confessions cited by the Court is subject to a major exception: if evidence is uncovered by police questioning, it is fully admissible at trial along with the confession itself, so far as it relates to the evidence and is not blatantly coerced. See Developments, supra, n. 2, at 1106-1110; Reg. v. Ramasamy [1965] A.C. 1 (P.C.). Scotland's limits on interrogation do measure up to the Court's; however, restrained comment at trial on the defendant's failure to take the stand is allowed the judge, and, in many other respects, Scotch law redresses the prosecutor's disadvantage in ways not permitted in this country. 21 The Court ends its survey by imputing [384 U.S. 523] added strength to our privilege against self-incrimination since, by contrast to other countries, it is embodied in a written Constitution. Considering the liberties the Court has today taken with constitutional history and precedent, few will find this emphasis persuasive.

1966, Miranda v. Arizona, 384 U.S. 523

In closing this necessarily truncated discussion of policy considerations attending the new confession rules, some reference must be made to their ironic untimeliness. There is now in progress in this country a massive reexamination of criminal law enforcement procedures on a scale never before witnessed. Participants in this undertaking include a Special Committee of the American Bar Association, under the chairmanship of Chief Judge Lumbard of the Court of Appeals for the Second Circuit; a distinguished study group of the American Law Institute, headed by Professors Vorenberg and Bator of the Harvard Law School, and the President's Commission on Law Enforcement and Administration of Justice, under the leadership of the Attorney General of the United States. 22 Studies are also being conducted by the District of Columbia Crime Commission, the Georgetown Law Center, and by others equipped to do practical research. 23 There are also signs that legislatures in some of the States may be preparing to reexamine the problem before us. 24 [384 U.S. 524]

1966, Miranda v. Arizona, 384 U.S. 524

It is no secret that concern has been expressed lest long-range and lasting reforms be frustrated by this Court's too rapid departure from existing constitutional standards. Despite the Court's disclaimer, the practical effect of the decision made today must inevitably be to handicap seriously sound efforts at reform, not least by removing options necessary to a just compromise of competing interests. Of course, legislative reform is rarely speedy or unanimous, though this Court has been more patient in the past. 25 But the legislative reforms, when they come, would have the vast advantage of empirical data and comprehensive study, they would allow experimentation and use of solutions not open to the courts, and they would restore the initiative in criminal law reform to those forums where it truly belongs.

IV. CONCLUSIONS

1966, Miranda v. Arizona, 384 U.S. 524

All four of the cases involved here present express claims that confessions were inadmissible not because of coercion in the traditional due process sense, but solely because of lack of counsel or lack of warnings concerning counsel and silence. For the reasons stated in this opinion, I would adhere to the due process test and reject the new requirements inaugurated by the Court. On this premise, my disposition of each of these cases can be stated briefly.

1966, Miranda v. Arizona, 384 U.S. 524

In two of the three cases coming from state courts, Miranda v. Arizona (No. 759) and Vignera v. New York (No. 760), the confessions were held admissible, and no other errors worth comment are alleged by petitioners. [384 U.S. 525] I would affirm in these two cases. The other state case is California v. Stewart (No. 584), where the state supreme court held the confession inadmissible, and reversed the conviction. In that case, I would dismiss the writ of certiorari on the ground that no final judgment is before us, 28 U.S.C. 1257 (1964 ed.); putting aside the new trial open to the State in any event, the confession itself has not even been finally excluded, since the California Supreme Court left the State free to show proof of a waiver. If the merits of the decision in Stewart be reached, then I believe it should be reversed, and the case remanded so the state supreme court may pass on the other claims available to respondent.

1966, Miranda v. Arizona, 384 U.S. 525

In the federal case, Westover v. United States (No. 761), a number of issues are raised by petitioner apart from the one already dealt with in this dissent. None of these other claims appears to me tenable, nor in this context to warrant extended discussion. It is urged that the confession was also inadmissible because not voluntary, even measured by due process standards, and because federal-state cooperation brought the McNabb-Mallory rule into play under Anderson v. United States, 318 U.S. 350. However, the facts alleged fall well short of coercion, in my view, and I believe the involvement of federal agents in petitioner's arrest and detention by the State too slight to invoke Anderson. I agree with the Government that the admission of the evidence now protested by petitioner was, at most, harmless error, and two final contentions—one involving weight of the evidence and another improper prosecutor comment—seem to me without merit. I would therefore affirm Westover's conviction.

1966, Miranda v. Arizona, 384 U.S. 525

In conclusion: nothing in the letter or the spirit of the Constitution or in the precedents squares with the heavy-handed and one-sided action that is so precipitously [384 U.S. 526] taken by the Court in the name of fulfilling its constitutional responsibilities. The foray which the Court makes today brings to mind the wise and farsighted words of Mr. Justice Jackson in Douglas v. Jeannette, 319 U.S. 157, 181 (separate opinion):

1966, Miranda v. Arizona, 384 U.S. 526

This Court is forever adding new stories to the temples of constitutional law, and the temples have a way of collapsing when one story too many is added.

WHITE, J., dissenting

1966, Miranda v. Arizona, 384 U.S. 526

MR. JUSTICE WHITE, with whom MR. JUSTICE HARLAN and MR. JUSTICE STEWART join, dissenting.

I

1966, Miranda v. Arizona, 384 U.S. 526

The proposition that the privilege against self-incrimination forbids in-custody interrogation without the warnings specified in the majority opinion and without a clear waiver of counsel has no significant support in the history of the privilege or in the language of the Fifth Amendment. As for the English authorities and the common law history, the privilege, firmly established in the second half of the seventeenth century, was never applied except to prohibit compelled judicial interrogations. The rule excluding coerced confessions matured about 100 years later,

1966, Miranda v. Arizona, 384 U.S. 526

[b]ut there is nothing in the reports to suggest that the theory has its roots in the privilege against self-incrimination. And, so far as the cases reveal, the privilege, as such, seems to have been given effect only in judicial proceedings, including the preliminary examinations by authorized magistrates.

1966, Miranda v. Arizona, 384 U.S. 526

Morgan, The Privilege Against Self-Incrimination, 34 Minn.L.Rev. 1, 18 (1949).

1966, Miranda v. Arizona, 384 U.S. 526

Our own constitutional provision provides that no person "shall be compelled in any criminal case to be a witness against himself." These words, when

1966, Miranda v. Arizona, 384 U.S. 526

[c]onsidered in the light to be shed by grammar and the dictionary…, appear to signify simply that nobody shall be [384 U.S. 527] compelled to give oral testimony against himself in a criminal proceeding under way in which he is defendant.

1966, Miranda v. Arizona, 384 U.S. 527

Corwin, The Supreme Court's Construction of the Self-Incrimination Clause, 29 Mich.L.Rev. 1, 2. And there is very little in the surrounding circumstances of the adoption of the Fifth Amendment or in the provisions of the then existing state constitutions or in state practice which would give the constitutional provision any broader meaning. Mayers, The Federal Witness' Privilege Against Self-Incrimination: Constitutional or Common-Law? 4 American Journal of Legal History 107 (1960). Such a construction, however, was considerably narrower than the privilege at common law, and, when eventually faced with the issues, the Court extended the constitutional privilege to the compulsory production of books and papers, to the ordinary witness before the grand jury, and to witnesses generally. Boyd v. United States, 116 U.S. 616, and Counselman v. Hitchcock, 142 U.S. 547. Both rules had solid support in common law history, if not in the history of our own constitutional provision.

1966, Miranda v. Arizona, 384 U.S. 527

A few years later, the Fifth Amendment privilege was similarly extended to encompass the then well established rule against coerced confessions:

1966, Miranda v. Arizona, 384 U.S. 527

In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment to the Constitution of the United States, commanding that no person "shall be compelled in any criminal case to be a witness against himself."

1966, Miranda v. Arizona, 384 U.S. 527

Bram v. United States, 168 U.S. 532, 542. Although this view has found approval in other cases, Burdeau v. McDowell, 256 U.S. 465, 475; Powers v. United States, 223 U.S. 303, 313; Shotwell v. United States, 371 U.S. 341, 347, it has also been questioned, see Brown v. Mississippi, 297 U.S. 278, 285; United States v. Carignan, [384 U.S. 528] 342 U.S. 36, 41; Stein v. New York, 346 U.S. 156, 191, n. 35, and finds scant support in either the English or American authorities, see generally Regina v. Scott, Dears. & Bell 47; 3 Wigmore, Evidence § 823 (3d ed.1940), at 249 ("a confession is not rejected because of any connection with the privilege against self-crimination"), and 250, n. 5 (particularly criticizing Bram); 8 Wigmore, Evidence § 2266, at 400-401 (McNaughton rev.1961). Whatever the source of the rule excluding coerced confessions, it is clear that, prior to the application of the privilege itself to state courts, Malloy v. Hogan, 378 U.S. 1, the admissibility of a confession in a state criminal prosecution was tested by the same standards as were applied in federal prosecutions. Id. at 6-7, 10.

1966, Miranda v. Arizona, 384 U.S. 528

Bram, however, itself rejected the proposition which the Court now espouses. The question in Bram was whether a confession, obtained during custodial interrogation, had been compelled, and, if such interrogation was to be deemed inherently vulnerable, the Court's inquiry could have ended there. After examining the English and American authorities, however, the Court declared that:

1966, Miranda v. Arizona, 384 U.S. 528

In this court also, it has been settled that the mere fact that the confession is made to a police officer, while the accused was under arrest in or out of prison, or was drawn out by his questions, does not necessarily render the confession involuntary, but, as one of the circumstances, such imprisonment or interrogation may be taken into account in determining whether or not the statements of the prisoner were voluntary.

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168 U.S. at 558. In this respect, the Court was wholly consistent with prior and subsequent pronouncements in this Court.

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Thus, prior to Bram, the Court, in Hopt v. Utah, 110 U.S. 574, 583-587, had upheld the admissibility of a [384 U.S. 529] confession made to police officers following arrest, the record being silent concerning what conversation had occurred between the officers and the defendant in the short period preceding the confession. Relying on Hopt, the Court ruled squarely on the issue in Sparf and Hansen v. United States, 156 U.S. 51, 55:

1966, Miranda v. Arizona, 384 U.S. 529

Counsel for the accused insist that there cannot be a voluntary statement, a free open confession, while a defendant is confined and in irons under an accusation of having committed a capital offence. We have not been referred to any authority in support of that position. It is true that the fact of a prisoner's being in custody at the time he makes a confession is a circumstance not to be overlooked, because it bears upon the inquiry whether the confession was voluntarily made or was extorted by threats or violence or made under the influence of fear. But confinement or imprisonment is not, in itself, sufficient to justify the exclusion of a confession if it appears to have been voluntary, and was not obtained by putting the prisoner in fear or by promises. Wharton's Cr.Ev. 9th ed. §§ 661, 663, and authorities cited.

1966, Miranda v. Arizona, 384 U.S. 529

Accord, Pierce v. United States, 160 U.S. 355, 357.

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And in Wilson v. United States, 162 U.S. 613, 623, the Court had considered the significance of custodial interrogation without any antecedent warnings regarding the right to remain silent or the right to counsel. There, the defendant had answered questions posed by a Commissioner, who had failed to advise him of his rights, and his answers were held admissible over his claim of involuntariness.

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The fact that [a defendant] is in custody and manacled does not necessarily render his statement involuntary, nor is that necessarily the effect of popular excitement shortly preceding…. And it is laid down [384 U.S. 530] that it is not essential to the admissibility of a confession that it should appear that the person was warned that what he said would be used against him, but, on the contrary, if the confession was voluntary, it is sufficient though it appear that he was not so warned.

1966, Miranda v. Arizona, 384 U.S. 530

Since Bram, the admissibility of statements made during custodial interrogation has been frequently reiterated. Powers v. United States, 223 U.S. 303, cited Wilson approvingly and held admissible as voluntary statements the accused's testimony at a preliminary hearing even though he was not warned that what he said might be used against him. Without any discussion of the presence or absence of warnings, presumably because such discussion was deemed unnecessary, numerous other cases have declared that "[t]he mere fact that a confession was made while in the custody of the police does not render it inadmissible," McNabb v. United States, 318 U.S. 332, 346; accord, United States v. Mitchell, 322 U.S. 65, despite its having been elicited by police examination, Wan v. United States, 266 U.S. 1, 14; United States v. Carignan, 342 U.S. 36, 39. Likewise, in Crooker v. California, 357 U.S. 433, 437, the Court said that

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the bare fact of police "detention and police examination in private of one in official state custody" does not render involuntary a confession by the one so detained.

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And finally, in Cicenia v. Lagay, 357 U.S. 504, a confession obtained by police interrogation after arrest was held voluntary even though the authorities refused to permit the defendant to consult with his attorney. See generally Culombe v. Connecticut, 367 U.S. 568, 587-602 (opinion of Frankfurter, J.); 3 Wigmore, Evidence § 851, at 313 (3d ed.1940); see also Joy, Admissibility of Confessions 38, 46 (1842).

1966, Miranda v. Arizona, 384 U.S. 530

Only a tiny minority of our judges who have dealt with the question, including today's majority, have considered in-custody interrogation, without more, to be a violation of the Fifth Amendment. And this Court, as [384 U.S. 531] every member knows, has left standing literally thousands of criminal convictions that rested at least in part on confessions taken in the course of interrogation by the police after arrest.

II

1966, Miranda v. Arizona, 384 U.S. 531

That the Court's holding today is neither compelled nor even strongly suggested by the language of the Fifth Amendment, is at odds with American and English legal history, and involves a departure from a long line of precedent does not prove either that the Court has exceeded its powers or that the Court is wrong or unwise in its present reinterpretation of the Fifth Amendment. It does, however, underscore the obvious—that the Court has not discovered or found the law in making today's decision, nor has it derived it from some irrefutable sources; what it has done is to make new law and new public policy in much the same way that it has in the course of interpreting other great clauses of the Constitution. 1 This is what the Court historically has done. Indeed, it is what it must do, and will continue to do until and unless there is some fundamental change in the constitutional distribution of governmental powers.

1966, Miranda v. Arizona, 384 U.S. 531

But if the Court is here and now to announce new and fundamental policy to govern certain aspects of our affairs, it is wholly legitimate to examine the mode of this or any other constitutional decision in this Court, and to inquire into the advisability of its end product in terms of the long-range interest of the country. At the very least, the Court's text and reasoning should withstand analysis, and be a fair exposition of the constitutional provision which its opinion interprets. Decisions [384 U.S. 532] like these cannot rest alone on syllogism, metaphysics or some ill-defined notions of natural justice, although each will perhaps play its part. In proceeding to such constructions as it now announces, the Court should also duly consider all the factors and interests bearing upon the cases, at least insofar as the relevant materials are available, and, if the necessary considerations are not treated in the record or obtainable from some other reliable source, the Court should not proceed to formulate fundamental policies based on speculation alone.

III

1966, Miranda v. Arizona, 384 U.S. 532

First, we may inquire what are the textual and factual bases of this new fundamental rule. To reach the result announced on the grounds it does, the Court must stay within the confines of the Fifth Amendment, which forbids self-incrimination only if compelled. Hence, the core of the Court's opinion is that, because of the

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compulsion inherent in custodial surroundings, no statement obtained from [a] defendant [in custody] can truly be the product of his free choice,

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ante at 458, absent the use of adequate protective devices as described by the Court. However, the Court does not point to any sudden inrush of new knowledge requiring the rejection of 70 years' experience. Nor does it assert that its novel conclusion reflects a changing consensus among state courts, see Mapp v. Ohio, 367 U.S. 643, or that a succession of cases had steadily eroded the old rule and proved it unworkable, see Gideon v. Wainwright, 372 U.S. 335. Rather than asserting new knowledge, the Court concedes that it cannot truly know what occurs during custodial questioning, because of the innate secrecy of such proceedings. It extrapolates a picture of what it conceives to be the norm from police investigatorial manuals, published in 1959 and 1962 or earlier, without any attempt to allow for adjustments in police practices that may [384 U.S. 533] have occurred in the wake of more recent decisions of state appellate tribunals or this Court. But even if the relentless application of the described procedures could lead to involuntary confessions, it most assuredly does not follow that each and every case will disclose this kind of interrogation or this kind of consequence. 2 Insofar as appears from the Court's opinion, it has not examined a single transcript of any police interrogation, let alone the interrogation that took place in any one of these cases which it decides today. Judged by any of the standards for empirical investigation utilized in the social sciences, the factual basis for the Court's premise is patently inadequate.

1966, Miranda v. Arizona, 384 U.S. 533

Although, in the Court's view, in-custody interrogation is inherently coercive, the Court says that the spontaneous product of the coercion of arrest and detention is still to be deemed voluntary. An accused, arrested on probable cause, may blurt out a confession which will be admissible despite the fact that he is alone and in custody, without any showing that he had any notion of his right to remain silent or of the consequences of his admission. Yet, under the Court's rule, if the police ask him a single question, such as "Do you have anything to say?" or "Did you kill your wife?", his response, if there is one, has somehow been compelled, even if the accused has [384 U.S. 534] been clearly warned of his right to remain silent. Common sense informs us to the contrary. While one may say that the response was "involuntary" in the sense the question provoked or was the occasion for the response, and thus the defendant was induced to speak out when he might have remained silent if not arrested and not questioned, it is patently unsound to say the response is compelled.

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Today's result would not follow even if it were agreed that, to some extent, custodial interrogation is inherently coercive. See Ashcraft v. Tennessee, 322 U.S. 143, 161 (Jackson, J., dissenting). The test has been whether the totality of circumstances deprived the defendant of a "free choice to admit, to deny, or to refuse to answer," Lisenba v. California, 314 U.S. 219, 241, and whether physical or psychological coercion was of such a degree that "the defendant's will was overborne at the time he confessed," Haynes v. Washington, 373 U.S. 503, 513; Lynumn v. Illinois, 372 U.S. 528, 534. The duration and nature of incommunicado custody, the presence or absence of advice concerning the defendant's constitutional rights, and the granting or refusal of requests to communicate with lawyers, relatives or friends have all been rightly regarded as important data bearing on the basic inquiry. See, e.g., Ashcraft v. Tennessee, 322 U.S. 143; Haynes v. Washington, 373 U.S. 503. 3 [384 U.S. 535] But it has never been suggested, until today, that such questioning was so coercive and accused persons so lacking in hardihood that the very first response to the very first question following the commencement of custody must be conclusively presumed to be the product of an overborne will.

1966, Miranda v. Arizona, 384 U.S. 535

If the rule announced today were truly based on a conclusion that all confessions resulting from custodial interrogation are coerced, then it would simply have no rational foundation. Compare Tot v. United States, 319 U.S. 463, 466; United States v. Romano, 382 U.S. 136. A fortiori, that would be true of the extension of the rule to exculpatory statements, which the Court effects after a brief discussion of why, in the Court's view, they must be deemed incriminatory, but without any discussion of why they must be deemed coerced. See Wilson v. United States, 162 U.S. 613, 624. Even if one were to postulate that the Court's concern is not that all confessions induced by police interrogation are coerced, but rather that some such confessions are coerced and present judicial procedures are believed to be inadequate to identify the confessions that are coerced and those that are not, it would still not be essential to impose the rule that the Court has now fashioned. Transcripts or observers could be required, specific time limits, tailored to fit the cause, could be imposed, or other devices could be utilized to reduce the chances that otherwise indiscernible coercion will produce an inadmissible confession.

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On the other hand, even if one assumed that there was an adequate factual basis for the conclusion that all confessions obtained during in-custody interrogation are the product of compulsion, the rule propounded by [384 U.S. 536] the Court would still be irrational, for, apparently, it is only if the accused is also warned of his right to counsel and waives both that right and the right against self-incrimination that the inherent compulsiveness of interrogation disappears. But if the defendant may not answer without a warning a question such as "Where were you last night?" without having his answer be a compelled one, how can the Court ever accept his negative answer to the question of whether he wants to consult his retained counsel or counsel whom the court will appoint? And why, if counsel is present and the accused nevertheless confesses, or counsel tells the accused to tell the truth and that is what the accused does, is the situation any less coercive insofar as the accused is concerned? The Court apparently realizes its dilemma of foreclosing questioning without the necessary warnings but, at the same time, permitting the accused, sitting in the same chair in front of the same policemen, to waive his right to consult an attorney. It expects, however, that the accused will not often waive the right, and, if it is claimed that he has, the State faces a severe, if not impossible burden of proof.

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All of this makes very little sense in terms of the compulsion which the Fifth Amendment proscribes. That amendment deals with compelling the accused himself. It is his free will that is involved. Confessions and incriminating admissions, as such, are not forbidden evidence; only those which are compelled are banned. I doubt that the Court observes these distinctions today. By considering any answers to any interrogation to be compelled regardless of the content and course of examination, and by escalating the requirements to prove waiver, the Court not only prevents the use of compelled confessions, but, for all practical purposes, forbids interrogation except in the presence of counsel. That is, instead of confining itself to protection of the right against compelled [384 U.S. 537] self-incrimination the Court has created a limited Fifth Amendment right to counsel—or, as the Court expresses it, a "need for counsel to protect the Fifth Amendment privilege…. " Ante at 470. The focus then is not on the will of the accused, but on the will of counsel, and how much influence he can have on the accused. Obviously there is no warrant in the Fifth Amendment for thus installing counsel as the arbiter of the privilege.

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In sum, for all the Court's expounding on the menacing atmosphere of police interrogation procedures, it has failed to supply any foundation for the conclusions it draws or the measures it adopts.

IV

1966, Miranda v. Arizona, 384 U.S. 537

Criticism of the Court's opinion, however, cannot stop with a demonstration that the factual and textual bases for the rule it propounds are, at best, less than compelling. Equally relevant is an assessment of the rule's consequences measured against community values. The Court's duty to assess the consequences of its action is not satisfied by the utterance of the truth that a value of our system of criminal justice is "to respect the inviolability of the human personality" and to require government to produce the evidence against the accused by its own independent labors. Ante at 460. More than the human dignity of the accused is involved; the human personality of others in the society must also be preserved. Thus, the values reflected by the privilege are not the sole desideratum; society's interest in the general security is of equal weight.

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The obvious underpinning of the Court's decision is a deep-seated distrust of all confessions. As the Court declares that the accused may not be interrogated without counsel present, absent a waiver of the right to counsel, and as the Court all but admonishes the lawyer to [384 U.S. 538] advise the accused to remain silent, the result adds up to a judicial judgment that evidence from the accused should not be used against him in any way, whether compelled or not. This is the not so subtle overtone of the opinion—that it is inherently wrong for the police to gather evidence from the accused himself. And this is precisely the nub of this dissent. I see nothing wrong or immoral, and certainly nothing unconstitutional, in the police's asking a suspect whom they have reasonable cause to arrest whether or not he killed his wife, or in confronting him with the evidence on which the arrest was based, at least where he has been plainly advised that he may remain completely silent, see Escobedo v. Illinois, 378 U.S. 478, 499 (dissenting opinion). Until today, "the admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence." Brown v. Walker, 161 U.S. 591, 596; see also Hopt v. Utah, 110 U.S. 574, 584-585. Particularly when corroborated, as where the police have confirmed the accused's disclosure of the hiding place of implements or fruits of the crime, such confessions have the highest reliability, and significantly contribute to the certitude with which we may believe the accused is guilty. Moreover, it is by no means certain that the process of confessing is injurious to the accused. To the contrary, it may provide psychological relief, and enhance the prospects for rehabilitation. This is not to say that the value of respect for the inviolability of the accused's individual personality should be accorded no weight, or that all confessions should be indiscriminately admitted. This Court has long read the Constitution to proscribe compelled confessions, a salutary rule from which there should be no retreat. But I see no sound basis, factual or otherwise, and the Court gives none, for concluding that the present rule against the receipt of coerced confessions is inadequate for the [384 U.S. 539] task of sorting out inadmissible evidence, and must be replaced by the per se rule which is now imposed. Even if the new concept can be said to have advantages of some sort over the present law, they are far outweighed by its likely undesirable impact on other very relevant and important interests.

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The most basic function of any government is to provide for the security of the individual and of his property. Lanzetta v. New Jersey, 306 U.S. 451, 455. These ends of society are served by the criminal laws which for the most part are aimed at the prevention of crime. Without the reasonably effective performance of the task of preventing private violence and retaliation, it is idle to talk about human dignity and civilized values.

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The modes by which the criminal laws serve the interest in general security are many. First, the murderer who has taken the life of another is removed from the streets, deprived of his liberty, and thereby prevented from repeating his offense. In view of the statistics on recidivism in this country, 4 and of the number of instances [384 U.S. 540] in which apprehension occurs only after repeated offenses, no one can sensibly claim that this aspect of the criminal law does not prevent crime or contribute significantly to the personal security of the ordinary citizen.

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Secondly, the swift and sure apprehension of those who refuse to respect the personal security and dignity of their neighbor unquestionably has its impact on others who might be similarly tempted. That the criminal law is wholly or partly ineffective with a segment of the population or with many of those who have been apprehended and convicted is a very faulty basis for concluding that it is not effective with respect to the great bulk of our citizens, or for thinking that, without the criminal laws, [384 U.S. 541] or in the absence of their enforcement, there would be no increase in crime. Arguments of this nature are not borne out by any kind of reliable evidence that I have seen to this date.

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Thirdly, the law concerns itself with those whom it has confined. The hope and aim of modern penology, fortunately, is as soon as possible to return the convict to society a better and more law-abiding man than when he left. Sometimes there is success, sometimes failure. But at least the effort is made, and it should be made to the very maximum extent of our present and future capabilities.

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The rule announced today will measurably weaken the ability of the criminal law to perform these tasks. It is a deliberate calculus to prevent interrogations, to reduce the incidence of confessions and pleas of guilty, and to increase the number of trials. 5 Criminal trials, no [384 U.S. 542] matter how efficient the police are, are not sure bets for the prosecution, nor should they be if the evidence is not forthcoming. Under the present law, the prosecution fails to prove its case in about 30% of the criminal cases actually tried in the federal courts. See Federal Offenders: 1964, supra, note 4, at 6 (Table 4), 59 (Table 1); Federal Offenders: 1963, supra, note 4, at 5 (Table 3); District of Columbia Offenders: 1963, supra, note 4, at 2 (Table 1). But it is something else again to remove from the ordinary criminal case all those confessions which heretofore have been held to be free and voluntary acts of the accused, and to thus establish a new constitutional barrier to the ascertainment of truth by the judicial process. There is, in my view, every reason to believe that a good many criminal defendants who otherwise would have been convicted on what this Court has previously thought to be the most satisfactory kind of evidence will now, under this new version of the Fifth Amendment, either not be tried at all or will be acquitted if the State's evidence, minus the confession, is put to the test of litigation.

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I have no desire whatsoever to share the responsibility for any such impact on the present criminal process.

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In some unknown number of cases, the Court's rule will return a killer, a rapist or other criminal to the streets and to the environment which produced him, to repeat his crime whenever it pleases him. As a consequence, there will not be a gain, but a loss, in human dignity. The real concern is not the unfortunate consequences of this new decision on the criminal law as an abstract, disembodied series of authoritative proscriptions, but the impact on those who rely on the public authority for protection, and who, without it, can only engage in violent self-help with guns, knives and the help of their neighbors similarly inclined. There is, of [384 U.S. 543] course, a saving factor: the next victims are uncertain, unnamed and unrepresented in this case.

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Nor can this decision do other than have a corrosive effect on the criminal law as an effective device to prevent crime. A major component in its effectiveness in this regard is its swift and sure enforcement. The easier it is to get away with rape and murder, the less the deterrent effect on those who are inclined to attempt it. This is still good common sense. If it were not, we should post-haste liquidate the whole law enforcement establishment as a useless, misguided effort to control human conduct.

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And what about the accused who has confessed or would confess in response to simple, noncoercive questioning and whose guilt could not otherwise be proved? Is it so clear that release is the best thing for him in every case? Has it so unquestionably been resolved that, in each and every case, it would be better for him not to confess, and to return to his environment with no attempt whatsoever to help him? I think not. It may well be that, in many cases, it will be no less than a callous disregard for his own welfare, as well as for the interests of his next victim.

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There is another aspect to the effect of the Court's rule on the person whom the police have arrested on probable cause. The fact is that he may not be guilty at all, and may be able to extricate himself quickly and simply if he were told the circumstances of his arrest and were asked to explain. This effort, and his release, must now await the hiring of a lawyer or his appointment by the court, consultation with counsel, and then a session with the police or the prosecutor. Similarly, where probable cause exists to arrest several suspects, as where the body of the victim is discovered in a house having several residents, compare Johnson v. State, 238 Md. 140, 207 A.2d 643 (1965), cert. denied, 382 U.S. 1013, it will often [384 U.S. 544] be true that a suspect may be cleared only through the results of interrogation of other suspects. Here too, the release of the innocent may be delayed by the Court's rule.

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Much of the trouble with the Court's new rule is that it will operate indiscriminately in all criminal cases, regardless of the severity of the crime or the circumstances involved. It applies to every defendant, whether the professional criminal or one committing a crime of momentary passion who is not part and parcel of organized crime. It will slow down the investigation and the apprehension of confederates in those cases where time is of the essence, such as kidnapping, see Brinegar v. United States, 338 U.S. 160, 183 (Jackson, J., dissenting); People v. Modesto, 62 Cal.2d 436, 446, 398 P.2d 753, 759 (1965), those involving the national security, see United States v. Drummond, 354 F.2d 132, 147 (C.A.2d Cir.1965) (en banc) (espionage case), pet. for cert. pending, No. 1203, Misc., O.T. 1965; cf. Gessner v. United States, 354 F.2d 726, 730, n. 10 (C.A. 10th Cir.1965) (upholding, in espionage case, trial ruling that Government need not submit classified portions of interrogation transcript), and some of those involving organized crime. In the latter context, the lawyer who arrives may also be the lawyer for the defendant's colleagues, and can be relied upon to insure that no breach of the organization's security takes place even though the accused may feel that the best thing he can do is to cooperate.

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At the same time, the Court's per se approach may not be justified on the ground that it provides a "bright line" permitting the authorities to judge in advance whether interrogation may safely be pursued without jeopardizing the admissibility of any information obtained as a consequence. Nor can it be claimed that judicial time and effort, assuming that is a relevant consideration, [384 U.S. 545] will be conserved because of the ease of application of the new rule. Today's decision leaves open such questions as whether the accused was in custody, whether his statements were spontaneous or the product of interrogation, whether the accused has effectively waived his rights, and whether nontestimonial evidence introduced at trial is the fruit of statements made during a prohibited interrogation, all of which are certain to prove productive of uncertainty during investigation and litigation during prosecution. For all these reasons, if further restrictions on police interrogation are desirable at this time, a more flexible approach makes much more sense than the Court's constitutional straitjacket, which forecloses more discriminating treatment by legislative or rulemaking pronouncements.

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Applying the traditional standards to the cases before the Court, I would hold these confessions voluntary. I would therefore affirm in Nos. 759, 760, and 761, and reverse in No. 584.

Footnotes

WARREN, J., lead opinion (Footnotes)

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1. Compare United States v. Childress, 347 F.2d 448 (C.A. 7th Cir.1965), with Collins v. Beto, 348 F.2d 823 (C.A. 5th Cir.1965). Compare People v. Dorado, 62 Cal.2d 338, 398 P.2d 361, 42 Cal.Rptr. 169 (1964), with People v. Hartgraves, 31 Ill.2d 375, 202 N.E.2d 33 (1964).

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2. See, e.g., Enker & Elsen, Counsel for the Suspect: Massiah v. United States and Escobedo v. Illinois, 49 Minn.L.Rev. 47 (1964); Herman, The Supreme Court and Restrictions on Police Interrogation, 25 Ohio St.L.J. 449 (1964); Kamisar, Equal Justice in the Gatehouses and Mansions of American Criminal Procedure, in Criminal Justice in Our Time 1 (1965); Dowling, Escobedo and Beyond: The Need for a Fourteenth Amendment Code of Criminal Procedure, 56 J.Crim.L., C. & P. S. 143, 156 (1965).

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The complex problems also prompted discussions by jurists. Compare Bazelon, Law, Morality, and Civil Liberties, 12 U.C.L.A.L.Rev. 13 (1964), with Friendly, The Bill of Rights as a Code of Criminal Procedure, 53 Calif.L.Rev. 929 (1965).

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3. For example, the Los Angeles Police Chief stated that,

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If the police are required…to…establish that the defendant was apprised of his constitutional guarantees of silence and legal counsel prior to the uttering of any admission or confession, and that he intelligently waived these guarantees…a whole Pandora's box is opened as to under what circumstances…can a defendant intelligently waive these rights…. Allegations that modern criminal investigation can compensate for the lack of a confession or admission in every criminal case is totally absurd!

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Parker, 40 L.A.Bar Bull. 603, 607, 642 (1965). His prosecutorial counterpart, District Attorney Younger, stated that

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[I]t begins to appear that many of these seemingly restrictive decisions are going to contribute directly to a more effective, efficient and professional level of law enforcement.

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L.A. Times, Oct. 2, 1965, p. 1. The former Police Commissioner of New York, Michael J. Murphy, stated of Escobedo:

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What the Court is doing is akin to requiring one boxer to fight by Marquis of Queensbury rules while permitting the other to butt, gouge and bite.

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N.Y. Times, May 14, 1965, p. 39. The former United States Attorney for the District of Columbia, David C. Acheson, who is presently Special Assistant to the Secretary of the Treasury (for Enforcement), and directly in charge of the Secret Service and the Bureau of Narcotics, observed that

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Prosecution procedure has, at most, only the most remote causal connection with crime. Changes in court decisions and prosecution procedure would have about the same effect on the crime rate as an aspirin would have on a tumor of the brain.

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Quoted in Herman, supra, n. 2, at 500, n. 270. Other views on the subject in general are collected in Weisberg, Police Interrogation of Arrested Persons: A Skeptical View, 52 J.Crim.L., C. & P.S. 21 (1961).

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4. This is what we meant in Escobedo when we spoke of an investigation which had focused on an accused.

1966, Miranda v. Arizona, 384 U.S. 545

5. See, for example, IV National Commission on Law Observance and Enforcement, Report on Lawlessness in Law Enforcement (1931) [Wickersham Report]; Booth, Confessions, and Methods Employed in Procuring Them, 4 So. Calif.L.Rev. 83 (1930); Kauper, Judicial Examination of the Accused—A Remedy for the Third Degree, 30 Mich.L.Rev. 1224 (1932). It is significant that instances of third-degree treatment of prisoners almost invariably took place during the period between arrest and preliminary examination. Wickersham Report, at 169; Hall, The Law of Arrest in Relation to Contemporary Social Problems, 3 U.Chi.L.Rev. 345, 357 (1936). See also Foote, Law and Police Practice: Safeguards in the Law of Arrest, 52 Nw.U.L.Rev. 16 (1957).

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6. Brown v. Mississippi, 297 U.S. 278 (1936); Chambers v. Florida, 309 U.S. 227 (1940); Canty v. Alabama, 309 U.S. 629 (1940); White v. Texas, 310 U.S. 530 (1940); Vernon v. Alabama, 313 U.S. 547 (1941); Ward v. Texas, 316 U.S. 547 (1942); Ashcraft v. Tennessee, 322 U.S. 143 (1944); Malinski v. New York, 324 U.S. 401 (1945); Leyra v. Denno, 347 U.S. 556 (1954). See also Williams v. United States, 341 U.S. 97 (1951).

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7. In addition, see People v. Wakat, 415 Ill. 610, 114 N.E.2d 706 (1953); Wakat v. Harlib, 253 F.2d 59 (C.A. 7th Cir.1958) (defendant suffering from broken bones, multiple bruises and injuries sufficiently serious to require eight months' medical treatment after being manhandled by five policemen); Kier v. State, 213 Md. 556, 132 A.2d 494 (1957) (police doctor told accused, who was strapped to a chair completely nude, that he proposed to take hair and skin scrapings from anything that looked like blood or sperm from various parts of his body); Bruner v. People, 113 Colo.194, 156 P.2d 111 (1945) (defendant held in custody over two months, deprived of food for 15 hours, forced to submit to a lie detector test when he wanted to go to the toilet); People v. Matlock, 51 Cal.2d 682, 336 P.2d 505 (1959) (defendant questioned incessantly over an evening's time, made to lie on cold board and to answer questions whenever it appeared he was getting sleepy). Other cases are documented in American Civil Liberties Union, Illinois Division, Secret Detention by the Chicago Police (1959); Potts, The Preliminary Examination and "The Third Degree," 2 Baylor L.Rev. 131 (1950); Sterling, Police Interrogation and the Psychology of Confession, 14 J.Pub.L. 25 (1965).

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8. The manuals quoted in the text following are the most recent and representative of the texts currently available. Material of the same nature appears in Kidd, Police Interrogation (1940); Mulbar, Interrogation (1951); Dienstein, Technics for the Crime Investigator 97-115 (1952). Studies concerning the observed practices of the police appear in LaFave, Arrest: The Decision To Take a Suspect Into Custody 244-437, 490-521 (1965); LaFave, Detention for Investigation by the Police: An Analysis of Current Practices, 1962 Wash.U.L.Q. 331; Barrett, Police Practices and the Law—From Arrest to Release or Charge, 50 Calif.L.Rev. 11 (1962); Sterling, supra, n. 7, at 47-65.

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9. The methods described in Inbau & Reid, Criminal Interrogation and Confessions (1962), are a revision and enlargement of material presented in three prior editions of a predecessor text, Lie Detection and Criminal Interrogation (3d ed.1953). The authors and their associates are officers of the Chicago Police Scientific Crime Detection Laboratory, and have had extensive experience in writing, lecturing and speaking to law enforcement authorities over a 20-year period. They say that the techniques portrayed in their manuals reflect their experiences, and are the most effective psychological stratagems to employ during interrogations. Similarly, the techniques described in O'Hara, Fundamentals of Criminal Investigation (1956), were gleaned from long service as observer, lecturer in police science, and work as a federal criminal investigator. All these texts have had rather extensive use among law enforcement agencies and among students of police science, with total sales and circulation of over 44,000.

1966, Miranda v. Arizona, 384 U.S. 545

10. Inbau & Reid, Criminal Interrogation and Confessions (1962), at 1.

1966, Miranda v. Arizona, 384 U.S. 545

11. O'Hara, supra, at 99.

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12. Inbau & Reid, supra, at 34-43, 87. For example, in Leyra v. Denno, 347 U.S. 556 (1954), the interrogator-psychiatrist told the accused, "We do sometimes things that are not right, but in a fit of temper or anger we sometimes do things we aren't really responsible for," id. at 562, and again, "We know that morally, you were just in anger. Morally, you are not to be condemned," id. at 582.

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13. Inbau Reid, supra, at 43-55.

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14. O'Hara, supra, at 112.

1966, Miranda v. Arizona, 384 U.S. 545

15. Inbau & Reid, supra, at 40.

1966, Miranda v. Arizona, 384 U.S. 545

16. Ibid.

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17. O'Hara, supra, at 104, Inbau & Reid, supra, at 58-59. See Spano v. New York, 360 U.S. 315 (1959). A variant on the technique of creating hostility is one of engendering fear. This is perhaps best described by the prosecuting attorney in Malinski v. New York, 324 U.S. 401, 407 (1945):

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Why this talk about being undressed? Of course, they had a right to undress him to look for bullet scars, and keep the clothes off him. That was quite proper police procedure. That is some more psychology—let him sit around with a blanket on him, humiliate him there for a while; let him sit in the corner, let him think he is going to get a shellacking.

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18. O'Hara, supra, at 105-106.

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19. Id. at 106.

1966, Miranda v. Arizona, 384 U.S. 545

20. Inbau & Reid, supra, at 111.

1966, Miranda v. Arizona, 384 U.S. 545

21. Ibid.

1966, Miranda v. Arizona, 384 U.S. 545

22. Inbau & Reid, supra, at 112.

1966, Miranda v. Arizona, 384 U.S. 545

23. Inbau & Reid, Lie Detection and Criminal Interrogation 185 (3d ed.1953).

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24. Interrogation procedures may even give rise to a false confession. The most recent conspicuous example occurred in New York, in 1964, when a Negro of limited intelligence confessed to two brutal murders and a rape which he had not committed. When this was discovered, the prosecutor was reported as saying:

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Call it what you want—brainwashing, hypnosis, fright. They made him give an untrue confession. The only thing I don't believe is that Whitmore was beaten.

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N.Y. Times, Jan. 28, 1965, p. 1, col. 5. In two other instances, similar events had occurred. N.Y. Times, Oct. 20, 1964, p. 22, col. 1; N.Y. Times, Aug. 25, 1965, p. 1, col. 1. In general, see Borchard, Convicting the Innocent (1932); Frank & Frank, Not Guilty (1957).

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25. In the fourth confession case decided by the Court in the 1962 Term, Fay v. Noia, 372 U.S. 391 (1963), our disposition made it unnecessary to delve at length into the facts. The facts of the defendant's case there, however, paralleled those of his codefendants, whose confessions were found to have resulted from continuous and coercive interrogation for 27 hours, with denial of requests for friends or attorney. See United States v. Murphy, 222 F.2d 698 (C.A.2d Cir.1955) (Frank, J.); People v. Bonino, 1 N.Y.2d 752, 135 N.E.2d 51 (1956).

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26. The absurdity of denying that a confession obtained under these circumstances is compelled is aptly portrayed by an example in Professor Sutherland's recent article, Crime and Confession, 79 Harv.L.Rev. 21, 37 (1965):

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Suppose a well-to-do testatrix says she intends to will her property to Elizabeth. John and James want her to bequeath it to them instead. They capture the testatrix, put her in a carefully designed room, out of touch with everyone but themselves and their convenient "witnesses," keep her secluded there for hours while they make insistent demands, weary her with contradictions of her assertions that she wants to leave her money to Elizabeth, and finally induce her to execute the will in their favor. Assume that John and James are deeply and correctly convinced that Elizabeth is unworthy, and will make base use of the property if she gets her hands on it, whereas John and James have the noblest and most righteous intentions. Would any judge of probate accept the will so procured as the "voluntary" act of the testatrix?

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27. Thirteenth century commentators found an analogue to the privilege grounded in the Bible. "To sum up the matter, the principle that no man is to be declared guilty on his own admission is a divine decree." Maimonides, Mishneh Torah (Code of Jewish Law), Book of Judges, Laws of the Sanhedrin, c. 18, 116, III Yale Judaica Series 52-53. See also Lamm, The Fifth Amendment and Its Equivalent in the Halakhah, 5 Judaism 53 (Winter 1956).

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28. See Morgan, The Privilege Against Self-Incrimination, 34 Minn.L.Rev. 1, 9-11 (1949); 8 Wigmore, Evidence 289-295 (McNaughton rev.1961). See also Lowell, The Judicial Use of Torture, Parts I and II, 11 Harv.L.Rev. 220, 290 (1897).

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29. See Pittman, The Colonial and Constitutional History of the Privilege Against Self-Incrimination in America, 21 Va.L.Rev. 763 (1935); Ullmann v. United States, 350 U.S. 422, 445-449 (1956) (DOUGLAS, J., dissenting).

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30. Compare Brown v. Walker, 161 U.S. 591 (1896); Quinn v. United States, 349 U.S. 155 (1955).

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31. Brief for the United States, p. 28. To the same effect, see Brief for the United States, pp. 40-49, n. 44, Anderson v. United States, 318 U.S. 350 (1943); Brief for the United States, pp. 17-18, McNabb v. United States, 318 U.S. 332 (1943).

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32. Our decision today does not indicate in any manner, of course, that these rules can be disregarded. When federal officials arrest an individual, they must as always comply with the dictates of the congressional legislation and cases thereunder. See generally Hogan & Snee, The McNabb-Mallory Rule: Its Rise, Rationale and Rescue, 47 Geo.L.J. 1 (1958).

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33. The decisions of this Court have guaranteed the same procedural protection for the defendant whether his confession was used in a federal or state court. It is now axiomatic that the defendant's constitutional rights have been violated if his conviction is based, in whole or in part, on an involuntary confession, regardless of its truth or falsity. Rogers v. Richmond, 365 U.S. 534, 544 (1961); Wan v. United States, 266 U.S. 1 (1924). This is so even if there is ample evidence aside from the confession to support the conviction, e.g., Malinski v. New York, 324 U.S. 401, 404 (1945); Bram v. United States, 168 U.S. 532, 540-542 (1897). Both state and federal courts now adhere to trial procedures which seek to assure a reliable and clear-cut determination of the voluntariness of the confession offered at trial, Jackson v. Denno, 378 U.S. 368 (1964); United States v. Carignan, 342 U.S. 36, 38 (1951); see also Wilson v. United States, 162 U.S. 613, 624 (1896). Appellate review is exacting, see Haynes v. Washington, 373 U.S. 503 (1963); Blackburn v. Alabama, 361 U.S. 199 (1960). Whether his conviction was in a federal or state court, the defendant may secure a post-conviction hearing based on the alleged involuntary character of his confession, provided he meets the procedural requirements, Fay v. Noia, 372 U.S. 391 (1963); Townsend v. Sain, 372 U.S. 293 (1963). In addition, see Murphy v. Waterfront Comm'n, 378 U.S. 52 (1964).

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34. See Lisenba v. California, 314 U.S. 219, 241 (1941); Ashcraft v. Tennessee, 322 U.S. 143 (1944); Malinski v. New York, 324 U.S. 401 (1945); Spano v. New York, 360 U.S. 315 (1959); Lynumn v. Illinois, 372 U.S. 528 (1963); Haynes v. Washington, 373 U.S. 503 (1963).

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35. The police also prevented the attorney from consulting with his client. Independent of any other constitutional proscription, this action constitutes a violation of the Sixth Amendment right to the assistance of counsel, and excludes any statement obtained in its wake. See People v. Donovan, 13 N.Y.2d 148, 193 N.E.2d 628, 243 N.Y.S.2d 841 (1963) (Fuld, J.)

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36. In re Groban, 352 U.S. 330, 340-352 (1957) (BLACK, J., dissenting); Note, 73 Yale L.J. 1000, 1048-1051 (1964); Comment, 31 U.Chi.L.Rev. 313, 320 (1964) and authorities cited.

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37. See p. 454, supra. Lord Devlin has commented:

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It is probable that, even today, when there is much less ignorance about these matters than formerly, there is still a general belief that you must answer all questions put to you by a policeman, or at least that it will be the worse for you if you do not.

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Devlin, The Criminal Prosecution in England 32 (1958).

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In accord with our decision today, it is impermissible to penalize an individual for exercising his Fifth Amendment privilege when he is under police custodial interrogation. The prosecution may not, therefore, use at trial the fact that he stood mute or claimed his privilege in the face of accusation. Cf. Griffin v. California, 380 U.S. 609 (1965); Malloy v. Hogan, 378 U.S. 1, 8 (1964); Comment, 31 U.Chi.L.Rev. 556 (1964); Developments in the Law—Confessions, 79 Harv.L.Rev. 935, 1041-1044 (1966). See also Bram v. United States, 168 U.S. 532, 562 (1897).

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38. Cf. Betts v. Brady, 316 U.S. 455 (1942), and the recurrent inquiry into special circumstances it necessitated. See generally Kamisar, Betts v. Brady Twenty Years Later: The Right to Counsel and Due Process Values, 61 Mich.L.Rev. 219 (1962).

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39. See Herman, The Supreme Court and Restrictions on Police Interrogation, 25 Ohio St.L.J. 440, 480 (1964).

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40. Estimates of 50-90% indigency among felony defendants have been reported. Pollock, Equal Justice in Practice, 45 Minn.L.Rev. 737, 738-739 (1961); Birzon, Kasanof & Forma, The Right to Counsel and the Indigent Accused in Courts of Criminal Jurisdiction in New York State, 14 Buffalo L.Rev. 428, 433 (1965).

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41. See Kamisar, Equal Justice in the Gatehouses and Mansions of American Criminal Procedure, in Criminal Justice in Our Time 1, 64-81 (1965). As was stated in the Report of the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice 9 (1963):

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When government chooses to exert its powers in the criminal area, its obligation is surely no less than that of taking reasonable measures to eliminate those factors that are irrelevant to just administration of the law, but which, nevertheless, may occasionally affect determinations of the accused's liability or penalty. While government may not be required to relieve the accused of his poverty, it may properly be required to minimize the influence of poverty on its administration of justice.

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42. Cf. United States ex rel. Brown v. Fay, 242 F.Supp. 273, 277 (D.C.S.D.N.Y.1965); People v. Witenski, 15 N.Y.2d 392, 207 N.E.2d 358, 259 N.Y.S.2d 413 (1965).

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43. While a warning that the indigent may have counsel appointed need not be given to the person who is known to have an attorney or is known to have ample funds to secure one, the expedient of giving a warning is too simple, and the rights involved too important, to engage in ex post facto inquiries into financial ability when there is any doubt at all on that score.

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44. If an individual indicates his desire to remain silent, but has an attorney present, there may be some circumstances in which further questioning would be permissible. In the absence of evidence of overbearing, statements then made in the presence of counsel might be free of the compelling influence of the interrogation process and might fairly be construed as a waiver of the privilege for purposes of these statements.

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45. Although this Court held in Rogers v. United States, 340 U.S. 367 (1951), over strong dissent, that a witness before a grand jury may not in certain circumstances decide to answer some questions and then refuse to answer others, that decision has no application to the interrogation situation we deal with today. No legislative or judicial factfinding authority is involved here, nor is there a possibility that the individual might make self-serving statements of which he could make use at trial while refusing to answer incriminating statements.

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46. The distinction and its significance has been aptly described in the opinion of a Scottish court:

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In former times, such questioning, if undertaken, would be conducted by police officers visiting the house or place of business of the suspect and there questioning him, probably in the presence of a relation or friend. However convenient the modern practice may be, it must normally create a situation very unfavourable to the suspect.

1966, Miranda v. Arizona, 384 U.S. 545

Chalmer v. H. M. Advocate, [1954] Sess.Cas. 66, 78 (J.C.).

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47. See People v. Dorado, 62 Cal.2d 338, 354, 398 P.2d 361, 371 42 Cal.Rptr. 169, 179 (1965).

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48. In accordance with our holdings today and in Escobedo v. Illinois, 378 U.S. 478, 492, Crooker v. California, 357 U.S. 433 (1958) and Cicenia v. Lagay, 357 U.S. 504 (1958), are not to be followed.

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49. In quoting the above from the dissenting opinion of Mr. Justice Brandeis we, of course, do not intend to pass on the constitutional questions involved in the Olmstead case.

1966, Miranda v. Arizona, 384 U.S. 545

50. Schaefer, Federalism and State Criminal Procedure, 70 Harv.L.Rev. 1, 26 (1956).

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51. Miranda, Vignera, and Westover were identified by eyewitnesses. Marked bills from the bank robbed were found in Westover's car. Articles stolen from the victim as well as from several other robbery victims were found in Stewart's home at the outset of the investigation.

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52. Dealing as we do here with constitutional standards in relation to statements made, the existence of independent corroborating evidence produced at trial is, of course, irrelevant to our decisions. Haynes v. Washington, 373 U.S. 503, 518-519 (1963); Lynumn v. Illinois, 372 U.S. 528, 537-538 (1963); Rogers v. Richmond, 365 U.S. 534, 541 (1961); Blackburn v. Alabama, 361 U.S. 199, 206 (1960).

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53. See, e.g., Report and Recommendations of the [District of Columbia] Commissioners' Committee on Police Arrests for Investigation (1962); American Civil Liberties Union, Secret Detention by the Chicago Police (1959). An extreme example of this practice occurred in the District of Columbia in 1958. Seeking three "stocky" young Negroes who had robbed a restaurant, police rounded up 90 persons of that general description. Sixty-three were held overnight before being released for lack of evidence. A man not among the 90 arrested was ultimately charged with the crime. Washington Daily News, January 21, 1958, p. 5, col. 1; Hearings before a Subcommittee of the Senate Judiciary Committee on H.R. 11477, S. 2970, S. 3325, and S. 3355, 85th Cong., 2d Sess. (July 1958), pp. 40, 78.

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54. In 1952, J. Edgar Hoover, Director of the Federal Bureau of Investigation, stated:

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Law enforcement, however, in defeating the criminal, must maintain inviolate the historic liberties of the individual. To turn back the criminal, yet, by so doing, destroy the dignity of the individual, would be a hollow victory.

\* \* \* \*

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We can have the Constitution, the best laws in the land, and the most honest reviews by courts—but unless the law enforcement profession is steeped in the democratic tradition, maintains the highest in ethics, and makes its work a career of honor, civil liberties will continually—and without end—be violated…. The best protection of civil liberties is an alert, intelligent and honest law enforcement agency. There can be no alternative.

\* \* \* \*

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…Special Agents are taught that any suspect or arrested person, at the outset of an interview, must be advised that he is not required to make a statement and that any statement given can be used against him in court. Moreover, the individual must be informed that, if he desires, he may obtain the services of an attorney of his own choice.

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Hoover, Civil Liberties and Law Enforcement: The Role of the FBI, 37 Iowa L.Rev. 175, 177-182 (1952).

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55. We agree that the interviewing agent must exercise his judgment in determining whether the individual waives his right to counsel. Because of the constitutional basis of the right, however, the standard for waiver is necessarily high. And, of course, the ultimate responsibility for resolving this constitutional question lies with the courts.

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56. Among the crimes within the enforcement jurisdiction of the FBI are kidnapping, 18 U.S.C. § 1201 (1964 ed.), white slavery, 18 U.S.C. §§ 2421-2423 (1964 ed.), bank robbery, 18 U.S.C. § 2113 (1964 ed.), interstate transportation and sale of stolen property, 18 U.S.C. §§ 2311-2317 (1964 ed.), all manner of conspiracies, 18 U.S.C. § 371 (1964 ed.), and violations of civil rights 18 U.S.C. §§ 241-242 (1964 ed.). See also 18 U.S.C. § 1114 (1964 ed.) (murder of officer or employee of the United States).

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57. [1964] Crim.L.Rev. at 166-170. These Rules provide in part:

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II. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

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The caution shall be in the following terms:

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You are not obliged to say anything unless you wish to do so, but what you say may be put into writing and given in evidence.

1966, Miranda v. Arizona, 384 U.S. 545

When, after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

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III…

\* \* \* \* .

1966, Miranda v. Arizona, 384 U.S. 545

(b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted.

\* \* \* \*

1966, Miranda v. Arizona, 384 U.S. 545

IV. All written statements made after caution shall be taken in the following manner:

1966, Miranda v. Arizona, 384 U.S. 545

(a) If a person says that he wants to make a statement, he shall be told that it is intended to make a written record of what he says.

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He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write, or that he would like someone to write it for him, a police officer may offer to write the statement for him….

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(b) Any person writing his own statement shall be allowed to do so without any prompting, as distinct from indicating to him what matters are material.

\* \* \* \*

1966, Miranda v. Arizona, 384 U.S. 545

(d) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters: he shall not prompt him.

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The prior Rules appear in Devlin, The Criminal Prosecution in England 137-141 (1958).

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Despite suggestions of some laxity in enforcement of the Rules, and despite the fact some discretion as to admissibility is invested in the trial judge, the Rules are a significant influence in the English criminal law enforcement system. See, e.g., [1964] Crim.L.Rev. at 182, and articles collected in [1960] Crim.L.Rev. at 298-356.

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58. The introduction to the Judges' Rules states in part:

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These Rules do not affect the principles

\* \* \* \*

1966, Miranda v. Arizona, 384 U.S. 545

(c) That every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that, in such a case, no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so….

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[1964] Crim.L.Rev. at 166-167.

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59. As stated by the Lord Justice General in Chalmers v. H.M Advocate, [1954] Sess.Cas. 66, 78 (J.C.):

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The theory of our law is that, at the stage of initial investigation, the police may question anyone with a view to acquiring information which may lead to the detection of the criminal; but that, when the stage has been reached at which suspicion, or more than suspicion, has in their view centered upon some person as the likely perpetrator of the crime, further interrogation of that person becomes very dangerous, and, if carried too far, e.g., to the point of extracting a confession by what amounts to cross-examination, the evidence of that confession will almost certainly be excluded. Once the accused has been apprehended and charged, he has the statutory right to a private interview with a solicitor and to be brought before a magistrate with all convenient speed so that he may, if so advised, emit a declaration in presence of his solicitor under conditions which safeguard him against prejudice.

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60. "No confession made to a police officer shall be proved as against a person accused of any offence." Indian Evidence Act § 25.

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No confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

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Indian Evidence Act § 26. See 1 Ramaswami & Rajagopalan, Law of Evidence in India 553-569 (1962). To avoid any continuing effect of police pressure or inducement, the Indian Supreme Court has invalidated a confession made shortly after police brought a suspect before a magistrate, suggesting:

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[I]t would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession.

1966, Miranda v. Arizona, 384 U.S. 545

Sarwan Singh v. State of Punjab, 44 All India Rep. 1957, Sup.Ct. 637, 644.

1966, Miranda v. Arizona, 384 U.S. 545

61. I Legislative Enactments of Ceylon 211 (1958).

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62. 10 U.S.C. § 831(b) (1964 ed.)

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63. United States v. Rose, 24 CMR 251 (1957); United States v. Gunnels, 23 CMR 354 (1957).

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64. Although no constitution existed at the time confessions were excluded by rule of evidence in 1872, India now has a written constitution which includes the provision that "No person accused of any offence shall be compelled to be a witness against himself." Constitution of India, Article 20(3). See Tope, The Constitution of India 63-67 (1960).

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65. Brief for United States in No. 761, Westover v. United States, pp. 44-47; Brief for the State of New York as amicus curiae, pp. 35-39. See also Brief for the National District Attorneys Association as amicus curiae, pp. 23-26.

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66. Miranda was also convicted in a separate trial on an unrelated robbery charge not presented here for review. A statement introduced at that trial was obtained from Miranda during the same interrogation which resulted in the confession involved here. At the robbery trial, one officer testified that, during the interrogation, he did not tell Miranda that anything he said would be held against him or that he could consult with an attorney. The other officer stated that they had both told Miranda that anything he said would be used against him and that he was not required by law to tell them anything.

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67. One of the officers testified that he read this paragraph to Miranda. Apparently, however, he did not do so until after Miranda had confessed orally.

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68. Vignera thereafter successfully attacked the validity of one of the prior convictions, Vignera v. Wilkins, Civ. 9901 (D.C.W.D.N.Y. Dec. 31, 1961) (unreported), but was then resentenced as a second-felony offender to the same term of imprisonment as the original sentence. R. 31-33.

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69. The failure of defense counsel to object to the introduction of the confession at trial, noted by the Court of Appeals and emphasized by the Solicitor General, does not preclude our consideration of the issue. Since the trial was held prior to our decision in Escobedo and, of course, prior to our decision today making the objection available, the failure to object at trial does not constitute a waiver of the claim. See, e.g., United States ex rel. Angelet v. Fay, 333 F.2d 12, 16 (C.A.2d Cir.1964), aff'd, 381 U.S. 654 (1965). Cf. Ziffrin, Inc. v. United States, 318 U.S. 73, 78 (1943).

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70. Because of this disposition of the case, the California Supreme Court did not reach the claims that the confession was coerced by police threats to hold his ailing wife in custody until he confessed, that there was no hearing as required by Jackson v. Denno, 378 U.S. 368 (1964), and that the trial judge gave an instruction condemned by the California Supreme Court's decision in People v. Morse, 60 Cal.2d 631, 388 P.2d 33, 36 Cal.Rptr. 201 (1964).

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71. After certiorari was granted in this case, respondent moved to dismiss on the ground that there was no final judgment from which the State could appeal, since the judgment below directed that he be retried. In the event respondent was successful in obtaining an acquittal on retrial, however, under California law the State would have no appeal. Satisfied that, in these circumstances, the decision below constituted a final judgment under 28 U.S.C. § 1257(3) (1964 ed.), we denied the motion. 383 U.S. 903.

CLARK, J., concurring and dissenting (Footnotes)

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1. E.g., Inbau & Reid, Criminal Interrogation and Confessions (196); O'Hara, Fundamentals Of Criminal Investigation (1956); Dienstein, Technics for the Crime Investigator (1952); Mulbar, Interrogation (1951); Kidd, Police Interrogation (1940).

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2. As developed by my Brother HARLAN, post pp. 506-514, such cases, with the exception of the long-discredited decision in Bram v. United States, 168 U.S. 532 (1897), were adequately treated in terms of due process.

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3. The Court points to England, Scotland, Ceylon and India as having equally rigid rules. As in Brother HARLAN points out, post, pp. 521-523, the Court is mistaken in this regard, for it overlooks counterbalancing prosecutorial advantages. Moreover, the requirements of the Federal Bureau of Investigation do not appear from the Solicitor General's letter, ante, pp. 484-46, to be as strict as those imposed today in at least two respects: (1) The offer of counsel is articulated only as "a right to counsel"; nothing is said about a right to have counsel present at the custodial interrogation. (See also the examples cited by the Solicitor General, Westover v. United States, 342 F.2d 684, 685 (1965) ("right to consult counsel"); Jackson v. United States, 337 F.2d 136, 138 (1964) (accused "entitled to an attorney").) Indeed, the practice is that, whenever the suspect

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decides that he wishes to consult with counsel before making a statement, the interview is terminated at that point…. When counsel appears in person, he is permitted to confer with his client in private.

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This clearly indicates that the FBI does not warn that counsel may be present during custodial interrogation. (2) The Solicitor General's letter states:

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[T]hose who have been arrested for an offense under FBI jurisdiction, or whose arrest is contemplated following the interview, [are advised] of a right to free counsel if they are unable to pay, and the availability of such counsel from the Judge.

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So phrased, this warning does not indicate that the agent will secure counsel. Rather, the statement may well be interpreted by the suspect to mean that the burden is placed upon himself, and that he may have counsel appointed only when brought before the judge or at trial—but not at custodial interrogation. As I view the FBI practice, it is not as broad as the one laid down today by the Court.

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4. In my view, there is "no significant support" in our cases for the holding of the Court today that the Fifth Amendment privilege, in effect, forbids custodial interrogation. For a discussion of this point, see the dissenting opinion of my Brother WHITE, post pp. 526-531.

HARLAN, J., dissenting (Footnotes)

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1. My discussion in this opinion is directed to the main questions decided by the Court and necessary to its decision; in ignoring some of the collateral points, I do not mean to imply agreement.

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2. The case was Bram v. United States, 168 U.S. 532 (quoted ante p. 461). Its historical premises were afterwards disproved by Wigmore, who concluded "that no assertions could be more unfounded." 3 Wigmore, Evidence § 823, at 250, n. 5 (3d ed.1940). The Court in United States v. Carignan, 342 U.S. 36, 41, declined to choose between Bram and Wigmore, and Stein v. New York, 346 U.S. 156, 191, n. 35, cast further doubt on Bram. There are, however, several Court opinions which assume in dicta the relevance of the Fifth Amendment privilege to confessions. Burdeau v. McDowell, 256 U.S. 465, 475; see Shotwell Mfg. Co. v. United States, 371 U.S. 341, 347. On Bram and the federal confession cases generally, see Developments in the Law—Confessions, 79 Harv.L.Rev. 935, 959-961 (1966).

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3. Comment, 31 U.Chi.L.Rev. 313 & n. 1 (1964), states that, by the 1963 Term, 33 state coerced confession cases had been decided by this Court, apart from per curiams. Spano v. New York, 360 U.S. 315, 321, n. 2, collects 28 cases.

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4. Bator & Vorenberg, Arrest, Detention, Interrogation and the Right to Counsel, 66 Col.L.Rev. 62, 73 (1966):

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In fact, the concept of involuntariness seems to be used by the courts as a shorthand to refer to practices which are repellent to civilized standards of decency or which, under the circumstances, are thought to apply a degree of pressure to an individual which unfairly impairs his capacity to make a rational choice.

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See Herman, The Supreme Court and Restrictions on Police Interrogation, 25 Ohio St.L.J. 449, 452-458 (1964); Developments, supra, n. 2, at 964-984.

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5. See the cases synopsized in Herman, supra, n. 4, at 456, nn. 36-39. One not too distant example is Stroble v. California, 343 U.S. 181, in which the suspect was kicked and threatened after his arrest, questioned a little later for two hours, and isolated from a lawyer trying to see him; the resulting confession was held admissible.

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6. Among the examples given in 8 Wigmore, Evidence § 2266, at 401 (McNaughton rev.1961), are these: the privilege applies to any witness, civil or criminal, but the confession rule protects only criminal defendants; the privilege deals only with compulsion, while the confession rule may exclude statements obtained by trick or promise, and where the privilege has been nullified—as by the English Bankruptcy Act—the confession rule may still operate.

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7. Additionally, there are precedents and even historical arguments that can be arrayed in favor of bringing extra-legal questioning within the privilege. See generally Maguire, Evidence of Guilt § 2.03, at 15-16 (1959).

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8. This, of course, is implicit in the Court's introductory announcement that "[o]ur decision in Malloy v. Hogan, 378 U.S. 1 (1964) [extending the Fifth Amendment privilege to the States] necessitates an examination of the scope of the privilege in state cases as well." Ante, p. 463. It is also inconsistent with Malloy itself, in which extension of the Fifth Amendment to the States rested in part on the view that the Due Process Clause restriction on state confessions has, in recent years, been "the same standard" as that imposed in federal prosecutions assertedly by the Fifth Amendment. 378 U.S. at 7.

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9. I lay aside Escobedo itself; it contains no reasoning or even general conclusions addressed to the Fifth Amendment, and indeed its citation in this regard seems surprising in view of Escobedo's primary reliance on the Sixth Amendment.

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10. Since the Court conspicuously does not assert that the Sixth Amendment itself warrants its new police interrogation rules, there is no reason now to draw out the extremely powerful historical and precedential evidence that the Amendment will bear no such meaning. See generally Friendly, The Bill of Rights as a Code of Criminal Procedure, 53 Calif.L.Rev. 9'9, 943-948 (1965).

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11. See supra, n. 4, and text. Of course, the use of terms like voluntariness involves questions of law and terminology quite as much as questions of fact. See Collins v. Beto, 348 F.2d 823, 832 (concurring opinion); Bator & Vorenberg, supra, n. 4, at 72-73.

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12. The Court's vision of a lawyer "mitigat[ing] the dangers of untrustworthiness" (ante, p. 470) by witnessing coercion and assisting accuracy in the confession is largely a fancy; for if counsel arrives, there is rarely going to be a police station confession. Watt v. Indiana, 338 U.S. 49, 59 (separate opinion of Jackson, J.): "[A]ny lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances." See Enker & Elsen, Counsel for the Suspect, 49 Minn.L.Rev. 47, 66-68 (1964).

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13. This need is, of course, what makes so misleading the Court's comparison of a probate judge readily setting aside as involuntary the will of an old lady badgered and beleaguered by the new heirs. Ante, pp. 457-458, n. 26. With wills, there is no public interest save in a totally free choice; with confessions, the solution of crime is a countervailing gain however the balance is resolved.

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14. See, e.g., the voluminous citations to congressional committee testimony and other sources collected in Culombe v. Connecticut, 367 U.S. 568, 578-579 (Frankfurter, J., announcing the Court's judgment and an opinion).

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15. In Westover, a seasoned criminal was practically given the Court's full complement of warnings, and did not heed them. The Stewart case, on the other hand, involves long detention and successive questioning. In Vignera, the facts are complicated, and the record somewhat incomplete.

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16.

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[J]ustice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.

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Snyder v. Massachusetts, 291 U.S. 97, 122 (Cardozo, J.).

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17. A narrow reading is given in: United States v. Robinson, 354 F.2d 109 (C.A.2d Cir.); Davis v. North Carolina, 339 F.2d 770 (C.A.4th Cir.); Edwards v. Holman, 342 F.2d 679 (C.A. 5th Cir.); United States ex rel. Townsend v. Ogilvie, 334 F.2d 837 (C.A. 7th Cir.); People v. Hartgraves, 31 Ill.2d 375, 202 N.E.2d 33; State v. Fox, \_\_\_ Iowa \_\_\_, 131 N.W.2d 684; Rowe v. Commonwealth, 394 S.W.2d 751 (Ky.); Parker v. Warden, 236 Md. 236, 203 A.2d 418; State v. Howard, 383 S.W.2d 701 (Mo.); Bean v. State, \_\_\_ Nev. \_\_\_, 398 P.2d 251; State v. Hodgson, 44 N.J. 151, 207 A.2d 542; People v. Gunner, 15 N.Y.2d 226, 205 N.E.2d 852; Commonwealth ex rel. Linde v. Maroney, 416 Pa. 331, 206 A.2d 288; Browne v. State, 24 Wis.2d 491, 131 N.W.2d 169.

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An ample reading is given in: United States ex rel. Russo v. New Jersey, 351 F.2d 429 (C.A.3d Cir.); Wright v. Dickson, 336 F.2d 878 (C.A. 9th Cir.); People v. Dorado, 62 Cal.2d 338, 398 P.2d 361; State v. Dufour, \_\_\_ R.I. \_\_\_, 206 A.2d 82; State v. Neely, 239 Ore. 487, 395 P.2d 557, modified, 398 P.2d 482.

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The cases in both categories are those readily available; there are certainly many others.

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18. For instance, compare the requirements of the catalytic case of People v. Dorado, 62 Cal.2d 338, 398 P.2d 361, with those laid down today. See also Traynor, The Devils of Due Process in Criminal Detection, Detention, and Trial, 33 U.Chi.L.Rev. 657, 670.

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19. The Court's obiter dictum notwithstanding, ante p. 486, there is some basis for believing that the staple of FBI criminal work differs importantly from much crime within the ken of local police. The skill and resources of the FBI may also be unusual.

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20. For citations and discussion covering each of these points, see Developments, supra, n. 2, at 1091-1097, and Enker & Elsen, supra, n. 12, at 80 & n. 94.

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21. On comment, see Hardin, Other Answers: Search and Seizure, Coerced Confession, and Criminal Trial in Scotland, 113 U.Pa.L.Rev. 165, 181 and nn. 96-97 (1964). Other examples are less stringent search and seizure rules and no automatic exclusion for violation of them, id. at 167-169; guilt based on majority jury verdicts, id. at 185, and pretrial discovery of evidence on both sides, id. at 175.

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22. Of particular relevance is the ALI's drafting of a Model Code of Pre-Arraignment Procedure, now in its first tentative draft. While the ABA and National Commission studies have wider scope, the former is lending its advice to the ALI project and the executive director of the latter is one of the reporters for the Model Code.

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23. See brief for the United States in Westover, p. 45. The N.Y. Times, June 3, 1966, p. 41 (late city ed.) reported that the Ford Foundation has awarded $1,100,000 for a five-year study of arrests and confession in New York.

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24. The New York Assembly recently passed a bill to require certain warnings before an admissible confession is taken, though the rules are less strict than are the Court's. N.Y. Times, May 24, 1966, p. 35 (late city ed.).

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25. The Court waited 12 years after Wolf v. Colorado, 338 U.S. 25, declared privacy against improper state intrusions to be constitutionally safeguarded before it concluded, in Mapp v. Ohio, 367 U.S. 643, that adequate state remedies had not been provided to protect this interest, so the exclusionary rule was necessary.

WHITE, J., dissenting (Footnotes)

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1. Of course, the Court does not deny that it is departing from prior precedent; it expressly overrules Crooker and Cicenia, ante at 479, n. 48, and it acknowledges that, in the instant "cases, we might not find the defendants' statements to have been involuntary in traditional terms," ante at 457.

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2. In fact, the type of sustained interrogation described by the Court appears to be the exception, rather than the rule. A survey of 399 cases in one city found that, in almost half of the cases, the interrogation lasted less than 30 minutes. Barrett, Police Practices and the Law—From Arrest to Release or Charge, 50 Calif.L.Rev. 11, 41-45 (1962). Questioning tends to be confused and sporadic, and is usually concentrated on confrontations with witnesses or new items of evidence as these are obtained by officers conducting the investigation. See generally LaFave, Arrest: The Decision to Take a Suspect into Custody 386 (1965); ALI, A Model Code of Pre-Arraignment Procedure, Commentary § 5.01, at 170, n. 4 (Tent.Draft No. 1, 1966).

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3. By contrast, the Court indicates that, in applying this new rule, it "will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given." Ante at 468. The reason given is that assessment of the knowledge of the defendant based on information as to age, education, intelligence, or prior contact with authorities can never be more than speculation, while a warning is a clear-cut fact. But the officers' claim that they gave the requisite warnings may be disputed, and facts respecting the defendant's prior experience may be undisputed, and be of such a nature as to virtually preclude any doubt that the defendant knew of his rights. See United States v. Bolden, 355 F.2d 453 (C.A. 7th Cir.1965), petition for cert. pending, No. 1146, O.T. 1965 (Secret Service agent); People v. Du Bont, 235 Cal.App.2d 844, 45 Cal.Rptr. 717, pet. for cert. pending No. 1053, Misc., O.T. 1965 (former police officer).

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4. Precise statistics on the extent of recidivism are unavailable, in part because not all crimes are solved and in part because criminal records of convictions in different jurisdictions are not brought together by a central data collection agency. Beginning in 1963, however, the Federal Bureau of Investigation began collating data on "Careers in Crime," which it publishes in its Uniform Crime Reports. Of 92,869 offenders processed in 1963 and 1964, 76% had a prior arrest record on some charge. Over a period of 10 years, the group had accumulated 434,000 charges. FBI, Uniform Crime Reports—1964, 27-28. In 1963 and 1964, between 23% and 25% of all offenders sentenced in 88 federal district courts (excluding the District Court for the District of Columbia) whose criminal records were reported had previously been sentenced to a term of imprisonment of 13 months or more. Approximately an additional 40% had a prior record less than prison (juvenile record, probation record, etc.). Administrative Office of the United States Courts, Federal Offenders in the United States District Courts: 1964, x, 36 (hereinafter cited as Federal Offenders: 1964); Administrative Office of the United States Courts, Federal Offenders in the United States District Courts: 1963, 25-27 (hereinafter cited as Federal Offenders: 1963). During the same two years in the District Court for the District of Columbia, between 28% and 35% of those sentenced had prior prison records, and from 37% to 40% had a prior record less than prison. Federal Offenders: 1964, xii, 64, 66; Administrative Office of the United States Courts, Federal Offenders in the United States District Court for the District of Columbia: 1963, 8, 10 (hereinafter cited as District of Columbia Offenders: 1963).

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A similar picture is obtained if one looks at the subsequent records of those released from confinement. In 1964, 12.3% of persons on federal probation had their probation revoked because of the commission of major violations (defined as one in which the probationer has been committed to imprisonment for a period of 90 days or more, been placed on probation for over one year on a new offense, or has absconded with felony charges outstanding). Twenty-three and two-tenths percent of parolees and 16.9% of those who had been mandatorily released after service of a portion of their sentence likewise committed major violations. Reports of the Proceedings of the Judicial Conference of the United States and Annual Report of the Director of the Administrative Office of the United States Courts: 1965, 138. See also Mandel et al., Recidivism Studied and Defined, 56 J.Crim.L., C. & P. S. 59 (1965) (within five years of release, 62.33% of sample had committed offenses placing them in recidivist category).

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5. Eighty-eight federal district courts (excluding the District Court for the District of Columbia) disposed of the cases of 33,381 criminal defendants in 1964. Only 12.5% of those cases were actually tried. Of the remaining cases, 89.9% were terminated by convictions upon pleas of guilty and 10.1% were dismissed. Stated differently, approximately 90% of all convictions resulted from guilty pleas. Federal Offenders: 1964, supra, note 4, 3-6. In the District Court for the District of Columbia, a higher percentage, 27%, went to trial, and the defendant pleaded guilty in approximately 78% of the cases terminated prior to trial. Id. at 58-59. No reliable statistics are available concerning the percentage of cases in which guilty pleas are induced because of the existence of a confession or of physical evidence unearthed as a result of a confession. Undoubtedly the number of such cases is substantial.

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Perhaps of equal significance is the number of instances of known crimes which are not solved. In 1964, only 388,946, or 23.9%, of 1,626,574 serious known offenses were cleared. The clearance rate ranged from 89.8% for homicides to 18.7% for larceny. FBI, Uniform Crime Reports—1964, 20-22, 101. Those who would replace interrogation as an investigatorial tool by modern scientific investigation techniques significantly overestimate the effectiveness of present procedures, even when interrogation is included.

President Johnson's Address on Vietnam Before the National Legislative Conference, San Antonio, Texas, 1967

Title: President Johnson's Address on Vietnam Before the National Legislative Conference, San Antonio, Texas

Author: Lyndon B. Johnson

Date: September 29, 1967

Source: Public Papers of the Presidents, Johnson, 1967, pp.876-881

Public Papers of LBJ, 1967, p.876

Speaker Barnes, Governor Hughes, Governor Smith, Congressman Kazen, Representative Graham, most distinguished legislators, ladies and gentlemen:

Public Papers of LBJ, 1967, p.876

I deeply appreciate this opportunity to appear before an organization whose members contribute every day such important work to the public affairs of our State and of our country.

Public Papers of LBJ, 1967, p.876

This evening I came here to speak to you about Vietnam.

Public Papers of LBJ, 1967, p.876

I do not have to tell you that our people are profoundly concerned about that struggle.

Public Papers of LBJ, 1967, p.876

There are passionate convictions about the wisest course for our Nation to follow. There are many sincere and patriotic Americans who harbor doubts about sustaining the commitment that three Presidents and a half a million of our young men have made.

Public Papers of LBJ, 1967, p.876

Doubt and debate are enlarged because the problems of Vietnam are quite complex. They are a mixture of political turmoil-of poverty—of religious and factional strife-of ancient servitude and modern longing for freedom. Vietnam is all of these things.

Public Papers of LBJ, 1967, p.876

Vietnam is also the scene of a powerful aggression that is spurred by an appetite for conquest.

Public Papers of LBJ, 1967, p.876

It is the arena where Communist expansionism is most aggressively at work in the world today—where it is crossing international frontiers in violation of international agreements; where it is killing and kidnaping; where it is ruthlessly attempting to bend free people to its will.

Public Papers of LBJ, 1967, p.876

Into this mixture of subversion and war, of terror and hope, America has entered-with its material power and with its moral commitment. Why?

Public Papers of LBJ, 1967, p.876

Why should three Presidents and the elected representatives of our people have chosen to defend this Asian nation more than 10,000 miles from American shores?

Public Papers of LBJ, 1967, p.876

We cherish freedom—yes. We cherish self-determination for all people—yes. We abhor the political murder of any state by another, and the bodily murder of any people by gangsters of whatever ideology. And for 27 years—since the days of lend-lease—we have sought to strengthen free people against domination by aggressive foreign powers.

Public Papers of LBJ, 1967, p.876

But the key to all that we have done is really our own security. At times of crisis-before asking Americans to fight and die to resist aggression in a foreign land—every American President has finally had to answer this question:

Public Papers of LBJ, 1967, p.876

Is the aggression a threat—not only to the immediate victim—but to the United States of America and to the peace and security of the entire world of which we in America are a very vital part?

Public Papers of LBJ, 1967, p.876

That is the question which Dwight Eisenhower and John Kennedy and Lyndon Johnson had to answer in facing the issue in Vietnam.

Public Papers of LBJ, 1967, p.877

That is the question that the Senate of the United States answered by a vote of 82 to 1 when it ratified and approved the SEATO treaty in 1955, and to which the Members of the United States Congress responded in a resolution that it passed in 1964 by a vote of 504 to 2, "…the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom."

Public Papers of LBJ, 1967, p.877

Those who tell us now that we should abandon our commitment—that securing South Vietnam from armed domination is not worth the price we are paying—must also answer this question. And the test they must meet is this: What would be the consequences of letting armed aggression against South Vietnam succeed? What would follow in the time ahead? What kind of world are they prepared to live in 5 months or 5 years from tonight?

Public Papers of LBJ, 1967, p.877

For those who have borne the responsibility for decision during these past m years, the stakes to us have seemed clear—and have seemed high.

Public Papers of LBJ, 1967, p.877

President Dwight Eisenhower said in 1959:

Public Papers of LBJ, 1967, p.877

"Strategically, South Vietnam's capture by the Communists would bring their power several hundred miles into a hitherto free region. The remaining countries in Southeast Asia would be menaced by a great flanking movement. The freedom of 12 million people would be lost immediately, and that of 150 million in adjacent lands would be seriously endangered. The loss of South Vietnam would set in motion a crumbling process that could, as it progressed, have grave consequences for us and for freedom…. "

Public Papers of LBJ, 1967, p.877

And President John F. Kennedy said in 1962:

Public Papers of LBJ, 1967, p.877

"…withdrawal in the case of Vietnam and the case of Thailand might mean a cob lapse of the entire area."

Public Papers of LBJ, 1967, p.877

A year later, he reaffirmed that:

Public Papers of LBJ, 1967, p.877

"We are not going to withdraw from that effort. In my opinion, for us to withdraw from that effort would mean a collapse not only of South Vietnam, but Southeast Asia. So we are going to stay there," said President Kennedy.

Public Papers of LBJ, 1967, p.877

This is not simply an American viewpoint, I would have you legislative leaders know. I am going to call the roll now of those who live in that part of the world—in the great arc of Asian and Pacific nations—and who bear the responsibility for leading their people, and the responsibility for the fate of their people.

Public Papers of LBJ, 1967, p.877

The President of the Philippines had this to say:

Public Papers of LBJ, 1967, p.877

"Vietnam is the focus of attention now…. It may happen to Thailand or the Philippines, or anywhere, wherever there is misery, disease, ignorance…. For you to renounce your position of leadership in Asia is to allow the Red Chinese to gobble up all of Asia."

Public Papers of LBJ, 1967, p.877

The Foreign Minister of Thailand said:

Public Papers of LBJ, 1967, p.877

"(The American) decision will go down in history as the move that prevented the world from having to face another major conflagration."

Public Papers of LBJ, 1967, p.877

The Prime Minister of Australia said:

Public Papers of LBJ, 1967, p.877

"We are there because while Communist aggression persists the whole of Southeast Asia is threatened."

Public Papers of LBJ, 1967, p.877

President Park of Korea said:

Public Papers of LBJ, 1967, p.877–p.878

"For the first time in our history, we decided to dispatch our combat troops overseas…because in our belief any aggression against the Republic of Vietnam represented a direct and grave menace against the security and peace of free Asia, and therefore directly jeopardized the very security and [p.878] freedom of our own people."

Public Papers of LBJ, 1967, p.878

The Prime Minister of Malaysia warned his people that if the United States pulled out of South Vietnam, it would go to the Communists, and after that, it would be only a matter of time until they moved against neighboring states.

Public Papers of LBJ, 1967, p.878

The Prime Minister of New Zealand said: "We can thank God that America at least regards aggression in Asia with the same concern as it regards aggression in Europe—and is prepared to back up its concern with action."

Public Papers of LBJ, 1967, p.878

The Prime Minister of Singapore said:

Public Papers of LBJ, 1967, p.878

"I feel the fate of Asia—South and Southeast Asia—will be decided in the next few years by what happens in Vietnam."

Public Papers of LBJ, 1967, p.878

I cannot tell you tonight as your President-with certainty—that a Communist conquest of South Vietnam would be followed by a Communist conquest of Southeast Asia. But I do know there are North Vietnamese troops in Laos. I do know that there are North Vietnamese trained guerrillas tonight in northeast Thailand. I do know that there are Communist-supported guerrilla forces operating in Burma. And a Communist coup was barely averted in Indonesia, the fifth largest nation in the world.

Public Papers of LBJ, 1967, p.878

So your American President cannot tell you—with certainty—that a Southeast Asia dominated by Communist .power would bring a third world war much closer to terrible reality. One could hope that this would not be so.

Public Papers of LBJ, 1967, p.878

But all that we have learned in this tragic century strongly suggests to me that it would be so. As President of the United States, I am not prepared to gamble on the chance that it is not so. I am not prepared to risk the security—indeed, the survival—of this American Nation on mere hope and wishful thinking. I am convinced that by seeing this struggle through now, we are greatly reducing the chances of a much larger war—perhaps a nuclear war. I would rather stand in Vietnam, in our time, and by meeting this danger now, and facing up to it, thereby reduce the danger for our children and for our grandchildren.

Public Papers of LBJ, 1967, p.878

I want to turn now to the struggle in Vietnam itself.

Public Papers of LBJ, 1967, p.878

There are questions about this difficult war that must trouble every really thoughtful person. I am going to put some of these questions. And I am going to give you the very best answers that I can give you.

Public Papers of LBJ, 1967, p.878

First, are the Vietnamese—with our help, and that of their other allies—really making any progress? Is there a forward movement? The reports I see make it clear that there is. Certainly there is a positive movement toward constitutional government. Thus far the Vietnamese have met the political schedule that they laid down in January 1966.

Public Papers of LBJ, 1967, p.878

The people wanted an elected, responsive government. They wanted it strongly enough to brave a vicious campaign of Communist terror and assassination to vote for it. It has been said that they killed more civilians in 4 weeks trying to keep them from voting before the election than our American bombers have killed in the big cities of North Vietnam in bombing military targets.

Public Papers of LBJ, 1967, p.878

On November 1, subject to the action, of course, of the Constituent Assembly, an elected government will be inaugurated and an elected Senate and Legislature will be installed. Their responsibility is clear: To answer the desires of the South Vietnamese people for self-determination and for peace, for an attack on corruption, for economic development, and for social justice.

Public Papers of LBJ, 1967, p.878–p.879

There is progress in the war itself, steady progress considering the war that we are fighting; rather dramatic progress considering the situation that actually prevailed when we sent our troops there in 1965; when we [p.879] intervened to prevent the dismemberment of the country by the Vietcong and the North Vietnamese.

Public Papers of LBJ, 1967, p.879

The campaigns of the last year drove the enemy from many of their major interior bases. The military victory almost within Hanoi's grasp in 1965 has now been denied them. The grip of the Vietcong on the people is being broken.

Public Papers of LBJ, 1967, p.879

Since our commitment of major forces in July 1965 the proportion of the population living under Communist control has been reduced to well under 20 percent. Tonight the secure proportion of the population has grown from about 45 percent to 65 percent-and in the contested areas, the tide continues to run with us.

Public Papers of LBJ, 1967, p.879

But the struggle remains hard. The South Vietnamese have suffered severely, as have we—particularly in the First Corps area in the north, where the enemy has mounted his heaviest attacks, and where his lines of communication to North Vietnam are shortest. Our casualties in the war have reached about 13,500 killed in action, and about 85,000 wounded. Of those 85,000 wounded, we thank God that 79,000 of the 85,000 have been returned, or will return to duty shortly. Thanks to our great American medical science and the helicopter.

Public Papers of LBJ, 1967, p.879

I know there are other questions on your minds, and on the minds of many sincere, troubled Americans: "Why not negotiate now?" so many ask me. The answer is that we and our South Vietnamese allies are wholly prepared to negotiate tonight.

Public Papers of LBJ, 1967, p.879

I am ready to talk with Ho Chi Minh, and other chiefs of state concerned, tomorrow.

Public Papers of LBJ, 1967, p.879

I am ready to have Secretary Rusk meet with their foreign minister tomorrow.

Public Papers of LBJ, 1967, p.879

I am ready to send a trusted representative of America to any spot on this earth to talk in public or private with a spokesman of Hanoi.

Public Papers of LBJ, 1967, p.879

We have twice sought to have the issue of Vietnam dealt with by the United Nations-and twice Hanoi has refused.

Public Papers of LBJ, 1967, p.879

Our desire to negotiate peace—through the United Nations or out—has been made very, very clear to Hanoi—directly and many times through third parties.

Public Papers of LBJ, 1967, p.879

As we have told Hanoi time and time and time again, the heart of the matter is really this: The United States is willing to stop all aerial and naval bombardment of North Vietnam when this will lead promptly to productive discussions. We, of course, assume that while discussions proceed, North Vietnam would not take advantage of the bombing cessation or limitation.

Public Papers of LBJ, 1967, p.879

But Hanoi has not accepted any of these proposals.

Public Papers of LBJ, 1967, p.879

So it is by Hanoi's choice—and not ours, and not the rest of the world's—that the war continues.

Public Papers of LBJ, 1967, p.879

Why, in the face of military and political progress in the South, and the burden of our bombing in the North, do they insist and persist with the war?

Public Papers of LBJ, 1967, p.879

From many sources the answer is the same. They still hope that the people of the United States will not see this struggle through to the very end. As one Western diplomat reported to me only this week-he had just been in Hanoi—"They believe their staying power is greater than ours and that they can't lose." A visitor from a Communist capital had this to say: "They expect the war to be long, and that the Americans in the end will be defeated by a breakdown in morale, fatigue, and psychological factors." The Premier of North Vietnam said as far back as 1962: "Americans do not like long, inconclusive war…. Thus we are sure to win in the end."

Public Papers of LBJ, 1967, p.879

Are the North Vietnamese right about us?

Public Papers of LBJ, 1967, p.879–p.880

I think not. No. I think they are wrong. I think it is the common failing of totalitarian [p.880] regimes that they cannot really understand the nature of our democracy:

—They mistake dissent for disloyalty.

—They mistake restlessness for a rejection of policy.

—They mistake a few committees for a country.

—They misjudge individual speeches for public policy.

Public Papers of LBJ, 1967, p.880

They are no better suited to judge the strength and perseverance of America than the Nazi and the Stalinist propagandists were able to judge it. It is a tragedy that they must discover these qualities in the American people, and discover them through a bloody war.

Public Papers of LBJ, 1967, p.880

And, soon or late, they will discover them. In the meantime, it shall be our policy to continue to seek negotiations—confident that reason will some day prevail; that Hanoi will realize that it just can never win; that it will turn away from fighting and start building for its own people.

Public Papers of LBJ, 1967, p.880

Since World War II, this Nation has met and has mastered many challenges—challenges in Greece and Turkey, in Berlin, in Korea, in Cuba.

Public Papers of LBJ, 1967, p.880

We met them because brave men were willing to risk their lives for their nation's security. And braver men have never lived than those who carry our colors in Vietnam at this very hour.

Public Papers of LBJ, 1967, p.880

The price of these efforts, of course, has been heavy. But the price of not having made them at all, not having seen them through, in my judgment would have been vastly greater.

Public Papers of LBJ, 1967, p.880

Our goal has been the same—in Europe, in Asia, in our own hemisphere. It has been—and it is now—peace.

Public Papers of LBJ, 1967, p.880

And peace cannot be secured by wishes; peace cannot be preserved by noble words and pure intentions. "Enduring peace," Franklin D. Roosevelt said, "cannot be bought at the cost of other people's freedom."

Public Papers of LBJ, 1967, p.880

The late President Kennedy put it precisely in November 1961, when he said: "We are neither warmongers nor appeasers, neither hard nor soft. We are Americans determined to defend the frontiers of freedom by an honorable peace if peace is possible but by arms if arms are used against us."

Public Papers of LBJ, 1967, p.880

The true peace-keepers in the world tonight are not those who urge us to retire from the field in Vietnam—who tell us to try to find the quickest, cheapest exit from that tormented land, no matter what the consequences to us may be.

Public Papers of LBJ, 1967, p.880

The true peace-keepers are those men who stand out there on the DMZ at this very hour, taking the worst that the enemy can give. The true peace-keepers are the soldiers who are breaking the terrorist's grip around the villages of Vietnam—the civilians who are bringing medical care and food and education to people who have already suffered a generation of war.

Public Papers of LBJ, 1967, p.880

And so I report to you that we are going to continue to press forward. Two things we must do. Two things we shall do.

Public Papers of LBJ, 1967, p.880

First, we must not mislead the enemy. Let him not think that debate and dissent will produce wavering and withdrawal. For I can assure you they won't. Let him not think that protests will produce surrender. Because they won't. Let him not think that he will wait us out. For he won't.

Public Papers of LBJ, 1967, p.880

Second, we will provide all that our brave men require to do the job that must be done. And that job is going to be done.

Public Papers of LBJ, 1967, p.880

These gallant men have our prayers-have our thanks—have our heart-felt praise-and our deepest gratitude.

Public Papers of LBJ, 1967, p.880–p.881

Let the world know that the keepers of [p.881] peace will endure through every trial—and that with the full backing of their countrymen, they are going to prevail.

Public Papers of LBJ, 1967, p.881

NOTE: The President spoke at 8:34 p.m. at the Villita Assembly Hall in San Antonio, Texas, before a group of 2,000 delegates to the National Legislative Conference, conducted by the Council of State Governments. In his opening words he referred to Ben Barnes, Speaker of the Texas House of Representatives, Governor Harold E. Hughes of Iowa, Lieutenant Governor Preston Smith of Texas, Representative Abraham Kazen, Jr., of Texas, and Thomas Graham, member of the Missouri House of Representatives. The address was broadcast nationally.

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Following the President's address, Mrs. Johnson spoke briefly. The text of her remarks was released by the White House Press Office.

Afroyim v. Rusk, 1967

Title: Afroyim v. Rusk

Author: U.S. Supreme Court

Date: May 29, 1967

Source: 387 U.S. 253

This case was argued February 20, 1967, and was decided May 29, 1967.

CERTIORARI TO THE UNITED STATES COURT OF APPEAL

FOR THE SECOND CIRCUIT

Syllabus

1967, Afroyim v. Rusk, 387 U.S. 253

Petitioner, of Polish birth, became a naturalized American citizen in 1926. He went to Israel in 1950, and in 1951 voted in an Israeli legislative election. The State Department subsequently refused to renew his passport, maintaining that petitioner had lost his citizenship by virtue of § 401(e) of the Nationality Act of 1940 which provides that a United States citizen shall "lose" his citizenship if he votes in a foreign political election. Petitioner then brought this declaratory judgment action alleging the unconstitutionality of § 401(e). On the basis of Perez v. Brownell, 356 U.S. 44, the District Court and Court of Appeals held that Congress, under its implied power to regulate foreign affairs, can strip an American citizen of his citizenship.

1967, Afroyim v. Rusk, 387 U.S. 253

Held: Congress has no power under the Constitution to divest a person of his United States citizenship absent his voluntary renunciation thereof. Perez v. Brownell, supra, overruled. Pp. 256-268.

1967, Afroyim v. Rusk, 387 U.S. 253

(a) Congress has no express power under the Constitution to strip a person of citizenship, and no such power can be sustained as an implied attribute of sovereignty, as was recognized by Congress before the passage of the Fourteenth Amendment, and a mature and well considered dictum in Osborn v. Bank of the United States, 9 Wheat. 738, 827, is to the same effect. Pp. 257-261.

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(b) The Fourteenth Amendment's provision that "All persons born or naturalized in the United States…are citizens of the United States…" completely controls the status of citizenship, and prevents the cancellation of petitioner's citizenship. Pp. 262-268.

1967, Afroyim v. Rusk, 387 U.S. 253

361 F.2d 102, reversed. [387 U.S. 254]

BLACK, J., lead opinion

1967, Afroyim v. Rusk, 387 U.S. 254

MR. JUSTICE BLACK delivered the opinion of the Court.

1967, Afroyim v. Rusk, 387 U.S. 254

Petitioner, born in Poland in 1893, immigrated to this country in 1912 and became a naturalized American citizen in 1926. He went to Israel in 1950, and in 1951, he voluntarily voted in an election for the Israeli Knesset, the legislative body of Israel. In 1960, when he applied for renewal of his United States passport, the Department of State refused to grant it on the sole ground that he had lost his American citizenship by virtue of § 401(e) of the Nationality Act of 1940, which provides that a United States citizen shall "lose" his citizenship if he votes "in a political election in a foreign state." 1 Petitioner then brought this declaratory judgment action in federal district court alleging that § 401(e) violates both the Due Process Clause of the Fifth Amendment and § 1, cl. 1, of the Fourteenth Amendment, 2 which grants American citizenship to persons like petitioner. Because neither the Fourteenth Amendment nor any other provision of the Constitution expressly grants Congress the power to [387 U.S. 255] take away that citizenship once it has been acquired, petitioner contended that the only way he could lose his citizenship was by his own voluntary renunciation of it. Since the Government took the position that § 401(e) empowers it to terminate citizenship without the citizen's voluntary renunciation, petitioner argued that this section is prohibited by the Constitution. The District Court and the Court of Appeals, rejecting this argument, held that Congress has constitutional authority forcibly to take away citizenship for voting in a foreign country based on its implied power to regulate foreign affairs. Consequently, petitioner was held to have lost his American citizenship regardless of his intention not to give it up. This is precisely what this Court held in Perez v. Brownell, 356 U.S. 44.

1967, Afroyim v. Rusk, 387 U.S. 255

Petitioner, relying on the same contentions about voluntary renunciation of citizenship which this Court rejected in upholding § 401(e) in Perez, urges us to reconsider that case, adopt the view of the minority there, and overrule it. That case, decided by a 5-4 vote almost 10 years ago, has been a source of controversy and confusion ever since, as was emphatically recognized in the opinions of all the judges who participated in this case below. 3 Moreover, in the other cases decided with 4 and since 5 Perez, this Court has consistently invalidated on a case-by-case basis various other statutory sections providing for involuntary expatriation. It has done so on various grounds, and has refused to hold that citizens can be expatriated without their voluntary renunciation of [387 U.S. 256] citizenship. These cases, as well as many commentators, 6 have cast great doubt upon the soundness of Perez. Under these circumstances, we granted certiorari to reconsider it, 385 U.S. 917. In view of the many recent opinions and dissents comprehensively discussing all the issues involved, 7 we deem it unnecessary to treat this subject at great length.

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The fundamental issue before this Court here, as it was in Perez, is whether Congress can, consistently with the Fourteenth Amendment, enact a law stripping an American of his citizenship which he has never voluntarily renounced or given up. The majority in Perez held that Congress could do this because withdrawal of citizenship is "reasonably calculated to effect the end that is within the power of Congress to achieve." 356 U.S. at 60. That conclusion was reached by this chain of reasoning: Congress has an implied power to deal with foreign affairs as an indispensable attribute of sovereignty; this implied power, plus the Necessary and Proper Clause, empowers Congress to regulate voting by American citizens in foreign elections; involuntary expatriation is within the "ample scope" of "appropriate modes" Congress can adopt to effectuate its general regulatory power. Id. at [387 U.S. 257] 57-60. Then, upon summarily concluding that

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there is nothing in the…Fourteenth Amendment to warrant drawing from it a restriction upon the power otherwise possessed by Congress to withdraw citizenship,

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id. at 58, n. 3, the majority specifically rejected the "notion that the power of Congress to terminate citizenship depends upon the citizen's assent," id. at 61.

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First, we reject the idea expressed in Perez that, aside from the Fourteenth Amendment, Congress has any general power, express or implied, to take away an American citizen's citizenship without his assent. This power cannot, as Perez indicated, be sustained as an implied attribute of sovereignty possessed by all nations. Other nations are governed by their own constitutions, if any, and we can draw no support from theirs. In our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship. Our Constitution governs us and we must never forget that our Constitution limits the Government to those powers specifically granted or those that are necessary and proper to carry out the specifically granted ones. The Constitution, of course, grants Congress no express power to strip people of their citizenship, whether, in the exercise of the implied power to regulate foreign affairs or in the exercise of any specifically granted power. And even before the adoption of the Fourteenth Amendment, views were expressed in Congress and by this Court that, under the Constitution the Government was granted no power, even under its express power to pass a uniform rule of naturalization, to determine what conduct should and should not result in the loss of citizenship. On three occasions, in 1794, 1797, and 1818, Congress considered and rejected proposals to enact laws which would describe certain conduct as resulting in expatriation. 8 On each occasion [387 U.S. 258] Congress was considering bills that were concerned with recognizing the right of voluntary expatriation and with providing some means of exercising that right. In 1794 and 1797, many members of Congress still adhered to the English doctrine of perpetual allegiance and doubted whether a citizen could even voluntarily renounce his citizenship. 9 By 1818, however, almost no one doubted the existence of the right of voluntary expatriation, but several judicial decisions had indicated that the right could not be exercised by the citizen without the consent of the Federal Government in the form of enabling legislation. 10 Therefore, a bill was introduced to provide that a person could voluntarily relinquish his citizenship by declaring such relinquishment in writing before a district court and then departing from the country. 11 The opponents of the bill argued that Congress had no constitutional authority, either express or implied, under either the Naturalization Clause or the Necessary and Proper Clause, to provide that a certain act would constitute expatriation. 12 They pointed to a proposed Thirteenth [387 U.S. 259] Amendment, subsequently not ratified, which would have provided that a person would lose his citizenship by accepting an office or emolument from a foreign government. 13 Congressman Anderson of Kentucky argued:

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The introduction of this article declares the opinion…that Congress could not declare the acts which should amount to a renunciation of citizenship; otherwise there would have been no necessity for this last resort. When it was settled that Congress could not declare that the acceptance of a pension or an office from a foreign Emperor amounted to a disfranchisement of the citizen, it must surely be conceded that they could not declare that any other act did. The cases to which their powers before this amendment confessedly did not extend are very strong, and induce a belief that Congress could not in any case declare the acts which should cause "a person to cease to be a citizen." The want of power in a case like this, where the individual has given the strongest evidence of attachment to a foreign potentate and an entire renunciation of the feelings and principles of an American citizen, certainly establishes the absence of all power to pass a bill like the present one. Although the intention with which it was introduced, and the title of the bill declare that it is to insure and foster the right of the citizen, the direct and inevitable effect of the bill, is an assumption of power by Congress to declare that certain acts when committed shall amount to a renunciation of citizenship.

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31 Annals of Cong. 1038-1039 (1818). [387 U.S. 260] Congressman Pindall of Virginia rejected the notion, later accepted by the majority in Perez, that the nature of sovereignty gives Congress a right to expatriate citizens:

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[A]llegiance imports an obligation on the citizen or subject, the correlative right to which resides in the sovereign power: allegiance in this country is not due to Congress, but to the people, with whom the sovereign power is found; it is, therefore, by the people only that any alteration can be made of the existing institutions with respect to allegiance.

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Id. at 1045. Although he recognized that the bill merely sought to provide a means of voluntary expatriation, Congressman Lowndes of South Carolina argued:

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But, if the Constitution had intended to give to Congress so delicate a power, it would have been expressly granted. That it was a delicate power, and ought not to be loosely inferred,…appeared in a strong light, when it was said, and could not be denied, that to determine the manner in which a citizen may relinquish his right of citizenship, is equivalent to determining how he shall be divested of that right. The effect of assuming the exercise of these powers will be, that, by acts of Congress a man may not only be released from all the liabilities, but from all the privileges of a citizen. If you pass this bill,…you have only one step further to go, and say that such and such acts shall be considered as presumption of the intention of the citizen to expatriate, and thus take from him the privileges of a citizen…. [Q]uestions affecting the right of the citizen were questions to be regulated, not by the laws of the General or State Governments, but by Constitutional provisions. If there was anything [387 U.S. 261] essential to our notion of a Constitution,…it was this: that, while the employment of the physical force of the country is in the hands of the Legislature, those rules which determine what constitutes the rights of the citizen, shall be a matter of Constitutional provision.

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Id. at 1050-1051. The bill was finally defeated. 14 It is in this setting that six years later, in Osborn v. Bank of the United States, 9 Wheat. 738, 827, this Court, speaking through Chief Justice Marshall, declared in what appears to be a mature and well considered dictum that Congress, once a person becomes a citizen, cannot deprive him of that status:

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[The naturalized citizen] becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the constitution, on the footing of a native. The constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national Legislature, is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual.

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Although these legislative and judicial statements may be regarded as inconclusive and must be considered in the historical context in which they were made, 15 any doubt [387 U.S. 262] as to whether prior to the passage of the Fourteenth Amendment Congress had the power to deprive a person against his will of citizenship, once obtained, should have been removed by the unequivocal terms of the Amendment itself. It provides its own constitutional rule in language calculated completely to control the status of citizenship: "All persons born or naturalized in the United States…are citizens of the United States…. " There is no indication in these words of a fleeting citizenship, good at the moment it is acquired but subject to destruction by the Government at any time. Rather the Amendment can most reasonably be read as defining a citizenship which a citizen keeps unless he voluntarily relinquishes it. Once acquired, this Fourteenth Amendment citizenship was not to be shifted, canceled, or diluted at the will of the Federal Government, the States, or any other governmental unit.

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It is true that the chief interest of the people in giving permanence and security to citizenship in the Fourteenth Amendment was the desire to protect Negroes. The Dred Scott decision, 19 How. 393, had shortly before greatly disturbed many people about the status of Negro citizenship. But the Civil Rights Act of 1866, 14 Stat. 27, had already attempted to confer citizenship on all persons born or naturalized in the United States. Nevertheless, when the Fourteenth Amendment passed the House without containing any definition of citizenship, the sponsors of the Amendment in the Senate insisted on inserting a constitutional definition and grant of citizenship. They expressed fears that the citizenship so recently conferred on Negroes by the Civil Rights Act could be just as easily taken away from them by subsequent Congresses, and it was to provide an insuperable obstacle against every governmental effort to strip Negroes of their newly acquired citizenship that the first clause was added to the Fourteenth Amendment. 16 [387 U.S. 263] Senator Howard, who sponsored the Amendment in the Senate, thus explained the purpose of the clause:

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It settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States…. We desired to put this question of citizenship and the rights of citizens…under the civil rights bill beyond the legislative power….

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Cong.Globe, 39th Cong., 1st Sess., 2890, 2896 (1866).

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This undeniable purpose of the Fourteenth Amendment to make citizenship of Negroes permanent and secure would be frustrated by holding that the Government can rob a citizen of his citizenship without his consent by simply proceeding to act under an implied general power to regulate foreign affairs or some other power generally granted. Though the framers of the Amendment were not particularly concerned with the problem of expatriation, it seems undeniable from the language they used that they wanted to put citizenship beyond the power of any governmental unit to destroy. In 1868, two years after the Fourteenth Amendment had been proposed, Congress specifically considered the subject of expatriation. Several bills were introduced to impose involuntary expatriation on citizens who committed certain acts. 17 With little [387 U.S. 264] discussion, these proposals were defeated. Other bills, like the one proposed but defeated in 1818, provided merely a means by which the citizen could himself voluntarily renounce his citizenship. 18 Representative Van Trump of Ohio, who proposed such a bill, vehemently denied in supporting it that his measure would make the Government

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a party to the act dissolving the tie between the citizen and his country…where the statute simply prescribes the manner in which the citizen shall proceed to perpetuate the evidence of his intention, or election, to renounce his citizenship by expatriation.

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Cong.Globe, 40th Cong., 2d Sess., 1804 (1868). He insisted that "inasmuch as the act of expatriation depends almost entirely upon a question of intention on the part of the citizen," id. at 1801,

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the true question is, that not only the right of expatriation, but the whole power of its exercise, rests solely and exclusively in the will of the individual,

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id. at 1804. 19 In strongest of terms, not contradicted by any during the debates, he concluded:

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To enforce expatriation or exile against a citizen without his consent is not a power anywhere belonging to this Government. No conservative-minded [387 U.S. 265] statesman, no intelligent legislator, no sound lawyer has ever maintained any such power in any branch of the Government. The lawless precedents created in the delirium of war…of sending men by force into exile, as a punishment for political opinion, were violations of this great law…of the Constitution…. The men who debated the question in 1818 failed to see the true distinction…. They failed to comprehend that it is not the Government, but that it is the individual, who has the right and the only power of expatriation…. [I]t belongs and appertains to the citizen, and not to the Government, and it is the evidence of his election to exercise his right, and not the power to control either the election or the right itself, which is the legitimate subject matter of legislation. There has been, and there can be, no legislation under our Constitution to control in any manner the right itself.

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Ibid. But even Van Trump's proposal, which went no further than to provide a means of evidencing a citizen's intent to renounce his citizenship, was defeated. 20 The Act, [387 U.S. 266] as finally passed, merely recognized the "right of expatriation" as an inherent right of all people. 21

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The entire legislative history of the 1868 Act makes it abundantly clear that there was a strong feeling in the Congress that the only way the citizenship it conferred could be lost was by the voluntary renunciation or abandonment by the citizen himself. And this was the unequivocal statement of the Court in the case of United States v. Wong Kim Ark, 169 U.S. 649. The issues in that case were whether a person born in the United States to Chinese aliens was a citizen of the United States and whether, nevertheless, he could be excluded under the Chinese Exclusion Act, 22 Stat. 58. The Court first held that, within the terms of the Fourteenth Amendment, Wong Kim Ark was a citizen of the United States, and then pointed out that, though he might "renounce this citizenship, and become a citizen of…any other country," he had never done so. Id. at 704-705. The Court then held 22 that Congress could not do anything to abridge or affect his citizenship conferred by the Fourteenth Amendment. Quoting Chief Justice Marshall's well considered and oft-repeated dictum in Osborn to the effect that Congress, under the power of naturalization, has "a power to confer citizenship, not a power to take it away," the Court said:

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Congress having no power to abridge the rights conferred by the Constitution upon those who have become naturalized citizens by virtue of acts of Congress, a fortiori no act…of Congress…[387 U.S. 267] can affect citizenship acquired as a birthright, by virtue of the Constitution itself…. The Fourteenth Amendment, while it leaves the power where it was before, in Congress, to regulate naturalization, has conferred no authority upon Congress to restrict the effect of birth, declared by the Constitution to constitute a sufficient and complete right to citizenship.

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Id. at 703.

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To uphold Congress' power to take away a man's citizenship because he voted in a foreign election in violation of § 401(e) would be equivalent to holding that Congress has the power to "abridge," "affect," "restrict the effect of," and "take…away" citizenship. Because the Fourteenth Amendment prevents Congress from doing any of these things, we agree with THE CHIEF JUSTICE's dissent in the Perez case that the Government is without power to rob a citizen of his citizenship under § 401(e). 23

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Because the legislative history of the Fourteenth Amendment, and of the expatriation proposals which preceded and followed it, like most other legislative history, contains many statements from which conflicting inferences can be drawn, our holding might be unwarranted if it rested entirely or principally upon that legislative history. But it does not. Our holding, we think, is the only one that can stand in view of the language and the purpose of the Fourteenth Amendment, and our construction of that Amendment, we believe, comports more nearly than Perez with the principles of liberty and equal justice to all that the entire Fourteenth Amendment was adopted to guarantee. Citizenship is no light trifle [387 U.S. 268] to be jeopardized any moment Congress decides to do so under the name of one of its general or implied grants of power. In some instances, loss of citizenship can mean that a man is left without the protection of citizenship in any country in the world—as a man without a country. Citizenship in this Nation is a part of a cooperative affair. Its citizenry is the country, and the country is its citizenry. The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship. We hold that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.

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Perez v. Brownell is overruled. The judgment is

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Reversed.

HARLAN, J., dissenting

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MR. JUSTICE HARLAN, whom MR. JUSTICE CLARK, MR. JUSTICE STEWART, and MR. JUSTICE WHITE join, dissenting.

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Almost 10 years ago, in Perez v. Brownell, 356 U.S. 44, the Court upheld the constitutionality of § 401(e) of the Nationality Act of 1940, 54 Stat. 1169. The section deprives of his nationality any citizen who has voted in a foreign political election. The Court reasoned that Congress derived from its power to regulate foreign affairs authority to expatriate any citizen who intentionally commits acts which may be prejudicial to the foreign relations of the United States, and which reasonably may be deemed to indicate a dilution of his allegiance to this country. Congress, it was held, could appropriately consider [387 U.S. 269] purposeful voting in a foreign political election to be such an act.

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The Court today overrules Perez, and declares § 401(e) unconstitutional, by a remarkable process of circumlocution. First, the Court fails almost entirely to dispute the reasoning in Perez; it is essentially content with the conclusory and quite unsubstantiated assertion that Congress is without "any general power, express or implied," to expatriate a citizen "without his assent." 1 Next, the Court embarks upon a lengthy, albeit incomplete, survey of the historical background of the congressional power at stake here, and yet, at the end, concedes that the history is susceptible of "conflicting inferences." The Court acknowledges that its conclusions might not be warranted by that history alone, and disclaims that the decision today relies, even "principally," upon it. Finally, the Court declares that its result is bottomed upon the "language [387 U.S. 270] and the purpose" of the Citizenship Clause of the Fourteenth Amendment; in explanation, the Court offers only the terms of the clause itself, the contention that any other result would be "completely incongruous," and the essentially arcane observation that the "citizenry is the country and the country is its citizenry."

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I can find nothing in this extraordinary series of circumventions which permits, still less compels, the imposition of this constitutional constraint upon the authority of Congress. I must respectfully dissent.

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There is no need here to rehearse Mr. Justice Frankfurter's opinion for the Court in Perez; it then proved and still proves to my satisfaction that § 401(e) is within the power of Congress. 2 It suffices simply to supplement Perez with an examination of the historical evidence which the Court in part recites, and which provides the only apparent basis for many of the Court's conclusions. As will be seen, the available historical evidence is not only inadequate to support the Court's abandonment of Perez, but, with due regard for the [387 U.S. 271] restraints that should surround the judicial invalidation of an Act of Congress, even seems to confirm Perez' soundness.

I

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Not much evidence is available from the period prior to the adoption of the Fourteenth Amendment through which the then-prevailing attitudes on these constitutional questions can now be determined. The questions pertinent here were only tangentially debated; controversy centered instead upon the wider issues of whether a citizen might under any circumstances renounce his citizenship, and, if he might, whether that right should be conditioned upon any formal prerequisites. 3 Even the discussion of these issues was seriously clouded by the widely accepted view that authority to regulate the incidents of citizenship had been retained, at least in part, by the several States. 4 It should therefore be remembered that the evidence which is now available may not necessarily represent any carefully considered, still less prevailing, viewpoint upon the present issues.

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Measured even within these limitations, the Court's evidence for this period is remarkably inconclusive; the Court relies simply upon the rejection by Congress of [387 U.S. 272] legislation proposed in 1794, 1797, and 1818, and upon an isolated dictum from the opinion of Chief Justice Marshall in Osborn v. Bank of the United States, 9 Wheat. 738. This, as will appear, is entirely inadequate to support the Court's conclusion, particularly in light of other and more pertinent evidence which the Court does not notice.

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The expatriation of unwilling citizens was apparently first discussed in the lengthy congressional debates of 1794 and 1795, which culminated eventually in the Uniform Naturalization Act of 1795. 5 1 Stat. 414. Little contained in those debates is pertinent here. The present question was considered only in connection with an amendment, offered by Congressman Hillhouse of Connecticut, which provided that any American who acquired a foreign citizenship should not subsequently be permitted to repatriate in the United States. Although this obscure proposal scarcely seems relevant to the present issues, it was apparently understood, at least by some members, to require the automatic expatriation of an American who acquired a second citizenship. Its discussion in the House consumed substantially less than one day, and, of this debate, only the views of two Congressmen, other than Hillhouse, were recorded by the Annals. 6 Murray of Maryland, for reasons immaterial here, supported the proposal. In response, Baldwin of Georgia urged that foreign citizenship was often conferred only as a mark of esteem, and that it would be unfair to deprive of his domestic citizenship an American honored in this fashion. There is no indication that any member believed the proposal to be forbidden by the Constitution. The measure was rejected by the House without a reported [387 U.S. 273] vote, and no analogous proposal was offered in the Senate. Insofar as this brief exchange is pertinent here, it establishes, at most, that two or more members believed the proposal both constitutional and desirable, and that some larger number determined, for reasons that are utterly obscure, that it should not be adopted.

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The Court next relies upon the rejection of proposed legislation in 1797. The bill there at issue would have forbidden the entry of American citizens into the service of any foreign state in time of war; its sixth section included machinery by which a citizen might voluntarily expatriate himself. 7 The bill contained nothing which would have expatriated unwilling citizens, and the debates do not include any pronouncements relevant to that issue. It is difficult to see how the failure of that bill might be probative here.

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The debates in 1817 and 1818, upon which the Court so heavily relies, are scarcely more revealing. Debate centered upon a brief bill 8 which provided merely that any citizen who wished to renounce his citizenship must first declare his intention in open court, and thereafter depart the United States. His citizenship would have terminated at the moment of his renunciation. The bill was debated only in the House; no proposal permitting the involuntary expatriation of any citizen was made or considered there or in the Senate. Nonetheless, the Court selects portions of statements made by three individual Congressmen, who apparently denied that Congress had authority to enact legislation to deprive unwilling citizens of their citizenship. These brief dicta are, by the most generous standard, inadequate to warrant the Court's broad constitutional conclusion. Moreover, it must be observed that they were in great part deductions from [387 U.S. 274] constitutional premises which have subsequently been entirely abandoned. They stemmed principally from the Jeffersonian contention that allegiance is owed by a citizen first to his State, and only through the State to the Federal Government. The spokesmen upon whom the Court now relies supposed that Congress was without authority to dissolve citizenship, since "we have no control" over "allegiance to the State…. " 9 The bill's opponents urged that

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The relation to the State government was the basis of the relation to the General Government, and therefore, as long as a man continues a citizen of a State, he must be considered a citizen of the United States. 10

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Any statute, it was thought, which dissolved federal citizenship while a man remained a citizen of a State "would be inoperative." 11 Surely the Court does not revive this entirely discredited doctrine, and yet, so long as it does not, it is difficult to see that any significant support for the ruling made today may be derived from the statements on which the Court relies. To sever the statements from their constitutional premises, as the Court has apparently done, is to transform the meaning these expressions were intended to convey. Finally, it must be remembered that these were merely the views of three Congressmen; nothing in the debates indicates that their constitutional doubts were shared by any substantial number of the other 67 members who eventually opposed the bill. They were plainly not accepted by the 58 members who voted in the bill's favor. The bill's opponents repeatedly urged that, whatever its constitutional validity, the bill was imprudent [387 U.S. 275] and undesirable. Pindall of Virginia, for example, asserted that a citizen who employed its provisions would have "motives of idleness or criminality," 12 and that the bill would thus cause "much evil." 13 McLane of Delaware feared that citizens would use the bill to escape service in the armed forces in time of war; he warned that the bill would, moreover, weaken "the love of country so necessary to individual happiness and national prosperity." 14 He even urged that "The commission of treason, and the objects of plunder and spoil, are equally legalized by this bill." 15 Lowndes of South Carolina cautioned the House that difficulties might again arise with foreign governments over the rights of seamen if the bill were passed. 16 Given these vigorous and repeated arguments, it is quite impossible to assume, as the Court apparently has, that any substantial portion of the House was motivated wholly, or even in part, by any particular set of constitutional assumptions. These three statements must, instead, be taken as representative only of the beliefs of three members, premised chiefly upon constitutional doctrines which have subsequently been rejected, and expressed in a debate in which the present issues were not directly involved.

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The last piece of evidence upon which the Court relies for this period is a brief obiter dictum from the lengthy opinion for the Court in Osborn v. Bank of the United States, 9 Wheat. 738, 827, written by Mr. Chief Justice Marshall. This use of the dictum is entirely unpersuasive, for its terms and context make quite plain that it cannot have been intended to reach the questions presented [387 U.S. 276] here. The central issue before the Court in Osborn was the right of the bank to bring its suit for equitable relief in the courts of the United States. In argument, counsel for Osborn had asserted that, although the bank had been created by the laws of the United States, it did not necessarily follow that any cause involving the bank had arisen under those laws. Counsel urged by analogy that the naturalization of an alien might as readily be said to confer upon the new citizen a right to bring all his actions in the federal courts. Id. at 813-814 [argument of counsel omitted from electronic version]. Not surprisingly, the Court rejected the analogy, and remarked that an act of naturalization "does not proceed to give, to regulate, or to prescribe his capacities," since the Constitution demands that a naturalized citizen must in all respects stand "on the footing of a native." Id. at 827. The Court plainly meant no more than that counsel's analogy is broken by Congress' inability to offer a naturalized citizen rights or capacities which differ in any particular from those given to a native-born citizen by birth. Mr. Justice Johnson's discussion of the analogy in dissent confirms the Court's purpose. Id. at 875-876.

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Any wider meaning, so as to reach the questions here, wrenches the dictum from its context and attributes to the Court an observation extraneous even to the analogy before it. Moreover, the construction given to the dictum by the Court today requires the assumption that the Court in Osborn meant to decide an issue which had to that moment scarcely been debated, to which counsel in Osborn had never referred, and upon which no case had ever reached the Court. All this, it must be recalled, is in an area of the law in which the Court had steadfastly avoided unnecessary comment. See, e.g., M'Ilvaine v. Coxe's Lessee, 4 Cranch 209, 212-213; The Santissima Trinidad, 7 Wheat. 283, 347-348. By any [387 U.S. 277] standard, the dictum cannot provide material assistance to the Court's position in the present case. 17

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Before turning to the evidence from this period which has been overlooked by the Court, attention must be given an incident to which the Court refers, but upon which it apparently places relatively little reliance. In 1810, a proposed thirteenth amendment to the Constitution [387 U.S. 278] was introduced into the Senate by Senator Reed of Maryland; the amendment, as subsequently modified, provided that any citizen who accepted a title of nobility, pension, or emolument from a foreign state, or who married a person of royal blood, should "cease to be a citizen of the United States." 18 The proposed amendment was, in a modified form, accepted by both Houses, and subsequently obtained the approval of all but one of the requisite number of States. 19 I have found nothing which indicates with any certainty why such a provision should then have been thought necessary, 20 but two reasons suggest themselves for the use of a constitutional amendment. First, the provisions may have been intended in part as a sanction for Art. I, § 9, cl. 8; 21 it may therefore have been thought more appropriate that it be placed within the Constitution itself. Second, a student of expatriation issues in this period has dismissed the preference for an amendment with the explanation that

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the dominant Jeffersonian view held that citizenship was within the jurisdiction of the states; a statute would thus have been a federal usurpation of state power. 22

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This second explanation is fully substantiated by the debate in [387 U.S. 279] 1818; the statements from that debate set out in the opinion for the Court were, as I have noted, bottomed on the reasoning that, since allegiance given by an individual to a State could not be dissolved by Congress, a federal statute could not regulate expatriation. It surely follows that this "obscure enterprise" 23 in 1810, motivated by now discredited constitutional premises, cannot offer any significant guidance for solution of the important issues now before us.

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The most pertinent evidence from this period upon these questions has been virtually overlooked by the Court. Twice in the two years immediately prior to its passage of the Fourteenth Amendment, Congress exercised the very authority which the Court now suggests that it should have recognized was entirely lacking. In each case, a bill was debated and adopted by both Houses which included provisions to expatriate unwilling citizens.

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In the spring and summer of 1864, both Houses debated intensively the Wade-Davis bill to provide reconstruction governments for the States which had seceded to form the Confederacy. Among the bill's provisions was § 14, by which

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every person who shall hereafter hold or exercise any office…in the rebel service…is hereby declared not to be a citizen of .the United States. 24

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Much of the debate upon the bill did not, of course, center on the expatriation provision, although it certainly did not escape critical attention. 25 Nonetheless, I have not found any indication in the debates in either House that it was supposed that Congress was without authority to deprive an unwilling citizen of his citizenship. The bill was not signed by President Lincoln before the adjournment [387 U.S. 280] of Congress, and thus failed to become law, but a subsequent statement issued by Lincoln makes quite plain that he was not troubled by any doubts of the constitutionality of § 14. 26 Passage of the Wade-Davis bill of itself "suffices to destroy the notion that the men who drafted the Fourteenth Amendment felt that citizenship was an `absolute.'" 27

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Twelve months later, and less than a year before its passage of the Fourteenth Amendment, Congress adopted a second measure which included provisions that permitted the expatriation of unwilling citizens. Section 21 of the Enrollment Act of 1865 provided that deserters from the military service of the United States "shall be deemed and taken to have voluntarily relinquished and forfeited their rights of citizenship and their rights to become citizens…. " 28 The same section extended these disabilities to persons who departed the United States with intent to avoid "draft into the military or naval service…. " 29 The bitterness of war did not cause Congress here to neglect the requirements of the Constitution, for it was urged in both Houses that § 21 as written was ex post facto, and thus was constitutionally [387 U.S. 281] impermissible. 30 Significantly, however, it was never suggested in either debate that expatriation without a citizen's consent lay beyond Congress' authority. Members of both Houses had apparently examined intensively the section's constitutional validity, and yet had been undisturbed by the matters upon which the Court now relies.

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Some doubt, based on the phrase "rights of citizenship," has since been expressed 31 that § 21 was intended to require any more than disfranchisement, but this is, for several reasons, unconvincing. First, § 21 also explicitly provided that persons subject to its provisions should not thereafter exercise various "rights of citizens"; 32 if the section had not been intended to cause expatriation, it is difficult to see why these additional provisions would have been thought necessary. Second, the executive authorities of the United States afterwards consistently construed the section as causing expatriation. 33 Third, the section was apparently understood by various courts to result in expatriation; in particular, Mr. Justice Strong, while a member of the Supreme Court of Pennsylvania, construed the section to cause a "forfeiture of citizenship," Huber v. Reily, 53 Pa. 112, 118, and although this point was not expressly reached, his general understanding of the statute was approved by this Court in Kurtz v. Moffitt, 115 U.S. 487, 501. Finally, Congress in 1867 approved an exemption from the section's provisions for those who had deserted after the termination of general hostilities, and the statute as adopted specifically described the disability from which exemption was given as a "loss of his citizenship." [387 U.S. 282] 15 Stat. 14. The same choice of phrase occurs in the pertinent debates. 34

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It thus appears that Congress had twice, immediately before its passage of the Fourteenth Amendment, unequivocally affirmed its belief that it had authority to expatriate an unwilling citizen.

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The pertinent evidence for the period prior to the adoption of the Fourteenth Amendment can therefore be summarized as follows. The Court's conclusion today is supported only by the statements, associated at least in part with a now abandoned view of citizenship, of three individual Congressmen, and by the ambiguous and inapposite dictum from Osborn. Inconsistent with the Court's position are statements from individual Congressmen in 1794, and Congress' passage in 1864 and 1865 of legislation which expressly authorized the expatriation of unwilling citizens. It may be that legislation adopted in the heat of war should be discounted in part by its origins, but, even if this is done, it is surely plain that the Court's conclusion is entirely unwarranted by the available historical evidence for the period prior to the passage of the Fourteenth Amendment. The evidence suggests, to the contrary, that Congress in 1865 understood that it had authority, at least in some circumstances, to deprive a citizen of his nationality.

II

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The evidence with which the Court supports its thesis that the Citizenship Clause of the Fourteenth Amendment was intended to lay at rest any doubts of Congress' inability to expatriate without the citizen's consent is no more persuasive. The evidence consists almost exclusively of two brief and general quotations from Howard [387 U.S. 283] of Michigan, the sponsor of the Citizenship Clause in the Senate, and of a statement made in a debate in the House of Representatives in 1868 by Van Trump of Ohio. Measured most generously, this evidence would be inadequate to support the important constitutional conclusion presumably drawn in large part from it by the Court; but, as will be shown, other relevant evidence indicates that the Court plainly has mistaken the purposes of the clause's draftsmen.

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The Amendment as initially approved by the House contained nothing which described or defined citizenship. 35 The issue did not as such even arise in the House debates; it was apparently assumed that Negroes were citizens, and that it was necessary only to guarantee to them the rights which sprang from citizenship. It is quite impossible to derive from these debates any indication that the House wished to deny itself the authority it had exercised in 1864 and 1865; so far as the House is concerned, it seems that no issues of citizenship were "at all involved." 36

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In the Senate, however, it was evidently feared that, unless citizenship were defined, or some more general classification substituted, freedmen might, on the premise that they were not citizens, be excluded from the Amendment's protection. Senator Stewart thus offered an amendment which would have inserted into § 1 a definition of citizenship, 37 and Senator Wade urged as an alternative the elimination of the term "citizen" from the Amendment's first section. 38 After a caucus of the [387 U.S. 284] chief supporters of the Amendment, Senator Howard announced on their behalf that they favored the addition of the present Citizenship Clause. 39

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The debate upon the clause was essentially cursory in both Houses, but there are several clear indications of its intended effect. Its sponsors evidently shared the fears of Senators Stewart and Wade that, unless citizenship were defined, freedmen might, under the reasoning of the Dred Scott decision, 40 be excluded by the courts from the scope of the Amendment. It was agreed that, since the "courts have stumbled on the subject," it would be prudent to remove the "doubt thrown over" it. 41 The clause would essentially overrule Dred Scott and place beyond question the freedmen's right of citizenship because of birth. It was suggested, moreover, that it would, by creating a basis for federal citizenship which was indisputably independent of state citizenship, preclude any effort by state legislatures to circumvent the Amendment by denying freedmen state citizenship. 42 Nothing in the debates, however, supports the Court's assertion that the clause was intended to deny Congress its authority to expatriate unwilling citizens. The evidence indicates that its draftsmen instead expected the clause only to declare unreservedly to [387 U.S. 285] whom citizenship initially adhered, thus overturning the restrictions both of Dred Scott and of the doctrine of primary state citizenship, while preserving Congress' authority to prescribe the methods and terms of expatriation.

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The narrow, essentially definitional purpose of the Citizenship Clause is reflected in the clear declarations in the debates that the clause would not revise the prevailing incidents of citizenship. Senator Henderson of Missouri thus stated specifically his understanding that the "section will leave citizenship where it now is." 43 Senator Howard, in the first of the statements relied upon, in part, by the Court, said quite unreservedly that

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This amendment [the Citizenship Clause] which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is…a citizen of the United States. 44

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Henderson had been present at the Senate's consideration both of the Wade-Davis bill and of the Enrollment Act, and had voted at least for the Wade-Davis bill. 45 [387 U.S. 286] Howard was a member of the Senate when both bills were passed, and had actively participated in the debates upon the Enrollment Act. 46 Although his views of the two expatriation measures were not specifically recorded, Howard certainly never expressed to the Senate any doubt either of their wisdom or of their constitutionality. It would be extraordinary if these prominent supporters of the Citizenship Clause could have imagined, as the Court's construction of the clause now demands, that the clause was only "declaratory" of the law "where it now is," and yet that it would entirely withdraw a power twice recently exercised by Congress in their presence.

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There is, however, even more positive evidence that the Court's construction of the clause is not that intended by its draftsmen. Between the two brief statements from Senator Howard relied upon by the Court, Howard, in response to a question, said the following:

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I take it for granted that, after a man becomes a citizen of the United States under the Constitution, he cannot cease to be citizen except by expatriation or the commission of some crime by which his citizenship shall be forfeited. 47

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(Emphasis added.) It would be difficult to imagine a more unqualified rejection of the Court's position; Senator Howard, the clause's sponsor, very plainly believed that it would leave unimpaired Congress' power to deprive unwilling citizens of their citizenship. 48 [387 U.S. 287]

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Additional confirmation of the expectations of the clause's draftsmen may be found in the legislative history, wholly overlooked by the Court, of the Act for the Relief of certain Soldiers and Sailors, adopted in 1867. 15 Stat. 14. The Act, debated by Congress within 12 months of its passage of the Fourteenth Amendment, provided an exception from the provisions of 21 of the Enrollment Act of 1865 for those who had deserted from the Union forces after the termination of general hostilities. Had the Citizenship Clause been understood to have the effect now given it by the Court, surely this would have been clearly reflected in the debates; members would at least have noted that, upon final approval of the Amendment, which had already obtained the approval of 21 States, § 21 would necessarily be invalid. Nothing of the sort occurred; it was argued by some members that § 21 was imprudent, and even unfair, 49 but Congress evidently did not suppose that it was, or would be, unconstitutional. Congress simply failed to attribute to the Citizenship [387 U.S. 288] Clause the constitutional consequences now discovered by the Court. 50

1967, Afroyim v. Rusk, 387 U.S. 288

Nonetheless, the Court urges that the debates which culminated in the Expatriation Act of 1868 materially support its understanding of the purposes of the Citizenship Clause. This is, for several reasons, wholly unconvincing. Initially, it should be remembered that discussion of the Act began in committee some six months after the passage of the Relief Act of 1867, by the Second Session of the Congress which had approved the Relief Act; the Court's interpretation of the history of the Expatriation Act thus demands, at the outset, the supposition that a view of the Citizenship Clause entirely absent in July had appeared vividly by the following January. Further, the purposes and background of the Act should not be forgotten. The debates were stimulated by repeated requests both from President Andrew Johnson and from the public that Congress assert the rights of naturalized Americans against the demands of their former countries. 51 The Act as finally adopted was thus intended

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primarily to assail the conduct of the British Government [chiefly for its acts toward naturalized Americans resident in Ireland] and to declare the right of naturalized Americans to renounce their native allegiance; 52

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accordingly, very little of the lengthy debate was in the least pertinent to the present issues. Several members did make plain, through their proposed amendments to the bill or their [387 U.S. 289] interstitial comments, that they understood Congress to have authority to expatriate unwilling citizens, 53 but ,in general, both the issues now before the Court and questions of the implications of the Citizenship Clause were virtually untouched in the debates.

1967, Afroyim v. Rusk, 387 U.S. 289

Nevertheless, the Court, in order to establish that Congress understood that the Citizenship Clause denied it such authority, fastens principally upon the speeches of Congressman Van Trump of Ohio. Van Trump sponsored, as one of many similar amendments offered to the bill by various members, a proposal to create formal machinery by which a citizen might voluntarily renounce his citizenship. 54 Van Trump himself spoke at length in support of his proposal; his principal speech consisted chiefly of a detailed examination of the debates and judicial decisions pertinent to the issues of voluntary renunciation of citizenship. 55 Never in his catalog of relevant materials did Van Trump even mention the Citizenship Clause of the Fourteenth Amendment; 56 so far as may be seen from his comments on the House floor, Van Trump evidently supposed the clause to be entirely immaterial to the issues of expatriation. This is completely characteristic of the debate in both Houses; even its draftsmen and principal supporters, such as Senator Howard, permitted the Citizenship Clause to [387 U.S. 290] pass unnoticed. The conclusion seems inescapable that the discussions surrounding the Act of 1868 cast only the most minimal light, if indeed any, upon the purposes of the clause, and that the Court's evidence from the debates is, by any standard, exceedingly slight. 57

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There is, moreover, still further evidence, overlooked by the Court, which confirms yet again that the Court's view of the intended purposes of the Citizenship Clause is mistaken. While the debate on the Act of 1868 was still in progress, negotiations were completed on the first of a series of bilateral expatriation treaties, which "initiated this country's policy of automatic divestment of citizenship for specified conduct affecting our foreign relations." Perez v. Brownell, supra, at 48. Seven such treaties were negotiated in 1868 and 1869 alone; 58 each was ratified by the Senate. If, as the Court now suggests, it was "abundantly clear" to Congress in 1868 that the Citizenship Clause had taken from its hands the power of expatriation, it is quite difficult to understand why these conventions were negotiated, or why, once negotiated, [387 U.S. 291] they were not immediately repudiated by the Senate. 59

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Further, the executive authorities of the United States repeatedly acted, in the 40 years following 1868, upon the premise that a citizen might automatically be deemed to have expatriated himself by conduct short of a voluntary renunciation of citizenship; individual citizens were, as the Court indicated in Perez, regularly held on this basis to have lost their citizenship. Interested Members of Congress, and others, could scarcely have been unaware of the practice; as early as 1874, President Grant urged Congress in his Sixth Annual Message to supplement the Act of 1868 with a statutory declaration of the acts by which a citizen might "be deemed to have renounced or to have lost his citizenship." 60 It was the necessity to provide a more satisfactory basis for this practice that led first to the appointment of the Citizenship Board of 1906, and subsequently to the Nationality Acts of 1907 and 1940. The administrative practice in this period was described by the Court in Perez; it suffices here merely to emphasize that the Court today has not ventured to explain why the Citizenship Clause should, so shortly after its adoption, have been, under the Court's construction, so seriously misunderstood.

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It seems to me apparent that the historical evidence which the Court in part recites is wholly inconclusive, [387 U.S. 292] as indeed the Court recognizes; the evidence, to the contrary, irresistibly suggests that the draftsmen of the Fourteenth Amendment did not intend, and could not have expected, that the Citizenship Clause would deprive Congress of authority which it had, to their knowledge, only recently twice exercised. The construction demanded by the pertinent historical evidence, and entirely consistent with the clause's terms and purposes, is instead that it declares to whom citizenship, as a consequence either of birth or of naturalization, initially attaches. The clause thus served at the time of its passage both to overturn Dred Scott and to provide a foundation for federal citizenship entirely independent of state citizenship; in this fashion it effectively guaranteed that the Amendment's protection would not subsequently be withheld from those for whom it was principally intended. But nothing in the history, purposes, or language of the clause suggests that it forbids Congress in all circumstances to withdraw the citizenship of an unwilling citizen. To the contrary, it was expected, and should now be understood, to leave Congress at liberty to expatriate a citizen if the expatriation is an appropriate exercise of a power otherwise given to Congress by the Constitution, and if the methods and terms of expatriation adopted by Congress are consistent with the Constitution's other relevant commands.

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The Citizenship Clause thus neither denies nor provides to Congress any power of expatriation; its consequences are, for present purposes, exhausted by its declaration of the classes of individuals to whom citizenship initially attaches. Once obtained, citizenship is, of course, protected from arbitrary withdrawal by the constraints placed around Congress' powers by the Constitution; it is not proper to create from the Citizenship Clause an additional, and entirely unwarranted, restriction [387 U.S. 293] upon legislative authority. The construction now placed on the Citizenship Clause rests, in the last analysis, simply on the Court's ipse dixit, evincing little more, it is quite apparent, than the present majority's own distaste for the expatriation power.

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I believe that Perez was rightly decided, and on its authority would affirm the judgment of the Court of Appeals.

Footnotes

BLACK, J., lead opinion (Footnotes)

1967, Afroyim v. Rusk, 387 U.S. 293

1. 54 Stat. 1168, as amended, 58 Stat. 746, 8 U.S.C. § 801 (1946 ed.):

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A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

\* \* \* \*

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(e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory.

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This provision was reenacted as § 349(a)(5) of the Immigration and Nationality Act of 1952, 66 Stat. 267, 8 U.S.C. § 1481(a)(5).

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2. "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States…. "

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3. 250 F.Supp. 686; 361 F.2d 102, 105.

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4. Trop v. Dulles, 356 U.S. 86; Nishikawa v. Dulles, 356 U.S. 129.

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5. Kennedy v. Mendoza-Martinez, 372 U.S. 144; Schneider v. Rusk, 377 U.S. 163. In his concurring opinion in Mendoza-Martinez, MR. JUSTICE BRENNAN expressed "felt doubts of the correctness of Perez.…" 372 U.S. at 187

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6. See, e.g., Agata, Involuntary Expatriation and Schneider v. Rusk, 27 U.Pitt.L.Rev. 1 (1965); Hurst, Can Congress Take Away Citizenship?, 29 Rocky Mt.L.Rev. 62 (1956); Kurland, Foreword: "Equal in Origin and Equal in Title to the Legislative and Executive Branches of the Government," 78 Harv.L.Rev. 143, 169-175 (1964); Comment, 56 Mich.L.Rev. 1142 (1958); Note, Forfeiture of Citizenship Through Congressional Enactments, 21 U.Cin.L.Rev. 59 (1952); 40 Cornell L.Q. 365 (1955); 25 S.Cal.L.Rev.196 (1952). But see, e.g., Comment, The Expatriation Act of 1954, 64 Yale L.J. 1164 (1955).

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7. See Perez v. Brownell, supra, at 62 (dissenting opinion of THE CHIEF JUSTICE), 79 (dissenting opinion of MR. JUSTICE DOUGLAS); Trop v. Dulles, supra, at 91-93 (part I of opinion of Court); Nishikawa v. Dulles, supra, at 138 (concurring opinion of MR. JUSTICE BLACK).

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8. For a history of the early American view of the right of expatriation, including these congressional proposals, see generally Roche, The Early Development of United States Citizenship (1949); Tsiang, The Question of Expatriation in America Prior to 1907 (1942); Dutcher, The Right of Expatriation, 11 Am.L.Rev. 447 (1877); Roche, The Loss of American Nationality—The Development of Statutory Expatriation, 99 U.Pa.L.Rev. 25 (1950); Slaymaker, The Right of the American Citizen to Expatriate, 37 Am.L.Rev.191 (1903).

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9. 4 Annals of Cong. 1005, 102-1030 (1794); 7 Annals of Cong. 349 et seq. (1797).

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10. See, e.g., Talbot v. Janson, 3 Dall. 133.

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11. 31 Annals of Cong. 495 (1817).

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12. Id. at 1036-1037, 1058 (1818). Although some of the opponents, believing that citizenship was derived from the States, argued that any power to prescribe the mode for its relinquishment rested in the States, they were careful to point out that "the absence of all power from the State Legislatures would not vest it in us." Id. at 1039.

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13. The amendment had been proposed by the 11th Cong., 2d Sess. See The Constitution of the United States of America, S.Doc. No. 39, 88th Cong., 1st Sess., 77-78 (1964).

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14. Id. at 1071. It is interesting to note that the proponents of the bill, such as Congressman Cobb of Georgia, considered it to be "the simple declaration of the manner in which a voluntary act, in the exercise of a natural right, may be performed" and denied that it created or could lead to the creation of "a presumption of relinquishment of the right of citizenship." Id. at 1068.

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15. The dissenting opinion here points to the fact that a Civil War Congress passed two Acts designed to deprive military deserters to the Southern side of the rights of citizenship. Measures of this kind passed in those days of emotional stress and hostility are by no means the most reliable criteria for determining what the Constitution means.

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16. Cong.Globe, 39th Cong., 1st Sess., 2768-2769, 2869, 2890 et seq. (1866). See generally, Flack, Adoption of the Fourteenth Amendment 88-94 (1908).

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17. Representative Jenckes of Rhode Island introduced an amendment that would expatriate those citizens who became naturalized by a foreign government, performed public duties for a foreign government, or took up domicile in a foreign country without intent to return. Cong.Globe, 40th Cong., 2d Sess., 968, 1129, 2311 (1868). Although he characterized his proposal as covering "cases where citizens may voluntarily renounce their allegiance to this country," id. at 1159, it was opposed by Representative Chanler of New York, who said,

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So long as a citizen does not expressly dissolve his allegiance and does not swear allegiance to another country his citizenship remains in statu quo, unaltered and unimpaired.

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Id. at 1016.

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18. Proposals of Representatives Pruyn of New York (id. at 1130) and Van Trump of Ohio (id. at 1801, 2311).

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19. While Van Trump disagreed with the 1818 opponents as to whether Congress had power to prescribe a means of voluntary renunciation of citizenship, he wholeheartedly agreed with their premise that the right of expatriation belongs to the citizen, not to the Government, and that the Constitution forbids the Government from being party to the act of expatriation. Van Trump simply thought that the opponents of the 1818 proposal failed to recognize that their mutual premise would not be violated by an Act which merely prescribed "how…[the rights of citizenship] might be relinquished at the option of the person in whom they were vested." Cong.Globe, 40th Cong., 2d Sess., 1804 (1868).

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20. Id. at 2317. Representative Banks of Massachusetts, the Chairman of the House Committee on Foreign Affairs which drafted the bill eventually enacted into law, explained why Congress refrained from providing a means of expatriation:

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It is a subject which, in our opinion, ought not to be legislated upon…. [T]his comes within the scope and character of natural rights which no Government has the right to control and which no Government can confer. And wherever this subject is alluded to in the Constitution—…it is in the declaration that Congress shall have no power whatever to legislate upon these matters.

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Id. at 2316.

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21. 15 Stat. 223, R.S. § 1999.

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22. Some have referred to this part. of the decision as a holding, see, e.g., Hurst, supra, 29 Rocky Mt.L.Rev. at 779; Comment, 56 Mich.L.Rev. at 1153-1154; while others have referred to it as obiter dictum, see, e.g., Roche, supra, 99 U.Pa.L.Rev. at 26-27. Whichever it was, the statement was evidently the result of serious consideration, and is entitled to great weight.

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23. Of course, as THE CHIEF JUSTICE said in his dissent, 356 U.S. at 66, naturalization unlawfully procured can be set aside. See, e.g., Knauer v. United States, 328 U.S. 654; Baumgartner v. United States, 322 U.S. 665; Schneiderman v. United States, 320 U.S. 118.

HARLAN, J., dissenting (Footnotes)

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1. It is appropriate to note at the outset what appears to be a fundamental ambiguity in the opinion for the Court. The Court at one point intimates, but does not expressly declare, that it adopts the reasoning of the dissent of THE CHIEF JUSTICE in Perez. THE CHIEF JUSTICE there acknowledged that "actions in derogation of undivided allegiance to this country" had "long been recognized" to result in expatriation, id. at 68; he argued, however, that the connection between voting in a foreign political election and abandonment of citizenship was logically insufficient to support a presumption that a citizen had renounced his nationality. Id. at 76. It is difficult to find any semblance of this reasoning, beyond the momentary reference to the opinion of THE CHIEF JUSTICE, in the approach taken by the Court today; it seems instead to adopt a substantially wider view of the restrictions upon Congress' authority in this area. Whatever the Court's position, it has assumed that voluntariness is here a term of fixed meaning; in fact, of course, it has been employed to describe both a specific intent to renounce citizenship and the uncoerced commission of an act conclusively deemed by law to be a relinquishment of citizenship. Until the Court indicates with greater precision what it means by "assent," today's opinion will surely cause still greater confusion in this area of the law.

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2. It is useful, however, to reiterate the essential facts of this case, for the Court's very summary statement might unfortunately cause confusion about the situation to which § 401(e) was here applied. Petitioner emigrated from the United States to Israel in 1950, and, although the issue was not argued at any stage of these proceedings, it was assumed by the District Court that he "has acquired Israeli citizenship." 250 F.Supp. 686, 687. He voted in the election for the Israeli Knesset in 1951, and, as his Israeli Identification Booklet indicates, in various political elections which followed. Transcript of Record 1-2. In 1960, after 10 years in Israel, petitioner determined to return to the United States, and applied to the United States Consulate in Haifa for a passport. The application was rejected, and a Certificate of Loss of Nationality, based entirely on his participation in the 1951 election, was issued. Petitioner's action for declaratory judgment followed. There is, as the District Court noted, "no claim by the [petitioner] that the deprivation of his American citizenship will render him a stateless person." Ibid.

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3. See generally Tsiang, The Question of Expatriation in America Prior to 1907, 25-70; Roche, The Expatriation Cases, 1963 Sup.Ct.Rev. 325, 327-330; Roche, Loss of American Nationality, 4 West.Pol.Q. 268.

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4. Roche, The Expatriation Cases, 1963 Sup.Ct.Rev. 325, 329. Although the evidence, which consists principally of a letter to Albert Gallatin, is rather ambiguous, Jefferson apparently believed even that a state expatriation statute could deprive a citizen of his federal citizenship. 1 Writings of Albert Gallatin 301-302 (Adams ed. 1879). His premise was presumably that state citizenship was primary, and that federal citizenship attached only through it. See Tsiang, supra, at 25. Gallatin's own views have been described as essentially "states' rights"; see Roche, Loss of American Nationality, 4 West.Pol.Q. 268, 271.

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5. See 4 Annals of Cong. 1004 et seq.

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6. The discussion and rejection of the amendment are cursorily reported at 4 Annals of Cong. 1028-1030.

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7. The sixth section is set out at 7 Annals of Cong. 349.

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8. The bill is summarized at 31 Annals of Cong. 495.

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9. 31 Annals of Cong. 1046.

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10. 31 Annals of Cong. 1057.

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11. Ibid. Roche describes the Congressmen upon whom the Court chiefly relies as "the states' rights opposition." Loss of American Nationality, 4 West.Pol.Q. 268, 276.

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12. 31 Annals of Cong. 1047.

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13. 31 Annals of Cong. 1050.

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14. 31 Annals of Cong. 1059.

1967, Afroyim v. Rusk, 387 U.S. 293

15. Ibid.

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16. 31 Annals of Cong. 1051.

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17. Similarly, the Court can obtain little support from its invocation of the dictum from the opinion for the Court in United States v. Wong Kim Ark, 169 U.S. 649, 703. The central issue there was whether a child born of Chinese nationals domiciled in the United States is an American citizen if its birth occurs in this country. The dictum upon which the Court relies, which consists essentially of a reiteration of the dictum from Osborn, can therefore scarcely be considered a reasoned consideration of the issues now before the Court. Moreover, the dictum could conceivably be read to hold only that no power to expatriate an unwilling citizen was conferred either by the Naturalization Clause or by the Fourteenth Amendment; if the dictum means no more, it would, of course, not even reach the holding in Perez. Finally, the dictum must be read in light of the subsequent opinion for the Court, written by Mr. Justice McKenna, in Mackenzie v. Hare, 239 U.S. 299. Despite counsel's invocation of Wong Kim Ark, id. at 302 and 303, the Court held in Mackenzie that marriage between an American citizen and an alien, unaccompanied by any intention of the citizen to renounce her citizenship, nonetheless permitted Congress to withdraw her nationality. It is immaterial for these purposes that Mrs. Mackenzie's citizenship might, under the statute there, have been restored upon termination of the marital relationship; she did not consent to the loss, even temporarily, of her citizenship, and, under the proposition apparently urged by the Court today, it can therefore scarcely matter that her expatriation was subject to some condition subsequent. It seems that neither Mr. Justice McKenna, who became a member of the Court after the argument but before the decision of Wong Kim Ark, supra, at 732, nor Mr. Chief Justice White, who joined the Court's opinions in both Wong Kim Ark and Mackenzie, thought that Wong Kim Ark required the result reached by the Court today. Nor, it must be supposed, did the other six members of the Court who joined Mackenzie, despite Wong Kim Ark.

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18. The various revisions of the proposed amendment may be traced through 20 Annals of Cong. 530, 549, 572-573, 635, 671.

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19. Ames, The Proposed Amendments to the Constitution of the United States during the First Century of Its History, 2 Ann.Rep.Am.Hist.Assn. for the Year 1896, 188.

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20. Ames, supra, at 187, speculates that the presence of Jerome Bonaparte in this country some few years earlier might have caused apprehension, and concludes that the amendment was merely an expression of "animosity against foreigners." Id.. at 188.

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21. The clause provides that

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

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22. Roche, The Expatriation Cases, 1963 Sup.Ct.Rev. 325, 335.

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23. Ibid.

1967, Afroyim v. Rusk, 387 U.S. 293

24. 6 Richardson, Messages and Papers of the Presidents 226.

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25. See, e.g., the comments of Senator Brown of Missouri, Cong.Globe, 38th Cong., 1st Sess., 3460.

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26. Lincoln indicated that, although he was "unprepared" to be "inflexibly committed" to "any single plan of restoration," he was "fully satisfied" with the bill's provisions. 6 Richardson, Messages and Papers of the Presidents 222-223.

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27. Roche, The Expatriation Cases, 1963 Sup.Ct.Rev. 325, 343.

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28. 13 Stat. 490. It was this provision that, after various recodifications, was held unconstitutional by this Court in Trop v. Dulles, 356 U.S. 86. A majority of the Court did not there hold that the provision was invalid because Congress lacked all power to expatriate an unwilling citizen. In any event, a judgment by this Court 90 years after the Act's passage can scarcely reduce the Act's evidentiary value for determining whether Congress understood in 1865, as the Court now intimates that it did, that it lacked such power.

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29. 13 Stat. 491

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30. Cong.Globe, 38th Cong., 2d Sess., 642-643, 1155-1156.

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31. Roche, The Expatriation Cases, 1963 Sup.Ct.Rev. 325, 336.

1967, Afroyim v. Rusk, 387 U.S. 293

32. 13 Stat. 490

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33. Hearings before House Committee on Immigration and Naturalization on H.R. 6127, 76th Cong., 1st Sess., 38.

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34. See, e.g., the remarks of Senator Hendricks, Cong.Globe, 40th Cong., 1st Sess., 661.

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35. The pertinent events are described in Flack, Adoption of the Fourteenth Amendment 83-94.

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36. Id. at 84

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37. Cong.Globe, 39th cong., 1st Sess., 2560.

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38. Wade would have employed the formula "persons born in the United States or naturalized under the laws thereof" to measure the sections protection. Cong.Globe, 39th Cong., 1st Sess., 2768-2769.

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39. 81 Cong.Globe, 39th Cong., 1st Sess., 2869. The precise terms of the discussion in the caucus were, and have remained, unknown. For contemporary comment, see Cong.Globe, 39th Cong., 1st Sess., 2939.

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40. Scott v. Sandford, 19 How. 393.

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41. Cong.Globe, 39th Cong., 1st Sess., 2768.

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42. See, e.g., the comments of Senator Johnson of Maryland, Cong.Globe, 39th Cong., 1st Sess., 2893. It was subsequently acknowledged by several members of this Court that a central purpose of the Citizenship Clause was to create an independent basis of federal citizenship, and thus to overturn the doctrine of primary state citizenship. The Slaughter-House Cases, 16 Wall. 36, 74, 95, 112. The background of this issue is traced in tenBroek, The Anti-slavery Origins of the Fourteenth Amendment 71-93.

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43. Cong.Globe, 39th Cong., 1st Sess., 3031. See also Flack, The Adoption of the Fourteenth Amendment 93. In the same fashion, tenBroek, supra, at 215-217, concludes that the whole of § 1 was "declaratory and confirmatory." Id. at 217.

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44. Cong.Globe, 39th Cong., 1st Sess., 2890. See also the statement of Congressman Baker, Cong.Globe, 39th Cong., 1st Sess., App. 255, 256. Similarly, two months after the Amendment's passage through Congress, Senator Lane of Indiana remarked that the clause was "simply a re-affirmation" of the declaratory citizenship section of the Civil Rights Bill. Fairman, Does the Fourteenth Amendment Incorporate the Bill of Rights? 2 Stan.L.Rev. 5, 74.

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45. Senator Henderson participated in the debates upon the Enrollment Act and expressed no doubts about the constitutionality of § 21, Cong.Globe, 38th Cong., 2d Sess., 641, but the final vote upon the measure in the Senate was not recorded. Cong.Globe, 38th Cong., 2d Sess., 643.

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46. See, e.g., Cong.Globe, 38th Cong., 2d Sess., 632.

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47. Cong.Globe, 39th Cong., 1st Sess., 2895.

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48. The issues pertinent here were not, of course, matters of great consequence in the ratification debates in the several state legislatures, but some additional evidence is nonetheless available from them. The Committee on Federal Relations of the Texas House of Representatives thus reported to the House that the Amendment's first section "proposes to deprive the States of the right…to determine what shall constitute citizenship of a State, and to transfer that right to the Federal Government." Its "object" was, they thought, "to declare negroes to be citizens of the United States." Tex. House J. 578 (1866). The Governor of Georgia reported to the legislature that the

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prominent feature of the first [section] is, that it settles definitely the right of citizenship in the several States,…thereby depriving them in the future of all discretionary power over the subject within their respective limits, and with reference to their State Governments proper.

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Ga.Sen. J. 6 (1866). See also the message of Governor Cox to the Ohio Legislature, Fairman, supra, 2 Stan.L.Rev. at 96, and the message of Governor Fletcher to the Missouri Legislature, Mo.Sen.J. 14 (1867). In combination, this evidence again suggests that the Citizenship Clause was expected merely to declare to whom citizenship initially attaches, and to overturn the doctrine of primary state citizenship.

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49. Senator Hendricks, for example, lamented its unfairness, declared that its presence was an "embarrassment" to the country, and asserted that it "is not required any longer." Cong.Globe, 40th Cong., 1st Sess., 660-661.

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50. Similarly, in 1885, this Court construed § 21 without any apparent indication that the section was, or had ever been thought to be, beyond Congress' authority. Kurtz v. Moffitt, 115 U.S. 487, 501-502.

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51. Tsiang, supra, n. 3, at 95. President Johnson emphasized in his Third Annual Message the difficulties which were then prevalent. 6 Richardson, Messages and Papers of the Presidents 558, 580-581.

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52. Tsiang, supra, at 95. See also 3 Moore, Digest of International Law 579-580.

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53. See, e.g., Cong.Globe, 40th Cong., 2d Sess., 968, 1129-1131.

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54. Van Trump's proposal contained nothing which would have expatriated any unwilling citizen, see Cong.Globe, 40th Cong., 2d Sess., 1801; its ultimate failure therefore cannot, despite the Court's apparent suggestion, help to establish that the House supposed that legislation similar to that at issue here was impermissible under the Constitution.

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55. Cong.Globe, 40th Cong., 2d Sess., 1800-1805.

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56. It should be noted that Van Trump, far from a "framer" of the Amendment, had not even been a member of the Congress which adopted it. Biographical Directory of the American Congress 1774-1961, H.R.Doc. No. 442, 85th Cong., 2d Sess., 1750.

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57. As General Banks, the Chairman of the House Committee on Foreign Affairs, carefully emphasized, the debates were intended simply to produce a declaration of the obligation of the United States to compel other countries "to consider the rights of our citizens and to bring the matter to negotiation and settlement"; the bill's proponents stood "for that and nothing more." Cong.Globe, 40th Cong., 2d Sess., 2315.

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58. The first such treaty was that with the North German Union, concluded February 22, 1868, and ratified by the Senate on March 26, 1868. 2 Malloy, Treaties, Conventions, International Acts, Protocols and Agreements between the United States and other Powers 1298. Similar treaties were reached in 1868 with Bavaria, Baden, Belgium, Hesse, and Wurttemberg; a treaty was reached in 1869 with Norway and Sweden. An analogous treaty was made with Mexico in 1868, but, significantly, it permitted rebuttal of the presumption of renunciation of citizenship. See generally Tsiang, supra, at 88.

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59. The relevance of these treaties was certainly not overlooked in the debates in the Senate upon the Act of 1868. See, e.g., Cong.Globe, 40th Cong., 2d Sess., 4205, 4211, 4329, 4331. Senator Howard attacked the treaties, but employed none of the reasons which might be suggested by the opinion for the Court today. Id. at 4211.

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60. 7 Richardson, Messages and Papers of the Presidents 284, 291. See further Borchard, Diplomatic Protection of Citizens Abroad §§ 319, 324, 325.

Jones v. Alfred H. Mayer Co., 1968

Title: Jones v. Alfred H. Mayer Co.

Author: U.S. Supreme Court

Date: June 17, 1968

Source: 392 U.S. 409

This case was argued April 1-2, 1968, and was decided June 17, 1968.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

Syllabus

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 409

Petitioners, alleging that respondents had refused to sell them a home for the sole reason that petitioner Joseph Lee Jones is a Negro, filed a complaint in the District Court, seeking injunctive and other relief. Petitioners relied in part upon 42 U.S.C. § 1982, which provides that all citizens

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shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

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The District Court dismissed the complaint, and the Court of Appeals affirmed, concluding that § 1982 applies only to state action, and does not reach private refusals to sell.

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Held:

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1. Congress' enactment of the Civil Rights Act of 1968, containing in Title VIII detailed housing provisions applicable to a broad range of discriminatory practices and enforceable by a complete arsenal of federal authority, had no effect upon this litigation or upon § 1982, a general statute limited to racial discrimination in the sale and rental of property and enforceable only by private parties acting on their own initiative. Pp. 413-417.

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2. Section 1982 applies to all racial discrimination in the sale or rental of property. Pp. 417-437.

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(a) Section 1982 has previously been construed to do more than grant Negro citizens the general legal capacity to buy and rent property free of prohibitions that wholly disable them because of their race. Hurd v. Hodge, 334 U.S. 24. Pp. 417-419.

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(b) The question whether purely private discrimination, unaided by any governmental action, violates § 1982 remains one of first impression in this Court. Hurd v. Hodge, supra; Corrigan v. Buckley, 271 U.S. 323; the Civil Rights Cases, 109 U.S. 3, and Virginia v. Rives, 100 U.S. 313, distinguished. Pp. 419-420.

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(c) On its face, the language of § 1982 appears to prohibit all discrimination against Negroes in the sale or rental of property. Pp. 420-422.

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(d) The legislative history of § 1982, which was part of § 1 of the Civil Rights Act of 1866, likewise shows that both Houses of Congress believed that they were enacting a comprehensive statute [392 U.S. 410] forbidding every form of racial discrimination affecting the basic civil rights enumerated therein—including the right to purchase or lease property—and thereby securing all such rights against interference from any source whatever, whether governmental or private. Pp. 422-436.

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(e) The scope of the 1866 Act was not altered when it was reenacted in 1870, two years after ratification of the Fourteenth Amendment. Pp. 436-437.

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(f) That § 1982 lay partially dormant for many years does not diminish its force today. P. 437.

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3. Congress has power under the Thirteenth Amendment to do what 42 U.S.C. § 1982 purports to do. Pp. 437-444.

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(a) Because the Thirteenth Amendment

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is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States,

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Civil Rights Cases, 109 U.S. 3, 20, it has never been doubted "that the power vested in Congress to enforce the article by appropriate legislation," ibid., includes the power to enact laws "operating upon the acts of individuals, whether sanctioned by State legislation or not." Id. at 23. See Clyatt v. United States, 197 U.S. 207. P. 438.

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(b) The Thirteenth Amendment authorized Congress to do more than merely dissolve the legal bond by which the Negro slave was held to his master; it gave Congress the power rationally to determine what are the badges and the incidents of slavery and the authority to translate that determination into effective legislation. Pp. 439-440.

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(c) Whatever else they may have encompassed, the badges and incidents of slavery that the Thirteenth Amendment empowered Congress to eliminate included restraints upon

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those fundamental rights which are the essence of civil freedom, namely, the same right…to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens.

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Civil Rights Cases, 109 U.S. 3, 22. Insofar as Hodges v. United States, 203 U.S. 1, suggests a contrary holding, it is overruled. Pp. 441-443.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 410

379 F.2d 33, reversed. [392 U.S. 412]

STEWART, J., lead opinion

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 412

MR JUSTICE STEWART delivered the opinion of the Court.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 412

In this case, we are called upon to determine the scope and the constitutionality of an Act of Congress, 42 U.S.C. § 1982, which provides that:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 412

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase lease, sell, hold, and convey real and personal property.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 412

On September 2, 1965, the petitioners filed a complaint in the District Court for the Eastern District of Missouri, alleging that the respondents had refused to sell them a home in the Paddock Woods community of St. Louis County for the sole reason that petitioner Joseph Lee Jones is a Negro. Relying in part upon § 1982, the petitioners sought injunctive and other relief. 1 The District Court sustained the respondents' motion to dismiss the complaint, 2 and the Court of Appeals for the Eighth Circuit affirmed, concluding that § 1982 applies only to state action, and does not reach private refusals to sell. 3 We granted certiorari to consider the [392 U.S. 413] questions thus presented. 4 For the reasons that follow, we reverse the judgment of the Court of Appeals. We hold that § 1982 bars all racial discrimination, private as well as public, in the sale or rental of property, and that the statute, thus construed, is a valid exercise of the power of Congress to enforce the Thirteenth Amendment. 5

I

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 413

At the outset, it is important to make clear precisely what this case does not involve. Whatever else it may be, 42 U.S.C. § 1982 is not a comprehensive open housing law. In sharp contrast to the Fair Housing Title (Title VIII) of the Civil Rights Act of 1968, Pub.L. 9284, 82 Stat. 81, the statute in this case deals only with racial discrimination, and does not address itself to discrimination on grounds of religion or national origin. 6 It does not deal specifically with discrimination in the provision of services or facilities in connection with the sale or rental of a dwelling. 7 It does not prohibit advertising or other representations that indicate discriminatory preferences. 8 It does not refer explicitly to discrimination in financing arrangements, 9 or in the provision of brokerage services. 10 It does not empower [392 U.S. 414] a federal administrative agency to assist aggrieved parties. 11 It makes no provision for intervention by the Attorney General. 12 And, although it can be enforced by injunction, 13 it contains no provision expressly authorizing a federal court to order the payment of damages. 14 [392 U.S. 415]

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 415

Thus, although § 1982 contains none of the exemptions that Congress included in the Civil Rights Act of 1968, 15 it would be a serious mistake to suppose that § 1982 in any way diminishes the significance of the law recently enacted by Congress. Indeed, the Senate Subcommittee on Housing and Urban Affairs was informed in hearings held after the Court of Appeals had rendered its decision in this case that § 1982 might well be "a presently valid federal statutory ban against discrimination by private persons in the sale or lease of real property." 16 The Subcommittee was told, however, that, even if this Court should so construe § 1982, the existence of that statute would not "eliminate the need for congressional action" to spell out "responsibility on the part of the federal government to enforce the rights it protects." 17 The point was made that, in light of the many difficulties [392 U.S. 416] confronted by private litigants seeking to enforce such rights on their own,

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 416

legislation is needed to establish federal machinery for enforcement of the rights guaranteed under Section 1982 of Title 42 even if the plaintiffs in Jones v. Alfred H. Mayer Company should prevail in the United States Supreme Court. 18

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 416

On April 10, 1968, Representative Kelly of New York focused the attention of the House upon the present case and its possible significance. She described the background of this litigation, recited the text of § 1982, and then added:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 416

When the Attorney General was asked in court about the effect of the old law [1982] as compared with the pending legislation which is being considered on the House floor today, he said that the scope was somewhat different, the remedies and procedures were different, and that the new law was still quite necessary. 19

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 416

Later the same day, the House passed the Civil Rights Act of 1968. Its enactment had no effect upon § 1982 20 [392 U.S. 417] and no effect upon this litigation, 21 but it underscored the vast differences between, on the one hand, a general statute applicable only to racial discrimination in the rental and sale of property and enforceable only by private parties acting on their own initiative, and, on the other hand, a detailed housing law, applicable to a broad range of discriminatory practices and enforceable by a complete arsenal of federal authority. Having noted these differences, we turn to a consideration of § 1982 itself.

II

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 417

This Court last had occasion to consider the scope of 42 U.S.C. § 1982 in 1948, in Hurd v. Hodge, 334 U.S. 24. That case arose when property owners in the District of Columbia sought to enforce racially restrictive covenants against the Negro purchasers of several homes on their block. A federal district court enforced the restrictive agreements by declaring void the deeds of the Negro purchasers. It enjoined further attempts to sell or lease them the properties in question, and directed them to "remove themselves and all of their personal belongings" from the premises within 60 days. The [392 U.S. 418] Court of Appeals for the District of Columbia Circuit affirmed, 22 and this Court granted certiorari 23 to decide whether § 1982, then § 1978 of the Revised Statutes of 1874, barred enforcement of the racially restrictive agreements in that case.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 418

The agreements in Hurd covered only two-thirds of the lots of a single city block, and preventing Negroes from buying or renting homes in that specific area would not have rendered them ineligible to do so elsewhere in the city. Thus, if § 1982 had been thought to do no more than grant Negro citizens the legal capacity to buy and rent property free of prohibitions that wholly disabled them because of their race, judicial enforcement of the restrictive covenants at issue would not have violated § 1982. But this Court took a broader view of the statute. Although the covenants could have been enforced without denying the general right of Negroes to purchase or lease real estate, the enforcement of those covenants would nonetheless have denied the Negro purchasers "the same right `as is enjoyed by white citizens…to inherit, purchase, lease, sell, hold, and convey real and personal property.'" 334 U.S. at 34. That result, this Court concluded, was prohibited by [392 U.S. 419] § 1982. To suggest otherwise, the Court said, "is to reject the plain meaning of language." Ibid.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 419

Hurd v. Hodge, supra, squarely held, therefore, that a Negro citizen who is denied the opportunity to purchase the home he wants "[s]olely because of [his] race and color," 334 U.S. at 34, has suffered the kind of injury that § 1982 was designed to prevent. Accord, Buchanan v. Warley, 245 U.S. 60, 79; Harmon v. Tyler, 273 U.S. 668; Richmond v. Deans, 281 U.S. 704. The basic source of the injury in Hurd was, of course, the action of private individuals—white citizens who had agreed to exclude Negroes from a residential area. But an arm of the Government—in that case, a federal court—had assisted in the enforcement of that agreement. 24 Thus, Hurd v. Hodge, supra, did not present the question whether purely private discrimination, unaided by any action on the part of government, would violate § 1982 if its effect were to deny a citizen the right to rent or buy property solely because of his race or color.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 419

The only federal court (other than the Court of Appeals in this case) that has ever squarely confronted that question held that a wholly private conspiracy among white citizens to prevent a Negro from leasing a farm violated § 1982. United States v. Morris, 125 F. 322. It is true that a dictum in Hurd said that § 1982 was directed only toward "governmental action," 334 U.S. at 31, but neither Hurd nor any other case [392 U.S. 420] before or since has presented that precise issue for adjudication in this Court. 25 Today we face that issue for the first time.

III

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 420

We begin with the language of the statute itself. In plain and unambiguous terms, § 1982 grants to all citizens, without regard to race or color, "the same right" to purchase and lease property "as is enjoyed by white citizens." As the Court of Appeals in this case evidently recognized, that right can be impaired as effectively [392 U.S. 421] by "those who place property on the market" 26 as by the State itself. For, even if the State and its agents lend no support to those who wish to exclude persons from their communities on racial grounds, the fact remains that, whenever property "is placed on the market for whites only, whites have a right denied to Negroes." 27 So long as a Negro citizen who wants to buy or rent a home can be turned away simply because he is not white, he cannot be said to enjoy "the same right…as is enjoyed by white citizens…to…purchase [and] lease…real and personal property." 42 U.S.C. § 1982. (Emphasis added.)

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 421

On its face, therefore, § 1982 appears to prohibit all discrimination against Negroes in the sale or rental of property—discrimination by private owners as well as discrimination by public authorities. Indeed, even the respondents seem to concede that, if § 1982 "means what it says"—to use the words of the respondents' brief—then it must encompass every racially motivated refusal [392 U.S. 422] to sell or rent, and cannot be confined to officially sanctioned segregation in housing. Stressing what they consider to be the revolutionary implications of so literal a reading of § 1982, the respondents argue that Congress cannot possibly have intended any such result. Our examination of the relevant history, however, persuades us that Congress meant exactly what it said.

IV

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 422

In its original form, 42 U.S.C. § 1982 was part of § 1 of the Civil Rights Act of 1866. 28 That section was cast in sweeping terms:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 422

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power,…are hereby declared to be citizens of the United States, and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude,…shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding. 29 [392 U.S. 423]

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 423

The crucial language for our purposes was that which guaranteed all citizens

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 423

the same right, in every State and Territory in the United States,…to inherit, purchase, lease, sell, hold, and convey real and personal property…as is enjoyed by white citizens….

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 423

To the Congress that passed the Civil Rights Act of 1866, it was clear that the right to do these things might be infringed not only by "State or local law", but also by "custom, or prejudice." 30 Thus, when Congress provided in § 1 of the Civil Rights Act that the right to purchase and lease property was to be enjoyed equally throughout the United States by Negro and white citizens [392 U.S. 424] alike, it plainly meant to secure that right against interference from any source whatever, whether governmental or private. 31

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 424

Indeed, if § 1 had been intended to grant nothing more than an immunity from governmental interference, then much of § 2 would have made no sense at all. 32 For that section, which provided fines and prison terms for certain [392 U.S. 425] individuals who deprived others of rights "secured or protected" by § 1, was carefully drafted to exempt private violations of § 1 from the criminal sanctions it imposed. 33 There would, of course, have been no private violations to exempt if the only "right" granted by § 1 [392 U.S. 426] had been a right to be free of discrimination by public officials. Hence, the structure of the 1866 Act, as well as its language, points to the conclusion urged by the petitioners in this case—that § 1 was meant to prohibit all racially motivated deprivations of the rights enumerated in the statute, although only those deprivations perpetrated "under color of law" were to be criminally punishable under § 2.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 426

In attempting to demonstrate the contrary, the respondents rely heavily upon the fact that the Congress which approved the 1866 statute wished to eradicate the recently enacted Black Codes—laws which had saddled Negroes with "onerous disabilities and burdens, and curtailed their rights…to such an extent that their freedom was of little value…. " Slaughter-House Cases, 16 Wall. 36, 70. 34 The respondents suggest that the only evil Congress sought to eliminate was that of racially discriminatory laws in the former Confederate States. But the Civil Rights Act was drafted to apply throughout the country, 35 and its language was far [392 U.S. 427] broader than would have been necessary to strike down discriminatory statutes.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 427

That broad language, we are asked to believe, was a mere slip of the legislative pen. We disagree. For the same Congress that wanted to do away with the Black Codes also had before it an imposing body of evidence pointing to the mistreatment of Negroes by private individuals and unofficial groups, mistreatment unrelated to any hostile state legislation. "Accounts in newspapers North and South, Freedmen's Bureau and other official documents, private reports and correspondence were all adduced" to show that "private outrage and atrocity" were "daily inflicted on freedmen…. 36 The congressional debates are replete with references to private injustices against Negroes—references to white employers who refused to pay their Negro workers, 37 white planters who agreed among themselves not to hire freed slaves without the permission of their former masters, 38 white [392 U.S. 428] citizens who assaulted Negroes 39 or who combined to drive them out of their communities. 40

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 428

Indeed, one of the most comprehensive studies then before Congress stressed the prevalence of private hostility toward Negroes and the need to protect them from the resulting persecution and discrimination. 41 The report noted the existence of laws virtually prohibiting Negroes from owning or renting property in certain towns, 42 but described such laws as "mere isolated cases," representing "the local outcroppings of a spirit…found to prevail everywhere" 43—a spirit expressed, for example, [392 U.S. 429] by lawless acts of brutality directed against Negroes who traveled to areas where they were not wanted. 44 The report concluded that, even if anti-Negro legislation were "repealed in all the States lately in rebellion," equal treatment for the Negro would not yet be secured. 45

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 429

In this setting, it would have been strange indeed if Congress had viewed its task as encompassing merely the nullification of racist laws in the former rebel States. That the Congress which assembled in the Nation's capital in December, 1865, in fact, had a broader vision of the task before it became clear early in the session, when three proposals to invalidate discriminatory state statutes were rejected as "too narrowly conceived." 46 From the outset, it seemed clear, at least to Senator Trumbull of Illinois, Chairman of the Judiciary Committee, that stronger legislation might prove necessary. After Senator Wilson of Massachusetts had introduced his bill to strike down all racially discriminatory laws in the South, 47 Senator Trumbull said this:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 429

I reported from the Judiciary Committee the second section of the [Thirteenth Amendment] for the very purpose of conferring upon Congress authority to see that the first section was carried out [392 U.S. 430] in good faith…and I hold that, under that second section, Congress will have the authority, when the constitutional amendment is adopted, not only to pass the bill of the Senator from Massachusetts, but a bill that will be much more efficient to protect the freedman in his rights.…And, sir, when the constitutional amendment shall have been adopted, if the information from the South be that the men whose liberties are secured by it are deprived of the privilege to go and come when they please, to buy and sell when they please, to make contracts and enforce contracts, I give notice that, if no one else does, I shall introduce a bill and urge its passage through Congress that will secure to those men every one of these rights: they would not be freemen without them. It is idle to say that a man is free who cannot go and come at pleasure, who cannot buy and sell, who cannot enforce his rights.…[So] when the constitutional amendment is adopted, I trust we may pass a bill, if the action of the people in the southern States should make it necessary, that will be much more sweeping and efficient than the bill under consideration. 48 [392 U.S. 431]

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 431

Five days later, on December 18, 1865, the Secretary of State officially certified the ratification of the Thirteenth Amendment. The next day, Senator Trumbull again rose to speak. He had decided, he said, that the "more sweeping and efficient" bill of which he had spoken previously ought to be enacted

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 431

at an early day for the purpose of quieting apprehensions in the minds of many friends of freedom lest by local legislation or a prevailing public sentiment in some of the States persons of the African race should continue to be oppressed and, in fact, deprived of their freedom…. 49

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 431

On January 5, 1866, Senator Trumbull introduced the bill he had in mind—the bill which later became the Civil Rights Act of 1866. 50 He described its objectives in terms that belie any attempt to read it narrowly:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 431

Mr. President, I regard the bill to which the attention of the Senate is now called as the most important measure that has been under its consideration since the adoption of the constitutional amendment abolishing slavery. That amendment declared that all persons in the United States should be free. This measure is intended to give effect to that declaration and secure to all persons within the United States practical freedom. There is very little importance in the general declaration of abstract truths and principles unless they can be carried into effect, unless the persons who are to be [392 U.S. 432] affected by them have some means of availing themselves of their benefits. 51

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 432

Of course, Senator Trumbull's bill would, as he pointed out, "destroy all [the] discriminations" embodied in the Black Codes, 52 but it would do more: it would affirmatively secure for all men, whatever their race or color, what the Senator called the "great fundamental rights":

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the right to acquire property, the right to go and come at pleasure, the right to enforce rights in the courts, to make contracts, and to inherit and dispose of property. 53

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 432

As to those basic civil rights, the Senator said, the bill would "break down all discrimination between black men and white men." 54 [392 U.S. 433]

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 433

That the bill would indeed have so sweeping an effect was seen as its great virtue by its friends 55 and as its great danger by its enemies, 56 but was disputed by none. Opponents of the bill charged that it would not only regulate state laws, but would directly "determine the persons who [would] enjoy…property within the States," 57 threatening the ability of white citizens "to determine who [would] be members of [their] communit[ies]." 58 The bill's advocates did not deny the accuracy of those characterizations. Instead, they defended the propriety of employing federal authority to deal with "the white man…[who] would invoke the power of local prejudice" against the Negro. 59 Thus, when the Senate passed the Civil Rights Act on February 2, 1866, 60 it did so fully aware of the breadth of the measure it had approved.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 433

In the House, as in the Senate, much was said about eliminating the infamous Black Codes. 61 But, like the Senate, the House was moved by a larger objective—that of giving real content to the freedom guaranteed by the Thirteenth Amendment. Representative Thayer of Pennsylvania put it this way:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 433

[W]hen I voted for the amendment to abolish slavery…, I did not suppose that I was offering [392 U.S. 434] …a mere paper guarantee. And when I voted for the second section of the amendment, I felt…certain that I had…given to Congress ability to protect…the rights which the first section gave….

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 434

The bill which now engages the attention of the House has for its object to carry out and guaranty the reality of that great measure. It is to give to it practical effect and force. It is to prevent that great measure from remaining a dead letter upon the constitutional page of this country…. The events of the last four years…have changed [a] large class of people…from a condition of slavery to that of freedom. The practical question now to be decided is whether they shall be, in fact, freemen. It is whether they shall have the benefit of this great charter of liberty given to them by the American people. 62

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 434

Representative Cook of Illinois thought that, without appropriate federal legislation, any "combination of men in [a] neighborhood [could] prevent [a Negro] from having any chance" to enjoy those benefits. 63 To Congressman Cook and others like him, it seemed evident that, with respect to basic civil rights—including the "right to…purchase, lease, sell, hold, and convey…property," Congress must provide that "there…be no discrimination" on grounds of race or color. 64 [392 U.S. 435]

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 435

It thus appears that, when the House passed the Civil Rights Act on March 13, 1866, 65 it did so on the same assumption that had prevailed in the Senate: it too believed that it was approving a comprehensive statute forbidding all racial discrimination affecting the basic civil rights enumerated in the Act.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 435

President Andrew Johnson vetoed the Act on March 27, 66 and, in the brief congressional debate that followed, his supporters characterized its reach in all-embracing terms. One stressed the fact that § 1 would confer "the right…to purchase…real estate…without any qualification and without any restriction whatever…. " 67 Another predicted, as a corollary, that the Act would preclude preferential treatment for white persons in the rental of hotel rooms and in the sale of church pews. 68 Those observations elicited no reply. On April 6, the Senate, and on April 9, the House, overrode the President's veto by the requisite majorities, 69 and the Civil Rights Act of 1866 became law. 70 [392 U.S. 436]

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 436

In light of the concerns that led Congress to adopt it and the contents of the debates that preceded its passage, it is clear that the Act was designed to do just what its terms suggest: to prohibit all racial discrimination, whether or not under color of law, with respect to the rights enumerated therein—including the right to purchase or lease property.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 436

Nor was the scope of the 1866 Act altered when it was reenacted in 1870, some two years after the ratification of the Fourteenth Amendment. 71 It is quite true that some members of Congress supported the Fourteenth Amendment "in order to eliminate doubt as to the constitutional validity of the Civil Rights Act as applied to the States." Hurd v. Hodge, 334 U.S. 24, 333. But it certainly does not follow that the adoption of the Fourteenth Amendment or the subsequent readoption of the Civil Rights Act were meant somehow to limit its application to state action. The legislative history furnishes not the slightest factual basis for any such speculation, and the conditions prevailing in 1870 make it highly implausible. For, by that time, most, if not all, of the former Confederate States, then under the control of "reconstructed" legislatures, had formally repudiated racial discrimination, and the focus of congressional concern had clearly shifted from hostile statutes to the activities of groups like the Ku Klux Klan, operating wholly outside the law. 72 [392 U.S. 437]

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 437

Against this background, it would obviously make no sense to assume, without any historical support whatever, that Congress made a silent decision in 1870 to exempt private discrimination from the operation of the Civil Rights Act of 1866. 73 "The cardinal rule is that repeals by implication are not favored." Posadas v. National City Bank, 296 U.S. 497, 503. All Congress said in 1870 was that the 1866 law "is hereby reenacted." That is all Congress meant.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 437

As we said in a somewhat different setting two Terms ago,

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 437

We think that history leaves no doubt that, if we are to give [the law] the scope that its origins dictate, we must accord it a sweep as broad as its language.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 437

United States v. Price, 383 U.S. 787, 801. "We are not at liberty to seek ingenious analytical instruments," ibid., to carve from § 1982 an exception for private conduct—even though its application to such conduct in the present context is without established precedent. And, as the Attorney General of the United States said at the oral argument of this case, "The fact that the statute lay partially dormant for many years cannot be held to diminish its force today."

V.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 437

The remaining question is whether Congress has power under the Constitution to do what § 1982 purports to do: to prohibit all racial discrimination, private and public, in the sale and rental of property. Our starting point is the Thirteenth Amendment, for it was pursuant [392 U.S. 438] to that constitutional provision that Congress originally enacted what is now § 1982. The Amendment consists of two parts. Section 1 states:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 438

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 438

Section 2 provides:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 438

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

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 438

As its text reveals, the Thirteenth Amendment

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 438

is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 438

Civil Rights Cases, 109 U.S. 3, 20. It has never been doubted, therefore, "that the power vested in Congress to enforce the article by appropriate legislation," ibid., includes the power to enact laws "direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not." Id. at 23. 74

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 438

Thus, the fact that § 1982 operates upon the unofficial acts of private individuals, whether or not sanctioned by state law, presents no constitutional problem. If Congress has power under the Thirteenth Amendment to eradicate conditions that prevent Negroes from buying and renting property because of their race or color, then no federal statute calculated to achieve that objective [392 U.S. 439] can be thought to exceed the constitutional power of Congress simply because it reaches beyond state action to regulate the conduct of private individuals. The constitutional question in this case, therefore, comes to this: does the authority of Congress to enforce the Thirteenth Amendment "by appropriate legislation" include the power to eliminate all racial barriers to the acquisition of real and personal property? We think the answer to that question is plainly yes.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 439

"By its own unaided force and effect," the Thirteenth Amendment "abolished slavery, and established universal freedom." Civil Rights Cases, 109 U.S. 3, 20. Whether or not the Amendment itself did any more than that—a question not involved in this case—it is at least clear that the Enabling Clause of that Amendment empowered Congress to do much more. For that clause clothed "Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States." Ibid. (Emphasis added.)

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 439

Those who opposed passage of the Civil Rights Act of 1866 argued, in effect that the Thirteenth Amendment merely authorized Congress to dissolve the legal bond by which the Negro slave was held to his master. 75 Yet many had earlier opposed the Thirteenth Amendment on the very ground that it would give Congress virtually unlimited power to enact laws for the protection of Negroes in every State. 76 And the majority leaders in Congress—who were, after all, the authors of the Thirteenth Amendment—had no doubt that its Enabling Clause contemplated the sort of positive legislation that [392 U.S. 440] was embodied in the 1866 Civil Rights Act. Their chief spokesman, Senator Trumbull of Illinois, the Chairman of the Judiciary Committee, had brought the Thirteenth Amendment to the floor of the Senate in 1864. In defending the constitutionality of the 1866 Act, he argued that, if the narrower construction of the Enabling Clause were correct, then

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the trumpet of freedom that we have been blowing throughout the land has given an "uncertain sound," and the promised freedom is a delusion. Such was not the intention of Congress, which proposed the constitutional amendment, nor is such the fair meaning of the amendment itself…. I have no doubt that, under this provision…, we may destroy all these discriminations in civil rights against the black man, and if we cannot, our constitutional amendment amounts to nothing. It was for that purpose that the second clause of that amendment was adopted, which says that Congress shall have authority, by appropriate legislation, to carry into effect the article prohibiting slavery. Who is to decide what that appropriate legislation is to be? The Congress of the United States, and it is for Congress to adopt such appropriate legislation as it may think proper, so that it be a means to accomplish the end. 77

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 440

Surely Senator Trumbull was right. Surely Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation. Nor can we say that the determination Congress has made is an irrational [392 U.S. 441] one. For this Court recognized long ago that, whatever else they may have encompassed, the badges and incidents of slavery—its "burdens and disabilities"—included restraints upon

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those fundamental rights which are the essence of civil freedom, namely, the same right…to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 441

Civil Rights Cases, 109 U.S. 3, 22. 78 Just as the Black Codes, enacted after the Civil [392 U.S. 442] War to restrict the free exercise of those rights, were substitutes for the slave system, so the exclusion of Negroes from white communities became a substitute for the Black Codes. And when racial discrimination herds men [392 U.S. 443] into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 443

Negro citizens, North and South, who saw in the Thirteenth Amendment a promise of freedom—freedom to "go and come at pleasure" 79 and to "buy and sell when they please" 80—would be left with "a mere paper guarantee" 81 if Congress were powerless to assure that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man. At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live. If Congress cannot say that being a free man means at least this much, then the Thirteenth Amendment made a promise the Nation cannot keep.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 443

Representative Wilson of Iowa was the floor manager in the House for the Civil Rights Act of 1866. In urging that Congress had ample authority to pass the pending bill, he recalled the celebrated words of Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat. 316, 421:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 443

Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional. 82

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 443

"The end is legitimate," the Congressman said,

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 443

because it is defined by the Constitution itself. The end is the [392 U.S. 444] maintenance of freedom…. A man who enjoys the civil rights mentioned in this bill cannot be reduced to slavery…. This settles the appropriateness of this measure, and that settles its constitutionality. 83

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 444

We agree. The judgment is

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 444

Reversed.

DOUGLAS, J., concurring

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 444

MR. JUSTICE DOUGLAS, concurring.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 444

The Act of April 9, 1866, 14 Stat. 27, 42 U.S. .C. § 1982, provides:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 444

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 444

This Act was passed to enforce the Thirteenth Amendment, which, in § 1, abolished "slavery" and "involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted" and, in § 2, gave Congress power "to enforce this article by appropriate legislation."

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 444

Enabling a Negro to buy and sell real and personal property is a removal of one of many badges of slavery.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 444

Slaves were not considered men…. They could own nothing; they could make no contracts; they could hold no property, nor traffic in property; they could not hire out; they could not legally marry nor constitute families; they could not control their children; they could not appeal from their master; they could be punished at will.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 444

W. Dubois, Black Reconstruction in America 10 (1964). 1 [392 U.S. 445]

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 445

The true curse of slavery is not what it did to the black man, but what it has done to the white man. For the existence of the institution produced the notion that the white man was of superior character, intelligence, and morality. The blacks were little more than livestock—to be fed and fattened for the economic benefits they could bestow through their labors, and to be subjected to authority, often with cruelty, to make clear who was master and who slave.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 445

Some badges of slavery remain today. While the institution has been outlawed, it has remained in the minds and hearts of many white men. Cases which have come to this Court depict a spectacle of slavery unwilling to die. We have seen contrivances by States designed to thwart Negro voting, e.g., Lane v. Wilson, 307 U.S. 268. Negroes have been excluded over and again from juries solely on account of their race, e.g., Strauder v. West Virginia, 100 U.S. 303, or have been forced to sit in segregated seats in courtrooms, Johnson v. Virginia, 373 U.S. 61. They have been made to attend segregated and inferior schools, e.g., Brown v. Board of Education, 347 U.S. 483, or been denied entrance to colleges or graduate schools because of their color, e.g., Pennsylvania v. Board of Trusts, 353 U.S. 230; Sweatt v. Painter, 339 U.S. 629. Negroes have been prosecuted for marrying whites, e.g., Loving v. Virginia, 388 U.S. 1. They have been forced to live in segregated residential districts, Buchanan v. Warley, 245 U.S. 60, and residents of white neighborhoods have denied them entrance, e.g., Shelley v. Kraemer, 334 U.S. 1. Negroes have been forced to use segregated facilities in going about their daily lives, having been excluded from railway coaches, Plessy v. Ferguson, 163 U.S. 537; public parks, New Orleans Park Improvement Assn. v. Detiege, 358 U.S. 54; restaurants, Lombard v. Louisiana, 373 U.S. 267; public beaches, Mayor of Baltimore v. Dawson, 350 U.S. 877; municipal [392 U.S. 446] golf courses, Holmes v. City of Atlanta, 350 U.S. 879; amusement parks, Griffin v. Maryland, 378 U.S. 130; buses, Gayle v. Browder, 352 U.S. 903; public libraries, Brown v. Louisiana, 383 U.S. 131. A state court judge in Alabama convicted a Negro woman of contempt of court because she refused to answer him when he addressed her as "Mary," although she had made the simple request to be called "Miss Hamilton." Hamilton v. Alabama, 376 U.S. 650.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 446

That brief sampling of discriminatory practices, many of which continue today, stands almost as an annotation to what Frederick Douglass (1817-1895) wrote nearly a century earlier:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 446

Of all the races and varieties of men which have suffered from this feeling, the colored people of this country have endured most. They can resort to no disguises which will enable them to escape its deadly aim. They carry in front the evidence which marks them for persecution. They stand at the extreme point of difference from the Caucasian race, and their African origin can be instantly recognized, though they may be several removes from the typical African race. They may remonstrate like Shylock—

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 446

Hath not a Jew eyes? hath not a Jew hands, organs, dimensions, senses, affections, passions? fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same summer and winter, as a Christian is?

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 446

—but such eloquence is unavailing. They are Negroes—and that is enough, in the eye of this unreasoning prejudice, to justify indignity and violence. In nearly every department of American life, they are confronted by this insidious influence. It fills the air. It meets them at the workshop and factory, when they apply for work. It meets them at the church, at the hotel, at the [392 U.S. 447] ballot box, and, worst of all, it meets them in the jury box. Without crime or offense against law or gospel, the colored man is the Jean Valjean of American society. He has escaped from the galleys, and hence all presumptions are against him. The workshop denies him work, and the inn denies him shelter; the ballot box a fair vote, and the jury box a fair trial. He has ceased to be the slave of an individual, but has, in some sense, become the slave of society. He may not now be bought and sold like a beast in the market, but he is the trammeled victim of a prejudice, well calculated to repress his manly ambition, paralyze his energies, and make him a dejected and spiritless man, if not a sullen enemy to society, fit to prey upon life and property and to make trouble generally. 2

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 447

Today the black is protected by a host of civil rights laws. But the forces of discrimination are still strong.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 447

A member of his race, duly elected by the people to a state legislature, is barred from that assembly because of his views on the Vietnam war. Bond v. Floyd, 385 U.S. 116.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 447

Real estate agents use artifice to avoid selling "white property" to the blacks. 3 The blacks who travel the country, though entitled by law to the facilities for sleeping and dining that are offered all tourists, Heart of Atlanta Motel v. United States, 379 U.S. 241, may well learn that the "vacancy" sign does not mean what it says, especially if the motel has a swimming pool.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 447

On entering a half-empty restaurant, they may find "reserved" signs on all unoccupied tables. [392 U.S. 448]

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 448

The black is often barred from a labor union because of his race. 4

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 448

He learns that the order directing admission of his children into white schools has not been obeyed "with all deliberate speed," Brown v. Board of Education, 349 U.S. 294, 301, but has been delayed by numerous stratagems and devices. 5 State laws, at times, have even encouraged [392 U.S. 449] discrimination in housing. Reitman v. Mulkey, 387 U.S. 369.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 449

This recital is enough to show how prejudices, once part and parcel of slavery, still persist. The men who sat in Congress in 1866 were trying to remove some of the badges or "customs" 6 of slavery when they enacted § 1982. And, as my Brother STEWART shows, the Congress that passed the so-called Open Housing Act in 1968 did not undercut any of the grounds on which § 1982 rests.

HARLAN, J., dissenting

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 449

MR. JUSTICE HARLAN, whom MR. JUSTICE WHITE joins, dissenting.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 449

The decision in this case appears to me to be most ill-considered and ill-advised.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 449

The petitioners argue that the respondents' racially motivated refusal to sell them a house entitles them to judicial relief on two separate grounds. First, they claim that the respondents acted in violation of 42 U.S.C. § 1982; second, they assert that the respondents' conduct amounted in the circumstances to "state action," 1 and was therefore forbidden by the Fourteenth Amendment even in the absence of any statute. The Court, without [392 U.S. 450] reaching the second ground alleged, holds that the petitioners are entitled to relief under 42 U.S.C. § 1982, and that § 1982 is constitutional as legislation appropriate to enforce the Thirteenth Amendment.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 450

For reasons which follow, I believe that the Court's construction of § 1982 as applying to purely private action is almost surely wrong, and, at the least, is open to serious doubt. The issues of the constitutionality of § 1982, as construed by the Court, and of liability under the Fourteenth Amendment alone, also present formidable difficulties. Moreover, the political processes of our own era have, since the date of oral argument in this case, given birth to a civil rights statute 2 embodying "fair housing" provisions 3 which would, at the end of this year, make available to others, though apparently not to the petitioners themselves, 4 the type of relief which the petitioners now seek. It seems to me that this latter factor so diminishes the public importance of this case that by far the wisest course would be for this Court to refrain from decision and to dismiss the writ as improvidently granted.

I

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 450

I shall deal first with the Court's construction of § 1982, which lies at the heart of its opinion. That construction is that the statute applies to purely private, as well as to state-authorized, discrimination.

A

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 450

The Court's opinion focuses upon the statute's legislative history, but it is worthy of note that the precedents in this Court are distinctly opposed to the Court's view of the statute. [392 U.S. 451]

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 451

In the Civil Rights Cases, 109 U.S. 3, decided less than two decades after the enactment of the Civil Rights Act of 1866, from which § 1982 is derived, the Court said in dictum of the 1866 Act:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 451

This law is clearly corrective in its character, intended to counteract and furnish redress against State laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified…. The Civil Rights Bill here referred to is analogous in its character to what a law would have been under the original Constitution, declaring that the validity of contracts should not be impaired, and that, if any person bound by a contract should refuse to comply with it, under color or pretence that it had been rendered void or invalid by a State law, he should be liable to an action upon it in the courts of the United States, with the addition of a penalty for setting up such an unjust and unconstitutional defence.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 451

Id. at 16-17. 5 In Corrigan v. Buckley, 271 U.S. 323, the question was whether the courts of the District of Columbia might enjoin prospective breaches of racially restrictive covenants. The Court held that it was without jurisdiction to consider the petitioners' argument that the covenant was void because it contravened the Fifth, Thirteenth, and Fourteenth Amendments and their implementing statutes. The Court reasoned, inter alia, that the statutes, including the immediate predecessor of § 1982, 6 were inapplicable because

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 451

they, like the Constitutional Amendment under whose sanction they were enacted, do not in any manner prohibit or invalidate contracts entered into [392 U.S. 452] by private individuals in respect to the control and disposition of their own property.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 452

Id. at 331. 7 In Hurd v. Hodge, 334 U.S. 24, the issue was again whether the courts of the District might enforce racially restrictive covenants. At the outset of the process of reasoning by which it held that judicial enforcement of such a covenant would violate the predecessor of § 1982, the Court said:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 452

We may start with the proposition that the statute does not invalidate private restrictive agreements so long as the purposes of those agreements are achieved by the parties through voluntary adherence to the terms. The action toward which the provisions of the statute under consideration is [sic] directed is governmental action. Such was the holding of Corrigan v. Buckley.…

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 452

Id. at 31. 8

B

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 452

Like the Court, I begin analysis of § 1982 by examining its language. In its present form, the section provides:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 452

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 452

The Court finds it "plain and unambiguous," ante at 420, that this language forbids purely private, as well as state-authorized, discrimination. With all respect, I do not find it so. For me, there is an inherent ambiguity in the [392 U.S. 453] term "right," as used in § 1982. The "right" referred to may either be a right to equal status under the law, in which case the statute operates only against state-sanctioned discrimination, or it may be an "absolute" right enforceable against private individuals. To me, the words of the statute, taken alone, suggest the former interpretation, not the latter. 9

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 453

Further, since intervening revisions have not been meant to alter substance, the intended meaning of § 1982 must be drawn from the words in which it was originally enacted. Section 1982 originally was a part of § 1 of the Civil Rights Act of 1866, 14 Stat. 27. Sections 1 and 2 of that Act provided in relevant part:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 453

That all persons born in the United States and not subject to any foreign power…are hereby declared to be citizens of the United States, and such citizens, of every race and color . . shall have the same right, in every State and Territory [392 U.S. 454] in the United States,…to inherit, purchase, lease, sell, hold, and convey real and personal property…as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 454

Sec. 2. That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act…shall be deemed guilty of a misdemeanor….

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 454

It seems to me that this original wording indicates even more strongly than the present language that § 1 of the Act (as well as § 2, which is explicitly so limited) was intended to apply only to action taken pursuant to state or community authority, in the form of a "law, statute, ordinance, regulation, or custom." 10 And, with deference, I suggest that the language of § 2, taken alone, no more implies that § 2 "was carefully drafted to exempt private violations of § 1 from the criminal sanctions it imposed," see ante at 425, than it does that § 2 was carefully drafted to enforce all of the rights secured by § 1.

C

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 454

The Court rests its opinion chiefly upon the legislative history of the Civil Rights Act of 1866. I shall endeavor to show that those debates do not, as the Court would have it, overwhelmingly support the result reached by the Court, and, in fact, that a contrary conclusion may equally well be drawn. I shall consider the legislative [392 U.S. 455] history largely in chronological sequence, dealing separately with the Senate and House debates.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 455

The First Session of the Thirty-ninth Congress met on December 4, 1865, some six months after the preceding Congress had sent to the States the Thirteenth Amendment, and a few days before word was received of that Amendment's ratification. On December 13, Senator Wilson introduced a bill which would have invalidated all laws in the former rebel States which discriminated among persons as to civil rights on the basis of color, and which would have made it a misdemeanor to enact or enforce such a statute. 11 On the same day, Senator Trumbull said with regard to Senator Wilson's proposal:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 455

The bill does not go far enough, if what we have been told today in regard to the treatment of freedmen in the southern States is true…. [U]ntil [the Thirteenth Amendment] is adopted, there may be some question…as to the authority of Congress to pass such a bill as this, but after the adoption of the constitutional amendment, there can be none.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 455

The second clause of that amendment was inserted for some purpose, and I would like to know…for what purpose? Sir, for the purpose, and none other, of preventing State Legislatures from enslaving, under any pretense, those whom the first clause declared should be free. 12

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 455

Senator Trumbull then indicated that he would introduce separate bills to enlarge the powers of the recently founded Freedmen's Bureau and to secure the freedmen in their civil rights, both bills in his view being authorized by the second clause of the Thirteenth Amendment. 13 [392 U.S. 456] Since he had just stated that the purpose of that clause was to enable Congress to nullify acts of the state legislatures, it seems inferable that this was also to be the aim of the promised bills.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 456

On January 5, Senator Trumbull introduced both the Freedmen's bill and the civil rights bill. 14 The Freedmen's bill would have strengthened greatly the existing system by which agents of the Freedmen's Bureau exercised protective supervision over freedmen wherever they were present in large numbers. Inter alia, the Freedmen's bill would have permitted the President, acting through the Bureau, to extend "military protection and jurisdiction" over all cases in which persons in the former rebel States were,

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 456

in consequence of any State or local law, ordinance, police or other regulation, custom, or prejudice, [denied or refused] any of the civil rights or immunities belonging to white persons, including the right…to inherit, purchase, lease, sell, hold and convey real and personal property,…on account of race. 15

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 456

The next section of the Freedmen's bill provided that the agents of the Freedmen's Bureau might try and convict of a misdemeanor any person who deprived another of such rights on account of race and "under color of any State or local law, ordinance, police, or other regulation or custom…. " Thus, the Freedmen's bill, which was generally limited in its application to the Southern States and which was correspondingly more sweeping in its protection [392 U.S. 457] of the freedmen than the civil rights bill, 16 defined both the rights secured and the denials of those rights which were criminally punishable in terms of acts done under the aegis of a State or locality. The only significant distinction was that denials which occurred "in consequence of a State or local…prejudice" would have entitled the victim to military protection, but would not have been criminal. In the corresponding section of the companion and generally parallel civil rights bill, which was to be effective throughout the Nation, the reference to "prejudice" was omitted from the rights-defining section. This would seem to imply that the more widely applicable civil rights bill was meant to provide protection only against those discriminations which were legitimated by a state or community sanction sufficiently powerful to deserve the name "custom."

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 457

The form of the Freedmen's bill also undercuts the Court's argument, ante at 424, that, if § 1 of the Civil Rights Act were construed as extending only to "state action," then "much of § 2 [which clearly was so limited] would have made no sense at all." For the similar structure of the companion Freedmen's bill, drafted by the same hand and largely parallel in structure, would seem to confirm that the limitation to "state action" was deliberate.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 457

The civil rights bill was debated intermittently in the Senate from January 12, 1866, until its eventual [392 U.S. 458] passage over the President's veto on April 6. In the course of the debates, Senator Trumbull, who was by far the leading spokesman for the bill, made a number of statements which can only be taken to mean that the bill was aimed at "state action" alone. For example, on January 29, 1866, Senator Trumbull began by citing a number of recently enacted Southern laws depriving men of rights named in the bill. He stated that "[t]he purpose of the bill under consideration is to destroy all these discriminations, and carry into effect the constitutional amendment." 17 Later the same day, Senator Trumbull quoted § 2 of the bill in full, and said:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 458

This is the valuable section of the bill so far as protecting the rights of freedmen is concerned…. When it comes to be understood in all parts of the United States that any person who shall deprive another of any right…in consequence of his color or race will expose himself to fine and imprisonment, I think such acts will soon cease. 18

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 458

These words contain no hint that the "rights" protected by § 2 were intended to be any less broad than those secured by § 1. Of course, § 2 plainly extended only to "state action." That Senator Trumbull viewed §§ 1 and 2 as coextensive appears even more clearly from his answer the following day when asked by Senator Cowan whether there was "not a provision [in the bill] by which State officers are to be punished?" Senator Trumbull replied: "Not State officers especially, but everybody who violates the law. It is the intention to punish everybody who violates the law." 19 [392 U.S. 459]

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 459

On January 29, Senator Trumbull also uttered the first of several remarkably similar and wholly unambiguous statements which indicated that the bill was aimed only at "state action." He said:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 459

[This bill] may be assailed as drawing to the Federal Government powers that properly belong to "states," but I apprehend, rightly considered, it is not obnoxious to that objection. It will have no operation in any State where the laws are equal, where all persons have the same civil rights without regard to color or race. It will have no operation in the State of Kentucky when her slave code and all her laws discrimination between persons on account of race or color shall be abolished. 20

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 459

Senator Trumbull several times reiterated this view. On February 2, replying to Senator Davis of Kentucky, he said:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 459

Why, sir, if the State of Kentucky makes no discrimination in civil rights between its citizens, this bill has no operation whatever in the State of Kentucky. Are all the rights of the people of Kentucky gone because they cannot discriminate and punish one man for doing a thing that they do not punish another for doing? The bill draws to the Federal [392 U.S. 460] Government no power whatever if the States will perform their constitutional obligations. 21

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 460

On April 4, after the President's veto of the bill, Senator Trumbull stated that,

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 460

If an offense is committed against a colored person simply because he is colored, in a State where the law affords him the same protection as if he were white, this act neither has nor was intended to have anything to do with his case, because he has adequate remedies in the State courts…. 22

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 460

Later the same day, he said:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 460

This bill in no manner interferes with the municipal regulations of any State which protects all alike in their rights of person and property. It could have no operation in Massachusetts, New York, Illinois, or most of the States of the Union. 23

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 460

The remarks just quoted constitute the plainest possible statement that the civil rights bill was intended to apply only to state-sanctioned conduct, and not to purely private action. The Court has attempted to negate the force of these statements by citing other declarations by Senator Trumbull and others that the bill would operate everywhere in the country. See ante at 426, n. 35. However, the obvious and natural way to reconcile these two sets of statements is to read the ones about the bill's nationwide application as declarations that the enactment of a racially discriminatory law in any State would bring the bill into effect there. 24 It seems to me that [392 U.S. 461] very great weight must be given these statements of Senator Trumbull, for they were clearly made to reassure Northern and Border State Senators about the extent of the bill's operation in their States.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 461

On April 4, Senator Trumbull gave two additional indications that the bill was intended to reach only state-sanctioned action. The first occurred during Senator Trumbull's defense of the part of § 3 of the bill which gave federal courts jurisdiction

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 461

of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts…of the State or locality where they may be any of the rights secured to them by the first section of this act….

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 461

Senator Trumbull said:

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 461

If it be necessary in order to protect the freedman in his rights that he should have authority to go into the Federal courts in all cases where a custom prevails in a State, or where there is a statute law of the State discriminating against him, I think we have the authority to confer that jurisdiction under the second clause of the [Thirteenth Amendment]. 25

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 461

If the bill had been intended to reach purely private discrimination, it seems very strange that Senator Trumbull did not think it necessary to defend the surely more dubious federal jurisdiction over cases involving no state action whatsoever. A few minutes later, Senator Trumbull reiterated that his reason for introducing the civil rights bill was to bring about

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 461

the passage of a law by Congress securing equality in civil rights when denied by State authorities to freedmen and all other inhabitants of the United States…. 26

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 461

Thus, the Senate debates contain many explicit statements by the bill's own author, to whom the Senate naturally [392 U.S. 462] looked for an explanation of its terms, indicating that the bill would prohibit only state-sanctioned discrimination.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 462

The Court puts forward in support of its construction an impressive number of quotations from and citations to the Senate debates. However, upon more circumspect analysis than the Court has chosen to give, virtually all of these appear to be either irrelevant or equally consistent with a "state action" interpretation. The Court's mention, ante at 427, of a reference in the Senate debates to "white employers who refused to pay their Negro workers" surely does not militate against a "state action" construction, since "state action" would include conduct pursuant to "custom," and there was a very strong "custom" of refusing to pay slaves for work done. The Court's citation, ante at 427-428, of Senate references to "white citizens who assaulted Negroes" is not in point, for the debate cited by the Court concerned the Freedmen's bill, not the civil rights bill. 27 The former, by its terms, forbade discrimination pursuant to "prejudice," as well as "custom," and, in any event, neither bill provided a remedy for the victim of a racially motivated assault. 28

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 462

The Court's quotation, ante at 429-430, of Senator Trumbull's December 13 reference to the then-embryonic civil rights bill is also compatible with a "state action" interpretation, at least when it is recalled that the unedited quotation, see supra at 455, includes a statement that [392 U.S. 463] the second clause of the Thirteenth Amendment, the authority for the proposed bill, was intended solely as a check on state legislatures. Senator Trumbull's declaration the following day that the forthcoming bill would be aimed at discrimination pursuant to "a prevailing public sentiment" as well as to legislation, see ante at 431, is also consistent with a "state action" reading of the bill, for the bill explicitly prohibited actions done under color of "custom" as well as of formal laws.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 463

The three additional statements of Senator Trumbull and the remarks of senatorial opponents of the bill, quoted by the Court, ante at 431-433, to show the bill's sweeping scope, are entirely ambiguous as to whether the speakers thought the bill prohibited only state-sanctioned conduct or reached wholly private action as well. Indeed, if the bill's opponents thought that it would have the latter effect, it seems a little surprising that they did not object more strenuously and explicitly. 29 The remark of Senator Lane which is quoted by the Court, ante at 433, to prove that he viewed the bill as reaching "`the white man…[who] would invoke the power of local prejudice' against the Negro," seems to have been quoted out of context. The quotation is taken from a part of Senator Lane's speech in which he defended the section of the bill permitting the President to invoke military authority when necessary to enforce the bill. After noting that there might be occasions " [w]here organized resistance to the legal authority assumes that shape that the officers cannot execute a writ," 30 Senator Lane concluded that,

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if [the white man] would invoke the power of local prejudice to override the laws of the country, this is no Government unless the military may be called in to enforce the order of the [392 U.S. 464] civil courts and obedience to the laws of the country.

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31 It seems to me manifest that, taken in context, this remark is beside the point in this case.

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The post-veto remarks of opponents of the bill, cited by the Court, ante at 435, also are inconclusive. Once it is recognized that the word "right" as used in the bill is ambiguous, then Senator Cowan's statement, ante at 435, that the bill would confer "the right…to purchase…real estate…without any qualification" 32 must inevitably share that ambiguity. The remarks of Senator Davis, ibid., with respect to rental of hotel rooms and sale of church pews are, when viewed in context, even less helpful to the Court's thesis. For these comments were made immediately following Senator Davis' plaintive acknowledgment that

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this measure proscribes all discriminations…that may be made…by any "ordinance, regulation, or custom," as well as by "law or statute." 33

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Senator Davis then observed that ordinances, regulations, and customs presently conferred upon white persons the most comfortable accommodations in ships and steamboats, hotels, churches and railroad cars, and stated that "[t]his bill…declares all persons who enforce those distinctions to be criminals against the United States…. " 34 Thus, Senator Davis not only tied these obnoxious effects of the bill to its "customs" provision, but alleged that they were brought about by § 2, as well as § 1. There is little wonder that his remarks "elicited no reply," see ibid., from the bill's supporters.

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The House debates are even fuller of statements indicating that the civil rights bill was intended to reach only state-endorsed discrimination. Representative Wilson [392 U.S. 465] was the hill's sponsor in the House. On the very first day of House debate, March 1, Representative Wilson said, in explaining the bill: .

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[I]f the States, seeing that we have citizens of different races and colors, would but shut their eyes to these differences and legislate, so far at least as regards civil rights and immunities, as though all citizens were of one race or color, our troubles as a nation would be well nigh over…. It will be observed that the entire structure of this bill rests on the discrimination relative to civil rights and immunities made by the States on "account of race, color, or previous condition of slavery." 35

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A few minutes later, Representative Wilson said:

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Before our Constitution was formed, the great fundamental rights [which are embodied in this bill] belonged to every person who became a member of our great national family…. The entire machinery of government…was designed, among other things, to secure a more perfect enjoyment of these rights…. I assert that we possess the power to do those things which Governments are organized to do; that we may protect a citizen of the United States against a violation of his rights by the law of a single State;…that this power permeates our whole system, is a part of it, without which the States can run riot over every fundamental right belonging to citizens of the United States…. 36

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These statements surely imply that Representative Wilson believed the bill to be aimed at state-sanctioned discrimination, and not at purely private discrimination, [392 U.S. 466] which, of course, existed unhindered "[b]efore our Constitution was formed."

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Other congressmen expressed similar views. On March 2, Representative Thayer, one of the bill's supporters, said:

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The events of the last four years…have changed [the freedmen] from a condition of slavery to that of freedom. The practical question now to be decided is whether they shall be, in fact, freemen. It is whether they shall have the benefit of this great charter of liberty given to them by the American people.

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Sir, if it is competent for the new-formed Legislatures of the rebel States to enact laws…which declare, for example, that they shall not have the privilege of purchasing a home for themselves and their families;…then I demand to know of what practical value is the amendment abolishing slavery…? 37

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A few minutes later, he said:

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Do you give freedom to a man when you allow him to be deprived of those great natural rights to which every man is entitled by nature?…[W]hat kind of freedom is that by which the man placed in a state of freedom is subject to the tyranny of laws which deprive him of [those] rights…? 38

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A little later, Representative Thayer added:

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[The freedmen] are entitled to the benefit of that guarantee of the Constitution which secures to every citizen the enjoyment of life, liberty, and property, and no just reason exists why they should not enjoy the protection of that guarantee…. [392 U.S. 467]

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What is the necessity which gives occasion for that protection? Sir, in at least six of the lately rebellious States, the reconstructed Legislatures of those States have enacted laws which, if permitted to be enforced, would strike a fatal blow at the liberty of the freedmen…. 39

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An opponent of the bill, Representative Bingham, said on March 9:

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[W]hat, then, is proposed by the provision of the first section? Simply to strike down by congressional enactment every State constitution which makes a discrimination on account of race or color in any of the civil rights of the citizen. 40

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Representative Shellabarger, a supporter of the bill, discussed it on the same day. He began by stating that he had no doubt of the constitutionality of § 2 of the bill, provided Congress might enact § 1. With respect to § 1, he said:

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Its whole effect is not to confer or regulate rights, but to require that whatever of these enumerated rights and obligations are imposed by State laws shall be for and upon all citizens alike…. Self-evidently, this is the whole effect of this first section. It secures…equality of protection in those enumerated civil rights which the States may deem proper to confer upon any races…. It must…be noted that the violations of citizens' rights, which are reached and punished by this bill, are those which are inflicted under "color of law," &c. The bill does not reach mere private wrongs, but only those done under color of state authority…. [I]ts whole force is expended in defeating an attempt, under State laws, to deprive races and the [392 U.S. 468] members thereof as such of the rights enumerated in this act. This is the whole of it. 41

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Thus, Representative Shellabarger said in so many words that the bill had no impact on "mere private wrongs."

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After the President's veto of the bill, Representative Lawrence, a supporter, stated his views. He said:

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The bill does not declare who shall or shall not have the right to sue, give evidence, inherit, purchase, and sell property. These questions are left to the States to determine, subject only to the limitation that there are some inherent and inalienable rights pertaining to every citizen which cannot be abolished or abridged by State constitutions or laws….

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Now there are two ways in which a State may undertake to deprive citizens of these…rights: either by prohibitory laws or by a failure to protect any one of them.

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If the people of a State should become hostile to a large class of naturalized citizens and should enact laws to prohibit them and no other citizens…from inheriting, buying, holding, or selling property,…that would be prohibitory legislation. If the State should simply enact laws for native-born citizens and provide no law under which naturalized citizens could enjoy any one of these rights, and should deny them all protection by civil process or penal enactments, that would be a denial of justice. 42 [392 U.S. 469]

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From this passage, it would appear that Representative Lawrence conceived of the word "right" in § 1 of the bill as referring to a right to equal legal status, and that he believed that the sole effect of the bill was to prohibit state-imposed discrimination.

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The Court quotes and cites a number of passages from the House debates in aid of its construction of the bill. As in the case of the Senate debates, most of these appear upon close examination to provide little support. The first significant citation, ante at 425, n. 33, is a dialogue between Representative Wilson and Representative Loan, another of the bill's supporters.

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The full exchange went as follows:

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Mr. LOAN. Mr. Speaker, I…ask the chairman…why the committee limit the provisions of the second section to those who act under the color of law. Why not let them apply to the whole community where the acts are committed?

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Mr. WILSON, of Iowa. That grows out of the fact that there is discrimination in reference to civil rights under the local laws of the States. Therefore we provide that the persons who under the color of these local laws should do these things shall be liable to this punishment.

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Mr. LOAN. What penalty is imposed upon others than officers who inflict these wrongs on the citizen?

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Mr. WILSON, of Iowa. We are not making a general criminal code for the States.

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Mr. LOAN. Why not abrogate those laws instead of inflicting penalties upon officers who execute writs under them?

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Mr. WILSON, of Iowa. A law without a sanction is of very little force.

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Mr. LOAN. Then why not put it in the bill directly? [392 U.S. 470]

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Mr. WILSON, of Iowa. That is what we are trying to do. 43

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The interpretation which the Court places on Representative Wilson's remarks, see ante at 425, n. 33, is a conceivable one. 44 However, it is equally likely that, since both participants in the dialogue professed concern solely with § 2 of the bill, their remarks carried no implication about the scope of § 1. Moreover, it is possible to read the entire exchange as concerned with discrimination in communities having discriminatory laws, with Representative Loan urging that the laws should be abrogated directly or that all persons, not merely officers, who discriminated pursuant to them, should be criminally punishable.

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The next significant reliance upon the House debates is the Court's mention of references in the debates

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to white employers who refused to pay their Negro workers, white planters who agreed among themselves not to hire freed slaves without the permission of their former masters, white citizens who assaulted Negroes or who combined to drive them out of their communities.

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Ante at 427-428. 45 (Footnotes omitted.) As was pointed out in the discussion of the Senate debates, supra, at 462, the references to white men's refusals to pay freedmen [392 U.S. 471] and their agreements not to hire freedmen without their "masters'" consent are by no means contrary to a "state action" view of the civil rights bill, since the bill expressly forbade action pursuant to "custom," and both of these practices reflected "customs" from the time of slavery. The Court cites two different House references to assaults on Negroes by whites. The first was by Congressman Windom, 46 and close examination reveals that his only mention of assaults was with regard to a Texas "pass system," under which freedmen were whipped if found abroad without passes, and a South Carolina law permitting freedmen to be whipped for insolence. 47 Since these assaults were sanctioned by law, or at least by "custom," they would be reached by the bill even under a "state action" interpretation. The other allusion to assaults, as well as the mention of combinations of whites to drive freedmen from communities, occurred in a speech by Representative Lawrence. 48 These references were shortly preceded by the remarks of Congressman Lawrence quoted supra at 468, and were immediately followed by his comment that,

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If States should undertake to authorize such offenses or deny to a class of citizens all protection against them, we may then inquire whether the nation itself may be destroyed…. 49

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These fore and aft remarks imply that Congressman Lawrence's concern was that the activities referred to would receive state sanction.

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The Court, ante at 428, n. 40, quotes a statement of Representative Eldridge, an opponent of the bill, in which he mentioned references by the bill's supporters to "individual cases of wrong perpetrated upon [392 U.S. 472] the freedmen of the South…. " 50 However, up to that time, there had been no mention whatever in the House debates of any purely private discrimination, 51 so one can only conclude that, by "individual cases," Representative Eldridge meant "isolated cases," not "cases of purely private discrimination."

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The last significant reference 52 by the Court to the House debates is its statement, ante at 434, that

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Representative Cook of Illinois thought that, without appropriate federal legislation, any "combination of men in [a] neighborhood [could] prevent [a Negro] from having any chance" to enjoy

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the benefits of the Thirteenth Amendment. This quotation seems to be taken out of context. What Representative Cook said was:

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[W]hen those rights which are enumerated in this bill are denied to any class of men on account of race or color, when they are subject to a system of vagrant laws which sells them into slavery or involuntary servitude, which operates upon them as upon no other part of the community, they are not secured in the rights of freedom. If a man can be sold, the man is a slave. If he is nominally freed by the amendment to the Constitution,…he has simply the labor of his hands on which he can depend. Any combination of men in his neighborhood can prevent him from having any chance to support himself by his labor. They can pass law that a man not supporting himself by labor shall [392 U.S. 473] be deemed a vagrant, and that a vagrant shall be sold. 53

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These remarks clearly were addressed to discriminations effectuated by law, or sanctioned by "custom." As such, they would have been reached by the bill even under a "state action" interpretation.

D

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The foregoing analysis of the language, structure, and legislative history of the 1866 Civil Rights Act shows, I believe, that the Court's thesis that the Act was meant to extend to purely private action is open to the most serious doubt, if indeed it does not render that thesis wholly untenable. Another, albeit less tangible, consideration points in the same direction. Many of the legislators who took part in the congressional debates inevitably must have shared the individualistic ethic of their time, which emphasized personal freedom 54 and embodied a distaste for governmental interference which was soon to culminate in the era of laissez-faire. 55 It seems to me that most of these men would have regarded [392 U.S. 474] it as a great intrusion on individual liberty for the Government to take from a man the power to refuse for personal reasons to enter into a purely private transaction involving the disposition of property, albeit those personal reasons might reflect racial bias. It should be remembered that racial prejudice was not uncommon in 1866, even outside the South. 56 Although Massachusetts had recently enacted the Nation's first law prohibiting racial discrimination in public accommodations, 57 Negroes could not ride within Philadelphia streetcars 58 or attend public schools with white children in New York City. 59 Only five States accorded equal voting rights to Negroes, 60 and it appears that Negroes were allowed to serve on juries only in Massachusetts. 61 Residential segregation was the prevailing pattern almost everywhere [392 U.S. 475] in the North. 62 There were no state "fair housing" laws in 1866, and it appears that none had ever been proposed. 63 In this historical context, I cannot conceive that a bill thought to prohibit purely private discrimination not only in the sale or rental of housing, but in all property transactions, would not have received a great deal of criticism explicitly directed to this feature. The fact that the 1866 Act received no criticism of this kind 64 is, for me, strong additional evidence that it was not regarded as extending so far.

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In sum, the most which can be said with assurance about the intended impact of the 1866 Civil Rights Act upon purely private discrimination is that the Act probably was envisioned by most members of Congress as prohibiting official, community-sanctioned discrimination in the South, engaged in pursuant to local "customs" which in the recent time of slavery probably were embodied in laws or regulations. 65 Acts done under the [392 U.S. 476] color of such "customs" were, of course, said by the Court in the Civil Rights Cases, 109 U.S. 3, to constitute "state action" prohibited by the Fourteenth Amendment. See id. at 16, 17, 21. Adoption of a "state action" construction of the Civil Rights Act would therefore have the additional merit of bringing its interpretation into line with that of the Fourteenth Amendment, which this Court has consistently held to reach only "state action." This seems especially desirable in light of the wide agreement that a major purpose of the Fourteenth Amendment, at least in the minds of its congressional proponents, was to assure that the rights conferred by the then recently enacted Civil Rights Act could not be taken away by a subsequent Congress. 66

II

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The foregoing, I think, amply demonstrates that the Court has chosen to resolve this case by according to a loosely worded statute a meaning which is open to the strongest challenge in light of the statute's legislative history. In holding that the Thirteenth Amendment is sufficient constitutional authority for § 1982 as interpreted, the Court also decides a question of great importance. Even contemporary supporters of the aims of the 1866 Civil Rights Act doubted that those goals could constitutionally be achieved under the Thirteenth Amendment, 67 and this Court has twice expressed similar [392 U.S. 477] doubts. See Hodges v. United States, 203 U.S. 1, 16-18; Corrigan v. Buckley, 271 U.S. 323, 330. But cf. Civil Rights Cases, 109 U.S. 3, 22. Thus, it is plain that the course of decision followed by the Court today entails the resolution of important and difficult issues.

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The only apparent way of deciding this case without reaching those issues would be to hold that the petitioners are entitled to relief on the alternative ground advanced by them: that the respondents' conduct amounted to "state action" forbidden by the Fourteenth Amendment. However, that route is not without formidable obstacles of its own, for the opinion of the Court of Appeals makes it clear that this case differs substantially from any "state action" case previously decided by this Court. See 379 F.2d at 40-45.

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The fact that a case is "hard" does not, of course, relieve a judge of his duty to decide it. Since the Court did vote to hear this case, I normally would consider myself obligated to decide whether the petitioners are entitled to relief on either of the grounds on which they rely. After mature reflection, however, I have concluded that this is one of those rare instances in which an event which occurs after the hearing of argument so diminishes a case's public significance, when viewed in light of the difficulty of the questions presented, as to justify this Court in dismissing the writ as improvidently granted.

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The occurrence to which I refer is the recent enactment of the Civil Rights Act of 1968, Pub.L. 90-284, 82 Stat. 73. Title VIII of that Act contains comprehensive "fair housing" provisions, which, by the terms of § 803, will become applicable on January 1, 1969, to persons who, like the petitioners, attempt to buy houses from developers. Under those provisions, such persons will be entitled to injunctive relief and damages from developers [392 U.S. 478] who refuse to sell to them on account of race or color, unless the parties are able to resolve their dispute by other means. Thus, the type of relief which the petitioners seek will be available within seven months' time under the terms of a presumptively constitutional Act of Congress. 68 In these circumstances, it seems obvious that the case has lost most of its public importance, and I believe that it would be much the wiser course for this Court to refrain from deciding it. I think it particularly unfortunate for the Court to persist in deciding this case on the basis of a highly questionable interpretation of a sweeping, century-old statute which, as the Court acknowledges, see ante at 415, contains none of the exemptions which the Congress of our own time found it necessary to include in a statute regulating relationships so personal in nature. In effect, this Court, by its construction of § 1982, has extended the coverage of federal "fair housing" laws far beyond that which Congress, in its wisdom, chose to provide in the Civil Rights Act of 1968. The political process now having taken hold again in this very field, I am at a loss to understand why the Court should have deemed it appropriate or, in the circumstances of this case, necessary to proceed with such precipitate and insecure strides.

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I am not dissuaded from my view by the circumstance that the 1968 Act was enacted after oral argument in this case, at a time when the parties and amici curiae had invested time and money in anticipation of a decision on the merits, or by the fact that the 1968 Act apparently will not entitle these petitioners to the relief which they seek. 69 For the certiorari jurisdiction was not [392 U.S. 479] conferred upon this Court "merely to give the defeated party in the…Court of Appeals another hearing," Magnum Co. v. Coty, 262 U.S. 159, 163, or "for the benefit of the particular litigants," Rice v. Sioux City Cemetery, 349 U.S. 70, 74, but to decide issues "the settlement of which is of importance to the public, as distinguished from…the parties," Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 393. I deem it far more important that this Court should avoid, if possible, the decision of constitutional and unusually difficult statutory questions than that we fulfill the expectations of every litigant who appears before us.

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One prior decision of this Court especially suggests dismissal of the writ as the proper course in these unusual circumstances. In Rice v. Sioux City Cemetery, supra, the issue was whether a privately owned cemetery might defend a suit for breach of a contract to bury on the ground that the decedent was a Winnebago Indian and the contract restricted burial privileges to Caucasians. In considering a petition for rehearing following an initial affirmance by an equally divided Court, there came to the Court's attention for the first time an Iowa statute which prohibited cemeteries from discriminating on account of race, but which would not have benefited the Rice petitioner because of an exception for "pending litigation." Mr. Justice Frankfurter, speaking for a majority of the Court, held that the writ should be dismissed. He pointed out that the case presented "evident difficulties," 349 U.S. at 77, and noted that,

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[h]ad the statute been properly brought to our attention…, the case would have assumed such an isolated significance that it would hardly have been brought here in the first instance.

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Id. at 76-77. This case certainly presents difficulties as substantial as those in Rice. Compare what has been said in this opinion with 349 U.S. [392 U.S. 480] at 72-73; see also Bell v. Maryland, 378 U.S. 226. And if the petition for a writ of certiorari in this case had been filed a few months after, rather than a few months before, the passage of the 1968 Civil Rights Act, I venture to say that the case would have been deemed to possess such "isolated significance," in comparison with its difficulties, that the petition would not have been granted.

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For these reasons, I would dismiss the writ of certiorari as improvidently granted.

Footnotes

STEWART, J., lead opinion (Footnotes)

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1. To vindicate their rights under 42 U.S.C. § 1982, the petitioners invoked the jurisdiction of the District Court to award "damages or…equitable or other relief under any Act of Congress providing for the protection of civil rights…. " 28 U.S.C. § 1343(4). In such cases, federal jurisdiction does not require that the amount in controversy exceed $10,000. Cf. Douglas v. City of Jeannette, 319 U.S. 157, 161; Hague v. C.I.O., 307 U.S. 496, 507-514, 527-532.

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2. 255 F.Supp. 115.

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3. 379 F.2d 33.

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4. 389 U.S. 968.

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5. Because we have concluded that the discrimination alleged in the petitioners' complaint violated a federal statute that Congress had the power to enact under the Thirteenth Amendment, we find it unnecessary to decide whether that discrimination also violated the Equal Protection Clause of the Fourteenth Amendment.

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6. Contrast the Civil Rights Act of 1968, § 804(a).

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7. Contrast § 804(b).

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8. Contrast §§ 804(c), (d), (e).

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9. Contrast § 805.

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10. Contrast § 806. In noting that 42 U.S.C. § 1982 differs from the Civil Rights Act of 1968 in not dealing explicitly and exhaustively with such matters (see also nn. 7 and 9, supra), we intimate no view upon the question whether ancillary services or facilities of this sort might in some situations constitute "property" as that term is employed in § 1982. Nor do we intimate any view upon the extent to which discrimination in the provision of such services might be barred by 42 U.S.C. § 1981, the text of which appears in n. 78, infra.

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11. Contrast the Civil Rights Act of 1968, §§ 808-811.

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12. Contrast § 813(a).

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13. The petitioners in this case sought an order requiring the respondents to sell them a "Hyde Park" type of home on Lot No. 7147, or on "some other lot in [the] subdivision sufficient to accommodate the home selected…. " They requested that the respondents be enjoined from disposing of Lot No. 7147 while litigation was pending, and they asked for a permanent injunction against future discrimination by the respondents "in the sale of homes in the Paddock Woods subdivision." The fact that 42 U.S.C. § 1982 is couched in declaratory terms and provides no explicit method of enforcement does not, of course, prevent a federal court from fashioning an effective equitable remedy. See, e.g., Texas & N. O. R. Co. v. Ry. Clerks, 281 U.S. 548, 568-570; Deckert v. Independence Corp., 311 U.S. 282, 288; United States v. Republic Steel Corp., 362 U.S. 482, 491-492; J. I. Case Co. v. Borak, 377 U.S. 426, 432-435. Cf. Ex parte Young, 209 U.S. 123; Griffin v. School Board, 377 U.S. 218.

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14. Contrast the Civil Rights Act of 1968, § 812(c). The complaint in this case alleged that the petitioners had "suffered actual damages in the amount of $50.00," but no facts were stated to support or explain that allegation. Upon receiving the injunctive relief to which they are entitled, see n. 13, supra, the petitioners will presumably be able to purchase a home from the respondents at the price prevailing at the time of the wrongful refusal in 1965—substantially less, the petitioners concede, than the current market value of the property in question. Since it does not appear that the petitioners will then have suffered any uncompensated injury, we need not decide here whether, in some circumstances, a party aggrieved by a violation of § 1982 might properly assert an implied right to compensatory damages. Cf. Texas & Pacific R. Co. v. Rigsby, 241 U.S. 33, 39-40; Steele v. Louisville & N. R. Co., 323 U.S. 192, 207; Wyandotte Transportation Co. v. United States, 389 U.S. 191, 202, 204. See generally Bell v. Hood, 327 U.S. 678, 684. See also 42 U.S.C. § 1988. In no event, on the facts alleged in the present complaint, would the petitioners be entitled to punitive damages. See Philadelphia, Wilmington, & Baltimore R. Co. v. Quigley, 21 How. 202, 213-214. Cf. Barry v. Edmunds, 116 U.S. 550, 562-565; Wills v. Trans World Airlines, Inc., 200 F.Supp. 360, 367-368. We intimate no view, however, as to what damages might be awarded in a case of this sort arising in the future under the Civil Rights Act of 1968.

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15. See §§ 803(b), 807.

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16. Hearings on S. 1358, S. 2114, and S. 2280 before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency, 90th Cong., 1st Sess., 229. These hearings were a frequent point of reference in the debates preceding passage of the 1968 Civil Rights Act. See, e.g., 114 Cong.Rec. S1387 (Feb. 16, 1968), S1453 (Feb. 20, 1968), S1641 (Feb. 26, 1968), S1788 (Feb. 27, 1968).

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17. Hearings, supra, n. 16, at 229.

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18. Id. at 230. See also id. at 129, 162-163, 251. And see Hearings on S. 1026, S. 1318, S. 1359, S. 1362, S. 1462, H.R. 2516, and H.R. 10805 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 90th Cong., 1st Sess., 416.

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19. 114 Cong.Rec. H2807 (April 10, 1968). See also id. at H2808. The Attorney General of the United States stated during the oral argument in this case that the Civil Rights Act then pending in Congress

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would provide open housing rights on a complicated statutory scheme, including administrative, judicial, and other sanctions for its effectuation….

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"Its potential for effectiveness," he added, "is probably much greater than [§ 1982] because of the sanctions and the remedies that it provides."

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20. At oral argument, the Attorney General expressed the view that, if Congress should enact the pending bill, § 1982 would not be affected in any way, but "would stand independently." That is, of course, correct. The Civil Rights Act of 1968 does not mention 42 U.S.C. § 1982, and we cannot assume that Congress intended to effect any change, either substantive or procedural, in the prior statute. See United States v. Borden Co., 308 U.S. 188, 198-199 See also § 815 of the 1968 Act:

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Nothing in this title shall be construed to invalidate or limit any law of…any…jurisdiction in which this title shall be effective, that grants, guarantees, or protects the…rights…granted by this title….

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21. On April 22, 1968, we requested the views of the parties as to what effect, if any, the enactment of the Civil Rights Act of 1968 had upon this litigation. The parties and the Attorney General, representing the United States as amicus curiae, have informed us that the respondents' housing development will not be covered by the 1968 Act until January 1, 1969; that, even then, the Act will have no application to cases where, as here, the alleged discrimination occurred prior to April 11, 1968, the date on which the Act became law, and that, if the Act were deemed applicable to such cases, the petitioners' claim under it would nonetheless be barred by the 180-day limitation period of §§ 810(b) and 812(a).

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Nor did the passage of the 1968 Act after oral argument in this case furnish a basis for dismissing the writ of certiorari as improvidently granted. Rice v. Sioux City Cemetery, 349 U.S. 70, relied upon in dissent, post at 479, was quite unlike this case, for the statute that belatedly came to the Court's attention in Rice reached precisely the same situations that would have been covered by a decision in this Court sustaining the petitioner's claim on the merits. The coverage of § 1982, however, is markedly different from that of the Civil Rights Act of 1968.

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22. 82 U.S.App.D.C. 180, 162 F.2d 233.

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23. 332 U.S. 789

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24. Compare Harmon v. Tyler, 273 U.S. 668, invalidating a New Orleans ordinance which gave legal force to private discrimination by forbidding any Negro to establish a home in a white community, or any white person to establish a home in a Negro community, "except on the written consent of a majority of the persons of the opposite race inhabiting such community or portion of the City to be affected." See Shelley v. Kraemer, 334 U.S. 1, 12.

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25. Two of this Court's early opinions contain dicta to the general effect that § 1982 is limited to state action. Virginia v. Rives, 100 U.S. 313, 317-318; Civil Rights Cases, 109 U.S. 3, 16-17. But all that Virginia v. Rives, supra, actually held was that § 641 of the Revised Statutes of 1874 (derived from § 3 of the Civil Rights Act of 1866 and currently embodied in 28 U.S.C. § 1443(1)) did not authorize the removal of a state prosecution where the defendants, without pointing to any statute discriminating against Negroes, could only assert that a denial of their rights might take place and might go uncorrected at trial. 100 U.S. at 319-322. See Georgia v. Rachel, 384 U.S. 780, 797-804. And, of course, the Civil Rights Cases, supra, which invalidated §§ 1 and 2 of the Civil Rights Act of 1875, 18 Stat. 335, did not involve the present statute at all.

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It is true that a dictum in Hurd v. Hodge, 334 U.S. 24, 31, characterized Corrigan v. Buckley, 271 U.S. 323, as having "held" that "[t]he action toward which the provisions of the statute…[are] directed is governmental action." 334 U.S. at 31. But no such statement appears in the Corrigan opinion, and a careful examination of Corrigan reveals that it cannot be read as authority for the proposition attributed to it in Hurd. In Corrigan, suits had been brought to enjoin a threatened violation of certain restrictive covenants in the District of Columbia. The courts of the District had granted relief, see 55 App.D.C. 30, 299 F. 899, and the case reached this Court on appeal. As the opinion in Corrigan specifically recognized, no claim that the covenants could not validly be enforced against the appellants had been raised in the lower courts, and no such claim was properly before this Court. 271 U.S. at 330-331. The only question presented for decision was whether the restrictive covenants themselves violated the Fifth, Thirteenth, and Fourteenth Amendments, and §§ 1977, 1978, and 1979 of the Revised Statutes (now 42 U.S.C. §§ 1981 1982 and 1983). Ibid. Addressing itself to that narrow question, the Court said that none of the provisions relied upon by the appellants prohibited private individuals from "enter[ing] into…[contracts] in respect to the control and disposition of their own property." Id. at 331. Nor, added the Court, had the appellants even claimed that the provisions in question "had, in and of themselves,…[the] effect" of prohibiting such contracts. Ibid.

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Even if Corrigan should be regarded as an adjudication that 42 U.S.C. § 1982 (then § 1978 of the Revised Statutes) does not prohibit private individuals from agreeing not to sell their property to Negroes, Corrigan would not settle the question whether § 1982 prohibits an actual refusal to sell to a Negro. Moreover, since the appellants in Corrigan had not even argued in this Court that the statute prohibited private agreements of the sort there involved, it would be a mistake to treat the Corrigan decision as a considered judgment even on that narrow issue.

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26. 379 F.2d 33, 43

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27. Ibid.

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28. Act of April 9, 1866, c. 31, § 1, 14 Stat. 27, reenacted by § 18 of the Enforcement Act of 1870, Act of May 31, 1870, c. 114, § 18, 16 Stat. 140, 144, and codified in §§ 1977 and 1978 of the Revised Statutes of 1874, now 42 U.S.C. §§ 1981 and 1982. For the text of § 1981, see n. 78, infra.

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29. It is, of course, immaterial that § 1 ended with the words "any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding." The phrase was obviously inserted to qualify the reference to "like punishment, pains, and penalties, and to none other," thus emphasizing the supremacy of the 1866 statute over inconsistent state or local laws, if any. It was deleted, presumably as surplusage, in § 1978 of the Revised Statutes of 1874.

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30. Several weeks before the House began its debate on the Civil Rights Act of 1866, Congress had passed a bill (S. 60) to enlarge the powers of the Freedmen's Bureau (created by Act of March 3, 1865, c. 90, 13 Stat. 507) by extending military jurisdiction over certain areas in the South where,

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in consequence of any State or local law,…custom, or prejudice, any of the civil rights…belonging to white persons (including the right…to inherit, purchase, lease, sell, hold, and convey real and personal property…) are refused or denied to negroes…on account of race, color, or any previous condition of slavery or involuntary servitude….

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See Cong.Globe, 39th Cong., 1st Sess., 129, 209. (Emphasis added.) Both Houses had passed S. 60 (see id. at 421, 688, 748, 775), and, although the Senate had failed to override the President's veto (see id. t 915-916, 943) the bill was nonetheless significant for its recognition that the "right to purchase" was a right that could be "refused or denied" by "custom or prejudice" as well as by "State or local law." See also the text accompanying nn. 49 and 59, infra. Of course, an

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abrogation of civil rights made "in consequence of…custom, or prejudice" might as easily be perpetrated by private individuals or by unofficial community activity as by state officers armed with statute or ordinance.

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J. tenBroek, Equal Under Law 179 (1965 ed.).

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31. When Congressman Bingham of Ohio spoke of the Civil Rights Act, he charged that it would duplicate the substantive scope of the bill recently vetoed by the President, see n. 30, supra, and that it would extend the territorial reach of that bill throughout the United States. Cong.Globe, 39th Cong., 1st Sess., 1292. Although the Civil Rights Act, as the dissent notes, post at 457, 462, made no explicit reference to "prejudice," cf. n. 30, supra, the fact remains that nobody who rose to answer the Congressman disputed his basic premise that the Civil Rights Act of 1866 would prohibit every form of racial discrimination encompassed by the earlier bill the President had vetoed. Even Senator Trumbull of Illinois, author of the vetoed measure as well as of the Civil Rights Act, had previously remarked that the latter was designed to "extend to all parts of the country," on a permanent basis, the "equal civil rights" which were to have been secured in rebel territory by the former, id. at 322, to the end that "all the badges of servitude…be abolished." Id. at 323. (Emphasis added.)

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32. Section 2 provided:

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That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.

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(Emphasis added.) For the evolution of this provision into 18 U.S.C. § 242, see Screws v. United States, 325 U.S. 91, 98-99; United States v. Price, 383 U.S. 787, 804.

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33. When Congressman Loan of Missouri asked the Chairman of the House Judiciary Committee, Mr. Wilson of Iowa, "why [does] the committee limit the provisions of the second section to those who act under the color of law," Cong.Globe, 39th Cong., 1st Sess., 1120, he was obviously inquiring why the second section did not also punish those who violated the first without acting "under the color of law." Specifically, he asked:

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Why not let them [the penalties of § 2] apply to the whole community where the acts are committed?

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Ibid. Mr. Wilson's reply was particularly revealing. If, as floor manager of the bill, he had viewed acts not under color of law as not violative of § 1 at all, that would, of course, have been the short answer to the Congressman's query. Instead, Mr. Wilson found it necessary to explain that the Judiciary Committee did not want to make "a general criminal code for the States." Ibid. Hence, only those who discriminated "in reference to civil rights…under the color of…local laws" were made subject to the criminal sanctions of § 2. Ibid.

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Congress might have thought it appropriate to confine criminal punishment to state officials, oath-bound to support the supreme federal law, while allowing only civil remedies—or perhaps only preventive relief—against private violators. Or Congress might have thought that States which did not authorize abridgment of the rights declared in § 1 would themselves punish all who interfered with those rights without official authority. See, e.g., Cong.Globe, 39th Cong., 1st Sess., 1758, 1785. Cf. Civil Rights Cases, 109 U.S. 3, 19, 24-25.

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Whatever the reason, it was repeatedly stressed that the only violations "reached and punished" by the bill, see Cong.Globe, 39th Cong., 1st Sess., at 1294 (emphasis added), would be those "done under color of State authority." Ibid. It is observed in dissent, post at 458, that Senator Trumbull told Senator Cowan that § 2 was directed not at "State officers especially, but [at] everybody who violates the law." That remark, however, was nothing more than a reply to Senator Cowan's charge that § 2 was "exceedingly objectionable" in singling out state judicial officers for punishment for the first time "in the history of civilized legislation." Id. at 500.

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34. See, e.g., Cong.Globe, 39th Cong., 1st Sess., at 39, 474, 516-517, 602-603, 1123-1125, 1151-1153, 1160. For the substance of the codes and their operation, see H.R.Exec.Doc. No. 118, 39th Cong., 1st Sess.; S.Exec.Doc. No. 6, 39th Cong., 2d Sess.; 1 W. Fleming, Documentary History of Reconstruction 273-312 (1906); E. McPherson, The Political History of the United States of America During the Period of Reconstruction 294 (1871); 2 S. Morison and H. Commager, The Growth of the American Republic 17-18 (1950 ed.); K. Stampp, The Era of Reconstruction 79-81 (1965).

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35. See n. 31, supra. It is true, as the dissent emphasizes, post at 460, that Senator Trumbull remarked at one point that the Act "could have no operation in Massachusetts, New York, Illinois, or most of the States of the Union," whose laws did not themselves discriminate against Negroes. Cong.Globe, 39th Cong., 1st Sess., 1761. But the Senator was simply observing that the Act would "in no manner [interfere] with the…regulations of any State which protects all alike in their rights of person and property." Ibid. See also id. at 476, 505, 600. That is, the Act would have no effect upon nondiscriminatory legislation. Senator Trumbull obviously could not have meant that the law would apply to racial discrimination in some States, but not in others, for the bill, on its face, applied upon its enactment "in every State and Territory in the United States," and no one disagreed when Congressman Bingham complained that, unlike Congress' recently vetoed attempt to expand the Freedmen's Bureau, see n. 30, supra, the Civil Rights Act would operate "in every State of the Union." Id. at 1292. Nor, contrary to a suggestion made in dissent, post at 460, was the Congressman speaking only of the Act's potential operation in any State that might enact a racially discriminatory law in the future. The Civil Rights Act, Congressman Bingham insisted, would "be enforced in every State…[at] the present…time." Ibid. (Emphasis added.)

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36. J. tenBroek, supra, n. 30, at 181. See also W. Brock, An American Crisis 124 (1963); J. McPherson, The Struggle For Equality 332 (1964); K. Stampp, supra, n. 34, at 75, 131-132.

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37. Cong.Globe, 39th Cong., 1st Sess., 95, 1833.

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38. Id. at 1160.

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39. Id. at 339-340, 1160, 1835. It is true, as the dissent notes, post at 462, that some of the references to private assaults occurred during debate on the Freedmen's Bureau bill, n. 30, supra, but the congressional discussion proceeded upon the understanding that all discriminatory conduct reached by the Freedmen's Bureau bill would be reached as well by the Civil Rights Act. See, e.g., n. 31, supra.

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40. Id. at 1835. It is clear that these instances of private mistreatment, see also text accompanying n. 41, infra were understood as illustrative of the evils that the Civil Rights Act of 1866 would correct. Congressman Eldridge of Wisconsin, for example, said this:

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Gentlemen refer us to individual cases of wrong perpetrated upon the freedmen of the South as an argument why we should extend the Federal authority into the different States to control the action of the citizens thereof. But, I ask, has not the South submitted to the altered state of things there, to the late amendment of the Constitution, to the loss of their slave property, with a cheerfulness and grace that we did not expect?…I deprecate all these measures because of the implication they carry upon their face that the people who have heretofore owned slaves intend to do them wrong. I do not believe it…. The cases of ill-treatment are exceptional cases.

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Id. at 1156. So it was that "opponents denied or minimized the facts asserted," but "did not contend that the [Civil Rights Act] would not reach such facts if they did exist." J. tenBroek, supra, n. 30, at 181.

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41. Report of C. Schurz, S.Exec.Doc. No. 2, 39th Cong., 1st Sess., 2, 17-25. See W. Brock, supra, n. 36, at 40-42; K. Stampp, supra, n. 34, at 73-75.

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42. Report of C. Schurz, supra, at 23-24.

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43. Id. at 25.

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44. Id. at 18.

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45. Id. at 35.

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46. J. tenBroek, supra, n. 30, at 177. One of the proposals, sponsored by Senator Wilson of Massachusetts, would have declared void all "laws, statutes, acts, ordinances, rules, and regulations" establishing or maintaining in former rebel States "any inequality of civil rights and immunities" on account of "color, race, or…a previous condition…of slavery." Cong.Globe, 39th Cong., 1st Sess., 39. The other two proposals, sponsored by Senator Sumner of Massachusetts, would have struck down in the former Confederate States "all laws…establishing any oligarchical privileges and any distinction of rights on account of color or race," and would have required that all persons there be "recognized as equal before the law." Id. at 91.

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47. See n. 46, supra.

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48. Cong.Globe, 39th Cong., 1st Sess., 43. (Emphasis added.) The dissent seeks to neutralize the impact of this quotation by noting that, prior to making the above statement, the Senator had argued that the second clause of the Thirteenth Amendment was inserted

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for the purpose, and none other, of preventing State Legislatures from enslaving, under any pretense, those whom the first clause declared should be free.

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See post at 455, 462-463. In fact, Senator Trumbull was simply replying at that point to the contention of Senator Saulsbury of Delaware that the second clause of the Thirteenth Amendment was never intended to authorize federal legislation interfering with subjects other than slavery itself. See id. at 42. Senator Trumbull responded that the clause was intended to authorize precisely such legislation. That, "and none other," he said for emphasis, was its avowed purpose. But Senator Trumbull did not imply that the force of § 2 of the Thirteenth Amendment would be spent once Congress had nullified discriminatory state laws. On the contrary, he emphasized the fact that it was "for Congress to determine, and nobody else," what sort of legislation might be "appropriate" to make the Thirteenth Amendment effective. Id. at 43. Cf. Part V of this opinion, infra.

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49. Id. at 77. (Emphasis added.)

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50. Id. at 129.

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51. Id. at 474.

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52. Ibid. See the dissenting opinion, post at 458.

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53. Id. at 475

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54. Id. at 599. (Emphasis added.) Senator Trumbull later observed that his bill would add nothing to federal authority if the States would fully "perform their constitutional obligations." Id. at 600. See also Senator Trumbull's remarks, id. at 1758; the remarks of Senator Lane of Indiana, id. at 602-603, and the remarks of Congressman Wilson of Iowa, id. at 1117-1118. But it would be a serious mistake to infer from such statements any notion (see the dissenting opinion, post at 460) that, so long as the States refrained from actively discriminating against Negroes, their "obligations" in this area, as Senator Trumbull and others understood them, would have been fulfilled. For the Senator's concern, it will be recalled (see text accompanying n. 49, supra), was that Negroes might be "oppressed and, in fact, deprived of their freedom" not only by hostile laws, but also by "prevailing public sentiment," and he viewed his bill as necessary "unless, by local legislation, they [the States] provide for the real freedom of their former slaves." Id. at 77. See also id. at 43. And see the remarks of Congressman Lawrence of Ohio:

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Now there are two ways in which a State may undertake to deprive citizens of these absolute, inherent, and inalienable rights: either by prohibitory laws, or by a failure to protect any one of them.

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Id. at 1833.

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55. See, e.g., the remarks of Senator Howard of Michigan. Id. at 504.

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56. See, e.g., the remarks of Senator Cowan of Pennsylvania, id. at 500, and the remarks of Senator Hendricks of Indiana. Id. at 601.

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57. Senator Saulsbury of Delaware. Id. at 478.

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58. Senator Van Winkle of West Virginia. Id. at 498.

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59. Senator Lane of Indiana. Id. at 603.

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60. Id. at 606-607

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61. See, e.g., id. at 1118-1119, 1123-1125, 1151-1153, 1160. See generally the discussion in the dissenting opinion, post at 464-467.

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62. Id. at 1151. (Emphasis added.)

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63. Id. at 1124.

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64. Ibid. (Emphasis added.) The clear import of these remarks is in no way diminished by the heated debate, see id. at 1290-1294, portions of which are quoted in the dissenting opinion, post at 467-468, between Representative Bingham, opposing the bill, and Representative Shellabarger, supporting it, over the question of what kinds of state laws might be invalidated by § 1, a question not involved in this case.

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65. Id. at 1367. On March 15, the Senate concurred in the several technical amendments that had been made by the House. Id. at 1413-1416.

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66. Id. at 1679-1681.

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67. Senator Cowan of Pennsylvania. Id. at 1781.

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68. Senator Davis of Kentucky. Id., Appendix, at 183. Such expansive views of the Act's reach found frequent and unchallenged expression in the Nation's press. See, e.g., Daily National Intelligencer (Washington, D.C.), March 24, 1866, p. 2, col. 1; New York Herald, March 29, 1866, p. 4, col. 3; Cincinnati Commercial, March 30, 1866, p. 4, col. 2; Evening Post (New York), April 7, 1866, p. 2, col. 1; Indianapolis Daily Herald, April 17, 1866, p. 2, col. 1.

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69. Cong.Globe, 39th Cong., 1st Sess., 1809, 1861.

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70.

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Never before had Congress overridden a President on a major political issue, and there was special gratification in feeling that this had not been done to carry some matter of material interest, such as a tariff, but in the cause of disinterested justice.

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W. Brock, supra, n. 36, at 115.

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71. Section 18 of the Enforcement Act of 1870, Act of May 31, 1870, c. 114, § 18, 16 Stat. 144:

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And be it further enacted, That the act to protect all persons In the United States in their civil rights, and furnish the means of their vindication, passed April nine, eighteen hundred and sixty-six, is hereby reenacted….

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72. See United States v. Mosley, 238 U.S. 383, 387-388; United States v. Price, 383 U.S. 787, 804-805; 2 W. Fleming, Documentary History of Reconstruction 285-288 (1907); K. Stampp, supra, n. 34, at 145, 171, 185, 198-204; G. Stephenson, Race Distinctions in American Law 116 (1910).

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73. The Court of Appeals in this case seems to have derived such an assumption from language in Virginia v. Rives, 100 U.S. 313, 317-318, and Hurd v. Hodge, 334 U.S. 24, 31. See 379 F.2d 33, 39-40, 43. Both of those opinions simply asserted that, at least after its reenactment in 1870, the Civil Rights Act of 1866 was directed only at governmental action. Neither opinion explained why that was thought to be so, and, in each case, the statement was merely dictum. See n. 25, supra.

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74. So it was, for example, that this Court unanimously upheld the power of Congress under the Thirteenth Amendment to make it a crime for one individual to compel another to work in order to discharge a debt. Clyatt v. United States, 197 U.S. 207.

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75. See, e.g., Cong.Globe, 39th Cong., 1st Sess., 113, 318, 476, 499, 507, 576, 600-601.

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76. See, e.g., Cong.Globe, 38th Cong., 1st Sess., 1366, 2616, 2940-2941, 2962, 2986; Cong.Globe, 38th Cong., 2d Sess., 178-180, 182, 192, 195, 239, 241-242, 480-481, 529.

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77. Cong.Globe, 39th Cong., 1st Sess., 322. See also the remarks of Senator Howard of Michigan. Id. at 503.

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78. The Court did conclude in the Civil Rights Cases that "the act of…the owner of the inn, the public conveyance or place of amusement, refusing…accommodation" cannot be "justly regarded as imposing any badge of slavery or servitude upon the applicant." 109 U.S. at 24. "It would be running the slavery argument into the ground," the Court thought,

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to make it apply to every act of discrimination which a person may see fit to make as to the guests he will entertain or as to the people he will take into his coach or cab or car, or admit to his concert or theatre, or deal with in other matters of intercourse or business.

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Id. at 24-25. Mr. Justice Harlan dissented, expressing the view that

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such discrimination practised by corporations and individuals in the exercise of their public or quasi-public functions is a badge of servitude the imposition of which Congress may prevent under its power, by appropriate legislation, to enforce the Thirteenth Amendment.

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Id. at 43.

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Whatever the present validity of the position taken by the majority on that issue—a question rendered largely academic by Title II of the Civil Rights Act of 1964, 78 Stat. 243 (see Heart of Atlanta Motel v. United States, 379 U.S. 241; Katzenbach v. McClung, 379 U.S. 294)—we note that the entire Court agreed upon at least one proposition: the Thirteenth Amendment authorizes Congress not only to outlaw all forms of slavery and involuntary servitude, but also to eradicate the last vestiges and incidents of a society half slave and half free by securing to all citizens, of every race and color,

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the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens.

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109 U.S. at 22. Cf. id. at 35 (dissenting opinion).

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In Hodges v. United States, 203 U.S. 1, a group of white men had terrorized several Negroes to prevent them from working in a sawmill. The terrorizers were convicted under 18 U.S.C. § 241 (then Revised Statutes § 5508) of conspiring to prevent the Negroes from exercising the right to contract for employment, a right secured by 42 U.S.C. § 1981 (then Revised Statutes § 1977, derived from § 1 of the Civil Rights Act of 1866, see n. 28, supra). Section 1981 provides, in terms that closely parallel those of § 1982 (then Revised Statutes § 1978), that all persons in the United States

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shall have the same right…to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens….

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(Emphasis added.)

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This Court reversed the conviction. The majority recognized that "one of the disabilities of slavery, one of the indicia of its existence, was a lack of power to make or perform contracts." 203 U.S. at 17. And there was no doubt that the defendants had deprived their Negro victims, on racial grounds, of the opportunity to dispose of their labor by contract. Yet the majority said that "no mere personal assault or trespass or appropriation operates to reduce the individual to a condition of slavery," id. at 18, and asserted that only conduct which actually enslaves someone can be subjected to punishment under legislation enacted to enforce the Thirteenth Amendment. Contra, United States v. Cruikshank, 25 Fed.Cas. 707, 712 (No. 14,897) (dictum of Mr. Justice Bradley, on circuit), aff'd, 92 U.S. 542; United States v. Morris, 125 F. 322, 324, 330-331. Mr. Justice Harlan, joined by Mr. Justice Day, dissented. In their view, the interpretation the majority placed upon the Thirteenth Amendment was "entirely too narrow and…hostile to the freedom established by the supreme law of the land." 203 U.S. at 37. That interpretation went far, they thought,

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towards neutralizing many declarations made as to the object of the recent Amendments of the Constitution, a common purpose of which, this court has said, was to secure to a people theretofore in servitude, the free enjoyment, without discrimination merely on account of their race, of the essential rights that appertain to American citizenship and to freedom.

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Ibid.

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The conclusion of the majority in Hodges rested upon a concept of congressional power under the Thirteenth Amendment irreconcilable with the position taken by every member of this Court in the Civil Rights Cases and incompatible with the history and purpose of the Amendment itself. Insofar as Hodges is inconsistent with our holding today, it is hereby overruled.

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79. See text accompanying n. 48, supra.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

80. Ibid.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

81. See text accompanying n. 62, supra.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

82. Cong.Globe, 39th Cong., 1st Sess., 1118.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

83. Ibid.

DOUGLAS, J., concurring (Footnotes)

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1. The cases are collected in five volumes in H. Catterall, Judicial Cases Concerning American Slavery and the Negro (1926-1937). And see 1 T. Cobb, An Inquiry into the Law of Negro Slavery, c. XIV (1858); G. Ostrander, The Rights of Man in America 1606-1861, p. 252 (1960); G. Stroud, Sketch of the Laws Relating to Slavery 45-50 (1827); J. Wheeler, Law of Slavery 190-191 (1837).

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2. Excerpt from Frederick Douglass, The Color Line, The North American Review, June 1881, 4 The Life and Writings of Frederick Douglass 343-344 (1955).

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3. See Kamper v. Department of State of New York, 22 N.Y.2d 690, 238 N.E.2d 914.

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4. See, e.g., O'Hanlon, The Case Against the Unions, Fortune, Jan.1968, at 170.

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5. The contrivances which some States have concocted to thwart the command of our decision in Brown v. Board of Education are by now legendary. See, e.g., Monroe v. Board of Commissioners, 391 U.S. 450 (Tennessee "free-transfer" plan); Green v. County School Board, 391 U.S. 430 (Virginia school board "freedom of choice" plan); Raney v. Board of Education, 391 U.S. 443 (Arkansas "freedom of choice" plan); Bradley v. School Board, 382 U.S. 103 (allocation of faculty allegedly on a racial basis); Griffin v. School Board, 377 U.S. 218 (closing of public schools in Prince Edward County, Virginia, with tuition grants and tax concessions used to assist white children attending private segregated schools); Goss v. Board of Education, 373 U.S. 683 (Tennessee rezoning of school districts, with a transfer plan permitting transfer by students on the basis of race); United States v. Jefferson County Board of Education, 372 F.2d 836, aff'd en banc, 380 F.2d 385 (C.A. 5th Cir.1967) ("freedom of choice" plans in States within the jurisdiction of the United States Court of Appeals for the Fifth Circuit); Northcross v. Board of Education, 302 F.2d 818 (C.A. 6th Cir.1962) (Tennessee pupil assignment law); Orleans Parish School Board v. Bush, 242 F.2d 156 (C.A. 5th Cir.1957) (Louisiana pupil assignment law); Hall v. St. Helena Parish School Board, 197 F.Supp. 649 (D.C.E.D.La.1961), aff'd, 368 U.S. 515 (Louisiana law permitting closing of public schools, with extensive state aid going to private segregated schools); Holmes v. Danner, 191 F.Supp. 394 (D.C.M.D. Ga.1961) (Georgia statute cutting off state funds if Negroes admitted to state university); Aaron v. McKinley, 173 F.Supp. 944 (D.C.E.D. Ark.1959), aff'd sub nom. Faubus v. Aaron, 361 U.S. 197 (Arkansas statute cutting off state funds to integrated school districts); James v. Almond, 170 F.Supp. 331 (D.C.E.D.Va.1959) (closing of all integrated public schools). See also Rogers v. Paul, 382 U.S. 198; Calhoun v. Latimer, 377 U.S. 263; Cooper v. Aaron, 358 U.S. 1.

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6. My Brother HARLAN's listing of some of the "customs" prevailing in the North at the time § 1982 was first enacted shows the extent of organized white discrimination against newly freed blacks. As he states, "[r]esidential segregation was the prevailing pattern almost everywhere in the North." Post at 474-475. Certainly, then, it was "customary." To suggest, however, that there might be room for argument in this case (post at 475, n. 65) that the discrimination against petitioners was not in some measure a part and product of this longstanding and widespread customary pattern is to pervert the problem by allowing the legal mind to draw lines and make distinctions that have no place in the jurisprudence of a nation striving to rejoin the human race.

HARLAN, J., dissenting (Footnotes)

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1. This "state action" argument emphasizes the respondents' role as housing developers exercising continuing authority over a suburban housing complex with about 1,000 inhabitants.

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2. The Civil Rights Act of 1968, Pub.L. 90-284, 82 Stat. 73.

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3. Id. §§ 801-819.

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4. See ante at 417, n. 21.

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5. See also Virginia v. Rives, 100 U.S. 313, 317-318.

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6. Section 1978 of the Revised Statutes.

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7. See also Buchanan v. Warley, 245 U.S. 60, 78-79.

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8. It seems to me that this passage is not dictum, as the Court terms it, ante at 419 and n. 25, but a holding. For, if the Court had held the covenants in question invalid as between the parties, then it would not have had to rely upon a finding of "state action."

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9. Despite the Court's view that this reading flies in the face of the "plain and unambiguous terms" of the statute, see ante at 420, it is not without precedent. In the Civil Rights Cases, 109 U.S. 3, the Court said of identical language in the predecessor statute to § 1982:

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[C]ivil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals, unsupported by State authority…. The wrongful act of an individual, unsupported by any such authority, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true…, but, if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress. An individual cannot deprive a man of his right…to hold property, to buy and sell…; he may, by force or fraud, interfere with the enjoyment of the right in a particular case;…but, unless protected in these wrongful acts by some shield of State law or State authority, he cannot destroy or injure the right….

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109 U.S. at 17.

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10. The Court does not claim that the deletion from § 1 of the statute, in 1874, of the words "any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding" was intended to have any substantive effect. See ante at 422, n. 29.

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11. See Cong.Globe, 39th Cong., 1st Sess., 392.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

12. Id. at 43.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

13. See ibid.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

14. See Cong.Globe, 39th Cong., 1st Sess., 129.

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15. Freedmen's bill, § 7. The text of the bill may be found in E. McPherson, The Political History of the United States of America During the Period of Reconstruction 72 (1871). The Freedmen's bill was passed by both the Senate and the House, but the Senate failed to override the President's veto. See Cong.Globe, 39th Cong., 1st Sess., 421, 688, 742, 748, 775, 915-916, 943.

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16. Section 7 of the Freedmen's bill would have permitted the President to extend "military protection and jurisdiction" over all cases in which the specified rights were denied, while § 3 of the Civil Rights Act merely gave the federal courts concurrent jurisdiction over such actions. Section 8 of the Freedmen's bill would have allowed agents of the Freedmen's Bureau to try and convict those who violated the bill's criminal provisions, while § 3 of the Civil Rights Act only gave the federal courts exclusive jurisdiction over such actions.

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17. Cong.Globe, 39th Cong., 1st Sess., 474. (Emphasis added.)

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18. Id. at 475. (Emphasis added.)

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19. Id. at 500. (Emphasis added.) The Civil Rights Cases, 109 U.S. 3, suggest how Senator Trumbull might have expected § 2 to affect persons other than "officers" in spite of its "under color" language, for it was there said in dictum that:

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The Civil Rights Bill…is analogous…to [a law] under the original Constitution declaring that the validity of contracts should not be impaired, and that, if any person bound by a contract should refuse to comply with it, under color or pretence that it had been rendered void or invalid by a State law, he should be liable to an action upon it in the courts of the United States, with the addition of a penalty for setting up such an unjust and unconstitutional defence.

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109 U.S. at 17. (Emphasis added.)

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

20. Cong.Globe, 39th Cong., 1st Sess., 476. (Emphasis added.)

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21. Id. at 600. (Emphasis added.)

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

22. Id. at 1758

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

23. Id. at 1761. (Emphasis added.)

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24. Moreover, a few Northern States apparently did have laws which denied to Negroes rights enumerated in the Act. See G. Stephenson, Race Distinctions in American Law 36-39 (1910); L. Litwack, North of Slavery: The Negro in the Free States, 1790-1860, at 93-94 (1961).

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25. Cong.Globe, 39th Cong., 1st Sess., 1759.

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26. Id. at 1760. (Emphasis added.)

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27. See Cong.Globe, 39th Cong., 1st Sess., 339-340.

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28. The Court also gives prominence, see ante at 428-429, to a report by General Carl Schurz which described private as well as official discrimination against freedmen in the South. However, it is apparent that the Senate regarded the report merely as background, and it figured relatively little in the debates. Moreover, to the extent that the described discrimination was the product of "custom," it would have been prohibited by the bill.

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29. See infra at 473-475

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

30. Cong.Globe, 39th Cong., 1st Sess., 603.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

31. Ibid.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

32. See Cong.Globe, 39th Cong., 1st Sess., 1781.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

33. Cong.Globe, 39th Cong., 1st Sess., Appendix, 183.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

34. Ibid.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

35. Cong.Globe, 39th Cong., 1st Sess., 111. (Emphasis added.)

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

36. Id. at 1119. (Emphasis added.)

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

37. Id. at 1151. (Emphasis added.)

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

38. Id. at 1152. (Emphasis added.)

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

39. Id. at 1153. (Emphasis added.)

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40. Id. at 1291. (Emphasis added.)

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41. Id. at 1293-1294. It is quite clear that Representative Shellabarger was speaking of the bill's first section, for he did not mention the second section until later in his speech, and then only briefly, and in terms which indicated that he thought it coextensive with the first ("I cannot remark on the second section further than to say that it is the ordinary case of providing punishment for violating a law of Congress."). See id. at 1294.

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42. Cong.Globe, 39th Cong., 1st Sess., 1832-1833. (Emphasis added.)

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43. Id. at 1120.

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44. It is worthy of note, however, that, if Representative Wilson believed that § 2 of the bill would apply only to state officers, and not to other members of the community, he apparently differed from the bill's author. See the remarks of Senator Trumbull quoted supra at 458.

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45. The Court's reliance, see ante at 425, n. 33, on the statement of Representative Shellabarger that "the violations of citizens' rights, which are reached and punished by this bill, are those which are…done under color of state authority…," Cong.Globe, 39th Cong., 1st Sess., 1294, seems very misplaced when the statement is taken in context. A fuller version of Representative Shellabarger's remarks will be found supra at 467-468.

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46. See Cong.Globe, 39th Cong., 1st Sess., 1160.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

47. See ibid.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

48. See Cong.Globe, 39th Cong., 1st Sess., 1835.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

49. Ibid. (Emphasis added.)

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

50. Cong.Globe, 39th Cong., 1st Sess., 1156.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

51. See id. at 1115-1124, 1151-1155.

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52. The emphasis given by the Court to the statement of Representative Thayer which is quoted ante at 433-434 surely evaporates when the statement is viewed in conjunction with Representative Thayer's immediately following remarks, quoted supra at 466-467.

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53. Id. at 1124. (Emphasis added.) Earlier in the same speech, Representative Cook had described actual vagrancy laws which had recently been passed by reconstructed Southern legislatures. See id. at 1123-1124.

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54. An eminent American historian has said that the events of the last third of the 19th century took place "in a framework of pioneer individualistic mores…. " S. Morison, The Oxford History of the American People 788 (1965). See also 3 V. Parrington, Main Currents in American Thought 7-22 (1930).

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55. It has been suggested that the effort of the congressional radicals to enact a program of land reform in favor of the freedmen during Reconstruction failed in part because it smacked too much of "paternalism" and interference with property rights. See K. Stampp, The Era of Reconstruction 126-131 (1965).

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56. See generally M. Konvitz & T. Leskes, A Century of Civil Rights (1961); L. Litwack, North of Slavery: The Negro in the Free States, 1790-1860 (1961); K. Stampp, supra, at 12-17; G. Stephenson, Race Distinctions in American Law (1910); Maslow & Robison, Civil Rights Legislation and the Fight for Equality, 1862-1952, 20 U.Chi.L.Rev. 363 (1953).

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57. See M. Konvitz & T. Leskes, supra, at 155-156; 1864-1865 Mass. Acts and Resolves 650.

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58. Negroes were permitted to ride only on the front platforms of the cars. See L. Litwack, supra, at 112.

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59. Negro students in New York City were compelled to attend separate schools, called African schools, under authority of an 1864 New York State statute which empowered school officials to establish separate, equal schools for Negro children. See L. Litwack, supra, at 121, 133-134, 136, 151; G. Stephenson, supra, at 185; 1864 N.Y.Laws 1281. In 1883, the New York Court of Appeals held that students in Brooklyn might constitutionally be segregated pursuant to the statute. See People ex rel. King v. Gallagher, 93 N.Y. 438. In 1900, the statute was finally repealed and segregation legally forbidden. See 1900 N.Y.Laws, Vol. II, at 1173.

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60. See L. Litwack, supra, at 91-92. The States were Massachusetts, Rhode Island, Maine, New Hampshire, and Vermont. See id. at 91.

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61. See L. Litwack, supra, at 94.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

62. See id. at 168-170.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

63. It has been noted that:

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Residential housing, despite its importance…, appears to be the last of the major areas of discrimination that the states have been willing to attack.

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M. Konvitz & T. Leskes, supra, at 236. And, as recently as 1953, it could be said:

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Bills have been introduced in state legislatures to forbid racial or religious discrimination in "multiple dwellings" (those housing three or more families),…but these proposals have not been considered seriously by any legislative body.

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Maslow & Robison, supra, at 408. (Footnotes omitted.)

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64. In contrast, the bill was repeatedly and vehemently attacked, in the face of emphatic denials by its sponsors, on the ground that it allegedly would invalidate two types of state laws: those denying Negroes equal voting rights and those prohibiting intermarriage. See, e.g., Cong.Globe, 39th Cong., 1st Sess., 598, 600, 604, 606, 1121, 1157, 1263.

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65. The petitioners do not argue, and the Court does not suggest, that the discrimination complained of in this case was the product of such a "custom."

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66. See, e.g., H. Flack, The Adoption of the Fourteenth Amendment 94 (1908); J. James, The Framing of the Fourteenth Amendment 126-128, 179 (1956); 2 S. Morison H. Commager, The Growth of the American Republic 39 (4th ed.1950); K. Stampp, supra, at 136; J. tenBroek, Equal Under Law 224 (1965); L. Warsoff, Equality and the Law 126 (1938).

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67. See, e.g., Cong.Globe, 39th Cong., 1st Sess., 504-505 (Senator Johnson); id. at 1291-1293 (Representative Bingham).

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68. of course, the question of the constitutionality of the "fair housing" provisions of the 1968 Civil Rights Act is not before us, and I intend no implication about how I would decide that issue.

1968, Jones v. Alfred H. Mayer Co., 392 U.S. 480

69. See ante at 417, n. 21.

President Johnson's Address to the Nation Announcing Steps To Limit the War in Vietnam and Reporting His Decision Not To Seek Reelection, 1968

Title: President Johnson's Address to the Nation Announcing Steps To Limit the War in Vietnam and Reporting His Decision Not To Seek Reelection

Author: Lyndon B. Johnson

Date: March 31, 1968

Source: Public Papers of the Presidents, Johnson, 1968, pp.469-476

Public Papers of LBJ, 1968, p.469

Good evening, my fellow Americans:

Public Papers of LBJ, 1968, p.469

Tonight I want to speak to you of peace in Vietnam and Southeast Asia.

Public Papers of LBJ, 1968, p.469

No other question so preoccupies our people. No other dream so absorbs the 250 million human beings who live in that part of the world. No other goal motivates American policy in Southeast Asia.

Public Papers of LBJ, 1968, p.469

For years, representatives of our Government and others have traveled the world—seeking to find a basis for peace talks.

Public Papers of LBJ, 1968, p.469

Since last September, they have carried the offer that I made public at San Antonio. That offer was this:

Public Papers of LBJ, 1968, p.469

That the United States would stop its bombardment of North Vietnam when that would lead promptly to productive discussions—and that we would assume that North Vietnam would not take military advantage of our restraint.

Public Papers of LBJ, 1968, p.469

Hanoi denounced this offer, both privately and publicly. Even while the search for peace was going on, North Vietnam rushed their preparations for a savage assault on the people, the government, and the allies of South Vietnam.

Public Papers of LBJ, 1968, p.469

Their attack—during the Tet holidays—failed to achieve its principal objectives.

Public Papers of LBJ, 1968, p.469

It did not collapse the elected government of South Vietnam or shatter its army—as the Communists had hoped.

Public Papers of LBJ, 1968, p.469

It did not produce a "general uprising" among the people of the cities as they had predicted.

Public Papers of LBJ, 1968, p.469

The Communists were unable to maintain control of any of the more than 30 cities that they attacked. And they took very heavy casualties.

Public Papers of LBJ, 1968, p.469

But they did compel the South Vietnamese and their allies to move certain forces from the countryside into the cities.

Public Papers of LBJ, 1968, p.469

They caused widespread disruption and suffering. Their attacks, and the battles that followed, made refugees of half a million human beings.

Public Papers of LBJ, 1968, p.469

The Communists may renew their attack any day.

Public Papers of LBJ, 1968, p.469

They are, it appears, trying to make 1968 the year of decision in South Vietnam—the year that brings, if not final victory or defeat, at least a turning point in the struggle. This much is clear:

Public Papers of LBJ, 1968, p.469

If they do mount another round of heavy attacks, they will not succeed in destroying the fighting power of South Vietnam and its allies.

Public Papers of LBJ, 1968, p.469–p.470

But tragically, this is also clear: Many men—on both sides of the struggle—will be [p.470] lost. A nation that has already suffered 20 years of warfare will suffer once again. Armies on both sides will take new casualties. And the war will go on.

Public Papers of LBJ, 1968, p.470

There is no need for this to be so.

Public Papers of LBJ, 1968, p.470

There is no need to delay the talks that could bring an end to this long and this bloody war.

Public Papers of LBJ, 1968, p.470

Tonight, I renew the offer I made last August—to stop the bombardment of North Vietnam. We ask that talks begin promptly, that they be serious talks on the substance of peace. We assume that during those talks Hanoi will not take advantage of our restraint.

Public Papers of LBJ, 1968, p.470

We are prepared to move immediately toward peace through negotiations.

Public Papers of LBJ, 1968, p.470

So, tonight, in the hope that this action will lead to early talks, I am taking the first step to deescalate the conflict. We are reducing—substantially reducing—the present level of hostilities.

Public Papers of LBJ, 1968, p.470

And we are doing so unilaterally, and at once.

Public Papers of LBJ, 1968, p.470

Tonight, I have ordered our aircraft and our naval vessels to make no attacks on North Vietnam, except in the area north of the demilitarized zone where the continuing enemy buildup directly threatens allied forward positions and where the movements of their troops and supplies are clearly related to that threat.

Public Papers of LBJ, 1968, p.470

The area in which we are stopping our attacks includes almost 90 percent of North Vietnam's population, and most of its territory. Thus there will be no attacks around the principal populated areas, or in the food-producing areas of North Vietnam.

Public Papers of LBJ, 1968, p.470

Even this very limited bombing of the North could come to an early end—if our restraint is matched by restraint in Hanoi. But I cannot in good conscience stop all bombing so long as to do so would immediately and directly endanger the lives of our men and our allies. Whether a complete bombing halt becomes possible in the future will be determined by events.

Public Papers of LBJ, 1968, p.470

Our purpose in this action is to bring about a reduction in the level of violence that now exists.

Public Papers of LBJ, 1968, p.470

It is to save the lives of brave men—and to save the lives of innocent women and children. It is to permit the contending forces to move closer to a political settlement.

Public Papers of LBJ, 1968, p.470

And tonight, I call upon the United Kingdom and I call upon the Soviet Union—as cochairmen of the Geneva Conferences, and as permanent members of the United Nations Security Council—to do all they can to move from the unilateral act of deescalation that I have just announced toward genuine peace in Southeast Asia.

Public Papers of LBJ, 1968, p.470

Now, as in the past, the United States is ready to send its representatives to any forum, at any time, to discuss the means of bringing this ugly war to an end.

Public Papers of LBJ, 1968, p.470

I am designating one of our most distinguished Americans, Ambassador Averell Harriman, as my personal representative for such talks. In addition, I have asked Ambassador Llewellyn Thompson, who returned from Moscow for consultation, to be available to join Ambassador Harriman at Geneva or any other suitable place—just as soon as Hanoi agrees to a conference.

Public Papers of LBJ, 1968, p.470

I call upon President Ho Chi Minh to respond positively, and favorably, to this new step toward peace.

Public Papers of LBJ, 1968, p.470

But if peace does not come now through negotiations, it will come when Hanoi understands that our common resolve is unshakable, and our common strength is invincible.

Public Papers of LBJ, 1968, p.470

Tonight, we and the other allied nations are contributing 600,000 fighting men to assist 700,000 South Vietnamese troops in defending their little country.

Public Papers of LBJ, 1968, p.470–p.471

Our presence there has always rested [p.471] on this basic belief: The main burden of preserving their freedom must be carried out by them—by the South Vietnamese themselves.

Public Papers of LBJ, 1968, p.471

We and our allies can only help to provide a shield behind which the people of South Vietnam can survive and can grow and develop. On their efforts—on their determination and resourcefulness—the outcome will ultimately depend.

Public Papers of LBJ, 1968, p.471

That small, beleaguered nation has suffered terrible punishment for more than 20 years.

Public Papers of LBJ, 1968, p.471

I pay tribute once again tonight to the great courage and endurance of its people. South Vietnam supports armed forces tonight of almost 700,000 men—and I call your attention to the fact that this is the equivalent of more than 10 million in our own population. Its people maintain their firm determination to be free of domination by the North.

Public Papers of LBJ, 1968, p.471

There has been substantial progress, I think, in building a durable government during these last 3 years. The South Vietnam of 1965 could not have survived the enemy's Tet offensive of 1968. The elected government of South Vietnam survived that attack—and is rapidly repairing the devastation that it wrought.

Public Papers of LBJ, 1968, p.471

The South Vietnamese know that further efforts are going to be required:

—to expand their own armed forces,

—to move back into the countryside as quickly as possible,

—to increase their taxes,

—to select the very best men that they have for civil and military responsibility,

—to achieve a new unity within their constitutional government, and

—to include in the national effort all those groups who wish to preserve South Vietnam's control over its own destiny.

Public Papers of LBJ, 1968, p.471

Last week President Thieu ordered the mobilization of 135,000 additional South Vietnamese. He plans to reach—as soon as possible—a total military strength of more than 800,000 men.

Public Papers of LBJ, 1968, p.471

To achieve this, the Government of South Vietnam started the drafting of 19-year-olds on March 1st. On May 1st, the Government will begin the drafting of 18-year-olds.

Public Papers of LBJ, 1968, p.471

Last month, 10,000 men volunteered for military service—that was two and a half times the number of volunteers during the same month last year. Since the middle of January, more than 48,000 South Vietnamese have joined the armed forces—and nearly half of them volunteered to do so.

Public Papers of LBJ, 1968, p.471

All men in the South Vietnamese armed forces have had their tours of duty extended for the duration of the war, and reserves are now being called up for immediate active duty.

Public Papers of LBJ, 1968, p.471

President Thieu told his people last week: "We must make greater efforts and accept more sacrifices because, as I have said many times, this is our country. The existence of our nation is at stake, and this is mainly a Vietnamese responsibility."

Public Papers of LBJ, 1968, p.471

He warned his people that a major national effort is required to root out corruption and incompetence at all levels of government.

Public Papers of LBJ, 1968, p.471

We applaud this evidence of determination on the part of South Vietnam. Our first priority will be to support their effort.

Public Papers of LBJ, 1968, p.471

We shall accelerate the reequipment of South Vietnam's armed forces—in order to meet the enemy's increased firepower. This will enable them progressively to undertake a larger share of combat operations against the Communist invaders.

Public Papers of LBJ, 1968, p.471–p.472

On many occasions I have told the American people that we would send to Vietnam those forces that are required to accomplish our mission there. So, with that as our guide, we have previously authorized a force level [p.472] of approximately 525,000.

Public Papers of LBJ, 1968, p.472

Some weeks ago—to help meet the enemy's new offensive—we sent to Vietnam about 11,000 additional Marine and airborne troops. They were deployed by air in 48 hours, on an emergency basis. But the artillery, tank, aircraft, medical, and other units that were needed to work with and to support these infantry troops in combat could not then accompany them by air on that short notice.

Public Papers of LBJ, 1968, p.472

In order that these forces may reach maximum combat effectiveness, the Joint Chiefs of Staff have recommended to me that we should prepare to send—during the next 5 months—support troops totaling approximately 13,500 men.

Public Papers of LBJ, 1968, p.472

A portion of these men will be made available from our active forces. The balance will come from reserve component units which will be called up for service.

Public Papers of LBJ, 1968, p.472

The actions that we have taken since the beginning of the year

—to reequip the South Vietnamese forces,

—to meet our responsibilities in Korea, as well as our responsibilities in Vietnam,

—to meet price increases and the cost of activating and deploying reserve forces,

—to replace helicopters and provide the other military supplies we need, all of these actions are going to require additional expenditures.

Public Papers of LBJ, 1968, p.472

The tentative estimate of those additional expenditures is $2.5 billion in this fiscal year, and $2.6 billion in the next fiscal year.

Public Papers of LBJ, 1968, p.472

These projected increases in expenditures for our national security will bring into sharper focus the Nation's need for immediate action: action to protect the prosperity of the American people and to protect the strength and the stability of our American dollar.

Public Papers of LBJ, 1968, p.472

On many occasions I have pointed out that, without a tax bill or decreased expenditures, next year's deficit would again be around $20 billion. I have emphasized the need to set strict priorities in our spending. I have stressed that failure to act and to act promptly and decisively would raise very strong doubts throughout the world about America's willingness to keep its financial house in order.

Public Papers of LBJ, 1968, p.472

Yet Congress has not acted. And tonight we face the sharpest financial threat in the postwar era—a threat to the dollar's role as the keystone of international trade and finance in the world.

Public Papers of LBJ, 1968, p.472

Last week, at the monetary conference in Stockholm, the major industrial countries decided to take a big step toward creating a new international monetary asset that will strengthen the international monetary system. I am very proud of the very able work done by Secretary Fowler and Chairman Martin of the Federal Reserve Board.

Public Papers of LBJ, 1968, p.472

But to make this system work the United States just must bring its balance of payments to—or very close to—equilibrium. We must have a responsible fiscal policy in this country. The passage of a tax bill now, together with expenditure control that the Congress may desire and dictate, is absolutely necessary to protect this Nation's security, to continue our prosperity, and to meet the needs of our people.

Public Papers of LBJ, 1968, p.472

What is at stake is 7 years of unparalleled prosperity. In those 7 years, the real income of the average American, after taxes, rose by almost 30 percent—a gain as large as that of the entire preceding 19 years.

Public Papers of LBJ, 1968, p.472

So the steps that we must take to convince the world are exactly the steps we must take to sustain our own economic strength here at home. In the past 8 months, prices and interest rates have risen because of our inaction.

Public Papers of LBJ, 1968, p.472–p.473

We must, therefore, now do everything we can to move from debate to action—from [p.473] talking to voting. There is, I believe—I hope there is—in both Houses of the Congress—a growing sense of urgency that this situation just must be acted upon and must be corrected.

Public Papers of LBJ, 1968, p.473

My budget in January was, we thought, a tight one. It fully reflected our evaluation of most of the demanding needs of this Nation.

Public Papers of LBJ, 1968, p.473

But in these budgetary matters, the President does not decide alone. The Congress has the power and the duty to determine appropriations and taxes.

Public Papers of LBJ, 1968, p.473

The Congress is now considering our proposals and they are considering reductions in the budget that we submitted.

Public Papers of LBJ, 1968, p.473

As part of a program of fiscal restraint that includes the tax surcharge, I shall approve appropriate reductions in the January budget when and if Congress so decides that that should be done.

Public Papers of LBJ, 1968, p.473

One thing is unmistakably clear, however: Our deficit just must be reduced. Failure to act could bring on conditions that would strike hardest at those people that all of us are trying so hard to help.

Public Papers of LBJ, 1968, p.473

These times call for prudence in this land of plenty. I believe that we have the character to provide it, and tonight I plead with the Congress and with the people to act promptly to serve the national interest, and thereby serve all of our people.

Public Papers of LBJ, 1968, p.473

Now let me give you my estimate of the chances for peace:

—the peace that will one day stop the bloodshed in South Vietnam,

—that will permit all the Vietnamese people to rebuild and develop their land,

—that will permit us to turn more fully to our own tasks here at home.

Public Papers of LBJ, 1968, p.473

I cannot promise that the initiative that I have announced tonight will be completely successful in achieving peace any more than the 30 others that we have undertaken and agreed to in recent years.

Public Papers of LBJ, 1968, p.473

But it is our fervent hope that North Vietnam, after years of fighting that have left the issue unresolved, will now cease its efforts to achieve a military victory and will join with us in moving toward the peace table.

Public Papers of LBJ, 1968, p.473

And there may come a time when South Vietnamese—on both sides—are able to work out a way to settle their own differences by free political choice rather than by war.

Public Papers of LBJ, 1968, p.473

As Hanoi considers its course, it should be in no doubt of our intentions. It must not miscalculate the pressures within our democracy in this election year.

Public Papers of LBJ, 1968, p.473

We have no intention of widening this war.

Public Papers of LBJ, 1968, p.473

But the United States will never accept a fake solution to this long and arduous struggle and call it peace.

Public Papers of LBJ, 1968, p.473

No one can foretell the precise terms of an eventual settlement.

Public Papers of LBJ, 1968, p.473

Our objective in South Vietnam has never been the annihilation of the enemy. It has been to bring about a recognition in Hanoi that its objective—taking over the South by force—could not be achieved.

Public Papers of LBJ, 1968, p.473

We think that peace can be based on the Geneva Accords of 1954—under political conditions that permit the South Vietnamese—all the South Vietnamese—to chart their course free of any outside domination or interference, from us or from anyone else.

Public Papers of LBJ, 1968, p.473

So tonight I reaffirm the pledge that we made at Manila—that we are prepared to withdraw our forces from South Vietnam as the other side withdraws its forces to the north, stops the infiltration, and the level of violence thus subsides.

Public Papers of LBJ, 1968, p.473–p.474

Our goal of peace and self-determination in Vietnam is directly related to the future of all of Southeast Asia—where much has happened to inspire confidence during the [p.474] past 10 years. We have done all that we knew how to do to contribute and to help build that confidence.

Public Papers of LBJ, 1968, p.474

A number of its nations have shown what can be accomplished under conditions of security. Since 1966, Indonesia, the fifth largest nation in all the world, with a population of more than 100 million people, has had a government that is dedicated to peace with its neighbors and improved conditions for its own people. Political and economic cooperation between nations has grown rapidly.

Public Papers of LBJ, 1968, p.474

I think every American can take a great deal of pride in the role that we have played in bringing this about in Southeast Asia. We can rightly judge—as responsible Southeast Asians themselves do—that the progress of the past 3 years would have been far less likely—if not completely impossible—if America's sons and others had not made their stand in Vietnam.

Public Papers of LBJ, 1968, p.474

At Johns Hopkins University, about 3 years ago, I announced that the United States would take part in the great work of developing Southeast Asia, including the Mekong Valley, for all the people of that region. Our determination to help build a better land-a better land for men on both sides of the present conflict—has not diminished in the least. Indeed, the ravages of war, I think, have made it more urgent than ever.

Public Papers of LBJ, 1968, p.474

So, I repeat on behalf of the United States again tonight what I said at Johns Hopkins—that North Vietnam could take its place in this common effort just as soon as peace comes.

Public Papers of LBJ, 1968, p.474

Over time, a wider framework of peace and security in Southeast Asia may become possible. The new cooperation of the nations of the area could be a foundation-stone. Certainly friendship with the nations of such a Southeast Asia is what the United States seeks—and that is all that the United States seeks.

Public Papers of LBJ, 1968, p.474

One day, my fellow citizens, there will be peace in Southeast Asia.

Public Papers of LBJ, 1968, p.474

It will come because the people of Southeast Asia want it—those whose armies are at war tonight, and those who, though threatened, have thus far been spared.

Public Papers of LBJ, 1968, p.474

Peace will come because Asians were willing to work for it—and to sacrifice for it—and to die by the thousands for it.

Public Papers of LBJ, 1968, p.474

But let it never be forgotten: Peace will come also because America sent her sons to help secure it.

Public Papers of LBJ, 1968, p.474

It has not been easy—far from it. During the past 4½ years, it has been my fate and my responsibility to be Commander in Chief. I have lived—daily and nightly—with the cost of this war. I know the pain that it has inflicted. I know, perhaps better than anyone, the misgivings that it has aroused.

Public Papers of LBJ, 1968, p.474

Throughout this entire, long period, I have been sustained by a single principle: that what we are doing now, in Vietnam, is vital not only to the security of Southeast Asia, but it is vital to the security of every American.

Public Papers of LBJ, 1968, p.474

Surely we have treaties which we must respect. Surely we have commitments that we are going to keep. Resolutions of the Congress testify to the need to resist aggression in the world and in Southeast Asia.

Public Papers of LBJ, 1968, p.474

But the heart of our involvement in South Vietnam—under three different presidents, three separate administrations—has always been America's own security.

Public Papers of LBJ, 1968, p.474

And the larger purpose of our involvement has always been to help the nations of Southeast Asia become independent and stand alone, self-sustaining, as members of a great world community—at peace with themselves, and at peace with all others.

Public Papers of LBJ, 1968, p.474–p.475

With such an Asia, our country—and the [p.475] world—will be far more secure than it is tonight.

Public Papers of LBJ, 1968, p.475

I believe that a peaceful Asia is far nearer to reality because of what America has done in Vietnam. I believe that the men who endure the dangers of battle—fighting there for us tonight—are helping the entire world avoid far greater conflicts, far wider wars, far more destruction, than this one.

Public Papers of LBJ, 1968, p.475

The peace that will bring them home someday will come. Tonight I have offered the first in what I hope will be a series of mutual moves toward peace.

Public Papers of LBJ, 1968, p.475

I pray that it will not be rejected by the leaders of North Vietnam. I pray that they will accept it as a means by which the sacrifices of their own people may be ended. And I ask your help and your support, my fellow citizens, for this effort to reach across the battlefield toward an early peace.

Public Papers of LBJ, 1968, p.475

Finally, my fellow Americans, let me say this:

Public Papers of LBJ, 1968, p.475

Of those to whom much is given, much is asked. I cannot say and no man could say that no more will be asked of us.

Public Papers of LBJ, 1968, p.475

Yet, I believe that now, no less than when the decade began, this generation of Americans is willing to "pay any price, bear any burden, meet any hardship, support any friend, oppose any foe to assure the survival and the success of liberty."

Public Papers of LBJ, 1968, p.475

Since those words were spoken by John F. Kennedy, the people of America have kept that compact with mankind's noblest cause.

Public Papers of LBJ, 1968, p.475

And we shall continue to keep it.

Public Papers of LBJ, 1968, p.475

Yet, I believe that we must always be mindful of this one thing, whatever the trials and the tests ahead. The ultimate strength of our country and our cause will lie not in powerful weapons or infinite resources or boundless wealth, but will lie in the unity of our people.

Public Papers of LBJ, 1968, p.475

This I believe very deeply.

Public Papers of LBJ, 1968, p.475

Throughout my entire public career I have followed the personal philosophy that I am a free man, an American, a public servant, and a member of my party, in that order always and only.

Public Papers of LBJ, 1968, p.475

For 37 years in the service of our Nation, first as a Congressman, as a Senator, and as Vice President, and now as your President, I have put the unity of the people first. I have put it ahead of any divisive partisanship.

Public Papers of LBJ, 1968, p.475

And in these times as in times before, it is true that a house divided against itself by the spirit of faction, of party, of region, of religion, of race, is a house that cannot stand.

Public Papers of LBJ, 1968, p.475

There is division in the American house now. There is divisiveness among us all tonight. And holding the trust that is mine, as President of all the people, I cannot disregard the peril to the progress of the American people and the hope and the prospect of peace for all peoples.

Public Papers of LBJ, 1968, p.475

So, I would ask all Americans, whatever their personal interests or concern, to guard against divisiveness and all its ugly consequences.

Public Papers of LBJ, 1968, p.475

Fifty-two months and 10 days ago, in a moment of tragedy and trauma, the duties of this office fell upon me. I asked then for your help and God's, that we might continue America on its course, binding up our wounds, healing our history, moving forward in new unity, to clear the American agenda and to keep the American commitment for all of our people.

Public Papers of LBJ, 1968, p.475

United we have kept that commitment. United we have enlarged that commitment.

Public Papers of LBJ, 1968, p.475–p.476

Through all time to come, I think America will be a stronger nation, a more just society, and a land of greater opportunity and fulfillment because of what we have [p.476] all done together in these years of unparalleled achievement.

Public Papers of LBJ, 1968, p.476

Our reward will come in the life of freedom, peace, and hope that our children will enjoy through ages ahead.

Public Papers of LBJ, 1968, p.476

What we won when all of our people united just must not now be lost in suspicion, distrust, selfishness, and politics among any of our people.

Public Papers of LBJ, 1968, p.476

Believing this as I do, I have concluded that I should not permit the Presidency to become involved in the partisan divisions that are developing in this political year.

Public Papers of LBJ, 1968, p.476

With America's sons in the fields far away, with America's future under challenge right here at home, with our hopes and the world's hopes for peace in the balance every day, I do not believe that I should devote an hour or a day of my time to any personal partisan causes or to any duties other than the awesome duties of this office—the Presidency of your country.

Public Papers of LBJ, 1968, p.476

Accordingly, I shall not seek, and I will not accept, the nomination of my party for another term as your President.

Public Papers of LBJ, 1968, p.476

But let men everywhere know, however, that a strong, a confident, and a vigilant America stands ready tonight to seek an honorable peace—and stands ready tonight to defend an honored cause—whatever the price, whatever the burden, whatever the sacrifice that duty may require.

Public Papers of LBJ, 1968, p.476

Thank you for listening. Good night and God bless all of you.

Public Papers of LBJ, 1968, p.476

NOTE: The President spoke at 9 p.m. in his office at the White House. The address was broadcast nationally.

King's "I See The Promised Land" Speech, 1968

Title: King's "I See The Promised Land" Speech

Author: Martin Luther King, Jr.

Date: April 3, 1968

Source: Martin Luther King, Jr., Center for Nonviolent Social Change, Atlanta, Georgia

This was Dr. King's last speech. He delivered it on the eve of his assassination at the Masonic Temple, Memphis, Tennessee, on 3 April 1968.

King, "I See The Promised Land"

Thank you very kindly, my friends. As I listened to Ralph Abernathy in his eloquent and generous introduction and then thought about myself, I wondered who he was talking about. It's always good to have your closest friend and associate say something good about you. And Ralph is the best friend that I have in the world.

King, "I See The Promised Land"

I'm delighted to see each of you here tonight in spite of a storm warning. You reveal that you are determined to go on anyhow. Something is happening in Memphis, something is happening in our world.

King, "I See The Promised Land"

As you know, if I were standing at the beginning of time, with the possibility of general and panoramic view of the whole human history up to now, and the Almighty said to me, "Martin Luther King, which age would you like to live in?"— I would take my mental flight by Egypt through, or rather across the Red Sea, through the wilderness on toward the promised land. And in spite of its magnificence, I wouldn't stop there. I would move on by Greece, and take my mind to Mount Olympus. And I would see Plato, Aristotle, Socrates, Euripides and Aristophanes assembled around the Parthenon as they discussed the great and eternal issues of reality.

King, "I See The Promised Land"

But I wouldn't stop there. I would go on, even to the great heyday of the Roman Empire. And I would see developments around there, through various emperors and leaders. But I wouldn't stop there. I would even come up to the day of the Renaissance, and get a quick picture of all that the Renaissance did for the cultural and esthetic life of man. But I wouldn't stop there. I would even go by the way that the man for whom I'm named had his habitat. And I would watch Martin Luther as he tacked his ninety-five theses on the door at the church in Wittenberg.

King, "I See The Promised Land"

But I wouldn't stop there. I would come on up even to 1863, and watch a vacillating president by the name of Abraham Lincoln finally come to the conclusion that he had to sign the Emancipation Proclamation. But I wouldn't stop there. I would even come up the early thirties, and see a man grappling with the problems of the bankruptcy of his nation. And come with an eloquent cry that we have nothing to fear but fear itself.

King, "I See The Promised Land"

But I wouldn't stop there. Strangely enough, I would turn to the Almighty, and say, "If you allow me to live just a few years in the second half of the twentieth century, I will be happy." Now that's a strange statement to make, because the world is all messed up. The nation is sick. Trouble is in the land. Confusion all around. That's a strange statement. But I know, somehow, that only when it is dark enough, can you see the stars. And I see God working in this period of the twentieth century in a way that men, in some strange way, are responding—something is happening in our world. The masses of people are rising up. And wherever they are assembled today, whether they are in Johannesburg, South Africa; Nairobi, Kenya: Accra, Ghana; New York City; Atlanta, Georgia; Jackson, Mississippi; or Memphis, Tennessee—the cry is always the same—"We want to be free."

King, "I See The Promised Land"

And another reason that I'm happy to live in this period is that we have been forced to a point where we're going to have to grapple with the problems that men have been trying to grapple with through history, but the demands didn't force them to do it. Survival demands that we grapple with them. Men, for years now, have been talking about war and peace. But now, no longer can they just talk about it. It is no longer a choice between violence and nonviolence in this world; it's nonviolence or nonexistence.

King, "I See The Promised Land"

That is where we are today. And also in the human rights revolution, if something isn't done, and in a hurry, to bring the colored peoples of the world out of their long years of poverty, their long years of hurt and neglect, the whole world is doomed. Now, I'm just happy that God has allowed me to live in this period, to see what is unfolding. And I'm happy that he's allowed me to be in Memphis.

King, "I See The Promised Land"

I can remember, I can remember when Negroes were just going around as Ralph has said, so often, scratching where they didn't itch, and laughing when they were not tickled. But that day is all over. We mean business now, and we are determined to gain our rightful place in God's world.

King, "I See The Promised Land"

And that's all this whole thing is about. We aren't engaged in any negative protest and in any negative arguments with anybody. We are saying that we are determined to be men. We are determined to be people. We are saying that we are God's children. And that we don't have to live like we are forced to live.

King, "I See The Promised Land"

Now, what does all of this mean in this great period of history? It means that we've got to stay together. We've got to stay together and maintain unity. You know, whenever Pharaoh wanted to prolong the period of slavery in Egypt, he had a favorite, favorite formula for doing it. What was that? He kept the slaves fighting among themselves. But whenever the slaves get together, something happens in Pharaoh's court, and he cannot hold the slaves in slavery. When the slaves get together, that's the beginning of getting out of slavery. Now let us maintain unity.

King, "I See The Promised Land"

Secondly, let us keep the issues where they are. The issue is injustice. The issue is the refusal of Memphis to be fair and honest in its dealings with its public servants, who happen to be sanitation workers. Now, we've got to keep attention on that. That's always the problem with a little violence. You know what happened the other day, and the press dealt only with the window-breaking. I read the articles. They very seldom got around to mentioning the fact that one thousand, three hundred sanitation workers were on strike, and that Memphis is not being fair to them, and that Mayor Loeb is in dire need of a doctor. They didn't get around to that.

King, "I See The Promised Land"

Now we're going to march again, and we've got to march again, in order to put the issue where it is supposed to be. And force everybody to see that there are thirteen hundred of God's children here suffering, sometimes going hungry, going through dark and dreary nights wondering how this thing is going to come out. That's the issue. And we've got to say to the nation: we know it's coming out. For when people get caught up with that which is right and they are willing to sacrifice for it, there is no stopping point short of victory.

King, "I See The Promised Land"

We aren't going to let any mace stop us. We are masters in our nonviolent movement in disarming police forces; they don't know what to do. I've seen them so often. I remember in Birmingham, Alabama, when we were in that majestic struggle there we would move out of the 16th Street Baptist Church day after day; by the hundreds we would move out. And Bull Connor would tell them to send the dogs forth and they did come; but we just went before the dogs singing, "Ain't gonna let nobody turn me round." Bull Connor next would say, "Turn the fire hoses on." And as I said to you the other night, Bull Connor didn't know history. He knew a kind of physics that somehow didn't relate to the transphysics that we knew about. And that was the fact that there was a certain kind of fire that no water could put out. And we went before the fire hoses; we had known water. If we were Baptist or some other denomination, we had been immersed. If we were Methodist, and some others, we had been sprinkled, but we knew water.

King, "I See The Promised Land"

That couldn't stop us. And we just went on before the dogs and we would look at them; and we'd go on before the water hoses and we would look at it, and we'd just go on singing. "Over my head I see freedom in the air." And then we would be thrown in the paddy wagons, and sometimes we were stacked in there like sardines in a can. And they would throw us in, and old Bull would say, "Take them off," and they did; and we would just go in the paddy wagon singing, "We Shall Overcome." And every now and then we'd get in the jail, and we'd see the jailers looking through the windows being moved by our prayers, and being moved by our words and our songs. And there was a power there which Bull Connor couldn't adjust to; and so we ended up transforming Bull into a steer, and we won our struggle in Birmingham.

King, "I See The Promised Land"

Now we've got to go on to Memphis just like that. I call upon you to be with us Monday. Now about injunctions: We have an injunction and we're going into court tomorrow morning to fight this illegal, unconstitutional injunction. All we say to America is, "Be true to what you said on paper." If I lived in China or even Russia, or any totalitarian country, maybe I could understand the denial of certain basic First Amendment privileges, because they hadn't committed themselves to that over there. But somewhere I read of the freedom of assembly. Somewhere I read of the freedom of speech. Somewhere I read of the freedom of the press. Somewhere I read that the greatness of America is the right to protest for right. And so just as I say, we aren't going to let any injunction turn us around. We are going on.

King, "I See The Promised Land"

We need all of you. And you know what's beautiful to me, is to see all of these ministers of the Gospel. It's a marvelous picture. Who is it that is supposed to articulate the longings and aspirations of the people more than the preacher? Somehow the preacher must be an Amos, and say, "Let justice roll down like waters and righteousness like a mighty stream." Somehow, the preacher must say with Jesus, "The spirit of the Lord is upon me, because he hath anointed me to deal with the problems of the poor."

King, "I See The Promised Land"

And I want to commend the preachers, under the leadership of these noble men: James Lawson, one who has been in this struggle for many years; he's been to jail for struggling; but he's still going on, fighting for the rights of his people. Rev. Ralph Jackson, Billy Kiles; I could just go right on down the list, but time will not permit. But I want to thank them all. And I want you to thank them, because so often, preachers aren't concerned about anything but themselves. And I'm always happy to see a relevant ministry.

King, "I See The Promised Land"

It's alright to talk about "long white robes over yonder," in all of its symbolism. But ultimately people want some suits and dresses and shoes to wear down here. It's alright to talk about "streets flowing with milk and honey," but God has commanded us to be concerned about the slums down here, and his children who can't eat three square meals a day. It's alright to talk about the new Jerusalem, but one day, God's preacher must talk about the New York, the new Atlanta, the new Philadelphia, the new Los Angeles, the new Memphis, Tennessee. This is what we have to do.

King, "I See The Promised Land"

Now the other thing we'll have to do is this: Always anchor our external direct action with the power of economic withdrawal. Now, we are poor people, individually, we are poor when you compare us with white society in America. We are poor. Never stop and forget that collectively, that means all of us together, collectively we are richer than all the nation in the world, with the exception of nine. Did you ever think about that? After you leave the United States, Soviet Russia, Great Britain, West Germany, France, and I could name the others, the Negro collectively is richer than most nations of the world. We have an annual income of more than thirty billion dollars a year, which is more than all of the exports of the United States, and more than the national budget of Canada. Did you know that? That's power right there, if we know how to pool it.

King, "I See The Promised Land"

We don't have to argue with anybody. We don't have to curse and go around acting bad with our words. We don't need any bricks and bottles, we don't need any Molotov cocktails, we just need to go around to these stores, and to these massive industries in our country, and say, "God sent us by here, to say to you that you're not treating his children right. And we've come by here to ask you to make the first item on your agenda—fair treatment, where God's children are concerned. Now, if you are not prepared to do that, we do have an agenda that we must follow. And our agenda calls for withdrawing economic support from you."

King, "I See The Promised Land"

And so, as a result of this, we are asking you tonight, to go out and tell your neighbors not to buy Coca-Cola in Memphis. Go by and tell them not to buy Sealtest milk. Tell them not to buy—what is the other bread?—Wonder Bread. And what is the other bread company, Jesse? Tell them not to buy Hart's bread. As Jesse Jackson has said, up to now, only the garbage men have been feeling pain; now we must kind of redistribute the pain. We are choosing these companies because they haven't been fair in their hiring policies; and we are choosing them because they can begin the process of saying, they are going to support the needs and the rights of these men who are on strike. And then they can move on downtown and tell Mayor Loeb to do what is right.

King, "I See The Promised Land"

But not only that, we've got to strengthen black institutions. I call upon you to take you money out of the banks downtown and deposit you money in Tri-State Bank—we want a "bank-in" movement in Memphis. So go by the savings and loan association. I'm not asking you something that we don't do ourselves at SCLC. Judge Hooks and others will tell you that we have an account here in the savings and loan association from the Southern Christian Leadership Conference. We're just telling you to follow what we're doing. Put your money there. You have six or seven black insurance companies in Memphis. Take out your insurance there. We want to have an "insurance-in."

King, "I See The Promised Land"

Now there are some practical things we can do. We begin the process of building a greater economic base. And at the same time, we are putting pressure where it really hurts. I ask you to follow through here.

King, "I See The Promised Land"

Now, let me say as I move to my conclusion that we've got to give ourselves to this struggle until the end. Nothing would be more tragic than to stop at this point, in Memphis. We've got to see it through. And when we have our march, you need to be there. Be concerned about your brother. You may not be on strike. But either we go up together, or we go down together.

King, "I See The Promised Land"

Let us develop a kind of dangerous unselfishness. One day a man came to Jesus; and he wanted to raise some questions about some vital matters in life. At points, he wanted to trick Jesus, and show him that he knew a little more than Jesus knew, and through this, throw him off base. Now that question could have easily ended up in a philosophical and theological debate. But Jesus immediately pulled that question from mid-air, and placed it on a dangerous curve between Jerusalem and Jericho. And he talked about a certain man, who fell among thieves. You remember that a Levite and a priest passed by on the other side. They didn't stop to help him. And finally a man of another race came by. He got down from his beast, decided not to be compassionate by proxy. But with him, administered first aid, and helped the man in need. Jesus ended up saying, this was the good man, because he had the capacity to project the "I" into the "thou," and to be concerned about his brother. Now you know, we use our imagination a great deal to try to determine why the priest and the Levite didn't stop. At times we say they were busy going to church meetings—an ecclesiastical gathering—and they had to get on down to Jerusalem so they wouldn't be late for their meeting. At other times we would speculate that there was a religious law that "One who was engaged in religious ceremonials was not to touch a human body twenty-four hours before the ceremony." And every now and then we begin to wonder whether maybe they were not going down to Jerusalem, or down to Jericho, rather to organize a "Jericho Road Improvement Association." That's a possibility. Maybe they felt that it was better to deal with the problem from the casual root, rather than to get bogged down with an individual effort.

King, "I See The Promised Land"

But I'm going to tell you what my imagination tells me. It's possible that these men were afraid. You see, the Jericho road is a dangerous road. I remember when Mrs. King and I were first in Jerusalem. We rented a car and drove from Jerusalem down to Jericho. And as soon as we got on that road, I said to my wife, "I can see why Jesus used this as a setting for his parable." It's a winding, meandering road. It's really conducive for ambushing. You start out in Jerusalem, which is about 1200 miles, or rather 1200 feet above sea level. And by the time you get down to Jericho, fifteen or twenty minutes later, you're about 2200 feet below sea level. That's a dangerous road. In the day of Jesus it came to be known as the "Bloody Pass." And you know, it's possible that the priest and the Levite looked over that man on the ground and wondered if the robbers were still around. Or it's possible that they felt that the man on the ground was merely faking. And he was acting like he had been robbed and hurt, in order to seize them over there, lure them there for quick and easy seizure. And so the first question that the Levite asked was, "If I stop to help this man, what will happen to me?" But then the Good Samaritan came by. And he reversed the question: "If I do not stop to help this man, what will happen to him?".

King, "I See The Promised Land"

That's the question before you tonight. Not, "If I stop to help the sanitation workers, what will happen to all of the hours that I usually spend in my office every day and every week as a pastor?" The question is not, "If I stop to help this man in need, what will happen to me?" "If I do no stop to help the sanitation workers, what will happen to them?" That's the question.

King, "I See The Promised Land"

Let us rise up tonight with a greater readiness. Let us stand with a greater determination. And let us move on in these powerful days, these days of challenge to make America what it ought to be. We have an opportunity to make America a better nation. And I want to thank God, once more, for allowing me to be here with you.

King, "I See The Promised Land"

You know, several years ago, I was in New York City autographing the first book that I had written. And while sitting there autographing books, a demented black woman came up. The only question I heard from her was, "Are you Martin Luther King?"

King, "I See The Promised Land"

And I was looking down writing, and I said yes. And the next minute I felt something beating on my chest. Before I knew it I had been stabbed by this demented woman. I was rushed to Harlem Hospital. It was a dark Saturday afternoon. And that blade had gone through, and the X-rays revealed that the tip of the blade was on the edge of my aorta, the main artery. And once that's punctured, you drown in your own blood—that's the end of you.

King, "I See The Promised Land"

It came out in the New York Times the next morning, that if I had sneezed, I would have died. Well, about four days later, they allowed me, after the operation, after my chest had been opened, and the blade had been taken out, to move around in the wheel chair in the hospital. They allowed me to read some of the mail that came in, and from all over the states, and the world, kind letters came in. I read a few, but one of them I will never forget. I had received one from the President and the Vice-President. I've forgotten what those telegrams said. I'd received a visit and a letter from the Governor of New York, but I've forgotten what the letter said. But there was another letter that came from a little girl, a young girl who was a student at the White Plains High School. And I looked at that letter, and I'll never forget it. It said simply, "Dear Dr. King: I am a ninth-grade student at the Whites Plains High School." She said, "While it should not matter, I would like to mention that I am a white girl. I read in the paper of your misfortune, and of your suffering. And I read that if you had sneezed, you would have died. And I'm simply writing you to say that I'm so happy that you didn't sneeze."

King, "I See The Promised Land"

And I want to say tonight, I want to say that I am happy that I didn't sneeze. Because if I had sneezed, I wouldn't have been around here in 1960, when students all over the South started sitting-in at lunch counters. And I knew that as they were sitting in, they were really standing up for the best in the American dream. And taking the whole nation back to those great wells of democracy which were dug deep by the Founding Fathers in the Declaration of Independence and the Constitution. If I had sneezed, I wouldn't have been around in 1962, when Negroes in Albany, Georgia, decided to straighten their backs up. And whenever men and women straighten their backs up, they are going somewhere, because a man can't ride your back unless it is bent. If I had sneezed, I wouldn't have been here in 1963, when the black people of Birmingham, Alabama, aroused the conscience of this nation, and brought into being the Civil Rights Bill. If I had sneezed, I wouldn't have had a chance later that year, in August, to try to tell America about a dream that I had had. If I had sneezed, I wouldn't have been down in Selma, Alabama, to see the great movement there. If I had sneezed, I wouldn't have been in Memphis to see a community rally around those brothers and sisters who are suffering. I'm so happy that I didn't sneeze.

King, "I See The Promised Land"

And they were telling me, now it doesn't matter now. It really doesn't matter what happens now. I left Atlanta this morning, and as we got started on the plane, there were six of us, the pilot said over the public address system, "We are sorry for the delay, but we have Dr. Martin Luther King on the plane. And to be sure that all of the bags were checked, and to be sure that nothing would be wrong with the plane, we had to check out everything carefully. And we've had the plane protected and guarded all night."

King, "I See The Promised Land"

And then I got into Memphis. And some began to say that threats, or talk about the threats that were out. What would happen to me from some of our sick white brothers?

King, "I See The Promised Land"

Well, I don't know what will happen now. We've got some difficult days ahead. But it doesn't matter with me now. Because I've been to the mountaintop. And I don't mind. Like anybody, I would like to live a long life. Longevity has its place. But I'm not concerned about that now. I just want to do God's will. And He's allowed me to go up to the mountain. And I've looked over. And I've seen the promised land. I may not get there with you. But I want you to know tonight, that we, as a people, will get to the promised land. And I'm happy, tonight. I'm not worried about anything. I'm not fearing any man. Mine eyes have seen the glory of the coming of the Lord.

President Johnson's Remarks Upon Signing the Civil Rights Act, 1968

Title: President Johnson's Remarks Upon Signing the Civil Rights Act

Author: Lyndon B. Johnson

Date: April 11, 1968

Source: Public Papers of the Presidents, Johnson, 1968, pp.509-510

Public Papers of LBJ, 1968, p.509

Members of the Congress, Members of the Cabinet, distinguished Americans, and guests:

Public Papers of LBJ, 1968, p.509

On an April afternoon in the year 1966, I asked a distinguished group of citizens who were interested in human rights to meet me in the Cabinet Room in the White House. In their presence that afternoon, I signed a message to the Congress. That message called for the enactment of "the first effective federal law against discrimination in the sale and the rental of housing" in the United States of America.

Public Papers of LBJ, 1968, p.509

Few in the Nation—and the record will show that very few in that room that afternoon—believed that fair housing would—in our time—become the unchallenged law of this land.

Public Papers of LBJ, 1968, p.509

And indeed, this bill has had a long and stormy trip.

Public Papers of LBJ, 1968, p.509

We did not get it in 1966.

Public Papers of LBJ, 1968, p.509

We pleaded for it again in 1967. But the Congress took no action that year.

Public Papers of LBJ, 1968, p.509

We asked for it again this year.

Public Papers of LBJ, 1968, p.509

And now—at long last this afternoon—its day has come.

Public Papers of LBJ, 1968, p.509

I do not exaggerate when I say that the proudest moments of my Presidency have been times such as this when I have signed into law the promises of a century.

Public Papers of LBJ, 1968, p.509

I shall never forget that it was more than 100 years ago when Abraham Lincoln issued the Emancipation Proclamation—but it was a proclamation; it was not a fact.

Public Papers of LBJ, 1968, p.509

In the Civil Rights Act of 1964, we affirmed through law that men equal under God are also equal when they seek a job, when they go to get a meal in a restaurant, or when they seek lodging for the night in any State in the Union.

Public Papers of LBJ, 1968, p.509

Now the Negro families no longer suffer the humiliation of being turned away because of their race.

Public Papers of LBJ, 1968, p.509–p.510

In the Civil Rights Act of 1965, we affirmed through law for every citizen in this land the most basic right of democracy—the right of a citizen to vote in an election in his country. In the five States where the [p.510] Act had its greater impact, Negro voter registration has already more than doubled.

Public Papers of LBJ, 1968, p.510

Now, with this bill, the voice of justice speaks again.

Public Papers of LBJ, 1968, p.510

It proclaims that fair housing for all—all human beings who live in this country—is now a part of the American way of life.

Public Papers of LBJ, 1968, p.510

We all know that the roots of injustice run deep. But violence cannot redress a solitary wrong, or remedy a single unfairness.

Public Papers of LBJ, 1968, p.510

Of course, all America is outraged at the assassination of an outstanding Negro leader who was at that meeting that afternoon in the White House in 1966. And America is also outraged at the looting and the burning that defiles our democracy.

Public Papers of LBJ, 1968, p.510

We just must put our shoulders together and put a stop to both. The time is here. Action must be now.

Public Papers of LBJ, 1968, p.510

So, I would appeal to my fellow Americans by saying, the only real road to progress for free people is through the process of law and that is the road that America will travel.

Public Papers of LBJ, 1968, p.510

I urge the Congress to enact the measures for social justice that I have recommended in some twenty messages. These messages went to the Congress in January and February of this year. They broke a precedent by being completed and delivered and read and printed. These measures provide more than $78 billion that I have urged the Congress to enact for major domestic programs for all Americans in the fiscal 1969 budget.

Public Papers of LBJ, 1968, p.510

This afternoon, as we gather here in this historic room in the White House, I think we can all take some heart that democracy's work is being done. In the Civil Rights Act of 1968 America does move forward and the bell of freedom rings out a little louder.

Public Papers of LBJ, 1968, p.510

We have come some of the way, not near all of it. There is much yet to do. If the Congress sees fit to act upon these twenty messages and some fifteen appropriations bills, I assure you that what remains to be done will be recommended in ample time for you to do it after you have completed what is already before you.

Public Papers of LBJ, 1968, p.510

Thank you very much.

Public Papers of LBJ, 1968, p.510

NOTE: The President spoke at 5 p.m. in the East Room at the White House. During his remarks he referred to Dr. Martin Luther King, Jr., civil rights leader who was assassinated on April 4, 1968 (see Items 179, 180).

Public Papers of LBJ, 1968, p.510

As enacted, the bill (H.R. 2516) is Public Law 90-284 (82 Stat. 73).

Statement by President Johnson Upon Signing the Omnibus Crime Control and Safe Streets Act of 1968

Title: Statement by President Johnson Upon Signing the Omnibus Crime Control and Safe Streets Act of 1968

Author: Lyndon B. Johnson

Date: June 19, 1968

Source: Public Papers of the Presidents, Johnson, 1968, pp.725-728

Public Papers of LBJ, 1968, p.725

THE Safe Streets and Crime Control Act of 1968 has had a long journey.

Public Papers of LBJ, 1968, p.725

The work behind the principal title of the act began in July 1965 when I appointed the national crime commission. The work of the Congress started more than 16 months ago, in February 1967, when I called upon it to strike a sure and swift blow against crime in America.

Public Papers of LBJ, 1968, p.725

Now, almost 500 days later, the legislative process has run its full course. The measure before me carries out many of the objectives I sought. But it also contains several other provisions which are unwise and which will not aid effective law enforcement.

Public Papers of LBJ, 1968, p.725

Over the past 10 days, I have given full consideration to this intricate, 110-page bill. I have carefully weighed the good features against the undesirable, the questions of law and policy it raises against the remedial actions I might take to resolve those questions, the immediate crisis of local law enforcement against the bill's response.

Public Papers of LBJ, 1968, p.725

My decision has been made only after consulting with the wisest counselors available to the President. I have asked 11 Government departments and agency heads, including those most affected, such as the Attorney General, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Chairman of the Federal Communications Commission, and the Mayor of the District of Columbia, for their views. No department has recommended veto. On the basis of their advice and my own searching examination, I have decided that this measure contains more good than bad and that I should sign it into law.

Public Papers of LBJ, 1968, p.725

I sign the bill because it responds to one of the most urgent problems in America today—the problem of fighting crime in the local neighborhood and on the city street.

Public Papers of LBJ, 1968, p.725

The program I recommended 16 months ago—the Safe Streets Act—is the heart of this measure.

Public Papers of LBJ, 1968, p.725

My program was based on the most exhaustive study of crime ever undertaken in America—the work of the President's national crime commission. The commission—composed of the Nation's leading criminologists, police chiefs, educators, and urban experts—spotlighted the weaknesses in our present system of law enforcement. It concluded that the States and local communities need large-scale Federal financial assistance to help them plan, organize, and mount a concerted and effective attack on crime.

Public Papers of LBJ, 1968, p.725

The bill I sign today provides much of that urgently needed assistance. It will give help to the ill-equipped and poorly-trained policeman on the beat, to the overburdened courtroom, to the antiquated correctional institution. The legislation honors the deeply rooted principle that the Federal Government should supplement—but never supplant—local efforts and local responsibility to prevent and control crime.

Public Papers of LBJ, 1968, p.725–p.726

This measure moves in new directions to fight crime by:

—Authorizing $400 million in Federal grants over a 2-year period for planning and launching action programs to strengthen the sinews of local law enforcement-from police to prisons to parole.

—Creating a National Institute of Law Enforcement and Criminal Justice to [p.726] begin a modern research and development venture which will put science and the laboratory to work in the detection of criminals and the prevention of crime.

—Establishing a pioneering aid-to-education program of forgivable college loans and tuition grants to attract better law enforcement officers and give them better education and preparation.

—Providing greatly expanded training for State and local police officers at the National Academy of the Federal Bureau of Investigation.

—Permitting Federal funds to be used to supplement police salaries and to encourage the specialized training of community service officers whose mission will be to ease tensions in ghetto neighborhoods.

Public Papers of LBJ, 1968, p.726

These are among the prime advantages of this bill I sign today.

Public Papers of LBJ, 1968, p.726

The measure also ends three decades of inaction on the problem of gun controls. Interstate traffic in handguns and their sales to minors will now be prohibited by law. The majority of all the murders by firearms in this Nation are committed by these small but deadly weapons.

Public Papers of LBJ, 1968, p.726

But as I have told the Nation and the Congress repeatedly, this is only a halfway step toward the protection of our families and homes. We must go further and stop mail order murder by rifle and shotgun. We must close a glaring loophole in the law by controlling the sale of these lethal weapons, as well as the sale of ammunition for all guns.

Public Papers of LBJ, 1968, p.726

A week ago I submitted my proposal for more stringent safeguards. I asked, as I had before, "What in the name of conscience will it take to pass a truly effective gun control law?"

Public Papers of LBJ, 1968, p.726

In the next few days, the Congress has the opportunity to answer that question. The call for action is compelling. We dare delay no longer. I urge the Congress to act on this bill immediately. I am asking the Attorney General to explore what further steps should be taken in the gun control area so that I may recommend them when the Congress has acted on the legislation I submitted last week.

Public Papers of LBJ, 1968, p.726

Title III of this legislation deals with wiretapping and eavesdropping.

Public Papers of LBJ, 1968, p.726

My views on this subject are clear. In a special message to Congress in 1967 and again this year, I called—in the Right of Privacy Act—for an end to the bugging and snooping that invade the privacy of citizens.

Public Papers of LBJ, 1968, p.726

I urge that the Congress outlaw "all wiretapping and electronic eavesdropping, public and private, wherever and whenever it occurs.'' The only exceptions would be those instances where "the security of the Nation itself was at stake—and then only under the strictest safeguards."

Public Papers of LBJ, 1968, p.726

In the bill I sign today, Congress has moved part of the way by

—banning all wiretapping and eavesdropping by private parties;

—prohibiting the sale and distribution of "listening-in" devices in interstate commerce.

Public Papers of LBJ, 1968, p.726

But the Congress, in my judgment, has taken an unwise and potentially dangerous step by sanctioning eavesdropping and wiretapping by Federal, State, and local law officials in an almost unlimited variety of situations.

Public Papers of LBJ, 1968, p.726

If we are not very careful and cautious in our planning, these legislative provisions could result in producing a nation of snoopers bending through the keyholes of the homes and offices in America, spying on our neighbors. No conversation in the sanctity of the bedroom or relayed over a copper telephone wire would be free of eavesdropping by those who say they want to ferret out crime.

Public Papers of LBJ, 1968, p.727

Thus, I believe this action goes far beyond the effective and legitimate needs of law enforcement. The right of privacy is a valued right. But in a technologically advanced society, it is a vulnerable right. That is why we must strive to protect it all the more against erosion.

Public Papers of LBJ, 1968, p.727

I call upon the Congress immediately to reconsider the unwise provisions of Title III and take steps to repeal them. I am directing the Attorney General to confer as soon as possible with the appropriate committee chairmen and warn them of the pitfalls that lie ahead, in the hope that the Congress will move to repeal the dangerous provisions of this title.

Public Papers of LBJ, 1968, p.727

Until that can be accomplished we shall pursue—within the Federal Government-carefully designed safeguards to limit wiretapping and eavesdropping. The policy of this administration has been to confine wiretapping and eavesdropping to national security cases only—and then only with the approval of the Attorney General.

Public Papers of LBJ, 1968, p.727

This policy, now in its 3d year, will continue in force. I have today directed the Attorney General to assure that this policy of privacy prevails and is followed by all Federal law enforcement officers.

Public Papers of LBJ, 1968, p.727

Many States have protected the citizen against the invasion of privacy by making wiretapping illegal. I call upon the State and local authorities in the other States to apply the utmost restraint and caution if they exercise the broad powers of Title III. We need not surrender our privacy to win the war on crime.

Public Papers of LBJ, 1968, p.727

Title II of the legislation deals with certain rules of evidence only in Federal criminal trials—which account for only 7 percent of the criminal felony prosecutions in this country. The provisions of Title II, vague and ambiguous as they are, can, I am advised by the Attorney General, be interpreted in harmony with the Constitution, and Federal practices in this field will continue to conform to the Constitution.

Public Papers of LBJ, 1968, p.727

Under long-standing policies, for example, the Federal Bureau of Investigation and other Federal law enforcement agencies have consistently given suspects full and fair warning of their constitutional rights. I have asked the Attorney General and the Director of the Federal Bureau of Investigation to assure that these policies will continue.

Public Papers of LBJ, 1968, p.727

My overriding concern today, as it has been since the first day I became President, is for safe streets in America. I believe this measure, despite its shortcomings, will help to lift the stain of crime and the shadow of fear from the streets of our communities.

Public Papers of LBJ, 1968, p.727

That promise, contained largely in Title I and in the reinforced gun control law I have asked for, must not be deterred.

Public Papers of LBJ, 1968, p.727

I believe it is in America's interest that I sign this law today.

Public Papers of LBJ, 1968, p.727

Crime will never yield to demagogic lament—only to action. With this measure, we are beginning to act. The Federal Government is taking a long overdue step.

Public Papers of LBJ, 1968, p.727

But at a time when crime is on the tip of every American's tongue, we must remember that our protection rests essentially with local and State police officers. For of the 40,000 law enforcement agencies in this Nation, more than 39,750 are local, while some 200 are State and only the remaining 40-plus are Federal. Of the 371,000 full-time law enforcement officers in the Nation, 308,000 are local, while 40,000 are State and only 23,000 are Federal. The essential duties these 23,000 Federal officers are authorized by law to perform are to protect the President, ferret out crime in interstate commerce, investigate crime in interstate commerce, guard our borders, and enforce the tax and customs laws.

Public Papers of LBJ, 1968, p.727–p.728

Today the Federal Government is acting. [p.728] But action must now also come from the cities and counties and States across America.

Public Papers of LBJ, 1968, p.728

The cities must increase the size of their police forces.

Public Papers of LBJ, 1968, p.728

The cities must pay their law enforcement officials more.

Public Papers of LBJ, 1968, p.728

The local communities must train them better.

Public Papers of LBJ, 1968, p.728

The cities and the States must streamline their courts and correctional institutions.

Public Papers of LBJ, 1968, p.728

Both the cities and States must plan with care and imagination to use the new Federal funds we will make available under the act I sign today.

Public Papers of LBJ, 1968, p.728

Today, I ask every Governor, every mayor, and every county and city commissioner and councilman to examine the adequacy of their State and local law enforcement systems and to move promptly to support the policemen, the law enforcement officers, and the men who wage the war on crime day after day in all the streets and roads and alleys in America.

Most important of all, I call upon every citizen in this Nation to support their local police officials with respect and with the resources necessary to enable them to do their job for justice in America.

Public Papers of LBJ, 1968, p.728

I call upon our church leaders and every parent to provide the spiritual and moral leadership necessary to make this a law-abiding Nation, with respect for the rights of others, respect for their system of government, and support for those charged with the responsibility of protecting our lives, our homes, and our liberties.

Public Papers of LBJ, 1968, p.728

NOTE: As enacted, the bill (H.R. 5037) is Public Law 90-351 (82 Stat. 197).

Public Papers of LBJ, 1968, p.728

In a letter to the President of the Senate on June 26, 1968, the President requested a fiscal 1969 budget amendment to provide appropriations for the Omnibus Crime Control and Safe Streets Act of 1968 (4 Weekly Comp. Pres. Docs., p. 1017).

Public Papers of LBJ, 1968, p.728

The Gun Control Act of 1968 was approved by the President on October 22, 1968 (see Item 553).

Public Papers of LBJ, 1968, p.728

For a statement by the President of July 26, 1965, on establishing the President's Commission on Law Enforcement and Administration of Justice and for his message to Congress of February 6, 1967, on crime in America, see 1965 and 1967 volumes, this series, Items 382 and 35, respectively.

Democratic Platform of 1968

Title: Democratic Platform of 1968

Author: Democratic Party

Date: 1968

Source: National Party Platforms, pp.718-743

The Terms of Our Duty

Democratic Platform of 1968, p.718

America belongs to the people who inhabit it, The source of the nation's strength is the people's freedom to be the source of the laws governing them. To uphold this truth, when Thomas Jefferson and James Madison brought the Democratic Party to birth 175 years ago, they bound it to serve the people and their government as a united whole.

Democratic Platform of 1968, p.718

Today, in our 175th anniversary year, the Democratic Party in national convention assembled, again renews the covenant of our birth. We affirm the binding force of our inherited duty to serve the people and their government. We here, therefore, account for what we have done in the Democratic years since 1961. We here state what we will do when our party is again called to lead the nation.

Democratic Platform of 1968, p.718

In America and in the world over, strong forces for change are on the move. Systems of thought have been jarred, ways of life have been uprooted, institutions are under siege. The governed challenge those who govern.

Democratic Platform of 1968, p.718

We are summoned, therefore, to a fateful task—to ensure that the turmoil of change will prove to be the turmoil of birth instead of decay. We cannot stand still until we are overtaken by events. We dare not entrust our lives to the blind play of accident and force. By reflection and choice, we must make the impulse for change the agent of orderly progress.

Democratic Platform of 1968, p.718

There is no alternative.

Democratic Platform of 1968, p.718

In the world around us, people have patiently lived with hopes long deferred, with grievances long endured. They are now impatient with patience. Their demands for change must not only be heard, they must be answered.

Democratic Platform of 1968, p.718

This is the reality the world as a whole faces. In America itself, now, and not later, is the right time to strengthen the fabric of our society by making justice and equity the cornerstones of order. Now, and not later, is the right time to uphold the rule of law by securing to all the people the natural rights that belong to them by virtue of their being human. Now, and not later, is the right time to unfurl again the flag of human patriotism and rededicate ourselves under it, to the cause of peace among nations. Now, and not later, is the right time to reclaim the strength spent in quarrels over the past and to apply that strength to America's future. Now is the right time to proceed with the work of orderly progress that will make the future become what we want it to be.

Democratic Platform of 1968, p.718

It has always been the object of the Democratic Party to march at the head of events instead of waiting for them to happen. It is our resolve to do that in the years ahead—just as we did in the Democratic years since 1961 when the nation was led by two Democratic Presidents and four Democratic Congresses.

This We Have Done

Democratic Platform of 1968, p.718

Our pride in the achievements of these Democratic years in no way blinds us to the large and unfinished tasks which still lie ahead. Just as we know where we have succeeded, we know where our efforts still fall short of our own and the nation's hopes. And we candidly recognize that the cost of trying the untried, of ploughing new ground, is bound to be occasional error. In the future, as in the past, we will confront and correct such errors as we carry our program forward.

Democratic Platform of 1968, p.718

In this, we are persuaded that the Almighty judges in a different scale those who err in warmly striving to promote the common good, and those who are free from error because they risked nothing at all and were icily indifferent to good and evil alike. We are also persuaded of something else. What we have achieved with the means at hand—the social inventions we have [p.719] made since 1961 in all areas of our internal life, and the initiatives we have pressed along a broad front in the world arena—gives us a clear title of right to claim that we know how to move the nation forward toward the attainment of its highest goals in a world of change.

The Economy

Democratic Platform of 1968, p.719

In presenting first the record of what we have achieved in the economic life of the American people, we do not view the economy as being just dollar signs divorced from the flesh and blood concerns of the people. Economics, like politics, involves people and it means people. It means for them the difference between what they don't want and what they do want. It means the difference between justice or injustice, health or sickness, better education or ignorance, a good place to live or a rat infested hovel, a good job or corrosive worry.

Democratic Platform of 1968, p.719

In the Democratic years since 1961, under the leadership of Presidents Kennedy and Johnson, we managed the national economy in ways that kept the best aspirations of people in clear view, and brought them closer to fulfillment.

Democratic Platform of 1968, p.719

The case was different in the 1950's, when the Republicans held the trust of national leadership. In those years, the American economy creaked and groaned from recurrent recessions. One wasteful recession came in 1954, another in 1958, and a third in 1960. The loss in national production from all three recessions and from a sluggish rate of growth—a loss that can fairly be called the GOP-gap—was a staggering $175 billion, computed in today's prices.

Democratic Platform of 1968, p.719

The Democratic Party, seeing the Republican inertia and the dangers it led to, promised to get America moving again. President Kennedy first made that promise for us, and we kept it. We brought an end to recurring recessions, each one of which had followed closer on the heels of the last. Full cooperation between our government officials and all sectors of American life led to new public policies which unlocked the creative power of America's free enterprise system. The magnificent response of all the people comprising that system made the world stand in awe of the results.

Democratic Platform of 1968, p.719

Since 1961, we have seen:

Democratic Platform of 1968, p.719

A 90-month period of recession-free prosperity, the longest and strongest period of sustained economic growth in American history;

Democratic Platform of 1968, p.719

A slash in the unemployment rate from 7 to under 4 percent;

Democratic Platform of 1968, p.719

An increase of nearly 40 percent in real wages and salaries and nearly one-third in the average person's real income;

Democratic Platform of 1968, p.719

And, on the eight year average, a reduction in the rate levels of the individual income tax.

Democratic Platform of 1968, p.719

America's private enterprise system flourished as never before in these years of Democratic leadership. Compared with the preceding eight Republican years, private enterprise in the Democratic 1960's grew twice as fast, profits increased twice as rapidly, four times as many jobs were created, and thirteen million Americans—or one-third of those in poverty in 1960—have today established its bondage.

Democratic Platform of 1968, p.719

Democrats, however, were not satisfied. We saw—and were the first to see—that even sustained prosperity does not eliminate hard-core unemployment. We were the first to see that millions of Americans would never share in America's abundance unless the people as a whole, through their government, acted to supplement what the free enterprise could do.

Democratic Platform of 1968, p.719

So, under the leadership of President Johnson, this nation declared war on poverty—a war in which the government is again working in close cooperation with leaders of the free enterprise system.

Democratic Platform of 1968, p.719

It would compromise the integrity of words to claim that the war on poverty and for equal opportunity has been won. Democrats are the first to insist that it has only begun—while 82 percent of the House Republicans and 69 percent of the Senate Republicans voted against even beginning it at all. Democrats know that much more remains to be done. What we have done thus far is to test a series of pilot projects before making them bigger, and we have found that they DO work. Thus:

Democratic Platform of 1968, p.719

The new pre-school program known as Head Start has proven its effectiveness in widening the horizons of over two million poor children and their parents.

Democratic Platform of 1968, p.719

The new programs known as the Job Corps and the Neighborhood Youth Corps, enrolling close cooperation between the government and private enterprise, have helped nearly two million unskilled boys and girls—most of them drop-outs [p.720] from school—get work in the community and in industry.

Democratic Platform of 1968, p.720

The new program known as Upward Bound has helped thousands of poor but talented young men and women prepare themselves for college.

Democratic Platform of 1968, p.720

The new structure of neighborhood centers brings modern community services directly to the people who need them most.

The People

Democratic Platform of 1968, p.720

We emphasize that the coldly stated statistics of gains made in the war on poverty must be translated to mean people, in all their yearnings for personal fulfillment. That is true as well of all other things in the great outpouring of constructive legislation that surpassed even the landmark years of the early New Deal.

Democratic Platform of 1968, p.720

Education is one example. From the beginning of our Party history, Democrats argued that liberty and learning must find in each other the surest ground for mutual support. The inherited conviction provided the motive force behind the educational legislation of the 1960's that we enacted:

Democratic Platform of 1968, p.720

Because of the Elementary and Secondary Education Act of 1965, local education has been enriched to the benefit of over 13 million young Americans;

Democratic Platform of 1968, p.720

Because of the Higher Education Act of 1965, new college classrooms, laboratories and libraries have been built to assure that higher education will not be the monopoly of the few but the right of the many;

Democratic Platform of 1968, p.720

Because of federal assistance to students, the doors to college have been opened for over a million young men and women coming from families with modest means—so that about one out of every five college students is now pursuing his higher education with some kind of federal help;

Democratic Platform of 1968, p.720

Because Democrats are convinced that the best of all investments is in the human resources represented by the youth of America, we brought about a four-fold increase in the federal investment in education since 1960. The level now approaches $12 billion annually.

Democratic Platform of 1968, p.720

As it promoted better education, so did Democratic leadership promote better health for all.

Democratic Platform of 1968, p.720

The program of mercy and justice known as health care for the aged, which President Truman originally proposed and Presidents Kennedy and Johnson fought for, finally became law in the summer of 1965. Because of it, more than seven million older citizens each year are now receiving modern medical care in dignity—no longer forced to depend on charity, no longer a burden on relatives, no longer in physical pain because they cannot afford to pay for the healing power of modern medicine. Virtually all older Americans, the well and the sick alike, are now protected, their lives more secure, their afflictions eased.

Democratic Platform of 1968, p.720

To deal with other aspects of the nation's health needs, measures were enacted in the Democratic years representing an almost fourfold increase in the government's investment in health. Programs were enacted to cope with the killing diseases of heart, cancer and stroke; to combat mental retardation and mental illness; to increase the manpower supply of trained medical technicians; to speed the construction of new hospitals.

Democratic Platform of 1968, p.720

Democrats in the Presidency and in the Congress have led the fight to erase the stain of racial discrimination that tarnished America's proudly announced proposition that all men are created equal.

Democratic Platform of 1968, p.720

We knew that racial discrimination was present in every section of the country. We knew that the enforcement of civil rights and general laws is indivisible. In this conviction, Democrats took the initiative to guarantee the right to safety and security of the person, the right to all the privileges of citizenship, the right to equality of opportunity in employment, and the right to public services and accommodations and housing. For example:

Democratic Platform of 1968, p.720

Because of the Civil Rights Act of 1964, all men born equal in the eyes of their Creator are by law declared to be equal when they apply for a job, or seek a night's lodging or a good meal;

Democratic Platform of 1968, p.720

Because of the Voting Rights Act of 1965, the right to the ballot box—the right on which all other rights depend—has been reinforced by law;

Democratic Platform of 1968, p.720

Because of the Civil Rights Act of 1968, all families will have an equal right to live where they wish.

The Nation

Democratic Platform of 1968, p.720

The frontier on which most Americans live is the vertical frontier of the city. It is a frontier [p.721] whose urgent needs hold a place of very high priority on the national agenda—and on the agenda of the Democratic Party.

Democratic Platform of 1968, p.721

Democrats recognize that the race to save our cities is a race against the absolute of time itself. The blight that threatens their future takes many forms. It is the physical decay of homes and neighborhoods. It is poverty and unemployment. It is broken homes and social disintegration. It is crime. It is congestion and pollution. The Democratic program attacked all of these forms of blight—and all at once.

Democratic Platform of 1968, p.721

Since we know that the cities can be saved only by the people who live there, Democrats have invigorated local effort through federal leadership and assistance. In almost every city, a community action agency has mounted a many-sided assault on poverty. Through varied neighborhood organizations, the poor themselves are tackling their own problems and devising their own programs of self-help. Under Model Cities legislation, enacted in 1966, seventy-five cities are now launching the most comprehensive programs of economic, physical, and social development ever undertaken—and the number of participating cities will be doubled soon. In this effort, the residents of the areas selected to become the model neighborhoods are participating fully in planning their future and deciding what it will be.

Democratic Platform of 1968, p.721

In a series of housing acts beginning in 1961, Democrats have found ways to encourage private enterprise to provide modern, decent housing for low-income and moderate-income families. The Housing and Urban Development Act of 1968 is the most far-reaching housing legislation in America's history. Under its terms, the genius of American business will combine with the productivity of American labor to meet a 10-year goal of 26 million new housing units—6 million of them for the poor. The objective is to enable the poor to own their own homes, to rebuild entire neighborhoods, to spur the pace of urban renewal, and to deal more humanely with the problems of displaced people.

Democratic Platform of 1968, p.721

To give our cities a spokesman of Cabinet rank, Democrats in 1965 took the lead in creating a Department of Housing and Urban Development.

Democratic Platform of 1968, p.721

Democratic Presidents and Congresses have moved with equal vigor to help the people of America's vast hinterland outside the metropolitan centers to join the march of economic progress. Of the 101 major areas classified as "depressed areas" when the Democrats assumed office in 1961, 90 have now solved their problems of excessive unemployment and the others are on their way. The Area Redevelopment Act, the expansion of resource development programs, and the massive effort to restore Appalachia and other lagging regions to economic health assisted the people of these areas in their remarkable progress.

Democratic Platform of 1968, p.721

In these legislative undertakings of primary concern to people—American people—it is to the credit of some Republicans that they joined the Democratic majority in a common effort. Unfortunately, however, most Republicans sat passively by while Democrats wrote the legislation the nation's needs demanded. Worse, and more often, Republicans did what they could to obstruct and defeat the measures that were approved by Democrats in defiance of hostile Republican votes. Thus:

Democratic Platform of 1968, p.721

In the case of the Elementary and Secondary Education Act, 73 percent of the Republicans in the House voted to kill it.

Democratic Platform of 1968, p.721

In the case of medical care for the aged, 93 percent of the Republicans in the House and 64 percent in the Senate voted to kill it.

Democratic Platform of 1968, p.721

In the case of the Model Cities program, 88 percent of the Republicans in the House voted to kill it.

Democratic Platform of 1968, p.721

In the case of the program to help Appalachia, 81 percent of House Republicans and 58 percent of Senate Republicans voted to kill it, and 75 percent of House Republicans voted to kill corresponding programs of aid for other depressed regions of the country.

Democratic Platform of 1968, p.721

The same negative attitude was present among Republicans in the 1950's, and one of the results was a crisis in the farm sector of the economy which the Democrats inherited in the 1960's. In the late Republican 1950's, the glut of farm surpluses amounted to over $8 billion, and the taxpayers were forced to pay $1 billion every year in interest and storage charges alone. Democrats, however, set out resolutely to reverse the picture. Democratic farm programs supported farm income, expanded farm exports and domestic consumption, helped farmers adjust their production to the size of the expanded markets, and [p.722] reduced farm surpluses and storage costs to the lowest level since 1952.

Democratic Platform of 1968, p.722

Democrats have also acted vigorously to assure that American science and technology shall continue to lead the world.

Democratic Platform of 1968, p.722

In atomic energy, in space exploration, in communications, in medicine, in oceanology, in fundamental and applied research in many fields, we have provided leadership and financial aid to the nation's scientists and engineers. Their genius has, in turn, powered our national economic growth.

Democratic Platform of 1968, p.722

Other measures affected all Americans everywhere.

Democratic Platform of 1968, p.722

Under our constitutional system of federalism, the primary responsibility for law enforcement rests with selected local officials and with governors, but the federal government can and should play a constructive role in support of state and local authorities.

Democratic Platform of 1968, p.722

In this conviction, Democratic leadership scented the enactment of a law which extended financial assistance to modernize local police departments, to train law enforcement personnel, and to develop modern police technology. The effect of these provisions is already visible in an improved quality of law enforcement throughout the land.

Democratic Platform of 1968, p.722

Under Democratic leadership, furthermore, the Juvenile Delinquence Prevention and Control Act was passed to aid states and communities to plan and carry out comprehensive programs to prevent and combat youth crime. We have added more personnel to strengthen the Federal Bureau of Investigation and the enforcement of narcotics laws, and have intensified the campaign against organized crime. The federal government has come swiftly to the aid of cities needing help to bring major disturbances under control, and Democratic leadership secured the enactment of a new gun control law as a step toward putting the weapons of wanton violence beyond the reach of criminal and irresponsible hands.

Democratic Platform of 1968, p.722

To purify the air we breathe and the water we drink, Democrats led the way to the enactment of landmark anti-pollution legislation.

Democratic Platform of 1968, p.722

To bring order into the administration of transportation programs and to coordinate transportation policy, Democrats in 1966 established a new Cabinet-level Department of Transportation.

Democratic Platform of 1968, p.722

For the consumer, new standards of protection were enacted—truth-in-lending and truth-in-packaging, the Child Safety Act, the Pipeline Safety Act, the Wholesome Meat and Wholesome Poultry Acts.

Democratic Platform of 1968, p.722

For America's 100 million automobile drivers, auto and highway safety legislation provided protection not previously known.

Democratic Platform of 1968, p.722

For every American family, unparalleled achievements in conservation meant the development of balanced outdoor recreation programs—involving magnificent new national parks, seashores, and lakeshores—all within an afternoon's drive of 110 million Americans. For the first time, we are beating the bulldozer to the nation's remaining open spaces.

Democratic Platform of 1968, p.722

For the sake of all living Americans and for their posterity, the Wilderness Preservation Act of 1964 placed in perpetual trust millions of acres of primitive and wilderness areas.

Democratic Platform of 1968, p.722

For America's sons who manned the nation's defenses, a new G.I. bill with greatly enlarged equitable benefits was enacted gratefully and proudly.

Democratic Platform of 1968, p.722

America's senior citizens enjoyed the large increase in social security since the system was inaugurated during the Democratic Presidency of Franklin D. Roosevelt.

Democratic Platform of 1968, p.722

For the hungry, our food distribution programs were expanded to provide more than $1 billion worth of food a year for domestic use, giving millions of children, for the first time, enough to eat.

Democratic Platform of 1968, p.722

A new minimum wage law raised paychecks and standards of living for millions, while a new network of training programs enabled more than a million Americans to learn new skills and become productive workers in the labor force.

Democratic Platform of 1968, p.722

A new Immigration Act removed the harsh injustice of the national origins quota system and opened our shores without discrimination to those who can contribute to the growth and strength of America.

Democratic Platform of 1968, p.722

Many more measures enacted under Democratic leadership could be added to this recital of achievements in our internal life since 1961. But what we could list shares the character of what we have listed. All the measures alike are a witness to our desire to serve the people as a united whole, to chart the way for their orderly progress, to possess their confidence—by striving through our conduct to deserve to possess it.[p.723]

The World

Democratic Platform of 1968, p.723

The conscience of the entire world has been shocked by the brutal and unprovoked Soviet aggression against Czechoslovakia. By this act, Moscow has confessed that it is still the prisoner of its fear of freedom. And the Czechoslovakian people have shown that the love of freedom, in their land and throughout Eastern Europe, can never be crushed.

Democratic Platform of 1968, p.723

This severe blow to freedom and self-determination reinforces our commitment to the unending quest for peace and security in the world. These dark days should not obscure the solid achievements of the past eight years. Nuclear war has been avoided. West Berlin and Western Europe are still free.

Democratic Platform of 1968, p.723

The blend of American power and restraint, so dramatically demonstrated in the Cuban missile crisis, earned the respect of the world and prepared the way for a series of arms control agreements with the Soviet Union. Long and patient negotiation by Presidents Kennedy and Johnson resulted in the Nuclear Test Ban, Nuclear Non-Proliferation, and Space treaties and the "hot line." These hard-won agreements provide the base for pursuing other measures to reduce the risk of nuclear war.

Democratic Platform of 1968, p.723

The unprecedented expansion of the American economy has invigorated the whole free world. Many once skeptical nations, including some communist states, now regard American economic techniques and institutions as a model.

Democratic Platform of 1968, p.723

In Asia the tragic Vietnam war has often blinded us to the quiet and constructive developments which affect directly the lives of over a billion people and the prospects for peace everywhere.

Democratic Platform of 1968, p.723

An economically strong and democratic Japan has assumed a more active role in the development of the region. Indonesia has a nationalist, non-communist government seeking to live at peace with its neighbors. Thailand, Taiwan, Singapore, Malaysia, and the Republic of Korea have more stable governments and steadily growing economies. They have been aided by American economic assistance and by the American military presence in the Pacific. They have also been encouraged by a confidence reflecting successive Presidential decisions to assist nations to live in peace and freedom.

Democratic Platform of 1968, p.723

Elsewhere in the developing world, there has been hopeful political and economic progress. Though Castro's Cuba is still a source of subversion, the other Latin American states are moving ahead under the Alliance for Progress. In Africa, many of the new states have chosen moderate leaders committed to peaceful nation-building. They are beginning to cooperate with their neighbors in regional agencies of their own design. And like developing countries on other continents, they are for the first time giving serious attention to agricultural development. This new emphasis on food will buy time to launch effective programs of population control.

Democratic Platform of 1968, p.723

In all these constructive changes America, under Democratic leadership, has played a significant role. But we Democrats do not believe in resting on past achievements. We view any success as a down payment on the hard tasks that lie ahead. There is still much to be done at home and abroad and we accept with confidence the challenge of the future.

This We Will Do: Toward a Peaceful World

Democratic Platform of 1968, p.723

In the pursuit of our national objectives and in the exercise of American power in the world, we assert that the United States should:

Democratic Platform of 1968, p.723

Continue to accept its world responsibilities—not turn inward and isolate ourselves from the cares and aspirations of mankind;

Democratic Platform of 1968, p.723

Seek a world of diversity and peaceful change, where men can choose their own governments and where each nation can determine its own destiny without external interference;

Democratic Platform of 1968, p.723

Resist the temptation to try to mold the world, or any part of it, in our own image, or to become the self-appointed policeman of the world;

Democratic Platform of 1968, p.723

Call on other nations, great and small, to contribute a fair share of effort and resources to world peace and development;

Democratic Platform of 1968, p.723

Honor our treaty obligations to our allies; Seek always to strengthen and improve the United Nations and other international peace-keeping arrangements and meet breaches or threatened breaches of the peace according to our carefully assessed interests and resources;

Democratic Platform of 1968, p.723

In pursuing these objectives, we will insure that our policies will be subject to constant re [p.724] view so they reflect our true national interests in a changing world.

National Defense

Democratic Platform of 1968, p.724

The tragic events in Czechoslovakia are a shocking reminder that we live in a dangerous and unpredictable world. The Soviet attack on and invasion of a small country that only yesterday was Moscow's peaceful ally, is an ominous reversal of the slow trend toward greater freedom and independence in Eastern Europe. The reimposition of Soviet tyranny raises the spectre of the darkest days of the Stalin era and increases the risk of war in Central Europe, a war that could become a nuclear holocaust.

Democratic Platform of 1968, p.724

Against this somber backdrop, whose full portent cannot now be seen, other recent Soviet military moves take on even greater significance. Though we have a significant lead in military strength and in all vital areas of military technology, Moscow has steadily increased its strategic nuclear arsenal, its missile-firing nuclear submarine fleet, and its anti-missile defenses. Communist China is providing political and military support for so-called wars of national liberation. A growing nuclear power, Peking has disdained all arms control efforts.

Democratic Platform of 1968, p.724

We must and will maintain a strong and balanced defense establishment adequate to the task of security and peace. There must be no doubt about our strategic nuclear capability, our capacity to meet limited challenges, and our willingness to act when our vital interests are threatened.

Democratic Platform of 1968, p.724

To this end, we pledge a vigorous research and development effort. We will also continue to pursue the highly successful efforts initiated by Democratic administrations to save tax dollars by eliminating waste and duplication.

Democratic Platform of 1968, p.724

We face difficult and trying times in Asia and in Europe. We have responsibilities and commitments we cannot escape with honor. But we are not alone. We have friends and allies around the world. We will consult with them and ask them to accept a fair share of the burdens of peace and security.

North Atlantic Community

Democratic Platform of 1968, p.724

The North Atlantic Community is strong and free. We must further strengthen our ties and be constantly alert to new challenges and opportunities. We support a substantially larger European contribution to NATO.

Democratic Platform of 1968, p.724

Soviet troops have never stepped across the border of a NATO country. By harassment and threat the Kremlin has repeatedly attempted to push the West out of Berlin. But West Berlin is still free. Western Europe is still free. This is a living tribute to the strength and validity of the NATO alliance.

Democratic Platform of 1968, p.724

The political differences we have had with some of our allies from time to time should not divert us from our common task of building a secure and prosperous Atlantic community based on the principles of mutual respect and mutual dependence. The NATO alliance has demonstrated that free nations can build a common shield without sacrificing their identity and independence.

Arms Control

Democratic Platform of 1968, p.724

We must recognize that vigilance calls for the twin disciplines of defense and arms control. Defense measures and arms control measures must go hand in hand, each serving national security and the larger interests of peace.

Democratic Platform of 1968, p.724

We must also recognize that the Soviet Union and the United States still have a common interest in avoiding nuclear war and preventing the spread of nuclear weapons. We also share a common interest in reducing the cost of national defense. We must continue to work together. We will press for further arms control agreements, insisting on effective safeguards against violations.

Democratic Platform of 1968, p.724

For almost a quarter of a century America's pre-eminent military strength, combined with our political restraint, has deterred nuclear war. This great accomplishment has confounded the prophets of doom.

Democratic Platform of 1968, p.724

Eight years ago the Democratic Party pledged new efforts to control nuclear weapons. We have fulfilled that pledge. The new Arms Control and Disarmament Agency has undertaken and coordinated important research. The sustained initiatives of President Kennedy and President Johnson have resulted in the "hot line" between the White House and the Kremlin, the limited Nuclear Test Ban Treaty, the Non-Proliferation Treaty, and the treaty barring the orbiting of weapons of mass destruction.

Democratic Platform of 1968, p.725

Even in the present tense atmosphere, we [p.725] strongly support President Johnson's effort to secure an agreement with the Soviet Union under which both states would refrain from deploying anti-missile systems. Such a treaty would result in the saving of billions of dollars and would create a climate for further arms control measures. We support concurrent efforts to freeze the present level of strategic weapons and delivery systems, and to achieve a balanced and verified reduction of all nuclear and conventional arms.

The Middle East

Democratic Platform of 1968, p.725

The Middle East remains a powder keg. We must do all in our power to prevent a recurrence of war in this area. A large Soviet fleet has been deployed to the Mediterranean. Preferring short-term political advantage to long-range stability and peace, the Soviet Union has rushed arms to certain Arab states to replace those lost in the Arab-Israeli War of 1967. As long as Israel is threatened by hostile and well-armed neighbors, we will assist her with essential military equipment needed for her defense, including the most advanced types of combat aircraft.

Democratic Platform of 1968, p.725

Lasting peace in the Middle East depends upon agreed and secured frontiers, respect for the territorial integrity of all states, the guaranteed right of innocent passage through all international waterways, a humane resettlement of the Arab refugees, and the establishment of a non-provocative military balance. To achieve these objectives, we support negotiations among the concerned parties. We strongly support efforts to achieve an agreement among states in the area and those states supplying arms to limit the flow of military equipment to the Middle East.

Democratic Platform of 1968, p.725

We support efforts to raise the living standards throughout the area, including desalinization and regional irrigation projects which cut across state frontiers.

Vietnam and Asia

Democratic Platform of 1968, p.725

Our most urgent task in Southeast Asia is to end the war in Vietnam by an honorable and lasting settlement which respects the rights of all the people of Vietnam. In our pursuit of peace and stability in the vital area of Southeast Asia we have borne a heavy burden in helping South Vietnam to counter aggression and subversion from the North.

Democratic Platform of 1968, p.725

We reject as unacceptable a unilateral withdrawal of our forces which would allow that aggression and subversion to succeed. We have never demanded, and do not now demand, unconditional surrender by the communists.

Democratic Platform of 1968, p.725

We strongly support the Paris talks and applaud the initiative of President Johnson which brought North Vietnam to the peace table. We hope that Hanoi will respond positively to this act of statesmanship.

Democratic Platform of 1968, p.725

In the quest for peace no solutions are free of risk. But calculated risks are consistent with the responsibility of a great nation to seek a peace of reconciliation.

Democratic Platform of 1968, p.725

Recognizing that events in Vietnam and the negotiations in Paris may affect the timing and the actions we recommend, we would support our Government in the following steps:

Democratic Platform of 1968, p.725

Bombing: Stop all bombing of North Vietnam when this action would not endanger the lives of our troops in the field; this action should take into account the response form Hanoi.

Democratic Platform of 1968, p.725

Troop Withdrawal: Negotiate with Hanoi an immediate end or limitation of hostilities and the withdrawal from South Vietnam of all foreign forces—both United States and allied forces, and forces infiltrated from North Vietnam.

Democratic Platform of 1968, p.725

Election of Postwar Government: Encourage all parties and interests to agree that the choice of the postwar government of South Vietnam should be determined by fair and safeguarded elections, open to all major political factions and parties prepared to accept peaceful political processes. We would favor an effective international presence to facilitate the transition from war to peace and to assure the protection of minorities against reprisal.

Democratic Platform of 1968, p.725

Interim Defense and Development Measures: Until the fighting stops, accelerate our efforts to train and equip the South Vietnamese army so that it can defend its own country and carry out cutbacks of U.S. military involvement as the South Vietnamese forces are able to take over their larger responsibilities. We should simultaneously do all in our power to support and encourage further economic, political and social development and reform in South Vietnam, including an extensive land reform program. We support President Johnson's repeated offer to provide a substantial U.S. contribution to the postwar reconstruction of South Vietnam as well as to the economic development of the entire region, [p.726] including North Vietnam. Japan and the European industrial states should be urged to join in this postwar effort.

Democratic Platform of 1968, p.726

For the future, we will make it clear that U.S. military and economic assistance in Asia will be selective. In addition to considerations of our vital interests and our resources, we will take into account the determination of the nations that request our help to help themselves and their willingness to help each other through regional and multilateral cooperation.

Democratic Platform of 1968, p.726

We want no bases in South Vietnam; no continued military presence and no political role in Vietnamese affairs. If and when the communists understand our basic commitment and limited goals and are willing to take their chances, as we are, on letting the choice of the post-war government of South Vietnam be determined freely and peacefully by all of the South Vietnamese people, then the bloodshed and the tragedy can stop.

Democratic Platform of 1968, p.726

Japan, India, Indonesia, and most of the smaller Asian nations are understandably apprehensive about Red China because of its nuclear weapons, its support of subversive efforts abroad, and its militant rhetoric. They have been appalled by the barbaric behavior of the Red Guards toward the Chinese people, their callous disregard for human life and their mistreatment of foreign diplomats.

Democratic Platform of 1968, p.726

The immediate prospect that China will emerge from its self-imposed isolation is dim. But both Asians and Americans will have to coexist with the 750 million Chinese on the mainland. We shall continue to make it clear that we are prepared to cooperate with China whenever it is ready to become a responsible member of the international community. We would actively encourage economic, social and cultural exchange with mainland China as a means of freeing that nation and her people from their narrow isolation.

Democratic Platform of 1968, p.726

We support continued assistance to help maintain the independence and peaceful development of India and Pakistan.

Democratic Platform of 1968, p.726

Recognizing the growing importance of Asia and the Pacific, we will encourage increased cultural and educational efforts, such as those undertaken in multi-racial Hawaii, to facilitate a better understanding of the problems and opportunities of this vast area.

The Developing World

Democratic Platform of 1968, p.726

The American people share the aspirations for a better life in the developing world. But we are committed to peaceful change. We believe basic political rights in most states can be more effectively achieved and maintained by peaceful action than by violence.

Democratic Platform of 1968, p.726

In their struggle for political and economic development, most Asian, African, and Latin American states are confronted by grinding poverty, illiteracy and a stubborn resistance to constructive change. The aspirations and frustrations of the people are frequently exploited by self-serving revolutionaries who employ illegal and violent means.

Democratic Platform of 1968, p.726

Since World War II, America's unprecedented program of foreign economic assistance for reconstruction and development has made a profound contribution to peace, security, and a better life for millions of people everywhere. Many nations formerly dependent upon American aid are now viable and stable as a result of this aid.

Democratic Platform of 1968, p.726

We support strengthened U.S. and U.N. development aid programs that are responsive to changing circumstances and based on the recognition, as President Johnson put it, that "self-help is the lifeblood of economic development." Grant aid and government loans for long-term projects are part of a larger transfer of resources between the developed and underdeveloped states, which includes international trade and private capital investment as important components.

Democratic Platform of 1968, p.726

Like the burden of keeping the peace, the responsibility for assisting the developing world must be shared by Japan and the Western European states, once recipients of U.S. aid and now donor states.

Democratic Platform of 1968, p.726

Development aid should be coordinated among both donors and recipients. The World Bank and other international and regional agencies for investment and development should be fully utilized. We should encourage regional cooperation by the recipients for the most efficient use of resources and markets.

Democratic Platform of 1968, p.726

We should press for additional international agreements that will stimulate mutually beneficial trade and encourage a growing volume of private investment in the developing states. World-wide commodity agreements that stabilize [p.727] prices for particular products and other devices to stabilize export earnings will also spur development.

Democratic Platform of 1968, p.727

We believe priority attention should be given to agricultural production and population control. Technical assistance which emphasizes manpower training is also of paramount importance. We support the Peace Corps which has sent thousands of ambassadors of good will to three continents.

Democratic Platform of 1968, p.727

Cultural and historic ties and a common quest for peace with freedom and justice have made Latin America an area of special concern and interest to the United States. We support a vigorous Alliance for Progress program based upon the Charter of Punta del Este which affirms that "free men working through the institutions for representative democracy can best satisfy man's aspirations."

Democratic Platform of 1968, p.727

We support the objective of Latin American economic integration endorsed by the presidents of the American Republics in April 1967 and urge further efforts in the areas of tax reform, land reform, educational reform, and economic development to fulfill the promise of Punta del Este.

United Nations

Democratic Platform of 1968, p.727

Since the birth of the United Nations, the United States has pursued the quest for peace, security and human dignity through United Nations channels more vigorously than any other member state. Our dedication to its purpose and its work remains undiminished.

Democratic Platform of 1968, p.727

The United Nations contributed to dampening the fires of conflict in Kashmir, the Middle East, Cyprus and the Congo. The agencies of the United Nations have made a significant contribution to health, education and economic well-being in Asia, Africa and Latin America. These efforts deserve continued and expanded support. We pledge that support.

Democratic Platform of 1968, p.727

Since we recognize that the United Nations can be only as effective as the support of its members, we call upon other states to join with us in a renewed commitment to use its facilities in the great tasks of economic development, the non-military use of atomic energy, arms control and peace-keeping. It is only with member nations working together that the organization can make its full contribution to the growth of a world community of peace under law, rather than by threat or use of military force.

Democratic Platform of 1968, p.727

We are profoundly concerned about the continued repression of Jews and other minorities in the Soviet Union and elsewhere, and look forward to the day when the full light of liberty and freedom shall be extended to all countries and all peoples.

Foreign Trade and Financial Policy

Democratic Platform of 1968, p.727

World trade is essential to economic stability. The growing interdependence of nations, particularly in economic affairs, is an established fact of contemporary life. It also spells an opportunity for constructive international cooperation that will bring greater well-being for all and improve the prospects for international peace and security.

Democratic Platform of 1968, p.727

We shall build upon the Trade Expansion Act of 1962 and the Kennedy round of trade negotiations, in order to achieve greater trade cooperation and progress toward freer international trade. In future negotiations, which will require careful preparation, we shall: 1) seek continued reciprocal reduction and elimination of tariff barriers, based on the most favored nation principle; 2) negotiate the reciprocal removal of non-tariff barriers to international trade on all products, including agriculture; 3) give special attention to the needs of the developing countries for increased export earnings; and 4) develop and improve the rules governing fair international competition affecting both foreign commerce and investment.

Democratic Platform of 1968, p.727

To lessen the hardships suffered by industries and workers as the result of trade liberalization, we support improvements in the adjustment assistance provisions of present law. Provision of law to remedy unfair and destructive import competition should be reviewed and strengthened, and negotiated international agreements to achieve this purpose should be employed where appropriate.

Democratic Platform of 1968, p.727

The United States has experienced balance-of payments deficits for over a decade, mainly because of our security obligations in the free world. Faced with these deficits, we have behaved responsibly by avoiding both economic deflation at home and severe unilateral restrictive measures on international transactions, which [p.728] would have weakened the international economy and international cooperation.

Democratic Platform of 1968, p.728

We shall continue to take the path of constructive measures by relying on steps to increase our exports and by the development of further cooperative arrangements with the other countries. We intend, as soon as possible, to dismantle the restrictions placed on foreign investment and finance, so that American free enterprise can play its full part as the agent of economic development. We will continue to encourage persons from other lands to visit America.

Democratic Platform of 1968, p.728

Steps of historical importance have already been taken to improve the functioning of the international monetary system, most notably the new special drawing rights under the international monetary fund. We shall continue to work for the further improvement of the international monetary system so as to reduce its vulnerability to monetary crises.

Economic Growth and Stability

Democratic Platform of 1968, p.728

The Democratic policies that more than doubled the nation's rate of economic expansion in the past eight years can double and redouble our national income by the end of this century. Such a rate of economic growth will enable us to win total victory in our wars on ignorance, poverty, and the misery of the ghettos.

Democratic Platform of 1968, p.728

But victory will not come automatically. To realize our full economic potential will require effective, businesslike planning and cooperation between government and all elements of private economy. The Democratic Party pledges itself to achieve that purpose in many ways.

Fiscal and Monetary Policy

Democratic Platform of 1968, p.728

Taxes were lowered in 1962, 1964, and 1965 to encourage more private spending and reach full employment; they were raised in 1966 and 1968 to help prevent inflation, but with a net reduction in the eight Democratic years. We will continue to use tax policy to maintain steady economic growth by helping through tax reduction to stimulate the economy when it is sluggish and through temporary tax increases to restrain inflation. To promote this objective, methods must be devised to permit prompt, temporary changes in tax rates within prescribed limits with full participation of the Congress in the decisions.

Democratic Platform of 1968, p.728

The goals of our national tax policy must be to distribute the burden of government equitably among our citizens and to promote economic efficiency and stability. We have placed major reliance on progressive taxes, which are based on the democratic principle of ability to pay. We pledge ourselves to continue to rely on such taxes, and to continue to improve the way they are levied and collected so that every American contributes to government in proportion to his ability to pay.

Democratic Platform of 1968, p.728

A thorough revamping of our federal taxes has been long overdue to make them more equitable as between rich and poor and as among people with the same income and family responsibilities. All corporation and individual preferences that do not serve the national interest should be removed. Tax preferences, like expenditures, must be rigorously evaluated to assure that the benefit to the nation is worth the cost.

Democratic Platform of 1968, p.728

We support a proposal for a minimum income tax for persons of high income based on an individual's total income regardless of source in order that wealthy persons will be required to make some kind of income tax contribution, no matter how many tax shelters they use to protect their incomes. We also support a reduction of the tax burden on the poor by lowering the income tax rates at the bottom of the tax scale and increasing the minimum standard deduction. No person or family below the poverty level should be required to pay federal income taxes.

Democratic Platform of 1968, p.728

Our goal is a balanced budget in a balanced economy. We favor distinguishing current operating expenditures from long term capital outlays and repayable loans, which should be amortized consistent with sound accounting principles. All government expenditures should be subject to firm tests of efficiency and essentiality.

Democratic Platform of 1968, p.728

An effective policy for growth and stability requires careful coordination of fiscal and monetary policies. Changes in taxes, budgets, interest rates, and money supply must be carefully blended and flexibly adjusted to assure:

Democratic Platform of 1968, p.728

Adaptation to changing economic conditions; Adequate supplies of money and credit for the expansion of industry, commerce, and housing; Maintenance of the lowest possible interest rates;

Democratic Platform of 1968, p.729

[p.729] Avoidance of needless hardships on groups that depend heavily on credit.

Democratic Platform of 1968, p.729

Cooperation between fiscal and monetary authorities was greatly strengthened in the past eight years, and we pledge ourselves to continue to perfect this cooperation.

Price Stability with Growth

Democratic Platform of 1968, p.729

Price stability continues to be an essential goal of expansive economic policy. Price inflation hurts most of the weak among us and could interfere with the continued social gains we are determined to achieve in the immediate years ahead.

Democratic Platform of 1968, p.729

The answer to rising prices will never be sought, under Democratic administrations, in unemployment and idle plant facilities. We are firmly committed to the twin objectives of full employment and price stability,

Democratic Platform of 1968, p.729

To promote price stability in a dynamic and growing economy, we will:

Democratic Platform of 1968, p.729

Pursue flexible fiscal and monetary policies designed to keep total private and public demand in line with the economy's rising productive capacity.

Democratic Platform of 1968, p.729

Work effectively with business, labor, and the public in formulating principles for price and wage policies that are equitable and sound for consumers as well as for workers and investors.

Democratic Platform of 1968, p.729

Strictly enforce antitrust and trade practice laws to combat administered pricing, supply limitations and other restrictive practices.

Democratic Platform of 1968, p.729

Strengthen competition by keeping the doors of world trade open and resisting the protectionism of captive markets.

Democratic Platform of 1968, p.729

Stimulate plant modernization, upgrade labor skills, and speed technological advance to step up productivity.

Agriculture

Democratic Platform of 1968, p.729

Twice in this century the Republican Party has brought disaster to the American farmer—in the thirties and in the fifties. Each time, the American farmer was rescued by the Democratic Party, but his prosperity has not yet been fully restored.

Democratic Platform of 1968, p.729

Farmers must continue to be heard in the councils of government where decisions affecting agriculture are taken. The productivity of our farmers—already the world's most productive—must continue to rise, making American agriculture more competitive abroad and more prosperous at home.

Democratic Platform of 1968, p.729

A strong agriculture requires fair income to farmers for an expanding output. Family farmers must be protected from the squeeze between rising production costs and low prices for their products. Farm income should grow with productivity just as industrial wages rise with productivity. At the same time, market prices should continue to reflect supply and demand conditions and American farm products must continue to compete effectively in world markets. In this way, markets at home and abroad will continue to expand beyond the record high levels of recent years.

Democratic Platform of 1968, p.729

To these ends, we shall:

Democratic Platform of 1968, p.729

Take positive action to raise farm income to full parity level in order to preserve the efficient, full-time family farm. This can be done through present farm programs when these programs are properly funded, but these programs will be constantly scrutinized with a view to improvement.

Democratic Platform of 1968, p.729

Actively seek out and develop foreign commercial markets, since international trade in agricultural products is a major favorable factor in the nation's balance of payments. In expanding our trade, we shall strive to ensure that farmers get adequate compensation for their production going into export.

Democratic Platform of 1968, p.729

Expand our food assistance programs to America's poor and our Food for Peace program to help feed the world's hungry.

Democratic Platform of 1968, p.729

Establish a Strategic Food and Feed Reserve Plan whereby essential commodities such as wheat, corn and other feed grains, soybeans, storable meat and other products will be stock-piled as a safeguard against crop failures, to assist our nation and other nations in time of famine or disaster, and to ensure adequate supplies for export markets, as well as to protect our own farm industry. This reserve should be insulated from the market.

Democratic Platform of 1968, p.729

Support the right of farmers to bargain collectively in the market place on a commodity by commodity basis. Labor and industry have long enjoyed this right to bargain collectively under existing legislation. Protective legislation for bargaining should be extended to agriculture.

Democratic Platform of 1968, p.729

Continue to support and encourage agricultural co-operatives by expanded and liberal [p.730] credit, and to protect them from punitive taxation.

Democratic Platform of 1968, p.730

Support private or public credit on reasonable terms to young farmers to enable them to purchase farms on long term, low interest loans.

Democratic Platform of 1968, p.730

Support the federal crop insurance program. Reaffirm our support of the rural electrification program, recognizing that rural America cannot be revitalized without adequate low-cost electric power. We pledge continued support of programs to assure supplemental financing to meet the growing generating and distributing power needs of rural areas. We support the rural telephone program.

Democratic Platform of 1968, p.730

Support a thorough study of the effect of unlimited payments to farmers. If necessary, we suggest graduated open-end limitations of payments to extremely large corporate farms that participate in government programs.

Democratic Platform of 1968, p.730

Take a positive approach to the public interest in the issue of health and tobacco at all levels of the tobacco economy. We recommend a cooperative effort in health and tobacco research by government, industry and qualified scientific bodies, to ascertain relationships between human health and tobacco growth, curing, storage and manufacturing techniques, as well as specific medical aspects of tobacco smoke constituents.

Small Business

Democratic Platform of 1968, p.730

Small business plays a vital role in a dynamic, competitive economy; it helps maintain a strong social fabric in communities across the land; it builds concerned community leadership deriving from ownership of small enterprises; and it maintains the challenge and competition essential to a free enterprise system.

Democratic Platform of 1968, p.730

To assure a continuing healthy environment for small business, the Democratic Party pledges to:

Democratic Platform of 1968, p.730

Assure adequate credit at reasonable costs; Assure small business a fair share of government contracts and procurement;

Democratic Platform of 1968, p.730

Encourage investment in research and development of special benefit to small enterprise;

Democratic Platform of 1968, p.730

Assist small business in taking advantage of technological innovations;

Democratic Platform of 1968, p.730

Provide centers of information on government procurement needs and foreign sales opportunities.

Democratic Platform of 1968, p.730

The Democratic Party is pledged to develop programs that will enable members of minority groups to obtain the financing and technical management assistance needed to succeed in launching and operating new enterprises.

Labor-Management Relations

Democratic Platform of 1968, p.730

Private collective bargaining and a strong and independent labor movement are essential to our system of free enterprise and economic democracy. Their development has been fostered under each Democratic administration in this century.

Democratic Platform of 1968, p.730

We will thoroughly review and update the National Labor Relations Act to assure an effective opportunity to all workers to exercise the right to organize and to bargain collectively, including such amendments as:

Democratic Platform of 1968, p.730

Repeal of the provision permitting states to enact compulsory open shop laws;

Democratic Platform of 1968, p.730

Extension of the Act's protection to farm workers, employees of private non-profit organizations, and other employees not now covered;

Democratic Platform of 1968, p.730

Removal of unreasonable restrictions upon the right of peaceful picketing, including situs picketing;

Democratic Platform of 1968, p.730

Speedier decisions in unfair labor practice cases and representation proceedings;

Democratic Platform of 1968, p.730

Greater equality between the remedies available under the Act to labor and those available to management;

Democratic Platform of 1968, p.730

Effective opportunities for unions as well as employers to communicate with employees, without coercion by either side or by anyone acting in their behalf.

Democratic Platform of 1968, p.730

The Federal Government will continue to set an example as an employer to private business and to state and local governments. The Government will not do business with firms that repeatedly violate Federal statutes prohibiting discrimination against employees who are union members or refuse to bargain with duly authorized union representatives.

Democratic Platform of 1968, p.730

By all these means, we will sustain the right of workers to organize in unions of their own choosing and will foster truly effective collective bargaining to provide the maximum opportunity for just and fair agreements between management and labor.

Consumer Protection

Democratic Platform of 1968, p.730

Rising incomes have brought new vigor to the market place. But the march of technology which [p.731] has brought unparalleled abundance and opportunity to the consumer has also exposed him to new hazards and new complexities. In providing economic justice for consumers, we shall strengthen business and industry and improve the quality of life for all 200 million Americans.

Democratic Platform of 1968, p.731

We commend the Democratic Congress for passing the landmark legislation of the past several years which has ushered in a new era of consumer protection—truth-in-lending, truth-in-packaging, wholesome meat and poultry, auto and highway safety, child safety, and protection against interstate land swindles.

Democratic Platform of 1968, p.731

We shall take steps, including necessary legislation, to minimize the likelihood of massive electric power failures, to improve the safety of medical devices and drugs, to penalize deceptive sales practices, and to provide consumer access to product information now being compiled in the Federal Government.

Democratic Platform of 1968, p.731

We will help the states to establish consumer fraud and information bureaus, and to update consumer credit laws.

Democratic Platform of 1968, p.731

A major objective of all consumer programs, at all levels, must be the education of the buying public, particularly the poor who are the special targets of unscrupulous and high-pressure salesmanship.

Democratic Platform of 1968, p.731

We will make the consumer's voice increasingly heard in the councils of government. We will strengthen consumer education and enforcement programs by consolidation of functions now dispersed among various agencies, through the establishment of an Office of Consumer Affairs to represent consumer interests within the government and before courts and regulatory agencies.

Housing

Democratic Platform of 1968, p.731

For the first time in history, a nation is able to rebuild or replace all of its substandard housing, even while providing housing for millions of new families.

Democratic Platform of 1968, p.731

This means rebuilding or replacing 4.5 million dwelling units in our urban areas and 3.9 million in rural areas, most in conditions of such dilapidation that they are too often dens of despair for millions of Americans.

Democratic Platform of 1968, p.731

Yet this performance is possible in the next decade because of goals and programs fashioned by Democratic Presidents and Democratic Congresses in close partnership with private business.

Democratic Platform of 1968, p.731

The goal is clear and pressing—"a decent home and a suitable living environment for every American family," as set forth in the 1949 Housing Act by a Democratic Congress and Administration.

Democratic Platform of 1968, p.731

To achieve this goal in the next ten years: We will assist private enterprise to double its volume of home-building, to an annual rate of 2.6 million units a year—a ten year total of 26 million units. This is the specific target of the history-making Housing and Urban Development Act of 1968.

Democratic Platform of 1968, p.731

We will give the highest priority to Federally-assisted home-building for low income families, with special attention given to ghetto dwellers, the elderly, the physically handicapped, and families in neglected areas of rural America, Indian reservations, territories of the United States, and migratory worker camps. All federal subsidy programs—whether in the form of public housing, interest rates at 1%, rent supplements, or direct loans—will be administered to favor these disadvantaged families, with full participation by the neighborhood residents themselves.

Democratic Platform of 1968, p.731

We will cooperate with private home builders to experiment boldly with new production technology, with financial institutions to marshal capital for housing where it is most needed, and with unions to expand the labor force needed for a doubling of production.

Democratic Platform of 1968, p.731

Above all, we will work toward the greatest possible freedom of choice—the opportunity for every family, regardless of race, color, religion, or income, to choose home ownership or rental, high-rise or low-rise, cooperatives or condominiums, detached or town house, and city, suburban or country living.

Democratic Platform of 1968, p.731

We urge local governments to shape their own zoning laws and building codes to favor consumers and hold down costs.

Democratic Platform of 1968, p.731

Rigid enforcement of State and local health and building codes is imperative to alleviate conditions of squalor and despair in deteriorating neighborhoods.

Democratic Platform of 1968, p.731

Democrats are proud of their housing record. But we are also painfully aware of how much more needs to be done to reach the final goal of decent shelter for all Americans and we pledge a steadfast pursuit of that goal.[p.732]

Transportation

Democratic Platform of 1968, p.732

America is a nation on the move. To meet the challenge of transportation, we propose a dynamic partnership between industry and government at all levels.

Democratic Platform of 1968, p.732

Of utmost urgency is the need to solve congestion in air traffic, especially in airports and between major metropolitan centers. We pledge intensified efforts to devise equitable methods of financing new and improved airport and airway facilities.

Democratic Platform of 1968, p.732

Urban and inter-urban transportation facilities are heavily overburdened. We support expanded programs of assistance to mass transit in order to avoid unnecessary congestion in air traffic, especially at air-link residential and work areas.

Democratic Platform of 1968, p.732

Despite the tremendous progress of our interstate highway program, still more super-highways are needed for safe and rapid motor transport. We need to establish local road networks to meet regional requirements.

Democratic Platform of 1968, p.732

The efficiency of our railroads has improved greatly but there is need for further strengthening of the nation's railroads so that they can contribute more fully to the nation's transport requirements. In particular, we will press forward with the effort to develop high-speed passenger trains to serve major urban areas.

Democratic Platform of 1968, p.732

To assume our proper place as a leading maritime nation, we must launch an aggressive and balanced program to replace and augment our obsolete merchant ships with modern vessels built in American shipyards. We will assist U.S. flag operators to overcome the competitive disparity between American and foreign costs.

Democratic Platform of 1968, p.732

We will continue to foster development of harbors, ports, and inland waterways, particularly regional waterways systems, and the St. Lawrence Seaway, to accommodate our expanded water-borne commerce. We support modernization of the Panama Canal.

Democratic Platform of 1968, p.732

We pledge a greater investment in transportation research and development to enhance safety and increase speed and economy; to implement the acts that have been passed to control noxious vehicle exhausts; and to reduce aircraft noise.

Democratic Platform of 1968, p.732

The expansion of our transportation must not be carried out at the expense of the environment through which it moves. We applaud the leadership provided by the First Lady to enhance the highway environment and initiate a national beautification program.

Communications

Democratic Platform of 1968, p.732

America has the most efficient and comprehensive communications system in the world. But a healthy society depends more on the quality of what is communicated than on either the volume or form of communication.

Democratic Platform of 1968, p.732

Public broadcasting has already proven that it can be a valuable supplement to formal education and a direct medium for non-formal education. We pledge our continuing support for the prompt enactment of a long-range financing plan that will help ensure the vigor and independence of this potentially vital but still underdeveloped new force in American life.

Democratic Platform of 1968, p.732

We deplore the all too frequent exploitation of violence as entertainment in all media.

Democratic Platform of 1968, p.732

In 1962 the Democratic Party sensed the great potential of space communication and quickly translated this awareness into the Communications Satellite Act. In a creative partnership between government and business, this revolutionary idea soon became a reality. Six years later we helped establish a consortium of 61 nations devoted to the development of a global satellite network.

Democratic Platform of 1968, p.732

We will continue to develop new technology and utilize communications to promote world-wide understanding as an essential pre-condition of world peace. But, in view of rapidly changing technology, the entire federal regulatory system dealing with telecommunication should be thoroughly reappraised.

Science and Technology

Democratic Platform of 1968, p.732

We lead the world in science and technology. This has produced a dramatic effect on the daily lives of all of us. To maintain our undisputed national leadership in science and further its manifold applications for the betterment of mankind, the Federal Government has a dear obligation to foster and support creative men and women in the research community, both public and private.

Democratic Platform of 1968, p.732

Our pioneering Space program has helped mankind on earth in countless ways. The benefits from improved weather forecasting which can soon be available thanks to satellite observations [p.733] and communications will by themselves make the space efforts worthwhile.

Democratic Platform of 1968, p.733

Observation by satellite of crops and other major earth resources will for the first time enable man to see all that is available to him on earth, and therefore to take maximum advantage of it. High endurance metals developed for space-craft help make commercial planes safer; similarly, micro-electronics are now found in consumer appliances. Novel space food-preservation techniques are employed in the tropical climates of underdeveloped countries. We will move ahead in aerospace research and development for their unimagined promise for man on earth as well as their vital importance to national defense.

Democratic Platform of 1968, p.733

We shall continue to work for our goal of leadership in space. To this end we will maximize the effectiveness and efficiency of our space programs through utilization of the best program, planning and budgeting systems.

Democratic Platform of 1968, p.733

To maintain our leadership in the application of energy, we will push forward with research and development to assure a balanced program for the supply of energy for electric power, both public and private. This effort should go hand in hand with development of "breeder" reactors and large-scale nuclear desalting plants that can provide pure water economically from the sea for domestic use and agricultural and industrial development in arid regions, and with broadened medical and biological applications of atomic energy.

Democratic Platform of 1968, p.733

In addition to the physical sciences, the social sciences will be encouraged and assisted to identify and deal with the problem areas of society.

Opportunity for All

Democratic Platform of 1968, p.733

We of the Democratic Party believe that a nation wealthy beyond the dreams of most of mankind—a nation with a twentieth of the world's population, possessing half the world's manufactured goods—has the capacity and the duty to assure to all its citizens the opportunity to enjoy the full measure of the blessings of American life.

Democratic Platform of 1968, p.733

For the first time in the history of the world, it is within the power of a nation to eradicate from within its borders the age-old curse of poverty.

Democratic Platform of 1968, p.733

Our generation of Americans has now made those commitments. It remains to implement and adequately fund the host of practical measures that demonstrate their, effectiveness and to continue to devise new approaches.

Democratic Platform of 1968, p.733

We are guided by the recommendations of the National Advisory Commission on Civil Disorders concerning jobs, housing, urban renewal, and education on a scale commensurate with the needs of the urban ghettos. We are guided by the report of the Commission on Rural Poverty in tackling the equally compelling problems of the rural slums.

Democratic Platform of 1968, p.733

Economic growth is our first antipoverty program. The best avenue to an independent, confident citizenry is a dynamic, full-employment economy. Beyond that lie the measures necessary to assure that every American, of every race, in every region, truly shares in the benefits of economic progress.

Democratic Platform of 1968, p.733

Those measures include rehabilitation of the victims of poverty, elimination of the urban and rural slums where poverty is bred, and changes throughout the system of institutions that affect the lives of the poor.

Democratic Platform of 1968, p.733

In this endeavor, the resources of private enterprise not only its economic power but its leadership and ingenuity—must be mobilized. We must marshal the power that comes from people working together in communities—the neighborhood communities of the poor and the larger communities of the city, the town, the village, the region.

Democratic Platform of 1968, p.733

We support community action agencies and their programs, such as Head Start, that will prevent the children of the poor from becoming the poor of the next generation. We support the extension of neighborhood centers. We are committed to the principle of meaningful participation of the poor in policy-making and administration of community action and related programs.

Democratic Platform of 1968, p.733

Since organizations of many kinds are joined in the war on poverty, problems of coordination inevitably arise. We pledge ourselves to review current antipoverty efforts to assess how responsibility should be distributed among levels of government, among private and public agencies, and between the permanent agencies of the federal government and an independent antipoverty agency.

Toward a Single Society

Democratic Platform of 1968, p.733

We acknowledge with concern the findings of the report of the bi-partisan National Advisory [p.734] Commission on Civil Disorders and we commit ourselves to implement its recommendations and to wipe out, once and for all, the stain of racial and other discrimination from our national life.

Democratic Platform of 1968, p.734

"The major goal," the Commission wrote, "is the creation of a true union—a single society and a single American identity." A single society, however, does not mean social or cultural uniformity. We are a nation of many social, ethnic and national groups. Each has brought richness and strength to America.

Democratic Platform of 1968, p.734

The Civil Rights Act of 1964 and 1968 and the Voting Rights Act of 1965, all adopted under the vigorous leadership of President Johnson, are basic to America's long march toward full equality under the law.

Democratic Platform of 1968, p.734

We will not permit these great gains to be chipped away by opponents or eroded by administrative neglect. We pledge effective and impartial enforcement of these laws. If they prove inadequate, or if their compliance provisions fail to serve their purposes, we will propose new laws. In particular, the enforcement provisions of the legislation prohibiting discrimination in employment should be strengthened. This will be done as a matter of first priority.

Democratic Platform of 1968, p.734

We have also come to recognize that freedom and equality require more than the ending of repression and prejudice. The victims of past discrimination must be encouraged and assisted to take full advantage of opportunities that are now opening to them.

Democratic Platform of 1968, p.734

We must recognize that for too long we have neglected the abilities and aspirations of Spanish speaking Americans to participate fully in American life. We promise to fund and implement the Bilingual Education Act and expand recruitment and training of bilingual federal and state employees.

Democratic Platform of 1968, p.734

The American Indian has the oldest claim on our national conscience. We must continue and increase federal help in the Indian's battle against poverty, unemployment, illiteracy, ill health and poor housing. To this end, we pledge a new and equal federal-Indian partnership that will enable Indian communities to provide for themselves many services now furnished by the federal government and federal sponsorship of industrial development programs owned, managed, and run by Indians. We support a quick and fair settlement of land claims of Indians, Eskimo and Aleut citizens of Alaska.

The Inner City

Democratic Platform of 1968, p.734

In the decaying slums of our larger cities, where so many of our poor are concentrated, the attack on poverty must embrace many interrelated aspects of development—economic development, the rehabilitation or replacement of dilapidated and unsafe housing, job training and placement, and the improvement of education, health, recreation, crime control, welfare, and other public services.

Democratic Platform of 1968, p.734

As the framework of such an effort, we will continue to support the Model Cities program under which communities themselves are planning and carrying out the most comprehensive plans ever put together for converting their worst slum areas into model neighborhoods—with full participation and leadership by the neighborhood residents themselves. The Model Cities program will be steadily extended to more cities and more neighborhoods and adequately financed.

Democratic Platform of 1968, p.734

The resources and leadership of private enterprise must be marshaled in the attack on slums and poverty, and such incentives as may be essential for that purpose we will develop and enact.

Democratic Platform of 1968, p.734

Some of the most urgent jobs in the revival of the inner city remain undone because the hazards are too great and the rewards too limited to attract sufficient private capital. To meet this problem, we will charter a new federal banking structure to provide capital and investment guaranties for urban projects planned and implemented through local initiative—neighborhood development corporations, minority programs for self-employment, housing development corporations, and other urban construction and planning operations. We will also enact legislation providing tax incentives for new business and industrial enterprises in the inner city. Our experience with aid to small business demonstrates the importance of increased local ownership of business enterprises in the inner city.

Democratic Platform of 1968, p.734

We shall aid the universities to concentrate their resources more fully upon the problems of the cities and facilitate their cooperation with municipal agencies and local organizations in finding solutions to urban problems.[p.735]

Rural Development

Democratic Platform of 1968, p.735

Balanced growth is essential for America. To achieve that balanced growth, we must greatly increase the growth of the rural non-farm economy. One-third of our people live in rural areas, but only one rural family in ten derives its principal income from farming. Almost thirty percent of the nation's poor are non-farm people in rural areas.

Democratic Platform of 1968, p.735

The problem of rural poverty and the problem of migration of poor people from rural areas to urban ghettos are mainly non-farm problems. The creation of productive jobs in small cities and towns can be the best and least costly solution of these problems.

Democratic Platform of 1968, p.735

To revitalize rural and small-town America and assure equal opportunity for all Americans where-ever they live, we pledge to:

Democratic Platform of 1968, p.735

Create jobs by offering inducements to new enterprises—using tax and other incentives—to locate in small towns and rural areas;

Democratic Platform of 1968, p.735

Administer existing federal programs and design new programs where necessary to overcome the disparity between rural and urban areas in opportunities for education, for health services, for low income housing, for employment and job training, and for public services of all kinds;

Democratic Platform of 1968, p.735

Encourage the development of new towns and new growth centers;

Democratic Platform of 1968, p.735

Encourage the creation of comprehensive planning and development agencies to provide additional leadership in non-metropolitan areas, and assist them financially.

Democratic Platform of 1968, p.735

The experience of the Appalachian and other regional commissions indicates that municipalities, counties, and state and federal agencies can work together in a common development effort.

Jobs and Training

Democratic Platform of 1968, p.735

Every American in need of work should have opportunity not only for meaningful employment, but also for the education, training, counselling, and other services that enable him to take advantage of available jobs.

Democratic Platform of 1968, p.735

To the maximum possible extent, our national goal of full employment should be realized through creation of jobs in the private economy, where six of every seven Americans now work. We will continue the Job Opportunities in the Business Sector (JOBS) program, which for the first time has mobilized the energies of business and industry on a nationwide scale to provide training and employment to the hard-core unemployed. We will develop whatever additional incentives may be necessary to maximize the opportunities in the private sector for hard-core unemployed.

Democratic Platform of 1968, p.735

We will continue also to finance the operation by local communities of a wide range of training programs for youth and retraining for older workers whose skills have become obsolete, coupled with related services necessary to enable people to undertake training and accept jobs—including improved recruitment and placement services, day-care centers, and transportation between work and home.

Democratic Platform of 1968, p.735

For those who can work but cannot find jobs, we pledge to expand public job and job-training programs, including the Neighborhood Youth Corps, to provide meaningful employment by state and local government and nonprofit institutions.

Democratic Platform of 1968, p.735

For those who cannot obtain other employment, the federal government will be the employer of last resort, either through federal assistance to state and local projects or through federally sponsored projects.

Employment Standards

Democratic Platform of 1968, p.735

American workers are entitled to more than the right to a job. They have the right to fair and safe working conditions and to adequate protection in periods of unemployment or disability.

Democratic Platform of 1968, p.735

In the last thirty years Democratic administrations and Congresses have enacted, extended and improved a series of measures to provide safeguards against exploitation and distress. We pledge to continue these efforts.

Democratic Platform of 1968, p.735

The minimum standards covering terms and conditions of employment must be improved:

Democratic Platform of 1968, p.735

By increasing the minimum wage guarantee to assure those at the bottom of the economic scale a fairer share in rising living standards;

Democratic Platform of 1968, p.735

By extending the minimum wage and overtime provision of the Fair Labor Standards Act to all workers;

Democratic Platform of 1968, p.735

By enacting occupational health and safety legislation to assure the material reduction of the present occupational death rate of 14,500 men [p.736] and women each year, and the disabling accident rate of over 2 million per year;

Democratic Platform of 1968, p.736

By assuring that the "green card" worker does not depress wages and conditions of employment for American workers;

Democratic Platform of 1968, p.736

By updating of the benefit provisions of the Longshoremen and Harbor Workers Act.

Democratic Platform of 1968, p.736

The unemployment compensation program should be modernized by national minimum standards for level and duration of benefits, eligibility, and universal coverage.

Older Citizens

Democratic Platform of 1968, p.736

A lifetime of work and effort deserves a secure and satisfying retirement.

Democratic Platform of 1968, p.736

Benefits, especially minimum benefits, under Old Age, Survivors, and Disability Insurance should be raised to overcome present inadequacies and thereafter should be adjusted automatically to reflect increases in living costs.

Democratic Platform of 1968, p.736

Medical care for the aged should be expanded to include the costs of prescription drugs.

Democratic Platform of 1968, p.736

The minimum age for public assistance should be lowered to correspond to the requirements for social security.

Democratic Platform of 1968, p.736

America's self-employed citizens should be encouraged by tax incentive legislation to supplement social security benefits for themselves and their employees to the same extent that employees of corporations are encouraged.

Democratic Platform of 1968, p.736

In addition to improving social security, we must develop in each community a wide variety of activities to enrich the lives of our older citizens, to enable them to continue to contribute to our society, and to permit them to live in dignity. The aged must have access to better housing, opportunities for regular or part-time employment and community volunteer services, and cultural and recreational activities.

People in Need

Democratic Platform of 1968, p.736

Every American family whose income is not sufficient to enable its members to live in decency should receive assistance free of the indignities and uncertainties that still too often mar our present programs, To support family incomes of the working poor a number of new program proposals have recently been developed. A thorough evaluation of the relative advantages of such proposals deserves the highest priority attention by the next Administration. This we pledge to do.

Democratic Platform of 1968, p.736

Income payments and eligibility standards for the aged, the blind, the disabled and dependent children should be determined and financed on a federal basis—in place of the present inequitable, underfinanced hodge podge state plans. This would, among other things, assure the eligibility in all states of needy children of unemployed parents who are now denied assistance in more than half the states as long as the father remains in the home.

Democratic Platform of 1968, p.736

Assistance payments should not only be brought to adequate levels but they should be kept adequate by providing for automatic adjustment to reflect increases in living costs.

Democratic Platform of 1968, p.736

Congress has temporarily suspended the restrictive amendment of 1967 that placed an arbitrary limit on the number of dependent children who can be aided in each state. We favor permanent repeal of that restriction and of the provision requiring mothers of young children to work.

Democratic Platform of 1968, p.736

The new federal-state program we propose should provide for financial incentives and needed services to enable and encourage adults on welfare to seek employment to the extent they are able to do so.

Democratic Platform of 1968, p.736

The time has come when we should make a national commitment that no American should have to go hungry or undernourished. The Democratic Party here and now does make that commitment. We will move rapidly to implement it through continued improvement and expansion of our food programs.

Democratic Platform of 1968, p.736

The Democratic Congress this year has already enacted legislation to expand and improve the school lunch and commodity distribution programs, and shortly will complete action on legislation now pending to expand the food stamp program. We will enact further legislation and appropriations to assure on a permanent basis that the school lunch program provides free and reduced price meals to all needy school children.

Health

Democratic Platform of 1968, p.736

The best of modern medical care should be made available to every American. We support efforts to overcome the remaining barriers of distance, poverty, ignorance, and discrimination [p.737] that separate persons from adequate medical services.

Democratic Platform of 1968, p.737

During the last eight years of Democratic administrations, this nation has taken giant steps forward in assuring life and health for its citizens. In the years ahead, we Democrats are determined to take those final steps that are necessary to make certain that every American, regardless of economic status, shall live out his years without fear of the high costs of sickness.

Democratic Platform of 1968, p.737

Through a partnership of government and private enterprise we must develop new coordinated approaches to stem the rise in medical and drug costs without lowering the quality or availability of medical care. Out-of-hospital care, comprehensive group practice arrangements, increased availability of neighborhood health centers, and the greater use of sub-professional aides can all contribute to the lowering of medical costs.

Democratic Platform of 1968, p.737

We will raise the level of research in all fields of health, with special programs for development of the artificial heart and the heart transplant technique, development of drugs to treat and prevent the recurrence of heart diseases, expansion of current task forces in cancer research and the creation of new ones including cancer of the lung, determination of the factors in mental retardation and reduction of infant mortality, development of drugs to reduce the incidence of suicide, and construction of health research facilities and hospitals.

Democratic Platform of 1968, p.737

We must build new medical, dental and medical service schools, and increase the capacity of existing ones, to train more doctors, dentists, nurses, and medical technicians.

Democratic Platform of 1968, p.737

Medical care should be extended to disabled beneficiaries under the Old Age, Survivors and Disability Insurance Act to the same extent and under the same system that such care is available to the aged.

Democratic Platform of 1968, p.737

Thousands of children die, or are handicapped for life, because their mothers did not receive proper pre-natal medical attention or because the infants were unattended in the critical first days of life. Maternal and child health centers, located and designed to serve the needs of the poor, and voluntary family planning information centers should be established throughout the country. Medicaid programs administered by the states should have uniform standards so that no mother or child is denied necessary health services. Finally, we urge consideration of a program comparable to Medicare to finance pre-natal care for mother's and post-natal care for children during the first year of life.

Veterans

Democratic Platform of 1968, p.737

American veterans deserve our enduring gratitude for their distinguished service to the nation. In 1968 some 750,000 returning servicemen will continue their education with increased benefits under the new G.I. Bill passed by an education-minded Democratic Congress. Two million disabled veterans and survivors of those killed in action are receiving larger pensions and higher disability payments.

Democratic Platform of 1968, p.737

Guided by the report of the Veterans Advisory Commission, established by the Democratic administration, we will:

Democratic Platform of 1968, p.737

Continue a strong one-stop agency vested with sole responsibility for all veterans programs;

Democratic Platform of 1968, p.737

Sustain and upgrade veteran medical services and expand medical training in VA hospitals;

Democratic Platform of 1968, p.737

Maintain compensation for disabled veterans and for widows and dependents of veterans who die of service-connected causes, in line with the rise in earnings and living standards;

Democratic Platform of 1968, p.737

Assure every veteran the right of burial in a national cemetery;

Democratic Platform of 1968, p.737

Provide incentives for veterans to aid their communities by serving in police, fire departments, educational systems and other public endeavors;

Democratic Platform of 1968, p.737

Make veterans and their widows eligible for pension benefits at the same age at which Social Security beneficiaries may receive old age benefits.

Democratic Platform of 1968, p.737

We recommend the establishment of a standing Committee on Veterans Affairs in the Senate.

Education

Democratic Platform of 1968, p.737

Education is the chief instrument for making good the American promise. It is indispensable to every man's chance to achieve his full potential. We will seek to open education to all Americans.

Democratic Platform of 1968, p.737

We will assure equal opportunity to education and equal access to high-quality education. Our aim is to maintain state-local control over the nation's educational system, with federal financial assistance and help in stimulating changes [p.738] through demonstration and technical assistance. New concepts of education and training employing new communications technology must be developed to educate children and adults.

Democratic Platform of 1968, p.738

Every citizen has a basic right to as much education and training as he desires and can master—from preschool through graduate studies—even if his family cannot pay for this education.

Democratic Platform of 1968, p.738

We will marshal our national resources to help develop and finance new and effective methods of dealing with the educationally disadvantaged—including expanded preschool programs to prepare all young children for full participation in formal education, improved teacher recruitment and training programs for inner city and rural schools, the Teacher Corps, assistance to community controlled schools to encourage pursuit of innovative practices, university participation in research and operation of school programs, a vocational education system that will provide imaginative new ties between school and the world of work, and improved and more widespread adult education programs.

Democratic Platform of 1968, p.738

We will fully fund Title I of the Elementary and Secondary Education Act of 1965, which provides federal funds for improving education in schools serving large numbers of students from low income families.

Democratic Platform of 1968, p.738

The financial burden of education continues to grow as enrollments spiral and costs increase. The home owner's property tax burden must be eased by increased levels of financial aid by both the states and the Federal government.

Democratic Platform of 1968, p.738

Our rapidly expanding educational frontiers require a redoubling of efforts to insure the vitality of a diverse higher education system—public and private, large and small, community and junior colleges, vocational and technical schools, and great universities. We also pledge support for high quality graduate and medical education.

Democratic Platform of 1968, p.738

We will enlarge the federal scholarship program to remove the remaining financial barriers to post-secondary education for low income youths, and increase assistance to students in the form of repayable loans out of future income.

Democratic Platform of 1968, p.738

We will encourage support for the arts and the humanities, through the national foundations established by a Democratic Congress, to provide incentives for those endowed with extraordinary talent, enhance the quality of our life, and make productive leisure available to all our people.

Democratic Platform of 1968, p.738

We recommend greater stress on the arts and humanities in elementary and secondary curricula to ensure a proper educational balance.

Youth

Democratic Platform of 1968, p.738

For generations, the Democratic Party has renewed its vitality with young people and new ideas. Today, young people are bringing new vigor and a deep concern for social justice into the political process, yet many feel excluded from full participation.

Democratic Platform of 1968, p.738

We of the Democratic Party welcome the bold thinking and exciting ideas of youth. We recognize, with deep satisfaction, that their healthy desire for participation in the democratic system must lead to a series of reforms in the direction of a greater democracy and a more open America.

Democratic Platform of 1968, p.738

The Democratic Party takes pride in the fact that so many of today's youth have channeled their interests and energies into our Party. To them, and to all young Americans we pledge the fullest opportunity to participate in the affairs of our Party at the local, state, and national levels. We call for special efforts to recruit young people as candidates for public office.

Democratic Platform of 1968, p.738

We will support a Constitutional amendment lowering the voting age to 18.

Democratic Platform of 1968, p.738

We favor an increase in youth representation on state delegations in future Democratic conventions.

Democratic Platform of 1968, p.738

Steps should be taken to include youth advisers on all government studies, commissions, and hearings which are relevant to their lives.

Democratic Platform of 1968, p.738

We will establish a youth commission involving young people between the ages of 18 and 26.

Democratic Platform of 1968, p.738

Every young person should have an opportunity to contribute to the social health of his community or to humanitarian service abroad. The extraordinary experience of the Teacher Corps, VISTA, and the Peace Corps points the way for broadening the opportunities for such voluntary service. Hundreds of thousands of America's youth have sought to enlist in these programs, but only tens of thousands have been able to serve. We will expand these Opportunities.

Democratic Platform of 1968, p.738

The lives of millions of young men are deeply affected by the requirement for military service. The present system leaves them in uncertainty [p.739] through much of their early manhood. Until our manpower needs can be fully met by voluntary enlistment, the Democratic Party will insist upon the most equitable and just selection system that can be devised. We support a random system of selection which will reduce the period of eligibility to one year, guarantee fair selection, and remove uncertainty.

Democratic Platform of 1968, p.739

We urge review of draft board memberships to make them more representative of the communities they serve.

Environment, Conservation and Natural Resources

Democratic Platform of 1968, p.739

These United States have undergone 200 years of continuous change and dramatic development resulting in the most technologically advanced nation in the world. But with rapid industrialization, the nation's air and water resources have been degraded, the public health and welfare endangered, the landscape scarred and littered, and the very quality of our national life jeopardized.

Democratic Platform of 1968, p.739

We must assure the availability of a decent environment for living, working and relaxation. To this end, we pledge our efforts:

Democratic Platform of 1968, p.739

To accelerate programs for the enhancement of the quality of the nation's waters for the protection of all legitimate water uses, with special emphasis on public water supplies, recreation, fish and wildlife;

Democratic Platform of 1968, p.739

To extend the national emission control program to all moving sources of air pollution;

Democratic Platform of 1968, p.739

To work for programs for the effective disposal of wastes of our modern industrial society;

Democratic Platform of 1968, p.739

To support the efforts on national, state, and local levels to preserve the historic monuments and sites of our heritage;

Democratic Platform of 1968, p.739

To assist in planning energy production and transportation to fit into the landscape, to assure safety, and to avoid interference with more desirable uses of land for recreation and other public purposes;

Democratic Platform of 1968, p.739

To continue to work toward abating the visual pollution that plagues our land;

Democratic Platform of 1968, p.739

To focus on the outdoor recreation needs of those who live in congested metropolitan areas;

Democratic Platform of 1968, p.739

To continue to work toward strong measures for the reclamation of mined and depleted lands and the conservation of soil.

Public Domain

Democratic Platform of 1968, p.739

We pledge continued support of the Public Land Law Review Commission, which is reviewing public land laws and policies to assure maximum opportunity for all beneficial uses of the public lands, including lands under the sea, and to develop a comprehensive land use policy.

Democratic Platform of 1968, p.739

We support sustained yield management of our forests, and expanded research for control of forest insects, disease, and fires.

Democratic Platform of 1968, p.739

We plan to examine the productivity of the public lands in goods, services, and local community prosperity, with a view to increasing such productivity.

Democratic Platform of 1968, p.739

We shall enforce existing federal statutes governing federal timber.

Democratic Platform of 1968, p.739

We support the orderly use and development of mineral resources on federal lands.

Recreation

Democratic Platform of 1968, p.739

We will continue the vigorous expansion of the public recreational domain to meet tomorrow's increasing needs, We will add national parks, recreation areas and seashores, and create national systems of scenic and wild rivers and of trails and scenic roads. We will support a growing wilderness preservation system, preservation of our redwood forests, and conservation of marshland and estuarine areas.

Democratic Platform of 1968, p.739

Recognizing that the bulk of the task of acquisition and development must be accomplished at the state and local levels we shall foster federal assistance to encourage such action, as well as recreational expansion by the private sector. To this end, we shall build upon the landmark Land and Water Conservation Fund Act, which has assured a foundation of a recreational heritage for future generations. We will assist communities to rehabilitate and expand inadequate and deteriorating urban park systems, and develop open space, waterways, and waterfront renovation facilities.

Resources of the Oceans

Democratic Platform of 1968, p.739

In and beneath the seas are resources of untold dimension for the benefit of mankind. Recognizing and protecting the paramount public interest in the seas, Congress under Democratic leadership enacted the Sea Grant College Act of 1965 and the Marine Resources and Engineering [p.740] Development Act of 1966, which established for the first time a comprehensive long-range policy and program for the marine sciences. We pledge to pursue vigorously the goals of that Act. Specifically, we will:

Democratic Platform of 1968, p.740

Foster marine application of new technology—spacecraft, buoys, data networks, and advanced navigation systems—and develop an engineering capability to work on and under the sea at any depth;

Democratic Platform of 1968, p.740

Encourage development of underseas resources by intensified research and better weather forecasting, with recognition to the coastal, insular and other littoral states of their unique interest and responsibility;

Democratic Platform of 1968, p.740

Foster an extensive program of oceanologic research and development, financed by a portion of the mineral-royalty receipts from the outer continental shelf;

Democratic Platform of 1968, p.740

Accelerate public and private programs for the development of food and other marine resources to meet world-wide malnutrition, to create new industries, and to utilize underemployed manpower living near the waterfront;

Democratic Platform of 1968, p.740

Promote our fisheries by providing incentives for private investment, enforcing our 12-mile fishing zone, and discouraging other nations from excessive territorial and fishery claims;

Democratic Platform of 1968, p.740

Conclude an appropriate Ocean Space treaty to secure rules and agreements that will facilitate public and private investment, guarantee security of investment and encourage efficient and orderly development of the sea's resources.

The Government

Democratic Platform of 1968, p.740

In the coming four years, the Democratic President and Democratic Congress will give priority to simplifying and streamlining the processes of government, particularly in the management of the great innovative programs enacted in the 1960's.

Democratic Platform of 1968, p.740

The Executive branch of the federal government is the largest and most complicated enterprise in the world, with programs distributed among 150 separate departments, agencies, bureaus, and boards. This massive operation contributes to and often results in duplication, administrative confusion, and delay.

Democratic Platform of 1968, p.740

We will seek to streamline this machinery by improving coordination and management of federal programs.

Democratic Platform of 1968, p.740

We realize that government must develop the capacity to anticipate problems. We support a thorough study of agency operations to determine priorities for governmental action and spending, for examination of the structure of these agencies, and for establishing more systematic means of attacking our nation's problems.

Democratic Platform of 1968, p.740

We recognize that citizen participation in government is most meaningful at the levels of government closest to the people. For that reason, we recognize the necessity of developing a true partnership between state, local, and Federal governments, with each carrying its share of the financial and administrative load. We acknowledge the tremendous strides made by President Johnson in strengthening federal-state relations through open communication with the governors and local officials, and we pledge to continue and expand, on this significant effort.

Democratic Platform of 1968, p.740

The complexities of federal-state local relationships must be simplified, so that states and local communities receiving federal aid will have maximum freedom to initiate and carry out programs suited to their own particular needs. To give states and communities greater flexibility in their programs, we will combine individual grant programs into broader categories.

Democratic Platform of 1968, p.740

As the economy grows, it is the federal revenue system that responds most quickly, yet it may be the states and local governments whose responsibilities mount most rapidly. To help states and cities meet their fiscal challenges, we must seek new methods for states and local governments to share in federal revenues while retaining responsibility for establishing their own priorities and for operating their own programs. To this end, we will seek out new and innovative approaches to government to assure that our Federal system does, in fact, deliver to the people the services for which they are paying.

Public Employees

Democratic Platform of 1968, p.740

The Democratic administration has moved vigorously in the past eight years—particularly with regard to pay scales—to improve the conditions of public service. We support:

Democratic Platform of 1968, p.740

A federal service that rewards new ideas and leadership;

Democratic Platform of 1968, p.741

Continued emphasis on education and training [p.741] programs for public employees, before and during their service;

Democratic Platform of 1968, p.741

Parity of government salaries with private industry;

Democratic Platform of 1968, p.741

A proper respect for the privacy and independence of federal employees;

Democratic Platform of 1968, p.741

Equal opportunities for career advancement;

Democratic Platform of 1968, p.741

Continued application of the principles of collective bargaining to federal employment;

Democratic Platform of 1968, p.741

Encouragement to state and local governments to continue to upgrade their personnel systems in terms of pay scales and training;

Democratic Platform of 1968, p.741

Interchange of employees between federal and state government.

Elections

Democratic Platform of 1968, p.741

We are alarmed at the growing costs of political participation in our country and the consequent reliance of political parties and candidates on large contributors, and we want to assure full public information on campaign expenditures. To encourage citizen participation we urge that limited campaign contributions be made deductible as a credit from the federal income tax.

Democratic Platform of 1968, p.741

We fully recognize the principle of one man, one vote in all elections. We urge that due consideration be given to the question of presidential primaries throughout the nation. We urge reform of the electoral college and election procedures to assure that the votes of the people are fully reflected.

Democratic Platform of 1968, p.741

We urge all levels of our Party to assume leadership in removing all remaining barriers to voter registration.

Democratic Platform of 1968, p.741

We will also seek to eliminate disenfranchisement of voters who change residence during an election year.

The District of Columbia

Democratic Platform of 1968, p.741

With the reorganization of the government of the District of Columbia, the nation's capital has for the first time in nearly a century the strong leadership provided by a mayor-council form of government. This, however, is no substitute for an independent and fiscally autonomous District government. We support a federally funded charter commission—controlled by District residents—to determine the most appropriate form of government for the District, and the prompt implementation of the Commission's recommendations.

Democratic Platform of 1968, p.741

The Democratic Party supports full citizenship for residents of the District of Columbia and a Constitutional amendment to grant such citizenship through voting representation in Congress. Until this can be done, we propose non-voting representation.

Puerto Rico

Democratic Platform of 1968, p.741

In accordance with the democratic principle of self-determination the people of Puerto Rico have expressed their will to continue in permanent union with the United States through commonwealth status. We pledge our continued support to the growth of the commonwealth status which the people of Puerto Rico overwhelmingly approved last year.

Virgin Islands and Guam

Democratic Platform of 1968, p.741

We favor an elected governor and a non-voting delegate in the House of Representatives for the Virgin Islands and Guam, and will consider methods by which American citizens residing in American territories can participate in presidential elections.

Justice and Law

Democratic Platform of 1968, p.741

We are firm in our commitment that equal justice under law shall be denied to no one. The duty of government at every level is the safety and security of its people. Yet the fact and fear of crime are uppermost in the minds of Americans today. The entire nation is united in its concern over crime, in all forms and wherever it occurs. America must move aggressively to reduce crime and its causes.

Democratic Platform of 1968, p.741

Democratic Presidents, governors and local officials are dedicated to the principle that equal justice under law shall remain the American creed. Those who take the law into their own hands undermine that creed. Anyone who breaks the law must be held accountable. Organized crime cannot be accepted as a way of life, nor can individual crime or acts of violence be permitted.

Democratic Platform of 1968, p.741

As stated in the report of the National Advisory Commission on Civil Disorders, the two fundamental questions confronting the American people are:

Democratic Platform of 1968, p.741

"How can we as a people end the resort to violence while we build a better society?"

Democratic Platform of 1968, p.742

"How can the nation realize the promise of [p.742] a single society—one nation indivisible—which yet remains unfulfilled?"

Democratic Platform of 1968, p.742

This platform commits the Democratic Party to seek resolution of these questions.

Democratic Platform of 1968, p.742

We pledge a vigorous and sustained campaign against lawlessness in all its forms—organized crime, white collar crime, rioting, and other violations of the rights and liberties of others. We will further this campaign by attack on the root causes of crime and disorder.

Democratic Platform of 1968, p.742

Under the recent enactments of a Democratic Congress we will continue and increase federal financial support and technical assistance to the states and their local governments to:

Democratic Platform of 1968, p.742

Increase the numbers, raise the pay, and improve the training of local police officers;

Democratic Platform of 1968, p.742

Reduce delays and congestion in our criminal courts;

Democratic Platform of 1968, p.742

Rehabilitate and supervise convicted offenders, to return offenders to useful, decent lives, and to protect the public against habitual criminals;

Democratic Platform of 1968, p.742

Develop and deploy the most advanced and effective techniques and equipment for the public safety;

Democratic Platform of 1968, p.742

Assure the availability in every metropolitan area of quick, balanced, coordinated control forces, with ample manpower, thoroughly trained and properly equipped, to suppress rioting;

Democratic Platform of 1968, p.742

Encourage responsible and competent civic associations and business and labor groups to cooperate with the law enforcement agencies in new efforts to combat organized crime, build community support for police work, and assist in rehabilitating convicted offenders—and for the attainment of these ends, encourage our police to cooperate with any such groups and to establish links of communication with every element of the public they serve, building confidence and respect;

Democratic Platform of 1968, p.742

Establish and maintain open and responsive channels of communication between the public and the police through creative police-community relations programs;

Democratic Platform of 1968, p.742

Develop innovative programs to reduce the incidence of juvenile delinquency;

Democratic Platform of 1968, p.742

Promote the passage and enforcement of effective federal, state and local gun control legislation.

Democratic Platform of 1968, p.742

In all these efforts, our aim is to strengthen state and local law enforcement agencies so that they can do their jobs. In addition, the federal government has a clear responsibility for national action. We have accepted that responsibility and will continue to accept it with these specific objectives:

Democratic Platform of 1968, p.742

Prompt and effective federal support, upon request of appropriate authorities, to suppress rioting: improvement of the capabilities of all agencies of law enforcement and justice—the police, the military, the courts—to handle more effectively problems attending riots;

Democratic Platform of 1968, p.742

A concentrated campaign by the Federal government to wipe out organized crime: by employment of additional Federal investigators and prosecutors; by computerizing the present system of collecting information; by enlarging the program of technical assistance teams to work with the states and local governments that request assistance in this fight; by launching a nationwide program for the country's business and labor leaders to alert them to the problems of organized crime;

Democratic Platform of 1968, p.742

Intensified enforcement, research, and education to protect the public from narcotics and other damaging drugs: by review of federal narcotics laws for loopholes and difficulties of enforcement; by increased surveillance of the entire drug traffic; through negotiations with those foreign nations which grow and manufacture the bulk of drug derivatives;

Democratic Platform of 1968, p.742

Vigorous federal leadership to assist and coordinate state and local enforcement efforts, and to ensure that all communities benefit from the resources and knowledge essential to the fight on crime;

Democratic Platform of 1968, p.742

Further implementation of the recommendations of the President's crime commission;

Democratic Platform of 1968, p.742

Creation in the District of Columbia of a model system of criminal justice;

Democratic Platform of 1968, p.742

Federal research and development to bring to the problems of law enforcement and the administration of justice the full potential of the scientific revolution.

Democratic Platform of 1968, p.742

In fighting crime we must not foster injustice. Lawlessness cannot be ended by curtailing the hard-won liberties of all Americans. The right of privacy must be safeguarded. Court procedures must be expedited. Justice delayed is justice denied.

Democratic Platform of 1968, p.742

A respect for civil peace requires also a proper respect for the legitimate means of expressing dissent. A democratic society welcomes criticism [p.743] within the limits of the law. Freedom of speech, press, assembly and association, together with free exercise of the franchise, are among the legitimate means to achieve change in a democratic society. But when the dissenter resorts to violence he erodes the institutions and values which are the underpinnings of our democratic society. We must not and will not tolerate violence.

Democratic Platform of 1968, p.743

As President Johnson has stated, "Our test is to rise above the debate between the rights of the individual and the rights of society by securing the rights of both."

Democratic Platform of 1968, p.743

We freely admit that the years we live in are years of turbulence. But the wisdom of history has something hopeful to say about times like these. It tells us that the giant American nation, on the move with giant strides, has never moved—and can never move—in silence.

Democratic Platform of 1968, p.743

We are an acting, doing, feeling people. We are a people whose deepest emotions are the source of the creative noise we make-precisely because of our ardent desire for unity, our wish for peace, our longing for concord, our demand for justice, our hope for material well being, our impulse to move always toward a more perfect union.

Democratic Platform of 1968, p.743

In that never-ending quest, we are all partners together—the industrialist and the banker, the workman and the storekeeper, the farmer and the scientist, the clerk and the engineer, the teacher and the student, the clergyman and the writer, the men of all colors and of all the different generations.

Democratic Platform of 1968, p.743

The American dream is not the exclusive property of any political party. But we submit that the Democratic Party has been the chief instrument of orderly progress in our time. As heirs to the longest tradition of any political party on earth, we Democrats have been trained over the generations to be a party of builders. And that experience has taught us that America builds best when it is called upon to build greatly.

Democratic Platform of 1968, p.743

We sound that call anew. With the active consent of the American people, we will prove anew that freedom is best secured by a government that is responsive and compassionate and committed to justice and the rule of law.

Republican Platform of 1968

Title: Republican Platform of 1968

Author: Republican Party

Date: 1968

Source: National Party Platforms, pp.748-763

Preamble, Purposes and Pledges

Republican Platform of 1968, p.748

Twice before, our Party gave the people of America leadership at a time of crisis—leadership which won us peace in place of war, unity in place of discord, compassion in place of bitterness.

Republican Platform of 1968, p.748

A century ago, Abraham Lincoln gave that leadership. From it came one nation, consecrated to liberty and justice for all.

Republican Platform of 1968, p.748

Fifteen years ago, Dwight D. Eisenhower gave that leadership. It brought the end of a war, eight years of peace, enhanced respect in the world, orderly progress at home, and trust of our people in their leaders and in themselves. Today, we are in turmoil.

Republican Platform of 1968, p.748

Tens of thousands of young men have died or been wounded in Vietnam.

Republican Platform of 1968, p.748

Many young people are losing faith in our society.

Republican Platform of 1968, p.748

Our inner cities have become centers of despair.

Republican Platform of 1968, p.748

Millions of Americans are caught in the cycle of poverty—poor education, unemployment or serious under-employment, and the inability to afford decent housing.

Republican Platform of 1968, p.748

Inflation has eroded confidence in the dollar at home and abroad. It has severely cut into the incomes of all families, the jobless, the farmers, the retired and those living on fixed incomes and pensions.

Republican Platform of 1968, p.748

Today's Americans are uncertain about the future, and frustrated about the recent past.

Republican Platform of 1968, p.748

America urgently needs new leadership—leadership courageous and understanding—leadership that will recapture control of events, mastering them rather than permitting them to master us, thus restoring our confidence in ourselves and in our future.

Republican Platform of 1968, p.748

Our need is new leadership which will develop imaginative new approaches assuring full opportunity to all our citizens—leadership which will face and resolve the basic problems of our country.

Republican Platform of 1968, p.748

Our Convention in 1968 can spark a "Republican Resurgence" under men and women willing to face the realities of the world in which we live.

Republican Platform of 1968, p.748

We must urgently dedicate our efforts toward restoration of peace both at home and abroad.

Republican Platform of 1968, p.748

We must bring about a national commitment to rebuild our urban and rural slum areas.

Republican Platform of 1968, p.748

We must enable family farm enterprise to participate fully in the nation's prosperity. We must bring about quality education for all. We must assure every individual an opportunity for satisfying and rewarding employment. We must attack the root causes of poverty and eradicate racism, hatred and violence.

Republican Platform of 1968, p.748

We must give all citizens the opportunity to influence and shape the events of our time.

Republican Platform of 1968, p.748

We must give increasing attention to the views of the young and recognize their key role in our present as well as the future.

Republican Platform of 1968, p.748

We must mobilize the resources, talents and energy of public and private sectors to reach these goals, utilizing the unique strength and initiative of state and local governments.

Republican Platform of 1968, p.749

[p.749] We must re-establish fiscal responsibility and put an end to increases in the cost of living.

Republican Platform of 1968, p.749

We must reaffirm our commitment to Lincoln's challenge of one hundred six years ago. To Congress he wrote: "The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty and we must rise with the occasion. As our case is new, so we must think anew and act anew. We must disenthrall ourselves and then we shall save our country ."

Republican Platform of 1968, p.749

In this, our stormy present, let us rededicate ourselves to Lincoln's thesis. Let the people know our commitment to provide the dynamic leadership which they rightly expect of this Party—the Party not of empty promises, but of performance—the Party not of wastefulness, but of responsibility—the Party not of war, but the Party whose Administrations have been characterized by peace—the Republican Party.

Republican Platform of 1968, p.749

To these ends, we solemnly pledge to every American that we shall think anew and act anew.

Domestic Policy

Republican Platform of 1968, p.749

A peaceful, reunified America, with opportunity and orderly progress for all—these are our overriding domestic goals.

Republican Platform of 1968, p.749

Clearly we must think anew about the relationship of man and his government, of man and his fellow-man. We must act anew to enlarge the opportunity and autonomy of the individual and the range of his choice.

Republican Platform of 1968, p.749

Republican leadership welcomes challenge. We eagerly anticipate new achievement.

Republican Platform of 1968, p.749

A new, vital partnership of government at all levels will be a prime Republican objective. We will broaden the base of decision-making. We will create a new mix of private responsibility and public participation in the solution of social problems.

Republican Platform of 1968, p.749

There is so much which urgently needs to be done.

Republican Platform of 1968, p.749

In many areas poverty and its attendant ills afflict large numbers of Americans. Distrust and fear plague us all. Our inner cities teem with poor, crowded in slums. Many rural areas are run down and barren of challenge or opportunity. Minorities among us—particularly the black community, the Mexican-American, the American Indian—suffer disproportionately.

Republican Platform of 1968, p.749

Americans critically need—and are eager for—new and dynamic leadership. We offer that leadership—a leadership to eradicate bitterness and discrimination—responsible, compassionate leadership that will keep its word—leadership every citizen can count on to move this nation forward again, confident, reunited, and sure of purpose.

Crisis of the Cities

Republican Platform of 1968, p.749

For today and tomorrow, there must be—and we pledge—a vigorous effort, nation-wide, to transform the blighted areas of cities into centers of opportunity and progress, culture and talent.

Republican Platform of 1968, p.749

For tomorrow, new cities must be developed—and smaller cities with room to grow, expanded—to house and serve another 100 million Americans by the turn of the century.

Republican Platform of 1968, p.749

The need is critical. Millions of our people are suffering cruelly from expanding metropolitan blight—congestion, crime, polluted air and water, poor housing, inadequate educational, economic and recreational opportunities. This continuing decay of urban centers—the deepening misery and limited opportunity of citizens living there—is intolerable in America. We promise effective, sustainable action enlisting new energies by the private sector and by governments at all levels. We pledge:

Republican Platform of 1968, p.749

Presidential leadership which will buttress state and local government;

Republican Platform of 1968, p.749

Vigorous federal support to innovative state programs, using new policy techniques such as urban development corporations, to help rebuild our cities;

Republican Platform of 1968, p.749

Energetic, positive leadership to enforce statutory and constitutional protections to eliminate discrimination;

Republican Platform of 1968, p.749

Concern for the unique problems of citizens long disadvantaged in our total society by race, color, national origin, creed, or sex;

Republican Platform of 1968, p.749

A greater involvement of vast private enterprise resources in the improvement of urban life, induced by tax and other incentives;

Republican Platform of 1968, p.749

New technological and administrative approaches through flexible federal programs enabling and encouraging communities to solve their own problems;

Republican Platform of 1968, p.749

A complete overhaul and restructuring of the competing and overlapping jumble of federal [p.750] programs to enable state and local governments to focus on priority objectives.

Republican Platform of 1968, p.750

These principles as urgently apply to rural poverty and decay. There must be a marked improvement of economic and educational opportunities to relieve widespread distress. Success with urban problems in fact requires acceleration of rural development in order to stem the flow of people from the countryside to the city.

Republican Platform of 1968, p.750

Air and water pollution, already acute in many areas, require vigorous state and federal action, regional planning, and maximum cooperation among neighboring cities, counties and states. We will encourage this planning and cooperation and also spur industrial participation by means of economic incentives.

Republican Platform of 1968, p.750

Skyrocketing building costs and interest rates have crippled home building and threaten a housing crisis in the nation, endangering the prospect of a decent home and a suitable living environment for every family. We will vigorously implement the Republican conceived home-ownership program for lower income families and also the Republican-sponsored rent certificate program. Economic incentives will be developed to attract private industry and capital to the low-cost housing market. By reducing interest rates through responsible fiscal and monetary policy we will lower the costs of home-ownership, and new technologies and programs will be developed to stimulate low-cost methods of housing rehabilitation. Local communities will be encouraged to adopt uniform, modern building codes, research in cost-cutting technology through private enterprise will be accelerated, and innovative state and local programs will be supported. We will also stimulate the investment of "sweat equity" by home owners.

Republican Platform of 1968, p.750

Our metropolitan transportation systems—the lifelines of our cities—have become tangled webs of congestion which not only create vast citizen inconvenience, discontent and economic inefficiency, but also tend to barricade inner city people against job opportunities in suburban areas. We will encourage priority attention by private enterprise and all levels of government to sound planning and the rapid development of improved mass transportation systems, Additionally, in the location of federal buildings and installations and the awarding of federal contracts, account will be taken of such factors as traffic congestion, housing, and the effect on community development.

Republican Platform of 1968, p.750

Americans are acutely aware that none of these objectives can be achieved unless order through law and justice is maintained in our cities. Fire and looting, causing millions of dollars of property damage, have brought great suffering to home owners and small businessmen, particularly in black communities least able to absorb catastrophic losses. The Republican Party strongly advocates measures to alleviate and remove the frustrations that contribute to riots. We simultaneously support decisive action to quell civil disorder, relying primarily on state and local governments to deal with these conditions.

Republican Platform of 1968, p.750

America has adequate peaceful and lawful means for achieving even fundamental social change if the people wish it. We will not tolerate violence!

Crime

Republican Platform of 1968, p.750

Lawlessness is crumbling the foundations of American society.

Republican Platform of 1968, p.750

Republicans believe that respect for the law is the cornerstone of a free and well-ordered society. We pledge vigorous and even-handed administration of justice and enforcement of the law. We must re-establish the principle that men are accountable for what they do, that criminals are responsible for their crimes, that while the youth's environment may help to explain the man's crime, it does not excuse that crime.

Republican Platform of 1968, p.750

We call on public officials at the federal, state and local levels to enforce our laws with firmness and fairness. We recognize that respect for law and order flows naturally from a just society; while demanding protection of the public peace and safety, we pledge a relentless attack on economic and social injustice in every form. The present Administration has:

Republican Platform of 1968, p.750

Ignored the danger signals of our rising crime rates until very recently and even now has proposed only narrow measures hopelessly inadequate to the need;

Republican Platform of 1968, p.750

Failed to implement most of the recommendations of the President's own Crime Commission;

Republican Platform of 1968, p.750

Opposed legislative measures that would assist law enforcement officials in bringing law-breakers to justice;

Republican Platform of 1968, p.751

[p.751] Refused to sanction the use of either the court-supervised wiretapping authority to combat organized crime or the revised rules of evidence, both made available by Congress;

Republican Platform of 1968, p.751

Failed to deal effectively with threats to the nation's internal security by not prosecuting identified subversives.

Republican Platform of 1968, p.751

By contrast, Republican leadership in Congress has:

Republican Platform of 1968, p.751

Provided funds for programs administered by state and local governments to control juvenile delinquency and crime;

Republican Platform of 1968, p.751

Created a National Institute of Law Enforcement and Criminal Justice to conduct crime research and facilitate the expansion of police training programs;

Republican Platform of 1968, p.751

Secured enactment of laws enabling law enforcement officials to obtain and use evidence needed to prosecute criminals, while at the same time protecting the rights and privacy of all citizens;

Republican Platform of 1968, p.751

Secured new laws aimed at "loan sharking," the intimidation of witnesses, and obstruction of investigations;

Republican Platform of 1968, p.751

Established disability as well as survivorship benefits for local police officers wounded or killed in pursuit of federal lawbreakers.

Republican Platform of 1968, p.751

For the future, we pledge an all-out, federal-state-local crusade against crime, including:

Republican Platform of 1968, p.751

Leadership by an Attorney General who will restore stature and respect to that office;

Republican Platform of 1968, p.751

Continued support of legislation to strengthen state and local law enforcement and preserve the primacy of state responsibility in this area;

Republican Platform of 1968, p.751

Full support of the F.B.I. and all law enforcement agencies of the federal government;

Republican Platform of 1968, p.751

Improved federal cooperation with state and local law enforcement agencies;

Republican Platform of 1968, p.751

Better coordination of the federal law enforcement, crime control, and criminal justice systems;

Republican Platform of 1968, p.751

A vigorous nation-wide drive against trafficking in narcotics and dangerous drugs, including special emphasis on the first steps toward addiction the use of marijuana and such drugs as LSD;

Republican Platform of 1968, p.751

Total commitment to a federal program to deter, apprehend, prosecute, convict and punish the overlords of organized crime in America, including full implementation of the Congressional mandate that court-supervised wiretapping and electronic surveillance tools be used against the mobsters and racketeers;

Republican Platform of 1968, p.751

Increased public protection against racketeer infiltration into legitimate business;

Republican Platform of 1968, p.751

Increased research into the causes and prevention of crime, juvenile delinquency, and drug addiction;

Republican Platform of 1968, p.751

Creation of a Federal Corrections Service to consolidate the fragmented and overlapping federal efforts and to assist state and local corrections systems;

Republican Platform of 1968, p.751

A new approach to the problem of chronic offenders, including adequate staffing of the corrections system and improvement of rehabilitative techniques;

Republican Platform of 1968, p.751

Modernization of the federal judicial system to promote swift, sure justice;

Republican Platform of 1968, p.751

Enactment of legislation to control indiscriminate availability of firearms, safeguarding the right of responsible citizens to collect, own and use firearms for legitimate purposes, retaining primary responsibility at the state level, with such federal laws as necessary to better enable the states to meet their responsibilities.

Youth

Republican Platform of 1968, p.751

More than any other nation, America reflects the strength and creative energy of youth. In every productive enterprise, the vigor, imagination and skills of our young people have contributed immeasurably to progress.

Republican Platform of 1968, p.751

Our youth today are endowed with greater knowledge and maturity than any such generation of the past. Their political restlessness reflects their urgent hope to achieve a meaningful participation in public affairs commensurate with their contributions as responsible citizens.

Republican Platform of 1968, p.751

In recognition of the abilities of these younger citizens, their desire to participate, and their service in the nation's defense, we believe that lower age groups should be accorded the right to vote. We believe that states which have not yet acted should reevaluate their positions with respect to 18-year-old voting, and that each such state should decide this matter for itself. We urge the states to act now.

Republican Platform of 1968, p.751

For greater equity we will further revise Selective Service policies and reduce the number of years during which a young man can be considered for the draft, thereby providing some certainty to those liable for military service. When [p.752] military manpower needs can be appreciably reduced, we will place the Selective Service System on standby and substitute a voluntary force obtained through adequate pay and career incentives.

Republican Platform of 1968, p.752

We encourage responsible young men and women to join actively in the political process to help shape the future of the nation. We invite them to join our Republican effort to assure the new direction and the new leadership which this nation so urgently needs and rightfully expects.

Education

Republican Platform of 1968, p.752

The birthplace of American opportunity has been in the classrooms of our schools and colleges. From early childhood through the college years, American schools must offer programs of education sufficiently flexible to meet the needs of all Americans—the advantaged, the average, the disadvantaged and the handicapped alike. To help our educators meet this need we will establish a National Commission to Study the Quality and Relevance of American Education.

Republican Platform of 1968, p.752

To treat the special problems of children from impoverished families, we advocate expanded, better programs for pre-school children. We will encourage state, local or private programs of teacher training. The development and increased use of better teaching methods and modern instruction techniques such as educational television and voluntary bilingual education will continue to have our support.

Republican Platform of 1968, p.752

To help assure excellence and equality of educational opportunity, we will urge the states to present plans for federal assistance which would include state distribution of such aid to non-public school children and include non-public school representatives in the planning process. Where state conditions prevent use of funds for non-public school children, a public agency should he designated to administer federal funds.

Republican Platform of 1968, p.752

Greater vocational education in high school and post-high school years is required for a new technological and service-oriented economy. Young people need expansion of post high school technical institutes to enable them to acquire satisfactory skills for meaningful employment. For youths unable to obtain such training, we propose an industry youth program, coupled with a flexible approach to minimum wage laws for young entry-level workers during their training periods.

Republican Platform of 1968, p.752

The rapidly mounting enrollments and costs of colleges and universities deprive many qualified young people of the opportunity to obtain a quality college education. To help colleges and universities provide this opportunity, we favor grant and loan programs for expansion of their facilities. We will also support a flexible student aid program of grants, loans and work opportunities, provided by federal and state governments and private organizations. We continue to favor tax credits for those burdened with the costs of higher education, and also tax deductions to encourage savings for this purpose. No young American should be denied a quality education because he cannot afford it or find work to meet its costs.

Human Development

Republican Platform of 1968, p.752

The inability of the poor to cope meaningfully with their environment is compounded by problems which blunt opportunity—inadequate income, inferior education, inadequate health care, slum housing, limited job opportunities, discrimination, and crime.

Republican Platform of 1968, p.752

Full opportunity requires a coordinated attack on the total problem through community human development programs. Federal revenue sharing would help provide the resources to develop such coordinated programs.

Jobs

Republican Platform of 1968, p.752

The nation must look to an expanding free enterprise system to provide jobs. Republican policies and programs will encourage this expansion.

Republican Platform of 1968, p.752

To qualify for jobs with permanence and promise, many disadvantaged citizens need special assistance and job training. We will enact the Republican-proposed Human Investment Act, offering tax credits to employers, to encourage such training and upgrading.

Republican Platform of 1968, p.752

A complete overhaul of the nation's job programs is urgent. There are some 70 federally funded job training programs, with some cities having as many as 30 operating side by side. Some of these programs are ineffective and should be eliminated. We will simplify the federal effort and also encourage states and localities to establish single-headed manpower systems, to correlate [p.753] all such federal activities and gear them to local conditions and needs. Local business advisory boards will assist in the design of such programs to fit training to employment needs. To help the unemployed find work we will also inaugurate a national Job Opportunity Data Bank to report the number, nature and location of unfilled jobs and to match the individuals with the jobs.

The Poor

Republican Platform of 1968, p.753

Welfare and poverty programs will be drastically revised to liberate the poor from the debilitating dependence which erodes self-respect and discourages family unity and responsibility. We will modify the rigid welfare requirements that stifle work motivation and support locally operated children's day care centers to free the parents to accept work.

Republican Platform of 1968, p.753

Burdensome administrative procedures will be simplified, and existing programs will be revised so that they will encourage and protect strong family units.

Republican Platform of 1968, p.753

This nation must not blink the harsh fact—or the special demands it places upon us—that the incidence of poverty is consistently greater among Negroes. Mexican-Americans, Indians and other minority groupings than in the population generally.

Republican Platform of 1968, p.753

An essential element of economic betterment is the opportunity for self-determination—to develop or acquire and manage one's own business enterprise. This opportunity is bleak for most residents of impoverished areas. We endorse the concept of state and community development corporations. These will provide capital, technical assistance and insurance for the establishment and renewal of businesses in depressed urban and rural areas. We favor efforts to enable residents of such areas to become owners and managers of businesses and, through such agencies as a Domestic Development Bank, to exercise economic leadership in their communities.

Republican Platform of 1968, p.753

Additionally, we support action by states, with federal re-insurance, to help provide insurance coverage for homes and small businesses against damage and fire caused by riots.

Republican Platform of 1968, p.753

We favor maximum reliance on community leaders utilizing the regular channels of government to provide needed public services. One approach is the Republican-sponsored Community

Republican Platform of 1968, p.753

Service Corps which would augment cooperation and communication between community residents and the police.

Republican Platform of 1968, p.753

In programs for the socially and economically disadvantaged we favor participation by representatives of those to be served. The failure so to encourage creative and responsible participation from among the poor has been the greatest among the host of failures of the War on Poverty.

Republican Platform of 1968, p.753

Recent studies indicate that many Americans suffer from malnutrition despite six separate federal food distribution programs. Here again, fragmentation of federal effort hinders accomplishment. We pledge a unified federal food distribution program, as well as active cooperation with the states and innovative private enterprise, to help provide the hungry poor sufficient food for a balanced diet.

Republican Platform of 1968, p.753

A new Republican Administration will strive for fairness for all consumers, including additional information and protection programs as necessary, state and local consumer education, vigorous enforcement of the numerous protection laws already enacted, and active encouragement of the many consumer-protection initiatives and organizations of private enterprise.

Health

Republican Platform of 1968, p.753

The inflation produced by the Johnson-Humphrey Administration has struck hardest in the area of health care. Hospital costs are rising 16 percent a year—four times the national average of price increases.

Republican Platform of 1968, p.753

We pledge to encourage the broadening of private health insurance plans, many of which cover hospital care only, and to review the operation of government hospital care programs in order to encourage more patients to utilize non-hospital facilities. Expansion of the number of doctors, nurses, and supporting staff to relieve shortages and spread the availability of health care services will have our support. We will foster the construction of additional hospitals and encourage regional hospital and health planning for the maximum development of facilities for medical and nursing care. We will also press for enactment of Republican-sponsored programs for financing of hospital modernization. New diagnostic methods and also preventive care to assure early detection of physical impairments, thus fostering [p.754] good health and avoiding illnesses requiring hospitalization, will have our support.

Republican Platform of 1968, p.754

Additionally, we will work with states and local communities to help assure improved services to the mentally ill within a community setting and will intensify research to develop better treatment methods. We will encourage extension of private health insurance to cover mental illness.

Republican Platform of 1968, p.754

While believing no American should be denied adequate medical treatment, we will be diligent in protecting the traditional patient-doctor relationship and the integrity, of the medical practitioner.

Republican Platform of 1968, p.754

We are especially concerned with the difficult circumstances of thousands of handicapped citizens who daily encounter architectural barriers which they are physically unable to surmount. We will support programs to reduce and where possible to eliminate such barriers in the construction of federal buildings.

The Elderly

Republican Platform of 1968, p.754

Elderly Americans desire and deserve independence, dignity, and the opportunity for continued useful participation. We will strengthen the Social Security system and provide automatic cost of living adjustments under Social Security and the Railroad Retirement Act. An increase in earnings permitted to Social Security recipients without loss of benefits, provision for postage 65 contributions to Social Security with deferment of benefits, and an increase in benefits to widows will also be provided. The age for universal Social Security coverage will be gradually reduced from 72 to 65 and the former 100 percent income tax deduction will be restored for medical and drug expenses for people over 65. Additionally, we will take steps to help improve and extend private pension plans.

Veterans

Republican Platform of 1968, p.754

The Republican Party pledges vigorous efforts to assure jobs for returning Vietnam war veterans, as well as other assistance to enable them and their families to establish living conditions befitting their brave service. We pledge a rehabilitation allowance for paraplegics to afford them the means to live outside a hospital environment. Adequate medical and hospital care will be maintained for all veterans with service-connected disabilities and veterans in need, and timely revisions of compensation programs will be enacted for service-connected death and disability to help assure an adequate standard of living for all disabled veterans and their survivors. We will see that every veteran is accorded the right to be interred in a national cemetery as near as possible to his home, and we pledge to maintain all veterans' programs in an independent Veterans Administration.

Indian Affairs

Republican Platform of 1968, p.754

The plight of American Indians and Eskimos is a national disgrace. Contradictory government policies have led to intolerable deprivation for these citizens. We dedicate ourselves to the promotion of policies responsive to their needs and desires and will seek the full participation of these people and their leaders in the formulation of such policies.

Republican Platform of 1968, p.754

Inequality of jobs, of education, of housing and of health blight their lives today. We believe the Indian and Eskimo must have an equal opportunity to participate fully in American society. Moreover, the uniqueness and beauty of these native cultures must be recognized and allowed to flourish.

The Individual and Government

Republican Platform of 1968, p.754

In recent years an increasingly impersonal national government has tended to submerge the individual. An entrenched, burgeoning bureaucracy has increasingly usurped powers, unauthorized by Congress. Decentralization of power, as well as strict Congressional oversight of administrative and regulatory agency compliance with the letter and spirit of the law, are urgently needed to preserve personal liberty, improve efficiency, and provide a swifter response to human problems.

Republican Platform of 1968, p.754

Many states and localities are eager to revitalize their own administrative machinery, procedures, and personnel practices. Moreover, there is growing inter-state cooperation in such fields as education, elimination of air and water pollution, utilization of airports, highways and mass transportation. We pledge full federal cooperation with these efforts, including revision of the system of providing federal funds and reestablishment of the authority of state governments in coordinating and administering the federal programs. [p.755] Additionally, we propose the sharing of federal revenues with state governments. We are particularly determined to revise the grant-in-aid system and substitute bloc grants wherever possible. It is also important that state and local governments retain the historic right to raise funds by issuing tax-exempt securities.

Republican Platform of 1968, p.755

The strengthening of citizen influence on government requires a number of improvements in political areas. For instance, we propose to reform the electoral college system, establish a nation-wide, uniform voting period for Presidential elections, and recommend that the states remove unreasonable requirements, residence and otherwise, for voting in Presidential elections. We specifically favor representation in Congress for the District of Columbia. We will work to establish a system of self-government for the District of Columbia which will take into account the interests of the private citizens thereof, and those of the federal government.

Republican Platform of 1968, p.755

We will support the efforts of the Puerto Rican people to achieve statehood when they freely request such status by a general election, and we share the hopes and aspirations of the people of the Virgin Islands who will be closely consulted on proposed gubernatorial appointments.

Republican Platform of 1968, p.755

We favor a new Election Reform Act that will apply clear, reasonable restraints to political spending and fund-raising, whether by business, labor or individuals, ensure timely publication of the financial facts in campaigns, and provide a tax deduction for small contributions.

Republican Platform of 1968, p.755

We will prevent the solicitation of federal workers for political contributions and assure comparability of federal salaries with private enterprise pay. The increasing government intrusion into the privacy of its employees and of citizens in general is intolerable. All such snooping, meddling, and pressure by the federal government on its employees and other citizens will be stopped and such employees, whether or not union members, will be provided a prompt and fair method of settling their grievances. Further, we pledge to protect federal employees in the exercise of their right freely and without fear of penalty or reprisal to form, join or assist any employee organization or to refrain from any such activities.

Republican Platform of 1968, p.755

Congress itself must be reorganized and modernized in order to function efficiently as a co-equal branch of government. Democrats in control of Congress have opposed Republican efforts for Congressional reform and killed legislation embodying the recommendations of a special bipartisan committee. We will again press for enactment of this measure.

Republican Platform of 1968, p.755

We are particularly concerned over the huge and mounting postal deficit and the evidence, recently stressed by the President's Commission on Postal Organization, of costly and inefficient practices in the postal establishment. We pledge full consideration of the Commission's recommendations for improvements in the nation's postal service. We believe the Post Office Department must attract and retain the best qualified and most capable employees and offer them improved opportunities for advancement and better working conditions and incentives. We favor extension of the merit principle to postmasters and rural carriers.

Republican Platform of 1968, p.755

Public confidence in an independent judiciary is absolutely essential to the maintenance of law and order. We advocate application of the highest standards in making appointments to the courts, and we pledge a determined effort to rebuild and enhance public respect for the Supreme Court and all other courts in the United States.

A Healthy Economy

Republican Platform of 1968, p.755

The dynamism of our economy is produced by millions of individuals who have the incentive to participate in decision-making that advances themselves and society as a whole. Government can reinforce these incentives, but its over-involvement in individual decisions distorts the system and intrudes inefficiency and waste.

Republican Platform of 1968, p.755

Under the Johnson-Humphrey Administration we have had economic mismanagement of the highest order. Inflation robs our pay checks at a present rate of 4 1/2 percent per year. In the past three years the real purchasing power of the average wage and salary worker has actually declined. Crippling interest rates, some the highest in a century, prevent millions of Americans from buying homes and small businessmen, farmers and other citizens from obtaining the loans they need. Americans must work longer today than ever before to pay their taxes.

Republican Platform of 1968, p.755

New Republican leadership can and will restore fiscal integrity and sound monetary policies, [p.756] encourage sustained economic vitality, and avoid such economic distortions as wage and price controls. We favor strengthened Congressional control over federal expenditures by scheduled Congressional reviews of, or reasonable time limits on, unobligated appropriations. By responsibly applying federal expenditure controls to priority needs, we can in time live both within our means and up to our aspirations. Such funds as become available with the termination of the Vietnam war and upon recovery from its impact on our national defense will be applied in a balanced way to critical domestic needs and to reduce the heavy tax burden. Our objective is not an endless expansion of federal programs and expenditures financed by heavier taxation. The imperative need for tax reform and simplification will have our priority attention. We will also improve the management of the national debt, reduce its heavy interest burden, and seek amendment of the law to make reasonable price stability an explicit objective of government policy.

Republican Platform of 1968, p.756

The Executive Branch needs urgently to be made a more efficient and economical instrument of public policy. Low priority activities must be eliminated and conflicting missions and functions simplified. We pledge to establish a new Efficiency Commission to root out the unnecessary and overlapping, as well as a Presidential Office of Executive Management to assure a vigorous follow-through.

Republican Platform of 1968, p.756

A new Republican Administration will undertake an intensive program to aid small business, including economic incentives and technical assistance, with increased emphasis in rural and urban poverty areas.

Republican Platform of 1968, p.756

In addition to vigorous enforcement of the antitrust statutes, we pledge a thorough analysis of the structure and operation of these laws at home and abroad in the light of changes in the economy, in order to update our antitrust policy and enable it to serve us well in the future.

Republican Platform of 1968, p.756

We are determined to eliminate and prevent improper federal competition with private enterprise.

Labor

Republican Platform of 1968, p.756

Organized labor has contributed greatly to the economic strength of our country and the well-being of its members. The Republican Party vigorously endorses its key role in our national life.

Republican Platform of 1968, p.756

We support an equitable minimum wage for American workers—one providing fair wages without unduly increasing unemployment among those on the lowest rung of the economic ladder—and will improve the Fair Labor Standards Act, with its important protections for employees.

Republican Platform of 1968, p.756

The forty-hour week adopted 30 years ago needs re-examination to determine whether or not a shorter work week, without loss of wages, would produce more jobs, increase productivity and stabilize prices.

Republican Platform of 1968, p.756

We strongly believe that the protection of individual liberty is the cornerstone of sound labor policy. Today, basic rights of some workers, guaranteed by law, are inadequately guarded against abuse. We will assure these rights through vigorous enforcement of present laws, including the Taft-Hartley Act and the Landrum-Griffin Act, and the addition of new protections where needed. We will be vigilant to prevent any administrative agency entrusted with labor-law enforcement from defying the letter and spirit of these laws.

Republican Platform of 1968, p.756

Healthy private enterprise demands responsibility—by government, management and labor—to avoid the imposition of excessive costs or prices and to share with the consumer the benefits of increased productivity. It also demands responsibility in free collective bargaining, not only by labor and management, but also by those in government concerned with these sensitive relationships.

Republican Platform of 1968, p.756

We will bar government-coerced strike settlements that cynically disregard the public interest and accelerate inflation. We will again reduce government intervention in labor-management disputes to a minimum, keep government participation in channels defined by the Congress, and prevent back-door intervention in the administration of labor laws.

Republican Platform of 1968, p.756

Repeated Administration promises to recommend legislation dealing with crippling economic strikes have never been honored. Instead, settlements forced or influenced by government and overriding the interests of the parties and the public have shattered the Administration's own wage and price guidelines and contributed to inflation.

Republican Platform of 1968, p.757

Effective methods for dealing with labor disputes [p.757] involving the national interest must be developed. Permanent, long-range solutions of the problems of national emergency disputes, public employee strikes and crippling work stoppages are imperative. These solutions cannot be wisely formulated in the heat of emergency. We pledge an intensive effort to develop practical, acceptable solutions that conform fully to the public interest.

Transportation

Republican Platform of 1968, p.757

Healthy economic growth demands a balanced, competitive transportation system in which each mode of transportation train, truck, barge, bus and aircraft—is efficiently utilized. The Administration's failure to evolve a coordinated transportation policy now results in outrageous delays at major airports and in glacial progress in developing high-speed train transportation linking our major population centers.

Republican Platform of 1968, p.757

The nation's air transport system performs excellently, but under increasingly adverse conditions. Airways and airport congestion has become acute. New and additional equipment, modern facilities including the use of computers, and additional personnel must be provided without further delay. We pledge expert evaluation of these matters in developing a national air transportation system.

Republican Platform of 1968, p.757

We will make the Department of Transportation the agency Congress intended it to be-effective in promoting coordination and preserving competition among carriers. We promise equitable treatment of all modes of transportation in order to assure the public better service, greater safety, and the most modern facilities. We will also explore a trust fund approach to transportation, similar to the fund developed for the Eisenhower interstate highway system, and perhaps in this way speed the development of modern mass transportation systems and additional airports.

Resources and Science

Agriculture

Republican Platform of 1968, p.757

During seven and a half years of Democrat Administrations and Democrat Congresses the farmer has been the forgotten man in our nation's economy. The cost-price squeeze has steadily worsened, driving more than four and a half million people from the farms, many to already congested urban areas. Over eight hundred thousand individual farm units have gone out of existence.

Republican Platform of 1968, p.757

During the eight years of the Eisenhower Administration, the farm parity ratio averaged 85. Under Democratic rule, the parity ratio has consistently been under 80 and averaged only 74 for all of 1967. It has now fallen to 73. Actions by the Administration, in line with its apparent cheap food policy, have held down prices received by farmers. Government payments to farmers, from taxes paid by consumers, have far from offset this loss.

Republican Platform of 1968, p.757

Inflationary policies of the Administration and its Congress have contributed greatly to increased costs of production. Using 1958 as a base year with an index of 100, prices paid by farmers in 1967 had risen to a weighted index of 117, whereas the prices they received were at a weighted index of only 104. From the 1958 index of 100, interest was up to 259, taxes 178, labor costs 146, and farm machinery 130.

Republican Platform of 1968, p.757

The cost-price squeeze has been accompanied by a dangerous increase in farm debt—up nearly $24 billion in the last seven years. In 1967 alone, net debt per farm increased $1,337 while net income per farm went down $605. While net farm equity has increased, it is due mainly to inflated land values. Without adequate net income to pay off indebtedness, the farm owner has no choice but to liquidate some of his equity or go out of business. Farm tenants are even worse off, since they have no comparable investment for inflation to increase in value as their indebtedness increases.

Republican Platform of 1968, p.757

The Republican Party is committed to the concept that a sound agricultural economy is imperative to the national interest. Prosperity, opportunity, abundance, and efficiency in agriculture benefit every American. To promote the development of American agriculture, we pledge:

Republican Platform of 1968, p.757

Farm policies and programs which will enable producers to receive fair prices in relation to the prices they must pay for other products;

Republican Platform of 1968, p.757

Sympathetic consideration of proposals to encourage farmers, especially small producers, to develop their bargaining position;

Republican Platform of 1968, p.757

Sound economic policies which will brake inflation and reduce the high interest rates; A truly two-way export-import policy which [p.758] protects American agriculture from unfair foreign competition while increasing our overseas commodity dollar sales to the rapidly expanding world population;

Republican Platform of 1968, p.758

Reorganization of the management of the Commodity Credit Corporation's inventory operations so that the Corporation will no longer compete with the marketings of farmers;

Republican Platform of 1968, p.758

Improved programs for distribution of food and milk to schools and low-income citizens;

Republican Platform of 1968, p.758

A strengthened program to export our food and farm technology in keeping with the Re-publican-initiated Food for Peace program;

Republican Platform of 1968, p.758

Assistance to farm cooperatives including rural electric and telephone cooperatives, consistent with prudent development of our nation's resources and rural needs;

Republican Platform of 1968, p.758

Greater emphasis on research for industrial uses of agricultural products, new markets, and new methods for cost-cutting in production and marketing techniques;

Republican Platform of 1968, p.758

Revitalization of rural America through programs emphasizing vocational training, economic incentives for industrial development, and the development of human resources;

Republican Platform of 1968, p.758

Improvement of credit programs to help finance the heavy capital needs of modern farming, recognizing the severe credit problems of young farm families seeking to enter into successful farming;

Republican Platform of 1968, p.758

A more direct voice for the American farmer in shaping his own destiny.

Natural Resources

Republican Platform of 1968, p.758

In the tradition of Theodore Roosevelt, the Republican Party promises sound conservation and development of natural resources in cooperative government and private programs.

Republican Platform of 1968, p.758

An expanding population and increasing material wealth require new public concern for the quality of our environment. Our nation must pursue its activities in harmony with the environment. As we develop our natural resources we must be mindful of our priceless heritage of natural beauty.

Republican Platform of 1968, p.758

A national minerals and fuels policy is essential to maintain production needed for our nation's economy and security. Present economic incentives, including depletion allowances, to encourage the discovery and development of vital minerals and fuels must be continued. We must recognize the increasing demand for minerals and fuels by our economy, help ensure an economically stable industry, maintain a favorable balance of trade and balance of payments, and encourage research to promote the wise use of these resources.

Republican Platform of 1968, p.758

Federal laws applicable to public lands and related resources will be updated and a public land-use policy formulated. We will manage such lands to ensure their multiple use as economic resources and recreational areas. Additionally, we will work in cooperation with cities and states in acquiring and developing green space—convenient outdoor recreation and conservation areas. We support the creation of additional national parks, wilderness areas, monuments and outdoor recreation areas at appropriate sites, as well as their continuing improvement, to make them of maximum utility and enjoyment to the public.

Republican Platform of 1968, p.758

Improved forestry practices, including protection and improvement of watershed lands, will have our vigorous support. We will also improve water resource information, including an acceleration of river basin commission inventory studies. The reclaiming of land by irrigation and the development of flood control programs will have high priority in these studies. We will support additional multi-purpose water projects for reclamation, flood control, and recreation based on accurate cost-benefit estimates.

Republican Platform of 1968, p.758

We also support efforts to increase our total fresh water supply by further research in weather modification, and in better methods of desalinization of salt and brackish waters.

Republican Platform of 1968, p.758

The United States has dropped to sixth among the fishing nations of the world. We pledge a reversal of present policies and the adoption of a progressive national fisheries policy, which will make it possible for the first time to utilize fully the vast ocean reservoir of protein. We pledge a more energetic control of pollution, encouragement of an increase in fishery resources, and will also press for international agreements assuring multi-national conservation.

Republican Platform of 1968, p.758

We pledge a far more vigorous and systematic program to expand knowledge about the unexplored storehouses of the sea and polar regions. We must undertake a comprehensive polar plan and an oceanographic program to develop these abundant resources for the continued strength [p.759] of the United States and the betterment of all mankind.

Science

Republican Platform of 1968, p.759

In science and technology the nation must maintain leadership against increasingly challenging competition from abroad. Crucial to this leadership is growth in the supply of gifted, skilled scientists and engineers. Government encouragement in this critical area should be stable and related to a more rational and selective scheme of priorities.

Republican Platform of 1968, p.759

Vigorous effort must be directed toward increasing the application of science and technology, including the social sciences, to the solution of such pressing human problems as housing, transportation, education, environmental pollution, law enforcement, and job training. We support a strong program of research in the sciences, with protection for the independence and integrity of participating individuals and institutions. An increase in the number of centers of scientific creativity and excellence, geographically dispersed, and active cooperation with other nations in meaningful scientific undertakings will also have our support.

Republican Platform of 1968, p.759

We regret that the Administration's budgetary mismanagement has forced sharp reductions in the space program. The Republican Party shares the sense of urgency manifested by the scientific community concerning the exploration of outer space. We recognize that the peaceful applications of space probes in communications, health, weather, and technological advances have been beneficial to every citizen. We regard the ability to launch and deploy advanced spacecraft as a military necessity. We deplore the failure of the Johnson-Humphrey Administration to emphasize the military uses of space for America's defense.

Foreign Policy

Republican Platform of 1968, p.759

Our nation urgently needs a foreign policy that realistically leads toward peace. This policy can come only from resolute, new leadership—a leadership that can and will think anew and act anew—a leadership not bound by mistakes of the past.

Republican Platform of 1968, p.759

Our best hope for enduring peace lies in comprehensive international cooperation. We will consult with nations that share our purposes. We will press for their greater participation in man's common concerns and encourage regional approaches to defense, economic development, and peaceful adjustment of disputes.

Republican Platform of 1968, p.759

We will seek to develop law among nations and strengthen agencies to effectuate that law and cooperatively solve common problems. We will assist the United Nations to become the keystone of such agencies, and its members will be pressed to honor all charter obligations, including specifically its financial provisions. World-wide resort to the International Court of Justice as a final arbiter of legal disputes among nations will have our vigorous encouragement, subject to limitations imposed by the U.S. Senate in accepting the Court's jurisdiction.

Republican Platform of 1968, p.759

The world abounds with problems susceptible of cooperative solution—poverty, hunger, denial of human rights, economic development, scientific and technological backwardness. The world-wide population explosion in particular, with its attendant grave problems, looms as a menace to all mankind and will have our priority attention. In all such areas we pledge to expand and strengthen international cooperation.

Republican Platform of 1968, p.759

A more selective use of our economic strength has become imperative. We believe foreign aid is a necessary ingredient in the betterment of less developed countries. Our aid, however, must be positioned realistically in our national priorities. Only those nations which urgently require America's help and clearly evince a desire to help themselves will receive such assistance as can be diverted from our pressing needs. In providing aid, more emphasis will be given to technical assistance. We will encourage multilateral agencies so that other nations will help share the burden. The administration of all aid programs will be revised and improved to prevent waste, inefficiency and corruption. We will vigorously encourage maximum participation by private enterprise.

Republican Platform of 1968, p.759

No longer will foreign aid activities range free of our foreign policy. Nations hostile to this country will receive no assistance from the United States. We will not provide aid of any kind to countries which aid and abet the war efforts of North Vietnam.

Republican Platform of 1968, p.759

Only when Communist nations prove by actual deeds that they genuinely seek world peace and will live in harmony with the rest of the world, will we support expansion of East-West trade.

Republican Platform of 1968, p.760

[p.760] We will strictly administer the Export Control Act, taking special care to deny export licenses for strategic goods.

Republican Platform of 1968, p.760

In the development and execution of the nation's foreign policy, our career Foreign Service officers play a critical role. We strongly support the Foreign Service and will strengthen it by improving its efficiency and administration and providing adequate allowances for its personnel.

Republican Platform of 1968, p.760

The principles of the 1965 Immigration Act—non-discrimination against national origins, reunification of families, and selective support for the American labor market—have our unreserved backing, We will refine this new law to make our immigration policy still more equitable and non-discriminatory.

Republican Platform of 1968, p.760

The Republican Party abhors the activities of those who have violated passport regulations contrary to the best interests of our nation and also the present policy of reissuing passports to such violators. We pledge to tighten passport administration so as to bar such violators from passport privileges.

Republican Platform of 1968, p.760

The balance of payments crisis must be ended, and the international position of the dollar strengthened. We propose to do this, not by peremptory efforts to limit American travel abroad or by self-defeating restraints on overseas investments, but by restraint in Federal spending and realistic monetary policies, by adjusting overseas commitments, by stimulating exports, by encouraging more foreign travel to the United States and, as specific conditions require, by extending tax treatment to our own exports and imports comparable to such treatment applied by foreign countries. Ending inflation is the first step toward solving the payments crisis.

Republican Platform of 1968, p.760

It remains the policy of the Republican Party to work toward freer trade among all nations of the free world. But artificial obstacles to such trade are a serious concern. We promise hard-headed bargaining to lower the non-tariff barriers against American exports and to develop a code of fair competition, including international fair labor standards, between the United States and its principal trading partners.

Republican Platform of 1968, p.760

A sudden influx of imports can endanger many industries. These problems, differing in each industry, must he considered case by case. Our guideline will be fairness for both producers and workers, without foreclosing imports.

Republican Platform of 1968, p.760

Thousands of jobs have been lost to foreign producers because of discriminatory and unfair trade practices.

Republican Platform of 1968, p.760

The State Department must give closest attention to the development of agreements with exporting nations to bring about fair competition. Imports should not be permitted to capture excessive portions of the American market but should, through international agreements, be able to participate in the growth of consumption.

Republican Platform of 1968, p.760

Should such efforts fail, specific counter-measures will have to be applied until fair competition is re-established. Tax reforms will also be required to preserve the competitiveness of American goods.

Republican Platform of 1968, p.760

The basis for determining the value of imports and exports must be modified to reflect true dollar value.

Republican Platform of 1968, p.760

Not the least important aspect of this problem is the relative obsolescence of machinery in this country. An equitable tax write-off is necessary to strengthen our industrial competitiveness in the world.

Republican Platform of 1968, p.760

We also favor the broadening of governmental assistance to industries, producers and workers seriously affected by imports—assistance denied by the Johnson-Humphrey Administration's excessively stringent application of the Trade Expansion Act of 1962.

Republican Platform of 1968, p.760

Ties of history and geography link us closely to Latin America. Closer economic and cultural cooperation of the United States and the Latin American countries is imperative in a broad attack on the chronic problems of poverty, inadequate economic growth and consequent poor education throughout the hemisphere. We will encourage in Latin America the progress of economic integration to improve opportunity for industrialization and economic diversification.

Republican Platform of 1968, p.760

The principles of the Monroe Doctrine, affirmed at Caracas 14 years ago by all the independent nations of this hemisphere, have been discarded by Democrat Administrations, We hold that they should be reaffirmed and should guide the collective policy of the Americas. Nor have we forgotten in this context, the Cuban people who still cruelly suffer under Communist tyranny.

Republican Platform of 1968, p.760

In cooperation with other nations, we will encourage the less developed nations of Asia and Africa peacefully to improve their standards of [p.761] living, working with stronger regional organizations where indicated and desired.

Republican Platform of 1968, p.761

In the tinderbox of the Middle East, we will pursue a stable peace through recognition by all nations of each other's right to assured boundaries, freedom of navigation through international waters, and independent existence free from the threat of aggression. We will seek an end to the arms race through international agreement and the stationing of peace-keeping forces of the United Nations in areas of severe tension, as we encourage peace-table talks among adversaries.

Republican Platform of 1968, p.761

Nevertheless, the Soviets persist in building an imbalance of military forces in this region. The fact of a growing menace to Israel is undeniable. Her forces must be kept at a commensurate strength both for her protection and to help keep the peace of the area. The United States, therefore, will provide countervailing help to Israel, such as supersonic fighters, as necessary for these purposes. To replace the ancient rivalries of this region with new hope and opportunity, we vigorously support a well conceived plan of regional development, including the bold nuclear desalinization and irrigation proposal of former President Eisenhower.

Republican Platform of 1968, p.761

Our relations with Western Europe, so critical to our own progress and security, have been needlessly and dangerously impaired. They must be restored, and NATO revitalized and strengthened. We continue to pursue the goal of a Germany reunified in freedom.

Republican Platform of 1968, p.761

The peoples of the captive nations of Eastern Europe will one day regain their freedom and independence. We will strive to speed this day by encouraging the greater political freedom actively sought by several of these nations. On occasions when a liberalization of trade in non-strategic goods with the captive nations can have this effect, it will have our support.

Republican Platform of 1968, p.761

We do not intend to conduct foreign policy in such manner as to make the United States a world policeman. However, we will not condone aggression, or so-called "wars of national liberation," or naively discount the continuing threats of Moscow and Peking. Nor can we fail to condemn the Soviet Union for its continuing anti-Semitic actions, its efforts to eradicate all religions, and its oppression of minorities generally. Improved relations with Communist nations can come only when they cease to endanger other states by force or threat. Under existing conditions, we cannot favor recognition of Communist China or its admission to the United Nations.

Republican Platform of 1968, p.761

We encourage international limitations of armaments, provided all major powers are proportionately restrained and trustworthy guarantees are provided against violations.

Vietnam

Republican Platform of 1968, p.761

The Administration's Vietnam policy has failed—militarily, politically, diplomatically, and with relation to our own people.

Republican Platform of 1968, p.761

We condemn the Administration's breach of faith with the American people respecting our heavy involvement in Vietnam. Every citizen bitterly recalls the Democrat campaign oratory of 1964: "We are not about to send American boys 9-10,000 miles away from home to do what Asian boys ought to be doing for themselves." The Administration's failure to honor its own words has led millions of Americans to question its credibility.

Republican Platform of 1968, p.761

The entire nation has been profoundly concerned by hastily extemporized, undeclared land wars which embroil massive U.S. armed forces thousands of miles from our shores. It is time to realize that not every international conflict is susceptible of solution by American ground forces.

Republican Platform of 1968, p.761

Militarily, the Administration's piecemeal commitment of men and material has wasted our massive military superiority and frittered away our options. The result has been a prolonged war of attrition. Throughout this period the Administration has been slow in training and equipping South Vietnamese units both for fighting the war and for defending their country after the war is over.

Republican Platform of 1968, p.761

Politically, the Administration has failed to recognize the entirely novel aspects of this war. The overemphasis on its old-style, conventional aspects has blinded the Administration to the fact that the issue is not control of territory but the security and loyalty of the population. The enemy's primary emphasis has been to disrupt orderly government.

Republican Platform of 1968, p.761

The Administration has paid inadequate attention to the political framework on which a successful outcome ultimately depends. Not only has the Administration failed to encourage assumption of responsibility by the Vietnamese, but their [p.762] sense of responsibility has been in fact undermined by our approach to pacification. An added factor has been a lack of security for the civilian population.

Republican Platform of 1968, p.762

At home, the Administration has failed to share with the people the full implication of our challenge and of our commitments.

Republican Platform of 1968, p.762

To resolve our Vietnam dilemma, America obviously requires new leadership—one capable of thinking and acting anew, not one hostage to the many mistakes of the past. The Republican Party offers such leadership.

Republican Platform of 1968, p.762

We pledge to adopt a strategy relevant to the real problems of the war, concentrating on the security of the population, on developing a greater sense of nation-hood, and on strengthening the local forces. It will be a strategy permitting a progressive de-Americanization of the war, both military and civilian.

Republican Platform of 1968, p.762

We will see to it that our gallant American servicemen are fully supported with the highest quality equipment, and will avoid actions that unnecessarily jeopardize their lives.

Republican Platform of 1968, p.762

We will pursue a course that will enable and induce the South Vietnamese to assume increasing responsibility.

Republican Platform of 1968, p.762

The war has been conducted without a coherent program for peace.

Republican Platform of 1968, p.762

We pledge a program for peace in Vietnam—neither peace at any price nor a camouflaged surrender of legitimate United States or allied interests—but a positive program that will offer a fair and equitable settlement to all, based on the principle of self-determination, our national interests and the cause of long-range world peace.

Republican Platform of 1968, p.762

We will sincerely and vigorously pursue peace negotiations as long as they offer any reasonable prospect for a just peace, We pledge to develop a clear and purposeful negotiating position.

Republican Platform of 1968, p.762

We will return to one of the cardinal principles of the last Republican Administration: that American interests are best served by cooperative multilateral action with our allies rather than by unilateral U.S. action.

Republican Platform of 1968, p.762

Our pride in the nation's armed forces in Southeast Asia and elsewhere in the world is beyond expression.

Republican Platform of 1968, p.762

In all our history none have fought more bravely or more devotedly than our sons in this unwanted war in Vietnam.

Republican Platform of 1968, p.762

They deserve—and they and their loved ones have—our total support, our encouragement, and our prayers.

National Defense

Republican Platform of 1968, p.762

Grave errors, many now irretrievable, have characterized the direction of our nation's defense.

Republican Platform of 1968, p.762

A singular notion—that salvation for America lies in standing still—has pervaded the entire effort. Not retention of American superiority but parity with the Soviet Union has been made the controlling doctrine in many critical areas. We have frittered away superior military capabilities, enabling the Soviets to narrow their defense gap, in some areas to outstrip us, and to move to cancel our lead entirely by the early Seventies. In a host of areas, advanced military research and development have been inhibited and stagnated by inexpert, cost oriented administrators imbued with a euphoric concept of Soviet designs. A strange Administration preference for such second-best weaponry as the costly Navy F111-B (TFX) has deprived our armed forces of more advanced weapons systems. Improvements in our submarines have been long delayed as the Soviets have proceeded apace with their own. Our anti-submarine warfare capabilities have been left seriously inadequate, new fighter planes held up, and new strategic weaponry left on the drawing boards.

Republican Platform of 1968, p.762

This mismanagement has dangerously weakened the ability of the United States to meet future crises with great power and decisiveness. All the world was respectful of America's decisive strategic advantage over the Soviets achieved during the Eisenhower Administration. This superiority proved its worth in the Cuban missile crisis six years ago. But now we have had an augury of things to come—a shameful, humiliating episode, the seizure of the USS Pueblo and its crew, with devastating injury to America's prestige everywhere in the world.

Republican Platform of 1968, p.762

We pledge to include the following in a comprehensive program to restore the pre-eminence of U.S. military strength:

Republican Platform of 1968, p.762

Improve our deterrent capability through an ocean strategy which extends the Polaris-Poseidon concept and accelerates submarine technology;

Republican Platform of 1968, p.762

Redirect and stimulate military strength to encourage major innovations rather than merely respond belatedly to Communist advances;

Republican Platform of 1968, p.763

[p.763] Strengthen intelligence gathering and evaluation by the various military services;

Republican Platform of 1968, p.763

Use the defense dollar more effectively through simplification of the cumbersome, overcentralized administration of the Defense Department, expanded competitive bidding on defense contracts, and improved safeguards against excessive profits;

Republican Platform of 1968, p.763

Reinvigorate the nation's most important security planning organization—the National Security Council—to prevent future haphazard diplomatic and military ventures, integrate the nation's foreign and military policies and programs, and enable our nation once again to anticipate and prevent crises rather than hastily contriving counter-measures after they arise.

Republican Platform of 1968, p.763

Our merchant marine, too, has been allowed to deteriorate. Now there are grave doubts that it is capable of adequate response of emergency security needs.

Republican Platform of 1968, p.763

The United States has drifted from first place to sixth place in the world in the size of its merchant fleet. By contrast, the Russian fleet has been rapidly expanding and will attain a dominant position by 1970. Deliveries of new ships are now eight to one in Russia's favor.

Republican Platform of 1968, p.763

For reasons of security, as well as of economics, the decline of our merchant marine must be reversed. We therefore pledge a vigorous and realistic ship replacement program to meet the changing pattern of our foreign commerce. We will also expand industry-government maritime research and development, emphasizing nuclear propulsion, and simplify and revise construction and operating subsidy procedures.

Republican Platform of 1968, p.763

Finally, we pledge to assemble the nation's best diplomatic, military and scientific minds for an exhaustive reassessment of America's world-wide commitments and military preparedness. We are determined to assure our nation of the strength required in future years to deter war and to prevail should it occur.

Conclusion

Republican Platform of 1968, p.763

We believe that the principles and programs we have here presented will find acceptance with the American people. We believe they will command the victory.

Republican Platform of 1968, p.763

There are points of emphasis which we deem important.

Republican Platform of 1968, p.763

The accent is on freedom. Our Party historically has been the Party of freedom. We are the only barricade against those who, through excessive government power, would overwhelm and destroy man's liberty. If liberty fails, all else is dross.

Republican Platform of 1968, p.763

Beyond freedom we emphasize trust and credibility. We have pledged only what we honestly believe we can perform. In a world where broken promises become a way of life, we submit that a nation progresses not on promises broken but on pledges kept.

Republican Platform of 1968, p.763

We have also accented the moral nature of the crisis which confronts us. At the core of that crisis is the life, the liberty, and the happiness of man. If life can be taken with impunity, if liberty is subtly leeched away, if the pursuit of happiness becomes empty and futile, then indeed are the moral foundations in danger.

Republican Platform of 1968, p.763

We have placed high store on our basic theme. The dogmas of the quiet past simply will not do for the restless present. The case is new. We must most urgently think anew and act anew. This is an era of rapid, indeed violent change. Clearly we must disenthrall ourselves. Only then can we save this great Republic.

Republican Platform of 1968, p.763

We rededicate ourselves to this Republic—this one nation, under God, indivisible, with liberty and justice for all.

Annual Message to the Congress: The Economic Report of the President, 1969

Title: Annual Message to the Congress: The Economic Report of the President

Author: Lyndon B. Johnson

Date: January 16, 1969

Source: Public Papers of the Presidents, Johnson, 1969, pp.1311-1326

Public Papers of LBJ, 1969, p.1311

To the Congress of the United States:

Public Papers of LBJ, 1969, p.1311

I regard achievement of the full potential of our resources—physical, human, and otherwise—to be the highest purpose of governmental policies next to the protection of those rights we regard as inalienable.

Public Papers of LBJ, 1969, p.1311

I cited this as my philosophy in my first Economic Report in January 1964. I reaffirm it today.

Public Papers of LBJ, 1969, p.1311

In the past 5 years, this Nation has made great strides toward realizing the full potential of our resources. Through fuller use and steady growth of our productive potential, our real output has risen nearly 30 percent.

Public Papers of LBJ, 1969, p.1311

Most important of all are our human resources. Today the vast majority of our workers enjoy productive and rewarding employment opportunities. For those who lack skills, we have made pioneering efforts in training. We have improved education for the young to enhance their productivity and their wisdom as citizens of a great democracy.

Public Papers of LBJ, 1969, p.1311

Our capital resources—plant and equipment-are being used intensively and have been continually expanded and modernized by a confident business community.

Public Papers of LBJ, 1969, p.1311

This has all been accomplished in an environment that preserved—indeed, enlarged-the traditional freedom of our economic system. In today's prosperous economy, our people have more freedom of choice—among jobs, consumer goods and services, types of investments, places to live, and ways to enjoy leisure.

Public Papers of LBJ, 1969, p.1311

I look upon the steady and strong growth of employment and production as our greatest economic success. In recent years, prosperity has become the normal state of the American economy. But it must not be taken for granted. It must be protected and extended

—by adopting sound and prudent policies for this year and

—by improving procedures for fiscal and monetary policy-making to meet our needs for the long run.

Public Papers of LBJ, 1969, p.1311

I shall discuss these tasks in this Report. I shall also consider how we might deal with some of our key unsolved economic problems.

• We must find a way of combining our prosperity with price stability. Reconciling these two objectives is the biggest remaining over-all economic challenge facing the Nation.

• We must more fully secure the foundations of the world monetary system and of our own balance of payments. The international monetary system has undergone important evolutionary improvements, but we must seek more effective ways of coping with the stresses that can still develop.

• We must fulfill our many unmet public needs such as good education, efficient transportation, clean air, and pure water. Quality as well as quantity is the key to a better life.

• We must share more equitably the fruits of prosperity among all our citizens. A Nation as prosperous as ours can afford to open the doors of opportunity to all. Indeed, it cannot afford to leave any citizen in poverty.

Public Papers of LBJ, 1969, p.1312

The achievements we have made and the lessons we have learned point the way for further progress.

THE RECORD OF ACHIEVEMENT

Public Papers of LBJ, 1969, p.1312

The Nation is now in its 95th month of continuous economic advance. Both in strength and length, this prosperity is without parallel in our history. We have steered clear of the business-cycle recessions which for generations derailed us repeatedly from the path of growth and progress.

Public Papers of LBJ, 1969, p.1312

This record demonstrates the vitality of a free economy and its capacity for steady growth. No longer do we view our economic life as a relentless tide of ups and downs. No longer do we fear that automation and technical progress will rob workers of jobs rather than help us to achieve greater abundance. No longer do we consider poverty and unemployment permanent landmarks on our economic scene.

CONTRIBUTION OF POLICY

Public Papers of LBJ, 1969, p.1312

Our progress did not just happen. It was created by American labor and business in effective partnership with the Government.

Public Papers of LBJ, 1969, p.1312

Ever since the historic passage of the Employment Act in 1946, economic policies have responded to the fire alarm of recession and boom. In the 1960's, we have adopted a new strategy aimed at fire prevention—sustaining prosperity and heading off recession or serious inflation before they could take hold.

• In 1964 and 1965, tax reductions unleashed the vigor of private demand and brought the economy a giant step toward its full potential.

• In 1966 and 1967, restrictive monetary and fiscal policies offset the strains of added defense spending. The adjustment was far from ideal, however, because of the delay in increasing taxes to pay the bills for the defense buildup and for continuing urgent civilian programs. In 1968, our Nation's finances were finally adjusted to the needs of a defense emergency. The Revenue and Expenditure Control Act strengthened the foundation of prosperity.

GAINS IN 5 YEARS

Public Papers of LBJ, 1969, p.1312

Aided by these policies in the past 5 years, he Nation's total output of goods and services—our gross national product—has increased by more than $190 billion, after correcting for price changes. This is as large Is the gain of the previous 11 years.

Public Papers of LBJ, 1969, p.1312–p.1313

The prosperity of the last 5 years has been accompanied by benefits that extend into every corner of our national life

—more than 8 1/2 million additional workers found jobs,

—over-all unemployment declined from 5.7 percent of our labor force to 3.3 percent,

—unemployment of nonwhite adult males dropped particularly dramatically, from 9.7 percent to 3.4 percent,

—the number of persons in poverty declined by about 12½ million-progress greater than in the entire preceding 13 years,

—the average income of Americans (after taxes and after correction for price rises) increased by $535—more than one-fifth and again more than in the previous 13 years combined,

—corporate profits rose by about 50 percent,

—wages and salaries also went up by 50 percent,

—net income per farm advanced 36 percent, [p.1313]

—the net financial assets of American families increased $460 billion—more than 50 percent, and

—Federal revenues grew by $70 billion, helping to finance key social advances.

Public Papers of LBJ, 1969, p.1313

Meanwhile, a solid foundation has been built for continued growth in the years ahead.

• Through Investment in Plant and Equipment. In the last 5 years, the stock of capital equipment has grown by nearly a third. Only 5 percent of manufacturing corporations report that their capacity is in excess of currently foreseen needs.

• Through Investment in Manpower. More than a million Americans have acquired skills in special training institutions or on the job—as a result of new Federal efforts.

• Through Investment in Education. College enrollment has risen by 2 1/4 million since 1963. Expenditures on all public education have increased at an average of 10 percent a year; Federal grants have almost quadrupled.

• Through Investment in Our Neighborhoods. Our urban centers are beginning to be restored as decent places to live and initial steps have been taken to help ensure construction of 26 million new or rehabilitated housing units by 1978.

DEVELOPMENTS IN 1968

Public Papers of LBJ, 1969, p.1313

Our economy had an exceptionally big year in 1968.

• Our gross national product increased by $71 billion to $861 billion. Adjusted for price increases, the gain was 5 percent.

• Payroll employment rose by more than two million persons.

• Unemployment fell by 160,000.

• The after-tax real income of the average person increased by 3 percent.

• An estimated four million Americans escaped from poverty, the largest exodus ever recorded in a single year.

• Our balance-of-payments results were the best in 11 years.

Public Papers of LBJ, 1969, p.1313

In some ways, 1968 was too big a year. Even our amazingly productive economy could not meet all the demands placed upon it. Nearly half of the extra dollars spent in our markets added to prices rather than to production. The price-wage spiral turned rapidly.

• Consumer prices rose by 4 percent and wholesale prices by 2 1/2 percent.

• Both union and nonunion wages increased about 7 percent—responding to higher costs of living and causing higher costs of production.

• Some of the extra demands for goods were met out of foreign production, and imports soared 22 percent.

Public Papers of LBJ, 1969, p.1313

The main source of the overheating was the excessive and inappropriate stimulus of the Federal budget in late 1967 and the first half of 1968. In January 1967, I pointed to the need for a tax increase. In the summer, when the upsurge was even more clearly foreseen, I urged immediate enactment of a 10-percent income tax surcharge. The subsequent delay in enactment resulted in a massive budget deficit of $25 billion for fiscal year 1968, which

—accelerated the economy beyond safe speed limits,

—weakened confidence in the dollar abroad, and

—placed a heavy burden on credit markets at home, pushing interest rates sharply higher.

Public Papers of LBJ, 1969, p.1313–p.1314

Ultimate passage of the Revenue and Expenditure Control Act of 1968 at midyear brought a much needed swing to fiscal restraint. The budget now shows a surplus [p.1314] of $2.3 billion for fiscal 1969. Because of both greater revenues and reduced expenditures, this picture has changed dramatically since last January when we estimated a deficit of $8 billion.

Public Papers of LBJ, 1969, p.1314

Just as the overly stimulative effects of the huge budget deficit of fiscal 1968 were unmistakable, so there can scarcely be doubt that the reverse swing—of even larger size-will improve balance in our economy. But just as inappropriate fiscal stimulus took a while to cause obvious problems, so needed fiscal restraint is taking time to work its full beneficial effects on the economy.

Public Papers of LBJ, 1969, p.1314

By the time the surcharge was enacted, the forces of boom and inflation had developed great momentum. Our economy continued to advance too rapidly throughout 1968—but growth did slow from a hectic 6 1/2 percent rate early in the year to about 4 percent at yearend. The budget is now in harmony with the needs of the economy, and its welcome effects are gradually emerging.

THE PROGRAM FOR 1969

Public Papers of LBJ, 1969, p.1314

The challenge to fiscal and monetary policies this year is difficult indeed. Enough restraint must be provided to permit a cooling off of the economy and a waning of inflationary forces. But the restraint must also be tempered to ensure continued economic growth. We must adopt a carefully balanced program that curbs inflation and preserves prosperity.

THE BUDGET

Public Papers of LBJ, 1969, p.1314

My final budget is designed to meet this demanding assignment. It is a tight and prudent program for fiscal 1970.

• It holds total Federal expenditures within the bounds of available revenues, yielding a surplus of $3.4 billion.

• It finances our continued military efforts in Vietnam while we strive to bring about peace.

• It provides funds for our continuing national campaign against poverty, injustice, and inequality.

• It limits increases in expenditures to programs of highest priority: the encouraging JOBS program and other manpower training, Model Cities and key housing programs, law enforcement, and education.

• It trims lower priority programs wherever possible.

Public Papers of LBJ, 1969, p.1314

The budget calls for the extension of the income tax surcharge at its current rate of 10 percent for 1 year from July 1, 1969 to June 30, 1970. My economic and financial advisers unanimously agree that this fiscal restraint is essential to safeguard the purchasing power of the dollar and its strength throughout the world. Indeed, the need for continued fiscal restraint is agreed upon by all informed opinion in both of our political parties.

Public Papers of LBJ, 1969, p.1314

In today's economic and military environment, an immediate lowering of taxes would be irresponsible. The American people would be poorly served by a small short-run gain that would endanger their enormous long-term stake in a steady and stable prosperity. I hope and I believe that Members of the Congress of both parties will support timely action on taxes to continue on the course of fiscal responsibility which we have worked together to achieve.

Public Papers of LBJ, 1969, p.1314–p.1315

I asked for the surcharge as a temporary measure and that is the way I regard it. My proposal for a 1-year extension preserves the option of the new Administration and the Congress to eliminate the surcharge more rapidly if our quest for peace is successful in the near future. It is my conviction that the surcharge should be removed just as soon [p.1315] as that can be done without jeopardizing our economic health, our national security, our most urgent domestic programs, or international confidence in the dollar. Clearly, that time has not yet arrived.

Public Papers of LBJ, 1969, p.1315

The extended surcharge will continue to take 1 percent of the income of the average American—less than half of the tax cut he received in 1964-65. In return, he will receive improved protection against the ravages of inflation, world financial crisis, and neglect or mismanagement of our priorities. It is the best investment in responsible fiscal management that the United States can make in 1969.

Public Papers of LBJ, 1969, p.1315

Including this budget, I have been responsible for 6 years of fiscal planning. From fiscal 1965 to fiscal 1970, the Federal Government will have spent $969 billion on programs and received $936 billion in revenues. The total deficit for that period amounts to $33 1/2 billion. The bulk of that total deficit occurred in fiscal 1968, when action on taxes was long delayed.

By comparison, these six budgets

—provided $35 billion of net tax reductions, even allowing for higher social security taxes, and

—carried $109 billion of outlays to cover the special costs of the war in Vietnam.

ECONOMIC OUTLOOK

Public Papers of LBJ, 1969, p.1315

With this budget and appropriate monetary policy, our gross national product for 1969 should rise about $60 billion.

• Increased expenditures on new plant and equipment will help expand and modernize our productive capacity.

• State and local governments will continue to increase their spending rapidly to meet public needs. But Federal purchases will rise little.

• Consumer spending and homebuilding activity should advance less than last year.

• The over-all gains will not and should not be as large as those in 1968, but they will still make for a highly prosperous year.

• For the fourth straight year, unemployment should be less than 4 percent of the labor force.

Public Papers of LBJ, 1969, p.1315

Because fiscal policy is soundly planned, monetary policy should not be overburdened. It will need to support firmly the objective of moderating economic expansion. But homebuilding and other credit-sensitive areas need not be subjected to the sharp and uneven pressures of a credit squeeze. Monetary policy should be flexible and prepared to lessen restraint as the economy cools off.

Public Papers of LBJ, 1969, p.1315

As pressures of demand moderate, our trade performance in world markets should improve. We should also see a gradually improving trend in prices and costs, although the wage-price spiral will continue to be troublesome.

TOWARD PRICE-COST STABILITY

Public Papers of LBJ, 1969, p.1315

The immediate task in 1969 is to make a decisive step toward price stability. This will be only the beginning of the journey. We cannot hope to reach in a single year the goal that has eluded every industrial country for generations—that of combining high employment with stable prices.

Public Papers of LBJ, 1969, p.1315–p.1316

There is no simple nor single formula for success. But this combination can and must be achieved—by the United States and within the next several years. Now that we have [p.1316] learned to sustain prosperity, we can surely not allow inflation to erode or erase that victory.

THE ROADS TO AVOID

Public Papers of LBJ, 1969, p.1316

We stand at a critical turning point for national policy. We can meet the challenge, or we can try to evade it.

Public Papers of LBJ, 1969, p.1316

Price stability could be restored unwisely by an overdose of fiscal and monetary restraint. This has been done before, and it would work again. But such a course would mean stumbling into recession and slack, losing precious billions of dollars of output, suffering rising unemployment, with growing distress and unrest. It would be a prescription for social disaster as well as for unconscionable waste.

Public Papers of LBJ, 1969, p.1316

Or we could conceivably travel the route to mandatory controls on prices and wages. But the vital guiding mechanism of a free economy is lost when the Government fixes prices and wages. We did not impose such regulations on our businessmen and our workers during the recent years of military buildup and hostilities. We surely must not turn down this path—a dead end for economic freedom and progress.

Public Papers of LBJ, 1969, p.1316

Or we could throw up our hands and allow the price-wage spiral to turn faster and faster. This counsel of despair would eventually undermine our prosperity and our financial system—wrecking the strong international position of the dollar and imposing unjust burdens on millions of our citizens.

THE ROADS TO FOLLOW

Public Papers of LBJ, 1969, p.1316

Price stability in a prosperous economy must be pursued by a coordinated program involving a wide range of actions.

Public Papers of LBJ, 1969, p.1316

The fiscal and monetary program I outlined earlier is our first line of defense against inflation. The Nation has surely learned that inflation will emerge unless responsible budget and credit policies keep demand within the bounds of the economy's productive capacity.

Public Papers of LBJ, 1969, p.1316

Even then, advances in prices and wages at high employment can prove troublesome. No free economy can escape these tendencies entirely. But it can keep them from developing when unemployment is too high, and it can moderate the pressures that do emerge. To do so effectively requires reinforcing other important measures to reinforce fiscal and monetary policies.

Public Papers of LBJ, 1969, p.1316

Productivity and Efficiency

First, although the productive efficiency of our industries and of our workers is already the envy of the world, we must keep striving for further improvements.

Public Papers of LBJ, 1969, p.1316

Productivity can be raised even more rapidly and manpower can be employed more effectively through many methods in which Government can lend a hand—by training programs that better match skills to job requirements, by developing the potential of the disadvantaged, by using the wasted abilities of those who are out of work seasonally or intermittently, by providing better information about job opportunities, and by encouraging research and investment in better technology.

Public Papers of LBJ, 1969, p.1316

Government, business, and labor can work together to improve industrial efficiency. We can strengthen our dedication to the competitive principles and practices that have made American industry preeminent. Impediments to efficiency must be identified and tackled, industry by industry, wherever they exist—as they do particularly in medical care and construction.

Public Papers of LBJ, 1969, p.1316–p.1317

The Government should look at its own programs and policies to ensure that they do not add an unnecessary penny to the costs [p.1317] of production. To fulfill this goal, public policies must be reviewed continually in many areas—procurement, regulation, international trade, commodity programs, and research and development.

Public Papers of LBJ, 1969, p.1317

Voluntary Cooperation

Second, both in their own interest and in the public interest, business and labor should exercise the utmost restraint in price and wage decisions. It is understandable that, with living costs rising sharply, labor cannot now accept wage agreements limited to the rise in productivity. It is also understandable that, with production costs increasing, business cannot now hold prices entirely stable.

Public Papers of LBJ, 1969, p.1317

But the process of deceleration must take hold for both prices and wages. The demands for incomes by business and labor combined must be brought more closely into line with the amount of real income the economy can generate. A decisive step toward price stability in 1969 requires labor and business to accept some mutual sacrifices in the short run to preserve their enormous long-term interest in prosperity and a stable value of the dollar.

Public Papers of LBJ, 1969, p.1317

In recent years, business, labor, and Government have been discussing the big economic issues—sometimes debating, but often agreeing. The dialogue should go forward and should explore new forms of labor-management cooperation to ensure greater fulfillment of common interests.

Public Papers of LBJ, 1969, p.1317

A year ago, I established the Cabinet Committee on Price Stability to coordinate efforts within the Administration to help improve efficiency, enlist voluntary restraint, and contribute to public education and discussion on the wage-price problem. In its recent Report, the Committee made many important recommendations which deserve the most serious consideration. The work of the Committee has proved its value, and should be continued in some appropriate form.

Public Papers of LBJ, 1969, p.1317

The stakes are enormous in our efforts to combine high employment and price stability. We can sacrifice neither goal. The challenge can be met if we have the will.

REINFORCING THE FISCAL-MONETARY

FRAMEWORK

Public Papers of LBJ, 1969, p.1317

The unparalleled economic expansion of the past 8 years testifies to the accomplishments of our fiscal and monetary policies. Yet the blemishes on that record show plainly that further improvements are needed.

BUDGET POLICY AND PROCEDURES

Public Papers of LBJ, 1969, p.1317

The budget is the keystone of Federal Government operations. It is a plan developed within the Executive Branch and a recommended program for action by the Congress. It is a blueprint for fiscal and economic policy.

Public Papers of LBJ, 1969, p.1317

In my many years in Washington, I have worked intensively on the budget on both the legislative and executive sides. I know the difficulties of

—coordinating a host of appropriation requests into a total program that accurately reflects national priorities,

—making the dollar sum of the parts equal a whole that remains within prudent bounds, and

—ensuring that decisions on tax revenues go hand in hand with those on expenditures.

Public Papers of LBJ, 1969, p.1317–p.1318

The Executive Branch coordinates its budgetary decisions through the Bureau of the Budget, with extensive cooperation from the Department of the Treasury and the Council of Economic Advisers. The Congress has no parallel process. I urge the Congress [p.1318] to review its procedures for acting on the annual budget and to consider ways that may improve the coordination of decisions among Federal programs and on Federal revenues in relation to expenditures.

Public Papers of LBJ, 1969, p.1318

My experience has thoroughly convinced me of the fundamental wisdom of our system of checks and balances. The system works well because both the President and the Congress subject their own operations continually to careful scrutiny and review in light of experience.

Public Papers of LBJ, 1969, p.1318

Costly delays in enacting recent tax legislation demonstrate the need for a review of procedures in this area. Congress should ask: How can a prompt response to a Presidential request for tax action be assured?

Public Papers of LBJ, 1969, p.1318

When such a recommendation takes a simple form (like the current income tax surcharge) and when it is made to head off a threat to prosperity, the Nation is entitled to a prompt verdict.

Public Papers of LBJ, 1969, p.1318

To provide the fiscal flexibility needed in our modern economy, the Congress might be willing to give the President discretionary authority to initiate limited changes in tax rates, subject to Congressional veto. I believe that the President should have such authority. Alternatively, the Congress might choose to establish its own rules for ensuring a prompt vote—up or down—on a Presidential request for tax action.

Public Papers of LBJ, 1969, p.1318

The Nation should never again be subjected to the threat of fiscal stalemate.

MONETARY POLICY

Public Papers of LBJ, 1969, p.1318

Our institutions allow monetary policy to adjust promptly and smoothly, and the value of this flexibility has become evident. When fiscal action has been delayed, monetary policy has been able to continue the battle against inflation. But tight credit, soaring interest rates, pressures on homebuilding, and nervous financial markets are the unhappy results of an overburdened monetary policy. Greater fiscal flexibility would help to ensure that monetary policy is not asked to carry an undue share of the load in restraining—or stimulating—the economy.

Public Papers of LBJ, 1969, p.1318

The Administration and the Federal Reserve have learned to work together closely and to coordinate effectively, while preserving the appropriate independence of the Federal Reserve within the Government. Our monetary institutions are working well, and I see a need for only a few reforms to enhance their effectiveness.

• The term of Chairman of the Federal Reserve Board should be appropriately geared to that of the President to provide further assurance of harmonious policy coordination.

• The rigid requirement that no more than a single member of the Federal Reserve Board may be appointed from any one Federal Reserve District should be removed so that the President, with the advice and consent of the Senate, may choose the very best talent for the Board.

• The Congress should review procedures for selecting the presidents of the 12 Reserve Banks to determine whether these positions should be subject to the same appointive process that applies to other posts with similarly important responsibilities for national policy.

AFTER VIETNAM

Public Papers of LBJ, 1969, p.1318

Despite some encouraging signs of progress toward peace, hostilities in Vietnam continue. In planning our budget, we must assume continuation of the war. But we must also be ready to adjust to peace whenever that welcome day arrives.

Public Papers of LBJ, 1969, p.1318–p.1319

Early in 1967, to ensure our readiness for [p.1319] peace, I established the Cabinet Coordinating Committee on Economic Planning for the End of Vietnam Hostilities.

Public Papers of LBJ, 1969, p.1319

The Report of that Committee emphasizes the demanding task that will confront fiscal and monetary policies once a secure peace permits demobilization. The resources freed from war must not—and need not—be squandered in idleness. Rather, this manpower and material should be promptly enlisted in the service of peaceful progress.

Public Papers of LBJ, 1969, p.1319

In addition to its immeasurable human benefits, peace will provide an economic dividend to the Nation and to the Federal budget. But that dividend is dwarfed by the urgent needs of our society. The Nation will have to weigh the priorities among attractive programs carefully and wisely to take full advantage of this dividend. High on the list of priorities is the commitment to provide equal and full economic opportunities for all our citizens.

THE INTERNATIONAL ECONOMY

BALANCE-OF-PAYMENTS ADJUSTMENT

Public Papers of LBJ, 1969, p.1319

Our international accounts were in balance in 1968—for the first time since 1957. Much of the improvement came from the program I announced in an atmosphere of world financial crisis a year ago. The contrast today is striking and gratifying.

Public Papers of LBJ, 1969, p.1319

The excellent results of last year were aided by temporary factors. Hence, we cannot relax our efforts to achieve fundamental improvement—especially in our disappointing trade performance. To strengthen our trade surplus and achieve a healthy balance of payments, we must

—restore price stability at home,

—encourage our farms and factories to become ever more competitive in quality and price so that they can export more,

—intensify efforts to secure the removal of barriers to freer trade,

—bring more foreign tourists to our shores to enjoy America with us, and

—minimize the foreign exchange cost of our military commitments and economic aid overseas.

Public Papers of LBJ, 1969, p.1319

Our temporary programs to restrain capital outflows worked well in 1968. American businesses showed remarkable ingenuity and cooperation in pursuing their activities abroad while drastically cutting the drain on the Nation's balance of payments. These programs clearly aided in preserving the strength of the dollar.

Public Papers of LBJ, 1969, p.1319

Capital restraints should never become permanent features of our economy. They should be ended as soon as possible.

Public Papers of LBJ, 1969, p.1319

But the war continues and the movement toward noninflationary prosperity has just begun. We cannot now scrap our defenses against large capital outflows. For the present, we must

—renew the Interest Equalization Tax before it expires on July 31,

—maintain the direct investment control program in the more flexible form recently announced, and

—continue the Federal Reserve program of voluntary restraint of foreign lending.

Public Papers of LBJ, 1969, p.1319

To maintain our gains, ever closer international cooperation is needed among the highly interdependent nations of the world. Countries in deficit must meet their responsibilities. And countries in surplus must also pursue appropriate policies—striving especially for rapid economic expansion and giving world traders greater access to their markets.

WORLD MONETARY SYSTEM

Public Papers of LBJ, 1969, p.1319–p.1320

The international monetary system was strengthened in 1968. An historic international [p.1320] agreement was reached, creating in the International Monetary Fund a new reserve asset—the Special Drawing Right.

Public Papers of LBJ, 1969, p.1320

We spent 3 years studying, exploring, and negotiating with our commercial partners in order to reach this agreement. I eagerly await the day that actual distribution of SDR's will begin. They can meet the future needs of the world for international liquidity—in the proper amounts and in a usable form. I am proud that the United States acted so promptly to ratify this agreement with such overwhelming bipartisan support in the Congress.

Public Papers of LBJ, 1969, p.1320

Some did not believe that such an agreement was possible, arguing that a rise in the official price of gold was the only way to increase international reserves. We and our trading partners rejected this futile course; it would have offered a ransom payment to speculators and would have failed to provide for the orderly growth of reserves. I have carried out my pledge that the United States would sell gold to official holders of dollars at $35 an ounce. There is clearly no need to change that price.

Public Papers of LBJ, 1969, p.1320

Myths about gold die slowly. But progress can be made—as we have demonstrated. In 1968, the Congress ended the obsolete gold-backing requirement for our currency.

Public Papers of LBJ, 1969, p.1320

Another major step in freeing the international monetary system from disturbances by gold speculators was taken in March, when the United States and the other active gold pool countries agreed to cease supplying gold to the private market. The resulting two-price system for gold is working successfully.

Public Papers of LBJ, 1969, p.1320

The international economy has made major strides in the past. But we must recognize the problems that remain. The financial crises of 1968 stimulated constructive discussion of many proposals for further evolutionary improvements in the international economic system.

Public Papers of LBJ, 1969, p.1320

These proposals are not an agenda for action in a week or a month or even a year. The issues posed cannot be resolved in a summit meeting or by a superplan. But they can be tackled effectively with the same kind of careful study and negotiation that led to the successful SDR plan. The United States should actively participate in such a procedure in order to strengthen the foundation of the world economy.

TRADE

Public Papers of LBJ, 1969, p.1320

World trade has continued to expand briskly—virtually unaffected by the sporadic crises in financial markets. Tariff barriers that once stifled international commerce have been substantially lowered—most notably by the Kennedy Round reductions which began in 1968 and will continue until 1973.

Public Papers of LBJ, 1969, p.1320

We must reinforce this success by devoting equal energy to the removal of nontariff barriers. On our part, Congressional action to rescind the American Selling Price provision is essential for achieving reductions of nontariff barriers offered by several of our trading partners.

Other nontariff barriers also need revision.

• Agriculture has been the stepchild of trade negotiations, and deserves prompt and proper attention.

• The international rules governing border tax adjustments should be revised so that they no longer give a special advantage to countries that rely heavily on excise and other indirect taxes.

Public Papers of LBJ, 1969, p.1320–p.1321

While we work to reduce trade barriers, we must not drop our guard against the advocates of protectionism at home and abroad. We will never neglect the legitimate concerns of any citizen. But the only real solutions are ones that improve our economy-not ones that erect new barriers that [p.1321] could provoke retaliation, or insulate producers from the invigorating force of world competition. To provide the right kind of aid to those seriously hurt by import competition, present provisions for temporary adjustment assistance must be liberalized, as I have repeatedly recommended.

AID

Public Papers of LBJ, 1969, p.1321

Important economic progress is being made in the world's less developed countries. The beginnings of spectacular advances in world agriculture are now clearly evident. Family planning is gaining widespread support.

Public Papers of LBJ, 1969, p.1321

The United States can and should help to promote further progress in world agriculture and family planning, and the achievement of more rapid economic growth in the less developed countries. Only if funds for foreign aid programs are restored to an adequate level can we do our part.

Public Papers of LBJ, 1969, p.1321

The United States has long supported multilateral assistance as an equitable and efficient means of channeling aid from wealthy to poorer nations. We must reaffirm this support by promptly authorizing the U.S.. contributions to the replenishment of the International Development Association and to the Special Funds of the Asian Development Bank.

KEY AREAS OF FEDERAL GOVERNMENT

RESPONSIBILITY

Public Papers of LBJ, 1969, p.1321

The bountiful output of the American private enterprise system has made our high standard of living possible. Yet this same abundance has created a growing need for public action to improve the quality of life in our cities, towns, and countryside. The Federal Government must continue its partnership with the private sector and with State and local governments to provide better public services. Increased efforts are needed to

—improve the environment by ensuring clean air, pure water, and the conservation of natural resources,

—assist in community development and in education,

—protect the consumer against unfair practices and unwholesome products,

—ensure safe employment conditions, and

—provide a more comprehensive social insurance system to protect against the financial impacts of retirement, unemployment, job accidents, and long-term illness of a breadwinner.

QUALITY OF THE ENVIRONMENT

Public Papers of LBJ, 1969, p.1321

More than ever, Americans realize that purposeful action is required to ensure an environment we can all enjoy. In the last 5 years, legislation has been enacted to abate air and water pollution and to control the disposal of solid wastes. Despite progress, many of our rivers still are open sewers, our atmosphere often unfit to breathe, and much of our land littered with discarded junk. We must

—develop new methods for financing water treatment plants,

—attack oil pollution of harbors and beaches,

—strengthen laws for clean air and solid waste disposal,

—stop the ravages of strip mining, and

—preserve more parks and wilderness areas.

COMMUNITY DEVELOPMENT AND HOUSING

Public Papers of LBJ, 1969, p.1321

Rapid population growth in our cities and rising living standards have created a backlog of community and housing needs.

Public Papers of LBJ, 1969, p.1322

Local governments are finding it increasingly difficult to finance essential community facilities—schools, parks, hospitals, and transportation systems. The Federal Government must develop new ways to help communities raise capital for public facilities.

Public Papers of LBJ, 1969, p.1322

The capacity of the housing industry must be enlarged and updated to meet the Nation's goal of adding 26 million decent homes and apartments over the next decade.

Public Papers of LBJ, 1969, p.1322

To improve our communities and meet our housing needs, I recommend

—an independent, federally established, Urban Development Bank to provide low-interest loans to State and local governments,

—increased Federal research and development to improve construction technology,

—a Federal program to test housing materials and to improve building standards and practices,

—the training of more construction workers through federally assisted manpower programs in cooperation with trade unions and contractors, and

—an urban mass transportation trust fund, financed by a portion of the automobile excise tax.

EDUCATION

Public Papers of LBJ, 1969, p.1322

Providing good education is a national responsibility in which the Federal Government must do its part. Great progress has been made in recent years toward our goal of providing every child all the education he wants and can absorb. But continued and expanded efforts will be needed. This Nation must strive to

—provide every child with year-round opportunity for preschool education,

—offer every teacher assistance for continuing education,

—bring the cost of higher education within the means of every qualified student through expanded loans and grants, and

—provide funds for higher education adequate to ensure instruction of finest quality.

CONSUMER PROTECTION

Public Papers of LBJ, 1969, p.1322

The confidence of consumers in the American marketplace is vital for a healthy economy. In the past 5 years, the Congress has ushered in a new era of consumer protection by enacting 20 major measures in this field. We have made great strides toward our goals of

—ensuring that all products are safe and wholesome,

—providing full and fair disclosure in the marketplace, and

—eliminating fraud and deception by the few who prey on the unsuspecting, the elderly, and the poor.

Public Papers of LBJ, 1969, p.1322

To carry on the work so well begun, legislation is needed to—prevent deceptive sales practices by giving new authority to the Federal Trade Commission,

—reduce the likelihood of massive electric power failures which can paralyze our cities,

—ensure that the small investor shares in the benefits of our thriving mutual fund industry, and

—complete the circuit of Federal inspection for foods commonly served at the family dinner table.

WORKER PROTECTION

Public Papers of LBJ, 1969, p.1322–p.1323

American workers are the most productive in the world and they have made our high standard of living possible. They and their [p.1323] families deserve a safe working place and adequate protection against the loss of income from on-the-job accidents, disability, and unemployment.

Public Papers of LBJ, 1969, p.1323

Safety

The human costs of accidents are immense—14,000 people killed on the job each year, 2.2 million workers injured. The monetary cost alone is a staggering $5 billion. Recent tragedies in our factories, mines, and other work places have dramatized once more the need for better safety practices. Must we wait for tragedy to strike again?

Public Papers of LBJ, 1969, p.1323

The Congress failed to act last year on an urgently needed Occupational Safety and Health Bill and on the Coal Mine Safety Bill. We can delay no longer. This Nation must put an end to this senseless waste from job accidents—through comprehensive legislation that will ensure the best job safety and health practices in all American work places.

Public Papers of LBJ, 1969, p.1323

Workmen's Compensation

Workmen's compensation should ensure that no victim of a job-related accident lacks the funds to pay his medical bills and support his family. Currently, one employee in five has no workmen's compensation protection. Benefit levels are too often tragically low. The Federal Government should act now to ensure that the States provide adequate workmen's coverage and benefits.

Public Papers of LBJ, 1969, p.1323

Disability Insurance

Today disabled workers wait as long as 6 months before receiving benefits—and their disability must be expected to last more than 1 year. In addition, disabled workers are too often unable to pay for the medical care they need. To meet these shortcomings, I recommend that

—the waiting period for benefits be reduced from 6 to 3 months,

—the minimum duration of qualifying disability be reduced to 3 months, and

—the totally and permanently disabled be eligible for Medicare.

Public Papers of LBJ, 1969, p.1323

Unemployment Insurance

Even in the height of prosperity during 1968, two million workers were out of work for a period of 15 weeks or longer. About a million workers spent at least half the year fruitlessly looking for work.

Public Papers of LBJ, 1969, p.1323

Congress should strengthen the Federal-State Unemployment Insurance system by

—extending coverage to five million more workers,

—raising benefit levels,

—lengthening payment periods, and

—providing special federally financed benefits for the long-term unemployed, with recipients required to accept job training and other employment services under appropriate circumstances.

SOCIAL SECURITY

Public Papers of LBJ, 1969, p.1323–p.1324

Social security is one of the oldest and best social programs. Currently, 25 million people—one out of every eight Americans-receive a social security check every month. Largely because of social security, two-thirds of the beneficiaries—the elderly, widows, orphans, and the disabled—are above the poverty line. Yet we need to do more. I recommend an average increase in benefits of 13 percent, including

—a rise of at least 10 percent for every beneficiary,

—a 45 percent increase from $55 to $80 for the five million Americans receiving the minimum benefit, [p.1324] —a $100 monthly minimum benefit for those who have contributed to social security for 20 years or more, and

—a liberalization of benefits for the elderly who choose to work.

OUR COMMITMENT TO ELIMINATE POVERTY

Public Papers of LBJ, 1969, p.1324

No achievement gives me greater pride than the advances in the war on poverty. No social challenge gives me greater concern than the elimination of poverty.

Public Papers of LBJ, 1969, p.1324

Since the passage of the Economic Opportunity Act, which established the Nation's commitment to eliminate poverty, the number of poor Americans has been reduced by about 11 million. Still, 22 million Americans remain poor.

Public Papers of LBJ, 1969, p.1324

The effective programs of the Office of Economic Opportunity must be preserved and strengthened. For this purpose, I am recommending a 2-year extension of the Economic Opportunity Act.

EMPLOYMENT OPPORTUNITIES

Public Papers of LBJ, 1969, p.1324

In recent years, our national prosperity has rapidly expanded job opportunities for the poor. To maintain progress, we must not retreat from high employment. The doors to opportunity are bound to be locked to the disadvantaged and to new workers if senior and skilled employees are being laid off.

Public Papers of LBJ, 1969, p.1324

At the same time, we cannot count on normal economic growth to create as many jobs for the poor as were created when we moved out of a slack economy. We must therefore increase the emphasis on manpower programs in order to provide effective aid to the disadvantaged.

Public Papers of LBJ, 1969, p.1324

In 1968, we launched a major new partnership with private industry—the National Alliance of Businessmen. Job Opportunities in the Business Sector is a promising route for providing jobs and training for the hard-core unemployed. The JOBS program has reached its initial target 6 months ahead of schedule. My budget provides for major expansion of this program.

Public Papers of LBJ, 1969, p.1324

The experience with JOBS encourages us to develop a similar program for employment in the rapidly growing public sector.

EDUCATION, HEALTH, AND NUTRITION

Public Papers of LBJ, 1969, p.1324

The poor are often handicapped by inferior education, ill health, and inadequate diets. Federal Government programs have begun to attack these roots of poverty. Head Start, Follow Through, and Tide I of the Elementary and Secondary Education Act help in educating disadvantaged children. These should ultimately be expanded to meet the needs of all poor children.

Public Papers of LBJ, 1969, p.1324

Medicaid has a high proportion of poor beneficiaries and should ultimately free the needy from the bonds of inadequate health care.

Public Papers of LBJ, 1969, p.1324

Good health is essential for a good start in life. Expectant mothers and infants in poor families should be provided comprehensive health care.

Public Papers of LBJ, 1969, p.1324

America, blessed with agricultural abundance, should not tolerate hunger among its people. The Food Stamp program should be expanded and a cooperative Federal-State effort launched to protect all Americans against hunger and malnutrition.

HOUSING

Public Papers of LBJ, 1969, p.1324–p.1325

With the Housing and Urban Development Act of 1968 we set the goal of eliminating all substandard housing in the next decade. We must back that commitment with the needed resources—financial, technical, and human. First priority must be given to the needs of the poorest of the poor [p.1325] through the Model Cities program, rent supplements, home ownership, and public housing. And all families must be assured full and fair access to housing—with no discrimination.

INCOME SUPPORT

Public Papers of LBJ, 1969, p.1325

No matter how well we succeed in other efforts, cash assistance will be needed by many of the poor—the elderly, the disabled, and some mothers with sole responsibility for the care of young children. Although such funds do not directly remove the causes of poverty, they sustain life and hope and help prevent poverty from being bequeathed from one generation to the next.

Public Papers of LBJ, 1969, p.1325

Income support programs need a thorough review. The public discussion required to illuminate this area is well under way and will benefit from the report of the Commission on Income Maintenance, due at the end of this year. Americans will soon have to decide how best to help those who cannot earn enough to escape from poverty.

Public Papers of LBJ, 1969, p.1325

Whatever strategies we choose, the effort to reduce poverty must be redoubled. Victory in the war on poverty can be won with only a modest share of the Nation's income gains. The total shortfall of income below the poverty line amounts to only 1 percent of our gross national product—one-fourth of our normal growth in a single year. A fully effective antipoverty program would initially cost more than that—but would not be out of range. Surely Americans will make the investment needed to eliminate poverty.

CONCLUSION

Public Papers of LBJ, 1969, p.1325

The American economy has been steadily on the march in the 1960's. It has shattered all records for progress toward the Employment Act's goals of "maximum employment, production, and purchasing power." It has bestowed great blessings of abundance on the vast majority of Americans in all walks of life.

Public Papers of LBJ, 1969, p.1325

Economic growth has provided the resources for urgent defense needs and has still permitted a major expansion of civilian production—both public and private. It has allowed us to send a youngster to Head start and a man to the moon.

Public Papers of LBJ, 1969, p.1325

When our economy was less prosperous, many of our social problems were neglected—eclipsed by the struggle of families to make ends meet. The plight of the poor was fatalistically accepted when the majority of Americans were vulnerable to unemployment and deprivation. Our needs for improved schools, better cities, and a healthier environment were pushed into the background.

Public Papers of LBJ, 1969, p.1325

As the average American's standard of living soared, we could afford to focus on new challenges. Facing these issues squarely has in itself been a great accomplishment. We have marshaled our determination to provide a good job, a decent standard of living, quality education, and a pleasing environment for everyone.

Public Papers of LBJ, 1969, p.1325

We have begun to make progress toward these new aspirations. But we have only begun. And because we have so far to go, many of us are impatient. This feeling is in the great American tradition. High aspirations and impatience have constantly spurred us to greater achievements.

Public Papers of LBJ, 1969, p.1325

And they will again. Our economy will not rest on the laurels of the 1960's. We will not relax to count or consolidate our gains. We will not retreat from the unprecedented prosperity we have achieved. This Nation will remain on the march.

LYNDON B. JOHNSON

January 16, 1969

Public Papers of LBJ, 1969, p.1326

NOTE: The President's message together with the Annual Report of the Council of Economic Advisers is printed in "Economic Report of the President, Transmitted to the Congress January 1969" (Government Printing Office, 1969, 332 pp.).

Richard Nixon's First Inaugural Address, 1969

Title: President Nixon's First Inaugural Address

Author: Richard M. Nixon

Date: January 20, 1969

Source: Public Papers of the Presidents, Nixon, 1969, pp.1-4

Public Papers of Nixon, 1969, p.1

Senator Dirksen, Mr. Chief Justice, Mr. Vice president, President Johnson, Vice president Humphrey, my fellow Americans-and my fellow citizens of the world community:

Public Papers of Nixon, 1969, p.1

I ask you to share with me today the majesty of this moment. In the orderly transfer of power, we celebrate the unity that keeps us free.

Public Papers of Nixon, 1969, p.1

Each moment in history is a fleeting time, precious and unique. But some stand out as moments of beginning, in which courses are set that shape decades or centuries.

Public Papers of Nixon, 1969, p.1

This can be such a moment.

Public Papers of Nixon, 1969, p.1

Forces now are converging that make possible, for the first time, the hope that many of man's deepest aspirations can at last be realized. The spiraling pace of change allows us to contemplate, within our own lifetime, advances that once would have taken centuries.

Public Papers of Nixon, 1969, p.1

In throwing wide the horizons of space, we have discovered new horizons on earth.

Public Papers of Nixon, 1969, p.1

For the first time, because the people of the world want peace, and the leaders of the world are afraid of war, the times are on the side of peace.

Public Papers of Nixon, 1969, p.1

Eight years from now America will celebrate its 200th anniversary as a nation. Within the lifetime of most people now living, mankind will celebrate that great new year which comes only once in a thousand years—the beginning of the third millennium.

Public Papers of Nixon, 1969, p.1

What kind of a nation we will be, what kind of a world we will live in, whether we shape the future in the image of our hopes, is ours to determine by our actions and our choices.

Public Papers of Nixon, 1969, p.1

The greatest honor history can bestow is the title of peacemaker. This honor now beckons America—the chance to help lead the world at last out of the valley of turmoil and onto that high ground of peace that man has dreamed of since the dawn of civilization.

Public Papers of Nixon, 1969, p.1

If we succeed, generations to come will say of us now living that we mastered our moment, that we helped make the world safe for mankind.

Public Papers of Nixon, 1969, p.1

This is our summons to greatness.

Public Papers of Nixon, 1969, p.1

I believe the American people are ready to answer this call.

Public Papers of Nixon, 1969, p.1

The second third of this century has been a time of proud achievement. We have made enormous strides in science and industry and agriculture. We have shared our wealth more broadly than ever. We have learned at last to manage a modern economy to assure its continued growth.

Public Papers of Nixon, 1969, p.1

We have given freedom new reach. We have begun to make its promise real for black as well as for white.

Public Papers of Nixon, 1969, p.1

We see the hope of tomorrow in the youth of today. I know America's youth. I believe in them. We can be proud that they are better educated, more committed, more passionately driven by conscience than any generation in our history.

Public Papers of Nixon, 1969, p.1

No people has ever been so close to the achievement of a just and abundant society, or so possessed of the will to achieve it. And because our strengths are so great, we can afford to appraise our weaknesses with candor and to approach them with hope.

Public Papers of Nixon, 1969, p.1–p.2

Standing in this same place a third of [p.2] a century ago, Franklin Delano Roosevelt addressed a nation ravaged by depression and gripped in fear. He could say in surveying the Nation's troubles: "They concern, thank God, only material things." Our crisis today is in reverse.

Public Papers of Nixon, 1969, p.2

We find ourselves rich in goods, but ragged in spirit; reaching with magnificent precision for the moon, but failing into raucous discord on earth.

Public Papers of Nixon, 1969, p.2

We are caught in war, wanting peace. We are torn by division, wanting unity. We see around us empty fives, wanting fulfillment. We see tasks that need doing, waiting for hands to do them.

Public Papers of Nixon, 1969, p.2

To a crisis of the spirit, we need an answer of the spirit.

Public Papers of Nixon, 1969, p.2

And to find that answer, we need only look within ourselves.

Public Papers of Nixon, 1969, p.2

When we listen to "the better angels of our nature," we find that they celebrate the simple things, the basic things—such as goodness, decency, love, kindness.

Public Papers of Nixon, 1969, p.2

Greatness comes in simple trappings. The simple things are the ones most needed today if we are to surmount what divides us, and cement what unites us.

Public Papers of Nixon, 1969, p.2

To lower our voices would be a simple thing.

Public Papers of Nixon, 1969, p.2

In these difficult years, America has suffered from a fever of words; from inflated rhetoric that promises more than it can deliver; from angry rhetoric that fans discontents into hatreds; from bombastic rhetoric that postures instead of persuading.

Public Papers of Nixon, 1969, p.2

We cannot learn from one another until we stop shouting at one another—until we speak quietly enough so that our words can be heard as well as our voices.

Public Papers of Nixon, 1969, p.2

For its part, government will listen. We will strive to listen in new ways—to the voices of quiet anguish, the voices that speak without words, the voices of the heart—to the injured voices, the anxious voices, the voices that have despaired of being heard.

Public Papers of Nixon, 1969, p.2

Those who have been left out, we will try to bring in.

Public Papers of Nixon, 1969, p.2

Those left behind, we will help to catch up.

Public Papers of Nixon, 1969, p.2

For all of our people, we will set as our goal the decent order that makes progress possible and our lives secure.

Public Papers of Nixon, 1969, p.2

As we reach toward our hopes, our task is to build on what has gone before—not turning away from the old, but turning toward the new.

Public Papers of Nixon, 1969, p.2

In this past third of a century, government has passed more laws, spent more money, initiated more programs than in all our previous history.

Public Papers of Nixon, 1969, p.2

In pursuing our goals of full employment, better housing, excellence in education; in rebuilding our cities and improving our rural areas; in protecting our environment and enhancing the quality of life—in all these and more, we will and must press urgently forward.

Public Papers of Nixon, 1969, p.2

We shall plan now for the day when our wealth can be transferred from the destruction of war abroad to the urgent needs of our people at home.

Public Papers of Nixon, 1969, p.2

The American dream does not come to those who fall asleep.

Public Papers of Nixon, 1969, p.2

But we are approaching the limits of what government alone can do.

Public Papers of Nixon, 1969, p.2

Our greatest need now is to reach beyond government, to enlist the legions of the concerned and the committed.

Public Papers of Nixon, 1969, p.2

What has to be done, has to be done by government and people together or it will not be done at all. The lesson of past agony is that without the people we can do nothing—with the people we can do everything.

Public Papers of Nixon, 1969, p.2–p.3

To match the magnitude of our tasks, we need the energies of our people—enlisted [p.3] not only in grand enterprises, but more importantly in those small, splendid efforts that make headlines in the neighborhood newspaper instead of the national journal.

Public Papers of Nixon, 1969, p.3

With these, we can build a great cathedral of the spirit—each of us raising it one stone at a time, as he reaches out to his neighbor, helping, caring, doing.

Public Papers of Nixon, 1969, p.3

I do not offer a life of uninspiring ease. I do not call for a life of grim sacrifice. I ask you to join in a high adventure—one as rich as humanity itself, and exciting as the times we live in.

Public Papers of Nixon, 1969, p.3

The essence of freedom is that each of us shares in the shaping of his own destiny.

Public Papers of Nixon, 1969, p.3

Until he has been part of a cause larger than himself, no man is truly whole.

Public Papers of Nixon, 1969, p.3

The way to fulfillment is in the use of our talents. We achieve nobility in the spirit that inspires that use.

Public Papers of Nixon, 1969, p.3

As we measure what can be done, we shall promise only what we know we can produce; but as we chart our goals, we shall be lifted by our dreams.

Public Papers of Nixon, 1969, p.3

No man can be fully free while his neighbor is not. To go forward at all is to go forward together.

Public Papers of Nixon, 1969, p.3

This means black and white together, as one nation, not two. The laws have caught up with our conscience. What remains is to give life to what is in the law: to insure at last that as all are born equal in dignity before God, all are born equal in dignity before man.

Public Papers of Nixon, 1969, p.3

As we learn to go forward together at home, let us also seek to go forward together with all mankind.

Public Papers of Nixon, 1969, p.3

Let us take as our goal: Where peace is unknown, make it welcome; where Peace is fragile, make it strong; where peace is temporary, make it permanent.

Public Papers of Nixon, 1969, p.3

After a period of confrontation, we are entering an era of negotiation.

Public Papers of Nixon, 1969, p.3

Let all nations know that during this administration our lines of communication will be open.

Public Papers of Nixon, 1969, p.3

We seek an open world—open to ideas, open to the exchange of goods and people—a world in which no people, great or small, will live in angry isolation.

Public Papers of Nixon, 1969, p.3

We cannot expect to make everyone our friend, but we can try to make no one our enemy.

Public Papers of Nixon, 1969, p.3

Those who would be our adversaries, we invite to a peaceful competition—not in conquering territory or extending dominion, but in enriching the life of man.

Public Papers of Nixon, 1969, p.3

As we explore the reaches of space, let us go to the new worlds together—not as new worlds to be conquered, but as a new adventure to be shared.

Public Papers of Nixon, 1969, p.3

With those who are willing to join, let us cooperate to reduce the burden of arms, to strengthen the structure of peace, to lift up the poor and the hungry.

Public Papers of Nixon, 1969, p.3

But to all those who would be tempted by weakness, let us leave no doubt that we will be as strong as we need to be for as long as we need to be.

Public Papers of Nixon, 1969, p.3

Over the past 90 years, since I first came to this Capital as a freshman Congressman, I have visited most of the nations of the world. I have come to know the leaders of the world and the great forces, the hatreds, the fears that divide the world.

Public Papers of Nixon, 1969, p.3

I know that peace does not come through wishing for it—that there is no substitute for days and even years of patient and prolonged diplomacy.

I also know the people of the world.

Public Papers of Nixon, 1969, p.3

I have seen the hunger of a homeless child, the pain of a man wounded in battle, the grief of a mother who has lost her son. I know these have no ideology, no race.

Public Papers of Nixon, 1969, p.3–p.4

I know America. I know the heart of [p.4] America is good.

Public Papers of Nixon, 1969, p.4

I speak from my own heart, and the heart of my country, the deep concern we have for those who suffer and those who sorrow.

Public Papers of Nixon, 1969, p.4

I have taken an oath today in the presence of God and my countrymen to uphold and defend the Constitution of the United States. To that oath I now add this sacred commitment: I shall consecrate my Office, my energies, and all the wisdom I can summon to the cause of peace among nations.

Public Papers of Nixon, 1969, p.4

Let this message be heard by strong and weak alike:

Public Papers of Nixon, 1969, p.4

The peace we seek the peace we seek to win—is not victory over any other people, but the peace that comes "with healing in its wings"; with compassion for those who have suffered; with understanding for those who have opposed us; with the opportunity for all the peoples of this earth to choose their own destiny.

Public Papers of Nixon, 1969, p.4

Only a few short weeks ago we shared the glory of man's first sight of the world as God sees it, as a single sphere reflecting light in the darkness.

Public Papers of Nixon, 1969, p.4

As the Apollo astronauts flew over the moon's gray surface on Christmas Eve, they spoke to us of the beauty of earth-and in that voice so clear across the lunar distance, we heard them invoke God's blessing on its goodness.

Public Papers of Nixon, 1969, p.4

In that moment, their view from the moon moved poet Archibald MacLeish to write: "To see the earth as it truly is, small and blue and beautiful in that eternal silence where it floats, is to see ourselves as riders on the earth together, brothers on that bright loveliness in the eternal cold—brothers who know now they are truly brothers."

Public Papers of Nixon, 1969, p.4

In that moment of surpassing technological triumph, men turned their thoughts toward home and humanity-seeing in that far perspective that man's destiny on earth is not divisible; telling us that however far we reach into the cosmos, our destiny lies not in the stars but on earth itself, in our own hands, in our own hearts.

Public Papers of Nixon, 1969, p.4

We have endured a long night of the American spirit. But as our eyes catch the dimness of the first rays of dawn, let us not curse the remaining dark. Let us gather the light.

Public Papers of Nixon, 1969, p.4

Our destiny offers not the cup of despair, but the chalice of opportunity. So let us seize it not in fear, but in gladness-and "riders on the earth together," let us go forward, firm in our faith, steadfast in our purpose, cautious of the dangers, but sustained by our confidence in the will of God and the promise of man.

Public Papers of Nixon, 1969, p.4

NOTE: The President spoke at 12:16 p.m. from the inaugural platform erected at the East Front of the Capitol, immediately following administration of the oath of office by Chief Justice Earl Warren.

Public Papers of Nixon, 1969, p.4

The address was broadcast on radio and television.

President Nixon's Statement on Deployment of the Antiballistic Missile System, 1969

Title: President Nixon's Statement on Deployment of the Antiballistic Missile System

Author: Richard M. Nixon

Date: March 14, 1969

Source: Public Papers of the Presidents, Nixon, 1969, pp.216-219

Public Papers of Nixon, 1969, p.216

IMMEDIATELY after assuming office, I requested the Secretary of Defense to review the program initiated by the last administration to deploy the Sentinel Ballistic Missile Defense System.

Public Papers of Nixon, 1969, p.216

The Department of Defense presented a full statement of the alternatives at the last two meetings of the National Security Council. These alternatives were reviewed there in the light of the security requirements of the United States and of their probable impact on East-West relations, with particular reference to the prospects for strategic arms negotiations.

Public Papers of Nixon, 1969, p.216

After carefully considering the alternatives, I have reached the following conclusions: (1) the concept on which the Sentinel program of the previous administration was based should be substantially modified, (2) the safety of our country requires that we should proceed now with the development and construction of the new system in a carefully phased program, (3) this program will be reviewed annually from the point of view of (a) technical developments, (b) the threat, (c) the diplomatic context including any talks on arms limitation.

Public Papers of Nixon, 1969, p.216

The modified system has been designed so that its defensive intent is unmistakable. It will be implemented not according to some fixed, theoretical schedule, but in a manner clearly related to our periodic analysis of the threat. The first deployment covers two missile sites; the first of these will not be completed before 1973. Any further delay would set this date back by at least 2 additional years. The program for fiscal year 1970 is the minimum necessary to maintain the security of our Nation.

Public Papers of Nixon, 1969, p.216–p.217

This measured deployment is designed to fulfill three objectives:

1. Protection of our land-based retaliatory [p.217] forces against a direct attack by the Soviet Union.

2. Defense of the American people against the kind of nuclear attack which Communist China is likely to be able to mount within the decade.

3. Protection against the possibility of accidental attacks from any source.

Public Papers of Nixon, 1969, p.217

In the review leading up to this decision, we considered three possible options in addition to this program: a deployment which would attempt to defend U.S. cities against an attack by the Soviet Union; a continuation of the Sentinel program approved by the previous administration; and indefinite postponement of deployment while continuing research and development.

Public Papers of Nixon, 1969, p.217

I rejected these options for the following reasons:

Public Papers of Nixon, 1969, p.217

Although every instinct motivates me to provide the American people with complete protection against a major nuclear attack, it is not now within our power to do so. The heaviest defense system we considered, one designed to protect our major cities, still could not prevent a catastrophic level of U.S. fatalities from a deliberate all-out Soviet attack. And it might look to an opponent like the prelude to an offensive strategy threatening the Soviet deterrent.

Public Papers of Nixon, 1969, p.217

The Sentinel system approved by the previous administration provided more capabilities for the defense of cities than the program I am recommending, but it did not provide protection against some threats to our retaliatory forces which have developed subsequently. Also, the Sentinel system had the disadvantage that it could be misinterpreted as the first step toward the construction of a heavy system.

Public Papers of Nixon, 1969, p.217

Giving up all construction of missile defense poses too many risks. Research and development does not supply the answer to many technical issues that only operational experience can provide. The Soviet Union has engaged in a buildup of its strategic forces larger than was envisaged in 1967 when the decision to deploy Sentinel was made. The following is illustrative of recent Soviet activity:

Public Papers of Nixon, 1969, p.217

1. The Soviets have already deployed an ABM system which protects to some degree a wide area centered around Moscow. We will not have a comparable capability for over 4 years. We believe the Soviet Union is continuing their ABM development, directed either toward improving this initial system, or more likely, making substantially better second generation ABM components.

Public Papers of Nixon, 1969, p.217

2. The Soviet Union is continuing the deployment of very large missiles with warheads capable of destroying our hardened Minuteman forces.

Public Papers of Nixon, 1969, p.217

3. The Soviet Union has also been substantially increasing the size of their submarine-launched ballistic missile force.

Public Papers of Nixon, 1969, p.217

4. The Soviets appear to be developing a semi-orbital nuclear weapon system.

Public Papers of Nixon, 1969, p.217

In addition to these developments, the Chinese threat against our population, as well as the danger of an accidental attack, cannot be ignored. By approving this system, it is possible to reduce U.S. fatalities to a minimal level in the event of a Chinese nuclear attack in the 1970's, or in an accidental attack from any source. No President with the responsibility for the lives and security of the American people could fail to provide this protection.

Public Papers of Nixon, 1969, p.217–p.218

The gravest responsibility which I bear as President of the United States is for [p.218] the security of the Nation. Our nuclear forces defend not only ourselves but our allies as well. The imperative that our nuclear deterrent remain secure beyond any possible doubt requires that the United States must take steps now to insure that our strategic retaliatory forces will not become vulnerable to a Soviet attack.

Public Papers of Nixon, 1969, p.218

Modern technology provides several choices in seeking to insure the survival of our retaliatory forces. First, we could increase the number of sea- and land-based missiles and bombers. I have ruled out this course because it provides only marginal improvement of our deterrent, while it could be misinterpreted by the Soviets as an attempt to threaten their deterrent. It would therefore stimulate an arms race.

Public Papers of Nixon, 1969, p.218

A second option is to harden further our ballistic missile forces by putting them in more strongly reinforced underground silos. But our studies show that hardening by itself is not adequate protection against foreseeable advances in the accuracy of Soviet offensive forces.

Public Papers of Nixon, 1969, p.218

The third option was to begin a measured construction on an active defense of our retaliatory forces.

Public Papers of Nixon, 1969, p.218

I have chosen the third option.

Public Papers of Nixon, 1969, p.218

The system will use components previously developed for the Sentinel system. However, the deployment will be changed to reflect the new concept. We will provide for local defense of selected Minuteman missile sites and an area defense designed to protect our bomber bases and our command and control authorities. In addition, this new system will provide a defense of the continental United States against an accidental attack and will provide substantial protection against the kind of attack which the Chinese Communists may be capable of launching throughout the 1970's. This deployment will not require us to place missile and radar sites close to our major cities.

Public Papers of Nixon, 1969, p.218

The present estimate is that the total cost of installing this system will be $6-$7 billion. However, because of the deliberate pace of the deployment, budgetary requests for the coming year can be substantially less—by about one-half—than those asked for by the previous administration for the Sentinel system.

Public Papers of Nixon, 1969, p.218

In making this decision, I have been mindful of my pledge to make every effort to move from an era of confrontation to an era of negotiation. The program I am recommending is based on a careful assessment of the developing Soviet and Chinese threats. I have directed the President's Foreign Intelligence Advisory Board—a nonpartisan group of distinguished private citizens—to make a yearly assessment of the threat which will supplement our regular intelligence assessment. Each phase of the deployment will be reviewed to insure that we are doing as much as necessary but no more than that required by the threat existing at that time. Moreover, we will take maximum advantage of the information gathered from the initial deployment in designing the later phases of the program.

Public Papers of Nixon, 1969, p.218

Since our deployment is to be closely related to the threat, it is subject to modification as the threat changes, either through negotiations or through unilateral actions by the Soviet Union or Communist China.

Public Papers of Nixon, 1969, p.218–p.219

The program is not provocative. The Soviet retaliatory capability is not affected by our decision. The capability for surprise attack against our strategic forces is reduced. In other words, our program provides an incentive for a responsible Soviet [p.219] weapons policy and for the avoidance of spiraling U.S. and Soviet strategic arms budgets.

Public Papers of Nixon, 1969, p.219

I have taken cognizance of the view that beginning construction of a U.S. ballistic missile defense would complicate an agreement on strategic arms with the Soviet Union.

Public Papers of Nixon, 1969, p.219

I do not believe that the evidence of the recent past bears out this contention. The Soviet interest in strategic talks was not deterred by the decision of the previous administration to deploy the Sentinel ABM system—in fact, it was formally announced shortly afterwards. I believe that the modifications we have made in the previous program will give the Soviet Union even less reason to view our defense effort as an obstacle to talks. Moreover, I wish to emphasize that in any arms limitation talks with the Soviet Union, the United States will be fully prepared to discuss limitations on defensive as well as offensive weapons systems.

Public Papers of Nixon, 1969, p.219

The question of ABM involves a complex combination of many factors:

—numerous, highly technical, often conflicting judgments;

—the costs;

—the relationship to prospects for reaching an agreement on limiting nuclear arms;

—the moral implications the deployment of a ballistic missile defense system has for many Americans;

—the impact of the decision on the security of the United States in this perilous age of nuclear arms.

Public Papers of Nixon, 1969, p.219

I have weighed all these factors. I am deeply sympathetic to the concerns of private citizens and Members of Congress that we do only that which is necessary for national security. This is why I am recommending a minimum program essential for our security. It is my duty as President to make certain that we do no less.

Public Papers of Nixon, 1969, p.219

NOTE: Appropriations for a modified antiballistic missile system were included in the 1970 Armed Forces appropriation authorization bill approved on November 19, 1969 (Public Law 91-121, 83 Stat. 204).

Public Papers of Nixon, 1969, p.219

The text of a letter to the President, dated March 17, 1969, from Dr. Lee A. DuBridge, the President's Science Adviser, on the proposed antiballistic missile system, is printed in the Weekly Compilation of Presidential Documents (vol. 5, P. 430).

President Nixon's Address to the Nation on the War in Vietnam, 1969

Title: President Nixon's Address to the Nation on the War in Vietnam

Author: Richard M. Nixon

Date: November 3, 1969

Source: Public Papers of the Presidents, Nixon, 1969, pp.901-909

Public Papers of Nixon, 1969, p.901

Good evening, my fellow Americans:

Public Papers of Nixon, 1969, p.901

Tonight I want to talk to you on a subject of deep concern to all Americans and to many people in all parts of the world—the war in Vietnam.

Public Papers of Nixon, 1969, p.901

I believe that one of the reasons for the deep division about Vietnam is that many Americans have lost confidence in what their Government has told them about our policy. The American people cannot and should not be asked to support a policy which involves the overriding issues of war and peace unless they know the truth about that policy.

Public Papers of Nixon, 1969, p.901

Tonight, therefore, I would like to answer some of the questions that I know are on the minds of many of you listening to me.

Public Papers of Nixon, 1969, p.901

How and why did America get involved in Vietnam in the first place?

Public Papers of Nixon, 1969, p.901

How has this administration changed the policy of the previous administration?

Public Papers of Nixon, 1969, p.901

What has really happened in the negotiations in Paris and on the battlefront in Vietnam?

Public Papers of Nixon, 1969, p.901

What choices do we have if we are to end the war?

Public Papers of Nixon, 1969, p.901

What are the prospects for peace? Now, let me begin by describing the situation I found when I was inaugurated on January 20.

—The war had been going on for 4 years.

—31,000 Americans had been killed in action.

—The training program for the South Vietnamese was behind schedule.

—540,000 Americans were in Vietnam with no plans to reduce the number.

—No progress had been made at the negotiations in Paris and the United States had not put forth a comprehensive peace proposal.

—The war was causing deep division at home and criticism from many of our friends as well as our enemies abroad.

Public Papers of Nixon, 1969, p.901

In view of these circumstances there were some who urged that I end the war at once by ordering the immediate withdrawal of all American forces.

Public Papers of Nixon, 1969, p.901–p.902

From a political standpoint this would [p.902] have been a popular and easy course to follow. After all, we became involved in the war while my predecessor was in office. I could blame the defeat which would be the result of my action on him and come out as the peacemaker. Some put it to me quite bluntly: This was the only way to avoid allowing Johnson's war to become Nixon's war.

Public Papers of Nixon, 1969, p.902

But I had a greater obligation than to think only of the years of my administration and of the next election. I had to think of the effect of my decision on the next generation and on the future of peace and freedom in America and in the world.

Public Papers of Nixon, 1969, p.902

Let us all understand that the question before us is not whether some Americans are for peace and some Americans are against peace. The question at issue is not whether Johnson's war becomes Nixon's war.

Public Papers of Nixon, 1969, p.902

The great question is: How can we win America's peace?

Public Papers of Nixon, 1969, p.902

Well, let us turn now to the fundamental issue. Why and how did the United States become involved in Vietnam in the first place?

Public Papers of Nixon, 1969, p.902

Fifteen years ago North Vietnam, with the logistical support of Communist China and the Soviet Union, launched a campaign to impose a Communist government on South Vietnam by instigating and supporting a revolution.

Public Papers of Nixon, 1969, p.902

In response to the request of the Government of South Vietnam, President Eisenhower sent economic aid and military equipment to assist the people of South Vietnam in their efforts to prevent a Communist takeover. Seven years ago, President Kennedy sent 16,000 military personnel to Vietnam as combat advisers. Four years ago, President Johnson sent American combat forces to South Vietnam.

Public Papers of Nixon, 1969, p.902

Now, many believe that President Johnson's decision to send American combat forces to South Vietnam was wrong. And many others—I among them—have been strongly critical of the way the war has been conducted.

Public Papers of Nixon, 1969, p.902

But the question facing us today is: Now that we are in the war, what is the best way to end it?

Public Papers of Nixon, 1969, p.902

In January I could only conclude that the precipitate withdrawal of American forces from Vietnam would be a disaster not only for South Vietnam but for the United States and for the cause of peace.

Public Papers of Nixon, 1969, p.902

For the South Vietnamese, our precipitate withdrawal would inevitably allow the Communists to repeat the massacres which followed their takeover in the North 15 years before.

Public Papers of Nixon, 1969, p.902

—They then murdered more than 50,000 people and hundreds of thousands more died in slave labor camps.

Public Papers of Nixon, 1969, p.902

—We saw a prelude of what would happen in South Vietnam when the Communists entered the city of Hue last year. During their brief rule there, there was a bloody reign of terror in which 3,000 civilians were clubbed, shot to death, and buried in mass graves.

Public Papers of Nixon, 1969, p.902

—With the sudden collapse of our support, these atrocities of Hue would become the nightmare of the entire nation—and particularly for the million and a half Catholic refugees who fled to South Vietnam when the

Public Papers of Nixon, 1969, p.902

Communists took over in the North. For the United States, this first defeat in our Nation's history would result in a collapse of confidence in American leadership, not only in Asia but throughout the world.

Public Papers of Nixon, 1969, p.902–p.903

Three American Presidents have recognized the great stakes involved in Vietnam [p.903] and understood what had to be done.

Public Papers of Nixon, 1969, p.903

In 1963, President Kennedy, with his characteristic eloquence and clarity, said: "we want to see a stable government there, carrying on a struggle to maintain its national independence.

Public Papers of Nixon, 1969, p.903

"We believe strongly in that. We are not going to withdraw from that effort. In my opinion, for us to withdraw from that effort would mean a collapse not only of South Viet-Nam, but Southeast Asia. So we are going to stay there."

Public Papers of Nixon, 1969, p.903

President Eisenhower and President Johnson expressed the same conclusion during their terms of office.

Public Papers of Nixon, 1969, p.903

For the future of peace, precipitate withdrawal would thus be a disaster of immense magnitude.

—A nation cannot remain great if it betrays its allies and lets down its friends.

—Our defeat and humiliation in South Vietnam without question would promote recklessness in the councils of those great powers who have not yet abandoned their goals of world conquest.

—This would spark violence wherever our commitments help maintain the peace—in the Middle East, in Berlin, eventually even in the Western Hemisphere.

Public Papers of Nixon, 1969, p.903

Ultimately, this would cost more lives. It would not bring peace; it would bring more war.

Public Papers of Nixon, 1969, p.903

For these reasons, I rejected the recommendation that I should end the war by immediately withdrawing all of our forces. I chose instead to change American policy on both the negotiating front and battlefront.

Public Papers of Nixon, 1969, p.903

In order to end a war fought on many fronts, I initiated a pursuit for peace on many fronts.

Public Papers of Nixon, 1969, p.903

In a television speech on May 14, in a speech before the United Nations, and on a number of other occasions I set forth our peace proposals in great detail.

—We have offered the complete withdrawal of all outside forces within 1 year.

—We have proposed a cease-fire under international supervision.

—We have offered free elections under international supervision with the Communists participating in the organization and conduct of the elections as an organized political force. And the Saigon Government has pledged to accept the result of the elections.

Public Papers of Nixon, 1969, p.903

We have not put forth our proposals on a take-it-or-leave-it basis. We have indicated that we are willing to discuss the proposals that have been put forth by the other side. We have declared that anything is negotiable except the right of the people of South Vietnam to determine their own future. At the Paris peace conference, Ambassador Lodge has demonstrated our flexibility and good faith in 40 public meetings.

Public Papers of Nixon, 1969, p.903

Hanoi has refused even to discuss our proposals. They demand our unconditional acceptance of their terms, which are that we withdraw all American forces immediately and unconditionally and that we overthrow the Government of South Vietnam as we leave.

Public Papers of Nixon, 1969, p.903

We have not limited our peace initiatives to public forums and public statements. I recognized, in January, that a long and bitter war like this usually cannot be settled in a public forum. That is why in addition to the public statements and negotiations I have explored every possible private avenue that might lead to a settlement.

Public Papers of Nixon, 1969, p.904

Tonight I am taking the unprecedented step of disclosing to you some of our other initiatives for peace—initiatives we undertook privately and secretly because we thought we thereby might open a door which publicly would be closed.

Public Papers of Nixon, 1969, p.904

I did not wait for my inauguration to begin my quest for peace.

Public Papers of Nixon, 1969, p.904

—Soon after my election, through an individual who is directly in contact on a personal basis with the leaders of North Vietnam, I made two private offers for a rapid, comprehensive settlement. Hanoi's replies called in effect for our surrender before negotiations.

Public Papers of Nixon, 1969, p.904

—Since the Soviet Union furnishes most of the military equipment for North Vietnam, Secretary of State Rogers, my Assistant for National Security Affairs, Dr. Kissinger, Ambassador Lodge, and I, personally, have met on a number of occasions with representatives of the Soviet Government to enlist their assistance in getting meaningful negotiations started. In addition, we have had extended discussions directed toward that same end with representatives of other governments which have diplomatic relations with North Vietnam. None of these initiatives have to date produced results.

Public Papers of Nixon, 1969, p.904

—In mid-July, I became convinced that it was necessary to make a major move to break the deadlock in the Paris talks. I spoke directly in this office, where I am now sitting, with an individual who had known Ho Chi Minh [President, Democratic Republic of Vietnam] on a personal basis for 25 years. Through him I sent a letter to Ho Chi Minh. I did this outside of the usual diplomatic channels with the hope that with the necessity of making statements for propaganda removed, there might be constructive progress toward bringing the war to an end. Let me read from that letter to you now.

Public Papers of Nixon, 1969, p.904

"Dear Mr. President:

"I realize that it is difficult to communicate meaningfully across the gulf of four years of war. But precisely because of this gulf, I wanted to take this opportunity to reaffirm in all solemnity my desire to work for a just peace. I deeply believe that the war in Vietnam has gone on too long and delay in bringing it to an end can benefit no one—least of all the people of Vietnam….

Public Papers of Nixon, 1969, p.904

"The time has come to move forward at the conference table toward an early resolution of this tragic war. You will find us forthcoming and open-minded in a common effort to bring the blessings of peace to the brave people of Vietnam. Let history record that at this critical juncture, both sides turned their face toward peace rather than toward conflict and war."

Public Papers of Nixon, 1969, p.904

I received Ho Chi Minh's reply on August 30, 3 days before his death. It simply reiterated the public position North Vietnam had taken at Paris and flatly rejected my initiative.

Public Papers of Nixon, 1969, p.904–p.905

The full text of both letters is being released to the press.

—In addition to the public meetings that I have referred to, Ambassador Lodge has met with Vietnam's chief negotiator in Paris in 11 private sessions.

—We have taken other significant initiatives which must remain secret [p.905] to keep open some channels of communication which may still prove to be productive. But the effect of all the public, private, and secret negotiations which have been undertaken since the bombing halt a year ago and since this administration came into office on January 20, can be summed up in one sentence: No progress whatever has been made except agreement on the shape of the bargaining table. Well now, who is at fault?

Public Papers of Nixon, 1969, p.905

It has become clear that the obstacle in negotiating an end to the war is not the President of the United States. It is not the South Vietnamese Government.

Public Papers of Nixon, 1969, p.905

The obstacle is the other side's absolute refusal to show the least willingness to join us in seeking a just peace. And it will not do so while it is convinced that all it has to do is to wait for our next concession, and our next concession after that one, until it gets everything it wants.

Public Papers of Nixon, 1969, p.905

There can now be no longer any question that progress in negotiation depends only on Hanoi's deciding to negotiate, to negotiate seriously.

Public Papers of Nixon, 1969, p.905

I realize that this report on our efforts on the diplomatic front is discouraging to the American people, but the American people are entitled to know the truth-the bad news as well as the good news-where the lives of our young men are involved.

Public Papers of Nixon, 1969, p.905

Now let me turn, however, to a more encouraging report on another front.

Public Papers of Nixon, 1969, p.905

At the time we launched our search for peace I recognized we might not succeed in bringing an end to the war through negotiation. I, therefore, put into effect another plan to bring peace—a plan which will bring the war to an end regardless of what happens on the negotiating front.

Public Papers of Nixon, 1969, p.905

It is in line with a major shift in U.S. foreign policy which I described in my press conference at Guam on July 25. Let me briefly explain what has been described as the Nixon Doctrine—a policy which not only will help end the war in Vietnam, but which is an essential element of our program to prevent future Vietnams.

Public Papers of Nixon, 1969, p.905

We Americans are a do-it-yourself people. We are an impatient people. Instead of teaching someone else to do a job, we like to do it ourselves. And this trait has been carried over into our foreign policy.

Public Papers of Nixon, 1969, p.905

In Korea and again in Vietnam, the United States furnished most of the money, most of the arms, and most of the men to help the people of those countries defend their freedom against Communist aggression.

Public Papers of Nixon, 1969, p.905

Before any American troops were committed to Vietnam, a leader of another Asian country expressed this opinion to me when I was traveling in Asia as a private citizen. He said: "When you are trying to assist another nation defend its freedom, U.S. policy should be to help them fight the war but not to fight the war for them."

Public Papers of Nixon, 1969, p.905–p.906

Well, in accordance with this wise counsel, I laid down in Guam three principles as guidelines for future American policy toward Asia:

—First, the United States will keep all of its treaty commitments.

—Second, we shall provide a shield if a nuclear power threatens the freedom of a nation allied with us or of a nation whose survival we consider vital to our security.

—Third, in cases involving other types of aggression, we shall furnish military and economic assistance when requested in accordance with our treaty commitments. But we shall [p.906] look to the nation directly threatened to assume the primary responsibility of providing the manpower for its defense.

Public Papers of Nixon, 1969, p.906

After I announced this policy, I found that the leaders of the Philippines, Thailand, Vietnam, South Korea, and other nations which might be threatened by Communist aggression, welcomed this new direction in American foreign policy.

Public Papers of Nixon, 1969, p.906

The defense of freedom is everybody's business—not just America's business. And it is particularly the responsibility of the people whose freedom is threatened. In the previous administration, we Americanized the war in Vietnam. In this administration, we are Vietnamizing the search for peace.

Public Papers of Nixon, 1969, p.906

The policy of the previous administration not only resulted in our assuming the primary responsibility for fighting the war, but even more significantly did not adequately stress the goal of strengthening the South Vietnamese so that they could defend themselves when we left.

Public Papers of Nixon, 1969, p.906

The Vietnamization plan was launched following Secretary Laird's visit to Vietnam in March. Under the plan, I ordered first a substantial increase in the training and equipment of South Vietnamese forces.

Public Papers of Nixon, 1969, p.906

In July, on my visit to Vietnam, I changed General Abrams' orders so that they were consistent with the objectives of our new policies. Under the new orders, the primary mission of our troops is to enable the South Vietnamese forces to assume the full responsibility for the security of South Vietnam.

Public Papers of Nixon, 1969, p.906

Our air operations have been reduced by over 20 percent.

And now we have begun to see the results of this long overdue change in American policy in Vietnam.

—After 5 years of Americans going into Vietnam, we are finally bringing American men home. By December 15, over 60,000 men will have been withdrawn from South Vietnam including 20 percent of all of our combat forces.

—The South Vietnamese have continued to gain in strength. As a result they have been able to take over combat responsibilities from our American troops.

Public Papers of Nixon, 1969, p.906

Two other significant developments have occurred since this administration took office.

—Enemy infiltration, infiltration which is essential if they are to launch a major attack, over the last 3 months is less than 20 percent of what it was over the same period last year.

—Most important—United States casualties have declined during the last 2 months to the lowest point in 3 years.

Public Papers of Nixon, 1969, p.906

Let me now turn to our program for the future.

Public Papers of Nixon, 1969, p.906

We have adopted a plan which we have worked out in cooperation with the South Vietnamese for the complete withdrawal of all U.S. combat ground forces, and their replacement by South Vietnamese forces on an orderly scheduled timetable. This withdrawal will be made from strength and not from weakness. As South Vietnamese forces become stronger, the rate of American withdrawal can become greater.

Public Papers of Nixon, 1969, p.906

I have not and do not intend to announce the timetable for our program. And there are obvious reasons for this decision which I am sure you will understand. As I have indicated on several occasions, the rate of withdrawal will depend on developments on three fronts.

Public Papers of Nixon, 1969, p.907

One of these is the progress which can be or might be made in the Paris talks. An announcement of a fixed timetable for our withdrawal would completely remove any incentive for the enemy to negotiate an agreement. They would simply wait until our forces had withdrawn and then move in.

Public Papers of Nixon, 1969, p.907

The other two factors on which we will base our withdrawal decisions are the level of enemy activity and the progress of the training programs of the South Vietnamese forces. And I am glad to be able to report tonight progress on both of these fronts has been greater than we anticipated when we started the program in June for withdrawal. As a result, our timetable for withdrawal is more optimistic now than when we made our first estimates in June. Now, this clearly demonstrates why it is not wise to be frozen in on a fixed timetable.

Public Papers of Nixon, 1969, p.907

We must retain the flexibility to base each withdrawal decision on the situation as it is at that time rather than on estimates that are no longer valid.

Public Papers of Nixon, 1969, p.907

Along with this optimistic estimate, I must—in all candor—leave one note of caution.

Public Papers of Nixon, 1969, p.907

If the level of enemy activity significantly increases we might have to adjust our timetable accordingly.

Public Papers of Nixon, 1969, p.907

However, I want the record to be completely clear on one point.

Public Papers of Nixon, 1969, p.907

At the time of the bombing halt just a year ago, there was some confusion as to whether there was an understanding on the part of the enemy that if we stopped the bombing of North Vietnam they would stop the shelling of cities in South Vietnam. I want to be sure that there is no misunderstanding on the part of the enemy with regard to our withdrawal program.

Public Papers of Nixon, 1969, p.907

We have noted the reduced level of infiltration, the reduction of our casualties, and are basing our withdrawal decisions partially on those factors.

Public Papers of Nixon, 1969, p.907

If the level of infiltration or our casualties increase while we are trying to scale down the fighting, it will be the result of a conscious decision by the enemy.

Public Papers of Nixon, 1969, p.907

Hanoi could make no greater mistake than to assume that an increase in violence will be to its advantage. If I conclude that increased enemy action jeopardizes our remaining forces in Vietnam, I shall not hesitate to take strong and effective measures to deal with that situation.

Public Papers of Nixon, 1969, p.907

This is not a threat. This is a statement of policy, which as Commander in Chief of our Armed Forces, I am making in meeting my responsibility for the protection of American fighting men wherever they may be.

Public Papers of Nixon, 1969, p.907

My fellow Americans, I am sure you can recognize from what I have said that we really only have two choices open to us if we want to end this war.

—I can order an immediate, precipitate withdrawal of all Americans from Vietnam without regard to the effects of that action.

—Or we can persist in our search for a just peace through a negotiated settlement if possible, or through continued implementation of our plan for Vietnamization if necessary—a plan in which we will withdraw all of our forces from Vietnam on a schedule in accordance with our program, as the South Vietnamese become strong enough to defend their own freedom. I have chosen this second course. It is not the easy way. It is the right way.

Public Papers of Nixon, 1969, p.907–p.908

It is a plan which will end the war and [p.908] serve the cause of peace—not just in Vietnam but in the Pacific and in the world.

Public Papers of Nixon, 1969, p.908

In speaking of the consequences of a precipitate withdrawal, I mentioned that our allies would lose confidence in America.

Public Papers of Nixon, 1969, p.908

Far more dangerous, we would lose confidence in ourselves. Oh, the immediate reaction would be a sense of relief that our men were coming home. But as we saw the consequences of what we had done, inevitable remorse and divisive recrimination would scar our spirit as a people.

Public Papers of Nixon, 1969, p.908

We have faced other crises in our history and have become stronger by rejecting the easy way out and taking the right way in meeting our challenges. Our greatness as a nation has been our capacity to do what had to be done when we knew our course was right.

Public Papers of Nixon, 1969, p.908

I recognize that some of my fellow citizens disagree with the plan for peace I have chosen. Honest and patriotic Americans have reached different conclusions as to how peace should be achieved.

Public Papers of Nixon, 1969, p.908

In San Francisco a few weeks ago, I saw demonstrators. carrying signs reading: "Lose in Vietnam, bring the boys home."

Public Papers of Nixon, 1969, p.908

Well, one of the strengths of our free society is that any American has a right to reach that conclusion and to advocate that point of view. But as President of the United States, I would be untrue to my oath of office if I allowed the policy of this Nation to be dictated by the minority who hold that point of view and who try to impose it on the Nation by mounting demonstrations in the street.

Public Papers of Nixon, 1969, p.908

For almost 200 years, the policy of this Nation has been made under our Constitution by those leaders in the Congress and the White House elected by all of the people. If a vocal minority, however fervent its cause, prevails over reason and the will of the majority, this Nation has no future as a free society.

Public Papers of Nixon, 1969, p.908

And now I would like to address a word, if I may, to the young people of this Nation who are particularly concerned, and I understand why they are concerned, about this war.

Public Papers of Nixon, 1969, p.908

I respect your idealism.

Public Papers of Nixon, 1969, p.908

I share your concern for peace. I want peace as much as you do. There are powerful personal reasons I want to end this war. This week I will have to sign 83 letters to mothers, fathers, wives, and loved ones of men who have given their lives for America in Vietnam. It is very little satisfaction to me that this is only one-third as many letters as I signed the first week in office. There is nothing I want more than to see the day come when I do not have to write any of those letters.

Public Papers of Nixon, 1969, p.908–p.909

—I want to end the war to save the lives of those brave young men in Vietnam.

—But I want to end it in a way which will increase the chance that their younger brothers and their sons will not have to fight in some future Vietnam someplace in the world.

—And I want to end the war for another reason. I want to end it so that the energy and dedication of you, our young people, now too often directed into bitter hatred against those responsible for the war, can be turned to the great challenges of peace, a [p.909] better life for all Americans, a better life for all people on this earth.

Public Papers of Nixon, 1969, p.909

I have chosen a plan for peace. I believe it will succeed.

Public Papers of Nixon, 1969, p.909

If it does succeed, what the critics say now won't matter. If it does not succeed, anything I say then won't matter.

Public Papers of Nixon, 1969, p.909

I know it may not be fashionable to speak of patriotism or national destiny these days. But I feel it is appropriate to do so on this occasion

Public Papers of Nixon, 1969, p.909

Two hundred years ago this Nation was weak and poor. But even then, America was the hope of millions in the world. Today we have become the strongest and richest nation in the world. And the Wheel of destiny has turned so that any hope the world has for the survival of peace and freedom will be determined by whether the American people have the moral stamina and the courage to meet the challenge of free world leadership.

Public Papers of Nixon, 1969, p.909

Let historians not record that when America was the most powerful nation in the world we passed on the other side of the road and allowed the last hopes for peace and freedom of millions of people to be suffocated by the forces of totalitarianism.

Public Papers of Nixon, 1969, p.909

And so tonight—to you, the great silent majority of my fellow Americans—I ask for your support.

Public Papers of Nixon, 1969, p.909

I pledged in my campaign for the Presidency to end the war in a way that we could win the peace. I have initiated a plan of action which will enable me to keep that pledge.

Public Papers of Nixon, 1969, p.909

The more support I can have from the American people, the sooner that pledge can be redeemed; for the more divided we are at home, the less likely the enemy is to negotiate at Paris.

Public Papers of Nixon, 1969, p.909

Let us be united for peace. Let us also be united against defeat. Because let us understand: North Vietnam cannot defeat or humiliate the United States. Only Americans can do that.

Public Papers of Nixon, 1969, p.909

Fifty years ago, in this room and at this very desk, 1 President Woodrow Wilson spoke words which caught the imagination of a war-weary world. He said: "This is the war to end war." His dream for peace after World War I was shattered on the hard realities of great power politics and Woodrow Wilson died a broken man.

1 Later research indicated that the desk had not been President Woodrow Wilson's as had long been assumed but was used by Vice President Henry Wilson during President Grant's administration.

Public Papers of Nixon, 1969, p.909

Tonight I do not tell you that the war in Vietnam is the war to end wars. But I do say this: I have initiated a plan which will end this war in a way that will bring us closer to that great goal to which Woodrow Wilson and every American President in our history has been dedicated—the goal of a just and lasting peace.

Public Papers of Nixon, 1969, p.909

As President I hold the responsibility for choosing the best path to that goal and then leading the Nation along it.

Public Papers of Nixon, 1969, p.909

I pledge to you tonight that I shall meet this responsibility with all of the strength and wisdom I can command in accordance with your hopes, mindful of your concerns, sustained by your prayers.

Thank you and goodnight.

Public Papers of Nixon, 1969, p.909

NOTE: The President spoke at 9:32 p.m. in his office at the White House. The address was broadcast on radio and television.

Public Papers of Nixon, 1969, p.909

On November 3, 1969, the White House Press Office released an advance text of the address.

President Nixon's Statement on Chemical and Biological Defense Policies and Programs, 1969

Title: President Nixon's Statement on Chemical and Biological Defense Policies and Programs

Author: Richard M. Nixon

Date: November 25, 1969

Source: Public Papers of the Presidents, Nixon, 1969, pp.968-969

Public Papers of Nixon, 1969, p.968

SOON AFTER taking office I directed a comprehensive study of our chemical and biological defense policies and programs. There had been no such review in over 15 years. As a result, objectives and policies in this field were unclear and programs lacked definition and direction.

Public Papers of Nixon, 1969, p.968

Under the auspices of the National Security Council, the Departments of State and Defense, the Arms Control and Disarmament Agency, the Office of Science and Technology, the intelligence community, and other agencies worked closely together on this study for over 6 months. These Government efforts were aided by contributions from the scientific community through the President's Science Advisory Committee.

Public Papers of Nixon, 1969, p.968

This study has now been completed and its findings carefully considered by the National Security Council. I am now reporting the decisions taken on the basis of this review.

CHEMICAL WARFARE PROGRAM

Public Papers of Nixon, 1969, p.968

As to our chemical warfare program, the United States:

—Reaffirms its oft-repeated renunciation of the first use of lethal chemical weapons.

—Extends this renunciation to the first use of incapacitating chemicals. Consonant with these decisions, the administration will submit to the Senate, for its advice and consent to ratification, the Geneva Protocol of 19251 which prohibits the first use in war of "asphyxiating, poisonous or other Gases and of Bacteriological Methods of Warfare." The United States has long supported the principles and objectives of this Protocol. We take this step toward formal ratification to reinforce our continuing advocacy of international constraints on the use of these weapons.

1 League of Nations Treaty Series (vol. 94, p. 65).

BIOLOGICAL RESEARCH PROGRAM

Public Papers of Nixon, 1969, p.968

Biological weapons have massive, unpredictable and potentially uncontrollable consequences. They may produce global epidemics and impair the health of future generations. I have therefore decided that:

—The United States shall renounce the use of lethal biological agents and weapons, and all other methods of biological warfare.

—The United States will confine its biological research to defensive measures such as immunization and safety measures.

—The Department of Defense has been asked to make recommendations as to the disposal of existing stocks of bacteriological weapons.

Public Papers of Nixon, 1969, p.968

In the spirit of these decisions, the United States associates itself with the principles and objectives of the United Kingdom Draft Convention which would ban the use of biological methods of warfare. 2 We will seek, however, to clarify specific provisions of the draft to assure that necessary safeguards are included.

2Annex to United Nations General Assembly Document of November 3, 1969 (A/7741 DC/232).

Public Papers of Nixon, 1969, p.969

Neither our association with the Convention nor the limiting of our program to research will leave us vulnerable to surprise by an enemy who does not observe these rational restraints. Our intelligence community will continue to watch carefully the nature and extent of the biological programs of others.

Public Papers of Nixon, 1969, p.969

These important decisions, which have been announced today, have been taken as an initiative toward peace. Mankind already carries in its own hands too many of the seeds of its own destruction. By the examples we set today, we hope to contribute to an atmosphere of peace and understanding between nations and among men.

President Nixon's Address to the Nation on the Situation in Southeast Asia, 1970

Title: President Nixon's Address to the Nation on the Situation in Southeast Asia

Author: Richard M. Nixon

Date: April 30, 1970

Source: Public Papers of the Presidents, Nixon, 1970, pp.405-410

Public Papers of Nixon, 1970, p.405

Good evening my fellow Americans:

Public Papers of Nixon, 1970, p.405

Ten days ago, in my report to the Nation on Vietnam, I announced a decision to withdraw an additional 150,000 Americans from Vietnam over the next year. I said then that I was making that decision despite our concern over increased enemy activity in Laos, in Cambodia, and in South Vietnam.

Public Papers of Nixon, 1970, p.405–p.406

At that time, I warned that if I concluded that increased enemy activity in any of these areas endangered the fives of Americans remaining in Vietnam, I would not hesitate to take strong and effective [p.406] measures to deal with that situation.

Public Papers of Nixon, 1970, p.406

Despite that warning, North Vietnam has increased its military aggression in all these areas, and particularly in Cambodia.

Public Papers of Nixon, 1970, p.406

After full consultation with the National Security Council, Ambassador Bunker, General Abrams, and my other advisers, I have concluded that the actions of the enemy in the last 10 days clearly endanger the lives of Americans who are in Vietnam now and would constitute an unacceptable risk to those who will be there after withdrawal of another 150,000.

Public Papers of Nixon, 1970, p.406

To protect our men who are in Vietnam and to guarantee the continued success of our withdrawal and Vietnamization programs, I have concluded that the time has come for action.

Public Papers of Nixon, 1970, p.406

Tonight, I shall describe the actions of the enemy, the actions I have ordered to deal with that situation, and the reasons for my decision.

Public Papers of Nixon, 1970, p.406

Cambodia, a small country of 7 million people, has been a neutral nation since the Geneva agreement of 1954—an agreement, incidentally, which was signed by the Government of North Vietnam.

Public Papers of Nixon, 1970, p.406

American policy since then has been to scrupulously respect the neutrality of the Cambodian people. We have maintained a skeleton diplomatic mission of fewer than 15 in Cambodia's capital, and that only since last August. For the previous 4 years, from 1965 to 1969, we did not have any diplomatic mission whatever in Cambodia. And for the past 5 years, we have provided no military assistance whatever and no economic assistance to Cambodia.

Public Papers of Nixon, 1970, p.406

North Vietnam, however, has not respected that neutrality.

Public Papers of Nixon, 1970, p.406

For the past 5 years—as indicated on this map that you see here—North Vietnam has occupied military sanctuaries all along the Cambodian frontier with South Vietnam. Some of these extend up to 20 miles into Cambodia. The sanctuaries are in red and, as you note, they are on both sides of the border. They are used for hit and run attacks on American and South Vietnamese forces in South Vietnam.

Public Papers of Nixon, 1970, p.406

These Communist occupied territories contain major base camps, training sites, logistics facilities, weapons and ammunition factories, airstrips, and prisoner-of. war compounds.

Public Papers of Nixon, 1970, p.406

For 5 years, neither the United States nor South Vietnam has moved against these enemy sanctuaries because we did not wish to violate the territory of a neutral nation. Even after the Vietnamese Communists began to expand these sanctuaries 4 weeks ago, we counseled patience to our South Vietnamese allies and imposed restraints on our own commanders.

Public Papers of Nixon, 1970, p.406

In contrast to our policy, the enemy in the past 2 weeks has stepped up his guerrilla actions and he is concentrating his main forces in these sanctuaries that you see on this map where they are building up to launch massive attacks on our forces and those of South Vietnam.

Public Papers of Nixon, 1970, p.406

North Vietnam in the last 2 weeks has stripped away all pretense of respecting the sovereignty or the neutrality of Cambodia. Thousands of their soldiers are invading the country from the sanctuaries; they are encircling the capital of Phnom Penh. Coming from these sanctuaries, as you see here, they have moved into Cambodia and are encircling the capital.

Public Papers of Nixon, 1970, p.406–p.407

Cambodia, as a result of this, has sent out a call to the United States, to a number of other nations, for assistance. Because if this enemy effort succeeds, Cambodia would become a vast enemy staging area and a springboard for attacks on South Vietnam along 600 miles of frontier—a refuge where enemy troops [p.407] could return from combat without fear of retaliation.

Public Papers of Nixon, 1970, p.407

North Vietnamese men and supplies could then be poured into that country, jeopardizing not only the lives of our own men but the people of South Vietnam as well.

Public Papers of Nixon, 1970, p.407

Now confronted with this situation, we have three options.

Public Papers of Nixon, 1970, p.407

First, we can do nothing. Well, the ultimate result of that course of action is clear. Unless we indulge in wishful thinking, the lives of Americans remaining in Vietnam after our next withdrawal of 150,000 would be gravely threatened.

Public Papers of Nixon, 1970, p.407

Let us go to the map again. Here is South Vietnam. Here is North Vietnam. North Vietnam already occupies this part of Laos. If North Vietnam also occupied this whole band in Cambodia, or the entire country, it would mean that South Vietnam was completely outflanked and the forces of Americans in this area, as well as the South Vietnamese, would be in an untenable military position.

Public Papers of Nixon, 1970, p.407

Our second choice is to provide massive military assistance to Cambodia itself. Now unfortunately, while we deeply sympathize with the plight of 7 million Cambodians whose country is being invaded, massive amounts of military assistance could not be rapidly and effectively utilized by the small Cambodian Army against the immediate threat. With other nations, we shall do our best to provide the small arms and other equipment which the Cambodian Army of 40,000 needs and can use for its defense. But the aid we will provide will be limited to the purpose of enabling Cambodia to defend its neutrality and not for the purpose of making it an active belligerent on one side or the other.

Public Papers of Nixon, 1970, p.407

Our third choice is to go to the heart of the trouble. That means cleaning out major North Vietnamese and Vietcong occupied territories—these sanctuaries which serve as bases for attacks on both Cambodia and American and South Vietnamese forces in South Vietnam. Some of these, incidentally, are as close to Saigon as Baltimore is to Washington. This one, for example [indicating], is called the Parrot's Beak. It is only 33 miles from Saigon.

Public Papers of Nixon, 1970, p.407

Now faced with these three options, this is the decision I have made.

Public Papers of Nixon, 1970, p.407

In cooperation with the armed forces of South Vietnam, attacks are being launched this week to clean out major enemy sanctuaries on the Cambodian-Vietnam border.

Public Papers of Nixon, 1970, p.407

A major responsibility for the ground operations is being assumed by South Vietnamese forces. For example, the attacks in several areas, including the Parrot's Beak that I referred to a moment ago, are exclusively South Vietnamese ground operations under South Vietnamese command with the United States providing air and logistical support.

Public Papers of Nixon, 1970, p.407

There is one area, however, immediately above Parrot's Beak, where I have concluded that a combined American and South Vietnamese operation is necessary.

Public Papers of Nixon, 1970, p.407

Tonight, American and South Vietnamese units will attack the headquarters for the entire Communist military operation in South Vietnam. This key control center has been occupied by the North Vietnamese and Vietcong for 5 years in blatant violation of Cambodia's neutrality.

Public Papers of Nixon, 1970, p.407–p.408

This is not an invasion of Cambodia. The areas in which these attacks will be launched are completely occupied and controlled by North Vietnamese forces. Our purpose is not to occupy the areas. Once enemy forces are driven out of these [p.408] sanctuaries and once their military supplies are destroyed, we will withdraw.

Public Papers of Nixon, 1970, p.408

These actions are in no way directed to the security interests of any nation. Any government that chooses to use these actions as a pretext for harming relations with the United States will be doing so on its own responsibility, and on its own initiative, and we will draw the appropriate conclusions.

Public Papers of Nixon, 1970, p.408

Now let me give you the reasons for my decision.

Public Papers of Nixon, 1970, p.408

A majority of the American people, a majority of you listening to me, are for the withdrawal of our forces from Vietnam. The action I have taken tonight is indispensable for the continuing success of that withdrawal program.

Public Papers of Nixon, 1970, p.408

A majority of the American people want to end this war rather than to have it drag on interminably. The action I have taken tonight will serve that purpose.

Public Papers of Nixon, 1970, p.408

A majority of the American people want to keep the casualties of our brave men in Vietnam at an absolute minimum. The action I take tonight is essential if we are to accomplish that goal.

Public Papers of Nixon, 1970, p.408

We take this action not for the purpose of expanding the war into Cambodia but for the purpose of ending the war in Vietnam and winning the just peace we all desire. We have made—we will continue to make every possible effort to end this war through negotiation at the conference table rather than through more fighting on the battlefield.

Public Papers of Nixon, 1970, p.408

Let us look again at the record. We have stopped the bombing of North Vietnam. We have cut air operations by over 20 percent. We have announced withdrawal of over 250,000 of our men. We have offered to withdraw all of our men if they will withdraw theirs. We have offered to negotiate all issues with only one condition—and that is that the future of South Vietnam be determined not by North Vietnam, and not by the United States, but by the people of South Vietnam themselves.

Public Papers of Nixon, 1970, p.408

The answer of the enemy has been intransigence at the conference table, belligerence in Hanoi, massive military aggression in Laos and Cambodia, and stepped-up attacks in South Vietnam, designed to increase American casualties.

Public Papers of Nixon, 1970, p.408

This attitude has become intolerable. We will not react to this threat to American lives merely by plaintive diplomatic protests. If we did, the credibility of the United States would be destroyed in every area of the world where only the power of the United States deters aggression.

Public Papers of Nixon, 1970, p.408

Tonight, I again warn the North Vietnamese that if they continue to escalate the fighting when the United States is withdrawing its forces, I shall meet my responsibility as Commander in Chief of our Armed Forces to take the action I consider necessary to defend the security of our American men.

Public Papers of Nixon, 1970, p.408

The action that I have announced tonight puts the leaders of North Vietnam on notice that we will be patient in working for peace; we will be conciliatory at the conference table, but we will not be humiliated. We will not be defeated. We will not allow American men by the thousands to be killed by an enemy from privileged sanctuaries.

Public Papers of Nixon, 1970, p.408–p.409

The time came long ago to end this war through peaceful negotiations. We stand ready for those negotiations. We have made major efforts, many of which must remain secret. I say tonight: All the offers [p.409] and approaches made previously remain on the conference table whenever Hanoi is ready to negotiate seriously.

Public Papers of Nixon, 1970, p.409

But if the enemy response to our most conciliatory offers for peaceful negotiation continues to be to increase its attacks and humiliate and defeat us, we shall react accordingly.

Public Papers of Nixon, 1970, p.409

My fellow Americans, we live in an age of anarchy, both abroad and at home. We see mindless attacks on all the great institutions which have been created by free civilizations in the last 500 years. Even here in the United States, great universities are being systematically destroyed. Small nations all over the world find themselves under attack from within and from without.

Public Papers of Nixon, 1970, p.409

If, when the chips are down, the world's most powerful nation, the United States of America, acts like a pitiful, helpless giant, the forces of totalitarianism and anarchy will threaten free nations and free institutions throughout the world.

Public Papers of Nixon, 1970, p.409

It is not our power but our will and character that is being tested tonight. The question all Americans must ask and answer tonight is this: Does the richest and strongest nation in the history of the world have the character to meet a direct challenge by a group which rejects every effort to win a just peace, ignores our warning, tramples on solemn agreements, violates the neutrality of an unarmed people, and uses our prisoners as hostages?

Public Papers of Nixon, 1970, p.409

If we fail to meet this challenge, all other nations will be on notice that despite its overwhelming power the United States, when a real crisis comes, will be found wanting.

Public Papers of Nixon, 1970, p.409

During my campaign for the Presidency, I pledged to bring Americans home from Vietnam. They are coming home.

Public Papers of Nixon, 1970, p.409

I promised to end this war. I shall keep that promise.

Public Papers of Nixon, 1970, p.409

I promised to win a just peace. I shall keep that promise.

Public Papers of Nixon, 1970, p.409

We shall avoid a wider war. But we are also determined to put an end to this war.

Public Papers of Nixon, 1970, p.409

In this room, Woodrow Wilson made the great decisions which led to victory in World War I. Franklin Roosevelt made the decisions which led to our victory in World War II. Dwight D. Eisenhower made decisions which ended the war in Korea and avoided war in the Middle East. John F. Kennedy, in his finest hour, made the great decision which removed Soviet nuclear missiles from Cuba and the Western Hemisphere.

Public Papers of Nixon, 1970, p.409

I have noted that there has been a great deal of discussion with regard to this decision that I have made and I should point out that I do not contend that it is in the same magnitude as these decisions that I have just mentioned. But between those decisions and this decision there is a difference that is very fundamental. In those decisions, the American people were not assailed by counsels of doubt and defeat from some of the most widely known opinion leaders of the Nation.

Public Papers of Nixon, 1970, p.409

I have noted, for example, that a Republican Senator has said that this action I have taken means that my party has lost all chance of winning the November elections. And others are saying today that this move against enemy sanctuaries will make me a one-term President.

Public Papers of Nixon, 1970, p.409–p.410

No one is more aware than I am of the political consequences of the action I have taken. It is tempting to take the easy political path: to blame this war on previous administrations and to bring all of [p.410] our men home immediately, regardless of the consequences, even though that would mean defeat for the United States; to desert 18 million South Vietnamese people, who have put their trust in us and to expose them to the same slaughter and savagery which the leaders of North Vietnam inflicted on hundreds of thousands of North Vietnamese who chose freedom when the Communists took over North Vietnam in 1954; to get peace at any price now, even though I know that a peace of humiliation for the United States would lead to a bigger war or surrender later.

Public Papers of Nixon, 1970, p.410

I have rejected all political considerations in making this decision.

Public Papers of Nixon, 1970, p.410

Whether my party gains in November is nothing compared to the lives of 400,000 brave Americans fighting for our country and for the cause of peace and freedom in Vietnam. Whether I may be a one-term President is insignificant compared to whether by our failure to act in this crisis the United States proves itself to be unworthy to lead the forces of freedom in this critical period in world history. I would rather be a one-term President and do what I believe is right than to be a two-term President at the cost of seeing America become a second-rate power and to see this Nation accept the first defeat in its proud 190-year history.

Public Papers of Nixon, 1970, p.410

I realize that in this war there are honest and deep differences in this country about whether we should have become involved, that there are differences as to how the war should have been conducted. But the decision I announce tonight transcends those differences.

Public Papers of Nixon, 1970, p.410

For the lives of American men are involved. The opportunity for Americans to come home in the next 12 months is involved. The future of 18 million people in South Vietnam and 7 million people in Cambodia is involved. The possibility of winning a just peace in Vietnam and in the Pacific is at stake.

Public Papers of Nixon, 1970, p.410

It is customary to conclude a speech from the White House by asking support for the President of the United States. Tonight, I depart from that precedent. What I ask is far more important. I ask for your support for our brave men fighting tonight halfway around the world-not for territory—not for glory—but so that their younger brothers and their sons and your sons can have a chance to grow up in a world of peace and freedom and justice.

Public Papers of Nixon, 1970, p.410

Thank you and good night.

Public Papers of Nixon, 1970, p.410

NOTE: The President spoke at 9 p.m. in his office at the White House. His address was broadcast live on radio and television.

Public Papers of Nixon, 1970, p.410

On the same day, the White House Press Office released an advance text of the President's address.

Public Papers of Nixon, 1970, p.410

On May 5, 1970, the President met on two separate occasions with congressional leaders to discuss the Southeast Asian operations. The White House released transcripts of news briefings following these meetings: The first by Senator John G. Tower of Texas and Representatives L. Mendel Rivers of South Carolina and Leslie C. Arends of Illinois on the meeting with the Members of the Senate and House Armed Services Committees; the second by Senators George D. Aiken of Vermont and Robert P. Griffin of Michigan and Representatives Thomas E. Morgan of Pennsylvania and E. Ross Adair of Indiana on the meeting with the Members of the Senate Foreign Relations Committee and the House Foreign Affairs Committee.

President Nixon's Message to the Senate Transmitting the Geneva Protocol of 1925 on Chemical and Bacteriological Warfare, 1970

Title: President Nixon's Message to the Senate Transmitting the Geneva Protocol of 1925 on Chemical and Bacteriological Warfare

Author: Richard M. Nixon

Date: August 19, 1970

Source: Public Papers of the Presidents, Nixon, 1970, pp.677-678

Public Papers of Nixon, 1970, p.677

To the Senate of the United States:

Public Papers of Nixon, 1970, p.677

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva June 17, 1925. I transmit also the report by the Secretary of State which sets forth the understanding and the proposed reservation of the United States with respect to the Protocol.

Public Papers of Nixon, 1970, p.677

In submitting this Protocol for approval, I consider it desirable and appropriate to make the following statements:

—The United States has renounced the first-use of lethal and incapacitating chemical weapons.

—The United States has renounced any use of biological and toxin weapons.

—Our biological and toxin programs will be confined to research for defensive purposes, strictly defined. By the example we set, we hope to contribute to an atmosphere of peace, understanding and confidence between nations and among men. The policy of the United States Government is to support international efforts to limit biological and toxin research programs to defensive purposes.

—The United States will seek further agreement on effective arms-control measures in the field of biological and chemical warfare.

Public Papers of Nixon, 1970, p.678

Today, there are 85 parties, including all other major powers, to this basic international agreement which the United States proposed and signed in 1925. The United States always has observed the principles and objectives of this Protocol.

Public Papers of Nixon, 1970, p.678

I consider it essential that the United States now become a party to this Protocol, and urge the Senate to give its advice and consent to ratification with the reservation set forth in the Secretary's report.

RICHARD NIXON

The White House

August 19, 1970

Public Papers of Nixon, 1970, p.678

NOTE: The text of the Protocol is printed in Senate Executive J (91st Cons., 2d sess.). The report of the Secretary of State and an announcement of the forwarding of the Protocol to the Senate, released by the White House on the same day, are printed in the Weekly Compilation of Presidential Documents (vol. 6, pp. 1082 and 1083).

Public Papers of Nixon, 1970, p.678

On February 14, 1970, the White House released an announcement of the decision to renounce toxins as a method of warfare. It is printed in the Weekly Compilation of Presidential Documents (vol. 6, p. 17).

President Nixon's Statement About the Report of the Commission on Obscenity and Pornography, 1970

Title: President Nixon's Statement About the Report of the Commission on Obscenity and Pornography

Author: Richard M. Nixon

Date: October 24, 1970

Source: Public Papers of the Presidents, Nixon, 1970, pp.940-941

Public Papers of Nixon, 1970, p.940

SEVERAL weeks ago, the National Commission on Obscenity and Pornography—appointed in a previous administration—presented its findings.

Public Papers of Nixon, 1970, p.940

I have evaluated that report and categorically reject its morally bankrupt conclusions and major recommendations.

Public Papers of Nixon, 1970, p.940

So long as I am in the White House, there will be no relaxation of the national effort to control and eliminate smut from our national life.

Public Papers of Nixon, 1970, p.940

The Commission contends that the proliferation of filthy books and plays has no lasting harmful effect on a man's character. If that were true, it must also be true that great books, great paintings, and great plays have no ennobling effect on a man's conduct. Centuries of civilization and 10 minutes of common sense tell us otherwise.

Public Papers of Nixon, 1970, p.940

The Commission calls for the repeal of laws controlling smut for adults, while recommending continued restrictions on smut for children. In an open society, this proposal is untenable. If the level of filth rises in the adult community, the young people in our society cannot help but also be inundated by the flood.

Public Papers of Nixon, 1970, p.940

Pornography can corrupt a society and a civilization. The people's elected representatives have the right and obligation to prevent that corruption.

Public Papers of Nixon, 1970, p.940

The warped and brutal portrayal of sex in books, plays, magazines, and movies, if not halted and reversed, could poison the wellsprings of American and Western culture and civilization.

Public Papers of Nixon, 1970, p.940

The pollution of our culture, the pollution of our civilization with smut and filth is as serious a situation for the American people as the pollution of our once-pure air and water.

Public Papers of Nixon, 1970, p.940

Smut should not be simply contained at its present level; it should be outlawed in every State in the Union. And the legislatures and courts at every level of American government should act in unison to achieve that goal.

Public Papers of Nixon, 1970, p.940–p.941

I am well aware of the importance of protecting freedom of expression. But pornography is to freedom of expression what anarchy is to liberty; as free men [p.941] willingly restrain a measure of their freedom to prevent anarchy, so must we draw the line against pornography to protect freedom of expression.

Public Papers of Nixon, 1970, p.941

The Supreme Court has long held, and recently reaffirmed, that obscenity is not within the area of protected speech or press. Those who attempt to break down the barriers against obscenity and pornography deal a severe blow to the very freedom of expression they profess to espouse.

Public Papers of Nixon, 1970, p.941

Moreover, if an attitude of permissiveness were to be adopted regarding pornography, this would contribute to an atmosphere condoning anarchy in every field—and would increase the threat to our social order as well as to our moral principles.

Public Papers of Nixon, 1970, p.941

Alexis de Tocqueville, observing America more than a century ago, wrote, America is great because she is good—and if America ceases to be good, America will cease to be great.

Public Papers of Nixon, 1970, p.941

We all hold the responsibility for keeping America a great country—by keeping America a good country.

Public Papers of Nixon, 1970, p.941

American morality is not to be trifled with. The Commission on Pornography and Obscenity has performed a disservice, and I totally reject its report.

Public Papers of Nixon, 1970, p.941

NOTE: The report is entitled "The Report of the Commission on Obscenity and Pornography-September 1970" (Government Printing Office, 646 pp. ).

Public Papers of Nixon, 1970, p.941

On October 2, 1970, the White House released a statement on the Commission's report by Counsellor to the President Robert H. Finch.

President Nixon's Remarks Announcing an Agreement on Strategic Arms Limitation Talks, 1971

Title: President Nixon's Remarks Announcing an Agreement on Strategic Arms Limitation Talks

Author: Richard M. Nixon

Date: May 20, 1971

Source: Public Papers of the Presidents, Nixon, 1971, p.648

Public Papers of Nixon, 1971, p.648

Good afternoon, ladies and gentlemen:

As you know, the Soviet-American talks an limiting nuclear arms have been deadlocked for over a year. As a result of negotiations involving the highest level of both governments, I am announcing today a significant development in breaking the deadlock.

Public Papers of Nixon, 1971, p.648

The statement that I shall now read is being issued simultaneously in Moscow and Washington: Washington, 12 o'clock; Moscow, 7 p.m.

Public Papers of Nixon, 1971, p.648

The Governments of the United States and the Soviet Union, after reviewing the course of their talks on the limitation of strategic armaments, have agreed to concentrate this year on working out an agreement for the limitation of the deployment of anti-ballistic missile systems (ABMs). They have also agreed that, together with concluding an agreement to limit ABMs, they will agree on certain measures with respect to the limitation of offensive strategic weapons.

Public Papers of Nixon, 1971, p.648

The two sides are taking this course in the conviction that it will create more favorable conditions for further negotiations to limit all strategic arms. These negotiations will be actively pursued.

Public Papers of Nixon, 1971, p.648

This agreement is a major step in breaking the stalemate on nuclear arms talks. Intensive negotiations, however, will be required to translate this understanding into a concrete agreement.

Public Papers of Nixon, 1971, p.648

This statement that I have just read expresses the commitment of the Soviet and American Governments at the highest levels to achieve that goal. If we succeed, this joint statement that has been issued today may well be remembered as the beginning of a new era in which all nations will devote more of their energies and their resources not to the weapons of war, but to the works of peace.

Public Papers of Nixon, 1971, p.648

NOTE: The President spoke at 12 noon in the Briefing Room at the White House. His remarks were broadcast live on radio and television.

Public Papers of Nixon, 1971, p.648

On the same day, the White House released the text of the joint statement read by the President; a chronology of the strategic arms limitation talks, including a list of the U.S. delegation; and an information sheet on the status of the SAFEGUARD antiballistic missile system and comparisons of U.S. and Soviet strategic force strengths.

President Nixon's Remarks to the Nation Announcing Acceptance of an Invitation To Visit the People's Republic of China, 1971

Title: President Nixon's Remarks to the Nation Announcing Acceptance of an Invitation To Visit the People's Republic of China

Author: Richard M. Nixon

Date: July 15, 1971

Source: Public Papers of the Presidents, Nixon, 1971, pp.819-820

Public Papers of Nixon, 1971, p.819

Good evening:

Public Papers of Nixon, 1971, p.819

I have requested this television time tonight to announce a major development in our efforts to build a lasting peace in the world.

Public Papers of Nixon, 1971, p.819

As I have pointed out on a number of occasions over the past 3 years, there can be no stable and enduring peace without the participation of the People's Republic of China and its 750 million people. That is why I have undertaken initiatives in several areas to open the door for more normal relations between our two countries.

Public Papers of Nixon, 1971, p.819

In pursuance of that goal, I sent Dr. Kissinger, my Assistant for National Security Affairs, to Peking during his recent world tour for the purpose of having talks with Premier Chou En-lai.

Public Papers of Nixon, 1971, p.819

The announcement I shall now read is being issued simultaneously in Peking and in the United States:

Public Papers of Nixon, 1971, p.819

Premier Chou En-lai and Dr. Henry Kissinger, President Nixon's Assistant for National Security Affairs, held talks in Peking from July 9 to 11, 1971. Knowing of President Nixon's expressed desire to visit the People's Republic of China, Premier Chou Enlai, on behalf of the Government of the People's Republic of China, has extended an invitation to President Nixon to visit China at an appropriate date before May 1972. President Nixon has accepted the invitation with pleasure.

Public Papers of Nixon, 1971, p.819–p.820

The meeting between the leaders of China and the United States is to seek the normalization of relations between [p.820] the two countries and also to exchange views on questions of concern to the two sides.

Public Papers of Nixon, 1971, p.820

In anticipation of the inevitable speculation which will follow this announcement, I want to put our policy in the clearest possible context.

Public Papers of Nixon, 1971, p.820

Our action in seeking a new relationship with the People's Republic of China will not be at the expense of our old friends. It is not directed against any other nation. We seek friendly relations with all nations. Any nation can be our friend without being any other nation's enemy.

Public Papers of Nixon, 1971, p.820

I have taken this action because of my profound conviction that all nations will gain from a reduction of tensions and a better relationship between the United States and the People's Republic of China.

Public Papers of Nixon, 1971, p.820

It is in this spirit that I will undertake what I deeply hope will become a journey for peace, peace not just for our generation but for future generations on this earth we share together.

Public Papers of Nixon, 1971, p.820

Thank you and good night.

Public Papers of Nixon, 1971, p.820

NOTE: The President's remarks. were broadcast live on radio and television at 7:31 p.m. from the NBC studios, Burbank, Calif.

President Nixon's Address to the Nation Outlining a New Economic Policy: "The Challenge of Peace", 1971

Title: President Nixon's Address to the Nation Outlining a New Economic Policy: "The Challenge of Peace"

Author: Richard M. Nixon

Date: August 15, 1971

Source: Public Papers of the Presidents, Nixon, 1971, pp.886-891

Public Papers of Nixon, 1971, p.886

Good evening:

Public Papers of Nixon, 1971, p.886

I have addressed the Nation a number of times over the past 3 years on the problems of ending a war. Because of the progress we have made toward achieving that goal, this Sunday evening is an appropriate time for us to turn our attention to the challenges of peace.

Public Papers of Nixon, 1971, p.886

America today has the best opportunity in this century to achieve two of its greatest ideals: to bring about a full generation of peace, and to create a new prosperity without war.

Public Papers of Nixon, 1971, p.886

This not only requires bold leadership ready to take bold action—it calls forth the greatness in a great people.

Public Papers of Nixon, 1971, p.886

Prosperity without war requires action on three fronts: We must create more and better jobs; we must stop the rise in the cost of living; we must protect the dollar from the attacks of international money speculators.

Public Papers of Nixon, 1971, p.886

We are going to take that action—not timidly, not half-heartedly, and not in piecemeal fashion. We are going to move forward to the new prosperity without war as befits a great people—all together, and along a broad front.

Public Papers of Nixon, 1971, p.886

The time has come for a new economic policy for the United States. Its targets are unemployment, inflation, and international speculation. And this is how we are going to attack those targets.

Public Papers of Nixon, 1971, p.886–p.887

First, on the subject of jobs. We all know why we have an unemployment problem. Two million workers have been released from the Armed Forces and defense plants because of our success in [p.887] winding down the war in Vietnam. Putting those people back to work is one of the challenges of peace, and we have begun to make progress. Our unemployment rate today is below the average of the 4 peacetime years of the 1960's.

Public Papers of Nixon, 1971, p.887

But we can and we must do better than that.

Public Papers of Nixon, 1971, p.887

The time has come for American industry, which has produced more jobs at higher real wages than any other industrial system in history, to embark on a bold program of new investment in production for peace.

Public Papers of Nixon, 1971, p.887

To give that system a powerful new stimulus, I shall ask the Congress, when it reconvenes after its summer recess, to consider as its first priority the enactment of the Job Development Act of 1971.

Public Papers of Nixon, 1971, p.887

I will propose to provide the strongest short term incentive in our history to invest in new machinery and equipment that will create new jobs for Americans: a 10 percent Job Development Credit for 1 year, effective as of today, with a 5 percent credit after August 15, 1972. This tax credit for investment in new equipment will not only generate new jobs; it will raise productivity; it will make our goods more competitive in the years ahead.

Public Papers of Nixon, 1971, p.887

Second, I will propose to repeal the 7 percent excise tax on automobiles, effective today. This will mean a reduction in price of about $200 per car. I shall insist that the American auto industry pass this tax reduction on to the nearly 8 million customers who are buying automobiles this year. Lower prices will mean that more people will be able to afford new cars, and every additional 100,000 cars sold means 25,000 new jobs.

Public Papers of Nixon, 1971, p.887

Third, I propose to speed up the personal income tax exemptions scheduled for January 1, 1973, to January i, 1972-so that taxpayers can deduct an extra $50 for each exemption 1 year earlier than planned. This increase in consumer spending power will provide a strong boost to the economy in general and to employment in particular.

Public Papers of Nixon, 1971, p.887

The tax reductions I am recommending, together with this broad upturn of the economy which has taken place in the first half of this year, will move us strongly forward toward a goal this Nation has not reached since 1956, 15 years ago: prosperity with full employment in peacetime.

Public Papers of Nixon, 1971, p.887

Looking to the future, I have directed the Secretary of the Treasury to recommend to the Congress in January new tax proposals for stimulating research and development of new industries and new techniques to help provide the 20 million new jobs that America needs for the young people who will be coming into the job market in the next decade.

Public Papers of Nixon, 1971, p.887

To offset the loss of revenue from these tax cuts which directly stimulate new jobs, I have ordered today a $4.7 billion cut in Federal spending.

Public Papers of Nixon, 1971, p.887

Tax cuts to stimulate employment must be matched by spending cuts to restrain inflation. To check the rise in the cost of Government, I have ordered a postponement of pay raises and a 5 percent cut in Government personnel.

Public Papers of Nixon, 1971, p.887

I have ordered a 10 percent cut in foreign economic aid.

Public Papers of Nixon, 1971, p.887

In addition, since the Congress has already delayed action on two of the great initiatives of this Administration, I will ask Congress to amend my proposals to postpone the implementation of revenue sharing for 3 months and welfare reform for 1 year.

Public Papers of Nixon, 1971, p.887–p.888

In this way, I am reordering our budget priorities so as to concentrate more on [p.888] achieving our goal of full employment.

Public Papers of Nixon, 1971, p.888

The second indispensable element of the new prosperity is to stop the rise in the cost of living.

Public Papers of Nixon, 1971, p.888

One of the cruelest legacies of the artificial prosperity produced by war is inflation. Inflation robs every American, every one of you. The 20 million who are retired and living on fixed incomes—they are particularly hard hit. Homemakers find it harder than ever to balance the family budget. And 80 million American wage earners have been on a treadmill. For example, in the 4 war years between 1965 and 1969, your wage increases were completely eaten up by price increases. Your paychecks were higher, but you were no better off.

Public Papers of Nixon, 1971, p.888

We have made progress against the rise in the cost of living. From the high point of 6 percent a year in 1969, the rise in consumer prices has been cut to 4 percent in the first half of 1971. But just as is the case in our fight against unemployment, we can and we must do better than that.

Public Papers of Nixon, 1971, p.888

The time has come for decisive action-action that will break the vicious circle of spiraling prices and costs.

Public Papers of Nixon, 1971, p.888

I am today ordering a freeze on all prices and wages throughout the United States for a period of 90 days. 1 In addition, I call upon corporations to extend the wage-price freeze to all dividends.

1 Executive Order 11615.

Public Papers of Nixon, 1971, p.888

I have today appointed a Cost of Living Council within the Government? I have directed this Council to work with leaders of labor and business to set up the proper mechanism for achieving continued price and wage stability after the 90-day freeze is over.

Public Papers of Nixon, 1971, p.888

Let me emphasize two characteristics of this action: First, it is temporary. To put the strong, vigorous American economy into a permanent straitjacket would lock in unfairness; it would stifle the expansion of our free enterprise system. And second, while the wage-price freeze will be backed by Government sanctions, if necessary, it will not be accompanied by the establishment of a huge price control bureaucracy. I am relying on the voluntary cooperation of all Americans-each one of you: workers, employers, consumers-to make this freeze work.

Public Papers of Nixon, 1971, p.888

Working together, we will break the back of inflation, and we will do it without the mandatory wage and price controls that crush economic and personal freedom.

Public Papers of Nixon, 1971, p.888

The third indispensable element in building the new prosperity is closely related to creating new jobs and halting inflation. We must protect the position of the American dollar as a pillar of monetary stability around the world.

Public Papers of Nixon, 1971, p.888

In the past 7 years, there has been an average of one international monetary crisis every year. Now who gains from these crises? Not the workingman; not the investor; not the real producers of wealth. The gainers are the international money speculators. Because they thrive on crises, they help to create them.

Public Papers of Nixon, 1971, p.888

In recent weeks, the speculators have been waging an all-out war on the American dollar. The strength of a nation's currency is based on the strength of that nation's economy—and the American economy is by far the strongest in the world. Accordingly, I have directed the Secretary of the Treasury to take the action necessary to defend the dollar against the speculators.

Public Papers of Nixon, 1971, p.888–p.889

I have directed Secretary Connally to suspend temporarily the convertibility of the dollar into gold or other reserve assets, [p.889] except in amounts and conditions determined to be in the interest of monetary stability and in the best interests of the United States.

Public Papers of Nixon, 1971, p.889

Now, what is this action—which is very technical—what does it mean for you?

Public Papers of Nixon, 1971, p.889

Let me lay to rest the bugaboo of what is called devaluation.

Public Papers of Nixon, 1971, p.889

If you want to buy a foreign car or take a trip abroad, market conditions may cause your dollar to buy slightly less. But if you are among the overwhelming majority of Americans who buy American-made products in America, your dollar will be worth just as much tomorrow as it is today.

Public Papers of Nixon, 1971, p.889

The effect of this action, in other words, will be to stabilize the dollar.

Public Papers of Nixon, 1971, p.889

Now, this action will not win us any friends among the international money traders. But our primary concern is with the American workers, and with fair competition around the world.

Public Papers of Nixon, 1971, p.889

To our friends abroad, including the many responsible members of the international banking community who are dedicated to stability and the flow of trade, I give this assurance: The United States has always been, and will continue to be, a forward-looking and trustworthy trading partner. In full cooperation with the International Monetary Fund and those who trade with us, we will press for the necessary reforms to set up an urgently needed new international monetary system. Stability and equal treatment is in everybody's best interest. I am determined that the American dollar must never again be a hostage in the hands of international speculators.

Public Papers of Nixon, 1971, p.889

I am taking one further step to protect the dollar, to improve our balance of payments, and to increase jobs for Americans. As a temporary measure, I am today imposing an additional tax of 10 percent on goods imported into the United States.2 This is a better solution for international trade than direct controls on the amount of imports.

Public Papers of Nixon, 1971, p.889

This import tax is a temporary action. It isn't directed against any other country. It is an action to make certain that American products will not be at a disadvantage because of unfair exchange rates. When the unfair treatment is ended, the import tax will end as well.

Public Papers of Nixon, 1971, p.889

As a result of these actions, the product of American labor will be more competitive, and the unfair edge that some of our foreign competition has will be removed. This is a major reason why our trade balance has eroded over the past 15 years.

Public Papers of Nixon, 1971, p.889

At the end of World War II the economies of the major industrial nations of Europe and Asia were shattered. To help them get on their feet and to protect their freedom, the United States has provided over the past 25 years $143 billion in foreign aid. That was the right thing for us to do.

Public Papers of Nixon, 1971, p.889

Today, largely with our help, they have regained their vitality. They have become our strong competitors, and we welcome their success. But now that other nations are economically strong, the time has come for them to bear their fair share of the burden of defending freedom around the world. The time has come for exchange rates to be set straight and for the major nations to compete as equals. There is no longer any need for the United States to compete with one hand tied behind her back.

Public Papers of Nixon, 1971, p.889–p.890

The range of actions I have taken and 2 Proclamation 4074. [p.890] proposed tonight—on the job front, on the inflation front, on the monetary front is the most comprehensive new economic policy to be undertaken in this Nation in four decades.

Public Papers of Nixon, 1971, p.890

We are fortunate to live in a nation with an economic system capable of producing for its people the highest standard of living in the world; a system flexible enough to change its ways dramatically when circumstances call for change; and, most important, a system resourceful enough to produce prosperity with freedom and opportunity unmatched in the history of nations.

Public Papers of Nixon, 1971, p.890

The purposes of the Government actions I have announced tonight are to lay the basis for renewed confidence, to make it possible for us to compete fairly with the rest of the world, to open the door to new prosperity.

Public Papers of Nixon, 1971, p.890

But government, with all of its powers, does not hold the key to the success of a people. That key, my fellow Americans, is in your hands.

Public Papers of Nixon, 1971, p.890

A nation, like a person, has to have a certain inner drive in order to succeed. In economic affairs, that inner drive is called the competitive spirit.

Public Papers of Nixon, 1971, p.890

Every action I have taken tonight is designed to nurture and stimulate that competitive spirit, to help us snap out of the self-doubt, the self-disparagement that saps our energy and erodes our confidence in ourselves.

Public Papers of Nixon, 1971, p.890

Whether this Nation stays number one in the world's economy or resigns itself to second, third, or fourth place; whether we as a people have faith in ourselves, or lose that faith; whether we hold fast to the strength that makes peace and freedom possible in this world, or lose our grip—all that depends on you, on your competitive spirit, your sense of personal destiny, your pride in your country and in yourself.

Public Papers of Nixon, 1971, p.890

We can be certain of this: As the threat of war recedes, the challenge of peaceful competition in the world will greatly increase.

Public Papers of Nixon, 1971, p.890

We welcome competition, because America is at her greatest when she is called on to compete.

Public Papers of Nixon, 1971, p.890

As there always have been in our history, there will be voices urging us to shrink from that challenge of competition, to build a protective wall around ourselves, to crawl into a shell as the rest of the world moves ahead.

Public Papers of Nixon, 1971, p.890

Two hundred years ago a man wrote in his diary these words: "Many thinking people believe America has seen its best days." That was written in 1775, just before the American Revolution—the dawn of the most exciting era in the history of man. And today we hear the echoes of those voices, preaching a gospel of gloom and defeat, saying the same thing: "We have seen our best days."

Public Papers of Nixon, 1971, p.890

I say, let Americans reply: "Our best days lie ahead."

Public Papers of Nixon, 1971, p.890

As we move into a generation of peace, as we blaze the trail toward the new prosperity, I say to every American: Let us raise our spirits. Let us raise our sights. Let all of us contribute all we can to this great and good country that has contributed so much to the progress of mankind.

Public Papers of Nixon, 1971, p.890

Let us invest in our Nation's future, and let us revitalize that faith in ourselves that built a great nation in the past and that will shape the world of the future.

Public Papers of Nixon, 1971, p.890

Thank you and good evening.

Public Papers of Nixon, 1971, p.890–p.891

NOTE: The President spoke at 9 p.m. in the Oval Office at the White House. His address [p.891] was broadcast live on radio and television.

Public Papers of Nixon, 1971, p.891

On the same day, the White House released an advance text of the President's address and the transcript of a news briefing on the new economic policy by John B. Connally, Secretary of the Treasury, George P. Shultz, Director, Office of Management and Budget, and Patti W. McCracken, Chairman, Council of Economic Advisers.

Public Papers of Nixon, 1971, p.891

In Dallas, Tex., on August 19, 1971, Press Secretary Ronald L. Ziegler read a statement about the reaction of the Governor of Texas to the wage-price freeze. It is printed in the Weekly Compilation of Presidential Documents (vol. 7, p. 1204).

Public Papers of Nixon, 1971, p.891

On August 20, the White House released the transcript of a news briefing by Caspar W. Weinberger, Chairman, Regulations and Purchasing Review Board, and Deputy Director, Office of Management and Budget, on the efforts of the Board to insure that the suppliers of Government purchases are in full compliance with the wage-price freeze.

Gillette v. United States, 1971

Title: Gillette v. United States

Author: U.S. Supreme Court

Date: March 8, 1971

Source: 401 U.S. 437

This case was argued December 9, 1970, and was decided March 8, 1971, together with No. 325, Negre v. Larsen et al., on certiorari to the United States Court of Appeals for the Ninth Circuit.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Syllabus

1971, Gillette v. United States, 401 U.S. 437

Petitioner in No. 85, who was convicted for failure to report for induction, and petitioner in No. 325, who sought discharge from the armed forces upon receipt of orders for Vietnam duty, claim exemption from military service because of their conscientious objection to participation in the Vietnam conflict, as an "unjust" war, pursuant to § 6(j) of the Military Selective Service Act of 1967. That section provides that no person shall be subject to

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service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form.

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Petitioners also challenge the constitutionality of § 6(j) as construed to cover only objectors to all war, as violative of the Free Exercise and Establishment of Religion Clauses of the First Amendment.

1971, Gillette v. United States, 401 U.S. 437

Held:

1971, Gillette v. United States, 401 U.S. 437

1. The exemption for those who oppose "participation in war in any form" applies to those who oppose participating in all war and not to those who object to participation in a particular war only, even if the latter objection is religious in character. Pp. 441-448.

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2. Section 6(j) does not violate the Establishment Clause of the First Amendment. Pp. 448-460.

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(a) The section on its face does not discriminate on the basis of religious affiliation or belief, and petitioners have not shown the absence of neutral, secular bases for the exemption. Pp. 450-453.

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(b) The exemption provision focuses on individual conscientious belief and not on sectarian affiliations. P. 454.

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(c) There are valid neutral reasons, with the central emphasis on the maintenance of fairness in the administration of military conscription, for the congressional limitation of the exemption to "war in any form," and therefore § 6(j) cannot be said to reflect a religious preference. Pp. 454-460. [401 U.S. 438]

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3. Section 6(j) does not violate the Free Exercise Clause. It is not designed to interfere with any religious practice and does not penalize any theological position. Any incidental burdens felt by petitioners are justified by the substantial governmental interests relating to military conscription. Pp. 461-462.

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No. 85, 420 F.2d 298, and No. 325, 418 F.2d 908, affirmed.

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MARSHALL, J., delivered the opinion of the Court, in which BURGER, C.J., and HARLAN, BRENNAN, STEWART, WHITE, and BLACKMUN, JJ., joined. BLACK, J., concurred in the judgment and in Part I of the Court's opinion. DOUGLAS, J., filed dissenting opinions, post, p. 463 and p. 470. [401 U.S. 439]

MARSHALL, J., lead opinion

1971, Gillette v. United States, 401 U.S. 439

MR. JUSTICE MARSHALL delivered the opinion of the Court.

1971, Gillette v. United States, 401 U.S. 439

These cases present the question whether conscientious objection to a particular war, rather than objection to war as such, relieves the objector from responsibilities of military training and service. Specifically, we are called upon to decide whether conscientious scruples relating to a particular conflict are within the purview of established provisions 1 relieving conscientious objectors to war from military service. Both petitioners also invoke constitutional principles barring government interference with the exercise of religion and requiring governmental neutrality in matters of religion.

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In No. 85, petitioner Gillette was convicted of willful failure to report for induction into the armed forces. Gillette defended on the ground that he should have been ruled exempt from induction as a conscientious objector to war. In support of his unsuccessful request for classification as a conscientious objector, this petitioner had stated his willingness to participate in a war of national defense or a war sponsored by the United Nations as a peace-keeping measure, but declared his opposition to American military operations in Vietnam, which he characterized as "unjust." Petitioner concluded that he could not, in conscience, enter and serve in the armed forces during the period of the Vietnam conflict. Gillette's view of his duty to abstain from any involvement in a war seen as unjust is, in his words, "based on a humanist approach to religion," and his personal decision concerning military service was guided by fundamental principles of conscience and deeply held views about the purpose and obligation of human existence. [401 U.S. 440]

1971, Gillette v. United States, 401 U.S. 440

The District Court determined that there was a basis in fact, to support administrative denial of exemption in Gillette's case. The denial of exemption was upheld, and Gillette's defense to the criminal charge rejected, not because of doubt about the sincerity or the religious character of petitioner's objection to military service, but because his objection ran to a particular war. In affirming the conviction, the Court of Appeals concluded that Gillette's conscientious beliefs "were specifically directed against the war in Vietnam," while the relevant exemption provision of the Military Selective Service Act of 1967, 50 U.S.C.App. § 456(j) (1964 ed., Supp. V), "requires opposition `to participation in war in any form.'" 420 F.2d 298, 299-300 (CA2 1970).

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In No. 325, petitioner Negre, after induction into the Army, completion of basic training, and receipt of orders for Vietnam duty, commenced proceedings looking to his discharge as a conscientious objector to war. Application for discharge was denied, and Negre sought judicial relief by habeas corpus. The District Court found a basis in fact, for the Army's rejection of petitioner's application for discharge. Habeas relief was denied, and the denial was affirmed on appeal, because, in the language of the Court of Appeals, Negre "objects to the war in Vietnam, not to all wars," and therefore does "not qualify for separation [from the Army], as a conscientious objector." 2 418 F.2d 908, 909-910 (CA9 1969). Again, no question is raised as to the sincerity or the religious quality of this petitioner's views. In line with religious counseling and numerous religious texts, Negre, [401 U.S. 441] a devout Catholic, believes that it is his duty as a faithful Catholic to discriminate between "just" and "unjust" wars, and to forswear participation in the latter. His assessment of the Vietnam conflict as an unjust war became clear in his mind after completion of infantry training, and Negre is now firmly of the view that any personal involvement in that war would contravene his conscience and "all that I had been taught in my religious training."

1971, Gillette v. United States, 401 U.S. 441

We granted certiorari in these cases, 399 U.S. 925 (1970), in order to resolve vital issues concerning the exercise of congressional power to raise and support armies, as affected by the religious guarantees of the First Amendment. We affirm the judgments below in both cases.

I

1971, Gillette v. United States, 401 U.S. 441

Each petitioner claims a nonconstitutional right to be relieved of the duty of military service in virtue of his conscientious scruples. 3 Both claims turn on the proper construction of § 6(j) of the Military Selective Service Act of 1967, 50 U.S.C.App. § 456(j) (1964 ed., Supp. V), which provides:

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Nothing contained in this title…shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. 4 [401 U.S. 442]

1971, Gillette v. United States, 401 U.S. 442

This language controls Gillette's claim to exemption, which was asserted administratively prior to the point of induction. Department of Defense Directive No. 1300.6 (May 10, 1968), prescribes that post-induction claims to conscientious objector status shall be honored, if valid, by the various branches of the armed forces. 5 Section 6(j) of the Act, as construed by the courts, is incorporated by the various service regulations issued pursuant to the Directive, 6 and thus the standards for measuring claims of in service objectors, such as Negre, are the same as the statutory tests applicable in a preinduction situation. [401 U.S. 443]

1971, Gillette v. United States, 401 U.S. 443

For purposes of determining the statutory status of conscientious objection to a particular war, the focal language of § 6(j) is the phrase, "conscientiously opposed to participation in war in any form." This language, on a straightforward reading, can bear but one meaning; that conscientious scruples relating to war and military service must amount to conscientious opposition to participating personally in any war and all war. See Welsh v. United States, 398 U.S. 333, 340, 342 (1970); id. at 347, 357 (concurring in result). See also United States v. Kauten, 133 F.2d 703, 707 (CA2 1943). It matters little for present purposes whether the words, "in any form," are read to modify "war" or "participation." On the first reading, conscientious scruples must implicate "war in any form," and an objection involving a particular war, rather than all war, would plainly not be covered by § 6(j). On the other reading, an objector must oppose "participation in war." It would strain good sense to read this phrase otherwise than to mean "participation in all war." For the word "war" would still be used in an unqualified, generic sense, meaning war as such. Thus, however the statutory clause be parsed, it remains that conscientious objection must run to war in any form. 7

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A different result cannot be supported by reliance on the materials of legislative history. 8 Petitioners and [401 U.S. 444] amici point to no episode or pronouncement in the legislative history of § 6(j), or of predecessor provisions, that tends to overthrow the obvious interpretation of the words themselves. 9 [401 U.S. 445]

1971, Gillette v. United States, 401 U.S. 445

It is true that the legislative materials reveal a deep concern for the situation of conscientious objectors to war, who, absent special status, would be put to a hard choice between contravening imperatives of religion and conscience or suffering penalties. Moreover, there are clear indications that congressional reluctance to impose such a choice stems from a recognition of the value of conscientious action to the democratic community at large, and from respect for the general proposition that fundamental principles of conscience and religious duty may sometimes override the demands of the secular state. See United States v. Seeger, 380 U.S. 163, 170-172 (1965); United States v. Macintosh, 283 U.S. 605, 631-634 (1931) (dissenting opinion). See generally Selective Service System Monograph No. 11, Conscientious Objection (1950). But there are countervailing considerations, which are also the concern of Congress, 10 and the legislative materials simply do not support the view that Congress intended to recognize any conscientious claim whatever as a basis for relieving the claimant from the general responsibility or the various incidents of military service. The claim that is recognized by § 6(j) is a [401 U.S. 446] claim of conscience running against war as such. This claim, not one involving opposition to a particular war only, was plainly the focus of congressional concern.

1971, Gillette v. United States, 401 U.S. 446

Finding little comfort in the wording or the legislative history of § 6(j), petitioners rely heavily on dicta in the decisional law dealing with objectors whose conscientious scruples ran against war as such, but who indicated certain reservations of an abstract nature. It is instructive that none of the cases relied upon embraces an interpretation of § 6(j) at variance with the construction we adopt today. 11

1971, Gillette v. United States, 401 U.S. 446

Sicurella v. United States, 348 U.S. 385 (1955), presented the only previous occasion for this Court to focus on the "participation in war in any form" language of § 6(j). In Sicurella, a Jehovah's Witness who opposed participation in secular wars was held to possess the requisite conscientious scruples concerning war, although he was not opposed to participation in a "theocratic war" commanded by Jehovah. The Court noted that the "theocratic war" reservation was highly abstract—no such war had occurred since biblical times, and none was contemplated. Congress, on the other hand, had in mind "real shooting wars," id. at 391, and Sicurella's abstract reservations did not undercut his conscientious opposition to participating in such wars. Plainly, Sicurella cannot be read to support the claims of those, like petitioners, [401 U.S. 447] who, for a variety of reasons, consider one particular "real shooting war" to be unjust, and therefore oppose participation in that war. 12

1971, Gillette v. United States, 401 U.S. 447

It should be emphasized that our cases explicating the "religious training and belief" clause of § 6(j), or cognate clauses of predecessor provisions, are not relevant to the present issue. The question here is not whether these petitioners' beliefs concerning war are "religious" in nature. Thus, petitioners' reliance on United States v. Seeger, 380 U.S. 163, and Welsh v. United States, 398 U.S. 333, is misplaced. Nor do we decide that conscientious objection to a particular war necessarily falls within § 6(j)'s expressly excluded class 13 of "essentially political, sociological, or philosophical views, or a merely personal moral code." Rather, we hold that Congress intended to exempt persons who oppose participating in all war—"participation in war in any form"—and that persons who object solely to participation in a particular war are not within the purview of the exempting section, even though the latter objection may have such roots in a claimant's conscience and personality that it is "religious" in character.

1971, Gillette v. United States, 401 U.S. 447

A further word may be said to clarify our statutory holding. Apart from abstract theological reservations, two other sorts of reservations concerning use of force have been thought by lower courts not to defeat a conscientious [401 U.S. 448] objector claim. Willingness to use force in self-defense, in defense of home and family, or in defense against immediate acts of aggressive violence toward other persons in the community, has not been regarded as inconsistent with a claim of conscientious objection to war as such. See, e.g., United States v. Haughton, 413 F.2d 736, 740-742 (CA9 1969); United States v. Carroll, 398 F.2d 651, 655 (CA3 1968). But surely willingness to use force defensively in the personal situations mentioned is quite different from willingness to fight in some wars, but not in others. Cf. Sicurella v. United States, 348 U.S. at 389. Somewhat more apposite to the instant situation are cases dealing with persons who oppose participating in all wars, but cannot say with complete certainty that their present convictions and existing state of mind are unalterable. See, e.g., United States v. Owen, 415 F.2d 383, 390 (CA8 1969). Unwillingness to deny the possibility of a change of mind, in some hypothetical future circumstances, may be no more than humble good sense, casting no doubt on the claimant's present sincerity of belief. At any rate, there is an obvious difference between present sincere objection to all war and present opposition to participation in a particular conflict only.

II

1971, Gillette v. United States, 401 U.S. 448

Both petitioners argue that § 6(j), construed to cover only objectors to all war, violates the religious clauses of the First Amendment. The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…. " Petitioners contend that Congress interferes with free exercise of religion by failing to relieve objectors to a particular war from military service when the objection is religious or conscientious in nature. While the two religious clauses—pertaining to "free exercise" and [401 U.S. 449] "establishment" of religion—overlap and interact in many ways, see Abington School District v. Schempp, 374 U.S. 203, 222-223 (1963); Freund, Public Aid To Parochial Schools, 82 Harv.L.Rev. 1680, 1684 (1969), it is best to focus first on petitioners' other contention, that § 6(j) is a law respecting the establishment of religion. For, despite free exercise overtones, the gist of the constitutional complaint is that § 6(j) impermissibly discriminates among types of religious belief and affiliation. 14

1971, Gillette v. United States, 401 U.S. 449

On the assumption that these petitioners' beliefs concerning war have roots that are "religious" in nature, within the meaning of the Amendment as well as this Court's decisions construing § 6(j), petitioners ask how their claims to relief from military service can be permitted to fail, while other "religious" claims are upheld by the Act. It is a fact that § 6(j), properly construed, has this effect. Yet we cannot conclude in mechanical fashion, or at all, that the section works an establishment of religion.

1971, Gillette v. United States, 401 U.S. 449

An attack founded on disparate treatment of "religious" claims invokes what is perhaps the central purpose of the Establishment Clause—the purpose of ensuring governmental neutrality in matters of religion. See Epperson v. Arkansas, 393 U.S. 97, 103-104 (1968); Everson v. Board of Education, 330 U.S. 1, 116 (1947). Here [401 U.S. 450] there is no claim that exempting conscientious objectors to war amounts to an overreaching of secular purposes and an undue involvement of government in affairs of religion. Cf. Walz v. Tax Commission, 397 U.S. 664, 675 (1970); id. at 695 (opinion of HARLAN, J.). To the contrary, petitioners ask for greater "entanglement" by judicial expansion of the exemption to cover objectors to particular wars. Necessarily, the constitutional value at issue is "neutrality." And, as a general matter, it is surely true that the Establishment Clause prohibits government from abandoning secular purposes in order to put an imprimatur on one religion, or on religion as such, or to favor the adherents of any sect or religious organization. See Engel v. Vitale, 370 U.S. 421, 430-431 (1962); Torcaso v. Watkins, 367 U.S. 488, 495 (1961). The metaphor of a "wall" or impassable barrier between Church and State, taken too literally, may mislead constitutional analysis, see Walz v. Tax Commission, supra, at 668-669; Zorach v. Clauson, 343 U.S. 306, 312-313 (1952), but the Establishment Clause stands at least for the proposition that, when government activities touch on the religious sphere, they must be secular in purpose, evenhanded in operation, and neutral in primary impact. Abington School District v. Schempp, 374 U.S. at 222; id. at 231 (BRENNAN, J., concurring); id. at 305 (Goldberg, J., concurring).

A

1971, Gillette v. United States, 401 U.S. 450

The critical weakness of petitioners' establishment claim arises from the fact that § 6(j), on its face, simply does not discriminate on the basis of religious affiliation or religious belief, apart, of course, from beliefs concerning war. The section says that anyone who is conscientiously opposed to all war shall be relieved of military service. The specified objection must have a grounding in "religious training and belief," but no particular [401 U.S. 451] sectarian affiliation or theological position is required. The Draft Act of 1917, § 4, 40 Stat. 78, extended relief only to those conscientious objectors affiliated with some "well-recognized religious sect or organization" whose principles forbade members' participation in war, but the attempt to focus on particular sects apparently broke down in administrative practice, Welsh v. United States, 398 U.S. at 367 n.19 (concurring in result), and the 1940 Selective Training and Service Act, § 5(g), 54 Stat. 889, discarded all sectarian restriction. 15 Thereafter, Congress has framed the conscientious objector exemption in broad terms compatible with "its long-established policy of not picking and choosing among religious beliefs." United States v. Seeger, 380 U.S. at 175.

1971, Gillette v. United States, 401 U.S. 451

Thus, there is no occasion to consider the claim that, when Congress grants a benefit expressly to adherents of one religion, courts must either nullify the grant or somehow extend the benefit to cover all religions. For § 6(j) does not single out any religious organization or religious creed for special treatment. Rather, petitioners' contention is that, since Congress has recognized one sort of conscientious objection concerning war, whatever its religious basis, the Establishment Clause commands that another, different objection be carved out and protected by the courts. 16

1971, Gillette v. United States, 401 U.S. 451

Properly phrased, petitioners' contention is that the special statutory status accorded conscientious objection to all war, but not objection to a particular war, works [401 U.S. 452] a de facto discrimination among religions. This happens, say petitioners, because some religious faiths themselves distinguish between personal participation in "just" and in "unjust" wars, commending the former and forbidding the latter, and therefore adherents of some religious faiths—and individuals whose personal beliefs of a religious nature include the distinction—cannot object to all wars consistently with what is regarded as the true imperative of conscience. Of course, this contention of de facto religious discrimination, rendering § 6(j) fatally underinclusive, cannot simply be brushed aside. The question of governmental neutrality is not concluded by the observation that § 6(j), on its face, makes no discrimination between religions, for the Establishment Clause forbids subtle departures from neutrality, "religious gerrymanders," as well as obvious abuses. Walz v. Tax Commission, 397 U.S. at 696 (opinion of HARLAN, J.). See also Braunfeld v. Brown, 366 U.S. 599, 607 (1961) (opinion of Warren, C.J.); Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 213, 232 (1948) (opinion of Frankfurter, J.). Still a claimant alleging "gerrymander" must be able to show the absence of a neutral, secular basis for the lines government has drawn. See Epperson v. Arkansas, 393 U.S. at 107-109; Board of Education v. Allen, 392 U.S. 236, 248 (1968); McGowan v. Maryland, 366 U.S. 420, 442-444 (1961); id. at 468 (separate opinion of Frankfurter, J.). For the reasons that follow, we believe that petitioners have failed to make the requisite showing with respect to § 6(j).

1971, Gillette v. United States, 401 U.S. 452

Section 6(j) serves a number of valid purposes having nothing to do with a design to foster or favor any sect, religion, or cluster of religions. 17 There are considerations [401 U.S. 453] of a pragmatic nature, such as the hopelessness of converting a sincere conscientious objector into an effective fighting man, Welsh v. United States, 398 U.S. at 369 (WHITE, J., dissenting), but no doubt the section reflects as well the view that, "in the forum of conscience, duty to a moral power higher than the State has always been maintained." United States v. Macintosh, 283 U.S. 605, 633 (1931) (Hughes, C.J., dissenting). See United States v. Seeger, 380 U.S. at 170-172. We have noted that the legislative materials show congressional concern for the hard choice that conscription would impose on conscientious objectors to war, as well as respect for the value of conscientious action and for the principle of supremacy of conscience. 18

1971, Gillette v. United States, 401 U.S. 453

Naturally the considerations just mentioned are affirmative in character, going to support the existence of an exemption, rather than its restriction specifically to persons who object to all war. The point is that these affirmative purposes are neutral in the sense of the Establishment Clause. Quite apart from the question whether the Free Exercise Clause might require some sort of exemption, 19 it is hardly impermissible for Congress to attempt to accommodate free exercise values, in line with "our happy tradition" of "avoiding unnecessary clashes with the dictates of conscience." United States v. Macintosh, supra, at 634 (Hughes, C.J., dissenting). See Abington School District v. Schempp, 374 U.S. at 294-299 (BRENNAN, J., concurring); id. at 306 (Goldberg, J., concurring); id. at 309 (STEWART, J., dissenting). [401 U.S. 454] See also Welsh v. United States, 398 U.S. at 370-373 (WHITE, J., dissenting). "Neutrality" in matters of religion is not inconsistent with "benevolence" by way of exemptions from onerous duties, Walz v. Tax Commission, 397 U.S. at 669, so long as an exemption is tailored broadly enough that it reflects valid secular purposes. In the draft area, for 30 years the exempting provision has focused on individual conscientious belief, not on sectarian affiliation. The relevant individual belief is simply objection to all war, not adherence to any extraneous theological viewpoint. And while the objection must have roots in conscience and personality that are "religious" in nature, this requirement has never been construed to elevate conventional piety or religiosity of any kind above the imperatives of a personal faith.

1971, Gillette v. United States, 401 U.S. 454

In this state of affairs, it is impossible to say that § 6(j) intrudes upon "voluntarism" in religious life, see id. at 694-696 (opinion of HARLAN, J.), or that the congressional purpose in enacting § 6(j) is to promote or foster those religious organizations that traditionally have taught the duty to abstain from participation in any war. A claimant, seeking judicial protection for his own conscientious beliefs, would be hard put to argue that § 6(j) encourages membership in putatively "favored" religious organizations, for the painful dilemma of the sincere conscientious objector arises precisely because he feels himself bound in conscience not to compromise his beliefs or affiliations.

B

1971, Gillette v. United States, 401 U.S. 454

We conclude not only that the affirmative purposes underlying § 6(j) are neutral and secular, but also that valid neutral reasons exist for limiting the exemption to objectors to all war, and that the section therefore cannot be said to reflect a religious preference. [401 U.S. 455]

1971, Gillette v. United States, 401 U.S. 455

Apart from the Government's need for manpower, perhaps the central interest involved in the administration of conscription laws is the interest in maintaining a fair system for determining "who serves when not all serve." 20 When the Government exacts so much, the importance of fair, evenhanded, and uniform decisionmaking is obviously intensified. The Government argues that the interest in fairness would be jeopardized by expansion of § 6(j) to include conscientious objection to a particular war. The contention is that the claim to relief on account of such objection is intrinsically a claim of uncertain dimensions, and that granting the claim in theory would involve a real danger of erratic or even discriminatory decisionmaking in administrative practice.

1971, Gillette v. United States, 401 U.S. 455

A virtually limitless variety of beliefs are subsumable under the rubric, "objection to a particular war." 21 All the factors that might go into nonconscientious dissent from policy also might appear as the concrete basis of an objection that has roots as well in conscience and religion. Indeed, over the realm of possible situations, opposition to a particular war may more likely be political and nonconscientious than otherwise. See United States v. Kauten, 133 F.2d at 708. The difficulties of sorting [401 U.S. 456] the two with a sure hand are considerable. Moreover, the belief that a particular war at a particular time is unjust is, by its nature, changeable and subject to nullification by changing events. Since objection may fasten on any of an enormous number of variables, the claim is ultimately subjective, depending on the claimant's view of the facts in relation to his judgment that a given factor or congeries of factors colors the character of the war as a whole. In short, it is not at all obvious in theory what sorts of objections should be deemed sufficient to excuse an objector, and there is considerable force in the Government's contention that a program of excusing objectors to particular wars may be "impossible to conduct with any hope of reaching fair and consistent results…. " Brief 28.

1971, Gillette v. United States, 401 U.S. 456

For their part, petitioners make no attempt to provide a careful definition of the claim to exemption that they ask the courts to carve out and protect. They do not explain why objection to a particular conflict—much less an objection that focuses on a particular facet of a conflict—should excuse the objector from all military service whatever, even from military operations that are connected with the conflict at hand in remote or tenuous ways. 22 They suggest no solution to the problems arising from the fact that altered circumstances may quickly render the objection to military service moot.

1971, Gillette v. United States, 401 U.S. 456

To view the problem of fairness and evenhanded decisionmaking, in the present context, as merely a commonplace chore of weeding out "spurious claims" is to minimize substantial difficulties of real concern to a responsible legislative body. For example, under the petitioners' unarticulated scheme for exemption, an objector's claim to exemption might be based on some feature of a current conflict that most would regard as incidental, [401 U.S. 457] or might be predicated on a view of the facts that most would regard as mistaken. The particular complaint about the war may itself be "sincere," but it is difficult to know how to judge the "sincerity" of the objector's conclusion that the war in toto is unjust, and that any personal involvement would contravene conscience and religion. To be sure, we have ruled, in connection with § 6(j), that "the `truth' of a belief is not open to question"; rather, the question is whether the objector's beliefs are "truly held." United States v. Seeger, 380 U.S. at 185. See also United States v. Ballard, 322 U.S. 78 (1944). But we must also recognize that "sincerity" is a concept that can bear only so much adjudicative weight.

1971, Gillette v. United States, 401 U.S. 457

Ours is a Nation of enormous heterogeneity in respect of political views, moral codes, and religious persuasions. It does not bespeak an establishing of religion for Congress to forgo the enterprise of distinguishing those whose dissent has some conscientious basis from those who simply dissent. There is a danger that, as between two would-be objectors, both having the same complaint against a war, that objector would succeed who is more articulate, better educated, or better counseled. There is even a danger of unintended religious discrimination—a danger that a claim's chances of success would be greater the more familiar or salient the claim's connection with conventional religiosity could be made to appear. At any rate, it is true that "the more discriminating and complicated the basis of classification for an exemption—even a neutral one—the greater the potential for state involvement" in determining the character of persons' beliefs and affiliations, thus "entangl[ing] government in difficult classifications of what is or is not religious," or what is or is not conscientious. Walz v. Tax Commission, 397 U.S. at 698-699 (opinion of [401 U.S. 458] HARLAN, J.). Cf. Presbyterian Church v. Mary Elizabeth Blue Hull Church, 393 U.S. 440 (1969). While the danger of erratic decisionmaking unfortunately exists in any system of conscription that takes individual differences into account, no doubt the dangers would be enhanced if a conscientious objection of indeterminate scope were honored in theory.

1971, Gillette v. United States, 401 U.S. 458

In addition to the interest in fairness, the Government contends that neutral, secular reasons for the line drawn by § 6(j)—between objection to all war and objection to a particular war—may be found in the nature of the conscientious claim that these petitioners assert. Opposition to a particular war, states the Government's brief, necessarily involves a judgment "that is political and particular," one "based on the same political, sociological and economic factors that the government necessarily considered" in deciding to engage in a particular conflict. Brief 226. Taken in a narrow sense, these considerations do not justify the distinction at issue, for however "political and particular" the judgment underlying objection to a particular war, the objection still might be rooted in religion and conscience, and although the factors underlying that objection were considered and rejected in the process of democratic decisionmaking, likewise the viewpoint of an objector to all war was no doubt considered, and "necessarily" rejected as well. Nonetheless, it can be seen on a closer view that this line of analysis, conjoined with concern for fairness, does support the statutory distinction.

1971, Gillette v. United States, 401 U.S. 458

Tacit at least in the Government's view of the instant cases is the contention that the limits of § 6(j) serve an overriding interest in protecting the integrity of democratic decisionmaking against claims to individual noncompliance. Despite emphasis on claims that have a "political and particular" component, the logic of the [401 U.S. 459] contention is sweeping. Thus, the "interest" invoked is highly problematical, for it would seem to justify governmental refusal to accord any breathing space whatever to noncompliant conduct inspired by imperatives of religion and conscience.

1971, Gillette v. United States, 401 U.S. 459

On the other hand, some have perceived a danger that exempting persons who dissent from a particular war, albeit on grounds of conscience and religion in part, would "open the doors to a general theory of selective disobedience to law" and jeopardize the binding quality of democratic decisions. Report of the National Advisory Commission on Selective Service, In Pursuit of Equity: Who Serves When Not All Serve? 50 (1967). See also Hamilton v. Regents, 293 U.S. 245, 268 (1934) (Cardozo, J., concurring). Other fields of legal obligation aside, it is undoubted that the nature of conscription, much less war itself, requires the personal desires and perhaps the dissenting views of those who must serve to be subordinated in some degree to the pursuit of public purposes. It is also true that opposition to a particular war does depend, inter alia, upon particularistic factual beliefs and policy assessments, beliefs and assessments that presumably were overridden by the government that decides to commit lives and resources to a trial of arms. Further, it is not unreasonable to suppose that some persons who are not prepared to assert a conscientious objection, and instead accept the hardships and risks of military service, may well agree at all points with the objector, yet conclude, as a matter of conscience, that they are personally bound by the decision of the democratic process. The fear of the National Advisory Commission on Selective Service, apparently, is that exemption of objectors to particular wars would weaken the resolve of those who otherwise would feel themselves bound to serve despite personal cost, uneasiness at the [401 U.S. 460] prospect of violence, or even serious moral reservations or policy objections concerning the particular conflict.

1971, Gillette v. United States, 401 U.S. 460

We need not and do not adopt the view that a categorical, global "interest" in stifling individualistic claims to noncompliance, in respect of duties generally exacted, is the neutral and secular basis of § 6(j). As is shown by the long history of the very provision under discussion, it is not inconsistent with orderly democratic government for individuals to be exempted by law, on account of special characteristics, from general duties of a burdensome nature. But real dangers—dangers of the kind feared by the Commission—might arise if an exemption were made available that, in its nature could not be administered fairly and uniformly over the run of relevant fact situations. Should it be thought that those who go to war are chosen unfairly or capriciously, then a mood of bitterness and cynicism might corrode the spirit of public service and the values of willing performance of a citizen's duties that are the very heart of free government. In short, the considerations mentioned in the previous paragraph, when seen in conjunction with the central problem of fairness, are without question properly cognizable by Congress. In light of these valid concerns, we conclude that it is supportable for Congress to have decided that the objector to all war—to all killing in war—has a claim that is distinct enough and intense enough to justify special status, while the objector to a particular war does not.

1971, Gillette v. United States, 401 U.S. 460

Of course, we do not suggest that Congress would have acted irrationally or unreasonably had it decided to exempt those who object to particular wars. Our analysis of the policies of § 6(j) is undertaken in order to determine the existence vel non of a neutral, secular justification for the lines Congress has drawn. We find that justifying reasons exist, and therefore hold that the Establishment Clause is not violated. [401 U.S. 461]

III

1971, Gillette v. United States, 401 U.S. 461

Petitioners' remaining contention is that Congress interferes with the free exercise of religion by conscripting persons who oppose a particular war on grounds of conscience and religion. Strictly viewed, this complaint does not implicate problems of comparative treatment of different sorts of objectors, but rather may be examined in some isolation from the circumstance that Congress has chosen to exempt those who conscientiously object to all war. 23 And our holding that § 6(j) comports with the Establishment Clause does not automatically settle the present issue. For despite a general harmony of purpose between the two religious clauses of the First Amendment, the Free Exercise Clause no doubt has a reach of its own. Abington School District v. Schempp, 374 U.S. at 222-223.

1971, Gillette v. United States, 401 U.S. 461

Nonetheless, our analysis of § 6(j) for Establishment Clause purposes has revealed governmental interests of a kind and weight sufficient to justify under the Free Exercise Clause the impact of the conscription laws on those who object to particular wars.

1971, Gillette v. United States, 401 U.S. 461

Our cases do not, at their farthest reach, support the proposition that a stance of conscientious opposition relieves an objector from any colliding duty fixed by a democratic government. See Cantwell v. Connecticut, [401 U.S. 462] 310 U.S. 296, 303-304 (1940); Jacobson v. Massachusetts, 197 U.S. 11, 29 (1905); cf. Cleveland v. United States, 329 U.S. 14, 20 (1946). To be sure, the Free Exercise Clause bars "governmental regulation of religious beliefs as such," Sherbert v. Verner, 374 U.S. 398, 402 (1963), or interference with the dissemination of religious ideas. See Fowler v. Rhode Island, 345 U.S. 67 (1953); Follett v. McCormick, 321 U.S. 573 (1944); Murdock v. Pennsylvania, 319 U.S. 105 (1943). It prohibits misuse of secular governmental programs

1971, Gillette v. United States, 401 U.S. 462

to impede the observance of one or all religions or…to discriminate invidiously between religions,…even though the burden may be characterized as being only indirect.

1971, Gillette v. United States, 401 U.S. 462

Braunfeld v. Brown, 366 U.S. at 607 (opinion of Warren, C.J.). And even as to neutral prohibitory or regulatory laws having secular aims, the Free Exercise Clause may condemn certain applications clashing with imperatives of religion and conscience, when the burden on First Amendment values is not justifiable in terms of the Government's valid aims. See id.; Sherbert v. Verner, supra. See generally Clark, Guidelines for the Free Exercise Clause, 83 Harv.L.Rev. 327 (1969). However, the impact of conscription on objectors to particular wars is far from unjustified. The conscription laws, applied to such persons as to others, are not designed to interfere with any religious ritual or practice, and do not work a penalty against any theological position. The incidental burdens felt by persons in petitioners' position are strictly justified by substantial governmental interests that relate directly to the very impacts questioned. And, more broadly, of course, there is the Government's interest in procuring the manpower necessary for military purposes, pursuant to the constitutional grant of power to Congress to raise and support armies. Art. I, § 8. [401 U.S. 463]

1971, Gillette v. United States, 401 U.S. 463

Since petitioners' statutory and constitutional claims to relief from military service are without merit, it follows that, in Gillette's case (No. 85), there was a basis in fact to support administrative denial of exemption, and that, in Negre's case (No. 325), there was a basis in fact to support the Army's denial of a discharge. Accordingly, the judgments below are

1971, Gillette v. United States, 401 U.S. 463

Affirmed.

1971, Gillette v. United States, 401 U.S. 463

MR. JUSTICE BLACK concurs in the Court's judgment and in Part I of the opinion of the Court.

DOUGLAS, J., dissenting

1971, Gillette v. United States, 401 U.S. 463

MR. JUSTICE DOUGLAS, dissenting in No. 85.\*

1971, Gillette v. United States, 401 U.S. 463

Gillette's objection is to combat service in the Vietnam war, not to wars in general, and the basis of his objection is his conscience. His objection does not put him into the statutory exemption which extends to one "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." 1

1971, Gillette v. United States, 401 U.S. 463

He stated his views as follows:

1971, Gillette v. United States, 401 U.S. 463

I object to any assignment in the United States Armed Forces while this unnecessary and unjust war is being waged, on the grounds of religious belief specifically "Humanism." This essentially means respect and love for man, faith in his inherent goodness and perfectability, and confidence in his capability to improve some of the pains of the human condition.

1971, Gillette v. United States, 401 U.S. 463

This position is substantially the same as that of Sisson in United States v. Sisson, 297 F.Supp. 902, appeal [401 U.S. 464] dismissed, 399 U.S. 267, where the District Court summarized the draftee's position as follows:

1971, Gillette v. United States, 401 U.S. 464

Sisson's table of ultimate values is moral and ethical. It reflects quite as real, pervasive, durable, and commendable a marshalling of priorities as a formal religion. It is just as much a residue of culture, early training, and beliefs shared by companions and family. What another derives from the discipline of a church, Sisson derives from the discipline of conscience.

1971, Gillette v. United States, 401 U.S. 464

297 F.Supp. at 905.

1971, Gillette v. United States, 401 U.S. 464

There is no doubt that the views of Gillette are sincere, genuine, and profound. The District Court in the present case faced squarely the issue presented in Sisson, and, being unable to distinguish the case on the facts, refused to follow Sisson.

1971, Gillette v. United States, 401 U.S. 464

The question, can a conscientious objector, whether his objection be rooted in "religion" or in moral values, be required to kill? has never been answered by the Court. 2 Hamilton v. Regents, 293 U.S. 245, did no more than hold that the Fourteenth Amendment did not require a State to make its university available to one who would not take military training. United States v. Macintosh, 283 U.S. 605, denied naturalization to a person who "would not promise in advance to bear arms in defense of the United States unless he believed the war to be morally justified." Id. at 613. The question of compelling a man to kill against his conscience was not squarely involved. Most of the talk in the majority opinion concerned "serving in the armed forces of the [401 U.S. 465] Nation in time of war." Id. at 623. Such service can, of course, take place in noncombatant roles. The ruling was that such service is "dependent upon the will of Congress, and not upon the scruples of the individual, except as Congress provides." Ibid. The dicta of the Court in the Macintosh case squint towards the denial of Gillette's claim, though, as I have said, the issue was not squarely presented.

1971, Gillette v. United States, 401 U.S. 465

Yet if dicta are to be our guide, my choice is the dicta of Chief Justice Hughes, who, dissenting in Macintosh, spoke as well for Justices Holmes, Brandeis, and Stone:

1971, Gillette v. United States, 401 U.S. 465

Nor is there ground, in my opinion, for the exclusion of Professor Macintosh because his conscientious scruples have particular reference to wars believed to be unjust. There is nothing new in such an attitude. Among the most eminent statesmen here and abroad have been those who condemned the action of their country in entering into wars they thought to be unjustified. Agreements for the renunciation of war presuppose a preponderant public sentiment against wars of aggression. If, while recognizing the power of Congress, the mere holding of religious or conscientious scruples against all wars should not disqualify a citizen from holding office in this country, or an applicant otherwise qualified from being admitted to citizenship, there would seem to be no reason why a reservation of religious or conscientious objection to participation in wars believed to be unjust should constitute such a disqualification.

1971, Gillette v. United States, 401 U.S. 465

Id. at 635.

1971, Gillette v. United States, 401 U.S. 465

I think the Hughes view is the constitutional view. It is true that the First Amendment speaks of the free exercise of religion, not of the free exercise of conscience or belief. Yet conscience and belief are the main ingredients of First Amendment rights. They are the [401 U.S. 466] bedrock of free speech, as well as religion. The implied First Amendment right of "conscience" is certainly as high as the "right of association" which we recognized in Shelton v. Tucker, 364 U.S. 479, and NAACP v. Alabama, 357 U.S. 449. Some, indeed, have thought it higher. 3

1971, Gillette v. United States, 401 U.S. 466

Conscience is often the echo of religious faith. But, as this case illustrates, it may also be the product of travail, meditation, or sudden revelation related to a moral comprehension of the dimensions of a problem, not to a religion in the ordinary sense.

1971, Gillette v. United States, 401 U.S. 466

Tolstoy 4 wrote of a man, one Van der Veer,

1971, Gillette v. United States, 401 U.S. 466

who, as he himself says, is not a Christian, and who refuses military service not from religious motives, but from motives of the simplest kind, motives intelligible and common to all men, of whatever religion or nation, whether Catholic, Mohammedan, Buddhist, Confucian, whether Spaniards or Japanese.

1971, Gillette v. United States, 401 U.S. 466

Van der Veer refuses military service not because he follows the commandment, "Thou shalt do no murder," not because he is a Christian, but because he holds murder to be opposed to human nature. [401 U.S. 467]

1971, Gillette v. United States, 401 U.S. 467

Tolstoy 5 goes on to say:

1971, Gillette v. United States, 401 U.S. 467

Van der Veer says he is not a Christian. But the motives of his refusal and action are Christian. He refuses because he does not wish to kill a brother man; he does not obey, because the commands of his conscience are more binding upon him than the commands of men…. Thereby he shows that Christianity is not a sect or creed which some may profess and others reject, but that it is naught else than a life's following of that light of reason which illumines all men….

1971, Gillette v. United States, 401 U.S. 467

Those men who now behave rightly and reasonably do so not because they follow prescriptions of Christ, but because that line of action which was pointed out eighteen hundred years ago has now become identified with human conscience.

1971, Gillette v. United States, 401 U.S. 467

The "sphere of intellect and spirit," as we described the domain of the First Amendment in West Virginia Board of Education v. Barnette, 319 U.S. 624, 642, was recognized in United States v. Seeger, 380 U.S. 163, where we gave a broad construction to the statutory exemption of those who, by their religious training or belief, are conscientiously opposed to participation in war in any form. We said:

1971, Gillette v. United States, 401 U.S. 467

A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by [401 U.S. 468] the God of those admittedly qualifying for the exemption comes within the statutory definition.

1971, Gillette v. United States, 401 U.S. 468

Id. at 176. 6

1971, Gillette v. United States, 401 U.S. 468

Seeger does not answer the present question, as Gillette is not "opposed to participation in war in any form."

1971, Gillette v. United States, 401 U.S. 468

But the constitutional infirmity in the present Act seems obvious once "conscience" is the guide. As Chief Justice Hughes said in the Macintosh case:

1971, Gillette v. United States, 401 U.S. 468

But, in the forum of conscience, duty to a moral power higher than the State has always been maintained. The reservation of that supreme obligation, as a matter of principle, would unquestionably be made by many of our conscientious and law-abiding citizens. The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation.

1971, Gillette v. United States, 401 U.S. 468

283 U.S. at 633-634.

1971, Gillette v. United States, 401 U.S. 468

The law as written is a species of those which show an invidious discrimination in favor of religious persons and against others with like scruples. MR. JUSTICE BLACK once said:

1971, Gillette v. United States, 401 U.S. 468

The First Amendment has lost much if the religious follower and the atheist 7 are no longer to be [401 U.S. 469] judicially regarded as entitled to equal justice under law.

1971, Gillette v. United States, 401 U.S. 469

Zorach v. Clauson, 343 U.S. 306, 320 (dissenting). We said as much in our recent decision in Epperson v. Arkansas, 393 U.S. 97, where we struck down as unconstitutional a state law prohibiting the teaching of the doctrine of evolution in the public schools:

1971, Gillette v. United States, 401 U.S. 469

Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of "no religion;" and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.

1971, Gillette v. United States, 401 U.S. 469

Id. at 103-104.

1971, Gillette v. United States, 401 U.S. 469

While there is no Equal Protection Clause in the Fifth Amendment, our decisions are clear that invidious classifications violate due process. Bolling v. Sharpe, 347 U.S. 497, 500, held that segregation by race in the public schools was an invidious discrimination, and Schneider v. Rusk, 377 U.S. 163, 168-169, reached the same result based on penalties imposed on naturalized, not native-born, citizens. A classification of "conscience" based on a "religion" and a "conscience" based on more generalized, philosophical grounds is equally invidious by reason of our First Amendment standards.

1971, Gillette v. United States, 401 U.S. 469

I had assumed that the welfare of the single human soul was the ultimate test of the vitality of the First Amendment.

1971, Gillette v. United States, 401 U.S. 469

This is an appropriate occasion to give content to our dictum in Board of Education v. Barnette, supra, at 642:

1971, Gillette v. United States, 401 U.S. 469

[F]reedom to differ is not limited to things that do not matter much…. The test of its substance [401 U.S. 470] is the right to differ as to things that touch the heart of the existing order.

1971, Gillette v. United States, 401 U.S. 470

I would reverse this judgment.

DOUGLAS, J., dissenting

1971, Gillette v. United States, 401 U.S. 470

MR. JUSTICE DOUGLAS, dissenting in No. 325, Negre v. Larsen.

1971, Gillette v. United States, 401 U.S. 470

I approach the facts of this case with some diffidence, as they involve doctrines of the Catholic Church, in which I was not raised. But we have on one of petitioner's briefs an authoritative lay Catholic scholar, Dr. John T. Noonan, Jr., and, from that brief, I deduce the following:

1971, Gillette v. United States, 401 U.S. 470

Under the doctrines of the Catholic Church, a person has a moral duty to take part in wars declared by his government so long as they comply with the tests of his church for just wars. 1 Conversely, a Catholic has a moral duty not to participate in unjust wars. 2 [401 U.S. 471]

1971, Gillette v. United States, 401 U.S. 471

The Fifth Commandment, "Thou shall not kill," provides a basis for the distinction between just and unjust wars. In the 16th century, Francisco Victoria, Dominican master of the University of Salamanca and pioneer in international law, elaborated on the distinction.

1971, Gillette v. United States, 401 U.S. 471

If a subject is convinced of the injustice of a war, he ought not to serve in it, even on the command of his prince. This is clear, for no one can authorize the killing of an innocent person.

1971, Gillette v. United States, 401 U.S. 471

He realized not all men had the information of the prince and his counselors on the causes of a war, but where "the proofs and tokens of the injustice of the war may be such that ignorance would be no excuse even to the subjects" who are not normally informed, that ignorance will not be an excuse if they participate. 3 Well over 400 years later, today, the Baltimore Catechism makes an exception to the Fifth Commandment for a "soldier fighting a just war." 4

1971, Gillette v. United States, 401 U.S. 471

No one can tell a Catholic that this or that war is either just or unjust. This is a personal decision that an individual must make on the basis of his own conscience after studying the facts. 5 [401 U.S. 472]

1971, Gillette v. United States, 401 U.S. 472

Like the distinction between just and unjust wars, the duty to obey conscience is not a new doctrine in the Catholic Church. When told to stop preaching by the Sanhedrin, to which they were subordinate by law, "Peter and the apostles answered and said, `We must obey God rather than men.'" 6 That duty has not changed. Pope Paul VI has expressed it as follows:

1971, Gillette v. United States, 401 U.S. 472

On his part, man perceives and acknowledges the imperatives of the divine law through the mediation of conscience. In all his activity, a man is bound to follow his conscience in order that he may come to God, the end and purpose of life. 7

1971, Gillette v. United States, 401 U.S. 472

While the fact that the ultimate determination of whether a war is unjust rests on individual conscience, the Church has provided guides. Francisco Victoria referred to "killing of an innocent person." World War II had its impact on the doctrine. Writing shortly after the war, Cardinal Ottaviani stated:

1971, Gillette v. United States, 401 U.S. 472

[M]odern wars can [401 U.S. 473] never fulfil those conditions which (as we stated earlier on in this essay) govern—theoretically—a just and lawful war. Moreover, no conceivable cause could ever be sufficient justification for the evils, the slaughter, the destruction, the moral and religious upheavals which war today entails. In practice, then, a declaration of war will never be justifiable. 8

1971, Gillette v. United States, 401 U.S. 473

The full impact of the horrors of modern war were emphasized in the Pastoral Constitution announced by Vatican II:

1971, Gillette v. United States, 401 U.S. 473

The development of armaments by modern science has immeasurably magnified the horrors and wickedness of war. Warfare conducted with these weapons can inflict immense and indiscriminate havoc which goes far beyond the bounds of legitimate defense. Indeed, if the kind of weapons now stocked in the arsenals of the great powers were to be employed to the fullest, the result would be the almost complete reciprocal slaughter of one side by the other, not to speak of the widespread devastation that would follow in the world and the deadly after-effects resulting from the use of such arms.

1971, Gillette v. United States, 401 U.S. 473

All these factors force us to undertake a completely fresh reappraisal of war….

1971, Gillette v. United States, 401 U.S. 473

[I]t is one thing to wage a war of self-defense; it is quite another to seek to impose domination on another nation….

1971, Gillette v. United States, 401 U.S. 473

The Pastoral Constitution announced that

1971, Gillette v. United States, 401 U.S. 473

[e]very act of war directed to the indiscriminate destruction of whole cities or vast areas with their inhabitants is a crime against God and man which merits firm and unequivocal condemnation. 9

1971, Gillette v. United States, 401 U.S. 473

Louis Negre is a devout Catholic. In 1951, when he was four, his family immigrated to this country from [401 U.S. 474] France. 10 He attended Catholic schools in Bakersfield, California, until graduation from high school. Then he attended Bakersfield Junior College for two years. Following that, he was inducted into the Army.

1971, Gillette v. United States, 401 U.S. 474

At the time of his induction, he had his own convictions about the Vietnam war and the Army's goals in the war. He wanted, however, to be sure of his convictions.

1971, Gillette v. United States, 401 U.S. 474

I agreed to myself that, before making any decision or taking any type of stand on the issue, I would permit myself to see and understand the Army's explanation of its reasons for violence in Vietnam. For, without getting an insight on the subject, it would be unfair for me to say anything, without really knowing the answer. 11

1971, Gillette v. United States, 401 U.S. 474

On completion of his advanced infantry training,

1971, Gillette v. United States, 401 U.S. 474

I knew that, if I would permit myself to go to Vietnam, I would be violating my own concepts of natural law, and would be going against all that I had been taught in my religious training.

1971, Gillette v. United States, 401 U.S. 474

Negre applied for a discharge as a conscientious objector. His application was denied. He then refused to comply with an order to proceed for shipment to Vietnam. A general court-martial followed, but he was acquitted. After that he filed this application for discharge as a conscientious objector. [401 U.S. 475]

1971, Gillette v. United States, 401 U.S. 475

Negre is opposed under his religious training and beliefs to participation in any form in the war in Vietnam. His sincerity is not questioned. His application for a discharge, however, was denied because his religious training and beliefs led him to oppose only a particular war 12 which, according to his conscience, was unjust.

1971, Gillette v. United States, 401 U.S. 475

For the reasons I have stated in my dissent in the Gillette case decided this day, I would reverse the judgment.

Footnotes

MARSHALL, J., lead opinion (Footnotes)

1971, Gillette v. United States, 401 U.S. 475

1. The relevant provisions are set down infra at nn. 4, 5, and 6, and at accompanying text.

1971, Gillette v. United States, 401 U.S. 475

2. Since petitioner Negre is no longer on active duty in the Army, the dispute in No. 325 lacks the same intensity that was present at the time that Negre commenced his habeas action. However, some possibility of Vietnam duty apparently remains, and the Government seems to concede that the case has not been mooted. We therefore pursue the matter no further.

1971, Gillette v. United States, 401 U.S. 475

3. Both petitioners asked to be spared all military responsibilities because of their objections to the Vietnam conflict—Gillette sought exemption from the draft; Negre sought discharge from the Army.

1971, Gillette v. United States, 401 U.S. 475

4. Section 6(j) provides further:

1971, Gillette v. United States, 401 U.S. 475

As used in this subsection, the term "religious training and belief" does not include essentially political, sociological, or philosophical views, or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces…be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered…to perform…civilian work contributing to the maintenance of the national health, safety, or interest….

1971, Gillette v. United States, 401 U.S. 475

5. The Directive states:

1971, Gillette v. United States, 401 U.S. 475

IV. A. National Policy. [T]he Congress…has deemed it more essential to respect a man's religious beliefs than to force him to serve in the Armed Forces and accordingly has provided that a person having bona fide religious objection to participation in war in any form…shall not be inducted into the Armed Forces….

1971, Gillette v. United States, 401 U.S. 475

IV. B. DoD Policy. Consistent with this national policy, bona fide conscientious objection…by persons who are members of the Armed Forces will be recognized to the extent practicable and equitable. Objection to a particular war will not be recognized.

1971, Gillette v. United States, 401 U.S. 475

6. DOD Directive No. 1300.6 itself states:

1971, Gillette v. United States, 401 U.S. 475

Since it is in the national interest to judge all claims of conscientious objection by the same standards, whether made before or after entering military service, Selective Service System standards used in determining [conscientious objector status] of draft registrants prior to induction shall apply to servicemen who claim conscientious objection after entering military service.

1971, Gillette v. United States, 401 U.S. 475

See also, e.g., Army Regulations AR 635-20 (July 31, 1970), and AR 135-25 (Sept. 2, 1970).

1971, Gillette v. United States, 401 U.S. 475

7. Moreover, a reading that attaches the words "in any form" to "participation," rather than to "war," would render § 6(j) somewhat incoherent. For that section itself allows a person having the specified conscientious scruples to be assigned to noncombatant service in the armed forces, if he is not "found to be conscientiously opposed to participation in such noncombatant service." See n. 4, supra. In short, Congress had in mind that conscientious scruples should be honored if they implicate opposition to "war in any form," even though the objector may not be averse to a noncombatant form of "participation."

1971, Gillette v. United States, 401 U.S. 475

8. The roots of § 6(j) may be found in the earliest period of American history. See generally Selective Service System Monograph No. 11, Conscientious Objection 29-38 (1950). In 1775 the Continental Congress announced its resolve to respect the beliefs of "people who from Religious Principles cannot bear Arms in any case…. " Id. at 33-34. Against a background of state constitutional and statutory law exempting conscientious objectors from militia service, see United States v. Seeger, 380 U.S. 163, 170-171 (1965), Congress in 1864 explicitly exempted from the federal draft persons who

1971, Gillette v. United States, 401 U.S. 475

are conscientiously opposed to the bearing of arms, and who are prohibited from doing so by the rules and articles of faith [of their] religious denominations.

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13 Stat. 9. The Draft Act of 1917 relieved from military service any person who belonged to

1971, Gillette v. United States, 401 U.S. 475

any well recognized religious sect or organization…whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein….

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40 Stat. 78. The Senate rejected an amendment to the 1917 legislation that would have granted exemptions "[o]n the ground of a conscientious objection to the undertaking of combatant service in the present war." 55 Cong.Rec. 1478. Subsequent exemption clauses have eliminated any restriction in terms of sectarian affiliation, and have made the exemption broadly available to any conscientious objector whose scruples concerning participation in war are grounded in "religious training and belief." Selective Training and Service Act of 1940, § 5(g), 54 Stat. 889. But the phrase "participation in war in any form," used in the 1917 enactment, has, of course, survived the various revisions of the exempting provision.

1971, Gillette v. United States, 401 U.S. 475

9. Petitioners' sole argument having specific reference to the legislative materials is utterly flawed. It runs as follows: the 1948 revision of the exempting provision was inspired in part by the dissent of Chief Justice Hughes in United States v. Macintosh, 283 U.S. 605 (1931); Macintosh involved a claimant whose conscientious scruples implicated only "unjust" wars, and the dissent remarked that "eminent statesmen here and abroad" have held such views, id. at 635; thus, Congress cannot fairly be deemed to have excluded objectors to particular wars from the 1948 exempting provision, predecessor to the present § 6(j). However, the very most that can be said about congressional reliance on the Macintosh dissent is that Congress used it in fashioning a definition of the words "religious training and belief." See United States v. Seeger, 380 U.S. at 172-179. The language of the exempting provision that is relevant to the present dispute—"participation in war in any form"—was not altered in 1948 or thereafter. Moreover, the Macintosh dissent does not itself suggest that conscientious objection to a particular war is or has ever been a basis for relief from military service. The claimant in Macintosh did not seek relief from military service—his contention, and that of the dissent, was that conscientious unwillingness to bear arms is not a disqualifying factor, under the language of the applicable loyalty oath, in a naturalization proceeding. (The argument of the dissent was later adopted by the Court in Girouard v. United States, 328 U.S. 61, 64 (1946).)

1971, Gillette v. United States, 401 U.S. 475

10. See infra at 454-460. See generally Report of the National Advisory Commission on Selective Service, In Pursuit of Equity: Who Serves When Not All Serve? 50-51 (1967).

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11. Perhaps more significant is the fact that even lower courts that have granted relief to claimants who object to particular wars have done so on constitutional, not statutory, grounds, and have found § 6(j) defective because it does not admit of such relief. See, e.g., United States v. McFadden, 309 F.Supp. 502 (ND Cal.1970), app. docketed, No. 422, O.T. 1970; United States v. Sisson, 297 F.Supp. 902 (Mass.1969), appeal dismissed for want of jurisdiction, 399 U.S. 267 (1970). Since we conclude that § 6(j), interpreted in the obvious way, suffers no constitutional infirmity, there is no temptation to expand its intended scope by constructional fiat in order to "save" it.

1971, Gillette v. United States, 401 U.S. 475

12. After noting that Sicurella's faith involved willingness to engage in theocratic conflict, though "without carnal weapons," the Court stated: "The test is not whether the registrant is opposed to all war, but whether he is opposed…to participation in war." 348 U.S. at 390. The plain purport of this statement is that opposition to theocratic war is not exacted, since Congress quite reasonably considered participation in "real shooting wars" to be the only sort of participation at stake. See also Taffs v. United States, 208 F.2d 329, 331 (CA8 1953), cert. denied, 347 U.S. 928 (1954).

1971, Gillette v. United States, 401 U.S. 475

13. See n. 4, supra.

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14. Petitioners also assert that the Fifth Amendment's Due Process Clause is violated because the distinction embodied in § 6(j)—between objectors to all war and objectors to particular wars—is arbitrary and capricious and works an invidious discrimination in contravention of the "equal protection" principles encompassed by the Fifth Amendment. Cf. Bolling v. Sharpe, 347 U.S. 497, 499 (1954). This is not an independent argument in the context of these cases. Cf. Walz v. Tax Commission, 397 U.S. 664, 696 (1970) (opinion of HARLAN, J.). We hold that the section survives the Establishment Clause because there are neutral, secular reasons to justify the line that Congress has drawn, and it follows as a more general matter that the line is neither arbitrary nor invidious.

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15. See n. 8, supra.

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16. Since we hold that the "participation in war in any form" clause of § 6(j) does not violate the First Amendment, there is little point in dealing with the problems that would be involved in deciding whether invalidity of the restrictive clause should lead to judicial nullification of the exemption in toto or judicial expansion to cure "underinclusiveness."

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17. The exemption provision of the Draft Act of 1917, § 4, 40 Stat. 78, was upheld in the Selective Draft Law Cases, 245 U.S. 366, 389-390 (1918), at an early stage in the development of First Amendment doctrine, against a constitutional attack apparently founded on both the Establishment and Free Exercise Clauses. A single sentence was devoted to the complainants' First Amendment argument, "because we think its unsoundness is too apparent to require us to do more." Id. at 390.

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18. See supra at 445-446

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19. See n. 23, infra.

1971, Gillette v. United States, 401 U.S. 475

20. The Report of the National Advisory Commission on Selective Service (1967) is aptly entitled In Pursuit of Equity: Who Serves When Not All Serve?

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21. Matters relevant to such an objection, as the papers in these cases show, are whether the purposes of the war are thought ultimately defensive and pacific, or otherwise; whether the conflict is legal, or its prosecution decided upon by legal means; whether the implements of war are used humanely, or whether certain weapons should be used at all. A war may be thought "just" or not depending on one's assessment of these factors and many more: the character of the foe, or of allies; the place the war is fought; the likelihood that a military clash will issue in benefits, of various kinds, enough to override the inevitable costs of the conflict. And so on.

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22. See n. 3, supra.

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23. We are not faced with the question whether the Free Exercise Clause itself would require exemption of any class other than objectors to particular wars. A free exercise claim on behalf of such objectors collides with the distinct governmental interests already discussed, and, at any rate, no other claim is presented. We note that the Court has previously suggested that relief for conscientious objectors is not mandated by the Constitution. See Hamilton v. Regents, 293 U.S. 245, 264 (1934); United States v. Macintosh, 283 U.S. at 623-624; cf. In re Summers, 325 U.S. 561, 572-573 (1945).

DOUGLAS, J., dissenting (Footnotes)

1971, Gillette v. United States, 401 U.S. 475

\* [For dissenting opinion of MR. JUSTICE DOUGLAS in No. 325, Negre v. Larsen, see post, p. 470.]

1971, Gillette v. United States, 401 U.S. 475

1. Section 6(j), Military Selective Service Act of 1967, 50 U.S.C.App. § 456(j) (1964 ed., Supp. V).

1971, Gillette v. United States, 401 U.S. 475

2. See T. Powell, Conscience and the Constitution, in Democracy and National Unity (W. Hutchison ed.1941).

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It is probably a universal truth that "the one thing which authority, whether political, social, religious or economic, tends instinctively to fear is the insistence of conscience." Mehta, The Conscience of a Nation or Studies in Gandhism p. ii (Calcutta, 1933).

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3. See M. Konvitz, Religious Liberty and Conscience 106 (1968); Redlich & Feinberg, Individual Conscience and the Selective Service Objector: The Right Not to Kill, 44 N.Y.U.L.Rev. 875, 891 (1969):

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Free expression and the right of personal conscientious belief are closely intertwined. At the core of the first amendment's protection of individual expression is the recognition that such expression represents the oral or written manifestation of conscience. The performance of certain acts, under certain circumstances involves such a crisis of conscience as to invoke the protection which the first amendment provides for similar manifestations of conscience when expressed in verbal or written expressions of thought. The most awesome act which any society can demand of a citizen's conscience is the taking of a human life.

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4. L. Tolstoy, Writings On Civil Disobedience and Non-Violence 12 (1967).

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5. Id. at 15-16. And see Clark, Guidelines for the Free Exercise Clause, 83 Harv.L.Rev. 327, 337 (1969):

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The argument is not merely that avoiding compulsion of a man's conscience produces the greatest good for the greatest number, but that such compulsion is itself unfair to the individual concerned. The moral condemnation implicit in the threat of criminal sanctions is likely to be very painful to one motivated by belief. Furthermore, the cost to a principled individual of failing to do his moral duty is generally severe, in terms of supernatural sanction or the loss of moral self-respect.

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6. In Welsh v. United States, 398 U.S. 333, four Justices elaborated on Seeger, stating:

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The Court [in Seeger] made it clear that these sincere and meaningful beliefs that prompt the registrant's objection to all wars need not be confined in either source or content to traditional or parochial concepts of religion…. What is necessary under Seeger for a registrant's conscientious objection to all war to be "religious" within the meaning of § 6(j) is that this opposition to war stem from the registrant's moral, ethical, or religious beliefs about what is right and wrong, and that these beliefs be held with the strength of traditional religious convictions.

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Id. at 339-340.

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7. Article VI of the Constitution provides that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." Torcaso v. Watkins, 367 U.S. 488, upheld the right of a nonbeliever to hold public office.

DOUGLAS, J., dissenting (Footnotes)

1971, Gillette v. United States, 401 U.S. 475

1. The theological basis for this was explained by Pope John XXIII in Part II of Pacem in Terris ¶ 46 (Paulist Press 1963):

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Human society can be neither well ordered nor prosperous unless it has some people invested with legitimate authority to preserve its institutions…. These, however, derive their authority from God, as St. Paul teaches in the words, There exists no authority except from God. These words of St. Paul are explained thus by St. John Chrysostom:

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…What I say is that it is the divine wisdom, and not mere chance, that has ordained that there should be government, that some should command and others obey.

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¶ 50 adds:

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When, in fact, men obey their rulers, it is not at all as men that they obey them, but through their obedience it is God…, since He has decreed that men's dealings with one another should be regulated by an order which He Himself has established.

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2.

1971, Gillette v. United States, 401 U.S. 475

Since the right to command is required by the moral order and has its source in God, it follows that, if civil authorities legislate for or allow anything that is contrary to that order, and therefore contrary to the will of God, neither the laws made nor the authorizations granted can be binding on the consciences of the citizens, since we must obey God, rather than men.

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Id. at ¶ 51.

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3. De Indis Relectio Posterior, sive De Iure Belli Eispanorum in Barbaros, translated in Classics of International Law 173-174 (E. Nys ed.1917).

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4. P. 205 (official rev. ed.1949).

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5. Pope Paul VI in § 16 of the Pastoral Constitution on the Church in the Modern World states:

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Deep within his conscience, man discovers a law which he has not laid upon himself but which he must obey. Its voice, ever calling him to love and to do what is good and avoid evil, tells him inwardly at the right moment to do this or to shun that. For man has in his heart a law inscribed by God. His dignity lies in observing this law, and by it he will be judged.

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A. Fagothey, Right and Reason: Ethics in Theory and Practice 38 (4th ed.1967) states:

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Hence, a certain conscience must be obeyed not only when it is correct, but even when it is invincibly erroneous [unrealized error]. Conscience is the only guide a man has for the performance of concrete actions here and now. But an invincibly erroneous conscience cannot be distinguished from a correct conscience. Therefore, if one were not obliged to follow a certain but invincibly erroneous conscience, we should be forced to the absurd conclusions that one would not be obliged to follow a certain and correct conscience.

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On this matter, § 16 of the Pastoral Constitution adds:

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Yet it often happens that conscience goes astray through ignorance which it is unable to avoid, but, under such circumstances, it does not lose its dignity. This cannot be said of the man who takes little trouble to find out what is true and good.

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6. Acts 5:29 (Standard ed.1900).

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7. Declaration on Religious Freedom I:3 in Documents of Vatican Council II, p. 369 (Newman Press 1966). See also "Human Life in Our Day" issued by the National Conference of Catholic Bishops (Nov. 15, 1968):

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Whether or not such modifications in our laws are, in fact, made, we continue to hope that, in the all-important issue of war and peace, all men will follow their consciences. We can do no better than to recall, as did the Vatican Council, "the permanent binding force of universal natural law and its all embracing principles," to which "man's conscience itself gives ever more emphatic voice."

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8. The Future of Offensive War, 30 Blackfriars 415, 419 (1949).

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9. Pastoral Constitution 79, 80.

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10. Petitioner suggests that one of the reasons his parents left France was their opposition to France's participation in the Indo-China war.

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11. See n. 5, supra. Fagothey, supra, n. 5, at 37 states:

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What degree of certitude is required? It is sufficient that the conscience be prudentially certain. Prudential certitude is not absolute, but relative. It excludes all prudent fear that the opposite may be true, but it does not rule out imprudent fears based on bare possibilities. The reasons are strong enough to satisfy a normally prudent man in an important matter, so that he feels safe in practice, though there is a theoretical chance of his being wrong. He has taken every reasonable precaution, but cannot guarantee against rare contingencies and freaks of nature.

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12.

1971, Gillette v. United States, 401 U.S. 475

For those middle-aged people who find themselves baffled by the current widespread resistance to the draft, a Stanford University student has provided a useful parallel.

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Addressing a hearing of the Senate Armed Service Committee . . Peter Knutson said that

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If, during the course of the Second World War, America had entered on the side of Hitler's Germany, would you have allowed yourself to be drafted? Would you have blindly said my country right or wrong?'

1971, Gillette v. United States, 401 U.S. 475

That is about as well as the anti-draft cause has ever been stated….

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It may seem far-fetched to suppose that America ever would have fought on the side of Hitler, but that too is beside the point. If today's World War II veteran will try to imagine what he might have done had he been drafted under those circumstances, he will be able to understand some part of the dilemma that the Vietnam war has imposed on this generation of draftees. It has been a real dilemma breeding powerful frustrations, and its residues will long outlast the war

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—L. H.—Lewiston (Ida.) Tribune.

Swann v. Charlotte-Mecklenburg Board of Educ., 1971

Title: Swann v. Charlotte-Mecklenburg Board of Education

Author: U.S. Supreme Court

Date: April 20, 1971

Source: 402 U.S. 1

This case was argued October 12, 1970, and was decided April 20, 1971.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Syllabus

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1

The Charlotte-Mecklenburg school system, which includes the city of Charlotte, North Carolina, had more than 84,000 students in 107 schools in the 1968-1969 school year. Approximately 29% (24,000) of the pupils were Negro, about 14,000 of whom attended 21 schools that were at least 99% Negro. This resulted from a desegregation plan approved by the District Court in 1965, at the commencement of this litigation. In 1968, petitioner Swann moved for further relief based on Green v. County School Board, 391 U.S. 430, which required school boards to

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1

come forward with a plan that promises realistically to work…now…until it is clear that state-imposed segregation has been completely removed.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1

The District Court ordered the school board in April 1969 to provide a plan for faculty and student desegregation. Finding the board's submission unsatisfactory, the District Court appointed an expert to submit a desegregation plan. In February 1970, the expert and the board presented plans, and the court adopted the board's plan, as modified, for the junior and senior high schools, and the expert's proposed plan for the elementary schools. The Court of Appeals affirmed the District Court's order as to faculty desegregation and the secondary school plans, [402 U.S. 2] but vacated the order respecting elementary schools, fearing that the provisions for pairing and grouping of elementary schools would unreasonably burden the pupils and the board. The case was remanded to the District Court for reconsideration and submission of further plans. This Court granted certiorari and directed reinstatement of the District Court's order pending further proceedings in that court. On remand the District Court received two new plans, and ordered the board to adopt a plan, or the expert's plan would remain in effect. After the board "acquiesced" in the expert's plan, the District Court directed that it remain in effect.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 2

Held:

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 2

1. Today's objective is to eliminate from the public schools all vestiges of state-imposed segregation that was held violative of equal protection guarantees by Brown v. Board of Education, 347 U.S. 483, in 1954. P. 15.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 2

2. In default by the school authorities of their affirmative obligation to proffer acceptable remedies, the district courts have broad power to fashion remedies that will assure unitary school systems. P. 16.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 2

3. Title IV of the Civil Rights Act of 1964 does not restrict or withdraw from the federal courts their historic equitable remedial powers. The proviso in 42 U.S.C. § 2000c-6 was designed simply to foreclose any interpretation of the Act as expanding the existing powers of the federal courts to enforce the Equal Protection Clause. Pp. 16-18.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 2

4. Policy and practice with regard to faculty, staff, transportation, extracurricular activities, and facilities are among the most important indicia of a segregated system, and the first remedial responsibility of school authorities is to eliminate invidious racial distinctions in those respects. Normal administrative practice should then produce schools of like quality, facilities, and staffs. Pp. 18-19.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 2

5. The Constitution does not prohibit district courts from using their equity power to order assignment of teachers to achieve a particular degree of faculty desegregation. United States v. Montgomery County Board of Education, 395 U.S. 225, was properly followed by the lower courts in this case. Pp. 19-20.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 2

6. In devising remedies to eliminate legally imposed segregation, local authorities and district courts must see to it that future school construction and abandonment are not used and do not serve to perpetuate or reestablish a dual system. Pp. 20-21. [402 U.S. 3]

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 3

7. Four problem areas exist on the issue of student assignment:

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 3

(1) Racial quotas. The constitutional command to desegregate schools does not mean that every school in the community must always reflect the racial composition of the system as a whole; here the District Court's very limited use of the racial ratio—not as an inflexible requirement, but as a starting point in shaping a remedy—was within its equitable discretion. Pp. 22-25.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 3

(2) One-race schools. While the existence of a small number of one-race, or virtually one-race, schools does not, in itself, denote a system that still practices segregation by law, the court should scrutinize such schools and require the school authorities to satisfy the court that the racial composition does not result from present or past discriminatory action on their part. Pp. 25-26.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 3

An optional majority-to-minority transfer provision has long been recognized as a useful part of a desegregation plan, and to be effective such arrangement must provide the transferring student free transportation and available space in the school to which he desires to move. Pp. 26-27.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 3

(3) Attendance zones. The remedial altering of attendance zones is not, as an interim corrective measure, beyond the remedial powers of a district court. A student assignment plan is not acceptable merely because it appears to be neutral, for such a plan may fail to counteract the continuing effects of past school segregation. The pairing and grouping of noncontiguous zones is a permissible tool; judicial steps going beyond contiguous zones should be examined in light of the objectives to be sought. No rigid rules can be laid down to govern conditions in different localities. Pp. 27-29.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 3

(4) Transportation. The District Court's conclusion that assignment of children to the school nearest their home serving their grade would not effectively dismantle the dual school system is supported by the record, and the remedial technique of requiring bus transportation as a tool of school desegregation was within that court's power to provide equitable relief. An objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process; limits on travel time will vary with many factors, but probably with none more than the age of the students. Pp. 29-31. [402 U.S. 4]

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 4

8. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once a unitary system has been achieved. Pp. 31-32.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 4

431 F.2d 138, affirmed as to those parts in which it affirmed the District Court's judgment. The District Court's order of August 7, 1970, is also affirmed.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 4

BURGER, C.J., delivered the opinion for a unanimous Court. [402 U.S. 5]

BURGER, J., lead opinion

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 5

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 5

We granted certiorari in this case to review important issues as to the duties of school authorities and the scope of powers of federal courts under this Court's mandates to eliminate racially separate public schools established and maintained by state action. Brown v. Board of Education, 347 U.S. 483 (1954) (Brown I).

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 5

This case and those argued with it 1 arose in States having a long history of maintaining two sets of schools in a [402 U.S. 6] single school system deliberately operated to carry out a governmental policy to separate pupils in schools solely on the basis of race. That was what Brown v. Board of Education was all about. These cases present us with the problem of defining in more precise terms than heretofore the scope of the duty of school authorities and district courts in implementing Brown I and the mandate to eliminate dual systems and establish unitary systems at once. Meanwhile, district courts and courts of appeals have struggled in hundreds of cases with a multitude and variety of problems under this Court's general directive. Understandably, in an area of evolving remedies, those courts had to improvise and experiment without detailed or specific guidelines. This Court, in Brown I, appropriately dealt with the large constitutional principles; other federal courts had to grapple with the flinty, intractable realities of day-to-day implementation of those constitutional commands. Their efforts, of necessity, embraced a process of "trial and error," and our effort to formulate guidelines must take into account their experience.

I

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 6

The Charlotte-Mecklenburg school system, the 43d largest in the Nation, encompasses the city of Charlotte and surrounding Mecklenburg County, North Carolina. The area is large—550 square miles—spanning roughly 22 miles east-west and 36 miles north-south. During the 1968-1969 school year, the system served more than 84,000 pupils in 107 schools. Approximately 71% of the pupils were found to be white, and 29% Negro. As of [402 U.S. 7] June, 1969, there were approximately 24,000 Negro students in the system, of whom 21,000 attended schools within the city of Charlotte. Two-thirds of those 21,000—approximately 14,000 Negro students—attended 21 schools which were either totally Negro or more than 99% Negro.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 7

This situation came about under a desegregation plan approved by the District Court at the commencement of the present litigation in 1965, 243 F.Supp. 667 (WDNC), aff'd, 369 F.2d 29 (CA4 1966), based upon geographic zoning with a free transfer provision. The present proceedings were initiated in September, 1968, by petitioner Swann's motion for further relief based on Green v. County School Board, 391 U.S. 430 (1968), and its companion cases. 2 All parties now agree that in 1969 the system fell short of achieving the unitary school system that those cases require.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 7

The District Court held numerous hearings and received voluminous evidence. In addition to finding certain actions of the school board to be discriminatory, the court also found that residential patterns in the city and county resulted in part from federal, state, and local government action other than school board decisions. School board action based on these patterns, for example, by locating schools in Negro residential areas and fixing the size of the schools to accommodate the needs of immediate neighborhoods, resulted in segregated education. These findings were subsequently accepted by the Court of Appeals.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 7

In April, 1969, the District Court ordered the school board to come forward with a plan for both faculty and student desegregation. Proposed plans were accepted by the court in June and August, 1969, on an interim basis [402 U.S. 8] only, and the board was ordered to file a third plan by November, 1969. In November, the board moved for an extension of time until February, 1970, but when that was denied the board submitted a partially completed plan. In December, 1969, the District Court held that the board's submission was unacceptable and appointed an expert in education administration, Dr. John Finger, to prepare a desegregation plan. Thereafter in February, 1970, the District Court was presented with two alternative pupil assignment plan the finalized "board plan" and the "Finger plan."

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 8

The Board Plan. As finally submitted, the school board plan closed seven schools and reassigned their pupils. It restructured school attendance zones to achieve greater racial balance but maintained existing grade structures and rejected techniques such as pairing and clustering as part of a desegregation effort. The plan created a single athletic league, eliminated the previously racial basis of the school bus system, provided racially mixed faculties and administrative staffs, and modified its free-transfer plan into an optional majority-to-minority transfer system.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 8

The board plan proposed substantial assignment of Negroes to nine of the system's 10 high schools, producing 17% to 36% Negro population in each. The projected Negro attendance at the 10th school, Independence, was 2%. The proposed attendance zones for the high schools were typically shaped like wedges of a pie, extending outward from the center of the city to the suburban and rural areas of the county in order to afford residents of the center city area access to outlying schools.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 8

As for junior high schools, the board plan rezoned the 21 school areas so that, in 20, the Negro attendance would range from 0% to 38%. The other school, located in the heart of the Negro residential area, was left with an enrollment of 90% Negro. [402 U.S. 9]

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 9

The board plan with respect to elementary schools relied entirely upon gerrymandering of geographic zones. More than half of the Negro elementary pupils were left in nine schools that were 86% to 100% Negro; approximately half of the white elementary pupils were assigned to schools 86% to 100% white.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 9

The Finger Plan. The plan submitted by the court-appointed expert, Dr. Finger, adopted the school board zoning plan for senior high schools with one modification: it required that an additional 300 Negro students be transported from the Negro residential area of the city to the nearly all-white Independence High School.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 9

The Finger plan for the junior high schools employed much of the rezoning plan of the board, combined with the creation of nine "satellite" zones. 3 Under the satellite plan, inner-city Negro students were assigned by attendance zones to nine outlying predominately white junior high schools, thereby substantially desegregating every junior high school in the system.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 9

The Finger plan departed from the board plan chiefly in its handling of the system's 76 elementary schools. Rather than relying solely upon geographic zoning, Dr. Finger proposed use of zoning, pairing, and grouping techniques, with the result that student bodies throughout the system would range from 9% to 38% Negro. 4

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 9

The District Court described the plan thus:

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 9

Like the board plan, the Finger plan does as much by rezoning school attendance lines as can reasonably [402 U.S. 10] be accomplished. However, unlike the board plan, it does not stop there. It goes further and desegregates all the rest of the elementary schools by the technique of grouping two or three outlying schools with one black inner city school; by transporting black students from grades one through four to the outlying white schools; and by transporting white students from the fifth and sixth grades from the outlying white schools to the inner city black school.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 10

Under the Finger plan, nine inner-city Negro schools were grouped in this manner with 24 suburban white schools.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 10

On February 5, 1970, the District Court adopted the board plan, as modified by Dr. Finger, for the junior and senior high schools. The court rejected the board elementary school plan and adopted the Finger plan as presented. Implementation was partially stayed by the Court of Appeals for the Fourth Circuit on March 5, and this Court declined to disturb the Fourth Circuit's order, 397 U.S. 978 (1970).

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 10

On appeal, the Court of Appeals affirmed the District Court's order as to faculty desegregation and the secondary school plans, but vacated the order respecting elementary schools. While agreeing that the District Court properly disapproved the board plan concerning these schools, the Court of Appeals feared that the pairing and grouping of elementary schools would place an unreasonable burden on the board and the system's pupils. The case was remanded to the District Court for reconsideration and submission of further plans. 431 F.2d [402 U.S. 11] 138. This Court granted certiorari, 399 U.S. 926, and directed reinstatement of the District Court's order pending further proceedings in that court.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 11

On remand, the District Court received two new plans for the elementary schools: a plan prepared by the United States Department of Health, Education, and Welfare (the HEW plan) based on contiguous grouping and zoning of schools, and a plan prepared by four members of the nine-member school board (the minority plan) achieving substantially the same results as the Finger plan but apparently with slightly less transportation. A majority of the school board declined to amend its proposal. After a lengthy evidentiary hearing, the District Court concluded that its own plan (the Finger plan), the minority plan, and an earlier draft of the Finger plan were all reasonable and acceptable. It directed the board to adopt one of the three or, in the alternative, to come forward with a new, equally effective plan of its own; the court ordered that the Finger plan would remain in effect in the event the school board declined to adopt a new plan. On August 7, the board indicated it would "acquiesce" in the Finger plan, reiterating its view that the plan was unreasonable. The District Court, by order dated August 7, 1970, directed that the Finger plan remain in effect.

II

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 11

Nearly 17 years ago, this Court held, in explicit terms, that state-imposed segregation by race in public schools denies equal protection of the laws. At no time has the Court deviated in the slightest degree from that holding or its constitutional underpinnings. None of the parties before us challenges the Court's decision of May 17, 1954, that,

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 11

in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, [402 U.S. 12] we hold that the plaintiffs and others similarly situated…are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment….

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 12

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 12

Brown v. Board of Education, supra, at 495.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 12

None of the parties before us questions the Court's 1955 holding in Brown II, that

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 12

School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 12

In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of [402 U.S. 13] equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 13

Brown v. Board of Education, 349 U.S. 294, 299-300 (1955).

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 13

Over the 16 years since Brown II, many difficulties were encountered in implementation of the basic constitutional requirement that the State not discriminate between public school children on the basis of their race. Nothing in our national experience prior to 1955 prepared anyone for dealing with changes and adjustments of the magnitude and complexity encountered since then. Deliberate resistance of some to the Court's mandates has impeded the good faith efforts of others to bring school systems into compliance. The detail and nature of these dilatory tactics have been noted frequently by this Court and other courts.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 13

By the time the Court considered Green v. County School Board, 391 U.S. 430, in 1968, very little progress had been made in many areas where dual school systems had historically been maintained by operation of state laws. In Green, the Court was confronted with a record of a freedom of choice program that the District Court had found to operate, in fact, to preserve a dual system more than a decade after Brown II. While acknowledging that a freedom of choice concept could be a valid remedial measure in some circumstances, its failure to be effective in Green required that:

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 13

The burden on a school board today is to come forward with a plan that promises realistically to work…now…until it is clear that state-imposed segregation has been completely removed.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 13

Green, supra, at 439. [402 U.S. 14]

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 14

This was plain language, yet the 1969 Term of Court brought fresh evidence of the dilatory tactics of many school authorities. Alexander v. Holmes County Board of Education, 396 U.S. 19, restated the basic obligation asserted in Griffin v. School Board, 377 U.S. 218, 234 (1964), and Green, supra, that the remedy must be implemented forthwith.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 14

The problems encountered by the district courts and courts of appeals make plain that we should now try to amplify guidelines, however incomplete and imperfect, for the assistance of school authorities and courts. 5 The failure of local authorities to meet their constitutional obligations aggravated the massive problem of converting from the state-enforced discrimination of racially separate school systems. This process has been rendered more difficult by changes since 1954 in the structure and patterns of communities, the growth of student population, 6 movement of families, and other changes, some of which had marked impact on school planning, sometimes neutralizing or negating remedial action before it was fully implemented. Rural areas accustomed for half a century to the consolidated school systems implemented by bus transportation could make adjustments more readily than metropolitan areas with dense and shifting population, numerous schools, congested and complex traffic patterns. [402 U.S. 15]

III

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 15

The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation. Segregation was the evil struck down by Brown I as contrary to the equal protection guarantees of the Constitution. That was the violation sought to be corrected by the remedial measures of Brown II. That was the basis for the holding in Green that school authorities are

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 15

clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 15

391 U.S. at 437-438.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 15

If school authorities fail in their affirmative obligations under these holdings, judicial authority may be invoked. Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 15

The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility, rather than rigidity, has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 15

Hecht Co. v. Bowles, 321 U.S. 321, 329-330 (1944), cited in Brown II, supra, at 300.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 15

This allocation of responsibility once made, the Court attempted from time to time to provide some guidelines for the exercise of the district judge's discretion and for the reviewing function of the courts of appeals. However, a school desegregation case does not differ fundamentally from other cases involving the framing of [402 U.S. 16] equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 16

In seeking to define even in broad and general terms how far this remedial power extends, it is important to remember that judicial powers may be exercised only on the basis of a constitutional violation. Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters only when local authority defaults.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 16

School authorities are traditionally charged with broad power to formulate and implement educational policy, and might well conclude, for example, that, in order to prepare students to live in a pluralistic society, each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities; absent a finding of a constitutional violation, however, that would not be within the authority of a federal court. As with any equity case, the nature of the violation determines the scope of the remedy. In default by the school authorities of their obligation to proffer acceptable remedies, a district court has broad power to fashion a remedy that will assure a unitary school system.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 16

The school authorities argue that the equity powers of federal district courts have been limited by Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c. The language and the history of Title IV show that it was enacted not to limit, but to define, the role of the Federal Government in the implementation of the Brown I decision. It authorizes the Commissioner of Education to provide technical assistance to local boards in the preparation of desegregation plans, to arrange "training institutes" [402 U.S. 17] for school personnel involved in desegregation efforts, and to make grants directly to schools to ease the transition to unitary systems. It also authorizes the Attorney General, in specified circumstances, to initiate federal desegregation suits. Section 2000c(b) defines "desegregation" as it is used in Title IV:

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 17

"Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 17

Section 2000c-6, authorizing the Attorney General to institute federal suits, contains the following proviso:

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 17

nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standard.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 17

On their face, the sections quoted purport only to insure that the provisions of Title IV of the Civil Rights Act of 1964 will not be read as granting new powers. The proviso in § 2000c-6 is, in terms, designed to foreclose any interpretation of the Act as expanding the existing powers of federal courts to enforce the Equal Protection Clause. There is no suggestion of an intention to restrict those powers or withdraw from courts their historic equitable remedial powers. The legislative history of Title IV indicates that Congress was concerned that the Act might be read as creating a right of action under the Fourteenth Amendment in the situation of so-called "de facto segregation," where racial imbalance exists in the [402 U.S. 18] schools but with no showing that this was brought about by discriminatory action of state authorities. In short, there is nothing in the Act that provides us material assistance in answering the question of remedy for state-imposed segregation in violation of Brown I. The basis of our decision must be the prohibition of the Fourteenth Amendment that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

IV

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 18

We turn now to the problem of defining with more particularity the responsibilities of school authorities in desegregating a state-enforced dual school system in light of the Equal Protection Clause. Although the several related cases before us are primarily concerned with problems of student assignment, it may be helpful to begin with a brief discussion of other aspects of the process.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 18

In Green, we pointed out that existing policy and practice with regard to faculty, staff, transportation, extracurricular activities, and facilities were among the most important indicia of a segregated system. 391 U.S. at 435. Independent of student assignment, where it is possible to identify a "white school" or a "Negro school" simply by reference to the racial composition of teachers and staff, the quality of school buildings and equipment, or the organization of sports activities, a prima facie case of violation of substantive constitutional rights under the Equal Protection Clause is shown.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 18

When a system has been dual in these respects, the first remedial responsibility of school authorities is to eliminate invidious racial distinctions. With respect to such matters as transportation, supporting personnel, and extracurricular activities, no more than this may be necessary. Similar corrective action must be taken with regard to the maintenance of buildings and the distribution of equipment. In these areas, normal administrative [402 U.S. 19] practice should produce schools of like quality, facilities, and staffs. Something more must be said, however, as to faculty assignment and new school construction.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 19

In the companion Davis case, post, p. 33, the Mobile school board has argued that the Constitution requires that teachers be assigned on a "color blind" basis. It also argues that the Constitution prohibits district courts from using their equity power to order assignment of teachers to achieve a particular degree of faculty desegregation. We reject that contention.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 19

In United States v. Montgomery County Board of Education, 395 U.S. 225 (1969), the District Court set as a goal a plan of faculty assignment in each school with a ratio of white to Negro faculty members substantially the same throughout the system. This order was predicated on the District Court finding that:

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 19

The evidence does not reflect any real administrative problems involved in immediately desegregating the substitute teachers, the student teachers, the night school faculties, and in the evolvement of a really legally adequate program for the substantial desegregation of the faculties of all schools in the system commencing with the school year 1968-69.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 19

Quoted at 395 U.S. at 232.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 19

The District Court, in Montgomery, then proceeded to set an initial ratio for the whole system of at least two Negro teachers out of each 12 in any given school. The Court of Appeals modified the order by eliminating what it regarded as "fixed mathematical" ratios of faculty and substituted an initial requirement of "substantially or approximately" a five-to-one ratio. With respect to the future, the Court of Appeals held that the numerical ratio should be eliminated and that compliance should not be tested solely by the achievement of specified proportions. Id. at 234. [402 U.S. 20]

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 20

We reversed the Court of Appeals and restored the District Court's order in its entirety, holding that the order of the District Judge

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 20

was adopted in the spirit of this Court's opinion in Green…in that his plan "promises realistically to work, and promises realistically to work now." The modifications ordered by the panel of the Court of Appeals, while of course not intended to do so, would, we think, take from the order some of its capacity to expedite, by means of specific commands, the day when a completely unified, unitary, nondiscriminatory school system becomes a reality instead of a hope…. We also believe that, under all the circumstances of this case, we follow the original plan outlined in Brown II…by accepting the more specific and expeditious order of [District] Judge Johnson….

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 20

395 U.S. at 235-236 (emphasis in original). The principles of Montgomery have been properly followed by the District Court and the Court of Appeals in this case.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 20

The construction of new schools and the closing of old ones are two of the most important functions of local school authorities and also two of the most complex. They must decide questions of location and capacity in light of population growth, finances, land values, site availability, through an almost endless list of factors to be considered. The result of this will be a decision which, when combined with one technique or another of student assignment, will determine the racial composition of the student body in each school in the system. Over the long run, the consequences of the choices will be far-reaching. People gravitate toward school facilities, just as schools are located in response to the needs of people. The location of schools may thus influence [402 U.S. 21] the patterns of residential development of a metropolitan area and have important impact on composition of inner-city neighborhoods.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 21

In the past, choices in this respect have been used as a potent weapon for creating or maintaining a state-segregated school system. In addition to the classic pattern of building schools specifically intended for Negro or white students, school authorities have sometimes, since Brown, closed schools which appeared likely to become racially mixed through changes in neighborhood residential patterns. This was sometimes accompanied by building new schools in the areas of white suburban expansion farthest from Negro population centers in order to maintain the separation of the races with a minimum departure from the formal principles of "neighborhood zoning." Such a policy does more than simply influence the short-run composition of the student body of a new school. It may well promote segregated residential patterns which, when combined with "neighborhood zoning," further lock the school system into the mold of separation of the races. Upon a proper showing, a district court may consider this in fashioning a remedy.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 21

In ascertaining the existence of legally imposed school segregation, the existence of a pattern of school construction and abandonment is thus a factor of great weight. In devising remedies where legally imposed segregation has been established, it is the responsibility of local authorities and district courts to see to it that future school construction and abandonment are not used and do not serve to perpetuate or reestablish the dual system. When necessary, district courts should retain jurisdiction to assure that these responsibilities are carried out. Cf. United States v. Board of Public Instruction, 395 F.2d 66 (CA5 1968); Brewer v. School Board, 397 F.2d 37 (CA4 1968). [402 U.S. 22]

V

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 22

The central issue in this case is that of student assignment, and there are essentially four problem areas:

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 22

(1) to what extent racial balance or racial quotas may be used as an implement in a remedial order to correct a previously segregated system;

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 22

(2) whether every all-Negro and all-white school must be eliminated as an indispensable part of a remedial process of desegregation;

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 22

(3) what the limits are, if any, on the rearrangement of school districts and attendance zones, as a remedial measure; and

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 22

(4) what the limits are, if any, on the use of transportation facilities to correct state-enforced racial school segregation.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 22

(1) Racial Balances or Racial Quotas.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 22

The constant theme and thrust of every holding from Brown I to date is that state-enforced separation of races in public schools is discrimination that violates the Equal Protection Clause. The remedy commanded was to dismantle dual school systems.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 22

We are concerned in these cases with the elimination of the discrimination inherent in the dual school systems, not with myriad factors of human existence which can cause discrimination in a multitude of ways on racial, religious, or ethnic grounds. The target of the cases from Brown I to the present was the dual school system. The elimination of racial discrimination in public schools is a large task, and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. One vehicle can carry only a limited amount of baggage. It would not serve the important objective of Brown I to seek to use school desegregation cases for purposes beyond their scope, although desegregation of schools ultimately will have [402 U.S. 23] impact on other forms of discrimination. We do not reach in this case the question whether a showing that school segregation is a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by a school desegregation decree. This case does not present that question and we therefore do not decide it.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 23

Our objective in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 23

In this case, it is urged that the District Court has imposed a racial balance requirement of 71%-29% on individual schools. The fact that no such objective was actually achieved—and would appear to be impossible—tends to blunt that claim, yet in the opinion and order of the District Court of December 1, 1969, we find that court directing

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 23

that efforts should be made to reach a 71-29 ratio in the various schools so that there will be no basis for contending that one school is racially different from the others…, [t]hat no school [should] be operated with an all-black or predominantly black student body, [and] [t]hat pupils of all grades [should] be assigned in such a way that as nearly as practicable the various schools at various grade levels have about the same proportion of black and white students.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 23

The District Judge went on to acknowledge that variation "from that norm may be unavoidable." This contains intimations that the "norm" is a fixed mathematical [402 U.S. 24] racial balance reflecting the pupil constituency of the system. If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 24

As the voluminous record in this case shows, 7 the predicate for the District Court's use of the 71%-29% ratio was twofold: first, its express finding, approved by the Court of Appeals and not challenged here, that a dual school system had been maintained by the school authorities at least until 1969; second, its finding, also approved by the Court of Appeals, that the school board had totally defaulted in its acknowledged duty to come forward with an acceptable plan of its own, notwithstanding the patient efforts of the District Judge who, on at least three occasions, urged the board to submit plans. 8 As the statement of facts shows, these findings are abundantly [402 U.S. 25] supported by the record. It was because of this total failure of the school board that the District Court was obliged to turn to other qualified sources, and Dr. Finger was designated to assist the District Court to do what the board should have done.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 25

We see therefore that the use made of mathematical ratios was no more than a starting point in the process of shaping a remedy, rather than an inflexible requirement. From that starting point, the District Court proceeded to frame a decree that was within its discretionary powers, as an equitable remedy for the particular circumstances. 9 As we said in Green, a school authority's remedial plan or a district court's remedial decree is to be judged by its effectiveness. Awareness of the racial composition of the whole school system is likely to be a useful starting point in shaping a remedy to correct past constitutional violations. In sum, the very limited use made of mathematical ratios was within the equitable remedial discretion of the District Court.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 25

(2) One-race Schools.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 25

The record in this case reveals the familiar phenomenon that, in metropolitan areas, minority groups are often found concentrated in one part of the city. In some circumstances, certain schools may remain all or largely of one race until new schools can be provided or neighborhood patterns change. Schools all or predominately [402 U.S. 26] of one race in a district of mixed population will require close scrutiny to determine that school assignments are not part of state-enforced segregation.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 26

In light of the above, it should be clear that the existence of some small number of one-race, or virtually one-race, schools within a district is not, in and of itself, the mark of a system that still practices segregation by law. The district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, and will thus necessarily be concerned with the elimination of one-race schools. No per se rule can adequately embrace all the difficulties of reconciling the competing interests involved; but, in a system with a history of segregation, the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition. Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominately of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 26

An optional majority-to-minority transfer provision has long been recognized as a useful part of every desegregation plan. Provision for optional transfer of those in the majority racial group of a particular school to other schools where they will be in the minority is an indispensable remedy for those students willing to transfer to other schools in order to lessen the impact on them of the state-imposed stigma of segregation. In order to be effective, such a transfer arrangement must grant [402 U.S. 27] the transferring student free transportation and space must be made available in the school to which he desires to move. Cf. Ellis v. Board of Public Instruction, 423 F.2d 203, 206 (CA5 1970). The court orders in this and the companion Davis case now provide such an option.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 27

(3) Remedial Altering of Attendance Zones.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 27

The maps submitted in these cases graphically demonstrate that one of the principal tools employed by school planners and by courts to break up the dual school system has been a frank—and sometimes drastic—gerrymandering of school districts and attendance zones. An additional step was pairing, "clustering," or "grouping" of schools with attendance assignments made deliberately to accomplish the transfer of Negro students out of formerly segregated Negro schools and transfer of white students to formerly all-Negro schools. More often than not, these zones are neither compact 10 nor contiguous; indeed they may be on opposite ends of the city. As an interim corrective measure, this cannot be said to be beyond the broad remedial powers of a court. [402 U.S. 28]

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 28

Absent a constitutional violation, there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations, and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 28

No fixed or even substantially fixed guidelines can be established as to how far a court can go, but it must be recognized that there are limits. The objective is to dismantle the dual school system. "Racially neutral" assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation. When school authorities present a district court with a "loaded game board," affirmative action in the form of remedial altering of attendance zones is proper to achieve truly nondiscriminatory assignments. In short, an assignment plan is not acceptable simply because it appears to be neutral.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 28

In this area, we must of necessity rely to a large extent, as this Court has for more than 16 years, on the informed judgment of the district courts in the first instance and on courts of appeals.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 28

We hold that the pairing and grouping of noncontiguous school zones is a permissible tool, and such action is to be considered in light of the objectives sought. Judicial [402 U.S. 29] steps in shaping such zones going beyond combinations of contiguous areas should be examined in light of what is said in subdivisions (1), (2), and (3) of this opinion concerning the objectives to be sought. Maps do not tell the whole story, since noncontiguous school zones may be more accessible to each other in terms of the critical travel time, because of traffic patterns and good highways, than schools geographically closer together. Conditions in different localities will vary so widely that no rigid rules can be laid down to govern all situations.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 29

(4) Transportation of Students.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 29

The scope of permissible transportation of students as an implement of a remedial decree has never been defined by this Court, and, by the very nature of the problem, it cannot be defined with precision. No rigid guidelines as to student transportation can be given for application to the infinite variety of problems presented in thousands of situations. Bus transportation has been an integral part of the public education system for years, and was perhaps the single most important factor in the transition from the one-room schoolhouse to the consolidated school. Eighteen million of the Nation's public school children, approximately 39%, were transported to their schools by bus in 1969-1970 in all parts of the country.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 29

The importance of bus transportation as a normal and accepted tool of educational policy is readily discernible in this and the companion case, Davis, supra. 11 The [402 U.S. 30] Charlotte school authorities did not purport to assign students on the basis of geographically drawn zones until 1965, and then they allowed almost unlimited transfer privileges. The District Court's conclusion that assignment of children to the school nearest their home serving their grade would not produce an effective dismantling of the dual system is supported by the record.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 30

Thus, the remedial techniques used in the District Court's order were within that court's power to provide equitable relief; implementation of the decree is well within the capacity of the school authority.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 30

The decree provided that the buses used to implement the plan would operate on direct routes. Students would be picked up at schools near their homes and transported to the schools they were to attend. The trips for elementary school pupils average about seven miles, and the District Court found that they would take "not over 35 minutes, at the most." 12 This system compares favorably with the transportation plan previously operated in Charlotte, under which, each day, 23,600 students on all grade levels were transported an average of 15 miles one way for an average trip requiring over an hour. In these circumstances, we find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation. Desegregation plans cannot be limited to the walk-in school.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 30

An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly [402 U.S. 31] impinge on the educational process. District courts must weigh the soundness of any transportation plan in light of what is said in subdivisions (1), (2), and (3) above. It hardly needs stating that the limits on time of travel will vary with many factors, but probably with none more than the age of the students. The reconciliation of competing values in a desegregation case is, of course, a difficult task with many sensitive facets, but fundamentally no more so than remedial measures courts of equity have traditionally employed.

VI

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 31

The Court of Appeals, searching for a term to define the equitable remedial power of the district courts, used the term "reasonableness." In Green, supra, this Court used the term "feasible," and, by implication, "workable," "effective," and "realistic" in the mandate to develop "a plan that promises realistically to work, and…to work now." On the facts of this case, we are unable to conclude that the order of the District Court is not reasonable, feasible and workable. However, in seeking to define the scope of remedial power or the limits on remedial power of courts in an area as sensitive as we deal with here, words are poor instruments to convey the sense of basic fairness inherent in equity. Substance, not semantics, must govern, and we have sought to suggest the nature of limitations without frustrating the appropriate scope of equity.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 31

At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in Brown I. The systems would then be "unitary" in the sense required by our decisions in Green and Alexander.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 31

It does not follow that the communities served by such systems will remain demographically stable, for, in a growing, mobile society, few will do so. Neither [402 U.S. 32] school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but, in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

For the reasons herein set forth, the judgment of the Court of Appeals is affirmed as to those parts in which it affirmed the judgment of the District Court. The order of the District Court, dated August 7, 1970, is also affirmed.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

It is so ordered.

Footnotes

BURGER, J., lead opinion (Footnotes)

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

1. McDaniel v. Barresi, No. 420, post, p. 39; Davis v. Board of School Commissioners of Mobile County, No. 436, post, p. 33; Moore v. Charlotte-Mecklenburg Board of Education, No. 444, post, p. 47; North Carolina State Board of Education v. Swann, No. 498, post, p. 43. For purposes of this opinion the cross-petitions in Nos. 281 and 349 are treated as a single case, and will be referred to as "this case."

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

2. Raney v. Board of Education, 391 U.S. 443 (1968), and Monroe v. Board of Commissioners, 391 U.S. 450 (1968).

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

3. A "satellite zone" is an area which is not contiguous with the main attendance zone surrounding the school.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

4. In its opinion and order of December 1, 1969, later incorporated in the order appointing Dr. Finger as consultant, the District Court stated:

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

Fixed ratios of pupils in particular schools will not be set. If the board in one of its three tries had presented a plan for desegregation, the court would have sought ways to approve variations in pupil ratios. In default of any such plan from the school board, the court will start with the thought…that efforts should be made to reach a 71-29 ratio in the various schools so that there will be no basis for contending that one school is racially different from the others, but to understand that variations from that norm may be unavoidable.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

306 F.Supp. 1299, 1312.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

5. The necessity for this is suggested by the situation in the Fifth Circuit where 166 appeals in school desegregation cases were heard between December 2, 1969, and September 24, 1970.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

6. Elementary public school population (grades 1-6) grew from 17,447,000 in 1954 to 23, 103,000 in 1969; secondary school population (beyond grade 6) grew from 11, 183,000 in 1954 to 20,775,000 in 1969. Digest of Educational Statistics, Table 3, Office of Education Pub. 10024-64; Digest of Educational Statistics, Table 28, Office of Education Pub. 10024-70.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

7. It must be remembered that the District Court entered nearly a score of orders and numerous sets of findings; and, for the most part, each was accompanied by a memorandum opinion. Considering the pressure under which the court was obliged to operate, we would not expect that all inconsistencies and apparent inconsistencies could be avoided. Our review, of course, is on the orders of February 5, 1970, as amended, and August 7, 1970.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

8. The final board plan left 10 schools 86% to 100% Negro, and yet categorically rejected the techniques of pairing and clustering as part of the desegregation effort. As discussed below, the Charlotte board was under an obligation to exercise every reasonable effort to remedy the violation, once it was identified, and the suggested techniques are permissible remedial devices. Additionally, as noted by the District Court and Court of Appeals, the board plan did not assign white students to any school unless the student population of that school was at least 60% white. This was an arbitrary limitation negating reasonable remedial steps.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

9. In its August 3, 1970, memorandum holding that the District Court plan was,"reasonable" under the standard laid down by the Fourth Circuit on appeal, the District Court explained the approach taken as follows:

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

This court has not ruled, and does not rule, that "racial balance" is required under the Constitution; nor that all black schools in all cities are unlawful; nor that all school boards must bus children or violate the Constitution; nor that the particular order entered in this case would be correct in other circumstances not before this court.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

(Emphasis in original.)

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

10. The reliance of school authorities on the reference to the "revision of…attendance areas into compact units," Brown II, at 300 (emphasis supplied), is misplaced. The enumeration in that opinion of considerations to be taken into account by district courts was patently intended to be suggestive, rather than exhaustive. The decision in Brown II to remand the cases decided in Brown I to local courts for the framing of specific decrees was premised on a recognition that this Court could not at that time foresee the particular means which would be required to implement the constitutional principles announced. We said in Green, supra, at 439:

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation. There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance.

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11. During 1967-1968, for example, the Mobile board used 207 buses to transport 22,094 students daily for an average round trip of 31 miles. During 1966-1967, 7,116 students in the metropolitan area were bused daily. In Charlotte-Mecklenburg, the system as a whole, without regard to desegregation plans, planned to bus approximately 23,000 students this year, for an average daily round trip of 15 miles. More elementary school children than high school children were to be bused, and four- and five-year-olds travel the longest routes in the system.

1971, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 32

12. The District Court found that the school system would have to employ 138 more buses than it had previously operated. But 105 of those buses were already available, and the others could easily be obtained. Additionally, it should be noted that North Carolina requires provision of transportation for all students who are assigned to schools more than one and one-half miles from their homes. N.C.Gen.Stat. § 115-186(b) (1966).

New York Times Co. v. United States, 1971

Title: New York Times Co. v. United States

Author: U.S. Supreme Court

Date: June 30, 1971

Source: 403 U.S. 713

This case was argued June 26, 1971, and was decided June 30, 1971, together with No. 1885, United States v. Washington Post Co. et al., on certiorari to the United States Court of Appeals for the District of Columbia Circuit.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Syllabus

1971, New York Times Co. v. United States, 403 U.S. 713

The United States, which brought these actions to enjoin publication in the New York Times and in the Washington Post of certain classified material, has not met the "heavy burden of showing justification for the enforcement of such a [prior] restraint."

1971, New York Times Co. v. United States, 403 U.S. 713

No. 1873, 44 F.2d 544, reversed and remanded; No. 1885, \_\_\_ U.S.App.D.C. \_\_\_, 446 F.2d 1327, affirmed. [403 U.S. 714]

Per curiam opinion.

1971, New York Times Co. v. United States, 403 U.S. 714

PER CURIAM

1971, New York Times Co. v. United States, 403 U.S. 714

We granted certiorari in these cases in which the United States seeks to enjoin the New York Times and the Washington Post from publishing the contents of a classified study entitled "History of U.S. Decision-Making Process on Viet Nam Policy." Post, pp. 942, 943.

1971, New York Times Co. v. United States, 403 U.S. 714

"Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963); see also Near v. Minnesota, 283 U.S. 697 (1931). The Government "thus carries a heavy burden of showing justification for the imposition of such a restraint." Organization for a Better Austin v. Keefe, 402 U.S. 415, 419 (1971). The District Court for the Southern District of New York, in the New York Times case, and the District Court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit, in the Washington Post case, held that the Government had not met that burden. We agree.

1971, New York Times Co. v. United States, 403 U.S. 714

The judgment of the Court of Appeals for the District of Columbia Circuit is therefore affirmed. The order of the Court of Appeals for the Second Circuit is reversed, and the case is remanded with directions to enter a judgment affirming the judgment of the District Court for the Southern District of New York. The stays entered June 25, 1971, by the Court are vacated. The judgments shall issue forthwith.

1971, New York Times Co. v. United States, 403 U.S. 714

So ordered.

BLACK, J., concurring

1971, New York Times Co. v. United States, 403 U.S. 714

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS joins, concurring.

1971, New York Times Co. v. United States, 403 U.S. 714

I adhere to the view that the Government's case against the Washington Post should have been dismissed, and that the injunction against the New York Times should have been vacated without oral argument when the cases were first presented to this Court. I believe [403 U.S. 715] that every moment's continuance of the injunctions against these newspapers amounts to a flagrant, indefensible, and continuing violation of the First Amendment. Furthermore, after oral argument, I agree completely that we must affirm the judgment of the Court of Appeals for the District of Columbia Circuit and reverse the judgment of the Court of Appeals for the Second Circuit for the reasons stated by my Brothers DOUGLAS and BRENNAN. In my view, it is unfortunate that some of my Brethren are apparently willing to hold that the publication of news may sometimes be enjoined. Such a holding would make a shambles of the First Amendment.

1971, New York Times Co. v. United States, 403 U.S. 715

Our Government was launched in 1789 with the adoption of the Constitution. The Bill of Rights, including the First Amendment, followed in 1791. Now, for the first time in the 182 years since the founding of the Republic, the federal courts are asked to hold that the First Amendment does not mean what it says, but rather means that the Government can halt the publication of current news of vital importance to the people of this country.

1971, New York Times Co. v. United States, 403 U.S. 715

In seeking injunctions against these newspapers, and in its presentation to the Court, the Executive Branch seems to have forgotten the essential purpose and history of the First Amendment. When the Constitution was adopted, many people strongly opposed it because the document contained no Bill of Rights to safeguard certain basic freedoms. 1 They especially feared that the [403 U.S. 716] new powers granted to a central government might be interpreted to permit the government to curtail freedom of religion, press, assembly, and speech. In response to an overwhelming public clamor, James Madison offered a series of amendments to satisfy citizens that these great liberties would remain safe and beyond the power of government to abridge. Madison proposed what later became the First Amendment in three parts, two of which are set out below, and one of which proclaimed:

1971, New York Times Co. v. United States, 403 U.S. 716

The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments, and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable. 2

1971, New York Times Co. v. United States, 403 U.S. 716

(Emphasis added.) The amendments were offered to curtail and restrict the general powers granted to the Executive, Legislative, and Judicial Branches two years before in the original Constitution. The Bill of Rights changed the original Constitution into a new charter under which no branch of government could abridge the people's freedoms of press, speech, religion, and assembly. Yet the Solicitor General argues and some members of the Court appear to agree that the general powers of the Government adopted in the original Constitution should be interpreted to limit and restrict the specific and emphatic guarantees of the Bill of Rights adopted later. I can imagine no greater perversion of history. Madison and the other Framers of the First Amendment, able men [403 U.S. 717] that they were, wrote in language they earnestly believed could never be misunderstood: "Congress shall make no law…abridging the freedom…of the press…. " Both the history and language of the First Amendment support the view that the press must be left free to publish news, whatever the source, without censorship, injunctions, or prior restraints.

1971, New York Times Co. v. United States, 403 U.S. 717

In the First Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell. In my view, far from deserving condemnation for their courageous reporting, the New York Times, the Washington Post, and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly. In revealing the workings of government that led to the Vietnam war, the newspapers nobly did precisely that which the Founders hoped and trusted they would do.

1971, New York Times Co. v. United States, 403 U.S. 717

The Government's case here is based on premises entirely different from those that guided the Framers of the First Amendment. The Solicitor General has carefully and emphatically stated:

1971, New York Times Co. v. United States, 403 U.S. 717

Now, Mr. Justice [BLACK], your construction of…[the First Amendment] is well known, and I certainly respect it. You say that no law means no law, and that should be obvious. I can only [403 U.S. 718] say, Mr. Justice, that to me it is equally obvious that "no law" does not mean "no law," and I would seek to persuade the Court that that is true…. [T]here are other parts of the Constitution that grant powers and responsibilities to the Executive, and…the First Amendment was not intended to make it impossible for the Executive to function or to protect the security of the United States. 3

1971, New York Times Co. v. United States, 403 U.S. 718

And the Government argues in its brief that, in spite of the First Amendment,

1971, New York Times Co. v. United States, 403 U.S. 718

[t]he authority of the Executive Department to protect the nation against publication of information whose disclosure would endanger the national security stems from two interrelated sources: the constitutional power of the President over the conduct of foreign affairs and his authority as Commander-in-Chief. 4

1971, New York Times Co. v. United States, 403 U.S. 718

In other words, we are asked to hold that, despite the First Amendment's emphatic command, the Executive Branch, the Congress, and the Judiciary can make laws enjoining publication of current news and abridging freedom of the press in the name of "national security." The Government does not even attempt to rely on any act of Congress. Instead, it makes the bold and dangerously far-reaching contention that the courts should take it upon themselves to "make" a law abridging freedom of the press in the name of equity, presidential power and national security, even when the representatives of the people in Congress have adhered to the command of the First Amendment and refused to make such a law. 5 See concurring opinion of MR. JUSTICE DOUGLAS, [403 U.S. 719] post at 721-722. To find that the President has "inherent power" to halt the publication of news by resort to the courts would wipe out the First Amendment and destroy the fundamental liberty and security of the very people the Government hopes to make "secure." No one can read the history of the adoption of the First Amendment without being convinced beyond any doubt that it was injunctions like those sought here that Madison and his collaborators intended to outlaw in this Nation for all time.

1971, New York Times Co. v. United States, 403 U.S. 719

The word "security" is a broad, vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment. The guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our Republic. The Framers of the First Amendment, fully aware of both the need to defend a new nation and the abuses of the English and Colonial governments, sought to give this new society strength and security by providing that freedom of speech, press, religion, and assembly should not be abridged. This thought was eloquently expressed in 1937 by Mr. Chief Justice Hughes—great man and great Chief Justice that he was—when the Court held a man could not be punished for attending a meeting run by Communists.

1971, New York Times Co. v. United States, 403 U.S. 719

The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free [403 U.S. 720] assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government. 6

DOUGLAS, J., concurring

1971, New York Times Co. v. United States, 403 U.S. 720

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK joins, concurring.

1971, New York Times Co. v. United States, 403 U.S. 720

While I join the opinion of the Court, I believe it necessary to express my views more fully.

1971, New York Times Co. v. United States, 403 U.S. 720

It should be noted at the outset that the First Amendment provides that "Congress shall male no law…abridging the freedom of speech, or of the press." That leaves, in my view, no room for governmental restraint on the press. 1

1971, New York Times Co. v. United States, 403 U.S. 720

There is, moreover, no statute barring the publication by the press of the material which the Times and the Post seek to use. Title 18 U.S.C. § 793(e) provides that

1971, New York Times Co. v. United States, 403 U.S. 720

[w]hoever having unauthorized possession of, access to, or control over any document, writing…or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates…the same to any person not entitled to receive it…[s]hall be fined [403 U.S. 721] not more than $10,000 or imprisoned not more than ten years, or both.

1971, New York Times Co. v. United States, 403 U.S. 721

The Government suggests that the word "communicates" is broad enough to encompass publication.

1971, New York Times Co. v. United States, 403 U.S. 721

There are eight sections in the chapter on espionage and censorship, §§ 792-799. In three of those eight, "publish" is specifically mentioned: § 794(b) applies to

1971, New York Times Co. v. United States, 403 U.S. 721

Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates…[the disposition of armed forces].

1971, New York Times Co. v. United States, 403 U.S. 721

Section 797 applies to whoever "reproduces, publishes, sells, or gives away" photographs of defense installations.

1971, New York Times Co. v. United States, 403 U.S. 721

Section 798, relating to cryptography, applies to whoever: "communicates, furnishes, transmits, or otherwise makes available…or publishes" the described material. 2 (Emphasis added.)

1971, New York Times Co. v. United States, 403 U.S. 721

Thus, it is apparent that Congress was capable of, and did, distinguish between publishing and communication in the various sections of the Espionage Act.

1971, New York Times Co. v. United States, 403 U.S. 721

The other evidence that § 793 does not apply to the press is a rejected version of § 793. That version read:

1971, New York Times Co. v. United States, 403 U.S. 721

During any national emergency resulting from a war to which the United States is a party, or from threat of such a war, the President may, by proclamation, declare the existence of such emergency and, by proclamation, prohibit the publishing or communicating of, or the attempting to publish or communicate any information relating to the national defense which, in his judgment, is of such character that it is or might be useful to the [403 U.S. 722] enemy.

1971, New York Times Co. v. United States, 403 U.S. 722

55 Cong.Rec. 1763. During the debates in the Senate, the First Amendment was specifically cited, and that provision was defeated. 55 Cong.Rec. 2167.

1971, New York Times Co. v. United States, 403 U.S. 722

Judge Gurfein's holding in the Times case that this Act does not apply to this case was therefore preeminently sound. Moreover, the Act of September 23, 1950, in amending 18 U.S.C. § 793 states in § 1(b) that:

1971, New York Times Co. v. United States, 403 U.S. 722

Nothing in this Act shall be construed to authorize, require, or establish military or civilian censorship or in any way to limit or infringe upon freedom of the press or of speech as guaranteed by the Constitution of the United States and no regulation shall be promulgated hereunder having that effect.

1971, New York Times Co. v. United States, 403 U.S. 722

64 Stat. 987. Thus, Congress has been faithful to the command of the First Amendment in this area.

1971, New York Times Co. v. United States, 403 U.S. 722

So any power that the Government possesses must come from its "inherent power."

1971, New York Times Co. v. United States, 403 U.S. 722

The power to wage war is "the power to wage war successfully." See Hirabayashi v. United States, 320 U.S. 81, 93. But the war power stems from a declaration of war. The Constitution by Art. I, § 8, gives Congress, not the President, power "[t]o declare War." Nowhere are presidential wars authorized. We need not decide, therefore, what leveling effect the war power of Congress might have.

1971, New York Times Co. v. United States, 403 U.S. 722

These disclosures 3 may have a serious impact. But that is no basis for sanctioning a previous restraint on [403 U.S. 723] the press. As stated by Chief Justice Hughes in Near v. Minnesota, 283 U.S. 697, 719-720:

1971, New York Times Co. v. United States, 403 U.S. 723

While reckless assaults upon public men, and efforts to bring obloquy upon those who are endeavoring faithfully to discharge official duties, exert a baleful influence and deserve the severest condemnation in public opinion, it cannot be said that this abuse is greater, and it is believed to be less, than that which characterized the period in which our institutions took shape. Meanwhile, the administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous press, especially in great cities. The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct.

1971, New York Times Co. v. United States, 403 U.S. 723

As we stated only the other day in Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, "[a]ny prior restraint on expression comes to this Court with a "heavy presumption" against its constitutional validity."

1971, New York Times Co. v. United States, 403 U.S. 723

The Government says that it has inherent powers to go into court and obtain an injunction to protect the national interest, which, in this case, is alleged to be national security.

1971, New York Times Co. v. United States, 403 U.S. 723

Near v. Minnesota, 283 U.S. 697, repudiated that expansive doctrine in no uncertain terms.

1971, New York Times Co. v. United States, 403 U.S. 723

The dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression [403 U.S. 724] of embarrassing information. It is common knowledge that the First Amendment was adopted against the widespread use of the common law of seditious libel to punish the dissemination of material that is embarrassing to the powers-that-be. See T. Emerson, The System of Freedom of Expression, c. V (1970); Z. Chafee, Free Speech in the United States, c. XIII (1941). The present cases will, I think, go down in history as the most dramatic illustration of that principle. A debate of large proportions goes on in the Nation over our posture in Vietnam. That debate antedated the disclosure of the contents of the present documents. The latter are highly relevant to the debate in progress.

1971, New York Times Co. v. United States, 403 U.S. 724

Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors. Open debate and discussion of public issues are vital to our national health. On public questions, there should be "uninhibited, robust, and wide-open" debate. New York Times Co. v. Sullivan, 376 U.S. 254, 269-270.

1971, New York Times Co. v. United States, 403 U.S. 724

I would affirm the judgment of the Court of Appeals in the Post case, vacate the stay of the Court of Appeals in the Times case, and direct that it affirm the District Court.

1971, New York Times Co. v. United States, 403 U.S. 724

The stays in these cases that have been in effect for more than a week constitute a flouting of the principles of the First Amendment as interpreted in Near v. Minnesota.

BRENNAN, J., concurring

1971, New York Times Co. v. United States, 403 U.S. 724

MR. JUSTICE BRENNAN, concurring.

I

1971, New York Times Co. v. United States, 403 U.S. 724

I write separately in these cases only to emphasize what should be apparent: that our judgments in the present cases may not be taken to indicate the propriety, in the future, of issuing temporary stays and restraining [403 U.S. 725] orders to block the publication of material sought to be suppressed by the Government. So far as I can determine, never before has the United States sought to enjoin a newspaper from publishing information in its possession. The relative novelty of the questions presented, the necessary haste with which decisions were reached, the magnitude of the interests asserted, and the fact that all the parties have concentrated their arguments upon the question whether permanent restraints were proper may have justified at least some of the restraints heretofore imposed in these cases. Certainly it is difficult to fault the several courts below for seeking to assure that the issues here involved were preserved for ultimate review by this Court. But even if it be assumed that some of the interim restraints were proper in the two cases before us, that assumption has no bearing upon the propriety of similar judicial action in the future. To begin with, there has now been ample time for reflection and judgment; whatever values there may be in the preservation of novel questions for appellate review may not support any restraints in the future. More important, the First Amendment stands as an absolute bar to the imposition of judicial restraints in circumstances of the kind presented by these cases.

II

1971, New York Times Co. v. United States, 403 U.S. 725

The error that has pervaded these cases from the outset was the granting of any injunctive relief whatsoever, interim or otherwise. The entire thrust of the Government's claim throughout these cases has been that publication of the material sought to be enjoined "could," or "might," or "may" prejudice the national interest in various ways. But the First Amendment tolerates absolutely no prior judicial restraints of the press predicated upon surmise or conjecture that untoward consequences [403 U.S. 726] may result.\* Our cases, it is true, have indicated that there is a single, extremely narrow class of cases in which the First Amendment's ban on prior judicial restraint may be overridden. Our cases have thus far indicated that such cases may arise only when the Nation "is at war," Schenck v. United States, 249 U.S. 47, 52 (1919), during which times

1971, New York Times Co. v. United States, 403 U.S. 726

[n]o one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops.

1971, New York Times Co. v. United States, 403 U.S. 726

Near v. Minnesota, 283 U.S. 697, 716 (1931). Even if the present world situation were assumed to be tantamount to a time of war, or if the power of presently available armaments would justify even in peacetime the suppression of information that would set in motion a nuclear holocaust, in neither of these actions has the Government presented or even alleged that publication of items from or based upon the material at issue would cause the happening of an event of that nature. "[T]he chief purpose of [the First Amendment's] guaranty [is] to prevent previous restraints upon publication." Near v. Minnesota, supra, at 713. Thus, only governmental allegation and proof that publication must inevitably, directly, [403 U.S. 727] and immediately cause the occurrence of an event kindred to imperiling the safety of a transport already at sea can support even the issuance of an interim restraining order. In no event may mere conclusions be sufficient, for if the Executive Branch seeks judicial aid in preventing publication, it must inevitably submit the basis upon which that aid is sought to scrutiny by the judiciary. And, therefore, every restraint issued in this case, whatever its form, has violated the First Amendment—and not less so because that restraint was justified as necessary to afford the courts an opportunity to examine the claim more thoroughly. Unless and until the Government has clearly made out its case, the First Amendment commands that no injunction may issue.

STEWART, J., concurring

1971, New York Times Co. v. United States, 403 U.S. 727

MR. JUSTICE STEWART, with whom MR. JUSTICE WHITE joins, concurring.

1971, New York Times Co. v. United States, 403 U.S. 727

In the governmental structure created by our Constitution, the Executive is endowed with enormous power in the two related areas of national defense and international relations. This power, largely unchecked by the Legislative 1 and Judicial 2 branches, has been pressed to the very hilt since the advent of the nuclear missile age. For better or for worse, the simple fact is that a [403 U.S. 728] President of the United States possesses vastly greater constitutional independence in these two vital areas of power than does, say, a prime minister of a country with a parliamentary form of government.

1971, New York Times Co. v. United States, 403 U.S. 728

In the absence of the governmental checks and balances present in other areas of our national life, the only effective restraint upon executive policy and power in the areas of national defense and international affairs may lie in an enlightened citizenry—in an informed and critical public opinion which alone can here protect the values of democratic government. For this reason, it is perhaps here that a press that is alert, aware, and free most vitally serves the basic purpose of the First Amendment. For, without an informed and free press, there cannot be an enlightened people.

1971, New York Times Co. v. United States, 403 U.S. 728

Yet it is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy. Other nations can hardly deal with this Nation in an atmosphere of mutual trust unless they can be assured that their confidences will be kept. And, within our own executive departments, the development of considered and intelligent international policies would be impossible if those charged with their formulation could not communicate with each other freely, frankly, and in confidence. In the area of basic national defense, the frequent need for absolute secrecy is, of course, self-evident.

1971, New York Times Co. v. United States, 403 U.S. 728

I think there can be but one answer to this dilemma, if dilemma it be. The responsibility must be where the power is. 3 If the Constitution gives the Executive [403 U.S. 729] a large degree of unshared power in the conduct of foreign affairs and the maintenance of our national defense, then, under the Constitution, the Executive must have the largely unshared duty to determine and preserve the degree of internal security necessary to exercise that power successfully. It is an awesome responsibility, requiring judgment and wisdom of a high order. I should suppose that moral, political, and practical considerations would dictate that a very first principle of that wisdom would be an insistence upon avoiding secrecy for its own sake. For when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion. I should suppose, in short, that the hallmark of a truly effective internal security system would be the maximum possible disclosure, recognizing that secrecy can best be preserved only when credibility is truly maintained. But, be that as it may, it is clear to me that it is the constitutional duty of the Executive—as a matter of sovereign prerogative, and not as a matter of law as the courts know law—through the promulgation and enforcement of executive regulations, to protect [403 U.S. 730] the confidentiality necessary to carry out its responsibilities in the fields of international relations and national defense.

1971, New York Times Co. v. United States, 403 U.S. 730

This is not to say that Congress and the courts have no role to play. Undoubtedly, Congress has the power to enact specific and appropriate criminal laws to protect government property and preserve government secrets. Congress has passed such laws, and several of them are of very colorable relevance to the apparent circumstances of these cases. And if a criminal prosecution is instituted, it will be the responsibility of the courts to decide the applicability of the criminal law under which the charge is brought. Moreover, if Congress should pass a specific law authorizing civil proceedings in this field, the courts would likewise have the duty to decide the constitutionality of such a law, as well as its applicability to the facts proved.

1971, New York Times Co. v. United States, 403 U.S. 730

But in the cases before us, we are asked neither to construe specific regulations nor to apply specific laws. We are asked, instead, to perform a function that the Constitution gave to the Executive, not the Judiciary. We are asked, quite simply, to prevent the publication by two newspapers of material that the Executive Branch insists should not, in the national interest, be published. I am convinced that the Executive is correct with respect to some of the documents involved. But I cannot say that disclosure of any of them will surely result in direct, immediate, and irreparable damage to our Nation or its people. That being so, there can under the First Amendment be but one judicial resolution of the issues before us. I join the judgments of the Court.

WHITE, J., concurring

1971, New York Times Co. v. United States, 403 U.S. 730

MR. JUSTICE WHITE, with whom MR. JUSTICE STEWART joins, concurring.

1971, New York Times Co. v. United States, 403 U.S. 730

I concur in today's judgments, but only because of the concededly extraordinary protection against prior restraints [403 U.S. 731] enjoyed by the press under our constitutional system. I do not say that in no circumstances would the First Amendment permit an injunction against publishing information about government plans or operations. 1 Nor, after examining the materials the Government characterizes as the most sensitive and destructive, can I deny that revelation of these documents will do substantial damage to public interests. Indeed, I am confident that their disclosure will have that result. But I nevertheless agree that the United States has not satisfied the very heavy burden that it must meet to warrant an injunction against publication in these cases, at least in the absence of express and appropriately limited congressional authorization for prior restraints in circumstances such as these. [403 U.S. 732]

1971, New York Times Co. v. United States, 403 U.S. 732

The Government's position is simply stated: the responsibility of the Executive for the conduct of the foreign affairs and for the security of the Nation is so basic that the President is entitled to an injunction against publication of a newspaper story whenever he can convince a court that the information to be revealed threatens "grave and irreparable" injury to the public interest; 2 and the injunction should issue whether or not the material to be published is classified, whether or not publication would be lawful under relevant criminal statutes enacted by Congress, and regardless of the circumstances by which the newspaper came into possession of the information. At least in the absence of legislation by Congress, based on its own investigations and findings, I am quite unable to agree that the inherent powers of the Executive and the courts reach so far as to authorize remedies having such sweeping potential for inhibiting publications by the press. Much of the difficulty inheres in the "grave and irreparable danger" standard suggested by the United States. If the United States were to have judgment under such a standard in these cases, our decision would be of little guidance to other courts in other cases, for the material at issue here would not be available from the Court's opinion or from public records, nor would it be published by the press. Indeed, even today, where we hold that the United States has not met its burden, the material remains sealed in court records and it is [403 U.S. 733] properly not discussed in today's opinions. Moreover, because the material poses substantial dangers to national interests, and because of the hazards of criminal sanctions, a responsible press may choose never to publish the more sensitive materials. To sustain the Government in these cases would start the courts down a long and hazardous road that I am not willing to travel, at least without congressional guidance and direction.

1971, New York Times Co. v. United States, 403 U.S. 733

It is not easy to reject the proposition urged by the United States, and to deny relief on its good faith claims in these cases that publication will work serious damage to the country. But that discomfiture is considerably dispelled by the infrequency of prior-restraint cases. Normally, publication will occur and the damage be done before the Government has either opportunity or grounds for suppression. So here, publication has already begun, and a substantial part of the threatened damage has already occurred. The fact of a massive breakdown in security is known, access to the documents by many unauthorized people is undeniable, and the efficacy of equitable relief against these or other newspapers to avert anticipated damage is doubtful, at best.

1971, New York Times Co. v. United States, 403 U.S. 733

What is more, terminating the ban on publication of the relatively few sensitive documents the Government now seeks to suppress does not mean that the law either requires or invites newspapers or others to publish them, or that they will be immune from criminal action if they do. Prior restraints require an unusually heavy justification under the First Amendment, but failure by the Government to justify prior restraints does not measure its constitutional entitlement to a conviction for criminal publication. That the Government mistakenly chose to proceed by injunction does not mean that it could not successfully proceed in another way.

1971, New York Times Co. v. United States, 403 U.S. 733

When the Espionage Act was under consideration in [403 U.S. 734] 1917, Congress eliminated from the bill a provision that would have given the President broad powers in time of war to proscribe, under threat of criminal penalty, the publication of various categories of information related to the national defense. 3 Congress at that time was unwilling to clothe the President with such far-reaching powers to monitor the press, and those opposed to this part of the legislation assumed that a necessary concomitant of such power was the power to "filter out the news to the people through some man." 55 Cong.Rec. 2008 (remarks of Sen. Ashurst). However, these same members of Congress appeared to have little doubt that newspapers would be subject to criminal prosecution if they insisted on publishing information of the type Congress had itself determined should not be revealed. Senator Ashurst, for example, was quite sure that the editor of such a newspaper

1971, New York Times Co. v. United States, 403 U.S. 734

should be punished if he did publish information as to the movements of the fleet, the troops, the aircraft, the location of powder factories, the location of defense works, and all that sort of thing.

1971, New York Times Co. v. United States, 403 U.S. 734

Id. at 2009. 4 [403 U.S. 735]

1971, New York Times Co. v. United States, 403 U.S. 735

The Criminal Code contains numerous provisions potentially relevant to these cases. Section 797 5 makes it a crime to publish certain photographs or drawings of military installations. Section 798, 6 also in precise language, proscribes knowing and willful publication of any classified information concerning the cryptographic systems [403 U.S. 736] or communication intelligence activities of the United States, as well as any information obtained from communication intelligence operations. 7 If any of the material here at issue is of this nature, the newspapers are presumably now on full notice of the position of the United States, and must face the consequences if they [403 U.S. 737] publish. I would have no difficulty in sustaining convictions under these sections on facts that would not justify the intervention of equity and the imposition of a prior restraint.

1971, New York Times Co. v. United States, 403 U.S. 737

The same would be true under those sections of the Criminal Code casting a wider net to protect the national defense. Section 793(e) 8 makes it a criminal act for any unauthorized possessor of a document "relating to the national defense" either (1) willfully to communicate or cause to be communicated that document to any person not entitled to receive it or (2) willfully to retain the document and fail to deliver it to an officer of the United States entitled to receive it. The subsection was added in 1950 because preexisting law provided no [403 U.S. 738] penalty for the unauthorized possessor unless demand for the documents was made. 9

1971, New York Times Co. v. United States, 403 U.S. 738

The dangers surrounding the unauthorized possession of such items are self-evident, [403 U.S. 739] and it is deemed advisable to require their surrender in such a case, regardless of demand, especially since their unauthorized possession may be unknown to the authorities who would otherwise make the demand.

1971, New York Times Co. v. United States, 403 U.S. 739

S.Rep. No. 2369, pt. 1, 81st Cong., 2d Sess., 9 (1950). Of course, in the cases before us, the unpublished documents have been demanded by the United States, and their import has been made known at least to counsel for the newspapers involved. In Gorin v. United States, 312 U.S. 19, 28 (1941), the words "national defense" as used in a predecessor of § 793 were held by a unanimous Court to have "a well understood connotation"—a "generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness"—and to be "sufficiently definite to apprise the public of prohibited activities" [403 U.S. 740] and to be consonant with due process. 312 U.S. at 28. Also, as construed by the Court in Gorin, information "connected with the national defense" is obviously not limited to that threatening "grave and irreparable" injury to the United States. 10

1971, New York Times Co. v. United States, 403 U.S. 740

It is thus clear that Congress has addressed itself to the problems of protecting the security of the country and the national defense from unauthorized disclosure of potentially damaging information. Cf. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585-586 (1952); see also id. at 593-628 (Frankfurter, J., concurring). It has not, however, authorized the injunctive remedy against threatened publication. It has apparently been satisfied to rely on criminal sanctions and their deterrent effect on the responsible, as well as the irresponsible, press. I am not, of course, saying that either of these newspapers has yet committed a crime, or that either would commit a crime if it published all the material now in its possession. That matter must await resolution in the context of a criminal proceeding if one is instituted by the United States. In that event, the issue of guilt or innocence would be determined by procedures and standards quite different from those that have purported to govern these injunctive proceedings.

MARSHALL, J., concurring

1971, New York Times Co. v. United States, 403 U.S. 740

MR. JUSTICE MARSHALL, concurring.

1971, New York Times Co. v. United States, 403 U.S. 740

The Government contends that the only issue in these cases is whether, in a suit by the United States, "the First Amendment bars a court from prohibiting a newspaper [403 U.S. 741] from publishing material whose disclosure would pose a 'grave and immediate danger to the security of the United States.' " Brief for the United States 7. With all due respect, I believe the ultimate issue in these cases is even more basic than the one posed by the Solicitor General. The issue is whether this Court or the Congress has the power to make law.

1971, New York Times Co. v. United States, 403 U.S. 741

In these cases, there is no problem concerning the President's power to classify information as "secret" or "top secret." Congress has specifically recognized Presidential authority, which has been formally exercised in Exec.Order 10501 (1953), to classify documents and information. See, e.g., 18 U.S.C. § 798; 50 U.S.C. § 783. 1 Nor is there any issue here regarding the President's power as Chief Executive and Commander in Chief to protect national security by disciplining employees who disclose information and by taking precautions to prevent leaks.

1971, New York Times Co. v. United States, 403 U.S. 741

The problem here is whether, in these particular cases, the Executive Branch has authority to invoke the equity jurisdiction of the courts to protect what it believes to be the national interest. See In re Debs, 158 U.S. 564, 584 (1895). The Government argues that, in addition to the inherent power of any government to protect itself, the President's power to conduct foreign affairs and his position as Commander in Chief give him authority to impose censorship on the press to protect his ability to deal effectively with foreign nations and to conduct the military affairs of the country. Of course, it is beyond cavil that the President has broad powers by virtue of his primary responsibility for the conduct of our foreign affairs and his position as Commander in Chief. Chicago & Southern Air Lines v. Waterman S.S. Corp., 333 U.S. 103 (1948); Hirabayashi v. United States, 320 U.S. 81, 93 (1943); United States v. Curtiss [403 U.S. 742] Wright Corp., 299 U.S. 304 (1936). 2 And, in some situations, it may be that, under whatever inherent powers the Government may have, as well as the implicit authority derived from the President's mandate to conduct foreign affairs and to act as Commander in Chief, there is a basis for the invocation of the equity jurisdiction of this Court as an aid to prevent the publication of material damaging to "national security," however that term may be defined.

1971, New York Times Co. v. United States, 403 U.S. 742

It would, however, be utterly inconsistent with the concept of separation of powers for this Court to use its power of contempt to prevent behavior that Congress has specifically declined to prohibit. There would be a similar damage to the basic concept of these co-equal branches of Government if, when the Executive Branch has adequate authority granted by Congress to protect "national security," it can choose, instead, to invoke the contempt power of a court to enjoin the threatened conduct. The Constitution provides that Congress shall make laws, the President execute laws, and courts interpret laws. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952). It did not provide for government by injunction in which the courts and the Executive Branch can "make law" without regard to the action of Congress. It may be more convenient for the Executive Branch if it need only convince a judge to prohibit conduct, rather than ask the Congress to pass a law, and it may be more convenient to enforce a contempt order than to seek a criminal conviction in a jury trial. Moreover, it may be considered politically wise to get a court to share the responsibility for arresting those who the Executive Branch has probable cause to believe are violating the law. But convenience and political considerations of the [403 U.S. 743] moment do not justify a basic departure from the principles of our system of government.

1971, New York Times Co. v. United States, 403 U.S. 743

In these cases, we are not faced with a situation where Congress has failed to provide the Executive with broad power to protect the Nation from disclosure of damaging state secrets. Congress has, on several occasions, given extensive consideration to the problem of protecting the military and strategic secrets of the United States. This consideration has resulted in the enactment of statutes making it a crime to receive, disclose, communicate, withhold, and publish certain documents, photographs, instruments, appliances, and information. The bulk of these statutes is found in chapter 37 of U.S.C. Title 18, entitled Espionage and Censorship. 3 In that chapter, [403 U.S. 744] Congress has provided penalties ranging from a $10,000 fine to death for violating the various statutes.

1971, New York Times Co. v. United States, 403 U.S. 744

Thus, it would seem that in order for this Court to issue an injunction it would require a showing that such an injunction would enhance the already exiting power of the Government to act. See Bennett v. Laman, 277 N.Y. 368, 14 N.E.2d 439 (1938). It is a traditional axiom of equity that a court of equity will not do a useless thing, just as it is a traditional axiom that equity will not enjoin the commission of a crime. See Z. Chafee & E. Re, Equity 935-954 (5th ed.1967); 1 H. Joyce, Injunctions §§ 580a (1909). Here, there has been no attempt to make such a showing. The Solicitor General does not even mention in his brief whether the Government considers that there is probable cause to believe a crime has been committed, or whether there is a conspiracy to commit future crimes.

1971, New York Times Co. v. United States, 403 U.S. 744

If the Government had attempted to show that there was no effective remedy under traditional criminal law, it would have had to show that there is no arguably applicable statute. Of course, at this stage, this Court could not and cannot determine whether there has been a violation of a particular statute or decide the constitutionality of any statute. Whether a good faith prosecution could have been instituted under any statute could, however, be determined. [403 U.S. 745]

1971, New York Times Co. v. United States, 403 U.S. 745

At least one of the many statutes in this area seems relevant to these cases. Congress has provided in 18 U.S.C. § 793(e) that whoever,

1971, New York Times Co. v. United States, 403 U.S. 745

having unauthorized possession of, access to, or control over any document, writing, code book, signal book…or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits…the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it…[s]hall be fined not more than $10,000 or imprisoned not more than ten years, or both.

1971, New York Times Co. v. United States, 403 U.S. 745

Congress has also made it a crime to conspire to commit any of the offenses listed in 18 U.S.C. § 793(e).

1971, New York Times Co. v. United States, 403 U.S. 745

It is true that Judge Gurfein found that Congress had not made it a crime to publish the items and material specified in § 793(e). He found that the words "communicates, delivers, transmits…" did not refer to publication of newspaper stories. And that view has some support in the legislative history, and conforms with the past practice of using the statute only to prosecute those charged with ordinary espionage. But see 103 Cong.Rec. 10449 (remarks of Sen. Humphrey). Judge Gurfein's view of the statute is not, however, the only plausible construction that could be given. See my Brother WHITE's concurring opinion.

1971, New York Times Co. v. United States, 403 U.S. 745

Even if it is determined that the Government could not in good faith bring criminal prosecutions against the New York Times and the Washington Post, it is clear that Congress has specifically rejected passing legislation that would have clearly given the President the power he seeks here and made the current activity of the newspapers unlawful. When Congress specifically declines to make conduct unlawful, it is not for this Court [403 U.S. 746] to redecide those issues—to overrule Congress. See Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

1971, New York Times Co. v. United States, 403 U.S. 746

On at least two occasions, Congress has refused to enact legislation that would have made the conduct engaged in here unlawful and given the President the power that he seeks in this case. In 1917, during the debate over the original Espionage Act, still the basic provisions of § 793, Congress rejected a proposal to give the President in time of war or threat of war authority to directly prohibit by proclamation the publication of information relating to national defense that might be useful to the enemy. The proposal provided that:

1971, New York Times Co. v. United States, 403 U.S. 746

During any national emergency resulting from a war to which the United States is a party, or from threat of such a war, the President may, by proclamation, declare the existence of such emergency and, by proclamation, prohibit the publishing or communicating of, or the attempting to publish or communicate any information relating to the national defense which, in his judgment, is of such character that it is or might be useful to the enemy. Whoever violates any such prohibition shall be punished by a fine of not more than $10,000 or by imprisonment for not more than 10 years, or both: Provided, That nothing in this section shall be construed to limit or restrict any discussion, comment, or criticism of the acts or policies of the Government or its representatives or the publication of the same.

1971, New York Times Co. v. United States, 403 U.S. 746

55 Cong.Rec. 1763. Congress rejected this proposal after war against Germany had been declared, even though many believed that there was a grave national emergency and that the threat of security leaks and espionage was serious. The Executive Branch has not gone to Congress and requested that the decision to provide such power be reconsidered. Instead, [403 U.S. 747] the Executive Branch comes to this Court and asks that it be granted the power Congress refused to give.

1971, New York Times Co. v. United States, 403 U.S. 747

In 1957, the United States Commission on Government Security found that

1971, New York Times Co. v. United States, 403 U.S. 747

[a]irplane journals, scientific periodicals, and even the daily newspaper have featured articles containing information and other data which should have been deleted in whole or in part for security reasons.

1971, New York Times Co. v. United States, 403 U.S. 747

In response to this problem, the Commission proposed that

1971, New York Times Co. v. United States, 403 U.S. 747

Congress enact legislation making it a crime for any person willfully to disclose without proper authorization, for any purpose whatever, information classified "secret" or "top secret," knowing, or having reasonable grounds to believe, such information to have been so classified.

1971, New York Times Co. v. United States, 403 U.S. 747

Report of Commission on Government Security 619-620 (1957). After substantial floor discussion on the proposal, it was rejected. See 103 Cong.Rec. 10447-10450. If the proposal that Sen. Cotton championed on the floor had been enacted, the publication of the documents involved here would certainly have been a crime. Congress refused, however, to make it a crime. The Government is here asking this Court to remake that decision. This Court has no such power.

1971, New York Times Co. v. United States, 403 U.S. 747

Either the Government has the power under statutory grant to use traditional criminal law to protect the country or, if there is no basis for arguing that Congress has made the activity a crime, it is plain that Congress has specifically refused to grant the authority the Government seeks from this Court. In either case, this Court does not have authority to grant the requested relief. It is not for this Court to fling itself into every breach perceived by some Government official, nor is it for this Court to take on itself the burden of enacting law, especially a law that Congress has refused to pass.

1971, New York Times Co. v. United States, 403 U.S. 747

I believe that the judgment of the United States Court of Appeals for the District of Columbia Circuit should [403 U.S. 748] be affirmed and the judgment of the United States Court of Appeals for the Second Circuit should be reversed insofar as it remands the case for further hearings.

BURGER, J., dissenting

1971, New York Times Co. v. United States, 403 U.S. 748

MR. CHIEF JUSTICE BURGER, dissenting.

1971, New York Times Co. v. United States, 403 U.S. 748

So clear are the constitutional limitations on prior restraint against expression that, from the time of Near v. Minnesota, 283 U.S. 697 (1931), until recently in Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971), we have had little occasion to be concerned with cases involving prior restraints against news reporting on matters of public interest. There is, therefore, little variation among the members of the Court in terms of resistance to prior restraints against publication. Adherence to this basic constitutional principle, however, does not make these cases simple. In these cases, the imperative of a free and unfettered press comes into collision with another imperative, the effective functioning of a complex modern government, and, specifically, the effective exercise of certain constitutional powers of the Executive. Only those who view the First Amendment as an absolute in all circumstances—a view I respect, but reject—can find such cases as these to be simple or easy.

1971, New York Times Co. v. United States, 403 U.S. 748

These cases are not simple for another and more immediate reason. We do not know the facts of the cases. No District Judge knew all the facts. No Court of Appeals judge knew all the facts. No member of this Court knows all the facts.

1971, New York Times Co. v. United States, 403 U.S. 748

Why are we in this posture, in which only those judges to whom the First Amendment is absolute and permits of no restraint in any circumstances or for any reason, are really in a position to act?

1971, New York Times Co. v. United States, 403 U.S. 748

I suggest we are in this posture because these cases have been conducted in unseemly haste. MR. JUSTICE HARLAN covers the chronology of events demonstrating the hectic pressures under which these cases have been processed, and I need not restate them. The prompt [403 U.S. 749] setting of these cases reflects our universal abhorrence of prior restraint. But prompt judicial action does not mean unjudicial haste.

1971, New York Times Co. v. United States, 403 U.S. 749

Here, moreover, the frenetic haste is due in large part to the manner in which the Times proceeded from the date it obtained the purloined documents. It seems reasonably clear now that the haste precluded reasonable and deliberate judicial treatment of these cases, and was not warranted. The precipitate action of this Court aborting trials not yet completed is not the kind of judicial conduct that ought to attend the disposition of a great issue.

1971, New York Times Co. v. United States, 403 U.S. 749

The newspapers make a derivative claim under the First Amendment; they denominate this right as the public "right to know"; by implication, the Times asserts a sole trusteeship of that right by virtue of its journalistic "scoop." The right is asserted as an absolute. Of course, the First Amendment right itself is not an absolute, as Justice Holmes so long ago pointed out in his aphorism concerning the right to shout "fire" in a crowded theater if there was no fire. There are other exceptions, some of which Chief Justice Hughes mentioned by way of example in Near v. Minnesota. There are no doubt other exceptions no one has had occasion to describe or discuss. Conceivably, such exceptions may be lurking in these cases and, would have been flushed had they been properly considered in the trial courts, free from unwarranted deadlines and frenetic pressures. An issue of this importance should be tried and heard in a judicial atmosphere conducive to thoughtful, reflective deliberation, especially when haste, in terms of hours, is unwarranted in light of the long period the Times, by its own choice, deferred publication. 1 [403 U.S. 750]

1971, New York Times Co. v. United States, 403 U.S. 750

It is not disputed that the Times has had unauthorized possession of the documents for three to four months, during which it has had its expert analysts studying them, presumably digesting them and preparing the material for publication. During all of this time, the Times, presumably in its capacity as trustee of the public's "right to know," has held up publication for purposes it considered proper, and thus public knowledge was delayed. No doubt this was for a good reason; the analysis of 7,000 pages of complex material drawn from a vastly greater volume of material would inevitably take time, and the writing of good news stories takes time. But why should the United States Government, from whom this information was illegally acquired by someone, along with all the counsel, trial judges, and appellate judges be placed under needless pressure? After these months of deferral, the alleged "right to know" has somehow and suddenly become a right that must be vindicated instanter.

1971, New York Times Co. v. United States, 403 U.S. 750

Would it have been unreasonable, since the newspaper could anticipate the Government's objections to release of secret material, to give the Government an opportunity to review the entire collection and determine whether agreement could be reached on publication? Stolen or not, if security was not, in fact, jeopardized, much of the material could no doubt have been declassified, since it spans a period ending in 1968. With such an approach—one that great newspapers have in the past practiced and stated editorially to be the duty of an honorable press—the newspapers and Government might well have narrowed [403 U.S. 751] the area of disagreement as to what was and was not publishable, leaving the remainder to be resolved in orderly litigation, if necessary. To me, it is hardly believable that a newspaper long regarded as a great institution in American life would fail to perform one of the basic and simple duties of every citizen with respect to the discovery or possession of stolen property or secret government documents. That duty, I had thought—perhaps naively—was to report forthwith, to responsible public officers. This duty rests on taxi drivers, Justices, and the New York Times. The course followed by the Times, whether so calculated or not, removed any possibility of orderly litigation of the issue. If the action of the judges up to now has been correct, that result is sheer happenstance. 2

1971, New York Times Co. v. United States, 403 U.S. 751

Our grant of the writ of certiorari before final judgment in the Times case aborted the trial in the District Court before it had made a complete record pursuant to the mandate of the Court of Appeals for the Second Circuit.

1971, New York Times Co. v. United States, 403 U.S. 751

The consequence of all this melancholy series of events is that we literally do not know what we are acting on. As I see it, we have been forced to deal with litigation concerning rights of great magnitude without an adequate record, and surely without time for adequate treatment either in the prior proceedings or in this Court. It is interesting to note that counsel on both sides, in oral argument before this Court, were frequently unable to respond to questions on factual points. Not surprisingly, they pointed out that they had been working literally "around the clock," and simply were unable to review the documents that give rise to these cases and [403 U.S. 752] were not familiar with them. This Court is in no better posture. I agree generally with MR. JUSTICE HARLAN and MR. JUSTICE BLACKMUN, but I am not prepared to reach the merits. 3

1971, New York Times Co. v. United States, 403 U.S. 752

I would affirm the Court of Appeals for the Second Circuit and allow the District Court to complete the trial aborted by our grant of certiorari, meanwhile preserving the status quo in the Post case. I would direct that the District Court, on remand, give priority to the Times case to the exclusion of all other business of that court, but I would not set arbitrary deadlines.

1971, New York Times Co. v. United States, 403 U.S. 752

I should add that I am in general agreement with much of what MR. JUSTICE WHITE has expressed with respect to penal sanctions concerning communication or retention of documents or information relating to the national defense.

1971, New York Times Co. v. United States, 403 U.S. 752

We all crave speedier judicial processes, but, when judges are pressured, as in these cases, the result is a parody of the judicial function.

HARLAN, J., dissenting

1971, New York Times Co. v. United States, 403 U.S. 752

MR. JUSTICE HARLAN, with whom THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN join, dissenting.

1971, New York Times Co. v. United States, 403 U.S. 752

These cases forcefully call to mind the wise admonition of Mr. Justice Holmes, dissenting in Northern Securities Co. v. United States, 193 U.S. 197, 400-401 (1904):

1971, New York Times Co. v. United States, 403 U.S. 752

Great cases, like hard cases, make bad law. For great cases are called great not by reason of their [403 U.S. 753] real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend.

1971, New York Times Co. v. United States, 403 U.S. 753

With all respect, I consider that the Court has been almost irresponsibly feverish in dealing with these cases.

1971, New York Times Co. v. United States, 403 U.S. 753

Both the Court of Appeals for the Second Circuit and the Court of Appeals for the District of Columbia Circuit rendered judgment on June 23. The New York Times' petition for certiorari, its motion for accelerated consideration thereof, and its application for interim relief were filed in this Court on June 24 at about 11 a.m. The application of the United States for interim relief in the Post case was also filed here on June 24 at about 7:15 p.m. This Court's order setting a hearing before us on June 26 at 11 a.m., a course which I joined only to avoid the possibility of even more peremptory action by the Court, was issued less than 24 hours before. The record in the Post case was filed with the Clerk shortly before 1 p.m. on June 25; the record in the Times case did not arrive until 7 or 8 o'clock that same night. The briefs of the parties were received less than two hours before argument on June 26.

1971, New York Times Co. v. United States, 403 U.S. 753

This frenzied train of events took place in the name of the presumption against prior restraints created by the First Amendment. Due regard for the extraordinarily important and difficult questions involved in these litigations should have led the Court to shun such a precipitate timetable. In order to decide the merits of these cases properly, some or all of the following questions should have been faced:

1971, New York Times Co. v. United States, 403 U.S. 753

1. Whether the Attorney General is authorized to bring these suits in the name of the United States. Compare [403 U.S. 754] In re Debs, 158 U.S. 564 (1895), with Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952). This question involves as well the construction and validity of a singularly opaque statute—the Espionage Act, 18 U.S.C. § 793(e).

1971, New York Times Co. v. United States, 403 U.S. 754

2. Whether the First Amendment permits the federal courts to enjoin publication of stories which would present a serious threat to national security. See Near v. Minnesota, 283 U.S. 697, 716 (1931) (dictum).

1971, New York Times Co. v. United States, 403 U.S. 754

3. Whether the threat to publish highly secret documents is of itself a sufficient implication of national security to justify an injunction on the theory that, regardless of the contents of the documents, harm enough results simply from the demonstration of such a breach of secrecy.

1971, New York Times Co. v. United States, 403 U.S. 754

4. Whether the unauthorized disclosure of any of these particular documents would seriously impair the national security.

1971, New York Times Co. v. United States, 403 U.S. 754

5. What weight should be given to the opinion of high officers in the Executive Branch of the Government with respect to questions 3 and 4.

1971, New York Times Co. v. United States, 403 U.S. 754

6. Whether the newspapers are entitled to retain and use the documents notwithstanding the seemingly uncontested facts that the documents, or the originals of which they are duplicates, were purloined from the Government's possession, and that the newspapers received them with knowledge that they had been feloniously acquired. Cf. Liberty Lobby, Inc. v. Pearson, 129 U.S.App.D.C. 74, 390 F.2d 489 (1967, amended 1968).

1971, New York Times Co. v. United States, 403 U.S. 754

7. Whether the threatened harm to the national security or the Government's possessory interest in the documents justifies the issuance of an injunction against publication in light of—

1971, New York Times Co. v. United States, 403 U.S. 754

a. The strong First Amendment policy against prior restraints on publication; [403 U.S. 755]

1971, New York Times Co. v. United States, 403 U.S. 755

b. The doctrine against enjoining conduct in violation of criminal statutes; and

1971, New York Times Co. v. United States, 403 U.S. 755

c. The extent to which the materials at issue have apparently already been otherwise disseminated.

1971, New York Times Co. v. United States, 403 U.S. 755

These are difficult questions of fact, of law, and of judgment; the potential consequences of erroneous decision are enormous. The time which has been available to us, to the lower courts,\* and to the parties has been wholly inadequate for giving these cases the kind of consideration they deserve. It is a reflection on the stability of the judicial process that these great issues—as important as any that have arisen during my time on the Court—should have been decided under the pressures engendered by the torrent of publicity that has attended these litigations from their inception.

1971, New York Times Co. v. United States, 403 U.S. 755

Forced as I am to reach the merits of these cases, I dissent from the opinion and judgments of the Court. Within the severe limitations imposed by the time constraints under which I have been required to operate, I can only state my reasons in telescoped form, even though, in different circumstances, I would have felt constrained to deal with the cases in the fuller sweep indicated above.

1971, New York Times Co. v. United States, 403 U.S. 755

It is a sufficient basis for affirming the Court of Appeals for the Second Circuit in the Times litigation to observe that its order must rest on the conclusion that, because of the time elements the Government had not been given an adequate opportunity to present its case [403 U.S. 756] to the District Court. At the least this conclusion was not an abuse of discretion.

1971, New York Times Co. v. United States, 403 U.S. 756

In the Post litigation, the Government had more time to prepare; this was apparently the basis for the refusal of the Court of Appeals for the District of Columbia Circuit on rehearing to conform its judgment to that of the Second Circuit. But I think there is another and more fundamental reason why this judgment cannot stand—a reason which also furnishes an additional ground for not reinstating the judgment of the District Court in the Times litigation, set aside by the Court of Appeals. It is plain to me that the scope of the judicial function in passing upon the activities of the Executive Branch of the Government in the field of foreign affairs is very narrowly restricted. This view is, I think, dictated by the concept of separation of powers upon which our constitutional system rests.

1971, New York Times Co. v. United States, 403 U.S. 756

In a speech on the floor of the House of Representatives, Chief Justice John Marshall, then a member of that body, stated:

1971, New York Times Co. v. United States, 403 U.S. 756

The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.

1971, New York Times Co. v. United States, 403 U.S. 756

10 Annals of Cong. 613 (1800). From that time, shortly after the founding of the Nation, to this, there has been no substantial challenge to this description of the scope of executive power. See United States v. Curtiss-Wright Corp., 299 U.S. 304, 319-321 (1936), collecting authorities.

1971, New York Times Co. v. United States, 403 U.S. 756

From this constitutional primacy in the field of foreign affairs, it seems to me that certain conclusions necessarily follow. Some of these were stated concisely by President Washington, declining the request of the House of Representatives for the papers leading up to the negotiation of the Jay Treaty:

1971, New York Times Co. v. United States, 403 U.S. 756

The nature of foreign negotiations requires caution, and their success must often depend on secrecy; [403 U.S. 757] and even when brought to a conclusion, a full disclosure of all the measures, demands, or eventual concessions which may have been proposed or contemplated would be extremely impolitic; for this might have a pernicious influence on future negotiations, or produce immediate inconveniences, perhaps danger and mischief, in relation to other powers.

1971, New York Times Co. v. United States, 403 U.S. 757

1 J. Richardson, Messages and Papers of the Presidents 194-195 (1896).

1971, New York Times Co. v. United States, 403 U.S. 757

The power to evaluate the "pernicious influence" of premature disclosure is not, however, lodged in the Executive alone. I agree that, in performance of its duty to protect the values of the First Amendment against political pressures, the judiciary must review the initial Executive determination to the point of satisfying itself that the subject matter of the dispute does lie within the proper compass of the President's foreign relations power. Constitutional considerations forbid "a complete abandonment of judicial control." Cf. United States v. Reynolds, 345 U.S. 1, 8 (1953). Moreover, the judiciary may properly insist that the determination that disclosure of the subject matter would irreparably impair the national security be made by the head of the Executive Department concerned—here, the Secretary of State or the Secretary of Defense—after actual personal consideration by that officer. This safeguard is required in the analogous area of executive claims of privilege for secrets of state. See id. at 8 and n. 20; Duncan v. Cammell, Laird Co., [1942] A.C. 624, 638 (House of Lords).

1971, New York Times Co. v. United States, 403 U.S. 757

But, in my judgment, the judiciary may not properly go beyond these two inquiries and redetermine for itself the probable impact of disclosure on the national security.

1971, New York Times Co. v. United States, 403 U.S. 757

[T]he very nature of executive decisions as to foreign policy is political, not judicial. Such decisions [403 U.S. 758] are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility, and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.

1971, New York Times Co. v. United States, 403 U.S. 758

Chicago & Southern Air Lines v. Waterman Steamship Corp., 333 U.S. 103, 111 (1948) (Jackson, J.).

1971, New York Times Co. v. United States, 403 U.S. 758

Even if there is some room for the judiciary to override the executive determination, it is plain that the scope of review must be exceedingly narrow. I can see no indication in the opinions of either the District Court or the Court of Appeals in the Post litigation that the conclusions of the Executive were given even the deference owing to an administrative agency, much less that owing to a co-equal branch of the Government operating within the field of its constitutional prerogative.

1971, New York Times Co. v. United States, 403 U.S. 758

Accordingly, I would vacate the judgment of the Court of Appeals for the District of Columbia Circuit on this ground, and remand the case for further proceedings in the District Court. Before the commencement of such further proceedings, due opportunity should be afforded the Government for procuring from the Secretary of State or the Secretary of Defense or both an expression of their views on the issue of national security. The ensuing review by the District Court should be in accordance with the views expressed in this opinion. And, for the reasons stated above, I would affirm the judgment of the Court of Appeals for the Second Circuit.

1971, New York Times Co. v. United States, 403 U.S. 758

Pending further hearings in each case conducted under the appropriate ground rules, I would continue the [403 U.S. 759] restraints on publication. I cannot believe that the doctrine prohibiting prior restraints reaches to the point of preventing courts from maintaining the status quo long enough to act responsibly in matters of such national importance as those involved here.

BLACKMUN, J., dissenting

1971, New York Times Co. v. United States, 403 U.S. 759

MR. JUSTICE BLACKMUN, dissenting.

1971, New York Times Co. v. United States, 403 U.S. 759

I join MR. JUSTICE HARLAN in his dissent. I also am in substantial accord with much that MR. JUSTICE WHITE says, by way of admonition, in the latter part of his opinion.

1971, New York Times Co. v. United States, 403 U.S. 759

At this point, the focus is on only the comparatively few documents specified by the Government as critical. So far as the other material—vast in amount—is concerned, let it be published and published forthwith if the newspapers, once the strain is gone and the sensationalism is eased, still feel the urge so to do.

1971, New York Times Co. v. United States, 403 U.S. 759

But we are concerned here with the few documents specified from the 47 volumes. Almost 70 years ago, Mr. Justice Holmes, dissenting in a celebrated case, observed:

1971, New York Times Co. v. United States, 403 U.S. 759

Great cases, like hard cases, make bad law. For great cases are called great not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure….

1971, New York Times Co. v. United States, 403 U.S. 759

Northen Securities Co. v. United States, 193 U.S. 197, 400-401 (1904). The present cases, if not great, are at least unusual in their posture and implications, and the Holmes observation certainly has pertinent application.

1971, New York Times Co. v. United States, 403 U.S. 759

The New York Times clandestinely devoted a period of three months to examining the 47 volumes that came into its unauthorized possession. Once it had begun publication [403 U.S. 760] of material from those volumes, the New York case now before us emerged. It immediately assumed, and ever since has maintained, a frenetic pace and character. Seemingly, once publication started, the material could not be made public fast enough. Seemingly, from then on, every deferral or delay, by restraint or otherwise, was abhorrent, and was to be deemed violative of the First Amendment and of the public's "right immediately to know." Yet that newspaper stood before us at oral argument and professed criticism of the Government for not lodging its protest earlier than by a Monday telegram following the initial Sunday publication.

1971, New York Times Co. v. United States, 403 U.S. 760

The District of Columbia case is much the same.

1971, New York Times Co. v. United States, 403 U.S. 760

Two federal district courts, two United States courts of appeals, and this Court—within a period of less than three weeks from inception until today—have been pressed into hurried decision of profound constitutional issues on inadequately developed and largely assumed facts without the careful deliberation that, one would hope, should characterize the American judicial process. There has been much writing about the law and little knowledge and less digestion of the facts. In the New York case, the judges, both trial and appellate, had not yet examined the basic material when the case was brought here. In the District of Columbia case, little more was done, and what was accomplished in this respect was only on required remand, with the Washington Post, on the excuse that it was trying to protect its source of information, initially refusing to reveal what material it actually possessed, and with the District Court forced to make assumptions as to that possession.

1971, New York Times Co. v. United States, 403 U.S. 760

With such respect as may be due to the contrary view, this, in my opinion, is not the way to try a lawsuit of this magnitude and asserted importance. It is not the way for federal courts to adjudicate, and to be required to adjudicate, issues that allegedly concern the Nation's [403 U.S. 761] vital welfare. The country would be none the worse off were the cases tried quickly, to be sure, but in the customary and properly deliberative manner. The most recent of the material, it is said, dates no later than 1968, already about three years ago, and the Times itself took three months to formulate its plan of procedure and, thus, deprived its public for that period.

1971, New York Times Co. v. United States, 403 U.S. 761

The First Amendment, after all, is only one part of an entire Constitution. Article II of the great document vests in the Executive Branch primary power over the conduct of foreign affairs, and places in that branch the responsibility for the Nation's safety. Each provision of the Constitution is important, and I cannot subscribe to a doctrine of unlimited absolutism for the First Amendment at the cost of downgrading other provisions. First Amendment absolutism has never commanded a majority of this Court. See, for example, Near v. Minnesota, 283 U.S. 697, 708 (1931), and Schenck v. United States, 249 U.S. 47, 52 (1919). What is needed here is a weighing, upon properly developed standards, of the broad right of the press to print and of the very narrow right of the Government to prevent. Such standards are not yet developed. The parties here are in disagreement as to what those standards should be. But even the newspapers concede that there are situations where restraint is in order and is constitutional. Mr. Justice Holmes gave us a suggestion when he said in Schenck,

1971, New York Times Co. v. United States, 403 U.S. 761

It is a question of proximity and degree. When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right.

1971, New York Times Co. v. United States, 403 U.S. 761

249 U.S. at 52.

1971, New York Times Co. v. United States, 403 U.S. 761

I therefore would remand these cases to be developed expeditiously, of course, but on a schedule permitting the [403 U.S. 762] orderly presentation of evidence from both sides, with the use of discovery, if necessary, as authorized by the rules, and with the preparation of briefs, oral argument, and court opinions of a quality better than has been seen to this point. In making this last statement, I criticize no lawyer or judge. I know from past personal experience the agony of time pressure in the preparation of litigation. But these cases and the issues involved and the courts, including this one, deserve better than has been produced thus far.

1971, New York Times Co. v. United States, 403 U.S. 762

It may well be that, if these cases were allowed to develop as they should be developed, and to be tried as lawyers should try them and as courts should hear them, free of pressure and panic and sensationalism, other light would be shed on the situation, and contrary considerations, for me, might prevail. But that is not the present posture of the litigation.

1971, New York Times Co. v. United States, 403 U.S. 762

The Court, however, decides the cases today the other way. I therefore add one final comment.

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I strongly urge, and sincerely hope, that these two newspapers will be fully aware of their ultimate responsibilities to the United States of America. Judge Wilkey, dissenting in the District of Columbia case, after a review of only the affidavits before his court (the basic papers had not then been made available by either party), concluded that there were a number of examples of documents that, if in the possession of the Post and if published, "could clearly result in great harm to the nation," and he defined "harm" to mean

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the death of soldiers, the destruction of alliances, the greatly increased difficulty of negotiation with our enemies, the inability of our diplomats to negotiate….

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I, for one, have now been able to give at least some cursory study not only to the affidavits, but to the material itself. I regret to say that, from this examination, I fear that Judge Wilkey's statements have possible foundation. I therefore share [403 U.S. 763] his concern. I hope that damage has not already been done. If, however, damage has been done, and if, with the Court's action today, these newspapers proceed to publish the critical documents and there results therefrom

1971, New York Times Co. v. United States, 403 U.S. 763

the death of soldiers, the destruction of alliances, the greatly increased difficulty of negotiation with our enemies, the inability of our diplomats to negotiate,

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to which list I might add the factors of prolongation of the war and of further delay in the freeing of United States prisoners, then the Nation's people will know where the responsibility for these sad consequences rests.

Footnotes

BLACK, J., concurring (Footnotes)

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1. In introducing the Bill of Rights in the House of Representatives, Madison said:

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[B]ut I believe that the great mass of the people who opposed [the Constitution] disliked it because it did not contain effectual provisions against the encroachments on particular rights….

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1 Annals of Cong. 433. Congressman Goodhue added:

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[I]t is the wish of many of our constituents that something should be added to the Constitution to secure in a stronger manner their liberties from the inroads of power.

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Id. at 426.

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2. The other parts were:

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The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

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The people shall not be restrained from peaceably assembling and consulting for their common good, nor from applying to the Legislature by petitions, or remonstrances, for redress of their grievances.

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1 Annals of Cong. 434.

1971, New York Times Co. v. United States, 403 U.S. 763

3. Tr. of Oral Arg. 76.

1971, New York Times Co. v. United States, 403 U.S. 763

4. Brief for the United States 13-14.

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5. Compare the views of the Solicitor General with those of James Madison, the author of the First Amendment. When speaking of the Bill of Rights in the House of Representatives, Madison said:

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If they [the first ten amendments] are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights.

1971, New York Times Co. v. United States, 403 U.S. 763

1 Annals of Cong. 439.

1971, New York Times Co. v. United States, 403 U.S. 763

6. De Jonge v. Oregon, 299 U.S. 353, 365.

DOUGLAS, J., concurring (Footnotes)

1971, New York Times Co. v. United States, 403 U.S. 763

1. See Beauharnais v. Illinois, 343 U.S. 250, 267 (dissenting opinion of MR. JUSTICE BLACK), 284 (my dissenting opinion); Roth v. United States, 354 U.S. 476, 508 (my dissenting opinion which MR. JUSTICE BLACK joined); Yates v. United States, 354 U.S. 298, 339 (separate opinion of MR. JUSTICE BLACK which I joined); New York Times Co. v. Sullivan, 376 U.S. 254, 293 (concurring opinion of MR. JUSTICE BLACK which I joined); Garrison v. Louisiana, 379 U.S. 64, 80 (my concurring opinion which MR. JUSTICE BLACK joined).

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2. These documents contain data concerning the communications system of the United States, the publication of which is made a crime. But the criminal sanction is not urged by the United States as the basis of equity power.

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3. There are numerous sets of this material in existence, and they apparently are not under any controlled custody. Moreover, the President has sent a set to the Congress. We start, then, with a case where there already is rather wide distribution of the material that is destined for publicity, not secrecy. I have gone over the material listed in the in camera brief of the United States. It is all history, not future events. None of it is more recent than 1968.

BRENNAN, J., concurring (Footnotes)

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\* Freedman v. Maryland, 380 U.S. 51 (1965), and similar cases regarding temporary restraints of allegedly obscene materials are not in point. For those cases rest upon the proposition that "obscenity is not protected by the freedoms of speech and press." Roth v. United States, 354 U.S. 476, 481 (1957). Here there is no question but that the material sought to be suppressed is within the protection of the First Amendment; the only question is whether, notwithstanding that fact, its publication may be enjoined for a time because of the presence of an overwhelming national interest. Similarly, copyright cases have no pertinence here: the Government is not asserting an interest in the particular form of words chosen in the documents, but is seeking to suppress the ideas expressed therein. And the copyright laws, of course, protect only the form of expression, and not the ideas expressed.

STEWART, J., concurring (Footnotes)

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1. The President's power to make treaties and to appoint ambassadors is, of course, limited by the requirement of Art. II, § 2, of the Constitution that he obtain the advice and consent of the Senate. Article I, § 8, empowers Congress to "raise and support Armies," and "provide and maintain a Navy." And, of course, Congress alone can declare war. This power was last exercised almost 30 years ago at the inception of World War II. Since the end of that war in 1945, the Armed Forces of the United States have suffered approximately half a million casualties in various parts of the world.

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2. See Chicago & Southern Air Lines v. Waterman S.S. Corp., 333 U.S. 103; Hirabayashi v. United States, 320 U.S. 81; United States v. Curtiss-Wright Corp., 299 U.S. 304; cf. Mora v. McNamara, 128 U.S.App.D.C. 297, 387 F.2d 862, cert. denied, 389 U.S. 934.

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3.

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It is quite apparent that, if, in the maintenance of our international relations, embarrassment—perhaps serious embarrassment—is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved. Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results. Indeed, so clearly is this true that the first President refused to accede to a request to lay before the House of Representatives the instructions, correspondence and documents relating to the negotiation of the Jay Treaty—a refusal the wisdom of which was recognized by the House itself, and has never since been doubted….

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United States v. Curtiss-Wright Corp., 299 U.S. 304, 320.

WHITE, J., concurring (Footnotes)

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1. The Congress has authorized a strain of prior restraints against private parties in certain instances. The National Labor Relations Board routinely issues cease and desist orders against employers who it finds have threatened or coerced employees in the exercise of protected rights. See 29 U.S.C. § 160(c). Similarly, the Federal Trade Commission is empowered to impose cease and desist orders against unfair methods of competition. 15 U.S.C. § 45(b). Such orders can, and quite often do, restrict what may be spoken or written under certain circumstances. See, e.g., NLRB v. Gissel Packing Co., 395 U.S. 575, 616-620 (1969). Article I, § 8, of the Constitution authorizes Congress to secure the "exclusive right" of authors to their writings, and no one denies that a newspaper can properly be enjoined from publishing the copyrighted works of another. See Westermann Co. v. Dispatch Co., 249 U.S. 100 (1919). Newspapers do themselves rely from time to time on the copyright as a means of protecting their accounts of important events. However, those enjoined under the statutes relating to the National Labor Relations Board and the Federal Trade Commission are private parties, not the press, and, when the press is enjoined under the copyright laws, the complainant is a private copyright holder enforcing a private right. These situations are quite distinct from the Government's request for an injunction against publishing information about the affairs of government, a request admittedly not based on any statute.

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2. The "grave and irreparable danger" standard is that asserted by the Government in this Court. In remanding to Judge Gurfein for further hearings in the Times litigation, five members of the Court of Appeals for the Second Circuit directed him to determine whether disclosure of certain items specified with particularity by the Government would "pose such grave and immediate danger to the security of the United States as to warrant their publication being enjoined."

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3.

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Whoever, in time of war, in violation of reasonable regulations to be prescribed by the President, which he is hereby authorized to make and promulgate, shall publish any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense calculated to be useful to the enemy, shall be punished by a fine…or by imprisonment….

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55 Cong.Rec. 2100.

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4. Senator Ashurst also urged that

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"freedom of the press" means freedom from the restraints of a censor, means the absolute liberty and right to publish whatever you wish; but you take your chances of punishment in the courts of your country for the violation of the laws of libel, slander, and treason.

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55 Cong.Rec. 2005.

1971, New York Times Co. v. United States, 403 U.S. 763

5. Title 18 U.S.C. § 797 provides:

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On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military or naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

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6. In relevant part 18 U.S.C. § 798 provides:

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(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

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(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

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(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

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(3) concerning the communication intelligence activities of the United States or any foreign government; or

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(4) obtained by the process of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

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Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

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7. The purport of 18 U.S.C. § 798 is clear. Both the House and Senate Reports on the bill, in identical terms, speak of furthering the security of the United States by preventing disclosure of information concerning the cryptographic systems and the communication intelligence systems of the United States, and explaining that

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[t]his bill makes it a crime to reveal the methods, techniques, and materiel used in the transmission by this Nation of enciphered or coded messages…. Further, it makes it a crime to reveal methods used by this Nation in breaking the secret codes of a foreign nation. It also prohibits under certain penalties the divulging of any information which may have come into this Government's hands as a result of such a code-breaking.

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H.R.Rep. No. 1895, 81st Cong., 2d Sess., 1 (1950). The narrow reach of the statute was explained as covering "only a small category of classified matter, a category which is both vital and vulnerable to an almost unique degree." Id. at 2. Existing legislation was deemed inadequate.

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At present, two other acts protect this information, but only in a limited way. These are the Espionage Act of 1917 (40 Stat. 217) and the act of June 10, 1933 (48 Stat. 122). Under the first, unauthorized revelation of information of this kind can be penalized only if it can be proved that the person making the revelation did so with an intent to injure the United States. Under the second, only diplomatic codes and messages transmitted in diplomatic codes are protected. The present bill is designed to protect against knowing and willful publication or any other revelation of all important information affecting the United States communication intelligence operations and all direct information about all United States codes and ciphers.

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Ibid. Section 798 obviously was intended to cover publications by nonemployees of the Government, and to ease the Government's burden in obtaining convictions. See H.R.Rep. No. 1895, supra, at 2-5. The identical Senate Report, not cited in parallel in the text of this footnote, is S.Rep. No. 111, 81st Cong., 1st Sess. (1949).

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8. Section 793(e) of 18 U.S.C. provides that:

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(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it;

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is guilty of an offense punishable by 10 years in prison, a $10,000 fine, or both. It should also be noted that 18 U.S.C. § 793(g), added in 1950 (see 64 Stat. 1004; S.Rep. No. 239, pt. 1, 81st Cong., 2d Sess., 9 (1950)), provides that,

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[i]f two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

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9. The amendment of § 793 that added subsection (e) was part of the Subversive Activities Control Act of 1950, which was, in turn, Title I of the Internal Security Act of 1950. See 64 Stat. 987. The report of the Senate Judiciary Committee best explains the purposes of the amendment:

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Section 18 of the bill amends section 793 of title 18 of the United States Code (espionage statute). The several paragraphs of section 793 of title 18 are designated as subsections (a) through (g) for purposes of convenient reference. The significant changes which would be made in section 793 of title 18 are as follows:

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(1) Amends the fourth paragraph of section 793, title 18 (subsec. (d)), to cover the unlawful dissemination of "information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation." The phrase "which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation" would modify only "information relating to the national defense," and not the other items enumerated in the subsection. The fourth paragraph of section 793 is also amended to provide that only those with lawful possession of the items relating to national defense enumerated therein may retain them subject to demand therefor. Those who have unauthorized possession of such items are treated in a separate subsection.

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(2) Amends section 793, title 18 (subsec. (e)), to provide that unauthorized possessors of items enumerated in paragraph 4 of section 793 must surrender possession thereof to the proper authorities without demand. Existing law provides no penalty for the unauthorized possession of such items unless a demand for them is made by the person entitled to receive them. The dangers surrounding the unauthorized possession of such items are self-evident, and it is deemed advisable to require their surrender in such a case, regardless of demand, especially since their unauthorized possession may be unknown to the authorities who would otherwise make the demand. The only difference between subsection (d) and subsection (e) of section 793 is that a demand by the person entitled to receive the items would be a necessary element of an offense under subsection (d) where the possession is lawful, whereas such a demand would not be a necessary element of an offense under subsection (e) where the possession is unauthorized.

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S.Rep. No. 2369, pt. 1, 81st Cong., 2d Sess., 8-9 (1950) (emphasis added).

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It seems clear from the foregoing, contrary to the intimations of the District Court for the Southern District of New York in this case, that, in prosecuting for communicating or withholding a "document," as contrasted with similar action with respect to "information," the Government need not prove an intent to injure the United States or to benefit a foreign nation, but only willful and knowing conduct. The District Court relied on Gorin v. United States, 312 U.S. 19 (1941). But that case arose under other parts of the predecessor to § 793, see 312 U.S. at 21-22—parts that imposed different intent standards not repeated in § 793(d) or § 793(e). Cf. 18 U.S.C. §§ 793(a), (b), and (c). Also, from the face of subsection (e) and from the context of the Act of which it was a part, it seems undeniable that a newspaper, as well as others unconnected with the Government, are vulnerable to prosecution under § 793(e) if they communicate or withhold the materials covered by that section. The District Court ruled that "communication" did not reach publication by a newspaper of documents relating to the national defense. I intimate no views on the correctness of that conclusion. But neither communication nor publication is necessary to violate the subsection.

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10. Also relevant is 18 U.S.C. § 794. Subsection (b) thereof forbids in time of war the collection or publication, with intent that it shall be communicated to the enemy, of any information with respect to the movements of military forces,

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or with respect to the plans or conduct…of any naval or military operations…or any other information relating to the public defense, which might be useful to the enemy….

MARSHALL, J., concurring (Footnotes)

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1. See n. 3, infra.

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2. But see Kent v. Dulles, 357 U.S. 116 (1958); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

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3. There are several other statutory provisions prohibiting and punishing the dissemination of information, the disclosure of which Congress thought sufficiently imperiled national security to warrant that result. These include 42 U.S.C. §§ 2161 through 2166, relating to the authority of the Atomic Energy Commission to classify and declassify "Restricted Data" ["Restricted Data" is a term of art employed uniquely by the Atomic Energy Act]. Specifically, 42 U.S.C. § 2162 authorizes the Atomic Energy Commission to classify certain information. Title 42 U.S.C. § 2274, subsection (a), provides penalties for a person who

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communicates, transmits, or discloses [restricted data]…with intent to injure the United States or with intent to secure an advantage to any foreign nation….

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Subsection (b) of § 2274 provides lesser penalties for one who "communicates, transmits, or discloses" such information "with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation…. " Other sections of Title 42 of the United States Code dealing with atomic energy prohibit and punish acquisition, removal, concealment, tampering with, alteration, mutilation, or destruction of documents incorporating "Restricted Data" and provide penalties for employees and former employees of the Atomic Energy Commission, the armed services, contractors and licensees of the Atomic Energy Commission. Title 42 U.S.C. §§ 2276, 2277. Title 50 U.S.C.App. § 781, 56 Stat. 390, prohibits the making of any sketch or other representation of military installations or any military equipment located on any military installation, as specified; and, indeed, Congress, in the National Defense Act of 1940, 54 Stat. 676, as amended, 56 Stat. 179, conferred jurisdiction on federal district courts over civil actions "to enjoin any violation" thereof. 50 U.S.C.App. § 1152(6). Title 50 U.S.C. § 783(b) makes it unlawful for any officers or employees of the United States or any corporation which is owned by the United States to communicate material which has been "classified" by the President to any person who that governmental employee knows or has reason to believe is an agent or representative of any foreign government or any Communist organization.

BURGER, J., dissenting (Footnotes)

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1. As noted elsewhere, the Times conducted its analysis of the 47 volumes of Government documents over a period of several months, and did so with a degree of security that a government might envy. Such security was essential, of course, to protect the enterprise from others. Meanwhile, the Times has copyrighted its material, and there were strong intimations in the oral argument that the Times contemplated enjoining its use by any other publisher in violation of its copyright. Paradoxically, this would afford it a protection, analogous to prior restraint, against all others—a protection the Times denies the Government of the United States.

1971, New York Times Co. v. United States, 403 U.S. 763

2. Interestingly, the Times explained its refusal to allow the Government to examine its own purloined documents by saying in substance this might compromise its sources and informants! The Times thus asserts a right to guard the secrecy of its sources while denying that the Government of the United States has that power.

1971, New York Times Co. v. United States, 403 U.S. 763

3. With respect to the question of inherent power of the Executive to classify papers, records, and documents as secret, or otherwise unavailable for public exposure, and to secure aid of the courts for enforcement, there may be an analogy with respect to this Court. No statute gives this Court express power to establish and enforce the utmost security measures for the secrecy of our deliberations and records. Yet I have little doubt as to the inherent power of the Court to protect the confidentiality of its internal operations by whatever judicial measures may be required.

HARLAN, J., dissenting (Footnotes)

1971, New York Times Co. v. United States, 403 U.S. 763

\* The hearing in the Post case before Judge Gesell began at 8 a.m. on June 21, and his decision was rendered, under the hammer of a deadline imposed by the Court of Appeals, shortly before 5 p.m. on the same day. The hearing in the Times case before Judge Gurfein was held on June 18, and his decision was rendered on June 19. The Government's appeals in the two cases were heard by the Courts of Appeals for the District of Columbia and Second Circuits, each court sitting en banc, on June 22. Each court rendered its decision on the following afternoon.

President Nixon's Joint Statement Following Discussions With Leaders of the People's Republic of China, 1972

Title: President Nixon's Joint Statement Following Discussions With Leaders of the People's Republic of China

Author: Richard M. Nixon

Date: February 27, 1972

Source: Public Papers of the Presidents, Nixon, 1972, pp.376-379

Public Papers of Nixon, 1972, p.376

PRESIDENT Richard Nixon of the United States of America visited the People's Republic of China at the invitation of Premier Chou En-lai of the People's Republic of China from February 21 to February 28, 1972. Accompanying the President were Mrs. Nixon, U.S. Secretary of State William Rogers, Assistant to the President Dr. Henry Kissinger, and other American officials.

Public Papers of Nixon, 1972, p.376

President Nixon met with Chairman Mao Tse-tung of the Communist Party of China on February 21. The two leaders had a serious and frank exchange of views on Sino-U.S. relations and world affairs.

Public Papers of Nixon, 1972, p.376

During the visit, extensive, earnest, and frank discussions were held between President Nixon and Premier Chou En-lai on the normalization of relations between the United States of America and the People's Republic of China, as well as on other matters of interest to both sides. In addition, Secretary of State William Rogers and Foreign Minister Chi P'engfei held talks in the same spirit.

Public Papers of Nixon, 1972, p.376

President Nixon and his party visited Peking and viewed cultural, industrial and agricultural sites, and they also toured Hangchow and Shanghai where, continuing discussions with Chinese leaders, they viewed similar places of interest.

Public Papers of Nixon, 1972, p.376

The leaders of the People's Republic of China and the United States of America found it beneficial to have this opportunity, after so many years without contact, to present candidly to one another their views on a variety of issues. They reviewed the international situation in which important changes and great upheavals are taking place and expounded their respective positions and attitudes.

Public Papers of Nixon, 1972, p.376–p.377

The U.S. side stated: Peace in Asia and peace in the world requires efforts both to reduce immediate tensions and to eliminate the basic causes of conflict. The United States will work for a just and secure peace: just, because it fulfills the aspirations of peoples and nations for freedom and progress; secure, because it removes the danger of foreign aggression. The United States supports individual freedom and social progress for all the peoples of the world, free of outside pressure or intervention. The United States believes that the effort to reduce tensions is served by improving communication between countries that have different ideologies so as to lessen the risks of confrontation through accident, miscalculation or misunderstanding. Countries should treat each other with mutual respect and be willing to compete peacefully, letting performance be the ultimate judge. No country should claim infallibility and each country should be prepared to re-examine its own attitudes for the common good. The United States stressed that the peoples of Indochina should be allowed to determine their destiny without [p.377] outside intervention; its constant primary objective has been a negotiated solution; the eight-point proposal put forward by the Republic of Vietnam and the United States on January 27, 1972 represents a basis for the attainment of that objective; in the absence of a negotiated settlement the United States envisages the ultimate withdrawal of all U.S. forces from the region consistent with the aim of self-determination for each country of Indochina. The United States will maintain its close ties with and support for the Republic of Korea; the United States will support efforts of the Republic of Korea to seek a relaxation of tension and increased communication in the Korean peninsula. The United States places the highest value on its friendly relations with Japan; it will continue to develop the existing close bonds. Consistent with the United Nations Security Council Resolution of December 21, 1971, the United States favors the continuation of the cease-fire between India and Pakistan and the withdrawal of all military forces to within their own territories and to their own sides of the cease-fire line in Jammu and Kashmir; the United States supports the right of the peoples of South Asia to shape their own future in peace, free of military threat, and without having the area become the subject of great power rivalry.

Public Papers of Nixon, 1972, p.377

The Chinese side stated: Wherever there is oppression, there is resistance. Countries want independence, nations want liberation and the people want revolution this has become the irresistible trend of history. All nations, big or small, should be equal; big nations should not bully the small and strong nations should not bully the weak. China will never be a superpower and it opposes hegemony and power politics of any kind. The Chinese side stated that it firmly supports the struggles of all the oppressed people and nations for freedom and liberation and that the people of all countries have the right to choose their social systems according to their own wishes and the right to safeguard the independence, sovereignty and territorial integrity of their own countries and oppose foreign aggression, interference, control and subversion. All foreign troops should be withdrawn to their own countries.

Public Papers of Nixon, 1972, p.377–p.378

The Chinese side expressed its firm support to the peoples of Vietnam, Laos, and Cambodia in their efforts for the attainment of their goal and its firm support to the seven-point proposal of the Provisional Revolutionary Government of the Republic of South Vietnam and the elaboration of February this year on the two key problems in the proposal, and to the Joint Declaration of the Summit Conference of the Indo-Chinese Peoples. It firmly supports the eight-point program for the peaceful unification of Korea put forward by the Government of the Democratic People's Republic of Korea on April 12, 1971, and the stand for the abolition of the "U.N. Commission for the Unification and Rehabilitation of Korea." It firmly opposes the revival and outward expansion of Japanese militarism and firmly supports the Japanese people's desire to build an independent, democratic, peaceful and neutral Japan. It firmly maintains that India and Pakistan should, in accordance with the United Nations resolutions on the India-Pakistan question, immediately withdraw all their forces to their respective territories and to their own sides of the cease fire line in Jammu and Kashmir and firmly supports the Pakistan Government and people in their struggle to preserve their independence [p.378] and sovereignty and the people of Jammu and Kashmir in their struggle for the right of self-determination.

Public Papers of Nixon, 1972, p.378

There are essential differences between China and the United States in their social systems and foreign policies. However, the two sides agreed that countries, regardless of their social systems, should conduct their relations on the principles of respect for the sovereignty and territorial integrity of all states, nonaggression against other states, noninterference in the internal affairs of other states, equality and mutual benefit, and peaceful coexistence. International disputes should be settled on this basis, without resorting to the use or threat of force. The United States and the People's Republic of China are prepared to apply these principles to their mutual relations.

Public Papers of Nixon, 1972, p.378

With these principles of international relations in mind the two sides stated that:

—progress toward the normalization of relations between China and the United States is in the interests of all countries;

—both wish to reduce the danger of international military conflict;

—neither should seek hegemony in the Asia-Pacific region and each is opposed to efforts by any other country or group of countries to establish such hegemony; and

—neither is prepared to negotiate on behalf of any third party or to enter into agreements or understandings with the other directed at other states.

Public Papers of Nixon, 1972, p.378

Both sides are of the view that it would be against the interests of the peoples of the world for any major country to collude with another against other countries, or for major countries to divide up the world into spheres of interest.

Public Papers of Nixon, 1972, p.378

The two sides reviewed the long-standing serious disputes between China and the United States. The Chinese side reaffirmed its position: The Taiwan question is the crucial question obstructing the normalization of relations between China and the United States; the Government of the People's Republic of China is the sole legal government of China; Taiwan is a province of China which has long been returned to the motherland; the liberation of Taiwan is China's internal affair in which no other country has the right to interfere; and all U.S. forces and military installations must be withdrawn from Taiwan. The Chinese Government firmly opposes any activities which aim at the creation of "one China, one Taiwan,…. one China, two governments," "two Chinas," and "independent Taiwan" or advocate that "the status of Taiwan remains to be determined."

Public Papers of Nixon, 1972, p.378

The U.S. side declared: The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. The United States Government does not challenge that position. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves. With this prospect in mind, it affirms the ultimate objective of the withdrawal of all U.S. forces and military installations from Taiwan. In the meantime, it will progressively reduce its forces and military installations on Taiwan as the tension in the area diminishes.

Public Papers of Nixon, 1972, p.378–p.379

The two sides agreed that it is desirable to broaden the understanding between the two peoples. To this end, they discussed specific areas in such fields as science, technology, culture, sports and [p.379] journalism, in which people-to-people contacts and exchanges would be mutually beneficial. Each side undertakes to facilitate the further development of such contacts and exchanges.

Public Papers of Nixon, 1972, p.379

Both sides view bilateral trade as another area from which mutual benefit can be derived, and agreed that economic relations based on equality and mutual benefit are in the interest of the people of the two countries. They agree to facilitate the progressive development of trade between their two countries.

Public Papers of Nixon, 1972, p.379

The two sides agreed that they will stay in contact through various channels, including the sending of a senior U.S. representative to Peking from time to time for concrete consultations to further the normalization of relations between the two countries and continue to exchange views on issues of common interest.

Public Papers of Nixon, 1972, p.379

The two sides expressed the hope that the gains achieved during this visit would open up new prospects for the relations between the two countries. They believe that the normalization of relations between the two countries is not only in the interest of the Chinese and American peoples but also contributes to the relaxation of tension in Asia and the world.

Public Papers of Nixon, 1972, p.379

President Nixon, Mrs. Nixon and the American party expressed their appreciation for the gracious hospitality shown them by the Government and people of the People's Republic of China.

Public Papers of Nixon, 1972, p.379

NOTE: The joint statement was released at Shanghai, People's Republic of China.

On the same day, the White House released a statement by Press Secretary Ronald L. Ziegler and the transcript of a news briefing on the joint statement. Participants in the news briefing were Henry A. Kissinger, Assistant to the President for National Security Affairs, and Marshall Green, Assistant Secretary of State for East Asian and Pacific Affairs. The statement and the transcript are printed in the Weekly Compilation of Presidential Documents (vol. 8, pp. 480 and 476).

Public Papers of Nixon, 1972, p.379

On February 14, 1972, the White House released a statement by Press Secretary Ziegler on further relaxation of trade with the People's Republic of China. The statement is printed in the Weekly Compilation of Presidential Documents (vol. 8, p. 438).

On February 21, the White House released a statement and the transcript of a news briefing by Press Secretary Ziegler on the President's meeting with Chairman Mao Tse-tung. The statement is printed in the Weekly Compilation of Presidential Documents (vol. 8, p. 466).

President Nixon's Address to the Nation on the Situation in Southeast Asia, 1972

Title: President Nixon's Address to the Nation on the Situation in Southeast Asia

Author: Richard M. Nixon

Date: May 8, 1972

Source: Public Papers of the Presidents, Nixon, 1972, pp.583-587

Public Papers of Nixon, 1972, p.583

Good evening:

Public Papers of Nixon, 1972, p.583

Five weeks ago, on Easter weekend, the Communist armies of North Vietnam launched a massive invasion of South Vietnam, an invasion that was made possible by tanks, artillery, and other advanced offensive weapons supplied to Hanoi by the Soviet Union and other Communist nations.

Public Papers of Nixon, 1972, p.583

The South Vietnamese have fought bravely to repel this brutal assault. Casualties on both sides have been very high. Most tragically, there have been over 20,000 civilian casualties, including women and children, in the cities which the North Vietnamese have shelled in wanton disregard of human life.

Public Papers of Nixon, 1972, p.583

As I announced in my report to the Nation 12 days ago, the role of the United States in resisting this invasion has been limited to air and naval strikes on military targets in North and South Vietnam. As I also pointed out in that report, we have responded to North Vietnam's massive military offensive by undertaking wide-ranging new peace efforts aimed at ending the war through negotiation.

Public Papers of Nixon, 1972, p.583

On April 20, I sent Dr. Kissinger to Moscow for 4 days of meetings with General Secretary Brezhnev and other Soviet leaders. I instructed him to emphasize our desire for a rapid solution to the war and our willingness to look at all possible approaches. At that time, the Soviet leaders showed an interest in bringing the war to an end on a basis just to both sides. They urged resumption of negotiations in Paris, and they indicated they would use their constructive influence.

Public Papers of Nixon, 1972, p.583

I authorized Dr. Kissinger to meet privately with the top North Vietnamese negotiator, Le Duc Tho, on Tuesday, May 2, in Paris. Ambassador Porter, as you know, resumed the public peace negotiations in Paris on April 27 and again on May 4. At those meetings, both public and private, all we heard from the enemy was bombastic rhetoric and a replaying of their demands for surrender. For example, at the May 2 secret meeting, I authorized Dr. Kissinger to talk about every conceivable avenue toward peace. The North Vietnamese flatly refused to consider any of these approaches. They refused to offer any new approach of their own. Instead, they simply read verbatim their previous public demands.

Public Papers of Nixon, 1972, p.583

Here is what over 3 years of public and private negotiations with Hanoi has come down to: The United States, with the full concurrence of our South Vietnamese allies, has offered the maximum of what any President of the United States could offer.

Public Papers of Nixon, 1972, p.583

We have offered a deescalation of the fighting. We have offered a cease-fire with a deadline for withdrawal of all American forces. We have offered new elections which would be internationally supervised with the Communists participating both in the supervisory body and in the elections themselves.

Public Papers of Nixon, 1972, p.583–p.584

President Thieu has offered to resign one month before the elections. We have offered an exchange of prisoners of war in a ratio of 10 North Vietnamese prisoners for every one American prisoner that they release. And North Vietnam has met each of these offers with insolence and insult. They have flatly and arrogantly refused to negotiate an end to the war and [p.584] bring peace. Their answer to every peace offer we have made has been to escalate the war.

Public Papers of Nixon, 1972, p.584

In the 2 weeks alone since I offered to resume negotiations, Hanoi has launched three new military offensives in South Vietnam. In those 2 weeks the risk that a Communist government may be imposed on the 17 million people of South Vietnam has increased, and the Communist offensive has now reached the point that it gravely threatens the lives of 60,000 American troops who are still in Vietnam.

Public Papers of Nixon, 1972, p.584

There are only two issues left for us in this war. First, in the face of a massive invasion do we stand by, jeopardize the lives of 60,000 Americans, and leave the South Vietnamese to a long night of terror? This will not happen. We shall do whatever is required to safeguard American lives and American honor.

Public Papers of Nixon, 1972, p.584

Second, in the face of complete intransigence at the conference table do we join with our enemy to install a Communist government in South Vietnam? This, too, will not happen. We will not cross the line from generosity to treachery.

Public Papers of Nixon, 1972, p.584

We now have a clear, hard choice among three courses of action: Immediate withdrawal of all American forces, continued attempts at negotiation, or decisive military action to end the war.

Public Papers of Nixon, 1972, p.584

I know that many Americans favor the first course of action, immediate withdrawal. They believe the way to end the war is for the United States to get out, and to remove the threat to our remaining forces by simply withdrawing them.

Public Papers of Nixon, 1972, p.584

From a political standpoint, this would be a very easy choice for me to accept. After all, I did not send over one-half million Americans to Vietnam. I have brought 500,000 men home from Vietnam since I took office. But, abandoning our commitment in Vietnam here and now would mean turning 17 million South Vietnamese over to Communist tyranny and terror. It would mean leaving hundreds of American prisoners in Communist hands with no bargaining leverage to get them released.

Public Papers of Nixon, 1972, p.584

An American defeat in Vietnam would encourage this kind of aggression all over the world, aggression in which smaller nations armed by their major allies, could be tempted to attack neighboring nations at will in the Mideast, in Europe, and other areas. World peace would be in grave jeopardy.

Public Papers of Nixon, 1972, p.584

The second course of action is to keep on trying to negotiate a settlement. Now this is the course we have preferred from the beginning and we shall continue to pursue it. We want to negotiate, but we have made every reasonable offer and tried every possible path for ending this war at the conference table.

Public Papers of Nixon, 1972, p.584

The problem is, as you all know, it takes two to negotiate and now, as throughout the past 4 years, the North Vietnamese arrogantly refuse to negotiate anything but an imposition, an ultimatum that the United States impose a Communist regime on 17 million people in South Vietnam who do not want a Communist government.

Public Papers of Nixon, 1972, p.584

It is plain then that what appears to be a choice among three courses of action for the United States is really no choice at all. The killing in this tragic war must stop. By simply getting out, we would only worsen the bloodshed. By relying solely on negotiations, we would give an intransigent enemy the time he needs to press his aggression on the battlefield.

Public Papers of Nixon, 1972, p.584–p.585

There is only one way to stop the killing. [p.585] That is to keep the weapons of war out of the hands of the international outlaws of North Vietnam.

Public Papers of Nixon, 1972, p.585

Throughout the war in Vietnam, the United States has exercised a degree of restraint unprecedented in the annals of war. That was our responsibility as a great Nation, a Nation which is interested-and we can be proud of this as Americans-as America has always been, in peace not conquest.

Public Papers of Nixon, 1972, p.585

However, when the enemy abandons all restraint, throws its whole army into battle in the territory of its neighbor, refuses to negotiate, we simply face a new situation.

Public Papers of Nixon, 1972, p.585

In these circumstances, with 60,000 Americans threatened, any President who failed to act decisively would have betrayed the trust of his country and betrayed the cause of world peace.

Public Papers of Nixon, 1972, p.585

I therefore concluded that Hanoi must be denied the weapons and supplies it needs to continue the aggression. In full coordination with the Republic of Vietnam, I have ordered the following measures which are being implemented as I am speaking to you.

Public Papers of Nixon, 1972, p.585

All entrances to North Vietnamese ports will be mined to prevent access to these ports and North Vietnamese naval operations from these ports. United States forces have been directed to take appropriate measures within the internal and claimed territorial waters of North Vietnam to interdict the delivery of any supplies. Rail and all other communications will be cut off to the maximum extent possible. Air and naval strikes against military targets in North Vietnam will continue.

Public Papers of Nixon, 1972, p.585

These actions are not directed against any other nation. Countries with ships presently in North Vietnamese ports have already been notified that their ships will have three daylight periods to leave in safety. After that time, the mines will become active and any ships attempting to leave or enter these ports will do so at their own risk.

Public Papers of Nixon, 1972, p.585

These actions I have ordered will cease when the following conditions are met:

First, all American prisoners of war must be returned.

Second, there must be an internationally supervised cease-fire throughout Indochina.

Public Papers of Nixon, 1972, p.585

Once prisoners of war are released, once the internationally supervised cease-fire has begun, we will stop all acts of force throughout Indochina, and at that time we will proceed with a complete withdrawal of all American forces from Vietnam within 4 months.

Public Papers of Nixon, 1972, p.585

Now, these terms are generous terms. They are terms which would not require surrender and humiliation on the part of anybody. They would permit the United States to withdraw with honor. They would end the killing. They would bring our POW's home. They would allow negotiations on a political settlement between the Vietnamese themselves. They would permit all the nations which have suffered in this long war—Cambodia, Laos, North Vietnam, South Vietnam-to turn at last to the urgent works of healing and of peace. They deserve immediate acceptance by North Vietnam.

Public Papers of Nixon, 1972, p.585

It is appropriate to conclude my remarks tonight with some comments directed individually to each of the major parties involved in the continuing tragedy of the Vietnam war.

Public Papers of Nixon, 1972, p.585–p.586

First, to the leaders of Hanoi, your people have already suffered too much in [p.586] your pursuit of conquest. Do not compound their agony with continued arrogance; choose instead the path of a peace that redeems your sacrifices, guarantees true independence for your country, and ushers in an era of reconciliation.

Public Papers of Nixon, 1972, p.586

To the people of South Vietnam, you shall continue to have our firm support in your resistance against aggression. It is your spirit that will determine the outcome of the battle. It is your will that will shape the future of your country.

Public Papers of Nixon, 1972, p.586

To other nations, especially those which are allied with North Vietnam, the actions I have announced tonight are not directed against you. Their sole purpose is to protect the lives of 60,000 Americans, who would be gravely endangered in the event that the Communist offensive continues to roll forward, and to prevent the imposition of a Communist government by brutal aggression upon 17 million people.

Public Papers of Nixon, 1972, p.586

I particularly direct my comments tonight to the Soviet Union. We respect the Soviet Union as a great power. We recognize the right of the Soviet Union to defend its interests when they are threatened. The Soviet Union in turn must recognize our right to defend our interests.

Public Papers of Nixon, 1972, p.586

No Soviet soldiers are threatened in Vietnam. Sixty thousand Americans are threatened. We expect you to help your allies, and you cannot expect us to do other than to continue to help our allies, but let us, and let all great powers, help our allies only for the purpose of their defense, not for the purpose of launching invasions against their neighbors.

Otherwise the cause of peace, the cause in which we both have so great a stake, will be seriously jeopardized.

Public Papers of Nixon, 1972, p.586

Our two nations have made significant progress in our negotiations in recent months. We are near major agreements on nuclear arms limitation, on trade, on a host of other issues.

Public Papers of Nixon, 1972, p.586

Let us not slide back toward the dark shadows of a previous age. We do not ask you to sacrifice your principles, or your friends, but neither should you permit Hanoi's intransigence to blot out the prospects we together have so patiently prepared.

Public Papers of Nixon, 1972, p.586

We, the United States and the Soviet Union, are on the threshold of a new relationship that can serve not only the interests of our two countries, but the cause of world peace. We are prepared to continue to build this relationship. The responsibility is yours if we fail to do so.

Public Papers of Nixon, 1972, p.586

And finally, may I say to the American people, I ask you for the same strong support you have always given your President in difficult moments. It is you most of all that the world will be watching.

Public Papers of Nixon, 1972, p.586

I know how much you want to end this war. I know how much you want to bring our men home. And I think you know from all that I have said and done these past 3 1/2 years how much I, too, want to end the war to bring our men home.

Public Papers of Nixon, 1972, p.586

You want peace. I want peace. But, you also want honor and not defeat. You want a genuine peace, not a peace that is merely a prelude to another war.

Public Papers of Nixon, 1972, p.586–p.587

At this moment, we must stand together in purpose and resolve. As so often in the past, we Americans did not choose to resort to war. It has been forced upon us by an enemy that has shown utter contempt toward every overture we have made for peace. And that is why, my fellow Americans, tonight I ask for your support of this decision, a decision which [p.587] has only one purpose, not to expand the war, not to escalate the war, but to end this war and to win the kind of peace that will last.

Public Papers of Nixon, 1972, p.587

With God's help, with your support, we will accomplish that great goal.

Thank you and good night.

Public Papers of Nixon, 1972, p.587

NOTE: The President spoke at 9 p.m. in the Oval Office at the White House. His address was broadcast live on radio and television. He spoke from a prepared text.

Public Papers of Nixon, 1972, p.587

Before delivering his address to the Nation, the President met with the bipartisan leadership of the Congress to discuss its contents.

Public Papers of Nixon, 1972, p.587

On May 9, 1972, the White House released the transcript of a news briefing by Henry A. Kissinger, Assistant to the President for National Security Affairs, on the situation in Southeast Asia. The transcript is printed in the Weekly Compilation of Presidential Documents (vol. 8, p. 842).

Johnson v. Louisiana, 1972

Title: Johnson v. Louisiana

Author: U.S. Supreme Court

Date: May 22, 1972

Source: 406 U.S. 356

This case was argued March 1, 1971, and was reargued January 10, 1972. The case was decided May 22, 1972.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

Syllabus

1972, Johnson v. Louisiana, 406 U.S. 356

A warrantless arrest for robbery was made of appellant at his home on the basis of identification from photographs, and he was committed by a magistrate. Thereafter he appeared in a lineup, at which he was represented by counsel, and was identified by the victim of another robbery. He was tried for the latter offense before a 12-man jury and convicted by a nine-to-three verdict, as authorized by Louisiana law in cases where the crime is necessarily punishable at hard labor. Other state law provisions require unanimity for five-man jury trials of offenses in which the punishment may be at hard labor and for 12-man jury trials of capital cases. The Louisiana Supreme Court affirmed the conviction, rejecting appellant's challenge to the jury trial provisions as violative of due process and equal protection and his claim that the lineup identification was a forbidden fruit of an invasion of appellant's Fourth Amendment rights. Appellant conceded that, under Duncan v. Louisiana, 391 U.S. 145, which was decided after his trial began and which has no retroactive effect, the Sixth Amendment does not apply to his case.

1972, Johnson v. Louisiana, 406 U.S. 356

Held:

1972, Johnson v. Louisiana, 406 U.S. 356

1. The provisions of Louisiana law requiring less than unanimous jury verdicts in criminal cases do not violate the Due Process Clause for failure to satisfy the reasonable doubt standard. Pp. 359-363.

1972, Johnson v. Louisiana, 406 U.S. 356

(a) The mere fact that three jurors vote to acquit does not mean that the nine who vote to convict have ignored their instructions concerning proof beyond a reasonable doubt, or that they do not honestly believe that guilt has been thus proved. Pp. 360-362.

1972, Johnson v. Louisiana, 406 U.S. 356

(b) Want of jury unanimity does not alone establish reasonable doubt. Pp. 362-363.

1972, Johnson v. Louisiana, 406 U.S. 356

2. The Louisiana legal scheme providing for unanimous verdicts in capital and five-man jury cases, but for less than unanimous verdicts otherwise, and which varies the difficulty of proving guilt with the gravity of the offense, was designed to serve the rational purposes of "facilitat[ing], expedit[ing], and reduc[ing] expense in the administration of justice," and does not constitute an invidious classification violative of equal protection. Pp. 363-365. [406 U.S. 357]

1972, Johnson v. Louisiana, 406 U.S. 357

3. Since no evidence constituting the fruit of an illegal arrest was used at appellant's trial, the validity of his arrest is not at issue, and the lineup was conducted not by the "exploitation" of the arrest, but under the authority of appellant's commitment by the magistrate, which purged the lineup procedure of any "primary taint." P. 365.

1972, Johnson v. Louisiana, 406 U.S. 357

255 La. 314, 230 So.2d 825, affirmed.

1972, Johnson v. Louisiana, 406 U.S. 357

WHITE, J., delivered the opinion of the Court, in which BURGER, C.J., and BLACKMUN, POWELL, and REHNQUIST, JJ., joined. BLACKMUN, J., post, p. 365, and POWELL, J., post, p. 366, filed concurring opinions. DOUGLAS, J., filed a dissenting opinion, in which BRENNAN and MARSHALL, JJ., joined, post, p. 380. BRENNAN, J., filed a dissenting opinion, in which MARSHALL, J., joined, post, p. 395. STEWART, J., filed a dissenting opinion, in which BRENNAN and MARSHALL, JJ., joined, post, p. 397. MARSHALL, J., filed a dissenting opinion, in which BRENNAN, J., joined, post, p. 399.

WHITE, J., lead opinion

1972, Johnson v. Louisiana, 406 U.S. 357

MR. JUSTICE WHITE delivered the opinion of the Court.

1972, Johnson v. Louisiana, 406 U.S. 357

Under both the Louisiana Constitution and Code of Criminal Procedure, criminal cases in which the punishment is necessarily at hard labor are tried to a jury of 12, and the vote of nine jurors is sufficient to return either a guilty or not guilty verdict. 1 The principal question [406 U.S. 358] in this case is whether these provisions allowing less than unanimous verdicts in certain cases are valid under the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

I

1972, Johnson v. Louisiana, 406 U.S. 358

Appellant Johnson was arrested at his home on January 20, 1968. There was no arrest warrant, but the victim of an armed robbery had identified Johnson from photographs as having committed the crime. He was then identified at a lineup, at which he had counsel, by the victim of still another robbery. The latter crime is involved in this case. Johnson pleaded not guilty, was tried on May 14, 1968, by a 12-man jury, and was convicted by a nine-to-three verdict. His due process and equal protection challenges to the Louisiana constitutional and statutory provisions were rejected by the Louisiana courts, 255 La. 314, 230 So.2d 825 (1970), and he appealed here. We noted probable jurisdiction. 400 U.S. 900 (1970). Conceding that, under Duncan v. Louisiana, 391 U.S. 145 (1968), the Sixth Amendment is not applicable to his case, see DeStefano v. Woods, 392 U.S. 631 (1968), appellant presses his equal protection [406 U.S. 359] and due process claims, together with a Fourth Amendment claim also rejected by the Louisiana Supreme Court. We affirm.

II

1972, Johnson v. Louisiana, 406 U.S. 359

Appellant argues that, in order to give substance to the reasonable doubt standard, which the State, by virtue of the Due Process Clause of the Fourteenth Amendment, must satisfy in criminal cases, see In re Winship, 397 U.S. 358, 363-364 (1970), that clause must be construed to require a unanimous jury verdict in all criminal cases. In so contending, appellant does not challenge the instructions in this case. Concededly, the jurors were told to convict only if convinced of guilt beyond a reasonable doubt. Nor is there any claim that, if the verdict in this case had been unanimous, the evidence would have been insufficient to support it. Appellant focuses instead on the fact that less than all jurors voted to convict, and argues that, because three voted to acquit, the reasonable doubt standard has not been satisfied, and his conviction is therefore infirm.

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We note at the outset that this Court has never held jury unanimity to be a requisite of due process of law. Indeed, the Court has more than once expressly said that,

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[i]n criminal cases, due process of law is not denied by a state law…which dispenses with the necessity of a jury of twelve, or unanimity in the verdict.

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Jordan v. Massachusetts, 225 U.S. 167, 176 (1912) (dictum). Accord, Maxwell v. Dow, 176 U.S. 581, 602, 605 (1900) (dictum). These statements, moreover, coexisted with cases indicating that proof of guilt beyond a reasonable doubt is implicit in constitutions recognizing "the fundamental principles that are deemed essential for the protection of life and liberty." Davis v. United States, 160 U.S. 469, 488 (1895). See also Leland v. Oregon, 343 U.S. 790, 802-803 (1952) (dissenting opinion); Brinegar [406 U.S. 360] v. United States, 338 U.S. 160, 174 (1949); Coffin v. United States, 156 U.S. 432, 453-460 (1895). 2

1972, Johnson v. Louisiana, 406 U.S. 360

Entirely apart from these cases, however, it is our view that the fact of three dissenting votes to acquit raises no question of constitutional substance about either the integrity or the accuracy of the majority verdict of guilt. Appellant's contrary argument breaks down into two parts, each of which we shall consider separately: first, that nine individual jurors will be unable to vote conscientiously in favor of guilt beyond a reasonable doubt when three of their colleagues are arguing for acquittal, and, second, that guilt cannot be said to have been proved beyond a reasonable doubt when one or more of a jury's members at the conclusion of deliberation still possess such a doubt. Neither argument is persuasive.

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Numerous cases have defined a reasonable doubt as one "`based on reason which arises from the evidence or lack of evidence.'" United States v. Johnson, 343 F.2d 5, 6 n. 1 (CA2 1965). Accord, e.g., Bishop v. United States, 71 App.D.C. 132, 138, 107 F.2d 297, 303 (1939); United States v. Schneiderman, 106 F.Supp. 906, 927 (SD Cal.1952); United States v. Haupt, 47 F.Supp. 836, 840 (ND Ill. 1942), rev'd on other grounds, 136 F.2d 661 (CA7 1943). In Winship, supra, the Court recognized this evidentiary standard as "`impress[ing] on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.'" 397 U.S. at 364 (citation omitted). In considering the first branch [406 U.S. 361] of appellant's argument, we can find no basis for holding that the nine jurors who voted for his conviction failed to follow their instructions concerning the need for proof beyond such a doubt, or that the vote of any one of the nine failed to reflect an honest belief that guilt had been so proved. Appellant, in effect, asks us to assume that, when minority jurors express sincere doubts about guilt, their fellow jurors will nevertheless ignore them and vote to convict even if deliberation has not been exhausted and minority jurors have grounds for acquittal which, if pursued, might persuade members of the majority to acquit. But the mere fact that three jurors voted to acquit does not, in itself, demonstrate that, had the nine jurors of the majority attended further to reason and the evidence, all or one of them would have developed a reasonable doubt about guilt. We have no grounds for believing that majority jurors, aware of their responsibility and power over the liberty of the defendant, would simply refuse to listen to arguments presented to them in favor of acquittal, terminate discussion, and render a verdict. On the contrary, it is far more likely that a juror presenting reasoned argument in favor of acquittal would either have his arguments answered or would carry enough other jurors with him to prevent conviction. A majority will cease discussion and outvote a minority only after reasoned discussion has ceased to have persuasive effect or to serve any other purpose when a minority, that is, continues to insist upon acquittal without having persuasive reasons in support of its position. At that juncture there is no basis for denigrating the vote of so large a majority of the jury or for refusing to accept their decision as being, at least in their minds, beyond a reasonable doubt. Indeed, at this point, a

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dissenting juror should consider whether his doubt was a reasonable one…[when it made] no impression upon the minds of so many [406 U.S. 362] men, equally honest, equally intelligent with himself.

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Allen v. United States, 164 U.S. 492, 501 (1896). Appellant offers no evidence that majority jurors simply ignore the reasonable doubts of their colleagues or otherwise act irresponsibly in casting their votes in favor of conviction, and before we alter our own longstanding perceptions about jury behavior and overturn a considered legislative judgment that unanimity is not essential to reasoned jury verdicts, we must have some basis for doing so other than unsupported assumptions.

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We conclude, therefore, that, as to the nine jurors who voted to convict, the State satisfied its burden of proving guilt beyond any reasonable doubt. The remaining question under the Due Process Clause is whether the vote of three jurors for acquittal can be said to impeach the verdict of the other nine and to demonstrate that guilt was not in fact, proved beyond such doubt. We hold that it cannot.

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Of course, the State's proof could perhaps be regarded as more certain if it had convinced all 12 jurors, instead of only nine; it would have been even more compelling if it had been required to convince and had, in fact, convinced 24 or 36 jurors. But the fact remains that nine jurors—a substantial majority of the jury—were convinced by the evidence. In our view, disagreement of three jurors does not alone establish reasonable doubt, particularly when such a heavy majority of the jury, after having considered the dissenters' views, remains convinced of guilt. That rational men disagree is not, in itself, equivalent to a failure of proof by the State, nor does it indicate infidelity to the reasonable doubt standard. Jury verdicts finding guilt beyond a reasonable doubt are regularly sustained even though the evidence was such that the jury would have been justified in having a reasonable doubt, see United States v. Quarles, 387 F.2d 551, 554 (CA4 1967); Bell v. United States, 185 F.2d 302, 310 (CA4 1950); even though the trial judge might not have [406 U.S. 363] reached the same conclusion as the jury, see Takahashi v. United States, 143 F.2d 118, 122 (CA9 1944); and even though appellate judges are closely divided on the issue whether there was sufficient evidence to support a conviction. See United States v. Johnson, 140 U.S.App.D.C. 54, 60, 433 F.2d 1160, 1166 (1970); United States v. Manuel-Baca, 421 F.2d 781, 783 (CA9 1970). That want of jury unanimity is not to be equated with the existence of a reasonable doubt emerges even more clearly from the fact that, when a jury in a federal court, which operates under the unanimity rule and is instructed to acquit a defendant if it has a reasonable doubt about his guilt, see Holt v. United States, 218 U.S. 245, 253 (1910); Agnew v. United States, 165 U.S. 36, 51 (1897); W. Mathes & E. Devitt, Federal Jury Practice and Instructions § 8.01 (1965), cannot agree unanimously upon a verdict, the defendant is not acquitted, but is merely given a new trial. Downum v. United States, 372 U.S. 734, 736 (1963); Dreyer v. Illinois, 187 U.S. 71, 85-86 (1902); United States v. Perez, 9 Wheat. 579, 580 (1824). If the doubt of a minority of jurors indicates the existence of a reasonable doubt, it would appear that a defendant should receive a directed verdict of acquittal, rather than a retrial. We conclude, therefore, that verdicts rendered by nine out of 12 jurors are not automatically invalidated by the disagreement of the dissenting three. Appellant was not deprived of due process of law.

III

1972, Johnson v. Louisiana, 406 U.S. 363

Appellant also attacks as violative of the Equal Protection Clause the provisions of Louisiana law requiring unanimous verdicts in capital and five-man jury cases, but permitting less than unanimous verdicts in cases such as his. We conclude, however, that the Louisiana statutory scheme serves a rational purpose, and is not subject to constitutional challenge. [406 U.S. 364]

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In order to "facilitate, expedite, and reduce expense in the administration of criminal justice," State v. Lewis, 129 La. 800, 804, 56 So. 893, 894 (1911), Louisiana has permitted less serious crimes to be tried by five jurors with unanimous verdicts, more serious crimes have required the assent of nine of 12 jurors, and, for the most serious crimes, a unanimous verdict of 12 jurors is stipulated. In appellant's case, nine jurors, rather than five or 12, were required for a verdict. We discern nothing invidious in this classification. We have held that the States are free under the Federal Constitution to try defendants with juries of less than 12 men. Williams v. Florida, 399 U.S. 78 (1970). Three jurors here voted to acquit, but, from what we have earlier said, this does not demonstrate that appellant was convicted on a lower standard of proof. To obtain a conviction in any of the categories under Louisiana law, the State must prove guilt beyond reasonable doubt, but the number of jurors who must be so convinced increases with the seriousness of the crime and the severity of the punishment that may be imposed. We perceive nothing unconstitutional or invidiously discriminatory, however, in a State's insisting that its burden of proof be carried with more jurors where more serious crimes or more severe punishments are at issue.

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Appellant nevertheless insists that dispensing with unanimity in his case disadvantaged him as compared with those who commit less serious or capital crimes. With respect to the latter, he is correct; the State does make conviction more difficult by requiring the assent of all 12 jurors. Appellant might well have been ultimately acquitted had he committed a capital offense. But, as we have indicated, this does not constitute a denial of equal protection of the law; the State may treat capital offenders differently without violating the constitutional rights of those charged with lesser crimes. As to the crimes triable by a five-man jury, if appellant's [406 U.S. 365] position is that it is easier to convince nine of 12 jurors than to convince all of five, he is simply challenging the judgment of the Louisiana Legislature. That body obviously intended to vary the difficulty of proving guilt with the gravity of the offense and the severity of the punishment. We remain unconvinced by anything appellant has presented that this legislative judgment was defective in any constitutional sense.

IV

1972, Johnson v. Louisiana, 406 U.S. 365

Appellant also urges that his nighttime arrest without a warrant was unlawful in the absence of a valid excuse for failing to obtain a warrant, and further, that his subsequent lineup identification was a forbidden fruit of the claimed invasion of his Fourth Amendment rights. The validity of Johnson's arrest, however, is beside the point here, for it is clear that no evidence that might properly be characterized as the fruit of an illegal entry and arrest was used against him at his trial. Prior to the lineup, at which Johnson was represented by counsel, he was brought before a committing magistrate to advise him of his rights and set bail. At the time of the lineup, the detention of the appellant was under the authority of this commitment. Consequently, the lineup was conducted not by "exploitation" of the challenged arrest, but "by means sufficiently distinguishable to be purged of the primary taint." Wong Sun v. United States, 371 U.S. 471, 488 (1963).

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The judgment of the Supreme Court of Louisiana is therefore

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Affirmed.

BLACKMUN, J., concurring

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MR. JUSTICE BLACKMUN, concurring.\*

1972, Johnson v. Louisiana, 406 U.S. 365

I join the Court's opinion and judgment in each of these cases. I add only the comment, which should be [406 U.S. 366] obvious and should not need saying, that, in so doing, I do not imply that I regard a State's split-verdict system as a wise one. My vote means only that I cannot conclude that the system is constitutionally offensive. Were I a legislator, I would disfavor it as a matter of policy. Our task here, however, is not to pursue and strike down what happens to impress us as undesirable legislative policy.

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I do not hesitate to say, either, that a system employing a 7-5 standard, rather than a 9-3 or 75% minimum, would afford me great difficulty. As MR. JUSTICE WHITE points out, ante at 362, "a substantial majority of the jury" are to be convinced. That is all that is before us in each of these cases.

POWELL, J., concurring

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MR. JUSTICE POWELL, concurring in No. 69-5035 and concurring in the judgment in No. 69-5046.

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I concur in the judgment of the Court that convictions based on less than unanimous jury verdicts in these cases did not deprive criminal defendants of due process of law under the Fourteenth Amendment. As my reasons for reaching this conclusion in the Oregon case differ from those expressed in the plurality opinion of MR. JUSTICE WHITE, I will state my views separately.

I

69-5035

1972, Johnson v. Louisiana, 406 U.S. 366

Duncan v. Louisiana, 391 U.S. 145 (1968), stands for the proposition that criminal defendants in state courts are entitled to trial by jury. 1 The source of that right is the Due Process Clause of the Fourteenth Amendment. Due process, as consistently interpreted by this Court, commands that citizens subjected to criminal [406 U.S. 367] process in state courts be accorded those rights that are fundamental to a fair trial in the context of our "American scheme of justice." Id. at 149. The right of an accused person to trial by a jury of his peers was a cherished element of the English common law long before the American Revolution. In this country, prior to Duncan, every State had adopted a criminal adjudicatory process calling for the extensive use of petit juries. Id. at 150 n. 14; Turner v. Louisiana, 379 U.S. 466, 471 n. 9 (1965). Because it assures the interposition of an impartial assessment of one's peers between the defendant and his accusers, the right to trial by jury deservedly ranks as a fundamental of our system of jurisprudence. With this principle of due process, I am in full accord.

1972, Johnson v. Louisiana, 406 U.S. 367

In DeStefano v. Woods, 392 U.S. 631 (1968), an Oregon petitioner sought to raise the question, left open in Duncan, whether the right to jury trial in a State court also contemplates the right to a unanimous verdict. 2 Because the Court concluded that Duncan was not to have retroactive applicability, it found it unnecessary to decide whether the Fourteenth Amendment requires unanimity. The trial in the case before the Court at that time occurred several years prior to May 20, 1968, the date of decision in Duncan. In the Louisiana case now before us, the petitioner also was convicted by a less than unanimous verdict before Duncan was decided. Accordingly, I read DeStefano as foreclosing consideration in this case of the question whether jury trial as guaranteed by the Due Process Clause contemplates a corollary requirement that its judgment be unanimous.

1972, Johnson v. Louisiana, 406 U.S. 367

Indeed, in Johnson v. Louisiana, appellant concedes that the nonretroactivity of Duncan prevents him from raising his due process argument in the classic "fundamental fairness" language adopted there. Instead, he [406 U.S. 368] claims that he is deprived of due process because a conviction in which only nine of 12 jurors joined is not one premised on a finding of guilt beyond a reasonable doubt, held to be a requisite element of due process in In re Winship, 397 U.S. 358, 364 (1970). For the reasons stated in the majority opinion, I do not agree that Louisiana's less than unanimous verdict rule undercuts the applicable standard of proof in criminal prosecutions in that State.

1972, Johnson v. Louisiana, 406 U.S. 368

Appellant also asks this Court to find a violation of the Equal Protection Clause in Louisiana's constitutional and statutory provisions establishing the contours of the jury trial right in that State. The challenged provisions divide those accused of crimes into three categories, depending on the severity of the possible punishment: those charged with offenses for which the punishment might be at hard labor are entitled to a five-juror, unanimous verdict; those charged with offenses for which the punishment will necessarily be at hard labor are entitled to a verdict in which nine of 12 jurors must concur; and those charged with capital offenses are entitled to a 12-juror, unanimous verdict. La.Const., Art. VII, § 41; La.Code Crim.Proc., Art. 782. Such distinctions between classes of defendants do not constitute invidious discrimination against any one of the classes unless the State's classification can be said to lack a reasonable or rational basis. We have been shown no reason to question the rationality of Louisiana's tri-level system. I therefore join the Court's opinion in Johnson v. Louisiana affirming the decision below. 3 [406 U.S. 369]

II

69-5046

1972, Johnson v. Louisiana, 406 U.S. 369

In the Oregon case decided today, Apodaca v. Oregon, the trials occurred after Duncan was decided. The question left unanswered in Duncan and DeStefano is therefore squarely presented. I concur in the plurality opinion in this case insofar as it concludes that a defendant in a state court may constitutionally be convicted by less than a unanimous verdict, but I am not in accord with a major premise upon which that judgment is based. Its premise is that the concept of jury trial, as applicable to the States under the Fourteenth Amendment, must be identical in every detail to the concept required in federal courts by the Sixth Amendment. 4 I do not think that all of the elements of jury trial within the meaning of the Sixth Amendment are necessarily embodied in or incorporated into the Due Process Clause of the Fourteenth Amendment. As Mr. Justice Fortas, concurring in Duncan v. Louisiana, 391 U.S. at 213, said:

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Neither logic nor history nor the intent of the draftsmen of the Fourteenth Amendment can possibly be said to require that the Sixth Amendment or its jury trial provision be applied to the States together with the total gloss that this Court's decisions have supplied.

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In an unbroken line of cases reaching back into the late 1800's, the Justices of this Court have recognized, virtually without dissent, that unanimity is one of the indispensable features of federal jury trial. Andres v. United States, 333 U.S. 740, 748-749 (1948); Patton v. United States, 281 U.S. 276, 288-290 (1930); Hawaii [406 U.S. 370] v. Mankichi, 190 U.S. 197, 211-212 (1903) (see also Mr. Justice Harlan's dissenting opinion); Maxwell v. Dow, 176 U.S. 581, 586 (1900) (see also Mr. Justice Harlan's dissenting opinion); Thompson v. Utah, 170 U.S. 343, 355 (1898). 5 In these cases, the Court has presumed that unanimous verdicts are essential in federal jury trials not because unanimity is necessarily fundamental to the function performed by the jury, but because that result is mandated by history. 6 The reasoning that [406 U.S. 371] runs throughout this Court's Sixth Amendment precedents is that, in amending the Constitution to guarantee the right to jury trial, the framers desired to preserve the jury safeguard as it was known to them at common law. 7 At the time the Bill of Rights was adopted, unanimity had long been established as one of the attributes of a jury conviction at common law. 8 It therefore seems to me, in accord both with history and precedent, that the Sixth Amendment requires a unanimous jury verdict to convict in a federal criminal trial.

1972, Johnson v. Louisiana, 406 U.S. 371

But it is the Fourteenth Amendment, rather than the Sixth, that imposes upon the States the requirement that they provide jury trials to those accused of serious crimes. This Court has said, in cases decided when the intendment of that Amendment was not as clouded by the passage of time, that due process does not require that the States apply the federal jury trial right, with all its gloss. In Maxwell v. Dow, 176 U.S. at 605, Mr. Justice Peckham, speaking for eight of the nine members of the Court, so stated:

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[W]hen providing in their constitution and legislation for the manner in which civil or criminal actions [406 U.S. 372] shall be tried, it is in entire conformity with the character of the Federal Government that [the States] should have the right to decide or themselves what shall be the form and character of the procedure in such trials,…whether there shall be a jury of twelve or a lesser number, and whether the verdict must be unanimous or not….

1972, Johnson v. Louisiana, 406 U.S. 372

Again, in Jordan v. Massachusetts, 225 U.S. 167, 176 (1912), the Court concluded that,

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[i]n criminal cases, due process of law is not denied by a state law which dispenses with…the necessity of a jury of twelve, or unanimity in the verdict.

1972, Johnson v. Louisiana, 406 U.S. 372

It is true, of course, that the Maxwell and Jordan Courts went further, and concluded that the States might dispense with jury trial altogether. That conclusion, grounded on a more limited view of due process than has been accepted by this Court in recent years, 9 was rejected by the Court in Duncan. But I find nothing in the constitutional principle upon which Duncan is based, or in other precedents, that requires repudiation of the views expressed in Maxwell and Jordan with respect to the size of a jury and the unanimity of its verdict. Mr. Justice Fortas, concurring in Duncan, commented on the distinction between the requirements of the Sixth Amendment [406 U.S. 373] and those of the Due Process Clause and suggested the appropriate framework for analysis of the issue in this case.

1972, Johnson v. Louisiana, 406 U.S. 373

I see no reason whatever…to assume that our decision today should require us to impose federal requirements such as unanimous verdicts or a jury of 12 upon the States. We may well conclude that these and other features of federal jury practice are by no means fundamental—that they are not essential to due process of law—and that they are not obligatory on the States.

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Duncan v. Louisiana, 391 U.S. at 213.

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The question, therefore, that should be addressed in this case is whether unanimity is, in fact, so fundamental to the essentials of jury trial that this particular requirement of the Sixth Amendment is necessarily binding on the States under the Due Process Clause of the Fourteenth Amendment. An affirmative answer, ignoring the strong views previously expressed to the contrary by this Court in Maxwell and Jordan, would give unwarranted and unwise scope to the incorporation doctrine as it applies to the due process right of state criminal defendants to trial by jury.

1972, Johnson v. Louisiana, 406 U.S. 373

The importance that our system attaches to trial by jury derives from the special confidence we repose in a "body of one's peers to determine guilt or innocence as a safeguard against arbitrary law enforcement." Williams v. Florida, 399 U.S. 78, 87 (1970). It is this safeguarding function, preferring the common sense judgment of a jury as a bulwark "against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge," 10 that lies at the core of our dedication to the principles of jury determination of guilt or innocence. 11 [406 U.S. 374] This is the fundamental of jury trial that brings it within the mandate of due process. It seems to me that this fundamental is adequately preserved by the jury verdict provision of the Oregon Constitution. There is no reason to believe, on the basis of experience in Oregon or elsewhere, that a unanimous decision of 12 jurors is more likely to serve the high purpose of jury trial, or is entitled to greater respect in the community, than the same decision joined in by 10 members of a jury of 12. The standard of due process assured by the Oregon Constitution provides a sufficient guarantee that the government will not be permitted to impose its judgment on an accused without first meeting the full burden of its prosecutorial duty. 12 [406 U.S. 375]

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Moreover, in holding that the Fourteenth Amendment has incorporated "jot-for-jot and case-for-case" 13 every element of the Sixth Amendment, the Court derogates principles of federalism that are basic to our system. In the name of uniform application of high standards of due process, the Court has embarked upon a course of constitutional interpretation that deprives the States of freedom to experiment with adjudicatory processes different from the federal model. At the same time, the Court's understandable unwillingness to impose requirements that it finds unnecessarily rigid (e.g., Williams v. Florida, 399 U.S. 78), has culminated in the dilution of federal rights that were, until these decisions, never seriously questioned. The doubly undesirable consequence of this reasoning process, labeled by Mr. Justice Harlan as "constitutional schizophrenia," id. at 136, may well be detrimental both to the state and federal criminal justice systems. Although it is perhaps late in the day for an expression of my views, I would have been in accord with the opinions in similar cases by THE CHIEF JUSTICE and Justices Harlan, STEWART, and Fortas 14 that, at least in defining the elements of the right to jury trial, there is no sound basis for interpreting the Fourteenth Amendment to require blind adherence by the States to all details of the federal Sixth Amendment standards. 15 [406 U.S. 376]

1972, Johnson v. Louisiana, 406 U.S. 376

While the Civil War Amendments altered substantially the balance of federalism, it strains credulity to believe that they were intended to deprive the States of all freedom to experiment with variations in jury trial procedure. In an age in which empirical study is increasingly relied upon as a foundation for decisionmaking, one of the more obvious merits of our federal system is the opportunity it affords each State, if its people so choose, to become a "laboratory" and to experiment with a range of trial and procedural alternatives. Although the need for the innovations that grow out of diversity has always been great, imagination unimpeded by unwarranted demands for national uniformity is of special importance at a time when serious doubt exists as to the adequacy of our criminal justice system. The same diversity of local legislative responsiveness that marked the development of economic and social reforms in this country, 16 if not barred by an unduly restrictive application of the Due Process Clause, might well lead to valuable innovations with respect to determining—fairly and more expeditiously—the guilt or innocence of the accused.

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Viewing the unanimity controversy as one requiring a fresh look at the question of what is fundamental in jury trial, I see no constitutional infirmity in the provision adopted by the people of Oregon. It is the product of a constitutional amendment, approved by a vote of the people in the State, and appears to be patterned on a provision of the American Law Institute's Code of Criminal [406 U.S. 377] Procedure. 17 A similar decision has been echoed more recently in England, where the unanimity requirement was abandoned by statutory enactment. 18 Less than unanimous verdict provisions also have been viewed with approval by the American Bar Association's Criminal Justice Project. 19 Those who have studied the jury mechanism and recommended deviation from the historic rule of unanimity have found a number of considerations to be significant. Removal of the unanimity requirement could well minimize the potential for hung juries occasioned either by bribery or juror irrationality. Furthermore, the rule that juries must speak with a single voice often leads not to full agreement among the 12, but to agreement by none and compromise by all, despite the frequent absence of a rational basis for such compromise. 20 Quite apart from whether Justices sitting on this Court would have deemed advisable the adoption of any particular less than unanimous jury provision, I think that considerations of this kind reflect a legitimate basis for experimentation and deviation from the federal blueprint. 21 [406 U.S. 378]

III

1972, Johnson v. Louisiana, 406 U.S. 378

Petitioners in Apodaca v. Oregon, in addition to their primary contention that unanimity is a requirement of state jury trials because the Fourteenth Amendment "incorporates" the Sixth, also assert that Oregon's constitutional provision offends the federal constitutional guarantee against the systematic exclusion of any group within the citizenry from participating in the criminal trial process. While the systematic exclusion of identifiable minorities from jury service has long been recognized as a violation of the Equal Protection Clause (see, e.g., Whitus v. Georgia, 385 U.S. 545 (1967); Strauder v. West Virginia, 100 U.S. 303 (1880)), in more recent years, the Court has held that criminal defendants are entitled, as a matter of due process, to a jury drawn from a representative cross-section of the community. This is an essential element of a fair and impartial jury trial. See Williams v. Florida, 399 U.S. at 100; Alexander v. Louisiana, 405 U.S. 625, 634 (1972) (DOUGLAS, J., concurring). Petitioners contend that less than unanimous jury verdict provisions undercut that right by implicitly permitting in the jury room that which is prohibited in the jury venire selection process—the exclusion of minority group viewpoints. They argue that, unless unanimity is required even of a properly drawn jury, the result—whether conviction or acquittal—may be the unjust product of racism, bigotry, or an emotionally inflamed trial.

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Such fears materialize only when the jury's majority, responding to these extraneous pressures, ignores the evidence and the instructions of the court as well as the [406 U.S. 379] rational arguments of the minority. The risk, however, that a jury in a particular case will fail to meet its high responsibility is inherent in any system that commits decisions of guilt or innocence to untrained laymen drawn at random from the community. In part, at least, the majority verdict rule must rely on the same principle that underlies our historic dedication to jury trial: both systems are premised on the conviction that each juror will faithfully perform his assigned duty. MR. JUSTICE Douglas' dissent today appears to rest on the contrary assumption that the members of the jury constituting the majority have no duty to consider the minority's viewpoint in the course of deliberation. Characterizing the jury's consideration of minority views as mere "polite and academic conversation," or "courtesy dialogue," he concludes that a jury is under no obligation in Oregon to deliberate at all if 10 jurors vote together at the outset. Post at 389. No such power freely to shut off competing views is implied in the record in this case, and it is contrary to basic principles of jury participation in the criminal process. While there may be, of course, reasonable differences of opinion as to the merit of the speculative concerns expressed by these petitioners and reflected in the dissenting opinion, I find nothing in Oregon's experience to justify the apprehension that juries not bound by the unanimity rule will be more likely to ignore their historic responsibility.

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Moreover, the States need not rely on the presumption of regularity in a vacuum, since each has at its disposal protective devices to diminish significantly the prospect of jury irresponsibility. Even before the jury is sworn, substantial protection against the selection of a representative but willfully irresponsible jury is assured by the wide availability of peremptory challenges and challenges for cause. 22 The likelihood of miscarriage of justice is [406 U.S. 380] further diminished by the judge's use of full jury instructions, detailing the applicable burdens of proof, informing the jurors of their duty to weigh the views of fellow jurors, 23 and reminding them of the solemn responsibility imposed by their oaths. Trial judges also retain the power to direct acquittals in cases in which the evidence of guilt is lacking, or to set aside verdicts once rendered when the evidence is insufficient to support a conviction. Furthermore, in cases in which public emotion runs high or pretrial publicity threatens a fair trial, judges possess broad power to grant changes of venue 24 and to impose restrictions on the extent of press coverage. 25

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In light of such protections, it is unlikely that the Oregon "ten-of-twelve" rule will account for an increase in the number of cases in which injustice will be occasioned by a biased or prejudiced jury. It may be wise to recall MR. JUSTICE WHITE's admonition in Murphy v. Waterfront Comm'n, 378 U.S. 52, 102 (1964), that the Constitution "protects against real dangers, not remote and speculative possibilities." Since I do not view Oregon's less than unanimous jury verdict requirement as violative of the due process guarantee of the Fourteenth Amendment, I concur in the Court's affirmance of these convictions.

DOUGLAS, J., dissenting

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MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.\*

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Appellant in the Louisiana case and petitioners in the Oregon case were convicted by juries that were less than unanimous. This procedure is authorized by both the [406 U.S. 381] Louisiana and Oregon Constitutions. Their claim, rejected by the majority, is that this procedure is a violation of their federal constitutional rights. With due respect to the majority, I dissent from this radical departure from American traditions.

I

1972, Johnson v. Louisiana, 406 U.S. 381

The Constitution does not mention unanimous juries. Neither does it mention the presumption of innocence, nor does it say that guilt must be proved beyond a reasonable doubt in all criminal cases. Yet it is almost inconceivable that anyone would have questioned whether proof beyond a reasonable doubt was in fact, the constitutional standard. And, indeed, when such a case finally arose, we had little difficulty disposing of the issue. In re Winship, 397 U.S. 358, 364.

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The Court, speaking through MR. JUSTICE BRENNAN, stated that:

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[The] use of the reasonable doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.

1972, Johnson v. Louisiana, 406 U.S. 381

Lest there remain any doubt about the constitutional stature of the reasonable doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

1972, Johnson v. Louisiana, 406 U.S. 381

Ibid. [406 U.S. 382]

1972, Johnson v. Louisiana, 406 U.S. 382

I had similarly assumed that there was no dispute that the Federal Constitution required a unanimous jury in all criminal cases. After all, it has long, been explicit constitutional doctrine that the Seventh Amendment civil jury must be unanimous. See American Publishing Co. v. Fisher, 166 U.S. 464, where the Court said that "unanimity was one of the peculiar and essential features of trial by jury at the common law. No authorities are needed to sustain this proposition." Id. at 468. Like proof beyond a reasonable doubt, the issue of unanimous juries in criminal cases simply never arose. Yet, in cases dealing with juries, it had always been assumed that a unanimous jury was required. 1 See Maxwell v. Dow, 176 U.S. 581, 586; Patton v. United States, 281 U.S. 276, 288; Andres v. United States, 333 U.S. 740, [406 U.S. 383] 748. Today the bases of those cases are discarded and two centuries of American history are shunted aside. 2

1972, Johnson v. Louisiana, 406 U.S. 383

The result of today's decisions is anomalous: though unanimous jury decisions are not required in state trials, they are constitutionally required in federal prosecutions. How can that be possible when both decisions stem from the Sixth Amendment?

1972, Johnson v. Louisiana, 406 U.S. 383

We held unanimously in 1948 that the Bill of Rights requires a unanimous jury verdict:

1972, Johnson v. Louisiana, 406 U.S. 383

Unanimity in jury verdicts is required where the Sixth and Seventh Amendments apply. In criminal cases, this requirement of unanimity extends to all issues—character or degree of the crime, guilt and punishment—which are left to the jury. A verdict embodies in a single finding the conclusions by the jury upon all the questions submitted to it.

1972, Johnson v. Louisiana, 406 U.S. 383

Andres v. United States, 333 U.S. at 748.

1972, Johnson v. Louisiana, 406 U.S. 383

After today's decisions, a man's property may only be taken away by a unanimous jury vote, yet he can be stripped of his liberty by a lesser standard. How can that result be squared with the law of the land as expressed in the settled and traditional requirements of procedural due process?

1972, Johnson v. Louisiana, 406 U.S. 383

Rule 31(a) of the Federal Rules of Criminal Procedure states, "The verdict shall be unanimous." That Rule was made by this Court with the concurrence of Congress pursuant to 18 U.S.C. § 3771. After today, a unanimous verdict will be required in a federal prosecution, but not in a state prosecution. Yet the source of the right in each case is the Sixth Amendment. I fail [406 U.S. 384] to see how with reason we can maintain those inconsistent dual positions.

1972, Johnson v. Louisiana, 406 U.S. 384

There have, of course, been advocates of the view that the duties imposed on the States by reason of the Bill of Rights operating through the Fourteenth Amendment are a watered-down version of those guarantees. But we held to the contrary in Malloy v. Hogan, 378 U.S. 1, 111:

1972, Johnson v. Louisiana, 406 U.S. 384

We have held that the guarantees of the First Amendment, Gitlow v. New York, supra; Cantwell v. Connecticut, 310 U.S. 296; Louisiana ex rel. Gremillion v. NAACP, 366 U.S. 293, the prohibition of unreasonable searches and seizures of the Fourth Amendment, Ker v. California, 374 U.S. 23, and the right to counsel guaranteed by the Sixth Amendment, Gideon v. Wainwright, supra, are all to be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment. In the coerced confession cases, involving the policies of the privilege itself, there has been no suggestion that a confession might be considered coerced if used in a federal, but not a state, tribunal. The Court thus has rejected the notion that the Fourteenth Amendment applies to the States only a "watered-down, subjective version of the individual guarantees of the Bill of Rights."

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Malloy, of course, not only applied the Self-Incrimination Clause to the States, but also stands for the proposition, as mentioned, that "the same standards must determine whether an accused's silence in either a federal or state proceeding is justified." Id. at 11. See also Murphy v. Waterfront Comm'n, 378 U.S. 52, 79. The equation of federal and state standards for the Self-Incrimination Clause was expressly reaffirmed in Griffin [406 U.S. 385] v. California, 380 U.S. 609, 615; and in Miranda v. Arizona, 384 U.S. 436, 464.

1972, Johnson v. Louisiana, 406 U.S. 385

Similarly, when the Confrontation Clause was finally made obligatory on the States, Mr. Justice Black for the majority was careful to observe that its guarantee,

1972, Johnson v. Louisiana, 406 U.S. 385

like the right against compelled self-incrimination, is "to be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment."

1972, Johnson v. Louisiana, 406 U.S. 385

Pointer v. Texas, 380 U.S. 400, 406. Cf. Dutton v. Evans, 400 U.S. 74, 81.

1972, Johnson v. Louisiana, 406 U.S. 385

Likewise, when we applied the Double Jeopardy Clause against the States, MR. JUSTICE MARSHALL wrote for the Court that,

1972, Johnson v. Louisiana, 406 U.S. 385

[o]nce it is decided that a particular Bill of Rights guarantee is "fundamental to the American scheme of justice," Duncan v. Louisiana…, the same constitutional standards apply against both the State and Federal Governments.

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Benton v. Maryland, 395 U.S. 784, 795. And the doctrine of coextensive coverage was followed in holding the Speedy Trial Clause applicable to the States. Klopfer v. North Carolina, 386 U.S. 213, 222.

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And in Duncan v. Louisiana, 391 U.S. 145, 158 n. 30, in holding the jury trial guarantee binding in state trials, we noted that its prohibitions were to be identical against both the Federal and State Governments. See also id. at 213 (Fortas, J., concurring).

1972, Johnson v. Louisiana, 406 U.S. 385

Only once has this Court diverged from the doctrine of coextensive coverage of guarantees brought within the Fourteenth Amendment, and that aberration was later rectified. In Wolf v. Colorado, 338 U.S. 25, it was held that the Fourth Amendment ban against unreasonable and warrantless searches was enforceable against the States, but the Court declined to incorporate the Fourth Amendment exclusionary rule of Weeks v. United States, [406 U.S. 386] 232 U.S. 383. Happily, however, that gap was partially closed in Elkins v. United States, 364 U.S. 206, and then completely bridged in Mapp v. Ohio, 367 U.S. 643. In Mapp, we observed that

1972, Johnson v. Louisiana, 406 U.S. 386

[t]his Court has not hesitated to enforce as strictly against the States as it does against the Federal Government the rights of free speech and of a free press, the rights to notice and to a fair, public trial….

1972, Johnson v. Louisiana, 406 U.S. 386

We concluded that "the same rule" should apply where the Fourth Amendment was concerned. Id. at 656. And later we made clear that "the standard for obtaining a search warrant is…`the same under the Fourth and Fourteenth Amendments,'" Aguilar v. Texas, 378 U.S. 108, 110, and that the "standard of reasonableness is the same under the Fourth and Fourteenth Amendments." Ker v. California, 374 U.S. 23, 33.

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It is said, however, that the Sixth Amendment, as applied to the States by reason of the Fourteenth, does not mean what it does in federal proceedings, that it has a "due process" gloss on it, and that that gloss gives the States power to experiment with the explicit or implied guarantees in the Bill of Rights.

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Mr. Justice Holmes, dissenting in Truax v. Corrigan, 257 U.S. 312, 344, and Mr. Justice Brandeis, dissenting in New State Ice Co. v. Liebmann, 285 U.S. 262, 311, thought that the States should be allowed to improvise remedies for social and economic ills. But in that area there are not many "thou shalt nots" in the Constitution and Bill of Rights concerning property rights. The most conspicuous is the Just Compensation Clause of the Fifth Amendment. It has been held applicable with full vigor to the States by reason of the Fourteenth Amendment. Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226.

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Do today's decisions mean that States may apply a "watered down" version of the Just Compensation [406 U.S. 387] Clause? Or are today's decisions limited to a paring down of civil rights protected by the Bill of Rights and, up until now, as fully applicable to the States a to the Federal Government?

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These civil rights—whether they concern speech, searches and seizures, self-incrimination, criminal prosecutions, bail, or cruel and unusual punishments—extend, of course, to everyone, but, in cold reality, touch mostly the lower castes in our society. I refer, of course, to the blacks, the Chicanos, the one-mule farmers, the agricultural workers, the offbeat students, the victims of the ghetto. Are we giving the States the power to experiment in diluting their civil rights? It has long been thought that the "thou shalt nots" in the Constitution and Bill of Rights protect everyone against governmental intrusion or overreaching. The idea has been obnoxious that there are some who can be relegated to second-class citizenship. But if we construe the Bill of Rights and the Fourteenth Amendment to permit States to "experiment" with the basic rights of people, we open a veritable Pandora's box. For hate and prejudice are versatile forces that can degrade the constitutional scheme. 3 [406 U.S. 388]

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That, however, is only one of my concerns when we make the Bill of Rights, as applied to the States, a "watered down" version of what that charter guarantees. My chief concern is one often expressed by the late Mr. Justice Black, who was alarmed at the prospect of nine men appointed for life sitting as a super-legislative body to determine whether government has gone too far. The balancing was done when the Constitution and Bill of Rights were written and adopted. For this Court to determine, say, whether one person, but not another, is entitled to free speech is a power never granted it. But that is the ultimate reach of decisions that let the States, subject to our veto, experiment with rights guaranteed by the Bill of Rights.

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I would construe the Sixth Amendment, when applicable to the States, precisely as I would when applied to the Federal Government.

II

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The plurality approves a procedure which diminishes the reliability of a jury. First, it eliminates the circumstances in which a minority of jurors (a) could have rationally persuaded the entire jury to acquit, or (b) while unable to persuade the majority to acquit, nonetheless could have convinced them to convict only on a lesser included offense. Second, it permits prosecutors in Oregon and Louisiana to enjoy a conviction-acquittal ratio substantially greater than that ordinarily returned by unanimous juries.

1972, Johnson v. Louisiana, 406 U.S. 388

The diminution of verdict reliability flows from the fact that nonunanimous juries need not debate and deliberate as fully as must unanimous juries. As soon as the requisite majority is attained, further consideration is not required either by Oregon or by Louisiana, even though the dissident jurors might, if given the chance, be able to convince the majority. Such persuasion [406 U.S. 389] does, in fact, occasionally occur in States where the unanimous requirement applies:

1972, Johnson v. Louisiana, 406 U.S. 389

In roughly one case in ten, the minority eventually succeeds in reversing an initial majority, and these may be cases of special importance. 4

1972, Johnson v. Louisiana, 406 U.S. 389

One explanation for this phenomenon is that, because jurors are often not permitted to take notes, and because they have imperfect memories, the forensic process of forcing jurors to defend their conflicting recollections and conclusions flushes out many nuances which otherwise would go overlooked. This collective effort to piece together the puzzle of historical truth, however, is cut short as soon as the requisite majority is reached in Oregon and Louisiana. Indeed, if a necessary majority is immediately obtained, then no deliberation at all is required in these States. (There is a suggestion that this may have happened in the 10-2 verdict rendered in only 41 minutes in Apodaca's case.) To be sure, in jurisdictions other than these two States, initial majorities normally prevail in the end, but, about a tenth of the time, the rough and tumble of the jury room operates to reverse completely their preliminary perception of guilt or innocence. The Court now extracts from the jury room this automatic check against hasty factfinding by relieving jurors of the duty to hear out fully the dissenters.

1972, Johnson v. Louisiana, 406 U.S. 389

It is said that there is no evidence that majority jurors will refuse to listen to dissenters whose votes are unneeded for conviction. Yet human experience teaches that polite and academic conversation is no substitute for the earnest and robust argument necessary to reach unanimity. As mentioned earlier, in Apodaca's case, whatever courtesy dialogue transpired could not have lasted more than 41 minutes. I fail to understand [406 U.S. 390] why the Court should lift from the States the burden of justifying so radical a departure from an accepted and applauded tradition, and instead demand that these defendants document with empirical evidence what has always been thought to be too obvious for further study.

1972, Johnson v. Louisiana, 406 U.S. 390

To be sure, in Williams v. Florida, 399 U.S. 78, we held that a State could provide a jury less than 12 in number in a criminal trial. We said:

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What few experiments have occurred—usually in the civil area—indicate that there is no discernible difference between the results reached by the two different-sized juries. In short, neither currently available evidence nor theory suggests that the 12-man jury is necessarily more advantageous to the defendant than a jury composed of fewer members.

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Id. at 101-102.

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That rationale of Williams can have no application here. Williams requires that the change be neither more nor less advantageous to either the State or the defendant. It is said that such a showing is satisfied here, since a 3:9 (Louisiana) or 2:10 (Oregon) verdict will result in acquittal. Yet experience shows that the less than unanimous jury overwhelmingly favors the States.

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Moreover, even where an initial majority wins the dissent over to its side, the ultimate result in unanimous jury States may nonetheless reflect the reservations of uncertain jurors. I refer to many compromise verdicts on lesser included offenses and lesser sentences. Thus, even though a minority may not be forceful enough to carry the day, their doubts may nonetheless cause a majority to exercise caution. Obviously, however, in Oregon and Louisiana, dissident jurors will not have the opportunity through full deliberation to temper the opposing faction's degree of certainty of guilt.

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The new rule also has an impact on cases in which a unanimous jury would have neither voted to acquit nor [406 U.S. 391] to convict, but would have deadlocked. In unanimous jury States, this occurs about 5.6 ,% of the time. Of these deadlocked juries, Kalven and Zeisel say that 56% contain either one, two, or three dissenters. In these latter cases, the majorities favor the prosecution 44% (of the 56%) but the defendant only 12% (of the 56%). 5 Thus, by eliminating these deadlocks, Louisiana wins 44 cases for every 12 that it loses, obtaining in this band of outcomes a substantially more favorable conviction ratio (3.67 to 1) than the unanimous jury ratio of slightly less than two guilty verdicts for every acquittal. H. Kalven & H. Zeisel, The American Jury 461, 488 (Table 139) (1966). By eliminating the one- and two-dissenting-juror cases, Oregon does even better, gaining 4.25 convictions for every acquittal. While the statutes, on their face, deceptively appear to be neutral, the use of the nonunanimous jury stacks the truth-determining process against the accused. Thus, we take one step more away from the accusatorial system that has been our proud boast.

1972, Johnson v. Louisiana, 406 U.S. 391

It is my belief that a unanimous jury is necessary if the great barricade known as proof beyond a reasonable [406 U.S. 392] doubt is to be maintained. This is not to equate proof beyond a reasonable doubt with the requirement of a unanimous jury. That would be analytically fallacious, since a deadlocked jury does not bar, as double jeopardy, retrial for the same offense. See Dreyer v. Illinois, 187 U.S. 71. Nevertheless, one is necessary for a proper effectuation of the other. Compare Mapp v. Ohio, 367 U.S. 643, with Wolf v. Colorado, 338 U.S. 25.

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Suppose a jury begins with a substantial minority, but then, in the process of deliberation, a sufficient number changes to reach the required 9:3 or 10:2 for a verdict. Is not there still a lingering doubt about that verdict? Is it not clear that the safeguard of unanimity operates in this context to make it far more likely that guilt is established beyond a reasonable doubt?

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The late Learned Hand said that, "as a litigant, I should dread a lawsuit beyond almost anything else short of sickness and death." 6 At the criminal level, that dread multiplies. Any person faced with the awesome power of government is in great jeopardy, even though innocent. Facts are always elusive, and often two-faced. What may appear to one to imply guilt may carry no such overtones to another. Every criminal prosecution crosses treacherous ground, for guilt is common to all men. Yet the guilt of one may be irrelevant to the charge on which he is tried or indicate that, if there is to be a penalty, it should be of an extremely light character.

1972, Johnson v. Louisiana, 406 U.S. 392

The risk of loss of his liberty and the certainty that, if found guilty, he will be "stigmatized by the conviction" were factors we emphasized in Winship in sustaining the requirement that no man should be condemned where there is reasonable doubt about his guilt. 397 U.S. at 363-364. [406 U.S. 393]

1972, Johnson v. Louisiana, 406 U.S. 393

We therefore have always held that, in criminal cases, we would err on the side of letting the guilty go free rather than sending the innocent to jail. We have required proof beyond a reasonable doubt as "concrete substance for the presumption of innocence." Id. at 363.

1972, Johnson v. Louisiana, 406 U.S. 393

That procedure has required a degree of patience on the part of the jurors, forcing them to deliberate in order to reach a unanimous verdict. Up until today, the price has never seemed too high. Now a "law and order" judicial mood causes these barricades to be lowered.

1972, Johnson v. Louisiana, 406 U.S. 393

The requirements of a unanimous jury verdict in criminal cases and proof beyond a reasonable doubt are so embedded in our constitutional law and touch so directly all the citizens and are such important barricades of liberty that, if they are to be changed, they should be introduced by constitutional amendment.

1972, Johnson v. Louisiana, 406 U.S. 393

Today the Court approves a nine-to-three verdict. Would t!he Court relax the standard of reasonable doubt still further by resorting to eight-to-four verdicts, or even a majority rule? Moreover, in light of today's holdings and that of Williams v. Florida, in the future, would it invalidate three-to-two or even two-to-one convictions?

1972, Johnson v. Louisiana, 406 U.S. 393

Is the next step the elimination of the presumption of innocence? Mr. Justice Frankfurter, writing in dissent in Leland v. Oregon, 343 U.S. 790, 802-803, said:

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It is not unthinkable that failure to bring the guilty to book for a heinous crime which deeply stirs popular sentiment may lead the legislature of a State, in one of those emotional storms which on occasion sweep over our people, to enact that thereafter an indictment for murder following attempted rape should be presumptive proof of guilt and cast upon the defendant the burden of proving beyond a reasonable doubt that he did not do the killing. Can there be any doubt that such a statute would go beyond [406 U.S. 394] the freedom of the States, under the Due Process Clause of the Fourteenth Amendment, to fashion their own penal codes and their own procedures for enforcing them? Why is that so? Because, from the time that the law which we have inherited has emerged from dark and barbaric times, the conception of justice which has dominated our criminal law has refused to put an accused at the hazard of punishment if he fails to remove every reasonable doubt of his innocence in the minds of jurors. It is the duty of the Government to establish his guilt beyond a reasonable doubt. This notion—basic in our law and rightly one of the boasts of a free society—is a requirement and a safeguard of due process of law in the historic, procedural context of "due process." Accordingly, there can be no doubt, I repeat, that a State cannot cast upon an accused the duty of establishing beyond a reasonable doubt that his was not the act which caused the death of another.

1972, Johnson v. Louisiana, 406 U.S. 394

The vast restructuring of American law which is entailed in today's decisions is for political, not for judicial, action. Until the Constitution is rewritten, we have the present one to support and construe. It has served us well. We lifetime appointees, who sit here only by happenstance, are the last who should sit as a Committee of Revision on rights as basic as those involved in the present cases.

1972, Johnson v. Louisiana, 406 U.S. 394

Proof beyond a reasonable doubt and unanimity of criminal verdicts and the presumption of innocence are basic features of the accusatorial system. What we do today is not in that tradition, but more in the tradition of the inquisition. Until amendments are adopted setting new standards, I would let no man be fined or imprisoned in derogation of what up to today was indisputably the law of the land. [406 U.S. 395]

BRENNAN, J., dissenting

1972, Johnson v. Louisiana, 406 U.S. 395

MR. JUSTICE BRENNAN, with whom MR JUSTICE MARSHALL joins, dissenting.\*

1972, Johnson v. Louisiana, 406 U.S. 395

Readers of today's opinions may be understandably puzzled why convictions by 11-1 and 10-2 jury vote are affirmed in No. 69-5046 when a majority of the Court agrees that the Sixth Amendment requires a unanimous verdict in federal criminal jury trials and a majority also agrees that the right to jury trial guaranteed by the Sixth Amendment is to be enforced against the States according to the same standards that protect that right against federal encroachment. The reason is that, while my Brother POWELL agrees that a unanimous verdict is required in federal criminal trials, he does not agree that the Sixth Amendment right to a jury trial is to be applied in the same way to State and Federal Governments. In that circumstance, it is arguable that the affirmance of the convictions of Apodaca, Madden, and Cooper is not inconsistent with a view that today's decision in No. 69-5046 is a holding that only a unanimous verdict will afford the accused in a state criminal prosecution the jury trial guaranteed him by the Sixth Amendment. In any event, the affirmance must not obscure that the majority of the Court remains of the view that, as in the case of every specific of the Bill of Rights that extends to the States\* the Sixth Amendment's jury trial [406 U.S. 396] guarantee, however it is to be construed, has identical application against both State and Federal Governments.

1972, Johnson v. Louisiana, 406 U.S. 396

I can add only a few words to the opinions of my Brothers DOUGLAS, STEWART, and MARSHALL, which I have joined. Emotions may run high at criminal trials. Although we can fairly demand that jurors be neutral until they have begun to hear evidence, it would surpass our power to command that they remain unmoved by the evidence that unfolds before them. What this means is that jurors will often enter the jury deliberations with strong opinions on the merits of the case. If at that time a sufficient majority is available to reach a verdict, those jurors in the majority will have nothing but their own common sense to restrain them from returning a verdict before they have fairly considered the positions of jurors who would reach a different conclusion. Even giving all reasonable leeway to legislative judgment in such matters, I think it simply ignores reality to imagine that most jurors in these circumstances would, or even could, fairly weigh the arguments opposing their position.

1972, Johnson v. Louisiana, 406 U.S. 396

It is in this context that we must view the constitutional requirement that all juries be drawn from an accurate cross-section of the community. When verdicts must be unanimous, no member of the jury may be ignored by the others. When less than unanimity is sufficient, consideration of minority views may become nothing more than a matter of majority grace. In my opinion, the right of all groups in this Nation to participate in the criminal process means the right to have their voices heard. A unanimous verdict vindicates that right. Majority verdicts could destroy it. [406 U.S. 397]

STEWART, J., dissenting

1972, Johnson v. Louisiana, 406 U.S. 397

MR. JUSTICE STEWART, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

1972, Johnson v. Louisiana, 406 U.S. 397

This case was tried before the announcement of our decision in Duncan v. Louisiana, 391 U.S. 145. Therefore, unlike Apodaca v. Oregon, decided today, post, p. 404, the Sixth Amendment's guarantee of trial by jury is not applicable here. DeStefano v. Woods, 392 U.S. 631. But I think the Fourteenth Amendment alone clearly requires that, if a State purports to accord the right of trial by jury in a criminal case, then only a unanimous jury can return a constitutionally valid verdict.

1972, Johnson v. Louisiana, 406 U.S. 397

The guarantee against systematic discrimination in the selection of criminal court juries is a fundamental of the Fourteenth Amendment. That has been the insistent message of this Court in a line of decisions extending over nearly a century. E.g., Carter v. Jury Comm'n, 396 U.S. 320 (1970); Whitus v. Georgia, 385 U.S. 545 (1967); Hernandez v. Texas, 347 U.S. 475 (1954); Patton v. Mississippi, 332 U.S. 463 (1947); Norris v. Alabama, 294 U.S. 587 (1935); Carter v. Texas, 177 U.S. 442 (1900); Strauder v. West Virginia, 100 U.S. 303 (1880). The clear purpose of these decisions has been to ensure universal participation of the citizenry in the administration of criminal justice. Yet today's judgment approves the elimination of the one rule that can ensure that such participation will be meaningful—the rule requiring the assent of all jurors before a verdict of conviction or acquittal can be returned. Under today's judgment, nine jurors can simply ignore the views of their fellow panel members of a different race or class.\*

1972, Johnson v. Louisiana, 406 U.S. 397

The constitutional guarantee of an impartial system of [406 U.S. 398] jury selection in a state criminal trial rests on the Due Process and Equal Protection Clauses of the Fourteenth Amendment. See, e.g., Whitus v. Georgia, supra, at 549-550; Carter v. Texas, supra, at 447; Strauder v. West Virginia, supra, at 310. Only a jury so selected can assure both a fair criminal trial, see id. at 308-309, and public confidence in its result, cf. Witherspoon v. Illinois, 391 U.S. 510, 519-520; In re Winship, 397 U.S. 358, 364. Today's decision grossly undermines those basic assurances. For only a unanimous jury so selected can serve to minimize the potential bigotry of those who might convict on inadequate evidence, or acquit when evidence of guilt was clear. See Strauder v. West Virginia, supra, at 309. And community confidence in the administration of criminal justice cannot but be corroded under a system in which a defendant who is conspicuously identified with a particular group can be acquitted or convicted by a jury split along group lines. The requirements of unanimity and impartial selection thus complement each other in ensuring the fair performance of the vital functions of a criminal court Jury.

1972, Johnson v. Louisiana, 406 U.S. 398

It does not denigrate the system of trial by jury to acknowledge that it is imperfect, nor does it ennoble that system to drape upon a jury majority the mantle of presumptive reasonableness in all circumstances. The Court has never before been so impervious to reality in this area. Its recognition of the serious risks of jury misbehavior is a theme unifying a series of constitutional decisions that may be in jeopardy if today's facile presumption of regularity becomes the new point of departure. Why, if juries do not sometimes act out of passion and prejudice, does the Constitution require the availability of a change of venue? Cf. Groppi v. Wisconsin, 400 U.S. 505; Irvin v. Dowd, 366 U.S. 717; Strauder v. West Virginia, supra, at 309. Why, if juries [406 U.S. 399] do not sometimes act improperly, does the Constitution require protection from inflammatory press coverage and ex parte influence by court officers? Cf., e.g., Sheppard v. Maxwell, 384 U.S. 333; Parker v. Gladden, 385 U.S. 363; Turner v. Louisiana, 379 U.S. 466. Why, if juries must be presumed to obey all instructions from the bench, does the Constitution require that certain information must not go to the jury no matter how strong a cautionary charge accompanies it? Cf., e.g., Bruton v. United States, 391 U.S. 123; Jackson v. Denno, 378 U.S. 368. Why, indeed, should we insist that no man can be constitutionally convicted by a jury from which members of an identifiable group to which he belongs have been systematically excluded? Cf., e.g., Hernandez v. Texas, 347 U.S. 475.

1972, Johnson v. Louisiana, 406 U.S. 399

So deeply engrained is the law's tradition of refusal to engage in after-the-fact review of jury deliberations, however, that these and other safeguards provide no more than limited protection. The requirement that the verdict of the jury be unanimous, surely as important as these other constitutional requisites, preserves the jury's function in linking law with contemporary society. It provides the simple and effective method endorsed by centuries of experience and history to combat the injuries to the fair administration of justice that can be inflicted by community passion and prejudice.

1972, Johnson v. Louisiana, 406 U.S. 399

I dissent.

MARSHALL, J., dissenting

1972, Johnson v. Louisiana, 406 U.S. 399

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.\*

1972, Johnson v. Louisiana, 406 U.S. 399

Today the Court cuts the heart out of two of the most important and inseparable safeguards the Bill of Rights offers a criminal defendant: the right to submit his case to a jury, and the right to proof beyond a reasonable [406 U.S. 400] doubt. Together, these safeguards occupy a fundamental place in our constitutional scheme, protecting the individual defendant from the awesome power of the State. After today, the skeleton of these safeguards remains, but the Court strips them of life and of meaning. I cannot refrain from adding my protest to that of my Brothers DOUGLAS, BRENNAN, and STEWART, whom I join.

1972, Johnson v. Louisiana, 406 U.S. 400

In Apodaca v. Oregon, the question is too frighteningly simple to bear much discussion. We are asked to decide what is the nature of the "jury" that is guaranteed by the Sixth Amendment. I would have thought that history provided the appropriate guide, and as MR. JUSTICE POWELL has demonstrated so convincingly, history compels the decision that unanimity is an essential feature of that jury. But the majority has embarked on a "functional" analysis of the jury that allows it to strip away, one by one, virtually all the characteristic features of the jury as we know it. Two years ago, over my dissent, the Court discarded as an essential feature the traditional size of the jury. Williams v. Florida, 399 U.S. 78 (1970). Today the Court discards, at least in state trials, the traditional requirement of unanimity. It seems utterly and ominously clear that, so long as the tribunal bears the label "jury," it will meet Sixth Amendment requirements as they are presently viewed by this Court. The Court seems to require only that jurors be laymen, drawn from the community without systematic exclusion of any group, who exercise common sense judgment.

1972, Johnson v. Louisiana, 406 U.S. 400

More distressing still than the Court's treatment of the right to jury trial is the cavalier treatment the Court gives to proof beyond a reasonable doubt. The Court asserts that, when a jury votes nine to three for conviction, the doubts of the three do not impeach the verdict of the nine. The argument seems to be that, since, under [406 U.S. 401] Williams, nine jurors are enough to convict, the three dissenters are mere surplusage. But there is all the difference in the world between three jurors who are not there and three jurors who entertain doubts after hearing all the evidence. In the first case, we can never know, and it is senseless to ask, whether the prosecutor might have persuaded additional jurors had they been present. But in the second case, we know what has happened: the prosecutor has tried and failed to persuade those jurors of the defendant's guilt. In such circumstances, it does violence to language and to logic to say that the government has proved the defendant's guilt beyond a reasonable doubt.

1972, Johnson v. Louisiana, 406 U.S. 401

It is said that this argument is fallacious, because a deadlocked jury does not, under our law, bring about an acquittal or bar a retrial. The argument seems to be that, if the doubt of a dissenting juror were the "reasonable doubt" that constitutionally bars conviction, then it would necessarily result in an acquittal and bar retrial. But that argument rests on a complete non sequitur. The reasonable doubt rule, properly viewed, simply establishes that, as a prerequisite to obtaining a valid conviction, the prosecutor must overcome all of the jury's reasonable doubts; it does not, of itself, determine what shall happen if he fails to do so. That is a question to be answered with reference to a wholly different constitutional provision, the Fifth Amendment ban on double jeopardy, made applicable to the States through the Due Process Clause of the Fourteenth Amendment in Benton v. Maryland, 395 U.S. 784 (1969).

1972, Johnson v. Louisiana, 406 U.S. 401

Under prevailing notions of double jeopardy, if a jury has tried and failed to reach a unanimous verdict, a new trial may be held. United States v. Perez, 9 Wheat. 579 (1824). The State is free, consistent with the ban on double jeopardy, to treat the verdict of a nonunanimous jury as a nullity, rather than as an [406 U.S. 402] acquittal. On retrial, the prosecutor may be given the opportunity to make a stronger case if he can: new evidence may be available, old evidence may have disappeared, and even the same evidence may appear in a different light if, for example, the demeanor of witnesses is different. Because the second trial may vary substantially from the first, the doubts of the dissenting jurors at the first trial do not necessarily impeach the verdict of a new jury on retrial. But that conclusion is wholly consistent with the view that the doubts of dissenting jurors create a constitutional bar to conviction at the trial that produced those doubts. Until today, I had thought that was the law.

1972, Johnson v. Louisiana, 406 U.S. 402

I respectfully reject the suggestion of my Brother POWELL that the doubts of minority jurors may be attributable to "irrationality" against which some protection is needed. For if the jury has been selected properly, and every juror is a competent and rational person, then the "irrationality" that enters into the deliberation process is precisely the essence of the right to a jury trial. Each time this Court has approved a change in the familiar characteristics of the jury, we have reaffirmed the principle that its fundamental characteristic is its capacity to render a common sense, layman's judgment, as a representative body drawn from the community. To fence out a dissenting juror fences out a voice from the community, and undermines the principle on which our whole notion of the jury now rests. My dissenting Brothers have pointed to the danger, under a less than unanimous rule, of excluding from the process members of minority groups, whose participation we have elsewhere recognized as a constitutional requirement. It should be emphasized, however, that the fencing-out problem goes beyond the problem of identifiable minority groups. The juror whose dissenting voice is unheard [406 U.S. 403] may be a spokesman not for any minority viewpoint, but simply for himself—and that, in my view, is enough. The doubts of a single juror are, in my view, evidence that the government has failed to carry its burden of proving guilt beyond a reasonable doubt. I dissent.

Footnotes

WHITE, J., lead opinion (Footnotes)

1972, Johnson v. Louisiana, 406 U.S. 403

1. La.Const., Art. VII, § 41, provides:

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Section 41. The Legislature shall provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service. All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict.

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La.Code Crim.Proc., Art. 782, provides:

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Cases in which the punishment may be capital shall be tried by a jury of twelve jurors, all of whom must concur to render a verdict. Cases in which the punishment is necessarily at hard labor shall be tried by a jury composed of twelve jurors, nine of whom must concur to render a verdict. Cases in which the punishment may be imprisonment at hard labor shall be tried by a jury composed of five jurors, all of whom must concur to render a verdict. Except as provided in Article 780, trial by jury may not be waived.

1972, Johnson v. Louisiana, 406 U.S. 403

2. Coffin contains a lengthy discussion on the requirement of proof beyond a reasonable doubt and other similar standards of proof in ancient Hebrew, Greek, and Roman law, as well as in the common law of England. This discussion suggests that the Court of the late 19th century would have held the States bound by the reasonable doubt standard under the Due Process Clause of the Fourteenth Amendment on the assumption that the standard was essential to a civilized system of criminal procedure. See generally Duncan v. Louisiana, 391 U.S. 145, 149-150, n. 14 (1968).

BLACKMUN, J., concurring (Footnotes)

1972, Johnson v. Louisiana, 406 U.S. 403

\* [This opinion applies also to No . 65046, Apodaca et al. v. Oregon, post, p. 404.]

POWELL, J., concurring (Footnotes)

1972, Johnson v. Louisiana, 406 U.S. 403

1. That right, of course, is reserved for those crimes that may be deemed "serious." See id. at 159-162; Bloom v. Illinois, 391 U.S. 194 (1968); Baldwin v. New York, 399 U.S. 66 (1970).

1972, Johnson v. Louisiana, 406 U.S. 403

2. This contention was raised in Carcerano v. Gladden, which was consolidated and disposed of along with the DeStefano opinion.

1972, Johnson v. Louisiana, 406 U.S. 403

3. In addition to the jury trial issues in this case, I also join Part IV of the Court's opinion insofar as it concludes that the lineup identification was not the fruit of the prior warrantless arrest. Wong Sun v. United States, 371 U.S. 471 (1963). Under the circumstances of this case, I find it unnecessary to reach the question whether appellant's warrantless arrest was constitutionally invalid.

1972, Johnson v. Louisiana, 406 U.S. 403

4. Jury trial in federal cases is also assured by Art. III, § 2, of the Constitution: "The Trial of all Crimes…shall be by Jury."

1972, Johnson v. Louisiana, 406 U.S. 403

5. See also MR. JUSTICE WHITE's opinion for the Court in Swain v. Alabama, 380 U.S. 202, 211 (1965), stating, in dictum, that

1972, Johnson v. Louisiana, 406 U.S. 403

Alabama adheres to the common law system of trial by an impartial jury of 12 men who must unanimously agree on a verdict, the system followed in the federal courts by virtue of the Sixth Amendment.

1972, Johnson v. Louisiana, 406 U.S. 403

(Emphasis supplied.)

1972, Johnson v. Louisiana, 406 U.S. 403

The same result has been attained with respect to the right to jury trial in civil cases under the Seventh Amendment. See American Publishing Co. v. Fisher, 166 U.S. 464, 467-468 (1897); Springville v. Thomas, 166 U.S. 707 (1897).

1972, Johnson v. Louisiana, 406 U.S. 403

6. The process of determining the content of the Sixth Amendment right to jury trial has long been one of careful evaluation of, and strict adherence to the limitations on, that right as it was known in criminal trials at common law. See Williams v. Florida, 399 U.S. 78, 117, 122-129 (1970) (separate opinion of Harlan, J.).

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A recent example of that process of constitutional adjudication may be found in Part II of the Court's opinion in Duncan v. Louisiana, 391 U.S. at 159-162, in which "petty" offenses were excluded from the rule requiring jury trial because such "offenses were tried without juries both in England and in the Colonies." The Court found "no substantial evidence that the Framers intended to depart from this established common law practice." Id. at 160. To the same effect, see Mr. Justice Harlan's dissent in Baldwin v. New York (appearing in Williams v. Florida, 399 U.S. at 119-121).

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Also representative of this historical approach to the Sixth Amendment are the exhaustive majority and dissenting opinions in Sparf v. United States, 156 U.S. 51 (1895), in which the Court ultimately concluded that federal criminal juries were empowered only to decide questions of "fact." Rather than attempting to determine whether the fact-law distinction was desirable or whether it might be essential to the function performed by juries, the decision was premised on the conclusion that English and Colonial juries had no right to decide questions of law.

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The same historical approach accounts for the numerous Supreme Court opinions (see text accompanying n. 5), finding unanimity to be one of the attributes subsumed under the term "jury trial." No reason, other than the conference committee's revision of the House draft of the Sixth Amendment, has been offered to justify departure from this Court's prior precedents. The admitted ambiguity of that piece of legislative history is not sufficient, in my view, to override the unambiguous history of the common law right. William v. Florida, 399 U.S. at 123 n. 9.

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7. See, e.g., R. Perry, Sources of Our Liberties 270, 281-282, 288, 429 (1959); 3 J. Story, Commentaries on the Constitution 652-653 (1st ed. 1833).

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8. See, e.g., 4 W. Blackstone, Commentaries \*376; W. Forsyth, History of Trial By Jury 238-258 (1852); M. Hale, Analysis of the Law of England 119 (1716).

1972, Johnson v. Louisiana, 406 U.S. 403

9. I agree with MR. JUSTICE WHITE's analysis in Duncan that the departure from earlier decisions was, in large measure, a product of a change in focus in the Court's approach to due process. No longer are questions regarding the constitutionality of particular criminal procedures resolved by focusing alone on the element in question and ascertaining whether a system of criminal justice might be imagined in which a fair trial could be afforded in the absence of that particular element. Rather, the focus is, as it should be, on the fundamentality of that element viewed in the context of the basic Anglo-American jurisprudential system common to the States. Duncan v. Louisiana, supra, at 149-150, n. 14. That approach to due process readily accounts both for the conclusion that jury trial is fundamental and that unanimity is not. See Part III, infra.

1972, Johnson v. Louisiana, 406 U.S. 403

10. Duncan v. Louisiana, 391 U.S. at 156. See also Baldwin v. New York, 399 U.S. at 72.

1972, Johnson v. Louisiana, 406 U.S. 403

11. Indeed, so strongly felt was the jury's role as the protector of "innocence against the consequences of the partiality and undue bias of judges in favor of the prosecution," that, at an earlier point in this country's history, some of the States deemed juries the final arbiters of all questions arising in criminal prosecutions, whether factual or legal. To allow judges to determine the law was considered by some States to pose too great a risk of judicial oppression, favoring the State above the accused. See, e.g., State v. Croteau, 23 Vt. 14, 21 (1849); Howe, Juries as Judges of Criminal Law, 52 Harv.L.Rev. 582 (1939). That historical preference for jury decisionmaking is still reflected in the criminal procedures of two States. Ind.Const., Art. I, § 19; Md.Const., Art. XV, § 5. See Brady v. Maryland, 373 U.S. 83 (1963); Wyley v. Warden, 372 F.2d 742, 746 (CA4), cert. denied, 389 U.S. 863 (1967); Beavers v. State, 236 Ind. 549, 141 N.E.2d 118 (1957).

1972, Johnson v. Louisiana, 406 U.S. 403

12. The available empirical research indicates that the jury trial protection is not substantially affected by less than unanimous verdict requirements. H. Kalven and H. Zeisel, in their frequently cited study of American juries (The American Jury (Phoenix ed.1971)), note that, where unanimity is demanded, 5.6% of the cases result in hung juries. Id. at 461. Where unanimity is not required, available statistics indicate that juries will still be hung in over 3% of the cases. Thus, it may be estimated roughly that Oregon's practice may result in verdicts in some 2.5% more of the cases cases in which no verdict would be returned if unanimity were demanded. Given the large number of causes to which this percentage disparity might be attributed, and given the possibility of conviction on retrial, it is impossible to conclude that this percentage represents convictions obtained under standards offensive to due process.

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13. Duncan v. Louisiana, supra, at 181 (Harlan, J., dissenting).

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14. Id. at 173-183 (Harlan, J., dissenting); Bloom v. Illinois, 391 U.S. at 211 (Fortas, J., concurring); Baldwin v. New York, 399 U.S. at 76-77 (BURGER, C.J., dissenting); Williams v. Florida, 399 U.S. at 117, 143 (separate opinions of Harlan, J., and STEWART, J.). Cf. MR. JUSTICE DOUGLAS concurring opinion in Alexander v. Louisiana, 405 U.S. 625, 637 n. 4 (1972).

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15. My unwillingness to accept the "incorporationist" notion that jury trial must be applied with total uniformity does not require that I take issue with every precedent of this Court applying various criminal procedural right to the States with the same force that they are applied in federal courts. See Mr. Justice Fortas' opinion in Bloom v. Illinois, 391 U.S. at 214, which also applied to Duncan.

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16. See Mr. Justice Brandeis' oft-quoted dissent in New State Ice Co. v. Liebmann, 285 U.S. 262, 280, 309-311 (1932), in which he details the stultifying potential of the substantive due process doctrine.

1972, Johnson v. Louisiana, 406 U.S. 403

17. ALI, Code of Criminal Procedure § 335 (1930).

1972, Johnson v. Louisiana, 406 U.S. 403

18. Criminal Justice Act 1967, c. 80, § 13 (Great Britain).

1972, Johnson v. Louisiana, 406 U.S. 403

19. American Bar Association, Project on Standards for Criminal Justice, Trial By Jury § 1.1 (Approved Draft 1968) (see also commentary, at 25-28). ,

1972, Johnson v. Louisiana, 406 U.S. 403

20. See, e.g., Kalven & Zeisel, The American Jury: Notes For an English Controversy, 48 Chi.B.Rec.195 (1967); Samuels, Criminal Justice Act, 31 Mod.L.Rev. 16, 24-27 (1968); Comment, Waiver of Jury Unanimity—Some Doubts About Reasonable Doubt, 21 U.Chi.L.Rev. 438, 444-445 (1954); Comment, Should Jury Verdicts Be Unanimous in Criminal Cases?, 47 Ore.L.Rev. 417 (1968).

1972, Johnson v. Louisiana, 406 U.S. 403

21. See State v. Gann, 254 Ore. 549, 463 P.2d 570 (1969).

1972, Johnson v. Louisiana, 406 U.S. 403

Approval of Oregon's 10-2 requirement does not compel acceptance of all other majority verdict alternatives. Due process and its mandate of basic fairness often require the drawing of difficult lines. See Francis v. Resweber, 329 U.S. 459, 466, 471 (1947) (Frankfurter, J., concurring). Full recognition of the function performed by jury trials, coupled with due respect for the presumptive validity of state laws based on rational considerations such as those mentioned above, will assist in finding the required balance when the question is presented in a different context.

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22. See, e.g., Swain v. Alabama, 380 U.S. 202, 209-222 (1965).

1972, Johnson v. Louisiana, 406 U.S. 403

23. Allen v. United States, 164 U.S. 492 (1896).

1972, Johnson v. Louisiana, 406 U.S. 403

24. See, e.g., Irvin v. Dowd, 366 U.S. 717 (1961).

1972, Johnson v. Louisiana, 406 U.S. 403

25. See, e.g., Sheppard v. Maxwell, 384 U.S. 333 (1966); Estes v. Texas, 381 U.S. 532 (1965).

DOUGLAS, J., dissenting (Footnotes)

1972, Johnson v. Louisiana, 406 U.S. 403

\* [This opinion applies also to No. 69-5046, Apodaca et al. v. Oregon, post, p. 404.]

1972, Johnson v. Louisiana, 406 U.S. 403

1. See also 2 J. Story, Commentaries on the Constitution 559 n. 2 (5th ed. 1891):

1972, Johnson v. Louisiana, 406 U.S. 403

A trial by jury is generally understood to mean ex vi termini, a trial by a jury of twelve men, impartially selected, who must unanimously concur in the guilt of the accused before a legal conviction can be had. Any law, therefore, dispensing with any of these requisites, may be considered unconstitutional.

1972, Johnson v. Louisiana, 406 U.S. 403

In the 1969 Term, we held a jury of six was sufficient, William v. Florida, 399 U.S. 78, but we noted that neither evidence nor theory suggested 12 was more favorable to the accused than six. The same cannot be said for unanimity and impartial selection of jurors. See infra at 388-394.

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Story's Commentaries cite no statutory authority for the requirement of unanimity in a criminal jury. That is because such authority has never been thought necessary. The unanimous jury has been so embedded in our legal history that no one would question its constitutional position, and thus there was never any need to codify it. Indeed, no criminal case dealing with a unanimous jury has ever been decided by this Court before today, largely because of this unquestioned constitutional assumption. A similar assumption had, of course, been made with respect to the Seventh Amendment civil jury, but that issue did reach the Court. And the Court had no difficulty at all in holding a unanimous jury was a constitutional requirement. American Publishing Co. v. Fisher, 166 U.S. 464.

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2. Of course, the unanimous jury's origin is long before the American Revolution. The first recorded case where there is a requirement of unanimity is Anonymous Case, 41 Lib.Assisarum 11 (1367), reprinted in English in R. Pound & T. Plucknett, Readings on the History and System of the Common Law 155-156 (3d ed.1927).

1972, Johnson v. Louisiana, 406 U.S. 403

3. What was said of the impact of Mapp v. Ohio, 367 U.S. 643, on federalism bears repeating here:

1972, Johnson v. Louisiana, 406 U.S. 403

Mapp…established no assumption by this Court of supervisory authority over state courts…, and, consequently, it implied no total obliteration of state laws relating to arrests and searches in favor of federal law. Mapp sounded no death knell for our federalism; rather, it echoed the sentiment of Elkins v. United States[, 364 U.S. 206,] that "a healthy federalism depends upon the avoidance of needless conflict between state and federal courts" by itself urging that

1972, Johnson v. Louisiana, 406 U.S. 403

[f]ederal-state cooperation…will be promoted, if only by recognition of their now mutual obligation to respect the same fundamental criteria in their approaches.

1972, Johnson v. Louisiana, 406 U.S. 403

Ker v. California, 374 U.S. 23, 31.

1972, Johnson v. Louisiana, 406 U.S. 403

4. H. Kalven & H. Zeisel, The American Jury 490 (1966). See also The American Jury: Notes For an English Controversy, 48 Chi.B.Rec. 195 (1967).

1972, Johnson v. Louisiana, 406 U.S. 403

5. The American Jury, supra, n. 3, at 460.

1972, Johnson v. Louisiana, 406 U.S. 403

Last Vote of Deadlocked Juries

1972, Johnson v. Louisiana, 406 U.S. 403

Vote for Conviction Per Cent

1972, Johnson v. Louisiana, 406 U.S. 403

11:1. . . . . . . . . . 24

1972, Johnson v. Louisiana, 406 U.S. 403

10:2. . . . . . . . . . 10

1972, Johnson v. Louisiana, 406 U.S. 403

9:3. . . . . . . . . . 10

1972, Johnson v. Louisiana, 406 U.S. 403

8:4. . . . . . . . . . 6

1972, Johnson v. Louisiana, 406 U.S. 403

7:5. . . . . . . . . . 13

1972, Johnson v. Louisiana, 406 U.S. 403

6:6. . . . . . . . . . 13

1972, Johnson v. Louisiana, 406 U.S. 403

5:7. . . . . . . . . . 8

1972, Johnson v. Louisiana, 406 U.S. 403

4:8. . . . . . . . . . 4

1972, Johnson v. Louisiana, 406 U.S. 403

3:9. . . . . . . . . . 4

1972, Johnson v. Louisiana, 406 U.S. 403

2:10. . . . . . . . . . 8

1972, Johnson v. Louisiana, 406 U.S. 403

1:11. . . . . . . . . . -

1972, Johnson v. Louisiana, 406 U.S. 403

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1972, Johnson v. Louisiana, 406 U.S. 403

100%

1972, Johnson v. Louisiana, 406 U.S. 403

1972, Johnson v. Louisiana, 406 U.S. 403

Number of Juries in Sample—48.

1972, Johnson v. Louisiana, 406 U.S. 403

6. 3 Lectures on Legal Topics, Association of Bar of the City of New York 105 (1926).

BRENNAN, J., dissenting (Footnotes)

1972, Johnson v. Louisiana, 406 U.S. 403

\* [This opinion applies also to No. 69-5046, Apodaca v. Oregon, post, p. 404 ]

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\*\* See, for example, First Amendment, Gitlow v. New York, 268 U.S. 652 (1925); Cantwell v. Connecticut, 310 U.S. 296 (1940); Louisiana ex rel. Gremillion v. NAACP, 366 U.S. 293 (1961); Fourth Amendment, Ker v. California, 374 U.S. 23 (1963); Fifth Amendment's privilege against self-incrimination, Malloy v. Hogan, 378 U.S. 1 (1964); Fifth Amendment's Double Jeopardy Clause, Benton v. Maryland, 395 U.S. 784 (1969); Fifth Amendment's Just Compensation Clause, Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226 (1897); Sixth Amendment's Speedy Trial Clause, Klopfer v. North Carolina, 386 U.S. 213 (1967); Sixth Amendment's guarantee of jury trial, Duncan v. Louisiana, 391 U.S. 145 (1968); Sixth Amendment's Confrontation Clause, Pointer v. Texas, 380 U.S. 400 (1965).

STEWART, J., dissenting (Footnotes)

1972, Johnson v. Louisiana, 406 U.S. 403

\* And, notwithstanding MR. JUSTICE BLACKMUN's disclaimer, there is nothing in the reasoning of the Court's opinion that would stop it from approving verdicts by 8-4 or even 7-5.

MARSHALL, J., dissenting (Footnotes)

1972, Johnson v. Louisiana, 406 U.S. 403

\* [This opinion applies also to No. 65046, Apodaca v. Oregon, post, p. 404.]

Joint Communiqué Following Discussions With Soviet Leaders, 1972

Title: Joint Communiqué Following Discussions With Soviet Leaders

Author: Nixon Administration

Date: May 29, 1972

Source: Public Papers of the Presidents, Nixon, 1972, pp.635-642

Public Papers of Nixon, 1972, p.635

BY MUTUAL agreement between the United States of America and the Union of Soviet Socialist Republics, the President of the United States and Mrs. Richard Nixon paid an official visit to the Soviet Union from May 22 to May 30, 1972. The President was accompanied by Secretary of State William P. Rogers, Assistant to the President Dr. Henry A. Kissinger, and other American officials. During his stay in the USSR President Nixon visited, in addition to Moscow, the cities of Leningrad and Kiev.

Public Papers of Nixon, 1972, p.635

President Nixon and L. I. Brezhnev, General Secretary of the Central Committee of the Communist Party of the Soviet Union, N. V. Podgorny, Chairman of the Presidium of the Supreme Soviet of the USSR, and A. N. Kosygin, Chairman of the Council of Ministers of the USSR conducted talks on fundamental problems of American-Soviet relations and the current international situation.

Public Papers of Nixon, 1972, p.635

Also taking part in the conversations were:

Public Papers of Nixon, 1972, p.635

On the American side: William P. Rogers, Secretary of State; Jacob D. Beam, American Ambassador to the USSR; Dr. Henry A. Kissinger, Assistant to the President for National Security Affairs; Peter M. Flanigan, Assistant to the President; and Martin J. Hillenbrand, Assistant Secretary of State for European Affairs.

Public Papers of Nixon, 1972, p.635

On the Soviet side: A. A. Gromyko, Minister of Foreign Affairs of the USSR; N. S. Patolichev, Minister of Foreign Trade; V. V. Kuznetsov, Deputy Minister of Foreign Affairs of the USSR; A. F. Dobrynin, Soviet Ambassador to the USA; A.M. Aleksandrov, Assistant to the General Secretary of the Central Committee, CPSU; G. M. Korniyenko, Member of the Collegium of the Ministry of Foreign Affairs of the USSR.

Public Papers of Nixon, 1972, p.635

The discussions covered a wide range of questions of mutual interest and were frank and thorough. They defined more precisely those areas where there are prospects for developing greater cooperation between the two countries, as well as those areas where the positions of the two Sides are different.

I. BILATERAL RELATIONS

Public Papers of Nixon, 1972, p.635–p.636

Guided by the desire to place US-Soviet relations on a more stable and constructive [p.636] foundation, and mindful of their responsibilities for maintaining world peace and for facilitating the relaxation of international tension, the two Sides adopted a document entitled: "Basic Principles of Mutual Relations between the United States of America and the Union of Soviet Socialist Republics," signed on behalf of the US by President Nixon and on behalf of the USSR by General Secretary Brezhnev.

Public Papers of Nixon, 1972, p.636

Both Sides are convinced that the provisions of that document open new possibilities for the development of peaceful relations and mutually beneficial cooperation between the USA and the USSR.

Public Papers of Nixon, 1972, p.636

Having considered various areas of bilateral US-Soviet relations, the two Sides agreed that an improvement of relations is possible and desirable. They expressed their firm intention to act in accordance with the provisions set forth in the above-mentioned document.

Public Papers of Nixon, 1972, p.636

As a result of progress made in negotiations which preceded the summit meeting, and in the course of the meeting itself, a number of significant agreements were reached. This will intensify bilateral cooperation in areas of common concern as ;veil as in areas relevant to the cause of peace and international cooperation.

LIMITATION OF STRATEGIC ARMAMENTS

Public Papers of Nixon, 1972, p.636

The two Sides gave primary attention to the problem of reducing the danger of nuclear war. They believe that curbing the competition in strategic arms will make a significant and tangible contribution to this cause.

Public Papers of Nixon, 1972, p.636

The two Sides attach great importance to the Treaty on the Limitation of Anti-Ballistic Missile Systems and the Interim Agreement on Certain Measures with Respect to the Limitation of Strategic Offensive Arms concluded between them. 1

1 The texts of the treaty and the interim agreement and protocol are printed in United States Treaties and Other International Agreements (23 UST 3435 and 3462). On May 26, 1972, the White House also released a fact sheet, a statement by Press Secretary Ziegler, and the transcripts of two news briefings on the treaty and the interim agreement. One of the news briefings was held by Dr. Kissinger and Ambassador Gerard C. Smith, Director, United States Arms Control and Disarmament Agency; and the other by Press Secretary Ziegler and Leonid M. Zamyatin, Director General, TASS. Mr. Ziegler's statement and Dr. Kissinger's news briefing are printed in the Weekly Compilation of Presidential Documents (vol. 8, p. 929). On May 27, the White House released the transcript of a news briefing 'by Dr. Kissinger on the same subjects. It is printed in the Weekly Compilation of Presidential Documents (vol. 8, p. 932).

Public Papers of Nixon, 1972, p.636

These agreements, which were concluded as a result of the negotiations in Moscow, constitute a major step towards curbing and ultimately ending the arms race.

Public Papers of Nixon, 1972, p.636

They are a concrete expression of the intention of the two Sides to contribute to the relaxation of international tension and the strengthening of confidence between states, as well as to carry out the obligations assumed by them in the Treaty on the Non-Proliferation of Nuclear Weapons (Article VI). Both Sides are convinced that the achievement of the above agreements is a practical step towards saving mankind from the threat of the outbreak of nuclear war. Accordingly, it corresponds to the vital interests of the American and Soviet peoples as well as to the vital interests of all other peoples.

Public Papers of Nixon, 1972, p.636–p.637

The two Sides intend to continue active negotiations for the limitation of strategic offensive arms and to conduct them in a [p.637] spirit of goodwill, respect for each other's legitimate interests and observance of the principle of equal security.

Public Papers of Nixon, 1972, p.637

Both Sides are also convinced that the agreement on Measures to Reduce the Risk of Outbreak of Nuclear War Between the USA and the USSR, signed in Washington on September 30, 1971, serves the interests not only of the Soviet and American peoples, but of all mankind.

COMMERCIAL AND ECONOMIC RELATIONS

Public Papers of Nixon, 1972, p.637

Both Sides agreed on measures designed to establish more favorable conditions for developing commercial and other economic ties between the USA and the USSR. The two Sides agree that realistic conditions exist for increasing economic ties. These ties should develop on the basis of mutual benefit and in accordance with generally accepted international practice.

Public Papers of Nixon, 1972, p.637

Believing that these aims would be served by conclusion of a trade agreement between the USA and the USSR, the two Sides decided to complete in the near future the work necessary to conclude such an agreement. They agreed on the desirability of credit arrangements to develop mutual trade and of early efforts to resolve other financial and economic issues. It was agreed that a lend-lease settlement will be negotiated concurrently with a trade agreement.

Public Papers of Nixon, 1972, p.637

In the interests of broadening and facilitating commercial ties between the two countries, and to work out specific arrangements, the two Sides decided to create a US-Soviet Joint Commercial Commission. Its first meeting will be held in Moscow in the summer of 1972.

Public Papers of Nixon, 1972, p.637

Each Side will help promote the establishment of effective working arrangements between organizations and firms of both countries and encouraging the conclusion of long-term contracts.

MARITIME MATTERS—INCIDENTS AT SEA

Public Papers of Nixon, 1972, p.637

The two Sides agreed to continue the negotiations aimed at reaching an agreement on maritime and related matters. They, believe that such an agreement would mark a positive step in facilitating the expansion of commerce between the United States and the Soviet Union.

Public Papers of Nixon, 1972, p.637

An Agreement was concluded between the two Sides on measures to prevent incidents at sea and in air space over it between vessels and aircraft of the US and Soviet Navies. 2 By providing agreed procedures for ships and aircraft of the two navies operating in close proximity, this agreement will diminish the chances of dangerous accidents.

2 The text of the agreement is printed in the Weekly Compilation of Presidential Documents (vol. 8, p. 922). On May 25, 1972, the White House also released a fact sheet and the transcript of a news briefing on the agreement. Participants in the news briefing were John W. Warner, Secretary of the Navy, and Herbert S. Okun, Deputy Country Director (USSR), Department of State.

COOPERATION IN SCIENCE AND

TECHNOLOGY

Public Papers of Nixon, 1972, p.637–p.638

It was recognized that the cooperation now underway in areas such as atomic energy research, space research, health and other fields benefits both nations and has contributed positively to their over-all relations. It was agreed that increased scientific and technical cooperation on the basis of mutual benefit and shared effort for common goals is in the interest of both nations and would contribute to a further improvement in their bilateral relations. [p.636] For these purposes the two Sides signed an agreement for cooperation in the fields of science and technology. 3 A US-Soviet Joint Commission on Scientific and Technical Cooperation will be created for identifying and establishing cooperative programs.

3 The text of the agreement on science and technology Ks printed in the Weekly Compilation of Presidential Documents (vol. 8, p. 921 ). On May 24, the White House released fact sheets and the transcript of a news briefing on the science and technology agreement, as well as the agreement on cooperation in space. Participants in the news briefing were Vladimir Kirillin, Soviet Chairman, Committee for Science and Technology, and Soviet Academician Boris Petroy.

COOPERATION IN SPACE

Public Papers of Nixon, 1972, p.638

Having in mind the role played by the US and the USSR in the peaceful exploration of outer space, both Sides emphasized the importance of further bilateral cooperation in this sphere. In order to increase the safety of man's flights in outer space and the future prospects of joint scientific experiments, the two Sides agreed to make suitable arrangements to permit the docking of American and Soviet spacecraft and stations. 4 The first joint docking experiment of the two countries' piloted spacecraft, with visits by astronauts and cosmonauts to each other's spacecraft, is contemplated for 1975. The planning and implementation of this flight will be carried out by the US National Aeronautics and Space Administration and the USSR Academy of Sciences, according to principles and procedures developed through mutual consultations.

4 The text of the agreement on cooperation in space is printed in the Weekly Compilation of Presidential Documents (vol. 8, p. 920).

COOPERATION IN THE FIELD OF HEALTH

Public Papers of Nixon, 1972, p.638

The two Sides concluded an agreement on health cooperation which marks a fruitful beginning of sharing knowledge about, and collaborative attacks on, the common enemies, disease and disability. 5 The initial research efforts of the program will concentrate on health problems important to the whole world—cancer, heart diseases, and the environmental health sciences. This cooperation subsequently will be broadened to include other health problems of mutual interest. The two Sides pledged their full support for the health cooperation program and agreed to continue the active participation of the two governments in the work of international organizations in the health field.

5 The text of the agreement is printed in the Weekly Compilation of Presidential Documents (vol. 8, p. 919). On May 23, the White House released a fact sheet and the transcripts of two news briefings on the agreement. Participants in the first news briefing were Elliot L. Richardson, Secretary, Dr. Merlin K. DuVal, Jr., Assistant Secretary for Health and Scientific Affairs, Department of Health, Education, and Welfare; and Dr. Roger O. Egeberg, Special Consultant to the President; and, in the second, were Boris V. Petrovsky, Soviet Minister of Health, and Dgermen Gvishiany, Soviet Deputy Chief, Committee for Science and Technology.

ENVIRONMENTAL COOPERATION

Public Papers of Nixon, 1972, p.638–p.639

The two Sides agreed to initiate a program of cooperation in the protection and [p.639] enhancement of man's environment. 6 Through joint research and joint measures, the United States and the USSR hope to contribute to the preservation of a healthful environment in their countries and throughout the world. Under the new agreement on environmental cooperation there will be consultations in the near future in Moscow on specific cooperative projects.

6 The text of the agreement is printed in the Weekly Compilation of Presidential Documents (vol. 8, p. 917). On May 23, the White House released a fact sheet and the transcripts of two news briefings on the agreement. Participants in the first news briefing were Russell E. Train, Chairman, and Gordon J. F. MacDonald, member, Council on Environmental Quality; and, in the second, were Mr. Petrovsky and Mr. Gvishiany. On September 11, the White House released a fact sheet on the agreement and the transcript of a news briefing on a meeting with the President to discuss upcoming meetings in Moscow of the U.S.-U.S.S.R. joint committee on implementation of the agreement. The news briefing was held by Chairman Train, head of the United States delegation to the U.S.—U.S.S.R. joint committee.

EXCHANGES IN THE FIELDS OF SCIENCE,

TECHNOLOGY, EDUCATION AND CULTURE

Public Papers of Nixon, 1972, p.639

Both Sides note the importance of the Agreement on Exchanges and Cooperation in Scientific, Technical, Educational, Cultural, and Other Fields in 1972-1973, signed in Moscow on April 11, 1972. Continuation and expansion of bilateral exchanges in these fields will lead to better understanding and help improve the general state of relations between the two countries. Within the broad framework provided by this Agreement the two Sides have agreed to expand the areas of cooperation, as reflected in new agreements concerning space, health, the environment and science and technology.

Public Papers of Nixon, 1972, p.639

The US side, noting the existence of an extensive program of English language instruction in the Soviet Union, indicated its intention to encourage Russian language programs in the United States.

II. INTERNATIONAL ISSUES

EUROPE

Public Papers of Nixon, 1972, p.639

In the course of the discussions on the international situation, both Sides took note of favorable developments in the relaxation of tensions in Europe.

Public Papers of Nixon, 1972, p.639

Recognizing the importance to world peace of developments in Europe, where both World Wars originated, and mindful of the responsibilities and commitments which they share with other powers under appropriate agreements, the USA and the USSR intend to make further efforts to ensure a peaceful future for Europe, free of tensions, crises and conflicts.

Public Papers of Nixon, 1972, p.639

They agree that the territorial integrity of all states in Europe should be respected.

Public Papers of Nixon, 1972, p.639

Both Sides view the September 3, 1971 Quadripartite Agreement relating to the Western Sectors of Berlin as a good example of fruitful cooperation between the states concerned, including the USA and the USSR. The two Sides believe that the implementation of that agreement in the near future, along with other steps, will further improve the European situation and contribute to the necessary trust among states.

Public Papers of Nixon, 1972, p.639

Both Sides welcomed the treaty between the USSR and the Federal Republic of Germany signed on August 12, 1970. They noted the significance of the provisions of this treaty as well as of other recent agreements in contributing to confidence and cooperation among the European states.

Public Papers of Nixon, 1972, p.639–p.640

The USA and the USSR are prepared [p.640] to make appropriate contributions to the positive trends on the European continent toward a genuine detente and the development of relations of peaceful cooperation among states in Europe on the basis of the principles of territorial integrity and inviolability of frontiers, non-interference in internal affairs, sovereign equality, independence and renunciation of the use or threat of force.

Public Papers of Nixon, 1972, p.640

The US and the USSR are in accord that multilateral consultations looking toward a Conference on Security and Cooperation in Europe could begin after the signature of the Final Quadripartite Protocol of the Agreement of September 3, 1971. The two governments agree that the conference should be carefully prepared in order that it may concretely consider specific problems of security and cooperation and thus contribute to the progressive reduction of the underlying causes of tension in Europe. This conference should be convened at a time to be agreed by the countries concerned, but without undue delay.

Public Papers of Nixon, 1972, p.640

Both Sides believe that the goal of ensuring stability and security in Europe would be served by a reciprocal reduction of armed forces and armaments, first of all in Central Europe. Any agreement on this question should not diminish the security of any of the Sides. Appropriate agreement should be reached as soon as practicable between the states concerned on the procedures for negotiations on this subject in a special forum.

THE MIDDLE EAST

Public Papers of Nixon, 1972, p.640

The two Sides set out their positions on this question. They reaffirm their support for a peaceful settlement in the Middle East in accordance with Security Council Resolution 24.2.

Public Papers of Nixon, 1972, p.640

Noting the significance of constructive cooperation of the parties concerned with the Special Representative of the UN Secretary General, Ambassador Jarring, the US and the USSR confirm their desire to contribute to his mission's success and also declare their readiness to play their part in bringing about a peaceful settlement in the Middle East. In the view of the US and the USSR, the achievement of such a settlement would open prospects for the normalization of the Middle East situation and would permit, in particular, consideration of further steps to bring about a military relaxation in that area.

INDOCHINA

Public Papers of Nixon, 1972, p.640

Each side set forth its respective standpoint with regard to the continuing war in Vietnam and the situation in the area of Indochina as a whole.

Public Papers of Nixon, 1972, p.640

The US side emphasized the need to bring an end to the military conflict as soon as possible and reaffirmed its commitment to the principle that the political future of South Vietnam should be left for the South Vietnamese people to decide for themselves, free from outside interference.

Public Papers of Nixon, 1972, p.638

The US side explained its view that the quickest and most effective way to attain the above-mentioned objectives is through negotiations leading to the return of all Americans held captive in the region, the implementation of an internationally supervised Indochina-wide cease-fire and the subsequent withdrawal of all American forces stationed in South Vietnam within four months, leaving the political questions to be resolved by the Indo-Chinese peoples themselves.

Public Papers of Nixon, 1972, p.640–p.641

The United States reiterated its willingness [p.641] to enter into serious negotiations with the North Vietnamese Side to settle the war in Indochina on a basis just to all.

Public Papers of Nixon, 1972, p.641

The Soviet Side stressed its solidarity with the just struggle of the peoples of Vietnam, Laos and Cambodia for their freedom, independence and social progress. Firmly supporting the proposals of the DRV and the Republic of South Vietnam, which provide a realistic and constructive basis for settling the Vietnam problem, the Soviet Union stands for a cessation of bombings of the DRV, for a complete and unequivocal withdrawal of the troops of the USA and its allies from South Vietnam, so that the peoples of Indochina would have the possibility to determine for themselves their fate without any outside interference.

DISARMAMENT ISSUES

Public Papers of Nixon, 1972, p.641

The two Sides expressed their positions on arms limitation and disarmament issues.

Public Papers of Nixon, 1972, p.641

The two Sides note that in recent years their joint and parallel actions have facilitated the working out and conclusion of treaties which curb the arms race or ban some of the most dangerous types of weapons. They note further that these treaties were welcomed by a large majority of the states in the world, which became parties to them.

Public Papers of Nixon, 1972, p.641

Both Sides regard the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on their Destruction, as an essential disarmament measure. Along with Great Britain, they are the depositories for the Convention which was recently opened for signature by all states. The USA and the USSR will continue their efforts to reach an international agreement regarding chemical weapons.

Public Papers of Nixon, 1972, p.641

The USA and the USSR, proceeding from the need to take into account the security interests of both countries on the basis of the principle of equality, and without prejudice to the security interests of third countries, will actively participate in negotiations aimed at working out new measures designed to curb and end the arms race. The ultimate purpose is general and complete disarmament, including nuclear disarmament, under strict international control. A world disarmament conference could play a role in this process at an appropriate time.

STRENGTHENING THE UNITED NATIONS

Public Papers of Nixon, 1972, p.641

Both Sides will strive to strengthen the effectiveness of the United Nations on the basis of strict observance of the UN Charter. They regard the United Nations as an instrument for maintaining world peace and security, discouraging conflicts, and developing international cooperation. Accordingly, they will do their best to support United Nations efforts in the interests of international peace.

Public Papers of Nixon, 1972, p.641

Both Sides emphasized that agreements and understandings reached in the negotiations in Moscow, as well as the contents and nature of these negotiations, are not in any way directed against any other country. Both Sides proceed from the recognition of the role, the responsibility and the prerogatives of other interested states, existing international obligations and agreements, and the principles and purposes of the UN Charter.

Public Papers of Nixon, 1972, p.641–p.642

Both Sides believe that positive results were accomplished in the course of the talks at the highest level. These results indicate that despite the differences between [p.642] the USA and the USSR in social systems, ideologies, and policy principles, it is possible to develop mutually advantageous cooperation between the peoples of both countries, in the interests of strengthening peace and international security.

Public Papers of Nixon, 1972, p.642

Both Sides expressed the desire to continue close contact on a number of issues that were under discussion. They agreed that regular consultations on questions of mutual interest, including meetings at the highest level, would be useful.

Public Papers of Nixon, 1972, p.642

In expressing his appreciation for the hospitality accorded him in the Soviet Union, President Nixon invited General Secretary L. I. Brezhnev, Chairman N. V. Podgorny, and Chairman A. N. Kosygin to visit the United States at a mutually convenient time. This invitation was accepted.

Public Papers of Nixon, 1972, p.642

NOTE: On the same day, the White House released the transcripts of two news briefings on the joint communiqué and the statement of basic principles (Item 177): the first, by Dr. Kissinger; the second, by Press Secretary Ziegler and Leonid M. Zamyatin, Director General, TASS. Dr. Kissinger's news briefing is printed in the Weekly Compilation of Presidential Documents (vol. 8, p. 951).

Public Papers of Nixon, 1972, p.642

During the President's visit to Moscow Press Secretary Ziegler and Director General Zamyatin held daily news briefings on discussions between United States and Soviet officials. Transcripts of the news briefings were released as follows: one on May 22, two on May 23, and two on May 24.

On May 29, the White House released the transcript of a news briefing by Dr. Kissinger on discussions held during the visit. The transcript is printed in the Weekly Compilation of Presidential Documents (vol. 8, p. 956).

On May 30, the White House released the transcript of a news briefing by John D. Ehrlichman, Assistant to the President for Domestic Affairs, and Peter G. Peterson, Secretary of Commerce, on the domestic impact of the agreements reached with the Soviet Union.

President Nixon's Address to a Joint Session of the Congress on Return From Austria, the Soviet Union, Iran, and Poland, 1972

Title: President Nixon's Address to a Joint Session of the Congress on Return From Austria, the Soviet Union, Iran, and Poland

Author: Richard M. Nixon

Date: June 1, 1972

Source: Public Papers of the Presidents, Nixon, 1972, pp.660-666

Public Papers of Nixon, 1972, p.660

Mr. Speaker, Mr. President, Members of the Congress, our distinguished guests, my fellow Americans:

Public Papers of Nixon, 1972, p.660

Your welcome in this great Chamber tonight has a very special meaning to Mrs. Nixon and to me. We feel very fortunate to have traveled abroad so often representing the United States of America. But we both agree after each journey that the best part of any trip abroad is coming home to America again.

Public Papers of Nixon, 1972, p.660

During the past 13 days we have flown more than 16,000 miles and we visited four countries. Everywhere we went—to Austria, the Soviet Union, Iran, Poland—we could feel the quickening pace of change in old international relationships and the peoples' genuine desire for friendship for the American people. Everywhere new hopes are rising for a world no longer shadowed by fear and want and war, and as Americans we can be proud that we now have an historic opportunity to play a great role in helping to achieve man's oldest dream—a world in which all nations can enjoy the blessings of peace.

Public Papers of Nixon, 1972, p.660–p.661

On this journey we saw many memorable sights, but one picture will always remain indelible in our memory—the flag of the United States of America flying [p.661] high in the spring breeze above Moscow's ancient Kremlin fortress.

Public Papers of Nixon, 1972, p.661

To millions of Americans for the past quarter century the Kremlin has stood for implacable hostility toward all that we cherish, and to millions of Russians the American flag has long been held up as a symbol of evil. No one would have believed, even a short time ago, that these two apparently irreconcilable symbols would be seen together as we saw them for those few days.

Public Papers of Nixon, 1972, p.661

But this does not mean that we bring back from Moscow the promise of instant peace, but we do bring the beginning of a process that can lead to a lasting peace. And that is why I have taken the extraordinary action of requesting this special joint session of the Congress because we have before us an extraordinary opportunity.

Public Papers of Nixon, 1972, p.661

I have not come here this evening to make new announcements in a dramatic setting. This summit has already made its news. It has barely begun, however, to make its mark on our world, and I ask you to join me tonight—while events are fresh, while the iron is hot—in starting to consider how we can help to make that mark what we want it to be.

Public Papers of Nixon, 1972, p.661

The foundation has been laid for a new relationship between the two most powerful nations in the world. Now it is up to us—to all of us here in this Chamber, to all of us across America—to join with other nations in building a new house upon that foundation, one that can be a home for the hopes of mankind and a shelter against the storms of conflict.

Public Papers of Nixon, 1972, p.661

As a preliminary, therefore, to requesting your concurrence in some of the agreements we reached and your approval of funds to carry out others, and also as a keynote for the unity in which this Government and this Nation must go forward from here, I am rendering this immediate report to the Congress on the results of the Moscow summit.

Public Papers of Nixon, 1972, p.661

The pattern of U.S.-Soviet summit diplomacy in the cold war era is well known to all those in this Chamber. One meeting after another produced a brief euphoric mood—the spirit of Geneva, the spirit of Camp David, the spirit of Vienna, the spirit of Glassboro—but without producing significant progress on the really difficult issues.

Public Papers of Nixon, 1972, p.661

And so early in this Administration I stated that the prospect of concrete results, not atmospherics, would be our criterion for meetings at the highest level. I also announced our intention to pursue negotiations with the Soviet Union across a broad front of related issues, with the purpose of creating a momentum of achievement in which progress in one area could contribute to progress in others.

Public Papers of Nixon, 1972, p.661

This is the basis on which we prepared for and conducted last week's talks. This was a working summit. We sought to establish not a superficial spirit of Moscow, but a solid record of progress on solving the difficult issues which for so long have divided our two nations and also have divided the world. Reviewing the number and the scope of agreements that emerged, I think we have accomplished that goal.

Public Papers of Nixon, 1972, p.661

Recognizing the responsibility of the advanced industrial nations to set an example in combatting mankind's common enemies, the United States and the Soviet Union have agreed to cooperate in efforts to reduce pollution and enhance environmental quality. We have agreed to work together in the field of medical science and public health, particularly in the conquest of cancer and heart disease.

Public Papers of Nixon, 1972, p.662

Recognizing that the quest for useful knowledge transcends differences between ideologies and social systems, we have agreed to expand United States and Soviet cooperation in many areas of science and technology.

Public Papers of Nixon, 1972, p.662

We have joined in plans for an exciting new adventure, a new adventure in the cooperative exploration of space, which will begin—subject to Congressional approval of funding—with a joint orbital mission of an Apollo vehicle and a Soviet spacecraft in 1975.

Public Papers of Nixon, 1972, p.662

By forming habits of cooperation and strengthening institutional ties in areas of peaceful enterprise, these four agreements, to which I have referred, will create on both sides a steadily growing vested interest in the maintenance of good relations between our two countries.

Public Papers of Nixon, 1972, p.662

Expanded United States-Soviet trade will also yield advantages to both of our nations. When the two largest economies in the world start trading with each other on a much larger scale, living standards in both nations will rise, and the stake which both have in peace will increase.

Public Papers of Nixon, 1972, p.662

Progress in this area is proceeding on schedule. At the summit, we established a Joint Commercial Commission which will complete the negotiations for a comprehensive trade agreement between the United States and the U.S.S.R. And we expect the final terms of this agreement to be settled later this year.

Public Papers of Nixon, 1972, p.662

Two further accords which were reached last week have a much more direct bearing on the search for peace and security in the world.

Public Papers of Nixon, 1972, p.662

One is the agreement between the American and Soviet navies aimed at significantly reducing the chances of dangerous incidents between our ships and aircraft at sea.

Public Papers of Nixon, 1972, p.662

And second, and most important, there is the treaty and the related executive agreement which will limit, for the first time, both offensive and defensive strategic nuclear weapons in the arsenals of the United States and the Soviet Union.

Public Papers of Nixon, 1972, p.662

Three-fifths of all the people alive in the world today have spent their whole lifetimes under the shadow of a nuclear war which could be touched off by the arms race among the great powers. Last Friday in Moscow we witnessed the beginning of the end of that era which began in 1945. We took the first step toward a new era of mutually agreed restraint and arms limitation between the two principal nuclear powers.

Public Papers of Nixon, 1972, p.662

With this step we have enhanced the security of both nations. We have begun to check the wasteful and dangerous spiral of nuclear arms which has dominated relations between our two countries for a generation. We have begun to reduce the level of fear by reducing the causes of fear, for our two peoples and for all peoples in the world.

Public Papers of Nixon, 1972, p.662

The ABM Treaty will be submitted promptly for the Senate's advice and consent to ratification and the interim agreement limiting certain offensive weapons will be submitted to both Houses for concurrence, because we can undertake agreements as important as these only on a basis of full partnership between the executive and legislative branches of our Government.

Public Papers of Nixon, 1972, p.662–p.663

I ask from this Congress and I ask from the Nation the fullest scrutiny of these accords. I am confident such examination will underscore the truth of what I told the Soviet people on television just a few nights ago—that this is an agreement in the interest of both nations. From the standpoint of the United States, when we [p.663] consider what the strategic balance would have looked like later in the seventies, if there had been no arms limitation, it is clear that the agreements forestall a major spiraling of the arms race—one which would have worked to our disadvantage, since we have no current building programs for the categories of weapons which have been frozen, and since no new building program could have produced any new weapons in those categories during the period of the freeze.

Public Papers of Nixon, 1972, p.663

My colleagues in the Congress, I have studied the strategic balance in great detail with my senior advisers for more than 3 years. I can assure you, the Members of the Congress, and the American people tonight that the present and planned strategic forces of the United States are without question sufficient for the maintenance of our security and the protection of our vital interests.

Public Papers of Nixon, 1972, p.663

No power on earth is stronger than the United States of America today. And none will be stronger than the United States of America in the future.

Public Papers of Nixon, 1972, p.663

This is the only national defense posture which can ever be acceptable to the United States. This is the posture I ask the Senate and the Congress to protect by approving the arms limitation agreements to which I have referred. This is the posture which, with the responsible cooperation of the Congress, I will take all necessary steps to maintain in our future defense programs.

Public Papers of Nixon, 1972, p.663

In addition to the talks which led to the specific agreements I have listed, I also had full, very frank, and extensive discussions with General Secretary Brezhnev and his colleagues about several parts of the world where American and Soviet interests have come in conflict.

Public Papers of Nixon, 1972, p.663

With regard to the reduction of tensions in Europe, we recorded our intention of proceeding later this year with multilateral consultations looking toward a conference on security and cooperation in all of Europe. We have also jointly agreed to move forward with negotiations on mutual and balanced force reductions in central Europe.

Public Papers of Nixon, 1972, p.663

The problem of ending the Vietnam war, which engages the hopes of all Americans, was one of the most extensively discussed subjects on our agenda. It would only jeopardize the search for peace if I were to review here all that was said on that subject. I will simply say this: Each side obviously has its own point of view and its own approach to this very difficult issue. But at the same time, both the United States and the Soviet Union share an overriding desire to achieve a more stable peace in the world. I emphasize to you once again that this Administration has no higher goal, a goal that I know all of you share, than bringing the Vietnam war to an early and honorable end. We are ending the war in Vietnam, but we shall end it in a way which will not betray our friends, risk the lives of the courageous Americans still serving in Vietnam, break faith with those held prisoners by the enemy, or stain the honor of the United States of America.

Public Papers of Nixon, 1972, p.663

Another area where we had very full, frank, and extensive discussions was the Middle East. I reiterated the American people's commitment to the survival of the state of Israel and to a settlement just to all the countries in the area. Both sides stated in the communiqué their intention to support the Jarring peace mission and other appropriate efforts to achieve this objective.

Public Papers of Nixon, 1972, p.663–p.664

The final achievement of the Moscow conference was the signing of a landmark [p.664] declaration entitled "Basic Principles of Mutual Relations Between the United States and the U.S.S.R." As these 12 basic principles are put into practice, they can provide a solid framework for the future development of better American-Soviet relations.

Public Papers of Nixon, 1972, p.664

They begin with the recognition that two nuclear nations, each of which has the power to destroy humanity, have no alternative but to coexist peacefully, because in a nuclear war there would be no winners, only losers.

Public Papers of Nixon, 1972, p.664

The basic principles commit both sides to avoid direct military confrontation and to exercise constructive leadership and restraint with respect to smaller conflicts in other parts of the world which could drag the major powers into war.

Public Papers of Nixon, 1972, p.664

They disavow any intention to create spheres of influence or to conspire against the interests of any other nation—a point I would underscore by saying once again tonight that America values its ties with all nations, from our oldest allies in Europe and Asia, as I emphasized by my visit to Iran, to our good friends in the third world, and to our new relationship with the People's Republic of China.

Public Papers of Nixon, 1972, p.664

The improvement of relations depends not only, of course, on words, but far more on actions. The principles to which we agreed in Moscow are like a road map. Now that the map has been laid out, it is up to each country to follow it. The United States intends to adhere to these principles. The leaders of the Soviet Union have indicated a similar intention.

Public Papers of Nixon, 1972, p.664

However, we must remember that Soviet ideology still proclaims hostility to some of America's most basic values. The Soviet leaders remain committed to that ideology. Like the nation they lead, they are and they will continue to be totally dedicated competitors of the United States of America.

Public Papers of Nixon, 1972, p.664

As we shape our policies for the period ahead, therefore, we must maintain our defenses at an adequate level until there is mutual agreement to limit forces. The time-tested policies of vigilance and firmness which have brought us to this summit are the only ones that can safely carry us forward to further progress in reaching agreements to reduce the danger of war.

Public Papers of Nixon, 1972, p.664

Our successes in the strategic arms talks and in the Berlin negotiations, which opened the road to Moscow, came about because over the past 3 years we have consistently refused proposals for unilaterally abandoning the ABM, unilaterally pulling back our forces from Europe, and drastically cutting the defense budget. The Congress deserves the appreciation of the American people for having the courage to vote such proposals down and to maintain the strength America needs to protect its interests.

Public Papers of Nixon, 1972, p.664

As we continue the strategic arms talks, seeking a permanent offensive weapons treaty, we must bear the lessons of the earlier talks well in mind.

Public Papers of Nixon, 1972, p.664

By the same token, we must stand steadfastly with our NATO partners if negotiations leading to a new detente and a mutual reduction of forces in Europe are to be productive. Maintaining the strength, integrity, and steadfastness of our free world alliances is the foundation on which all of our other initiatives for peace and security in the world must rest. As we seek better relations with those who have been our adversaries, we will not let down our friends and allies around the world.

Public Papers of Nixon, 1972, p.664–p.665

And in this period we must keep our economy vigorous and competitive if the opening for greater East-West trade is to [p.665] mean anything at all, and if we do not wish to be shouldered aside in world markets by the growing potential of the economies of Japan, Western Europe, the Soviet Union, the People's Republic of China. For America to continue its role of helping to build a more peaceful world, we must keep America number one economically in the world.

Public Papers of Nixon, 1972, p.665

We must maintain our own momentum of domestic innovation, growth, and reform if the opportunities for joint action with the Soviets are to fulfill their promise. As we seek agreements to build peace abroad, we must keep America moving forward at home.

Public Papers of Nixon, 1972, p.665

Most importantly, if the new age we seek is ever to become a reality, we must keep America strong in spirit—a nation proud of its greatness as a free society, confident of its mission in the world. Let us be committed to our way of life as wholeheartedly as the Communist leaders with whom we seek a new relationship are committed to their system. Let us always be proud to show in our words and actions what we know in our hearts—that we believe in America.

Public Papers of Nixon, 1972, p.665

These are just some of the challenges of peace. They are in some ways even more difficult than the challenges of war. But we are equal to them. As we meet them, we will be able to go forward and explore the sweeping possibilities for peace which this season of summits has now opened up for the world.

Public Papers of Nixon, 1972, p.665

For decades, America has been locked in hostile confrontation with the two great Communist powers, the Soviet Union and the People's Republic of China. We were engaged with the one at many points and almost totally isolated from the other, but our relationships with both had reached a deadly impasse. All three countries were victims of the kind of bondage about which George Washington long ago warned in these words: The nation which indulges toward another an habitual hatred…is a slave to its own animosity.

Public Papers of Nixon, 1972, p.665

But now in the brief space of 4 months, these journeys to Peking and to Moscow have begun to free us from perpetual confrontation. We have moved toward better understanding, mutual respect, point-by-point settlement of differences with both the major Communist powers.

Public Papers of Nixon, 1972, p.665

This one series of meetings bas not rendered an imperfect world suddenly perfect. There still are deep philosophical differences; there still are parts of the world in which age-old hatreds persist. The threat of war has not been eliminated—it has been reduced. We are making progress toward a world in which leaders of nations will settle their differences by negotiation, not by force, and in which they learn to live with their differences so that their sons will not have to die for those differences.

Public Papers of Nixon, 1972, p.665

It was particularly fitting that this trip, aimed at building such a world, should have concluded in Poland.

Public Papers of Nixon, 1972, p.665

No country in the world has suffered; more from war than Poland—and no country has more to gain from peace. The. faces of the people who gave us such a heartwarming welcome in Warsaw yesterday, and then again this morning and this afternoon, told an eloquent story of suffering from war in the past and of trope for peace in the future. One could see it in their faces. It made me more determined than ever that America must do all in its power to help that hope for peace come true for all people in the world.

Public Papers of Nixon, 1972, p.665

As we continue that effort, our unity of purpose and action will be very important.

Public Papers of Nixon, 1972, p.666

For the summits of 1972 have not belonged just to one person or to one party or to one branch of our Government alone. Rather they are part of a great national journey for peace. Every American can claim a share in the credit for the success of that journey so far, and every American has a major stake in its success for the future.

Public Papers of Nixon, 1972, p.666

An unparalleled opportunity has been placed in America's hands. Never has there been a time when hope was more justified or when complacency was more dangerous. We have made a good beginning. And because we have begun, history now lays upon us a special obligation to see it through. We can seize this moment or we can lose it; we can make good this opportunity to build a new structure of peace in the world or we can let it slip away. Together, therefore, let us seize the moment so that our children and the world's children can live free of the fears and free of the hatreds that have been the lot of mankind through the centuries.

Public Papers of Nixon, 1972, p.666

Then the historians of some future age will write of the year 1972, not that this was the year America went up to the summit and then down to the depths of the valley again, but that this was the year when America helped to lead the world up out of the lowlands of constant war, and onto the high plateau of lasting peace.

Public Papers of Nixon, 1972, p.666

NOTE: The President spoke at 9:40 p.m. in the House Chamber at the Capitol, after being introduced by Carl Albert, Speaker of the House of Representatives. The address was broadcast live on radio and television.

The President spoke from a prepared text. An advance text of his address was released on the same day.

On June 2, 1972, the bipartisan leaders of the Congress met with the President at the White House for a review of his trip and the agreements reached.

Democratic Platform of 1972

Title: Democratic Platform of 1972

Author: Democratic Party

Date: 1972

Source: National Party Platforms, pp.782-820

New Directions: 1972-76

Democratic Platform of 1972, p.782

Skepticism and cynicism are widespread in America. The people are skeptical of platforms filled with political platitudes—of promises made by opportunistic politicians.

Democratic Platform of 1972, p.782

The people are cynical about the idea that a rosy future is just around the corner.

Democratic Platform of 1972, p.782

And is it any wonder that the people are skeptical and cynical of the whole political process?

Democratic Platform of 1972, p.782

Our traditions, our history, our Constitution, our lives, all say that America belongs to its people.

Democratic Platform of 1972, p.782

But the people no longer believe it.

Democratic Platform of 1972, p.782

They feel that the government is run for the privileged few rather than for the many-and they are right.

Democratic Platform of 1972, p.782

No political party, no President, no government can by itself restore a lost sense of faith. No Administration can provide solutions to all our problems. What we can do is to recognize the doubts of Americans, to speak to those doubts, and to act to begin turning those doubts into hopes.

Democratic Platform of 1972, p.782

As Democrats, we know that we share responsibility for that loss of confidence. But we also know, as Democrats that at decisive moments of choice in our past, our party has offered leadership that has tapped the best within our country.

Democratic Platform of 1972, p.782

Our party-standing by its ideals of domestic progress and enlightened internationalism—has served America well. We have nominated or elected men of the high calibre of Woodrow Wilson, [p.783] Franklin Delano Roosevelt, Harry S. Truman, Adlai E. Stevenson, John Fitzgerald Kennedy, Lyndon Baines Johnson—and in the last election Hubert Humphrey and Edmund S. Muskie. In that proud tradition we are now prepared to move forward.

Democratic Platform of 1972, p.783

We know that our nation cannot tolerate any longer a government that shows no regard for the people's basic needs and no respect for our right to the truth from those who lead us. What do the people want? They want three things:

Democratic Platform of 1972, p.783

They want a personal life that makes us all feel that life is worth living;

Democratic Platform of 1972, p.783

They want a social environment whose institutions promote the good of all; and

Democratic Platform of 1972, p.783

They want a physical environment whose resources are used for the good of all.

Democratic Platform of 1972, p.783

They want an opportunity to achieve their aspirations and their dreams for themselves and their children.

Democratic Platform of 1972, p.783

We believe in the rights of citizens to achieve to the limit of their talents and energies. We are determined to remove barriers that limit citizens because they are black, brown, young or women; because they never had the chance to gain an education; because there was no possibility of being anything but what they were.

Democratic Platform of 1972, p.783

We believe in hard work as a fair measure of our own willingness to achieve. We are determined that millions should not stand idle while work demands to be done. We are determined that the dole should not become a permanent way of life for any. And we are determined that government no longer tax the product of hard work more rigorously than it taxes inherited wealth, or money that is gained simply by having money in the first place.

Democratic Platform of 1972, p.783

We believe that the law must apply equally to all, and that it must be an instrument of justice. We are determined that the citizen must be protected in his home and on his streets. We are determined also that the ordinary citizen should not be imprisoned for a crime before we know whether he is guilty or not while those with the right friends and the right connections can break the law without ever facing the consequences of their actions.

Democratic Platform of 1972, p.783

We believe that war is a waste of human life. We are determined to end forthwith a war which has cost 50,000 American lives, $150 billion of our resources, that has divided us from each other, drained our national will and inflicted incalculable damage to countless people. We will end that war by a simple plan that need not be kept secret: The immediate total withdrawal of all Americans from Southeast Asia.

Democratic Platform of 1972, p.783

We believe in the right of an individual to speak, think, read, write, worship, and live free of official intrusion. We are determined that our government must no longer tap the phones of law-abiding citizens nor spy on those who have broken no law. We are determined that never again shall government seek to censor the newspapers and television. We are determined that the government shall no longer mock the supreme law of the land, while it stands helpless in the face of crime which makes our neighborhoods and communities less and less safe.

Democratic Platform of 1972, p.783

Perhaps most fundamentally, we believe that government is the servant, not the master, of the people. We are determined that government should not mean a force so huge, so impersonal, that the complaint of an ordinary citizen goes unheard.

Democratic Platform of 1972, p.783

That is not the kind of government America was created to build. Our ancestors did not fight a revolution and sacrifice their lives against tyrants from abroad to leave us a government that does not know how to listen to its own people.

Democratic Platform of 1972, p.783

The Democratic Party is proud of its past; but we are honest enough to admit that we are part of the past and share in its mistakes. We want in 1972 to begin the long and difficult task of reviewing existing programs, revising them to make them work and finding new techniques to serve the public need. We want to speak for, and with, the citizens of our country. Our pledge is to be truthful to the people and to ourselves, to tell you when we succeed, but also when we fail or when we are not sure. In 1976, when this nation celebrates its 200th anniversary, we want to tell you simply that we have done our best to give the government to those who formed it—the people of America.

Democratic Platform of 1972, p.783

Every election is a choice: In 1972, Americans must decide whether they want their country back again.

II. Jobs, Prices and Taxes

Democratic Platform of 1972, p.783

"I went to school here and I had some training for truck driver school and I go to different places and put in applications for truck driving but they say, 'We can't hire you without the experience.' [p.784] Now, I don't have the experience. I don't get the experience without the job first. I have four kids, you know, and I'm on unemployment. And when my unemployment runs out, I'll probably be on relief, like a lot of other people. But, being that I have so many kids, relief is just not going to be enough money. I'm looking for maybe the next year or two, if I don't get a job, they'll probably find me down at the county jail, because I have to do something."-Robert Coleman, Pittsburgh Hearing, June 2, 1972.

Democratic Platform of 1972, p.784

The Nixon Administration has deliberately driven people out of work in a heartless and ineffective effort to deal with inflation. Ending the Nixon policy of creating unemployment is the first task of the Democratic Party.

Democratic Platform of 1972, p.784

The Nixon "game plan" called for more unemployment. Tens of millions of families have suffered joblessness or work cutbacks in the last four years in the name of fighting inflation…and for nothing.

Democratic Platform of 1972, p.784

Prices rose faster in early 1972 than at any time from 1960 to 1968.

Democratic Platform of 1972, p.784

Today there are 5.5 million unemployed. The nation will have suffered $175 billion in lost production during the Nixon Administration by election day. Twenty per cent of our people have suffered a period without a job each year in the last three.

Democratic Platform of 1972, p.784

Business has lost more in profits than it has gained from this Administration's business-oriented tax cuts.

Democratic Platform of 1972, p.784

In pockets of cities, up to 40 per cent of our young people are jobless.

Democratic Platform of 1972, p.784

Farmers have seen the lowest parity ratios since the Great Depression.

Democratic Platform of 1972, p.784

For the first time in 30 years, there is substantial unemployment among aerospace technicians, teachers and other white-collar workers.

Democratic Platform of 1972, p.784

The economic projections have been manipulated for public relations purposes.

Democratic Platform of 1972, p.784

The current Nixon game plan includes a control structure which keeps workers' wages down while executive salaries soar, discourages productivity and distributes income away from those who need it and has produced no significant dent in inflation, as prices for food, clothes, rent and basic necessities soar.

Democratic Platform of 1972, p.784

These losses were unnecessary. They are the price of a Republican Administration which has no consistent economic philosophy, no adequate regard for the human costs of its economic decisions and no vision of what a full employment economy could mean for all Americans.

Jobs, Income and Dignity

Democratic Platform of 1972, p.784

Full employment—a guaranteed job for all—is the primary economic objective of the Democratic Party. The Democratic Party is committed to a job for every American who seeks work. Only through full employment can we reduce the burden on working people. We are determined to make economic security a matter of right. This means a job with decent pay and good working conditions for everyone willing and able to work and an adequate income for those unable to work. It means abolition of the present welfare system.

Democratic Platform of 1972, p.784

To assure jobs and economic security for all, the next Democratic Administration should support:

Democratic Platform of 1972, p.784

A full employment economy, making full use of fiscal and monetary policy to stimulate employment;

Democratic Platform of 1972, p.784

Tax reform directed toward equitable distribution of income and wealth and fair sharing of the cost of government;

Democratic Platform of 1972, p.784

Full enforcement of all equal employment opportunity laws, including federal contract compliance and federally-regulated industries and giving the Equal Employment Opportunity Commission adequate staff and resources and power to issue cease and desist orders promptly;

Democratic Platform of 1972, p.784

Vastly increased efforts to open education at all levels and in all fields to minorities, women and other under-represented groups;

Democratic Platform of 1972, p.784

An effective nation-wide job placement system to entrance worker mobility;

Democratic Platform of 1972, p.784

Opposition to arbitrarily high standards for entry to jobs;

Democratic Platform of 1972, p.784

Overhaul of current manpower programs to assure training-without sex, race or language discrimination for jobs that really exist with continuous skill improvement and the chance for advancement;

Democratic Platform of 1972, p.784

Economic development programs to ensure the growth of communities and industry in lagging parts of the nation and the economy;

Democratic Platform of 1972, p.784

Use of federal depository funds to reward banks and other financial institutions which invest in socially productive endeavors;

Democratic Platform of 1972, p.785

Improved adjustment assistance and job creation [p.785] for workers and employers hurt by foreign competition, reconversion of defense-oriented companies, rapid technological change and environmental protection activities;

Democratic Platform of 1972, p.785

Closing tax loopholes that encourage the export of American jobs by American-controlled multi-national corporations;

Democratic Platform of 1972, p.785

Assurance that the needs of society are considered when a decision to close or move an industrial plant is to be made and that income loss to workers and revenue loss to communities does not occur when plants are closed;

Democratic Platform of 1972, p.785

Assurance that, whatever else is done in the income security area, the social security system provides a decent income for the elderly, the blind and the disabled and their dependents, with escalators so that benefits keep pace with rising prices and living standards;

Democratic Platform of 1972, p.785

Reform of social security and government employment security programs to remove all forms of discrimination by sex; and adequate federal income assistance for those who do not benefit sufficiently from the above measures.

Democratic Platform of 1972, p.785

The last is not least, but it is last for good reason. The present welfare system has failed because it has been required to make up for too many other failures. Millions of Americans are forced into public assistance because public policy too often creates no other choice.

Democratic Platform of 1972, p.785

The heart of a program of economic security based on earned income must be creating jobs and training people to fill them. Millions of jobs—real jobs, not make-work-need to be provided. Public service employment must be greatly expanded in order to make the government the employer of last resort and guarantee a job for all. Large sections of our cities resemble bombed-out Europe after World War II. Children in Appalachia cannot go to school when the dirt road is a sea of mud. Homes, schools and clinics, roads and mass transit systems need to be built.

Democratic Platform of 1972, p.785

Cleaning up our air and water will take skills and people in large numbers. In the school, the police department, the welfare agency or the recreation program, there are new careers to be developed to help ensure that social services reach the people for whom they are intended.

Democratic Platform of 1972, p.785

It may cost more, at least initially, to create decent jobs than to perpetuate the hand-out system of present welfare. But the return—in new public facilities and services, in the dignity of bringing a paycheck home and in the taxes that will come back in—far outweigh the cost of the investment.

Democratic Platform of 1972, p.785

The next Democratic Administration must end the present welfare system and replace it with an income security program which places cash assistance in an appropriate context with all of the measures outlined above, adding up to an earned income approach to ensure each family an income substantially more than the poverty level ensuring standards of decency and health, as officially defined in the area. Federal income assistance will supplement the income of working poor people and assure an adequate income for those unable to work. With full employment and simpler, fair administration, total costs will go down, and with federal financing the burden on local and state budgets will be eased. The program will protect current benefit goals during the transitional period.

Democratic Platform of 1972, p.785

The system of income protection which replaces welfare must he a part of the full employment policy which assures every American a job at a fair wage under conditions which make use of his ability and provide an opportunity for advancement. H.R. 1, and its various amendments, is not humane and does not meet the social and economic objectives that we believe in, and it should be defeated. It perpetuates the coercion of forced work requirements.

Economic Management

Democratic Platform of 1972, p.785

Every American family knows how its grocery bill has gone up under Nixon. Every American family has felt the bite of higher and higher prices for food and housing and clothing. The Administration attempts to stop price rises have been dismal failures—for which the working people have paid in lost jobs, missed raises and higher prices.

Democratic Platform of 1972, p.785

This nation achieved its economic greatness under a system of free enterprise, coupled with human effort and ingenuity, and thus it must remain. This will be the attitude and objective of the Party.

Democratic Platform of 1972, p.785

There must be an end to inflation and the ever-increasing cost of living. This is of vital concern to the laborer, the housewife, the farmer and the small businessman, as well as the millions of [p.786] Americans dependent upon their weekly or monthly income for sustenance. It wrecks the retirement plans and lives of our elderly who must survive on pensions or savings gauged by the standards of another day.

Democratic Platform of 1972, p.786

Through greater efficiency in the operation of the machinery of government, so badly plagued with duplication, overlapping and excesses in programs, we will ensure that bureaucracy will cease to exist solely for bureaucracy's own sake. The institutions and functions of government will be judged by their efficiency of operation and their contribution to the lives and welfare of our citizens.

Democratic Platform of 1972, p.786

A first priority of a Democratic Administration must be eliminating the unfair, bureaucratic Nixon wage and price controls.

Democratic Platform of 1972, p.786

When price rises threaten to or do get out of control—as they are now—strong, fair action must be taken to protect family income and savings. The theme of that action should be swift, tough measures to break the wage-price spiral and restore the economy. In that kind of economic emergency, America's working people will support a truly fair stabilization program which affects profits, investment earnings, executive salaries and prices, as well as wages. The Nixon controls do not meet that standard. They have forced the American worker, who suffers most from inflation, to pay the price of trying to end it.

Democratic Platform of 1972, p.786

In addition to stabilizing the economy, we propose:

Democratic Platform of 1972, p.786

To develop automatic instruments protecting the livelihood of Americans who depend on fixed incomes, such as savings bonds with purchasing power guarantees and cost-of-living escalators in government social security and income support payments;

Democratic Platform of 1972, p.786

To create a system of "recession insurance" for states and localities to replace lost local revenues with federal funds in economic downturns, thereby avoiding reduction in public employment or public services;

Democratic Platform of 1972, p.786

To establish longer-term budget and fiscal planning; and

Democratic Platform of 1972, p.786

To create new mechanisms to stop unwarranted price increases in concentrated industries.

Toward Economic Justice

Democratic Platform of 1972, p.786

The Democratic Party deplores the increasing concentration of economic power in fewer and fewer hands. Five per cent of the American people control 90 per cent of our productive national wealth. Less than one per cent of all manufacturers have 88 per cent of the profits. Less than two per cent of the population now owns approximately 80 per cent of the nation's personally-held corporate stock, 90 per cent of the personally-held corporate bonds and nearly 100 per cent of the personally-held municipal bonds. The rest of the population—including all working men and women—pay too much for essential products and services because of national policy and market distortions.

Democratic Platform of 1972, p.786

The Democratic Administration should pledge itself to combat factors which tend to concentrate wealth and stimulate higher prices.

Democratic Platform of 1972, p.786

To this end, the federal government should:

Democratic Platform of 1972, p.786

Develop programs to spread economic growth among the workers, farmers and businessmen;

Democratic Platform of 1972, p.786

Help make parts of the economy more efficient such as medical care—where wasteful and inefficient practices now increase prices;

Democratic Platform of 1972, p.786

Step up anti-trust action to help competition, with particular regard to laws and enforcement curbing conglomerate mergers which swallow up efficient small business and feed the power of corporate giants;

Democratic Platform of 1972, p.786

Strengthen the anti-trust laws so that the divestiture remedy will be used vigorously to break up large conglomerates found to violate the antitrust laws;

Democratic Platform of 1972, p.786

Abolish the oil import quota that raises prices for consumers;

Democratic Platform of 1972, p.786

Deconcentrate shared monopolies such as auto, steel and tire industries which administer prices, create unemployment through restricted output and stifle technological innovation;

Democratic Platform of 1972, p.786

Assure the right of the citizen to recover costs and attorneys fees in all successful suits including class actions involving Constitutionally-guaranteed rights, or rights secured by federal statutes;

Democratic Platform of 1972, p.786

Adjust rate-making and regulatory activities, with particular attention to regulations which increase prices for food, transportation and other necessities;

Democratic Platform of 1972, p.786

Remove artificial constraints in the job market by better job manpower training and strictly enforcing equal employment opportunity;

Democratic Platform of 1972, p.786

Stiffen the civil and criminal statutes to make corporate officers responsible for their actions; and

Democratic Platform of 1972, p.786

Establish a temporary national economic commission to study federal chartering of large multi-national and international corporations, concentrated [p.787] ownership and control in the nation's economy.

Tax Reform

Democratic Platform of 1972, p.787

The last ten years have seen a massive shift in the tax burden from the rich to the working people of America. This is due to cuts in federal income taxes simultaneous with big increases in taxes which bear heavily on lower incomes—state and local sales and property taxes and the payroll tax. The federal tax system is still grossly unfair and over-complicated. The wealthy and corporations get special tax favors; major reform of the nation's tax structure is required to achieve a more equitable distribution of income and to raise the funds needed by government. The American people neither should nor will accept anything less from the next Administration.

Democratic Platform of 1972, p.787

The Nixon Administration, which fought serious reform in 1969, has no program, only promises, for tax reform. Its clumsy administrative favoring of the well-off has meant quick action on corporate tax giveaways like accelerated depreciation, while over-withholding from workers' paychecks goes on and on while the Administration tries to decide what to do.

Democratic Platform of 1972, p.787

In recent years, the federal tax system has moved precipitously in the wrong direction. Corporate taxes have dropped from 30 per cent of federal revenues in 1954 to 16 per cent in 1973, but payroll taxes for Social Security—regressive because the burden falls more heavily on the worker than on the wealthy—have gone from ten per cent to 29 per cent over the same period. If legislation now pending in Congress passes, pay-roll taxes will have increased over 500 per cent between 1960 and 1970—from $144 to $755—for the average wage earner. Most people earning under $10,000 now pay more in regressive payroll tax than in income tax.

Democratic Platform of 1972, p.787

Now the Nixon Administration—which gave corporations the largest tax cut in American history—is considering a hidden national sales tax (Value Added Tax) which would further shift the burden to the average wage earner and raise prices of virtually everything ordinary people buy. It is cruel and unnecessary to pretend to relieve one bad tax, the property tax, by a new tax which is just as bad. We oppose this price-raising unfair tax in any form.

Democratic Platform of 1972, p.787

Federal income tax. The Democratic Party believes that all unfair corporate and individual tax preferences should be removed. The tax law is clogged with complicated provisions and special interests, such as percentage oil depletion and other favors for the oil industry, special rates and rules for capital gains, fast depreciation unrelated to useful life, easy-to-abuse "expense-account" deductions and the ineffective minimum tax. These hidden expenditures in the federal budget are nothing more than billions of "tax welfare" aid for the wealthy, the privileged and the corporations.

Democratic Platform of 1972, p.787

We, therefore, endorse as a minimum step the Mills-Mansfield Tax Policy Review Act of 1972, which would repeal virtually all tax preferences in the existing law over the period 1974-1976, as a means of compelling a systematic review of their value to the nation. We acknowledge that the original reasons for some of these tax preferences may remain valid, but believe that none should escape close scrutiny and full public exposure. The most unjustified of the tax loopholes should, however, be closed immediately, without waiting for a review of the whole system.

Democratic Platform of 1972, p.787

After the implementation of the minimum provisions of the Mills-Mansfield Act, the Democratic Party, to combat the economically-depressing effect of a regressive income tax scheme, proposes further revision of the tax law to ensure economic equality of opportunity to ordinary Americans.

Democratic Platform of 1972, p.787

We hold that the federal tax structure should reflect the following principles:

Democratic Platform of 1972, p.787

The cost of government must be distributed more fairly among income classes. We reaffirm the long-established principle of progressive taxation—allocating the burden according to ability to pay—which is all but a dead letter in the present tax code.

Democratic Platform of 1972, p.787

The cost of government must be distributed fairly among citizens in similar economic circumstances:

Democratic Platform of 1972, p.787

Direct expenditures by the federal government which can be budgeted are better than tax preferences as the means for achieving public objectives. The lost income of those tax preferences which are deemed desirable should be stated in the annual budget.

Democratic Platform of 1972, p.787

When relief for hardship is provided through federal tax policy, as for blindness, old age or poverty, benefits should be provided equally by credit rather than deductions which favor recipients with more income, with special provisions for those whose credits would exceed the tax they owe.

Democratic Platform of 1972, p.788

[p.788] Provisions which discriminate against working women and single people should be corrected in addition to greater fairness and efficiency, these principles would mean a major redistribution of personal tax burdens and permit considerable simplification of the tax code and tax forms.

Democratic Platform of 1972, p.788

Social security tax. The Democratic Party commits itself to make the Social Security tax progressive by raising substantially the ceiling on earned income. To permit needed increases in Social Security benefits, we will use general revenues as necessary to supplement payroll tax receipts. In this way, we will support continued movement toward general revenue financing for social security.

Democratic Platform of 1972, p.788

Property tax. Greater fairness in taxation at the federal level will have little meaning for the vast majority of American households if the burden of inequitable local taxation is not reduced. To reduce the local property tax for all American families, we support equalization of school spending and substantial increases in the federal share of education costs and general revenue sharing.

Democratic Platform of 1972, p.788

New forms of federal financial assistance to states and localities should be made contingent upon property tax reforms, including equal treatment and full publication of assessment ratios.

Democratic Platform of 1972, p.788

Tax policy should not provide incentives that encourage overinvestment in developed countries by American business, and mechanisms should be instituted to limit undesirable capital exports that exploit labor abroad and damage the American worker at home.

Labor-Management Relations

Democratic Platform of 1972, p.788

Free private collective bargaining between management and independent labor unions has been, and must remain, the cornerstone of our free enterprise system. America achieved its greatness through the combined energy and efforts of the working men and women of this country. Retention of its greatness rests in their hands. Through their great trade union organizations, these men and women, have exerted tremendous influence on the economic and social life of the nation and have attained a standard of living known to no other nation. The concern of the Party is that the gains which labor struggled so long to obtain not be lost to them, whether through inaction or subservience to illogical Republican domestic policies. We pledge continued support for our system of free collective bargaining and denounce any attempt to substitute compulsory arbitration for it. We, therefore, oppose the Nixon Administration's effort to impose arbitration in transportation disputes through its last-offer-selection bill.

Democratic Platform of 1972, p.788

The National Labor Relations Act should be updated to ensure:

Democratic Platform of 1972, p.788

Extension of protection to employees of non-profit institutions;

Democratic Platform of 1972, p.788

Remedies which adequately reflect the losses caused by violations of the Act;

Democratic Platform of 1972, p.788

Repeal of section 14(b), which allows states to legislate the open shop and remove the ban on common-sites picketing; and

Democratic Platform of 1972, p.788

Effective opportunities for unions, as well as employers, to communicate with employees, without coercion by either side or by anyone acting on their behalf.

Democratic Platform of 1972, p.788

The Railway Labor Act should be updated to ensure:

Democratic Platform of 1972, p.788

That strikes on a single carrier or group of carriers cannot be transformed into nation-wide strikes or lockouts;

Democratic Platform of 1972, p.788

Incentives for bargaining which would enable both management and labor to resolve their differences without referring to government intervention; and

Democratic Platform of 1972, p.788

Partial operation of struck railroads to ensure continued movement of essential commodities.

Democratic Platform of 1972, p.788

New legislation is needed to ensure:

Democratic Platform of 1972, p.788

Collective bargaining rights for government employees;

Democratic Platform of 1972, p.788

Universal coverage and longer duration of the Unemployment Insurance and Workmen's Compensation programs and to establish minimum federal standards, including the establishment of equitable wage-loss ratios in those programs, including a built-in escalator clause that fairly reflects increases in average wage rates; and

Democratic Platform of 1972, p.788

That workers covered under private pension plans actually receive the personal and other fringe benefits to which their services for their employer entitle them. This requires that the fixed right to benefits starts early in employment, that reserves move with the worker from job to job and that re-insurance protection be given pension plans.

Labor Standards

Democratic Platform of 1972, p.788

American workers are entitled to job safety at a living wage. Most of the basic protections [p.789] needed have been recognized in legislation already enacted by Congress.

Democratic Platform of 1972, p.789

The Fair Labor Standards Act should be updated, however, to:

Democratic Platform of 1972, p.789

Move to a minimum wage of $2.50 per hour, which allows a wage earner to earn more than a poverty level income for 40 hours a week, with no subminimums for special groups or age differentials;

Democratic Platform of 1972, p.789

Expand coverage to include the 16 million workers not presently covered, including domestic workers, service workers, agricultural employees and employees of governmental and nonprofit agencies; and

Democratic Platform of 1972, p.789

Set overtime premiums which give an incentive to hire new employees rather than to use regular employees for extended periods of overtime.

Democratic Platform of 1972, p.789

The Longshoremen and Harbor Workers' Compensation Act should be updated to provide adequate protection for injured workers and federal standards for workmen's compensation should be set by Congress.

Democratic Platform of 1972, p.789

The Equal Pay Act of 1963 should be extended to be fully effective, and to cover professional, executive and administrative workers.

Democratic Platform of 1972, p.789

Maternity benefits should be made available to all working women. Temporary disability benefits should cover pregnancy, childbirth, miscarriage and recovery.

Occupational Health and Safety

Democratic Platform of 1972, p.789

Each year over 14,000 American workers are killed on their jobs, and nine million injured. Unknown millions more are exposed to long-term danger and disease from exposure to dangerous substances. Federal and state laws are supposed to protect workers; but these laws are not being enforced. This Administration has hired only a handful of inspectors and proposes to turn enforcement over to the same state bureaucracies that have proven inadequate in the past. Where violations are detected, only token penalties have been assessed.

Democratic Platform of 1972, p.789

We pledge to fully and rigorously enforce the laws which protect the safely and health of workers on their jobs and to extend those laws to all jobs, regardless of number of employees. This must include standards that truly protect against all health hazards, adequate federal enforcement machinery backed up by rigorous penalties and an opportunity for workers themselves to participate in the laws' enforcement by sharing responsibility for plant inspection.

Democratic Platform of 1972, p.789

We endorse federal research and development of effective approaches to combat the dehumanizing debilitating effects of monotonous work.

Farm Labor

Democratic Platform of 1972, p.789

The Sixties and Seventies have seen the struggle for unionization by the poorest of the poor in our country—America's migrant farm workers.

Democratic Platform of 1972, p.789

Under the leadership of Cesar Chavez, the United Farm Workers have accomplished in the non-violent tradition what was thought impossible only a short time ago. Through hard work and much sacrifice, they are the one group that is successfully organizing farm workers.

Democratic Platform of 1972, p.789

Their movement has caught the imagination of millions of Americans who have not eaten grapes so that agribusiness employers will recognize their workers as equals and sit down with them in meaningful collective bargaining.

Democratic Platform of 1972, p.789

We now call upon all friends and supporters of this movement to refrain from buying or eating non-union lettuce.

Democratic Platform of 1972, p.789

Furthermore, we support the farm workers' movement and the use of boycotts as a non-violent and potent weapon for gaining collective bargaining recognition and contracts for agricultural workers. We oppose the Nixon Administration's effort to enjoin the use of the boycott.

Democratic Platform of 1972, p.789

We also affirm the right of farm workers to organize free of repressive anti-labor legislation, both state and federal.

III. Rights, Power and Social Justice

Democratic Platform of 1972, p.789

"We're just asking, and we don't ask for much. Just to give us opportunity to live as human beings as other people have lived."-Dorothy Bolden, Atlanta Hearing, June 9, 1972.

Democratic Platform of 1972, p.789

"All your platform has to say is that the rights, opportunities and political power of citizenship will be extended to the lowest level, to neighborhoods and individuals. If your party can live up to that simple pledge, my faith will lie restored."—Bobby Westbrooks, St. Louis Hearing, June 17, 1972.

Democratic Platform of 1972, p.789

"We therefore urge the Democratic Party to adopt the principle that America has a responsibility to offer every American family the best in health care, whenever they need it, regardless of income or any other factor. We must devise a system which will assure that…every American [p.790] receives comprehensive health services from the day he is born to the day he dies, with an emphasis on preventive care to keep him healthy."-Joint Statement of Senator Edward M. Kennedy and Representative Wilbur Mills, St. Louis Hearing, June 17, 1972.

Democratic Platform of 1972, p.790

The Democratic Party commits itself to be responsive to the millions of hard working, lower-and middle-income Americans who are traditionally courted by politicians at election time, get bilked at tax-paying time, and are too often forgotten the balance of the time.

Democratic Platform of 1972, p.790

This is an era of great change. The world is fast moving into a future for which the past has not prepared us well; a future where to survive, to find answers to the problems which threaten us as a people, we must create qualitatively new solutions. We can no longer rely on old systems of thought, the results of which were partially successful programs that were heralded as important social reforms in the past. It is time now to rethink and reorder the institutions of this country so that everyone—women, blacks, Spanish-speaking, Puerto Ricans, Indians, the young and the old—can participate in the decision-making process inherent in the democratic heritage to which we aspire. We must restructure the social, political and economic relationships throughout the entire society in order to ensure the equitable distribution of wealth and power.

Democratic Platform of 1972, p.790

The Democratic Party in 1972 is committed to resuming the march toward equality; to enforcing the laws supporting court decisions and enacting new legal rights as necessary, to assuring every American true opportunity, to bringing about a more equal distribution of power, income and wealth and equal and uniform enforcement in all states and territories of civil rights statutes and acts.

Democratic Platform of 1972, p.790

In the 1970's, this commitment requires the fulfillment—through laws and policies, through appropriations and directives; through leadership and exhortation of a wide variety of rights:

Democratic Platform of 1972, p.790

The right to full participation in government and the political process;

Democratic Platform of 1972, p.790

The rights of free speech and free political expression, of freedom from official intimidation, harassment and invasion of privacy, as guaranteed by the letter and the spirit of the Constitution;

Democratic Platform of 1972, p.790

The right to a decent job and an adequate income, with dignity;

Democratic Platform of 1972, p.790

The right to quality, accessibility and sufficient quantity in tax-supported services and amenities—including educational opportunity, health care, housing and transportation;

Democratic Platform of 1972, p.790

The right to quality, safety and the lowest possible cost on goods and services purchased in the market place;

Democratic Platform of 1972, p.790

The right to be different, to maintain a cultural or ethnic heritage or lifestyle, without being forced into a compelled homogeneity;

Democratic Platform of 1972, p.790

The rights of people who lack rights: Children, the mentally retarded, mentally ill and prisoners, to name some; and

Democratic Platform of 1972, p.790

The right to legal services, both civil and criminal, necessary to enforce secured rights.

Free Expression and Privacy

Democratic Platform of 1972, p.790

The new Democratic Administration should bring an end to the pattern of political persecution and investigation, the use of high office as a pulpit for unfair attack and intimidation and the blatant efforts to control the poor and to keep them from acquiring additional economic security or political power.

Democratic Platform of 1972, p.790

The epidemic of wiretapping and electronic surveillance engaged in by the Nixon Administration and the use of grand juries for purposes of political intimidation must be ended. The rule of law and the supremacy of the Constitution, as these concepts have traditionally been understood, must be restored.

Democratic Platform of 1972, p.790

We strongly object to secret computer data banks on individuals. Citizens should have access to their own files that are maintained by private commercial firms and the right to insert corrective material. Except in limited cases, the same should apply to government files. Collection and maintenance by federal agencies of dossiers on law-abiding citizens, because of their political views and statements, must be stopped, and files which never should have been opened should be destroyed. We firmly reject the idea of a National Computer Data Bank.

Democratic Platform of 1972, p.790

The Nixon policy of intimidation of the media and Administration efforts to use government power to block access to media by dissenters must end, if free speech is to he preserved. A Democratic Administration must be an open one, with the fullest possible disclosure of information, with an end to abuses of security classifications and executive privilege, and with regular top-level press conferences.[p.791]

The Right to Be Different

Democratic Platform of 1972, p.791

The new Democratic Administration can help lead America to celebrate the magnificence of the diversity within its population, the racial, national, linguistic and religious groups which have contributed so much to the vitality and richness of our national life. As things are, official policy too often forces people into a mold of artificial homogeneity.

Democratic Platform of 1972, p.791

Recognition and support of the cultural identity and pride of black people are generations overdue. The American Indians, the Spanish-speaking, the Asian Americans—the cultural and linguistic heritage of these groups is too often ignored in schools and communities. So, too, are the backgrounds, traditions and contributions of white national, ethnic, religious and regional communities ignored. All official discrimination on the basis of sex, age, race, language, political belief, religion, region or national origin must end. No American should be subject to discrimination in employment or restriction in business because of ethnic background or religious practice. Americans should be free to make their own choice of life-styles and private habits without being subject to discrimination or prosecution. We believe official policy can encourage diversity while continuing to place full emphasis on equal opportunity and integration.

Democratic Platform of 1972, p.791

We urge full funding of the Ethnic Studies bill to provide funds for development of curriculum to preserve America's ethnic mosaic.

Rights of Children

Democratic Platform of 1972, p.791

One measure of a nation's greatness is the care it manifests for all of its children. The Nixon Administration has demonstrated a callous attitude toward children repeatedly through veto and administrative decisions. We, therefore, call for a reordering of priorities at all levels of American society so that children, our most precious resource, and families come first. To that end, we call for:

Democratic Platform of 1972, p.791

The federal government to fund comprehensive development child care programs that will be family centered, locally controlled and universally available. These programs should provide for active participation of all family members in the development and implementation of the program. Health, social service and early childhood education should be part of these programs, as well as a variety of options most appropriate to their needs. Child care is a supplement, not a substitute, for the family;

Democratic Platform of 1972, p.791

The establishment of a strong child advocacy program, financed by the federal government and other sources, with full ethnic, cultural, racial and sexual representation;

Democratic Platform of 1972, p.791

First priority for the needs of children, as we move toward a National Health Insurance Program;

Democratic Platform of 1972, p.791

The first step should be immediate implementation of the federal law passed in the 1967 Social Security Amendments providing for "early and periodic screening, diagnosis and treatment" of children's health problems;

Democratic Platform of 1972, p.791

Legislation and administrative decisions to drastically reduce childhood injuries—prenatal, traffic, poisoning, burns, malnutrition, rat bites and to provide health and safety education.

Democratic Platform of 1972, p.791

Full funding of legislation designed to meet the needs of children with special needs: The retarded, the physically and mentally handicapped, and those whose environment produces abuse and neglect and directs the child to anti-social conduct;

Democratic Platform of 1972, p.791

Reaffirmation of the rights of bilingual, handicapped or slow-learning children to education in the public schools, instead of being wrongly classified as retarded or uneducable and dismissed;

Democratic Platform of 1972, p.791

Revision of the juvenile court system; dependency and neglect cases must be removed from the corrections system, and clear distinctions must be drawn between petty childhood offenses and the more serious crimes;

Democratic Platform of 1972, p.791

Allocation of funds to the states to provide counsel to children in juvenile proceedings, legal or administrative; and

Democratic Platform of 1972, p.791

Creation by Congress of permanent standing committees on Children and Youth.

Rights of Women

Democratic Platform of 1972, p.791

Women historically have been denied a full voice in the evolution of the political and social institutions of this country and are therefore allied with all under-represented groups in a common desire to form a more humane and compassionate society. The Democratic Party pledges the following:

Democratic Platform of 1972, p.791

A priority effort to ratify the Equal Rights Amendment;

Democratic Platform of 1972, p.791

Elimination of discrimination against women in public accommodations and public facilities, public [p.792] education and in all federally-assisted programs and federally-contracted employment:

Democratic Platform of 1972, p.792

Extension of the jurisdiction of the Civil Rights Commission to include denial of civil rights on the basis of sex;

Democratic Platform of 1972, p.792

Full enforcement of all federal statutes and executive laws barring job discrimination on the basis of sex, giving the Equal Employment Opportunities Commission adequate staff and resources and power to issue cease-and-desist orders promptly;

Democratic Platform of 1972, p.792

Elimination of discriminatory features of criminal laws and administration;

Democratic Platform of 1972, p.792

Increased efforts to open educational opportunities at all levels, eliminating discrimination against women in access to education, tenure, promotion and salary;

Democratic Platform of 1972, p.792

Guarantee that all training programs are made more equitable, both in terms of the numbers of women involved and the job opportunities provided; jobs must be available on the basis of skill, not sex;

Democratic Platform of 1972, p.792

Availability of maternity benefits to all working women; temporary disability benefits should cover pregnancy, childbirth, miscarriage and recovery;

Democratic Platform of 1972, p.792

Elimination of all tax inequities that affect women and children, such as higher taxes for single women;

Democratic Platform of 1972, p.792

Amendment of the Social Security Act to provide equitable retirement benefits for families with working wives, widows, women heads of households and their children;

Democratic Platform of 1972, p.792

Amendment of the Internal Revenue Code to permit working families to deduct from gross income as a business expense, housekeeping and child care costs;

Democratic Platform of 1972, p.792

Equality for women on credit, mortgage, insurance, property, rental and financial contracts;

Democratic Platform of 1972, p.792

Extension of the Equal Pay Act to all workers, with amendment to read "equal pay for comparable work;"

Democratic Platform of 1972, p.792

Appointment of women to positions of top responsibility in all branches of the federal government to achieve all equitable ratio of women and men. Such positions include Cabinet members, agency and division heads and Supreme Court Justices; inclusion of women advisors in equitable ratios on all government studies, commissions and hearings; and

Democratic Platform of 1972, p.792

Laws authorizing federal grants on a matching basis for financing State Commissions of the Status of Women.

Rights of Youth

Democratic Platform of 1972, p.792

In order to ensure, maintain and secure the proper role and functions of youth in American government, politics and society, the Democratic Party will endeavor to:

Democratic Platform of 1972, p.792

Lower the age of legal majority and consent to 18;

Democratic Platform of 1972, p.792

Actively encourage and assist in the election of youth to federal, state and local offices;

Democratic Platform of 1972, p.792

Develop special programs for employment of youth, utilizing governmental resources to guarantee development, training and job placement; and

Democratic Platform of 1972, p.792

Secure the electoral reforms called for under "People and the Government."

Rights of Poor People

Democratic Platform of 1972, p.792

Poor people, like all Americans, should be represented at all levels of the Democratic Party in reasonable proportion of their numbers in the general population. Affirmative action must be taken to ensure their representation at every level. The Democratic Party guidelines guaranteeing proportional representation to "previously discriminated against groups" (enumerated as "women, young people and minorities") must be extended to specifically include poor people.

Democratic Platform of 1972, p.792

Political parties, candidates and government institutions at all levels must be committed to working with and supporting poor people's organizations and ending the tokenism and co-optation that has characterized past dealings.

Democratic Platform of 1972, p.792

Welfare rights organizations must be recognized as representative of welfare recipients and be given access to regulations, policies and decision-making processes, as well as being allowed to represent clients at all governmental levels.

Democratic Platform of 1972, p.792

The federal government must protect the right of tenants to organize tenant organizations and negotiate collective bargaining agreements with private landlords and encourage the participation of the tenants in the management and control of all subsidized housing.

Rights of American Indians

Democratic Platform of 1972, p.792

We support rights of American Indians to full rights of citizenship. The federal government should commit all necessary funds to improve the lives of Indians, with no division between reservation and non-reservation Indians. We strongly oppose the policy of termination, and we urge the [p.793] government to provide unequivocal advocacy for the protection of the remaining Indian land and water resources. All land rights due American Indians, and Americans of Spanish and Mexican descent, on the basis of treaties with the federal government will be protected by the federal government. In addition we support allocation of Federal surplus lands to American Indians on a first priority basis.

Democratic Platform of 1972, p.793

American Indians should be given the right to receive bilingual medical services from hospitals and physicians of their choice.

Rights of the Physically Disabled

Democratic Platform of 1972, p.793

The physically disabled have the right to pursue meaningful employment and education, outside a hospital environment, free from unnecessary discrimination, living in adequate housing, with access to public mass transportation and regular medical care. Equal opportunity employment practices should be used by the government in considering their application for federal jobs and equal access to education from pre-school to the college level guaranteed. The physically disabled like all disadvantaged peoples, should be represented in any group making decisions affecting their lives.

Rights of the Mentally Retarded

Democratic Platform of 1972, p.793

The mentally retarded must be given employment and educational opportunities that promote their dignity as individuals and ensure their civil rights. Educational treatment facilities must guarantee that these rights always will be recognized and protected. In addition, to assure these citizens a more meaningful life, emphasis must be placed on programs of treatment that respect their right to life in a non-institutional environment.

Rights of the Elderly

Democratic Platform of 1972, p.793

Growing old in America for too many means neglect, sickness, despair and, all too often, poverty. We have failed to discharge the basic obligation of a civilized people—to respect and assure the security of our senior citizens. The Democratic Party pledges, as a final step to economic security for all, to end poverty—as measured by official standards-among the retired, the blind and the disabled. Our general program of economic and social justice will benefit the elderly directly. In addition, a Democratic Administration should:

Democratic Platform of 1972, p.793

Increase social security to bring benefits in line with changes on the national standard of living;

Democratic Platform of 1972, p.793

Provide automatic adjustments to assure that benefits keep pace with inflation;

Democratic Platform of 1972, p.793

Support legislation which allows beneficiaries to earn more income, without reduction of social security payments;

Democratic Platform of 1972, p.793

Protect individual's pension rights by pension re-insurance and early vesting;

Democratic Platform of 1972, p.793

Lower retirement eligibility age to 60 in all government pension programs;

Democratic Platform of 1972, p.793

Expand housing assistance for the elderly; Encourage development of local programs by which senior citizens can serve their community in providing education, recreation, counseling and other services to the rest of the population;

Democratic Platform of 1972, p.793

Establish federal standards and inspection of nursing homes and full federal support for qualified nursing homes;

Democratic Platform of 1972, p.793

Take the needs of the elderly and the handicapped into account in all federal programs, including construction of federal buildings, housing and transportation planning;

Democratic Platform of 1972, p.793

Pending a full national health security system, expand Medicare by supplementing trust funds with general revenues in order to provide a complete range of care and services; eliminate the Nixon Administration cutbacks in Medicare and Medicaid; eliminate the part B premium under Medicare and include under Medicare and Medicaid the costs of eyeglasses, dentures, hearing aids, and all prescription drugs and establish uniform national standards for Medicaid to bring to an end the present situation which makes it worse to be poor in one state than in another.

Democratic Platform of 1972, p.793

The Democratic Party pledges itself to adopt rules to give those over 60 years old representation on all Party committees and agencies as nearly as possible in proportion to their percentage in the total population.

Rights of Veterans

Democratic Platform of 1972, p.793

It is time that the nation did far more to recognize the service of our 28 million living veterans and to serve them in return. The veterans of Vietnam must get special attention, for no end of the war is truly honorable which does not provide these men the opportunities to meet their needs.

Democratic Platform of 1972, p.793

The Democratic Party is committed to extending and improving the benefits available to American [p.794] veterans and society, to ending the neglect shown by the Nixon Administration to these problems and to the human needs of our ex-servicemen.

Democratic Platform of 1972, p.794

Medical care—The federal government must guarantee quality medical care to ex-servicemen, and to all disabled veterans, expanding and improving Veterans Administration facilities and manpower and preserving the independence and integrity of the VA hospital program. Staff-patient ratios in these hospitals should be made comparable to ratios in community hospitals. Meanwhile, there should be an increase in the VA's ability to deliver out-patient care and home health services, wherever possible treating veterans as part of a family unit.

Democratic Platform of 1972, p.794

We support future coordination of health care for veterans with the national health care insurance program, with no reduction in scale or quality of existing veterans care and with recognition of the special health needs of veterans.

Democratic Platform of 1972, p.794

The VA separate personnel system should be expanded to take in all types of health personnel, and especially physician's assistants; and VA hospitals should be used to develop medical schools and area health education centers.

Democratic Platform of 1972, p.794

The VA should also assume responsibility for the care of wives and children of veterans who are either permanently disabled or who have died from service-connected causes. Distinction should no longer be made between veterans who have seen "wartime," as opposed to "peacetime," service.

Democratic Platform of 1972, p.794

Education.—Educational benefits should be provided for Vietnam-era veterans under the GI Bill at levels comparable to those of the original Bill after World War II, supplemented by special veteran's education loans. The VA should greatly expand and improve programs for poor or educationally disadvantaged veterans. In addition, there should be a program under which service-men and women can receive high school, college or job training while on active duty. GI Bill trainees should be used more extensively to reach out to other veterans who would otherwise miss these educational opportunities.

Democratic Platform of 1972, p.794

Drug addiction.—The Veterans Administration should provide either directly or through community facilities, a comprehensive, individually tailored treatment and rehabilitation program for all drug- and alcohol-addicted veterans, on a voluntary and confidential basis, and regardless of the nature of their discharge or the way in which they acquired their condition.

Democratic Platform of 1972, p.794

Unemployment.—There should be an increase in unemployment compensation provided to veterans, and much greater emphasis on the Veterans Employment Service of the Department of Labor, expanding its activities in every state. There should be a greatly enlarged effort by the federal government to employ Vietnam-era veterans and other veterans with service-connected disabilities. In addition, veterans' preferences in hiring should he written into every federal contract or sub-contract and for public service employment.

Rights of Servicemen and Servicewomen

Democratic Platform of 1972, p.794

Military discipline must be maintained, but unjustifiable restriction on the Constitutional rights of members of the armed services must cease. We support means to ensure the protection of G.I. rights to express political opinion and engage in off-base political activity.

Democratic Platform of 1972, p.794

We should explore new procedures for providing review of discharges other than honorable, in cases involving political activity.

Democratic Platform of 1972, p.794

We oppose deferential advancement, punishment assignment or any other treatment on the basis of race, and support affirmative action to end discrimination.

Democratic Platform of 1972, p.794

We support rights of women in the armed forces to be free from unfair discrimination.

Democratic Platform of 1972, p.794

We support an amendment of the Uniform Code of Military Justice to provide for fair and uniform sentencing procedures.

Rights of Consumers

Democratic Platform of 1972, p.794

Consumers need to be assured of a renewed commitment to basic rights and freedoms. They must have the mechanisms available to allow self-protection against the abuses that the Kennedy and Johnson programs were designed to eliminate. We propose a new consumer program:

Democratic Platform of 1972, p.794

In the Executive Branch.—The executive branch must use its power to expand consumer information and protection:

Democratic Platform of 1972, p.794

Ensure that every policy-making level of government concerned with economic or procurement decisions should have a consumer input either through a consumer advisory committee or through consumer members on policy advisory committees;

Democratic Platform of 1972, p.795

Support the development of an independent [p.795] consumer agency providing a focal point on consumer matters with the right to intervene on behalf of the consumer before all agencies and regulatory bodies; and

Democratic Platform of 1972, p.795

Expand all economic policy-making mechanisms to include an assessment of social as well as economic indicators of human well-being.

Democratic Platform of 1972, p.795

In the Legislative Branch,—We support legislation which will expand the ability of consumers to defend themselves:

Democratic Platform of 1972, p.795

Ensure an extensive campaign to get food, drugs and all other consumer products to carry complete informative labeling about safety, quality and cost. Such labeling is the first step in ensuring the economic and physical health of the consumer. In the food area, it should include nutritional unit pricing, full ingredients by percentage, grade, quality and drained weight in formation. For drugs, it should include safety, quality, price and operation data, either on the label or in an enclosed manual;

Democratic Platform of 1972, p.795

Support a national program to encourage the development of consumer cooperatives, patterned after the rural electric cooperatives in areas where they might help eliminate inflation and restore consumer rights; and

Democratic Platform of 1972, p.795

Support federal initiatives and federal standards to reform automobile insurance and assure coverage on a first-party, no-fault basis.

Democratic Platform of 1972, p.795

In the Judicial Branch.—The Courts should become an effective forum to hear well-rounded consumer grievances.

Democratic Platform of 1972, p.795

Consumer class action: Consumers should be given access to the federal courts in a way that allows them to initiate group action against fraudulent, deceitful, or misleading or dangerous business practices.

Democratic Platform of 1972, p.795

Small Claims Court: A national program should be undertaken to improve the workings of small claims courts and spread their use so that consumers injured in economically small, though individually significant amounts (e.g. $500), can bring their complaints to the attention of a court and collect their damages without self-defeating legal fees,

The Quality and Quantity of Social Service

Democratic Platform of 1972, p.795

The new Democratic Administration can begin a fundamental re-examination of all federal domestic social programs and the patterns of service delivery they support. Simply advocating the expenditure of more funds is not enough, although funds are needed, for billions already have been poured into federal government programs—programs like urban renewal, current welfare and aid to education, with meager results. The control, structure and effectiveness of every institution and government grant system must be fully examined and these institutions must be made accountable to those they are supposed to serve.

Democratic Platform of 1972, p.795

We will, therefore, pursue the development of new rights of two kinds: Rights to the service itself and rights to participate in the delivery process.

Health Care

Democratic Platform of 1972, p.795

Good health is the least this society should promise its citizens. The state of health services in this country indicates the failure of government to respond to this fundamental need. Costs skyrocket while the availability of services for all but the rich steadily declines.

Democratic Platform of 1972, p.795

We endorse the principle that good health is a right of all Americans.

Democratic Platform of 1972, p.795

America has a responsibility to offer to every American family the best in health care whenever they need it, regardless of income or where they live or any other factor.

Democratic Platform of 1972, p.795

To achieve this goal the next Democratic Administration should:

Democratic Platform of 1972, p.795

Establish a system of universal National Health Insurance which covers all Americans with a comprehensive set of benefits including preventive medicine, mental and emotional disorders, and complete protection against catastrophic costs, and in which the rule of free choice for both provider and consumer is protected. The program should be federally-financed and federally-administered. Every American must know he can afford the cost of health care whether given in a hospital or a doctor's office;

Democratic Platform of 1972, p.795

Incorporate in the National Health Insurance System incentives and controls to curb inflation in health care costs and to assure efficient delivery of all services;

Democratic Platform of 1972, p.795

Continue and evaluate Health Maintenance Organizations;

Democratic Platform of 1972, p.795

Set up incentives to bring health service personnel back to inner-cities and rural areas;

Democratic Platform of 1972, p.795

Continue to expand community health centers and availability of early screening diagnosis and treatment;

Democratic Platform of 1972, p.796

Provide federal funds to train added health [p.796] manpower including doctors, nurses, technicians and para-medical workers;

Democratic Platform of 1972, p.796

Secure greater consumer participation and control over health care institutions;

Democratic Platform of 1972, p.796

Expand federal support for medical research including research in heart disease, hypertension, stroke, cancer, sickle cell anemia, occupational and childhood diseases which threaten millions and in preventive health care;

Democratic Platform of 1972, p.796

Eventual replacement of all federal programs of health care by a comprehensive National Health Insurance System;

Democratic Platform of 1972, p.796

Take legal and other action to curb soaring prices for vital drugs using anti trust laws as applicable and amending patent laws to end price-raising abuses, and require generic-name labeling of equal-effective drugs; and

Democratic Platform of 1972, p.796

Expand federal research and support for drug abuse treatment and education, especially development of non-addictive treatment methods.

Family Planning

Democratic Platform of 1972, p.796

Family planning services, including the eduction, comprehensive medical and social services necessary to permit individuals freely to determine and achieve the number and spacing of their children, should be available to all, regardless of sex, age, marital status, economic group or ethnic origin, and should be administered in a non-coercive and non-discriminatory manner.

Puerto Rico

Democratic Platform of 1972, p.796

The Democratic Party respects and supports the frequently-expressed desire of the people of Puerto Rico to freely associate in permanent union with the United States, as an autonomous commonwealth. We are committed to Puerto Rico's right to enjoy full self-determination and a relationship that can evolve in ways that will most benefit both parties.

Democratic Platform of 1972, p.796

To this end, we support equal treatment for Puerto Rico in the distribution of all federal grants-in-aid, amendment of federal laws that restrict aid to Puerto Rico; and we pledge no further restrictions in future laws. Only in this way can the people of Puerto Rico come to participate more fully in the many areas of social progress made possible by Democratic efforts, on behalf of all the people.

Democratic Platform of 1972, p.796

Finally, the Democratic Party pledges to end all Naval shelling and bombardment of the tiny, inhabited island of Culebra and its neighboring keys, not later than June 1, 1975. With this action, and others, we will demonstrate the concern of the Democratic Party to develop and maintain a productive relationship between the Commonwealth and the United States.

Virgin Islands, Guam, American Samoa and the Trust Territories of the Pacific

Democratic Platform of 1972, p.796

We pledge to include all of these areas in federal grant-in-aid programs on a full and equitable basis.

Democratic Platform of 1972, p.796

We praise the Democratic Congress for providing a non-voting delegate to the House of Representatives from Guam and the Virgin Islands and urge that these elected delegates be accorded the full vote in the committees to which they are assigned.

Democratic Platform of 1972, p.796

We support the right of American Samoans to elect their Governor, and will consider methods by which American citizens residing in American territories can participate in Presidential elections.

IV. Cities, Communities, Counties and the Environment

Democratic Platform of 1972, p.796

"When the Democratic Platform is written and acted on in Miami, let it be a blueprint for the life and survival of our cities and our people."

Democratic Platform of 1972, p.796

Mayor Kenneth A. Gibson U.S. Conference of Mayors New Orleans June 19, 1972

Introduction

Democratic Platform of 1972, p.796

Always the vital center of our civilization, the American city since World War II has been suffering growing pains, caused partly by the change of the core city into a metropolitan city and partly by the movement of people from towns and rural areas into the cities.

Democratic Platform of 1972, p.796

The burgeoning of the suburbs—thrust outward with too little concern for social, economic and environmental consequences—has both broadened the city's limits and deepened human and neighborhood needs.

Democratic Platform of 1972, p.796

The Nixon Administration has failed to meet most of these needs. It has met the problem of urban decay with tired, decaying "solutions" that are unworthy of the name. It could act to revitalize [p.797] our urban areas; instead, we see only rising crime, fear and flight, racial and economic polarization, loss of confidence and depletion of community resources.

Democratic Platform of 1972, p.797

This Administration has ignored the cities and suburbs, permitting taxes to rise and services to decline; housing to deteriorate faster than it can be replaced, and morale to suffer. It actually has impounded funds appropriated by a Democratic Congress to help cities in crisis.

Democratic Platform of 1972, p.797

The Administration has ignored the needs of city and suburban residents for public services, for property tax relief and for the planning and coordination that alone can assure that housing, jobs, schools and transportation are built and maintained in suitable locations and in needed numbers and quality.

Democratic Platform of 1972, p.797

Meanwhile, the Nixon Administration has forgotten small-town America, too, refusing to provide facilities that would make it an attractive alternative to city living.

Democratic Platform of 1972, p.797

This has become the American crisis of the 1970's. Today, our highest national priority is clear and precise: To deal effectively—and now with the massive, complex and urgent needs of our cities, suburbs and towns.

Democratic Platform of 1972, p.797

The federal government cannot solve all the problems of these communities. Too often, federal bureaucracy has failed to deliver the services and keep the promises that are made. But only the federal government can be the catalyst to focus attention and resources on the needs of every neighborhood in America.

Democratic Platform of 1972, p.797

Under the Nixon Administration, piecemeal measures, poorly funded and haphazardly applied, have proved almost totally inadequate. Words have not halted the decline of neighborhoods. Words have not relieved the plight of tenants in poorly managed, shoddy housing. Our scarce urban dollars have been wasted, and even the Republican Secretary of Housing and Urban Development has admitted it.

Democratic Platform of 1972, p.797

The Democratic Party pledges to stop the rot in our cities, suburbs and towns, and stop it now. We pledge commitment, coordination, planning and funds:

Democratic Platform of 1972, p.797

Commitment to make our communities places where we are proud to raise our children;

Democratic Platform of 1972, p.797

Coordination and planning to help all levels of government achieve the same goals, to ensure that physical facilities meet human needs and to ensure that land—a scarce resource—is used in ways that meet the needs of the entire nation; and

Democratic Platform of 1972, p.797

Funds to reduce the burden of the inequitable property tax and to help local government meet legitimate and growing demands for public facilities and services.

Democratic Platform of 1972, p.797

The nation's urban areas must and can be habitable. They are not only centers of commerce and trade, but also repositories of history and culture, expressing the richness and variety of their region and of the larger society. They are worthy of the best America can offer. They are America.

Partnership among Governments

Democratic Platform of 1972, p.797

The federal government must assist local communities to plan for their orderly growth and development, to improve conditions and opportunities for all their citizens and to build the public facilities they need.

Democratic Platform of 1972, p.797

Effective planning must be done on a regional basis. New means of planning are needed that are practical and realistic, but that go beyond the limits of jurisdictional lines. If local government is to be responsive to citizen needs, public services and programs must efficiently be coordinated and evolved through comprehensive regional planning and decision-making. Government activities should take account of the future as well as the present.

Democratic Platform of 1972, p.797

In aiding the reform of state and local government, federal authority must insist that local decisions take into account the views and needs of all citizens, white and black, haves and have-nots, young and old, Spanish and other non-English-speaking, urban, suburban and rural.

Democratic Platform of 1972, p.797

Americans ask more and more of their local governments, but the regressive property tax structure makes it impossible for cities and counties to deliver. The Democratic Party is committed to ensure that state and local governments have the funds and the capacity to achieve community service and development goals—goals that are nationally recognized. To this end:

Democratic Platform of 1972, p.797

We fully support general revenue sharing and the principle that the federal income tax should be used to raise more revenues for local use;

Democratic Platform of 1972, p.797

We pledge adequate federal funds to halt property tax increases and to begin to roll them back. Turning over federal funds to local governments will permit salaries of underpaid state and local government employees to climb to acceptable levels; and it will reduce tax pressures on the aged, the poor, Spanish and other non-English-[p.798] speaking Americans and young couples starting out in life;

Democratic Platform of 1972, p.798

We further commit ourselves to reorganize categorical grant programs. They should be consolidated, expanded and simplified. Funding should be adequate, dependable, sustained, long-term and related to state and local fiscal timetables and priorities. There should be full funding of all programs, without the impounding of funds by the Executive Branch to thwart the will of Congress. And there should be performance standards governing the distribution of all federal funds to state and local governments; and

Democratic Platform of 1972, p.798

We support efforts to eliminate gaps and costly overlaps in services delivered by different levels of government.

Urban Growth Policy

Democratic Platform of 1972, p.798

The Nixon Administration has neither developed an effective urban growth policy designed to meet critical problems, nor concerned itself with the needed recreation of the quality of life in our cities, large and small. Instead, it has severely over-administered and underfunded existing federal aid programs. Through word and deed, the Administration has widened the gulf between city and suburb, between core and fringe, between haves and have-nots.

Democratic Platform of 1972, p.798

The nation's urban growth policies are seen most clearly in the legitimate complaints of suburban householders over rising taxes and center-city families over houses that are falling apart and services that are often non-existent. And it is here, in the center city, that the failure of Nixon Administration policies is most clear to all who live there.

Democratic Platform of 1972, p.798

The Democratic Party pledges:

Democratic Platform of 1972, p.798

A national urban growth policy to promote a balance of population among cities, suburbs, small towns and rural areas, while providing social and economic opportunities for everyone. America needs a logical urban growth policy, instead of today's inadvertent, chaotic and haphazard one that doesn't work. An urban growth policy that truly deals with our tax and mortgage insurance and highway policies will require the use of federal policies as leverage on private investment;

Democratic Platform of 1972, p.798

A policy on housing—including low- and middle-income housing—that will concentrate effort in areas where there are jobs, transportation, schools, health care and commercial facilities. Problems of over growth are not caused so much by land scarcity, as by the wrong distribution of people and the inadequate servicing of their needs; and

Democratic Platform of 1972, p.798

A policy to experiment with alternative strategies to reserve land for future development—land banks—and a policy to recoup publicly created land values for public benefit.

The Cities

Democratic Platform of 1972, p.798

Many of the worst problems in America are centered in our cities. Countless problems contribute to their plight: decay in housing, the drain of welfare, crime and violence, racism, failing schools, joblessness and poor mass transit, lack of planning for land use and services.

Democratic Platform of 1972, p.798

The Democratic Party pledges itself to change the disastrous policies of the Nixon Administration toward the cities and to reverse the steady process of decay and dissolution. We will renew the battle begun under the Kennedy and Johnson Administrations to improve the quality of life in our cities. In addition to pledging the resources critically needed, we commit ourselves to these actions.

Democratic Platform of 1972, p.798

Help localities to develop their own solutions to their most pressing problems—the federal government should not stifle or usurp local initiative;

Democratic Platform of 1972, p.798

Carry out programs developed elsewhere in this Platform to assure every American decent shelter, freedom from hunger, good health care, the opportunity to work, adequate income and a decent education;

Democratic Platform of 1972, p.798

Provide sufficient management and planning funds for cities, to let them increase staff capacity and improve means of allocating resources;

Democratic Platform of 1972, p.798

Distribute funds according to standards that will provide center cities with enough resources to revitalize old neighborhoods and build new ones, to expand and improve community services and to help local governments better to plan and deliver these services; and

Democratic Platform of 1972, p.798

Create and fund a housing strategy that will recognize that housing is neighborhood and community as well as shelter—a strategy that will serve all the nation's urban areas and all the American people.

Housing and Community Development

Democratic Platform of 1972, p.798

The 1949 Housing Act pledged "a decent home and suitable living environment for every American family." Twenty-three years later, this goal is still far away. Under this Administration, there [p.799] simply has been no progress in meeting our housing needs, despite the Democratic Housing Act of 1968. We must build 2.6 million homes a year, including two-thirds of a million units of federally-subsidized low- and middle-income housing. These targets are not being met. And the lack of housing is particularly critical for people with low and middle incomes.

Democratic Platform of 1972, p.799

In the cities, widespread deterioration and abandonment are destroying once sound homes and apartments, and often entire neighborhoods, faster than new homes are built.

Democratic Platform of 1972, p.799

Federal housing policy creates walled compounds of poor, elderly and ethnic minorities, isolating them in the center city.

Democratic Platform of 1972, p.799

These harmful policies include the Administration's approach to urban renewal, discrimination against the center city by the Federal Housing Administration, highway policies that destroy neighborhoods and create ghettoes and other practices that work against housing for low- and middle-income families.

Democratic Platform of 1972, p.799

Millions of lower—and middle-class Americans-each year the income level is higher—are priced out of housing because of sharply rising costs.

Democratic Platform of 1972, p.799

Under Republican leadership, the Federal Housing Administration (FHA) has become the biggest slumlord in the country. Some unsophisticated home buyers have purchased homes with FHA mortgage insurance or subsidies. These consumers, relying on FHA appraisals to protect them, often have been exploited by dishonest real estate speculators. Unable to repair or maintain these houses, the buyers often have no choice but to abandon them. As a result, the FHA will acquire a quarter million of these abandoned houses at a cost to the taxpayers of billions of dollars.

Democratic Platform of 1972, p.799

Under the Republican Administration, the emphasis has been on housing subsidies for the people who build and sell houses rather than for those people who need and live in them. In many cases, the only decent shelter provided is a tax shelter.

Democratic Platform of 1972, p.799

To correct this inequity the Democratic Party pledges:

Democratic Platform of 1972, p.799

To overhaul completely the FHA to make it a consumer oriented agency;

Democratic Platform of 1972, p.799

To use the full faith and credit of the Treasury to provide direct, low-interest loans to finance the construction and purchase of decent housing for the American people; and

Democratic Platform of 1972, p.799

To insist on building practices, inspection standards and management that will assure quality housing.

Democratic Platform of 1972, p.799

The next Administration must build and conserve housing that not only meets the basic need for shelter, but also provides a wider choice of quality housing and living environments. To meet this challenge, the Democratic Party commits itself to a housing approach that:

Democratic Platform of 1972, p.799

Prevents the decay and abandonment of homes and neighborhoods. Major rehabilitation programs to conserve and rehabilitate housing are needed. Consumers should be aided in purchasing homes, and low-income housing foreclosed by the FHA should be provided to poor families at minimal cost as an urban land grant. These houses should be rehabilitated and lived in, not left to rot;

Democratic Platform of 1972, p.799

Provides federal funds for preservation of existing neighborhoods. Local communities should decide whether they want renewal or preservation. Choosing preservation should not mean steady deterioration and inadequate facilities;

Democratic Platform of 1972, p.799

Provides for improved housing quality for all families through strict enforcement of housing quality standards and full compliance with state and local health and safety laws;

Democratic Platform of 1972, p.799

Provides effective incentives to reduce housing costs—to the benefit of poor and middle-income families alike through effective use of unused, undeveloped land, reform of building practices and the use of new building techniques, including factory-made and modular construction;

Democratic Platform of 1972, p.799

Assures that residents have a strong voice in determining the destiny of their own neighborhoods;

Democratic Platform of 1972, p.799

Promotes free choice in housing—the right of all families, regardless of race, color, religion or income, to choose among a wide range of homes and neighborhoods in urban, suburban and rural areas—through the greater use of grants to individuals for housing, the development of new communities offering diversified housing and neighborhood options and the enforcement of fair housing laws; and

Democratic Platform of 1972, p.799

Assures fair and equitable relationships between landlords and tenants.

New Towns

Democratic Platform of 1972, p.799

New towns meet the direct housing and community needs of only a small part of our populations. To do more, new towns must be developed in concert with massive efforts to revitalize [p.800] central cities and enhance the quality of life in still growing suburban areas.

Democratic Platform of 1972, p.800

The Democratic Party pledges:

Democratic Platform of 1972, p.800

To strengthen the administration of the New Towns program; to reduce onerous review requirements that delay the start of New Towns and thus thwart Congressional mandates; to release already appropriated monies and provide new planning and development funds needed to assure the quality of life in New Towns; and

Democratic Platform of 1972, p.800

To assure coordination between development of New Towns and renewed efforts to improve the quality of life in established urban and suburban areas. We also promise to use effectively the development of New Towns to increase housing choices for people now living in central and suburban areas.

Transportation

Democratic Platform of 1972, p.800

Urban problems cannot be separated from transportation problems. Whether tying communities together, connecting one community to another or linking our cities and towns to rural areas, good transportation is essential to the social and economic life of any community. It joins workers to jobs; makes commercial activity both possible and profitable and provides the means for expanding personal horizons and promoting community cultural life.

Democratic Platform of 1972, p.800

Today, however, the automobile is the principal form of transportation in urban areas. The private automobile has made a major contribution to economic growth and prosperity in this century. But now we must have better balanced transportation—more of it public. Today, 15 times as much federal aid goes to highways as to mass transit; tomorrow this must change. At the same time, it is important to preserve and improve transportation in America's rural areas, to end the crisis in rural mobility.

Democratic Platform of 1972, p.800

The Democratic Party pledges:

Democratic Platform of 1972, p.800

To create a single Transportation Trust Fund, to replace the Highway Trust Fund, with such additional funds as necessary to meet our transportation crisis substantially from federal resources. This fund will allocate monies for capital projects on a regional basis, permitting each region to determine its own needs under guidelines that will ensure a balanced transportation system and adequate funding of mass transit facilities.

Democratic Platform of 1972, p.800

Moreover, we will:

Democratic Platform of 1972, p.800

Assist local transit systems to meet their capital operating needs;

Democratic Platform of 1972, p.800

End the deterioration of rail and rural transportation and promote a flexible rural transportation system based on local, state and regional needs;

Democratic Platform of 1972, p.800

Take steps to meet the particular transportation problems of the elderly, the handicapped and others with special needs; and

Democratic Platform of 1972, p.800

Assist development of airport terminals, facilities and access to them, with due regard to impact on environment and community.

Environment, Technology and Resources

Democratic Platform of 1972, p.800

Every American has the right to live, work and play in a clean, safe and healthy environment. We have the obligation to ourselves and to our children. It is not enough simply to prevent further environmental deterioration and the despoilation of our natural endowment. Rather, we must improve the quality of the world in which we and they will live.

Democratic Platform of 1972, p.800

The Nixon Administration's record on the environment is one of big promises and small actions.

Democratic Platform of 1972, p.800

Inadequate enforcement, uncertain requirements, reduced funding and a lack of manpower have undercut the effort commenced by a Democratic Administration to clean up the environment.

Democratic Platform of 1972, p.800

We must recognize the costs all Americans pay for the environmental destruction with which we all live: Poorer health, lessened recreational opportunities, higher maintenance costs, lower land productivity and diminished beauty in our surroundings. Only then can we proceed wisely, yet vigorously, with a program of environmental protection which recognizes that, although environmental protection will not be cheap, it is worth a far greater price, in effort and money, than we have spent thus far.

Democratic Platform of 1972, p.800

Such a program must include adequate federal funding for waste management, recycling and disposal and for purification and conservation of air and water resources.

Democratic Platform of 1972, p.800

The next Administration must reconcile any conflicts among the goals of cleaner air and water, inexpensive power and industrial development and jobs in specific places. These difficulties do exist—to deny them would be deceptive and irresponsible. At the same time, we know they can be resolved by an Administration with energy, intelligence [p.801] and commitment-qualities notably absent from the current Administration's handling of the problem.

Democratic Platform of 1972, p.801

We urge additional financial support to the United States Forest Service for planning and management consistent with the environmental ideal stated in this Platform.

Choosing the Right Methods of Environmental Protection

Democratic Platform of 1972, p.801

The problem we face is to choose the most efficient, effective and equitable techniques for solving each new environmental problem. We cannot afford to waste resources while doing the job, any more than we can afford to leave the job undone.

Democratic Platform of 1972, p.801

We must enforce the strict emission requirements on all pollution sources set under the 1970 Clean Air Act.

Democratic Platform of 1972, p.801

We must support the establishment of a policy of no harmful discharge into our waters by 1985.

Democratic Platform of 1972, p.801

We must have adequate staffing and funding of all regulatory and enforcement agencies and departments to implement laws, programs and regulations protecting the environment, vigorous prosecution of violators and a Justice Department committed to enforcement of environmental law.

Democratic Platform of 1972, p.801

We must fully support laws to assure citizens' standing in federal environmental court suits.

Democratic Platform of 1972, p.801

Strict interstate environmental standards must be formulated and enforced to prevent pollution from high-density population areas being dumped into low-density population areas for the purpose of evasion of strict pollution enforcement.

Democratic Platform of 1972, p.801

The National Environmental Policy Act should be broadened to include major private as well as public projects, and a genuine commitment must be made to making the Act work.

Democratic Platform of 1972, p.801

Our environment is most threatened when the natural balance of an area's ecology is drastically altered for the sole purpose of profits. Such practices as "clear cut" logging, strip mining, the indiscriminate destruction of whole species, creation of select ocean crops at the expense of other species and the unregulated use of persistent pesticides cannot be justified when they threaten our ability to maintain a stable environment.

Democratic Platform of 1972, p.801

Where appropriate, taxes need to be levied on pollution, to provide industry with an incentive to clean up.

Democratic Platform of 1972, p.801

We also need to develop new public agencies that can act to abate pollution-act on a scale commensurate with the size of the problem and the technology of pollution control.

Democratic Platform of 1972, p.801

Expanded federal funding is required to assist local governments with both the capital and operating expenses of water pollution control and solid waste management.

Jobs and the Environment

Democratic Platform of 1972, p.801

The United States should not be condemned to the choice between the development of resources and economic security or preservation of those resources.

Democratic Platform of 1972, p.801

A decent job for every American is a goal that need not, and must not, be sacrificed to our commitment to a clean environment. Far from slowing economic growth, spending for environmental protection can create new job opportunities for many Americans. Nevertheless, some older and less efficient plants might find themselves in a worse competitive position due to environmental protection requirements. Closely monitored adjustment assistance should be made available to those plants willing to modernize and institute environmental protection measures.

Science and Technology

Democratic Platform of 1972, p.801

For years, the United States was the world's undisputed leader in science and technology. Now that leadership is being challenged, in part because of the success of efforts in other countries, and in part because of the Nixon Administration's neglect of our basic human and material resources in this field.

Democratic Platform of 1972, p.801

As Democrats, we understand the enormous investment made by the nation in educating and training hundreds of thousands of highly skilled Americans in science and technology. Many of these people are now unemployed, as aerospace and defense programs are slowly cut back and as the Administration's economic policies deprive these Americans, as well as others, of their livelihood.

Democratic Platform of 1972, p.801

So far, however, the Nixon Administration has paid scant attention to these problems. By contrast, the Democratic Party seeks both to increase efforts by the federal government and to stimulate research in private industry.

Democratic Platform of 1972, p.801

In addition, the Democratic Party is committed to increasing the overall level of scientific research in the United States, which has been allowed to fall under the Nixon Administration. And we are [p.802] eager to take management methods and techniques devised for the space and defense programs, as well as our technical resources, and apply them to the city, the environment, education, energy, transportation, health care and other urgent domestic needs. We propose also to work out a more effective relationship between government and industry in this area, to stimulate the latter to a greater research and development effort, thus helping buoy up the economy and create more jobs.

Democratic Platform of 1972, p.802

Finally, we will promote the search for new approaches in science and technology, so that the benefits of progress may be had without further endangering the environment—indeed, so that the environment may be better preserved. We must create a systematic way to decide which new technologies will contribute to the nation's development, and which will cause more problems than they solve. We are committed to a role for government in helping to bring the growth of technology into a harmonious relationship with our lives.

Energy Resources

Democratic Platform of 1972, p.802

The earth's natural resources, once in abundant and seemingly unlimited supply, can no longer be taken for granted. In particular, the United States is facing major changes in the pattern of energy supply that will force us to reassess traditional policies. By 1980, we may well have to depend on imports from the Eastern Hemisphere for as much as 30 to 50 percent of our oil supplies. At the same time, new forms of energy supply—such as nuclear, solar or geothermal power—lag far behind in research and development.

Democratic Platform of 1972, p.802

In view of these concerns, it is shocking that the Nixon Administration still steadfastly refuses to develop a national energy policy.

Democratic Platform of 1972, p.802

The Democratic Party would remedy that glaring oversight. To begin with, we should:

Democratic Platform of 1972, p.802

Promote greater research and development, both by government and by private industry, of unconventional energy sources, such as solar power, geothermal power, energy from water and a variety of nuclear power possibilities to design clean breeder fission and fusion techniques. Public funding in this area needs to be expanded, while retaining the principle of public administration of public funds;

Democratic Platform of 1972, p.802

Re-examine our traditional view of national security requirements in energy to reconcile them with our need for long-term abundant supplies of clean energy at reasonable cost;

Democratic Platform of 1972, p.802

Expand research on coal technology to minimize pollution, while making it possible to expand the efficiency of coal in meeting our energy needs;

Democratic Platform of 1972, p.802

Establish a national power plant siting procedure to examine and protect environmental values;

Democratic Platform of 1972, p.802

Reconcile the demand for energy with the demand to protect the environment;

Democratic Platform of 1972, p.802

Redistribute the cost of power among consumers, so that all, especially the poor, may be guaranteed adequate power at reasonable costs;

Democratic Platform of 1972, p.802

Develop a national power grid to improve the reliability and efficiency of our electricity system;

Democratic Platform of 1972, p.802

End the practice of allowing promotional utility advertising as an expense when rates are set; and

Democratic Platform of 1972, p.802

Find new techniques to encourage the conservation of energy. We must also require full disclosure of the energy needs of consumer products and home heating to enable consumers to make informed decisions on their use of energy.

The Oceans

Democratic Platform of 1972, p.802

As with the supply of energy, no longer can we take for granted the precious resources we derive from the oceans. Here, too, we need comprehensive national and international policies to use and protect the vast potential contained in the sea. In particular we must:

Democratic Platform of 1972, p.802

Agree with other nations on stopping pollution of the seas, if they are not one day to become one large sewer, or be filled with dangerous poisons that will deprive us of vital food resources;

Democratic Platform of 1972, p.802

Agree with other nations on the conservation of food resources in the seas and promote the use of management techniques that will end the decline of the world's fish catch on the continental shelf through international cooperation for fishing gear regulations and species quota and preserve endangered species;

Democratic Platform of 1972, p.802

Agree on an international accord for the seas, so resources can be shared equitably among the world's nations. We must be prepared to act constructively at next year's Conference on the Law of the Seas;

Democratic Platform of 1972, p.802

Begin to reconcile competing interests in the future of the seas, including our national security objectives, to protect ocean resources in cooperation with other nations; and [p.803] Support strongly the protection of ocean mammals (seal, whale, walrus) from indiscriminate destruction by both foreign and tuna fishing industries, but specifically exempting those native Americans whose subsistence depends completely on their total use of the ocean's resources.

Democratic Platform of 1972, p.803

Ninety percent of all salt water fish species live on our continental shelves, where plant life is plentiful. For this reason, we support monitoring and strict enforcement of all safety regulations on all offshore drilling equipment and on environmentally-safe construction of all tankers transporting oil.

Public Lands

Democratic Platform of 1972, p.803

For generations, Americans have been concerned with preserving the natural treasures of our country: Our lakes and rivers, our forests and mountains. Enlightened Americans of the past decided that the federal government should take a major role in protecting these treasures, on behalf of everyone. Today, however, neglect on the part of the Nixon Administration is threatening this most valued heritage—and that of our children. Never before in modern history have our public lands been so neglected and the responsible agencies so starved of funds.

Democratic Platform of 1972, p.803

The Democratic Party is concerned about preserving our public lands, and promoting policies of land management in keeping with the broad public interest. In particular, it is imperative to restore lost funds for land, park and forest management. It is imperative that decisions about the future use of our public lands be opened up to all the people for widespread public debate and discussion. Only through such an open process can we set ground rules that appropriately limit the influence of special interests and allow for cohesive guidelines for national land-use planning.

Democratic Platform of 1972, p.803

We are particularly aware of the potential conflicts among the use of land, rivers, lakes and the seashore for economic development, large-scale recreation and for preservation as unspoiled wilderness. We recognize that there are competing goals, and shall develop means for resolving these conflicts in a way that reflects the federal government's particular responsibilities as custodian for the public. We need more National Seashores and expansion of the National Park system. Major steps must be taken to follow up on Congressional commitment to scenic riverways.

Democratic Platform of 1972, p.803

Recreation areas must be made available to people where they live. This includes the extension of our national wilderness preserves to include de facto wilderness areas and their preservation free of commercialization. In this way, we will help to preserve and improve the quality of life for millions of our people.

Democratic Platform of 1972, p.803

With regard to the development of the vast natural resources on our public lands, we pledge a renewed commitment to proceed in the interests of all our citizens.

V. Education

Democratic Platform of 1972, p.803

"The American people want overwhelmingly to give to our children and adults equitable educational opportunities of the highest possible quality, not predicated on race, not predicated on past social accomplishment or wealth, except in a compensatory way to those who have been deprived in the past." Governor Jimmy Carter, Atlanta Hearing, June 9, 1972.

Democratic Platform of 1972, p.803

Our schools are failing our children. Never, more than now, have we needed the schools to play their traditional role—to create a sense of national unity and to reconcile ethnic, religious and racial conflicts. Yet the Nixon Administration—by ignoring the plight of the nation's schools, by twice vetoing funds for education—has contributed to this failure.

Democratic Platform of 1972, p.803

America in the 1970's requires something the world has never seen: Masses of educated people—educated to feel and to act, as well as to think. The children who enter school next fall still will be in the labor force in the year 2030; we cannot even imagine what American society will be like then, let alone what specific jobs they may hold. For them, education must be done by teaching them how to learn, how to apply man's wisdom to new problems as they arise and how to recognize new problems as they arise. Education must prepare students not just to earn a living but to live a life—a creative, humane and sensitive life.

School Finance

Democratic Platform of 1972, p.803

Achieving educational excellence requires adequate financial support. But today local property taxes—which do not keep pace with inflation—can no longer support educational needs. Continued reliance on this revenue source imposes needless hardship on the American family without supplying the means for good schools. At the same time, [p.804] the Nixon recession has sapped the resources of state government, and the Administration's insensitivity to school children has meant inadequate federal expenditures in education.

Democratic Platform of 1972, p.804

The next Democratic Administration should: Support equalization in spending among school districts. We support Court decisions holding unconstitutional the disparities in school expenditures produced by dependence on local property taxes. We pledge equality of spending as a way to improve schools and to assure equality of access to good education for all children;

Democratic Platform of 1972, p.804

Increase federal financial aid for elementary and secondary education to enhance achievement of quality education anywhere, and by fully funding the programs passed by the Congress and by fully funding ESEA Title I;

Democratic Platform of 1972, p.804

Step up efforts to meet the special needs and costs of educationally disadvantaged children handicapped by poverty, disability or non-English-speaking family background;

Democratic Platform of 1972, p.804

Channel financial aid by a Constitutional formula to children in non-public schools;

Democratic Platform of 1972, p.804

Support suburban-urban cooperation in education to share resources and expenses;

Democratic Platform of 1972, p.804

Develop and implement the retraining of displaced black and other minority teachers affected by desegregation; and

Democratic Platform of 1972, p.804

Continue with full federal funding the breakfast and lunch programs for all children and the development of other programs to combat hunger.

Early Childhood Education

Democratic Platform of 1972, p.804

Our youngest children are most ignored by national policy and most harshly treated by the Nixon Administration. President Nixon's cruel, irresponsible veto of the Comprehensive Child Development Act of 1971 indicates dramatically the real values of the present Administration.

Democratic Platform of 1972, p.804

That legislation struck down by President Nixon remains the best program to bring support to family units threatened by economic and social pressures; to eliminate educational handicaps which leave disadvantaged children unable to compete in school; to prevent early childhood disease before it results in adult disability; to interrupt the painful, destructive cycle of welfare dependence, and, most important, to allow all children happy lives as children and the opportunity to develop their full potential.

Democratic Platform of 1972, p.804

We support legislation for positive and preventive approaches to early childhood education.

Democratic Platform of 1972, p.804

These approaches should be designed to help eliminate educational handicaps before they require remedial treatment. A Democratic President will support and sign a program for universal comprehensive child development.

Democratic Platform of 1972, p.804

We should give reality to the right of mentally retarded children to adequate health care and educational opportunities through such measures as including necessary care under national health insurance and federal aid to assure an opportunity for education for all retarded persons.

Equal Access to Quality Education

Democratic Platform of 1972, p.804

The Supreme Court of the United States in Brown v Board of Education established the Constitutional principle that states may not discriminate between school children on the basis of their race and that separate but equal has no place in our public education system. Eighteen years later the provision of integration is not a reality.

Democratic Platform of 1972, p.804

We support the goal of desegregation as a means to achieve equal access to quality education for all our children. There are many ways to desegregate schools: School attendance lines may he redrawn; schools may be paired; larger physical facilities may be built to serve larger, more diverse enrollments; magnet schools or educational parks may be used. Transportation of students is another tool to accomplish desegregation. It must continue to be available according to Supreme Court decisions to eliminate legally imposed segregation and improve the quality of education for all children.

Bilingual Education

Democratic Platform of 1972, p.804

Ten per cent of school children in the United States speak a language other than English in their homes and communities. The largest of the linguistic and cultural groups—Spanish-speaking and American Indians—are also among the poorest people in the United States. Increasing evidence indicates an almost total failure of public education to educate these children.

Democratic Platform of 1972, p.804

The drop out rates of Spanish speaking and Indian children are the worst of any children in the country. The injury is compounded when such children are placed in special "compensatory" programs or programs for the "dumb" or the "retarded" on the basis of tests and evaluations conducted in English.

Democratic Platform of 1972, p.805

The passage of the Bilingual Education Act [p.805] of 1967 began a commitment by the nation to do something about the injustices committed against the bilingual child. But for 1972-73, Congress appropriated $35 million—enough to serve only two per cent of the children who need help.

Democratic Platform of 1972, p.805

The next Democratic Administration should: Increase federal support for bilingual, bicultural educational programs, pre-school through secondary school, including funding of bilingual Adult Basic Education;

Democratic Platform of 1972, p.805

Ensure sufficient teacher training and curriculum development for such schools;

Democratic Platform of 1972, p.805

Implement an affirmative action program to train and to hire bilingual-bicultural Spanish-speaking persons at all levels in the educational system;

Democratic Platform of 1972, p.805

Provide inventories for state and local districts to initiate bilingual bicultural education programs;

Democratic Platform of 1972, p.805

Require testing of bilingual-bicultural children in their own languages; and

Democratic Platform of 1972, p.805

Prohibit discrimination against bilingual-bicultural children in school.

Career Education

Democratic Platform of 1972, p.805

Academic accomplishment is not the only way to financial success, job satisfaction or rewarding life in America. Many young Americans think that college is the only viable route when for some a vocational-technical career offers as much promise of a full life. Moreover, the country desperately needs skilled workers, technicians, men and women who understand and can handle the tools and equipment that mean growth and jobs. By 1975 the need for skilled craftsmen will increase 18 per cent while the need for college-trained persons will remain stable.

Democratic Platform of 1972, p.805

Young people should be permitted to make a career choice consistent with their interests, aptitudes and aspirations. We must create an atmosphere where the dignity of work is respected, where diversity of talent and taste is encouraged and where continuing opportunity exists to keep pace with change and gives a saleable skill.

Democratic Platform of 1972, p.805

To aid this, the next Democratic Administration can:

Democratic Platform of 1972, p.805

Give vocational-technical education the same priority in funds and emphasis previously given academic education;

Democratic Platform of 1972, p.805

Support full appropriations for the recently-passed Occupational Education Act;

Democratic Platform of 1972, p.805

Strengthen the career counseling programs in elementary, secondary and post-secondary education so that young people are made aware of all of the opportunities open to them and provide special kinds of vocational-technical education and experience to meet specific area needs;

Democratic Platform of 1972, p.805

Develop and promote a climate conducive to free, rational choice by young people, dispelling the current prejudices that influence career decisions for most young people almost from birth;

Democratic Platform of 1972, p.805

Establish a lifetime system of continuing education to enhance career mobility, both vertically and laterally, so that the career choice made at 18 or 20 years of age does not have to be the only or the final choice; and

Democratic Platform of 1972, p.805

Grant equal representation to minorities and women in vocational technical education.

Higher Education

Democratic Platform of 1972, p.805

We support universal access to opportunities to post-secondary education. The American education system has always been an important path toward social and economic advancement. Federal education policy should ensure that our colleges and universities continue as an open system. It must also stimulate the creative development and expansion of higher education to meet the new social, economic and environmental problems confronting society. To achieve the goals of equal opportunity in education, to meet the growing financial crisis in higher education and to stimulate reform of educational techniques, the next Democratic Administration should:

Democratic Platform of 1972, p.805

Support guaranteed access for all students to loan funds with long-term repayment based on future earnings. Not only the poor, but families with moderate incomes must be provided relief from the cost of a college and professional education;

Democratic Platform of 1972, p.805

Grant supplements and contingent loans to institutions, based on enrollment of federally-aided students;

Democratic Platform of 1972, p.805

Provide research funds to stimulate a partnership between post-secondary, secondary and primary education, in an effort to find new patterns for learning and to provide training and retraining of teachers, especially in urban areas;

Democratic Platform of 1972, p.805

Develop broad opportunities for lifelong learning including encouragement for post-secondary education throughout adult years and permit "stopping-off" during higher education;

Democratic Platform of 1972, p.806

Develop affirmative programs in universities [p.806] and colleges for recruitment of minorities and women for administrative and teaching positions and as students; and

Democratic Platform of 1972, p.806

Create incentives for non-traditional education which recognize the contribution of experience to an individual's educational status.

Arts and Humanities

Democratic Platform of 1972, p.806

Support for the arts and humanities is one of the benchmarks of a civilized society. Yet, the continued existence of many of America's great symphonies, theatres and museums, our film institutes, dance companies and other art forms, is now threatened by rising costs, and the public contribution, far less than in most advanced industrial societies, is a fraction of the need.

Democratic Platform of 1972, p.806

We should expand support of the arts and humanities by direct grants through the National Foundation for the Arts and Humanities, whose policy should be to stimulate the widest variety of artistic and scholarly expression.

Democratic Platform of 1972, p.806

We should support long-range financing for public broadcasting, insulated from political pressures. We deplore the Nixon Administration's crude efforts to starve and muzzle public broadcasting, which has become a vital supplement to commercial television.

VI. Crime, Law and Justice

Democratic Platform of 1972, p.806

"I think we can reduce crime. Society has no more important challenge because crime is human conduct and more than any other activity of people it reflects the moral character of a nation." —Ramsey Clark, Washington Hearing, June 23, 1972.

Democratic Platform of 1972, p.806

We advocate and seek a society and a government in which there is an attitude of respect for the law and for those who seek its enforcement and an insistence on the part of our citizens that the judiciary be ever mindful of their primary duty and function of punishing the guilty and protecting the innocent. We will insist on prompt, fair and equal treatment for all persons before the bar of justice.

Democratic Platform of 1972, p.806

The problem of crime in America is real, immediate and fundamental; its costs to the nation are staggering; nearly three-quarters of a million victims of violent crime in one year alone; more than 15,000 murders, billions of dollars of property loss.

Democratic Platform of 1972, p.806

The indirect, intangible costs are even more ominous. A frightened nation is not a free nation. Its citizens are prisoners, suspicious of the people they meet, restricted in when they go out and when they return, threatened even in their own homes. Unless government at all levels can restore a sense of confidence and security to its people, there is the ever-present danger that alarm will turn to panic, triggering short-cut remedies that jeopardize hard-won liberties.

Democratic Platform of 1972, p.806

When law enforcement breaks down, not only the victims of street violence suffer; the worker's health and safety is imperiled by unsafe, illegal conditions on the job; the society is defenseless against fraud and pollution; most tragically of all, parents and communities are ravaged by traffic in dangerous drugs.

Democratic Platform of 1972, p.806

The Nixon Administration campaigned on a pledge to reduce crime—to strengthen the "peace forces" against the "criminal forces." Despite claims to the contrary, that pledge has been broken:

Democratic Platform of 1972, p.806

Violent crime has increased by one-third, to the highest levels in our history;

Democratic Platform of 1972, p.806

Fueled by the immense profits of narcotics traffic, organized crime has thrust its corruption farther and farther, into law enforcement agencies and the halls of justice;

Democratic Platform of 1972, p.806

The Department of Justice has become the handmaiden of the White House political apparatus, offering favors to those special interests which buy their "law" in Washington.

Democratic Platform of 1972, p.806

The Justice Department has failed to enforce laws protecting key legal rights, such as the Voting Rights Act of 1965;

Democratic Platform of 1972, p.806

Nixon and Mitchell use federal crime control funds for political purposes, squandering $1.5 billion.

Democratic Platform of 1972, p.806

To reverse this course, through equal enforcement of the law, and to rebuild justice the Democratic Party believes:

Democratic Platform of 1972, p.806

The impact of crime in America cuts across racial, geographic and economic lines;

Democratic Platform of 1972, p.806

Hard-line rhetoric, pandering to emotion, is both futile and destructive;

Democratic Platform of 1972, p.806

We can protect all people without undermining fundamental liberties by ceasing to use "law and order" as justification for repression and political persecution, and by ceasing to use stop-gap measures as preventive detention, "no-knock" entry, surveillance, promiscuous and unauthorized use of wire taps, harassment, and secret dossiers; and [p.807] The problems of crime and drug abuse cannot be isolated from the social and economic conditions that give rise to them.

Preventing Crime

Democratic Platform of 1972, p.807

Effective law enforcement requires tough planning and action. This Administration has given us nothing but tough words. Together with unequal law enforcement by police, prosecutors and judges, the result is a "turnstile" system of injustice, where most of those who commit crime are not arrested, most of those arrested are not prosecuted, and many of those prosecuted are not convicted. Under this Administration, the conviction rate for federal prosecutions has declined to one-half its former level. Tens of thousands of offenders simply never appear in court and are heard from again only when they commit another crime. This system does not deter crime. It invites it. It will be changed only when all levels of government act to return firmness and fairness to every part of the criminal justice system.

Democratic Platform of 1972, p.807

Fear of crime, and firm action against it, is not racism. Indeed the greatest victims of crime today—whether of business fraud or of the narcotics plague—are the people of the ghetto, black and brown. Fear now stalks their streets far more than it does the suburbs.

Democratic Platform of 1972, p.807

So that Americans can again live without fear of each other the Democratic Party believes:

Democratic Platform of 1972, p.807

There must be equally stringent law enforcement for rich and poor, corporate and individual offenders;

Democratic Platform of 1972, p.807

Citizens must he actively involved with the police in a joint effort;

Democratic Platform of 1972, p.807

Police forces must be upgraded, and recruiting of highly qualified and motivated policemen must be made easier through federally-assisted pay commensurate with the difficulty and importance of their job, and improved training with comprehensive scholarship and financial support for anyone who is serving or will contract to serve for an appropriate period of police service;

Democratic Platform of 1972, p.807

The complex job of policing requires a sensitivity to the changing social demands of the communities in which police operate;

Democratic Platform of 1972, p.807

We must provide the police with increased technological facilities and support more efficient use of police resources, both human and material;

Democratic Platform of 1972, p.807

When a person is arrested, both justice and effective deterrence of crime require that he be speedily tried, convicted or acquitted, and if convicted, promptly sentenced. To this end we support financial assistance to local courts, prosecutors, and independent defense counsel for expansion, streamlining, and upgrading, with trial in 60 days as the goal;

Democratic Platform of 1972, p.807

To train local and state police officers, a Police Academy on a par with the other service academies should be established as well as an Academy of Judicial Administration;

Democratic Platform of 1972, p.807

We will provide every assistance to our law enforcement agencies at federal and local levels in the training of personnel and the improvement of techniques and will encourage mutual cooperation between each in its own sphere of responsibility;

Democratic Platform of 1972, p.807

We will support needed legislation and action to seek out and bring to justice the criminal organization of national scope operating in our country;

Democratic Platform of 1972, p.807

We will provide leadership and action in a national effort against the usage of drugs and drug addiction, attacking this problem at every level and every source in a full scale campaign to drive this evil from our society. We recognize drug addiction as a health problem and pledge that emphasis will be put on rehabilitation of addicts;

Democratic Platform of 1972, p.807

We will provide increased emphasis in the area of juvenile delinquency and juvenile offenses in order to deter and rehabilitate young offenders;

Democratic Platform of 1972, p.807

There must be laws to control the improper use of hand guns. Four years ago a candidate for the presidency was slain by a handgun. Two months ago, another candidate for that office was gravely wounded. Three out of four police officers killed in the line of duty are slain with hand guns. Effective legislation must include a ban on sale of hand guns known as Saturday night specials which are unsuitable for sporting purposes;

Democratic Platform of 1972, p.807

A comprehensive fully-funded program is needed to improve juvenile justice, to ensure minimum standards, to expand research into rehabilitation techniques, including alternatives to reform schools and coordinate existing programs for treating juvenile delinquency; and

Democratic Platform of 1972, p.807

The block-grant system of the Law Enforcement Assistance Administration which has produced ineffectiveness, waste and corruption should be eliminated. Funds should go directly to operating agencies that are committed to change and [p.808] improvement in local law enforcement, including agencies concerned with research, rehabilitation, training and treatment.

Narcotic Drugs

Democratic Platform of 1972, p.808

Drug addiction and alcoholism are health problems. Drugs prey on children, destroy lives and communities, force crimes to satisfy addicts, corrupt police and government and finance the expansion of organized crime. A massive national effort, equal to the scale and complexity of the problem, is essential.

Democratic Platform of 1972, p.808

The next Democratic Administration should support:

Democratic Platform of 1972, p.808

A massive law enforcement effort, supported by increased funds and personnel, against the suppliers and distributors of heroin and other dangerous drugs, with increased penalties for major narcotics traffickers;

Democratic Platform of 1972, p.808

Full use of all existing resources to halt the illegal entry of narcotics into the United States, including suspension of economic and military assistance to any country that fails to take appropriate steps to prevent narcotic drugs produced or processed in that country from entering the United States illegally, and increases in customs personnel fighting smuggling of hard drugs;

Democratic Platform of 1972, p.808

An all-out investigative and prosecutory effort against corruption in government and law enforcement. Where corruption exists it is a major factor in permitting criminal activity, especially large-scale narcotic distribution, to flourish. It also destroys respect for the law in all who are conscious of its operation. We are determined that our children—whether in the ghetto or in a suburban high school shall no longer be able to see a pusher protected from prosecution, openly plying his trade;

Democratic Platform of 1972, p.808

Strict regulation and vigorous enforcement of existing quotas regulating production and distribution of dangerous drugs, including amphetamines and barbiturates, to prevent diversion into illegal markets, with legislation for strong criminal penalties against drug manufacturers engaging in illegal overproduction, distribution and importation;

Democratic Platform of 1972, p.808

Expanded research into dangerous drugs and their abuse, focusing especially on heroin addiction among the young and development of effective, non-addictive heroin treatment methods;

Democratic Platform of 1972, p.808

Concentration of law enforcement efforts on major suppliers and distributors, with most individual users diverted into treatment before prosecution;

Democratic Platform of 1972, p.808

Immediate placement in medical or psychiatric treatment, available to any individual drug abuser without fear of disclosure or harassment. Work opportunities should be provided for addicts in treatment by supported work and other programs; and

Democratic Platform of 1972, p.808

Drug education in schools based on fact, not scare tactics to teach young people the dangers of different drugs, and full treatment opportunities for youthful drug abusers. Hard drug trafficking in schools must be met with the strongest possible law enforcement.

Organized and Professional Crime

Democratic Platform of 1972, p.808

We are determined to exert the maximum power and authority of the federal government to protect the many victims who cannot help themselves against great criminal combinations.

Democratic Platform of 1972, p.808

Against the organized criminal syndicates, we pledge an expanded federal enforcement effort; one not restricted to criminals of any particular ethnic group, but which recognizes that organized crime in the United States cuts across all boundaries of race, national origin and class.

Democratic Platform of 1972, p.808

Against white-collar crime, we pledge to enforce the maximum penalties provided by law. Justice cannot survive when, as too often is the case, a boy who steals a television set is sentenced to a long jail term, while a stock manipulator who steals millions is only commanded to sin no more.

Democratic Platform of 1972, p.808

At least where life or personal injury are at stake, we pledge to seek expanded criminal penalties for the violation of federal laws. Employers who violate the worker safety and health laws, or manufacturers who knowingly sell unsafe products or drugs profit from death and injury as knowingly as the common mugger. They deserve equally severe punishment.

Rehabilitation of Offenders

Democratic Platform of 1972, p.808

Few institutions in America are as uniformly condemned and as consistently ignored as our existing prison system. Many prisons that are supposed to rehabilitate and separate, in fact train their inmates for nothing but brutality and a life of further crime. Only when public understanding recognizes that our existing "corrections" system contributes to escalating crime, will we get the [p.809] massive effort necessary for fundamental restructuring.

Democratic Platform of 1972, p.809

Therefore, the Democratic Party commits itself to:

Democratic Platform of 1972, p.809

Restoration, after release, of rights to obtain drivers licenses and to public and private employment, and, after completion of sentence and conditions of parole, restoration of civil rights to vote and hold public office;

Democratic Platform of 1972, p.809

Revision of sentencing procedures and greater use of community-based rehabilitation facilities, especially for juveniles;

Democratic Platform of 1972, p.809

Recognition of the constitutional and human rights of prisoners; realistic therapeutic, vocational, wage-earning, education, alcoholism and drug treatment programs;

Democratic Platform of 1972, p.809

Making correctional personnel an integral part of the rehabilitative process;

Democratic Platform of 1972, p.809

Emergency, educational and work-release furlough programs as an available technique, support for "self-help" programs; and

Democratic Platform of 1972, p.809

Restoration of civil rights to ex-convicts after completion of their sentences, including the right to vote, to hold public office, to obtain drivers' licenses and to public and private employment.

The Quality of Justice

Democratic Platform of 1972, p.809

Justice is not merely effective law enforcement—though that is an essential part of it. Justice, rather, expresses the moral character of a nation and its commitment to the rule of law, to equality of all people before the law.

Democratic Platform of 1972, p.809

The Democratic Party believes that nothing must abridge the faith of the American citizens in their system of law and justice.

Democratic Platform of 1972, p.809

We believe that the quality of justice will be enhanced by:

Democratic Platform of 1972, p.809

Equal treatment for all citizens in the court without fear or favor—corporations as well as individual offenders;

Democratic Platform of 1972, p.809

Swift trials for accused persons;

Democratic Platform of 1972, p.809

Equitable pre-trial release systems and the elimination of plea bargaining abuses;

Democratic Platform of 1972, p.809

Ending subversion of the legal system for political gain in court appointments, in antitrust cases and in administration of law enforcement programs;

Democratic Platform of 1972, p.809

Administering the laws and funding enacted by the Congress;

Democratic Platform of 1972, p.809

Respecting and abiding by Constitutional protections of due process; and

Democratic Platform of 1972, p.809

Abolishing capital punishment, recognized as an ineffective deterrent to crime, unequally applied and cruel and excessive punishment.

VII. Farming and Rural Life

Democratic Platform of 1972, p.809

"A blight hangs over the land caused by misguided farm policies."—Tony Dechant, Sioux City hearing, June 16, 1972.

Democratic Platform of 1972, p.809

For many decades, American agriculture has been the envy of the world; and American farmers and American ranchers have made possible a level of nutrition and abundance for our people that is unrivaled in history, while feeding millions of people abroad.

Democratic Platform of 1972, p.809

The basis for this success—and its promise for the future—lies with the family-type farm. It can and must be preserved, in the best interests of all Americans and the nation's welfare.

Democratic Platform of 1972, p.809

Today, as dwindling income forces thousands of family farmers into bankruptcy each year, the family-type farm is threatened with extinction. American farming is passing to corporate control.

Democratic Platform of 1972, p.809

These trends will benefit few of our people, while hurting many. The dominance of American food production by the large corporation would destroy individual enterprise and links that millions of our people have with the land; and it would lead to higher prices and higher food costs for everyone.

Democratic Platform of 1972, p.809

Major efforts must be made to prevent this disaster for the fabric of rural life, for the American farmer, rancher, farm worker and for the consumer and other rural people throughout our nation;

Democratic Platform of 1972, p.809

Farm income must be improved to enable farmers, ranchers and farm workers to produce a steady and dependable supply of food and fiber products in return for full parity; and

Democratic Platform of 1972, p.809

We must recognize and fulfill the social contract that exists between the family-farm producers of food and the non-farm consumer.

Democratic Platform of 1972, p.809

The Democratic Party understands these urgent needs; the Nixon Administration does not and has failed the American farmer. Its record today is consistent with the Republican record of the past: Low prices, farm surpluses that depress the market and callous disregard for the people in rural America.

Democratic Platform of 1972, p.809

This Administration has sold out agriculture to interests bent on eliminating family-type farmers and bent on delivering agriculture to conglomerates, [p.810] agribusiness giants and rich investors seeking to avoid taxes.

Democratic Platform of 1972, p.810

Its policies have driven farm income as low as 67 per cent of parity, unequalled since the Depression. Between 50,000 and 75,000 farm families are driven off the land each year. Hundreds of thousands of demoralized people are being forced into overcrowded cities, emptying the countryside and bankrupting small business in rural towns and cities.

Democratic Platform of 1972, p.810

The Nixon Administration tries to hide its failures by misleading the people, juggling the parity formula to make prices look higher, distorting reports to make corporate farming look insignificant and trying to break up the U.S. Department of Agriculture and still the farmer's voice.

Democratic Platform of 1972, p.810

The Democratic Party will reverse these disastrous policies, and begin to recreate a rural society of widespread family farming, individual opportunity and private and cooperative enterprises, where honest work will bring a decent income.

Democratic Platform of 1972, p.810

We repudiate the Administration's set aside program, which pushes up the cost of farm programs while building huge surpluses that depress prices.

Democratic Platform of 1972, p.810

We repudiate the Report of the USDA Young Executives Committee which would eliminate the family-type farm by ending price support, loan and purchasing programs on all farm commodities and which would put farm people on the welfare rolls.

Democratic Platform of 1972, p.810

We repudiate a Presidential commission report recommending that future federal investment in many small towns and cities should make their decline merely more bearable rather than reverse it.

Democratic Platform of 1972, p.810

In place of these negative and harmful policies, the Democratic Party pledges itself to take positive and decisive action:

Democratic Platform of 1972, p.810

We will replace the 1970 Farm Act, when it expires next year, with a permanent law to provide fair prices to family type farm and ranch operators. This law will include loans and payments to farmers and effective supply management to raise family farm income to 100 percent of parity, based on the 1910-14 ratios:

Democratic Platform of 1972, p.810

We will resist a price ceiling on agriculture products until farm prices reach 110 per cent of parity, based on the 1910-14 ratios, and we will conduct a consumer education program to inform all Americans of the relationship between the prices of raw commodities and retail prices;

Democratic Platform of 1972, p.810

We will end farm program benefits to farm units larger than family-size; and

Democratic Platform of 1972, p.810

We will work for production adjustment that will assure adequate food and fiber for all our people, including low-income families and individuals whose purchasing power is supplemented with food stamps and that can provide enough commodities for export and for the Food for Peace Program.

Exporting Our Abundance

Democratic Platform of 1972, p.810

For many years, farm exports have made a major contribution to our balances of trade and payments. But this benefit for the entire nation must not be purchased with depressed prices for the producer.

Democratic Platform of 1972, p.810

The Democratic Party will ensure that:

Democratic Platform of 1972, p.810

Prices for commodities sent abroad as exports or aid return the cost of production plus a profit for the American farmer;

Democratic Platform of 1972, p.810

We will negotiate international commodity agreements to include prices that guarantee prices to producers based on cost of production plus a reasonable profit;

Democratic Platform of 1972, p.810

We will require U.S. corporations producing commodities outside the country for consumption here to pay duties high enough to prevent unfair competition for domestic producers;

Democratic Platform of 1972, p.810

We will assure that the same rigid standards for inspection of domestic dairy products and meat will be applied to imports; and

Democratic Platform of 1972, p.810

We will create a strategic reserve of storable commodities, insulated from the market, rotated regularly to maintain quality and stored to the extent possible on farms.

Strengthening the Family Farm

Democratic Platform of 1972, p.810

These policies and actions will not be enough on their own to strengthen the family farm. The Democratic Party also recognizes that farmers and ranchers must be able to gain economic strength in the marketplace by organizing and bargaining collectively for the sale of their products. And they need to be free of unfair competition from monopoly and other restrictive corporate practices. We therefore pledge:

Democratic Platform of 1972, p.810

To remove all obstacles to farm bargaining for the sale of products;

Democratic Platform of 1972, p.810

To extend authority for marketing orders to all farm commodities including those used for processing;

Democratic Platform of 1972, p.811

[p.811] To prohibit farming, or the gaining of monopolistic control of production, on the part of corporations whose resources and income derive primarily from non-farm sources;

Democratic Platform of 1972, p.811

To investigate violations and enforce anti-trust laws in corporation-agriculture-agribusiness interlocks;

Democratic Platform of 1972, p.811

To prohibit corporations and individuals from setting up tax shelters or otherwise engaging in agriculture primarily for the purpose of tax avoidance or tax loss;

Democratic Platform of 1972, p.811

To encourage and support the use of cooperatives and membership associations in all areas of the country, which we pledge to protect from interference, punitive taxation or other hindrances; and

Democratic Platform of 1972, p.811

To assist small rural cooperatives to promote projects in housing, health, social services, marketing, farming, employment and transportation for rural areas with such things as technical assistance and credit.

Guaranteeing Farm People a Voice

Democratic Platform of 1972, p.811

None of these policies can begin to work unless farmers, ranchers, farm workers and other rural people have full rights of participation in our democratic institutions of government. The Democratic Party is committed to seeing that family-type farmers and ranchers will be heard and that they will have ample opportunity to help shape policies affecting agriculture and rural America. To this end:

Democratic Platform of 1972, p.811

We support the appointment of a farmer or rancher as Secretary of Agriculture;

Democratic Platform of 1972, p.811

We oppose all efforts to abolish or dismantle the U.S. Department of Agriculture;

Democratic Platform of 1972, p.811

We will require that decisions relating to dams and other public land-use projects in rural areas involving federal funds be considered at well-publicized public hearings. Government is not now giving adequate protection to individual rights in condemnation procedures. It must set new and better procedures and requirements to, assure individual rights;

Democratic Platform of 1972, p.811

We supported the United Farm Workers in their non-violent efforts to gain collective bargaining recognition and contracts. We also support unemployment insurance compensation benefits, workman's compensation benefits and delivery of health services for farm workers; and

Democratic Platform of 1972, p.811

We support the removal of sugar workers from the custody of the U.S. Department of Agriculture.

Revitalizing Rural America

Democratic Platform of 1972, p.811

Sound rural development must start with improved farm income, which also promotes the prosperity of the small businesses that serve all rural people. But there must be other efforts, as well, to ensure equity for farm and rural people in the American economy. The Democratic Party pledges:

Democratic Platform of 1972, p.811

To support the rural cooperative electrification and telephone programs and to implement rural transportation programs as explained in the section Cities, Communities, Counties and the Environment of this Platform. We will extend the agricultural exemption in the Motor Carriers Act to products and supplies and ensure rural areas an equitable share of Highway Trust Funds;

Democratic Platform of 1972, p.811

To apply general revenue sharing in ways that will permit state and local taxation of family farm lands on the basis of value for farm use rather than value for land speculation;

Democratic Platform of 1972, p.811

To guarantee equal treatment of rural and urban areas in the provision of federal funds for schools, poverty programs, health facilities, housing, highways, air services, pollution control, senior citizen programs and employment opportunities and manpower and training programs;

Democratic Platform of 1972, p.811

To provide loans to aid young farm families and small businesses to get established in rural areas; and

Democratic Platform of 1972, p.811

To ensure agricultural research toward an examination of the social and economic consequences of technology.

Democratic Platform of 1972, p.811

The prime goal of land grant colleges and research should be to help family farms and rural people.

VIII. Foreign Policy

Democratic Platform of 1972, p.811

"The Administration is continuing a war—continuing the killing of Americans and Vietnamese—when our national security is not at stake.

Democratic Platform of 1972, p.811

"It is our duty as the opposition party to point out the Administration's errors and to offer a responsible alternative."—W. Averell Harriman, New York Hearing, June 22, 1972.

Democratic Platform of 1972, p.811

Strength in defense and wisdom in foreign affairs are essential to prosperity and tranquility. In the modern world, there can be no isolationism in reality or policy. But the measure of our nation's rank in the world must be our success in achieving a just and peaceful society at home.

Democratic Platform of 1972, p.812

For the Nixon Administration, foreign policy results [p.812] have fallen short of the attention and the slogans:

Democratic Platform of 1972, p.812

After four years of "Vietnamization," the war in Southeast Asia continues and Nixon's plan is still a secret;

Democratic Platform of 1972, p.812

Vital foreign policy decisions are made without consultation with Congress or our allies; and

Democratic Platform of 1972, p.812

Executive secrecy runs wild with unparalleled efforts to intimidate the media and suppress those who seek to put a different view before the American people.

Democratic Platform of 1972, p.812

The next Democratic Administration should:

Democratic Platform of 1972, p.812

End American participation in the war in Southeast Asia;

Democratic Platform of 1972, p.812

Re-establish control over military activities and reduce military spending, where consistent with national security;

Democratic Platform of 1972, p.812

Defend America's real interests and maintain our alliances, neither playing world policeman nor abandoning old and good friends;

Democratic Platform of 1972, p.812

Not neglect America's relations with small third-world nations in placing reliance to great power relationships;

Democratic Platform of 1972, p.812

Return to Congress, and to the people, a meaningful role in decisions on peace and war; and

Democratic Platform of 1972, p.812

Make information public, except where real national defense interests are involved.

Vietnam

Democratic Platform of 1972, p.812

Nothing better describes the need for a new American foreign policy than the fact that now, as for the past seven years, it begins with the war in Vietnam.

Democratic Platform of 1972, p.812

The task now is still to end the war, not to decide who is to blame for it. The Democratic Party must share the responsibility for this tragic war. But, elected with a secret plan to end this war, Nixon's plan is still secret, and we—and the Vietnamese—have had four more years of fighting and death.

Democratic Platform of 1972, p.812

It is true that our involvement on the ground has been reduced. Troops are coming home. But the war has been extended in Laos and Cambodia; the bombing of North Vietnam has been expanded to levels of destruction undreamed of four years ago; North Vietnam has been blockaded; the number of refugees increases each day, and the Secretary of Defense warns us of still further escalation.

Democratic Platform of 1972, p.812

All this has accomplished nothing except to prolong the war. The hollowness of "Vietnamization"—a delusive slogan seeming to offer cheap victory—has been exposed by the recent offensive. The Saigon Government, despite massive U.S. support, is still not viable. It is militarily ineffective, politically corrupt and economically near collapse. Yet it is for this regime that Americans still die, and American prisoners still rot in Indo-China camps.

Democratic Platform of 1972, p.812

The plight of these American prisoners justly arouses the concern of all Americans. We must insist that any resolution of the war include the return of all prisoners held by North Vietnam and other adversary forces and the fullest possible accounting for the missing. With increasing lack of credibility, the Nixon Administration has sought to use the prisoners of war as an excuse for its policies. It has refused to make the simple offer of a definite and final end to U.S. participation in the war, in conjunction with return of all U.S. prisoners.

Democratic Platform of 1972, p.812

The majority of the Democratic Senators have called for full U.S. withdrawal by October 1, 1972. We support that position. If the war is not ended before the next Democratic Administration takes office, we pledge, as the first order of business, an immediate and complete withdrawal of all U.S. forces in Indo-China. All U.S. military action in Southeast Asia will cease. After the end of U.S. direct combat participation, military aid to the Saigon Government, and elsewhere in Indo-China, will be terminated.

Democratic Platform of 1972, p.812

The U.S. will no longer seek to determine the political future of the nations of Indo-China. The issue is not whether we will depose the present South Vietnamese Government, rather when we will cease insisting that it must be the core of any political settlement. We will do what we can to foster an agreement on an acceptable political solution but we recognize that there are sharp limits to our ability to influence this process, and to the importance of the outcome to our interest.

Democratic Platform of 1972, p.812

Disengagement from this terrible war will not be a "defeat" for America. It will not imply any weakness in America's will or ability to protect its vital interests from attack. On the contrary, disengagement will enable us to heal domestic diversions and to end the distortion of our international priorities which the war has caused.

Democratic Platform of 1972, p.812

A Democratic Administration will act to ease the hard transitions which will come with the end of this war. We pledge to offer to the people of Vietnam humanitarian assistance to help them repair the ravages of 30 years of war to the economy [p.813] and to the people of that devastated land.

Democratic Platform of 1972, p.813

To our own people, we pledge a true effort to extend the hand of reconciliation and assistance to those most affected by the war.

Democratic Platform of 1972, p.813

To those who have served in this war, we pledge a full G.I. Bill of Rights, with benefits sufficient to pay for an education of the veteran's choice, job training programs and the guarantee of employment and the best medical care this country can provide, including a full program of rehabilitation for those who have returned addicted to dangerous drugs. To those who for reasons of conscience refused to serve in this war and were prosecuted or sought refuge abroad, we state our firm intention to declare an amnesty, on an appropriate basis, when the fighting has ceased and our troops and prisoners of war have returned.

Military Policy

Democratic Platform of 1972, p.813

We propose a program of national defense which is both prudent and responsible, which will retain the confidence of our allies and which will be a deterrent to potential aggressors.

Democratic Platform of 1972, p.813

Military strength remains an essential element of a responsible international policy. America must have the strength required for effective deterrence.

Democratic Platform of 1972, p.813

But military defense cannot be treated in isolation from other vital national concerns. Spending for military purposes is greater by far than federal spending for education, housing, environmental protection, unemployment insurance or welfare. Unneeded dollars for the military at once add to the tax burden and pre-empt funds from programs of direct and immediate benefit to our people. Moreover, too much that is now spent on defense not only adds nothing to our strength but makes us less secure by stimulating other countries to respond.

Democratic Platform of 1972, p.813

Under the Nixon stewardship of our defense policy, lack of sound management controls over defense projects threatens to price us out of an adequate defense. The reaction of the Defense Department to exposure of cost overruns has been to strike back at the critics instead of acting to stop the waste.

Democratic Platform of 1972, p.813

Needless projects continue and grow, despite evidence of waste, military ineffectiveness and even affirmative danger to real security. The "development" budget starts pressures for larger procurement budgets in a few years. Morale and military effectiveness deteriorate as drugs, desertion and racial hatreds plague the armed forces, especially in Vietnam.

Democratic Platform of 1972, p.813

The Democratic Party pledges itself to maintain adequate military forces for deterrence and effective support of our international position. But we will also insist on the firm control of specific costs and projects that are essential to ensure that each defense dollar makes a real contribution to national security. Specifically, a Democratic Administration should:

Democratic Platform of 1972, p.813

Plan military budgets on the basis of our present needs and commitments, not past practices or force levels;

Democratic Platform of 1972, p.813

Stress simplicity and effectiveness in new weapons and stop goldplating and duplication which threatens to spawn a new succession of costly military white elephants; avoid commitment to new weapons unless and until it becomes clear that they are needed;

Democratic Platform of 1972, p.813

Reject calls to use the SALT agreement as an excuse for wasteful and dangerous acceleration of our military spending;

Democratic Platform of 1972, p.813

Reduce overseas bases and forces; and

Democratic Platform of 1972, p.813

Rebuild the morale and military tradition of our armed forces through creative programs to combat drug abuse, racial tensions and eroded pride in service. We will support reforms of the conditions of military life to restore military service as an attractive career for men and women from all segments of our society.

Democratic Platform of 1972, p.813

By these reforms and this new approach to budgeting, coupled with a prompt end to U.S. involvement in the war in Indo-China, the military budget can be reduced substantially with no weakening of our national security. Indeed a leaner, better-run system will mean added strength, efficiency and morale for our military forces.

Democratic Platform of 1972, p.813

Workers and industries now dependent on defense spending should not be made to pay the price of altering our priorities. Therefore, we pledge reconversion policies and government resources to assure jobs and new industrial opportunities for all those adversely affected by curtailed defense spending.

Draft

Democratic Platform of 1972, p.813

We urge abolition of the draft.

Disarmament and Arms Control

Democratic Platform of 1972, p.813

The Democratic Party stands for keeping America strong; we reject the concept of unilateral [p.814] reductions below levels needed for adequate military defense. But effective international arms control and disarmament do not threaten American security; they enhance it.

Democratic Platform of 1972, p.814

The last Democratic Administration took the lead in pressing for U.S.-Soviet agreement on strategic arms limitation. The recent SALT agreement is an important and useful first step.

Democratic Platform of 1972, p.814

The SALT agreement should be quickly ratified and taken as a starting point for new agreements. It must not be used as an excuse for new "bargaining chip" military programs or the new round of the arms race.

Democratic Platform of 1972, p.814

The next Democratic Administration should: Carry on negotiations to expand the initial SALT agreement to other areas, especially to seek limits to the qualitative arms race and to begin reducing force levels on each side;

Democratic Platform of 1972, p.814

Seek a comprehensive ban on all nuclear testing, verified, as SALT will be, by national means;

Democratic Platform of 1972, p.814

Press for wide adherence to the Non-Proliferation Treaty, signed in 1968, and for extension of the concept of nuclear free regions;

Democratic Platform of 1972, p.814

Seek ratification of the Protocol on Chemical Warfare without reservations;

Democratic Platform of 1972, p.814

In concert with our allies, pursue with the U.S.S.R. mutual force reductions in Europe; and

Democratic Platform of 1972, p.814

Widen the range of arms control discussions to include new subjects, such as mutual budget cuts, control of arms transfer to developing countries, restrictions on naval force deployments and other measures to limit conventional forces.

U.S. and the World Community

Democratic Platform of 1972, p.814

A new foreign policy must be adequate for a rapidly changing world. We welcome the opportunity this brings for improved relations with the U.S.S.R. and China. But we value even more America's relations with our friends and allies in the Hemisphere, in Western Europe, Japan and other industrialized countries, Israel and the Middle East, and in the developing nations of Asia and Africa. With them, our relations must be conducted on a basis of mutual trust and consultation, seeking to strengthen our ties and to resolve differences on a basis of mutual advantage. Throughout the world, the focus of our policy should be a commitment to peace, self-determination, development, liberty and international cooperation, without distortion in favor of military points of view.

Democratic Platform of 1972, p.814

Europe.—Europe's increasing economic and political strength and the growing cooperation and self-confidence of its people have made the Atlantic Alliance a partnership of equals. If we face the challenge of this new relationship, our historic partnership can endure.

Democratic Platform of 1972, p.814

The next Democratic Administration should: Reduce U.S. troop levels in Europe in close consultation with our allies, as part of a program to adjust NATO to changed conditions. What is essential in our relations with the other NATO nations is not a particular troop level, but our continued commitment to collective defense;

Democratic Platform of 1972, p.814

Pledge to work in greater cooperation with the European economic communities to ensure that integration in Europe does not serve as a formula for discrimination against American goods and enterprises;

Democratic Platform of 1972, p.814

Cease American support for the repressive Greek military government; and

Democratic Platform of 1972, p.814

Make the voice of the United States heard in Northern Ireland against violence and terror and against the discrimination, repression and deprivation which brought about that awful civil strife.

Democratic Platform of 1972, p.814

We welcome every improvement in relations between the United States and the Soviet Union and every step taken toward reaching vital agreements on trade and other subjects. However, in our pursuit of improved relations, America cannot afford to be blind to the continued existence of serious differences between us. In particular, the United States should, by diplomatic contacts, seek to mobilize world opinion to express concern at the denial to the oppressed peoples of Eastern Europe and the minorities of the Soviet Union, including the Soviet Jews, of the right to practice their religion and culture and to leave their respective countries.

Democratic Platform of 1972, p.814

Middle East.—The United States must be unequivocally committed to support of Israel's right to exist within secure and defensible boundaries. Progress toward a negotiated political settlement in the Middle East will permit Israel and her Arab neighbors to live at peace with each other, and to turn their energies to internal development. It will also free the world from the threat of the explosion of Mid-East tensions into world war. In working toward a settlement, our continuing pledge to the security and freedom of Israel must be both clear and consistent.

Democratic Platform of 1972, p.814

The next Democratic Administration should: Make and carry out a firm, long-term public [p.815] commitment to provide Israel with aircraft and other military equipment in the quantity and sophistication she needs to preserve her deterrent strength in the face of Soviet arsenaling of Arab threats of renewed war;

Democratic Platform of 1972, p.815

Seek to bring the parties into direct negotiations toward a permanent political solution based on the necessity of agreement on secure and defensible national boundaries;

Democratic Platform of 1972, p.815

Maintain a political commitment and a military force in Europe and at sea in the Mediterranean ample to deter the Soviet Union from putting unbearable pressure on Israel.

Democratic Platform of 1972, p.815

Recognize and support the established status of Jerusalem as the capital of Israel, with free access to all its holy places provided to all faiths. As a symbol of this stand, the U.S. Embassy should be moved from Tel Aviv to Jerusalem; and

Democratic Platform of 1972, p.815

Recognize the responsibility of the world community for a just solution to the problems of the Arab and Jewish refugees.

Democratic Platform of 1972, p.815

Africa.—The central feature of African politics today is the struggle against racism and colonialism in Southern Africa. There should be no mistake about which side we are on. We stand for full political, civil and economic rights for black and other nonwhite peoples in Southern Africa. We are against white-minority rule. We should not underwrite a return to the interventionism of the past. But we can end United States complicity with such governments.

Democratic Platform of 1972, p.815

The focus of America's concern with Africa must be on economic and social development. Economic aid to Africa, without political conditions, should be expanded, and African states assured an adequate share of the aid dollar. Military aid and aid given for military purposes should be sharply reduced.

Democratic Platform of 1972, p.815

All military aid to Portugal should be stopped and the Nixon $435 million deal for unneeded Azores bases should be canceled.

Democratic Platform of 1972, p.815

U.N. sanctions against the illegal racist regime in Southern Rhodesia should be supported vigorously, especially as they apply to chrome imports.

Democratic Platform of 1972, p.815

The U.S. should give full support to U.N. assertion of its control over Nambia (South West Africa), in accordance with the World Court's ruling.

Democratic Platform of 1972, p.815

The U.S. should make clear its opposition to the radical totalitarianism of South Africa. The U.S. government should act firmly to press U.S. businesses in South Africa to take measures for the fullest possible justice for their black employees. Blacks should be assigned at all levels to U.S. offices in South Africa, and throughout Africa. The South African sugar quota should be withdrawn.

Democratic Platform of 1972, p.815

No U.S. company or its subsidiary should be given U.S. tax credit for taxes paid to white-minority-ruled countries of Africa.

Democratic Platform of 1972, p.815

Japan.—Our relations with Japan have been severely strained by a series of "Nixon shocks." We must restore our friendship with Japan, the leading industrial nation of Asia and a growing world power. There are genuine issues between us and Japan in the economic area, but accommodation of trade problems will be greatly eased by an end to the Nixon Administration's calculated insensitivity to Japan and her interests, marked by repeated failures to afford advance warnings, much consultation over sudden shifts in U.S. diplomatic and economic policy that affect Japan.

Democratic Platform of 1972, p.815

India, Pakistan and Bangla Desh.—A Democratic Administration should work to restore the damage done to America's friendship with India as a result of the Administration's folly in "tilting" in favor of Pakistan and against Bangla Desh. The alienation by the Nixon Administration of India, the world's largest democracy, and the continued suspension of economic aid to India have seriously damaged the status of the United States in Asia. We pledge generous support for the essential work of reconstruction and reconciliation in Bangla Desh. At the same time, we will maintain friendship and developmental assistance to the "new" Pakistan which has emerged from these sad events.

Democratic Platform of 1972, p.815

China.—The beginnings of a new U.S.-China relationship are welcome and important. However, so far, little of substance has changed, and the exaggerated secrecy and rhetoric of the Nixon Administration have produced unnecessary complications in our relationship with our allies and friends in Asia and with the U.S.S.R.

Democratic Platform of 1972, p.815

What is needed now is serious negotiation on trade, travel exchanges and progress on more basic issues. The U.S. should take the steps necessary to establish regular diplomatic relations with China.

Democratic Platform of 1972, p.815

Other Asian Countries.—The future of Asia will be determined by its people, not by the United States. We should support accommodation and cooperation among all Asian countries and continue to assist in economic development.

Democratic Platform of 1972, p.816

[p.816] Canada.—A Democratic Administration should restore close U.S.-Canadian cooperation and communication, respecting Canada's nationhood and pride. In settling economic issues, we should not compromise our interests; but seek mutually advantageous and equitable solutions. In areas such as environmental protection and social policies, the Americans and Canadians share common problems and we must act together.

Democratic Platform of 1972, p.816

Latin America.—The Good Neighbor policy of Franklin Roosevelt and the Alliance for Progress of John Kennedy set still-living goals-insulation from external political conflicts, mutual non-interference in internal affairs, and support for political liberty, social justice and economic progress. The Nixon Administration has lost sight of these goals, and the result is hostility and suspicion of the U.S. unmatched in generations.

Democratic Platform of 1972, p.816

The next Democratic Administration should: Re-establish an inter-American alliance of equal sovereign nations working cooperatively for development;

Democratic Platform of 1972, p.816

Sharply reduce military assistance throughout the area;

Democratic Platform of 1972, p.816

Strive to deepen the exchange of people and ideas within the Hemisphere;

Democratic Platform of 1972, p.816

Take account of the special claims of democratically-elected governments on our resources and sympathy;

Democratic Platform of 1972, p.816

Pursue a policy of non-intervention by military means in domestic affairs of Latin American nations;

Democratic Platform of 1972, p.816

Recognize that, while Cuba must not be permitted to become a foreign military base, after 13 years of boycott, crisis and hostility, the time has come to re-examine our relations with Cuba and to seek a way to resolve this cold war confrontation on mutually acceptable terms; and

Democratic Platform of 1972, p.816

Re-establish a U.S.-Mexico border commission, with Mexican-American representatives, to develop a comprehensive program to desalinate and eradicate pollution of the Colorado River and other waterways flowing into Mexico, and conduct substantial programs to raise the economic level on both sides of the border. This should remove the economic reasons which contribute to illegal immigration and discourage run-away industries, in addition, language requirements for citizenship should be removed.

Democratic Platform of 1972, p.816

The United Nations.—The U.N. cannot solve all the great political problems of our time, but in an increasingly interdependent world, a world body is essential and its potential must be increasingly relied upon.

Democratic Platform of 1972, p.816

The next Democratic Administration should: Re-establish the U.N. as a key forum for international activity, and assign representatives with the highest qualification for diplomacy;

Democratic Platform of 1972, p.816

Give strong executive branch leadership for U.S. acceptance of its obligations for U.N. financing, while renegotiating arrangement for sharing U.N. costs;

Democratic Platform of 1972, p.816

Abide by the binding U.N. Security Council decision on Rhodesia sanctions, and support U.N. peace-keeping efforts;

Democratic Platform of 1972, p.816

Work for development of enforceable world law as a basis for peace, and endorse repeal of the Connally Reservation on U.S. acceptance of World Court jurisdiction; and

Democratic Platform of 1972, p.816

Work to involve the U.N. increasingly on the complex technical and social problems such as pollution, health, communication, technology and population policy, which are worldwide in scope and demand a worldwide approach, and help provide the means for these U.N. efforts and for U.N. economic development functions.

International Economic Policy

Democratic Platform of 1972, p.816

In a prosperous economy, foreign trade has benefits for virtually everyone. For the consumer, it means lower prices and a wider choice of goods. For the worker and the businessman, it means new jobs and new markets. For nations, it means greater efficiency and growth.

Democratic Platform of 1972, p.816

But in a weak economy—with over five million men and women out of work—foreign imports bring hardships to many Americans. The automobile or electrical worker, the electronics technician, the small businessman—for them, and millions of others, foreign competition coinciding with a slack economy has spelled financial distress. Our national commitment to liberal trade policies takes its toll when times are bad, but yields its benefits when the economy is fully employed.

Democratic Platform of 1972, p.816

The Democratic Party proposes no retreat from this commitment. Our international economic policy should have these goals: To expand jobs and business opportunities in this country and to establish two-way trade relations with other nations. To do this, we support the following policies:

Democratic Platform of 1972, p.816

End the high-unemployment policy of the Nixon Administration. When a job is available for everyone who wants to work, imports will no [p.817] longer be a threat. Full employment is a realistic goal, it is a goal which has been attained under Democratic Administrations, and it is a goal we intend to achieve again;

Democratic Platform of 1972, p.817

Adopt broad programs to ease dislocations and relieve the hardship of workers injured by foreign competition;

Democratic Platform of 1972, p.817

Seek higher labor standards in the advanced nations where productivity far outstrips wage rates, thus providing unfair competition to American workers and seek to limit harmful flows of American capital which exploit both foreign and American workers;

Democratic Platform of 1972, p.817

Adhere to liberal trade policies, but we should oppose actions and policies which harm American workers through unfair exploitation of labor abroad and the encouragement of American capital to run after very low wage opportunities for quick profits that will damage the economy of the United States and further weaken the dollar;

Democratic Platform of 1972, p.817

Negotiate orderly and reciprocal reductions of trade barriers to American products. Foreign nations with access to our markets should no longer be permitted to fence us out of theirs;

Democratic Platform of 1972, p.817

Support reform of the international monetary system. Increased international reserves, provision for large margins in foreign exchange fluctuations and strengthened institutions for the coordination of national economic policies can free our government and others to achieve full employment;

Democratic Platform of 1972, p.817

Support efforts to promote exports of American farm products; and

Democratic Platform of 1972, p.817

Develop ground rules for pollution controls with our industrialized trading partners so that no country gains competitive advantage at the expense of the environment.

Developing Nations

Democratic Platform of 1972, p.817

Poverty at home or abroad is part of a common problem. Great and growing income gaps among nations are no more tenable than such gaps among groups in our own country. We should remain committed to U.S. support for economic and social development of countries in need. Old ways of providing aid must be revised—to reduce U.S. involvement in administration; to encourage other nations to contribute jointly with us. But funding must be adequate to help poor countries achieve accelerated rates of growth.

Democratic Platform of 1972, p.817

Specifically, the next Democratic Administration should support: Provision of more assistance through international organizations, along with measures to strengthen the development agencies of the U.N.; A curtailment of military aid;

Democratic Platform of 1972, p.817

Improved access to the markets of industrial nations for the products of the developing countries;

Democratic Platform of 1972, p.817

A greater role in international monetary affairs for poor countries; in particular distributing the new Special Drawing Rights in support of the poor countries; and

Democratic Platform of 1972, p.817

A fair share for poor countries in the resources of the seabeds.

The Methods and Structures of U.S. Foreign and Military Policy

Democratic Platform of 1972, p.817

The needed fundamental reordering of U.S. foreign and military policy calls for changes in the structure of decision-making, as well as in particular policies. This means:

Democratic Platform of 1972, p.817

Greater sharing with Congress of real decisions on issues of war and peace, and providing Congress with the information and resources needed for a more responsible role;

Democratic Platform of 1972, p.817

More honest information policies, beginning with a fundamental reform of the document classification system and including regular press conferences by the President, his cabinet and senior advisors;

Democratic Platform of 1972, p.817

Ending the present drastic overbalance in favor of military opinion by redefining the range of agencies and points of view with a proper claim to be heard on foreign and military policies;

Democratic Platform of 1972, p.817

Subjecting the military budget to effective civilian control and supervision;

Democratic Platform of 1972, p.817

Establishing effective executive control and legislative oversight of the intelligence agencies;

Democratic Platform of 1972, p.817

Ending political domination of USIA's reporting and Peace Corps dedication and, in general, making it clear that the White House understands the crucial distinction between dissent and disloyalty; and

Democratic Platform of 1972, p.817

Urging the appointment of minority Americans to top positions of ambassadors and diplomats, to let the world know that America is a multi-racial nation and proud of it.

IX. The People and the Government

Democratic Platform of 1972, p.817

"Our people are dispirited because there seems to be no way by which they can call to office a government which will cut the ties to the past, meeting the challenge of leadership and begin a new era of bold action.

Democratic Platform of 1972, p.818

[p.818] "Bold action by innovative government—responsive to the people's needs and desires—is essential to the achievement of our national hopes."—Leonard Woodcock, President, United Auto Workers, New York Hearing, June 22, 1972.

Democratic Platform of 1972, p.818

Representative democracy fails when citizens cannot know:

Democratic Platform of 1972, p.818

When public officials ignore or work against the principles of due process;

Democratic Platform of 1972, p.818

How their public officials conduct the public's business;

Democratic Platform of 1972, p.818

Whether public officials have personal financial stakes in the very matters they are legislating, administering or enforcing; and

Democratic Platform of 1972, p.818

What special interest pressures are being exerted on public officials by lobbyists.

Democratic Platform of 1972, p.818

Today, it is imperative that the Democratic Party again take the lead in reforming those practices that limit the responsiveness of government and remove it from the control of the people.

Seniority

Democratic Platform of 1972, p.818

The seniority system is one of the principal reasons that party platforms—and parties themselves—have lost meaning and importance in our political life. Seniority has weakened Congress as an effective and responsive institution in a changing society. It has crippled effective Congressional leadership and made it impossible to present and enact a coherent legislative program. It has permitted the power of the Democratic majority to be misused and abused. It has stifled initiative and wasted the talents of many members by making length of service the only criterion for selection to the vital positions of Congressional power and leadership.

Democratic Platform of 1972, p.818

We, therefore, call on the Democratic Members of the Congress to use the powers inherent in their House and Senate caucuses to implement the policies and programs of the National Democratic Party. It is specifically not intended that Democratic members be directed how to vote on issues on the floor. But, in order that they be responsive to broad party policies and programs, we nonetheless call upon Members of Congress to:

Democratic Platform of 1972, p.818

Choose committee chairmen as provided in existing caucus rules and procedures, but by separate open ballot; chair-people should be chosen who will carry out party policies and programs which come within the jurisdiction of their committees;

Democratic Platform of 1972, p.818

Assure that Democratic programs and policies receive full and fair consideration and are brought to a vote in each house;

Democratic Platform of 1972, p.818

Discipline committee members, including chair-people, who refuse to comply with caucus instructions regarding the reporting of legislation from their committees; and

Democratic Platform of 1972, p.818

Withhold any seniority benefits from a Member of Congress who fails to overtly identify with the Democratic organization in his state which is recognized by the National Democratic Party.

Secrecy

Democratic Platform of 1972, p.818

Public business should be transacted publicly, except when national security might be jeopardized.

Democratic Platform of 1972, p.818

To combat secrecy in government, we call on the Democratic Members of Congress and state legislatures to:

Democratic Platform of 1972, p.818

Enact "open meetings" legislation, barring the practice of conducting the public business behind closed doors. This should include so-called mark-up sessions by legislative committees, but should allow for exceptions involving national security and invasions of privacy. To the extent possible, the same principle should apply to the Executive Branch;

Democratic Platform of 1972, p.818

Assure that all committee and floor votes are taken in open session, recorded individually for each legislator; record caucus votes, and make all of these available to the public;

Democratic Platform of 1972, p.818

Urge reservation of executive privilege for the President alone;

Democratic Platform of 1972, p.818

Urge that the judgment in the U.S. Senate in a contested election case be rendered in open Senate session;

Democratic Platform of 1972, p.818

Immediately strengthen the Federal Freedom of Information Act. Congress should improve its oversight of Executive secrecy by requiring federal agencies to report annually on every refusal to grant information requested under the Act. Citizens should have full recourse to the courts to deal with violation or circumvention of the Act. It should be amended to allow courts to review the reasonableness of a claim of executive privilege; and

Democratic Platform of 1972, p.818

Administer the security system so as to limit the number of officials who can make a document secret, and provide for frequent declassification of documents. Congress should be given the means to obtain documents necessary to fulfill its responsibilities.

Democratic Platform of 1972, p.819

We also call on the Democratic Members of [p.819] the House of Representatives to take action through their caucus to end the "closed rule," which is used to prevent amendments and votes on vital tax matters and other important issues, and we call on the Democratic Members of the Senate to liberalize the cloture rule, which is used to prevent votes in that body, so that after full and extensive debate majority rule can prevail.

Administrative Agencies

Democratic Platform of 1972, p.819

There is, among more and more citizens, a growing revolt against large, remote and impersonal government agencies that are not responsive to human needs. We pledge to build a representative process into the Executive Branch, so that individuals affected by agency programs can be involved in formulating, implementing and revising them. This requires a basic restructuring of procedures—public hearings before guidelines and regulations are handed down, the processing of citizen complaints, the granting of citizen standing and the recovery of litigation fees for those who win suits against the government.

Democratic Platform of 1972, p.819

We recommend these specific changes in the rule making and adjudication process of the federal government:

Democratic Platform of 1972, p.819

There should be no non-written communication between an agency and outside parties about pending decisions. All written communications should promptly be made a part of the public record;

Democratic Platform of 1972, p.819

All communications between government employees and outside parties about possible future action should be made a part of the public record;

Democratic Platform of 1972, p.819

All government employees involved in rule-making and adjudication should be subject to conflict of interest laws;

Democratic Platform of 1972, p.819

The Justice Department should make available to the public any consent decree 90 days prior to its submission to court, to allow any interested party to comment on it to the Court; and The Justice Department should report to Congress each year, to explain its action on major suits.

Democratic Platform of 1972, p.819

In addition, we must more effectively protect consumer rights before the government. The consumer must be made an integral part of any relationship between government and institutions (public or private) at every level of proceedings whether formal or informal.

Democratic Platform of 1972, p.819

A Democratic Administration would instruct all federal agencies to identify American Indians, Asian Americans and Spanish-speaking Americans in separate categories in all statistical data that note racial or ethnic heritage. Only in this way can these Americans be assured their rights under federal programs.

Democratic Platform of 1972, p.819

Finally, in appropriate geographical areas, agencies of the federal government should be equipped to conduct business in such a fashion that Spanish-speaking citizens should not be hampered by language difficulties.

Conflict of Interest

Democratic Platform of 1972, p.819

The public interest must not be sacrificed to personal gain. Therefore, we call for legislation requiring full disclosure of the financial interests of Members of Congress and their staffs and high officials of the Executive Branch and independent agencies. Disclosure should include business directorships held and associations with individuals or firms lobbying or doing business with the government.

Democratic Platform of 1972, p.819

Further, Congress should forbid its members to engage in the practice of law or to retain association with a law firm while in office. Legislators serving on a committee whose jurisdiction includes matters in which they have financial interest should divest themselves of the interest or resign from the committee.

Campaign Finance

Democratic Platform of 1972, p.819

A total overhaul of the present system of financing elections is a national necessity. Candidates should not be dependent on large contributors who seek preferential treatment. We call for Congressional action to provide for public financing of more election costs by 1974. We recommend a statutory ceiling on political gifts at a reasonable limit. Publicly owned communications facilities such as television, radio and the postal service should be made available, but on a limited basis, to candidates for federal Office.

Regulation of Lobbyists

Democratic Platform of 1972, p.819

We also call upon Congress to enact rigorous lobbying disclosure legislation, to replace the present shockingly ineffective law. There should be full disclosure of all organized lobbying—including names of lobbyists, identity of the source of funds, total receipts and expenditures, the nature of the lobbying operation and specific target issues or bills. Reports should be filed at least [p.820] quarterly, with criminal penalties for late filing. Lobbying regulations should cover attempts to influence both legislative and Executive Branch decisions. The legislation should specifically cover lobbying appeals in subscription publications.

Democratic Platform of 1972, p.820

As a safeguard, we urge the availability of subpoena and cease-and-desist powers to enforce these conflict of interest, campaign financing and lobby disclosure laws. We also affirm the citizens' right to seek enforcement through the courts, should public officials fail in enforcement.

Taking Part in the Political Process

Democratic Platform of 1972, p.820

The Presidential primary system today is an unacceptable patchwork. The Democratic Party supports federal laws that will embody the following principles:

Democratic Platform of 1972, p.820

Protect the opportunity for less-known candidates to build support;

Democratic Platform of 1972, p.820

Establish uniform ground rules; Reduce the cost of primary campaigns; Promote maximum voter turnout; Ensure that issues are clarified;

Democratic Platform of 1972, p.820

Foster the selection of nominees with broad popular support to assure the continued viability of the two party system;

Democratic Platform of 1972, p.820

Ensure every citizen the ability to take part in the Presidential nomination process; and

Democratic Platform of 1972, p.820

Equalize the ability of people from all income levels to participate in the political decision-making processes of the Democratic Party, by providing financial assistance through party funds for delegates, alternates and standing committee members to state and national conventions.

Democratic Platform of 1972, p.820

We also call for full and uniform enforcement of the Voting Rights Act of 1965. But further steps are needed to end all barriers to participation in the political process:

Democratic Platform of 1972, p.820

Universal voter registration by post card; Bilingual means of registration and voting; Bilingual voter education programs; Liberalized absentee voting;

Democratic Platform of 1972, p.820

Lower minimum age requirements for service in the Senate and House of Representatives;

Democratic Platform of 1972, p.820

Minimum residency requirements of 30 days for all elections, including primaries;

Democratic Platform of 1972, p.820

Student voting where they attend schools; Study and review of the Hatch Act, to see what can be done to encourage good citizenship and reasonable participation by government employees;

Democratic Platform of 1972, p.820

Full home rule for the District of Columbia, including an elected mayor-city council government, broad legislative power, control over appointments, automatic federal payment and voting representation in both Houses of Congress; No discriminatory districting;

Democratic Platform of 1972, p.820

We favor a Constitutional change to abolish the Electoral College and to give every voter a direct and equal voice in Presidential elections. The amendment should provide for a run-off election, if no candidate received more than 40 percent of the popular vote;

Democratic Platform of 1972, p.820

Early ratification of the equal rights amendment to the Constitution;

Democratic Platform of 1972, p.820

Appointment of women to positions of top responsibilities in all branches of the federal government, to achieve an equitable ratio of women and men;

Democratic Platform of 1972, p.820

Inclusion of women advisors in equitable ratios on all government studies, commissions and hearings; and

Democratic Platform of 1972, p.820

Laws authorizing federal grants on a matching basis for financing state commissions of the status of women.

Democratic Platform of 1972, p.820

These changes in themselves will not solve the problems of government for all time. As our society changes, so must the ways we use to make government more responsive to the people. Our challenge, today, as always, is to ensure that politics and institutions belong in spirit and in practice to all the people of our nation. In 1972, Americans are deciding that they want their country back again.

Republican Platform of 1972

Title: Republican Platform of 1972

Author: Republican Party

Date: 1972

Source: National Party Platforms, p.847

Preamble

Republican Platform of 1972, p.847

This year our Republican Party has greater reason than ever before for pride in its stewardship.

Republican Platform of 1972, p.847

When our accomplishments are weighed—when our opponents' philosophy, programs and candidates are assessed—we believe the American people will rally eagerly to the leadership which since January 1969 has brought them a better life in a better land in a safer world.

Republican Platform of 1972, p.847

This political contest of 1972 is a singular one. No Americans before have had a clearer option. The choice is between going forward from dramatic achievements to predictable new achievements, or turning back toward a nightmarish time in which the torch of free America was virtually snuffed out in a storm of violence and protest. It is so easy to forget how frightful it was. There was Vietnam—so bloody, so costly, so bitterly divisive—a war in which more than a half-million of America's sons had been committed to battle—a war, it seemed, neither to be won nor lost, but only to be endlessly fought—a war emotionally so tormenting as almost to obliterate America's other worldly concerns.

Republican Platform of 1972, p.847

And yet, as our eyes were fixed on the carnage in Asia, in Europe our alliance had weakened. The Western will was dividing and ebbing. The isolation of the People's Republic of China with one-fourth of the world's population, went endlessly on.

Republican Platform of 1972, p.847

At home our horrified people watched our cities burn, crime burgeon, campuses dissolve into chaos. A mishmash of social experimentalism, producing such fiscal extravaganzas as the abortive war on poverty, combined with war pressures to drive up taxes and balloon the cost of living. Working men and women found their living standards fixed or falling, the victim of inflation. Nationwide, welfare skyrocketed out of control.

Republican Platform of 1972, p.847

The history of our country may record other crises more costly in material goods, but none so demoralizing to the American people. To millions of Americans it seemed we had lost our way. So it was when our Republican Party came to power.

Republican Platform of 1972, p.847

Now, four years later, a new leadership with new policies and new programs has restored reason and order and hope. No longer buffeted by internal violence and division, we are on course in calmer seas with a sure, steady hand at the helm. A new spirit, buoyant and confident, is on the rise in our land, nourished by the changes we have made. In the past four years:

Republican Platform of 1972, p.847

We have turned toward concord among all Americans;

Republican Platform of 1972, p.847

We have turned toward reason and order;

Republican Platform of 1972, p.847

We have turned toward government responding sensitively to the people's hopes and needs;

Republican Platform of 1972, p.847

We have turned toward innovative solutions to the nation's most pressing problems;

Republican Platform of 1972, p.847

We have turned toward new paths for social progress—from welfare rolls to payrolls; from wanton pollution to vigorous environmental protection;

Republican Platform of 1972, p.847

We have moved far toward peace: withdrawal of our fighting men from Vietnam, constructive new relationships with the Soviet Union and the People's Republic of China, the nuclear arms race checked, the Mid-East crisis dampened, our alliances revitalized.

Republican Platform of 1972, p.847

So once again the foreign policy of the United States is on a realistic footing, promising us a nation [p.848] secure in a full generation of peace, promising the end of conscription, promising a further allocation of resources to domestic needs. It is a saga of exhilarating progress.

Republican Platform of 1972, p.848

We have come far in so short a time. Yet, much remains to be done.

Republican Platform of 1972, p.848

Discontents, frustrations and concerns still stir in the minds and hearts of many of our people, especially the young. As long as America falls short of being truly peaceful, truly prosperous, truly secure, truly just for all, her task is not done.

Republican Platform of 1972, p.848

Our encouragement is in the fact that things as they are, are far better than things that recently were. Our resolve is that things to come can be, and will be, better still.

Republican Platform of 1972, p.848

Looking to tomorrow, to President Nixon's second term and on into the third century of this Republic, we of the Republican Party see a quarter-billion Americans peaceful and prospering as never before, humane as never before, their nation strong and just as never before.

Republican Platform of 1972, p.848

It is toward this bright tomorrow that we are determined to move, in concert with millions of discerning Democrats and concerned Independents who will not, and cannot, take part in the convulsive leftward lurch of the national Democratic Party.

Republican Platform of 1972, p.848

The election of 1972 requires of the voters a momentous decision—one that will determine the kind of nation that is to be on its 200th birthday four years hence. In this year we must choose between strength and weakness for our country in the years to come. This year we must choose between negotiating and begging with adversary nations. This year we must choose between an expanding economy in which workers will prosper and a hand-out economy in which the idle live at ease. This year we must choose between running our own lives and letting others in a distant bureaucracy run them. This year we must choose between responsible fiscal policy and fiscal folly.

Republican Platform of 1972, p.848

This year the choice is between moderate goals historically sought by both major parties and far-out goals of the far left. The contest is not between the two great parties Americans have known in previous years. For in this year 1972 the national Democratic Party has been seized by a radical clique which scorns our nation's past and would blight her future.

Republican Platform of 1972, p.848

We invite our troubled friends of other political affiliations to join with us in a new coalition for progress. Together let us reject the New Left prescription for folly and build surely on the solid achievements of President Nixon's first term.

Republican Platform of 1972, p.848

Four years ago we said, in Abraham Lincoln's words, that Americans must think anew and act anew. This we have done, under gifted leadership. The many advances already made, the shining prospects so clearly ahead, are presented in this Platform for 1972 and beyond.

Republican Platform of 1972, p.848

May every American measure our deeds and words thoughtfully and objectively, and may our opponents' claims be equally appraised. Once this is done and judgment rendered on election day, we will confidently carry forward the task of doing for America what her people need and want and deserve.

Toward a Full Generation of Peace

Foreign Policy

Republican Platform of 1972, p.848

When Richard Nixon became President, our country was still clinging to foreign policies fashioned for the era immediately following World War II. The world has changed dramatically in the 1960's, but our foreign policies had not.

Republican Platform of 1972, p.848

America was hopelessly enmeshed in Vietnam. In all parts of the globe our alliances were frayed. With the principal Communist powers our relations showed little prospect of improvement. Trade and monetary problems were grave. Periodic crises had become the way of international economic life.

Republican Platform of 1972, p.848

The nation's frustrations had fostered a dangerous spirit of isolationism among our people. America's influence in the world had waned.

Republican Platform of 1972, p.848

In only four years we have fashioned foreign policies based on a new spirit of effective negotiation with our adversaries, and a new sense of real partnership with our allies. Clearly, the prospects for lasting peace are greater today than at any time since World War II.

New Era of Diplomacy

Republican Platform of 1972, p.848

Not all consequences of our new foreign policy are yet visible, precisely because one of its great purposes is to anticipate crises and avoid them rather than merely respond. Its full impact will be realized over many years, but already there are vivid manifestations of its success:

Republican Platform of 1972, p.849

Before this Administration, a Presidential visit [p.849] to Peking would have been unthinkable. Yet our President has gone there to open a candid airing of differences so that they will not lead some day to war. All over the world tensions have eased as, after a generation of hostility, the strongest of nations and the most populous of nations have started discoursing again.

Republican Platform of 1972, p.849

During the 1960's, Presidential visits to Moscow were twice arranged and twice cancelled. Now our President has conferred, in the Soviet Union, with Soviet leaders, and has hammered out agreements to make this world a much safer place. Our President's quest for peace has taken him to 20 other countries, including precedent-shattering visits to Rumania, Yugoslavia and Poland.

Republican Platform of 1972, p.849

Around the globe America's alliances have been renewed and strengthened. A new spirit of partnership shows results in our NATO partners' expenditures for the common defense—up by some $2 billion in two years.

Republican Platform of 1972, p.849

Historians may well regard these years as a golden age of American diplomacy. Never before has our country negotiated with so many nations on so wide a range of subjects—and never with greater success. In the last four years we have concluded agreements:

Republican Platform of 1972, p.849

To limit nuclear weapons.

Republican Platform of 1972, p.849

To ban nuclear weapons from the world's sea-beds.

Republican Platform of 1972, p.849

To reduce the risk of an accidental nuclear war.

Republican Platform of 1972, p.849

To end the threat of biological and toxin warfare.

Republican Platform of 1972, p.849

To terminate American responsibility for the administration of Okinawa.

Republican Platform of 1972, p.849

To end the recurrent crises over Berlin.

Republican Platform of 1972, p.849

To provide for U.S.-Soviet cooperation in health and space research.

Republican Platform of 1972, p.849

To reduce the possibility of dangerous incidents at sea.

Republican Platform of 1972, p.849

To improve emergency communications between the White House and the Kremlin.

Republican Platform of 1972, p.849

To exercise restraint in situations threatening conflict.

Republican Platform of 1972, p.849

To realign the world's currencies.

Republican Platform of 1972, p.849

To reduce barriers to American exports. To combat the international drug traffic. To protect the international environment.

Republican Platform of 1972, p.849

To expand cultural relations with peoples of Eastern Europe.

Republican Platform of 1972, p.849

To settle boundary disputes with Mexico.

Republican Platform of 1972, p.849

To restore the water quality of the Great Lakes in cooperation with Canada.

Republican Platform of 1972, p.849

In Vietnam, too, our new policies have been dramatically effective.

Republican Platform of 1972, p.849

In the 1960's, our nation was plunged into another major war—for the fourth time in this century, the third time in a single generation.

Republican Platform of 1972, p.849

More than a half-million Americans were fighting in Vietnam in January 1969. Fatalities reached 562 in a single week. There was no plan for bringing Americans home; no hope for an end of the war.

Republican Platform of 1972, p.849

In four years, we have marched toward peace and away from war. Our forces in Vietnam have been, cut by 93 per cent. No longer do we have a single ground combat unit there. Casualties are down by 95 per cent. Our young draftees are no longer sent there without their consent.

Republican Platform of 1972, p.849

Through it all, we have not abandoned an ally to aggression, not turned our back on their brave defense against brutal invasion, not consigned them to the bloodbath that would follow Communist conquest. By helping South Vietnam build a capability to withstand aggression, we have laid the foundation for a just peace and a durable peace in Southeast Asia.

Republican Platform of 1972, p.849

From one sector of the globe to another, a sure and strong America, in partnership with other nations, has once again resumed her historic mission—the building of lasting peace.

The Nixon Doctrine

Republican Platform of 1972, p.849

When President Nixon came into office, America's foremost problem was the bloody, costly, divisive involvement in Vietnam. But there was an even more profound task—to redefine the international role of the United States in light of new realities around the globe and new attitudes at home. Precisely and clearly, the President stated a new concept of a positive American role. This—the Nixon Doctrine—is monumentally important to every American and to all other people in the world.

Republican Platform of 1972, p.849

The theme of this Doctrine is that America will remain fully involved in world affairs, and yet do this in ways that will elicit greater effort by other nations and the sustaining support of our people.

Republican Platform of 1972, p.849

For decades, our nation's leaders regarded virtually every problem of local defense or economic development anyplace in the world as an exclusive American responsibility. The Nixon Doctrine [p.850] recognizes that continuing defense and development are impossible unless the concerned nations shoulder the principal burden.

Republican Platform of 1972, p.850

Yet, strong economic and military assistance programs remain essential. Without these, we are denied a middle course—the course between abruptly leaving allies to struggle alone against economic stagnation or aggression, or intervening massively ourselves. We cannot move from the over-involvement of the Sixties to the selective involvement of the Seventies if we do not assist our friends to make the transition with us.

Republican Platform of 1972, p.850

In the Nixon Doctrine, therefore, we define our interests and commitments realistically and clearly; we offer, not an abdication of leadership, but more rational and responsible leadership.

Republican Platform of 1972, p.850

We pledge that, under Republican leadership, the United States will remain a leader in international affairs. We will continue to shape our involvement abroad to national objectives and realities in order to sustain a strong, effective American role in the world.

Republican Platform of 1972, p.850

Over time we hope this role will eventually lead the peace-loving nations to undertake an exhaustive, coordinated analysis of the root causes of war and the most promising paths of peace, so that those causes may in time be removed and the prospects for enduring peace strengthened year by year.

Peace in the 1970's

Republican Platform of 1972, p.850

We stand with our President for his strategy for Peace—a strategy of national strength, a new sense of international partnership, a willingness to negotiate international differences.

Republican Platform of 1972, p.850

We will strengthen our relationships with our allies, recognizing them as full-fledged partners in securing the peace and promoting the common well being.

Republican Platform of 1972, p.850

With our adversaries, we will continue to negotiate in order to improve our security, reduce tension, and extend the realm of cooperation. Especially important is continued negotiation to maintain the momentum established by the Strategic Arms Limitation agreements to limit offensive and defensive nuclear weapons systems and further to reduce the danger of nuclear conflict. In addition, we will encourage increased trade for the benefit of our consumers, businessmen, workers, and farmers.

Republican Platform of 1972, p.850

Along with NATO allies, we will seek agreement with the Warsaw Pact nations on a mutual and balanced reduction of military forces in Europe.

Republican Platform of 1972, p.850

We will press for expansion of contacts with the people of Eastern Europe and the People's Republic of China, so long isolated from most of the world.

Republican Platform of 1972, p.850

We will continue to seek a settlement of the Vietnam war which will permit the people of Southeast Asia to live in peace under political arrangements of their own choosing. We take specific note of the remaining major obstacle to settlement—Hanoi's demand that the United States overthrow the Saigon government and impose a Communist-dominated government on the South Vietnamese. We stand unequivocally at the side of the President in his effort to negotiate honorable terms, and in his refusal to accept terms which would dishonor this country.

Republican Platform of 1972, p.850

We commend his refusal to perform this act of betrayal—and we most emphatically say the President of the United States should not go begging to Hanoi. We believe that the President's proposal to withdraw remaining American forces from Vietnam four months after an internationally supervised cease-fire has gone into effect throughout Indochina and all prisoners have been returned is as generous an offer as can be made by anyone—by anyone, that is, who is not bemused with surrender—by anyone who seeks, not a fleeting peace at whatever cost, but a real peace that will be both just and lasting.

Republican Platform of 1972, p.850

We will keep faith with American prisoners of war held by the enemy, and we will keep faith, too, with their families here at home who have demonstrated remarkable courage and fortitude over long periods of uncertainty. We will never agree to leave the fate of our men unclear, dependent upon a cruel enemy's whim. On the contrary-we insist that, before all American forces are withdrawn from Vietnam, American prisoners must be returned and a full accounting made of the missing in action and of those who have died in enemy hands.

Republican Platform of 1972, p.850

We pledge that upon repatriation our returned prisoners will be received in a manner befitting their valor and sacrifice.

Republican Platform of 1972, p.850

We applaud the Administration's program to assure each returned prisoner the finest medical care, personal counseling, social services and career orientation. This around-the-clock personal [p.851] service will ease their reintegration into American life.

Republican Platform of 1972, p.851

North Vietnam's violation of the Geneva Convention in its treatment of our prisoners of war has called forth condemnation from leaders around the world—but not by our political opposition at home. We denounce the enemy's flagrant breach of international law and common decency. We will continue to demand full implementation of the rights of the prisoners.

Republican Platform of 1972, p.851

If North Vietnam continues obdurately to reject peace by negotiation, we shall nevertheless achieve peace for our country through the successful program of Vietnamization, phasing out our involvement as our ally strengthens his defense against aggression.

Republican Platform of 1972, p.851

In the Middle East, we initiated arrangements leading to a cease-fire which has prevailed for two years. We pledge every effort to transform the cease-fire into lasting peace.

Republican Platform of 1972, p.851

Since World War II, our country has played the major role in the international effort to assist the developing countries of the world. Reform of our foreign assistance program, to induce a greater international sharing of the aid effort, is long overdue. The reforms proposed by the President have been approved only in part. We call for further reforms to make our aid more effective and protect the taxpayer's interests.

Republican Platform of 1972, p.851

We stand for an equitable, non-discriminatory immigration policy, reaffirming our support of the principles of the 1965 Immigration Act—non-discrimination against national origins, reunification of families, and the selective admission of the specially talented. The immigration process must be just and orderly, and we will increase our efforts to halt the illegal entry of aliens into the United States.

Republican Platform of 1972, p.851

We also pledge to strengthen the agencies of international cooperation. We will help multilateral organizations focus on international issues affecting the quality of life—for example the peaceful uses of nuclear energy and the protection of man's cultural heritage and freedom of communication, as well as drug abuse, pollution, overpopulation, exploitation of the oceans and sea-beds, aircraft hijacking and international crime. We will seek to improve the performance of the United Nations, including more objective leadership. We support a more equitable sharing of the costs of international organizations and have serious concerns over the delinquency of many UN members in meeting their financial obligations.

Republican Platform of 1972, p.851

Our country, which from its beginnings has proclaimed that all men are endowed with certain rights, cannot be indifferent to the denial of human rights anywhere in the world. We deplore oppression and persecution, the inevitable hallmarks of despotic systems of rule. We will continue to strive to bring them to an end, both to reestablish the right of self-determination and to encourage where and when possible the political freedom of subjugated peoples everywhere in the world.

Republican Platform of 1972, p.851

We firmly support the right of all persons to emigrate from any country, and we have consistently upheld that doctrine. We are fully aware of and share the concern of many citizens for the plight of Soviet Jews with regard to their freedoms and emigration. This view, together with our commitment to the principles of the Universal Declaration of Human Rights of the United Nations, was made known to Soviet leaders during the President's discussions in Moscow.

The Middle East

Republican Platform of 1972, p.851

We support the right of Israel and its courageous people to survive and prosper in peace. We have sought a stable peace for the Middle East and helped to obtain a cease-fire which contained the tragic conflict. We will help in any way possible to bring Israel and the Arab states to the conference table, where they may negotiate a lasting peace. We will continue to act to prevent the development of a military imbalance which would imperil peace in the region and elsewhere by providing Israel with support essential for her security, including aircraft, training and modern and sophisticated military equipment, and also by helping friendly Arab governments and peoples, including support for their efforts to diminish their dependence on outside powers. We support programs of economic assistance to Israel pursued by President Nixon that have helped her achieve a nine-per cent annual economic growth rate. This and the special refugee assistance ordered by the President have also helped to provide resettlement for the thousands of immigrants seeking refuge in Israel.

Republican Platform of 1972, p.851

We will maintain our technical forces in Europe and the Mediterranean area at adequate strength and high levels of efficiency. The irresponsible [p.852] proposals of our political opposition to slash the defense forces of the United States-specifically, by cutting the strength of our fleet, by reducing our aircraft carriers from 16 to six and by unilateral withdrawals from Europe—would increase the threat of war in the Middle East and gravely menace Israel. We flatly reject these dangerous proposals.

Republican Platform of 1972, p.852

With a settlement fair to all nations of the Middle East, there would be an opportunity for their peoples to look ahead to shared opportunities rather than backward to rancorous animosities. In a new environment of cooperation, Israel will be able to contribute much to economic renaissance in the Mid-East crossroads of the world.

The Atlantic Community

Republican Platform of 1972, p.852

We place high priority on the strengthening of the North Atlantic Alliance. One of the President's first initiatives was to visit Western European capitals to reinvigorate the NATO alliance and indicate its importance in U.S. foreign policy.

Republican Platform of 1972, p.852

Right now, with plaintive cries of "come home America" echoing a new isolationism, the Republican Party states its firm belief that no nation can be an island or a fortress unto itself. Now, more than ever, there is need for interdependence among proven friends and old allies.

Republican Platform of 1972, p.852

The North Atlantic Alliance remains the strongest most successful peacetime association ever formed among a group of free nations. The continued strengthening of the Alliance will remain an important clement in the foreign policies of the second Nixon Administration.

Japan

Republican Platform of 1972, p.852

During the 1960's a number of economic and political issues developed in our country's relations with Japan, our major ally in Asia. To resolve these, President Nixon terminated our responsibility for the administration of Okinawa and initiated action to reduce our trade deficit with Japan. We are consulting closely to harmonize our two countries' separate efforts to normalize relations with Peking. In these ways we have shifted our vital alliance with Japan to a more sustainable basis for the long term, recognizing that the maintenance of United States-Japanese friendship advances the interests of both countries.

The Soviet Union

Republican Platform of 1972, p.852

Over many years our relations with the Soviet Nation have oscillated between superficial improvements and new crises. False hopes have been repeatedly followed by disillusioned confrontation. In the closing months of 1968, our relations with the Soviet Union deteriorated steadily, forcing the cancellation of a scheduled Presidential visit to Moscow and immobilizing projected negotiations on strategic arms limitation.

Republican Platform of 1972, p.852

President Nixon immediately began the difficult task of building a new relationship—one based on a realistic acceptance of the profound differences in the values and systems of our two nations. He moved decisively on key issues—such as the Berlin problem and strategic arms limitation—so that progress in one area would add momentum to progress in other areas. The success of these efforts was demonstrated at the summit in Moscow. Agreements were reached on new areas of cooperation—public health, environmental control, space exploration and trade. The first historic agreements limiting strategic arms were signed last May 26 in Moscow, and the Soviet Union subscribed to a broad declaration of principles governing our relations.

Republican Platform of 1972, p.852

We pledge to build upon these promising beginnings in reorienting relations between the world's strongest nuclear powers to establish a truly lasting peace.

China

Republican Platform of 1972, p.852

In the 1960's it seemed beyond possibility that the United States could dispel the ingrained hostility and confrontation with the China mainland. President Nixon's visit to the People's Republic of China was, therefore, an historic milestone in his effort to transform our era from one of confrontation to one of negotiation. While profound differences remain between the United States and China, at least a generation of hostility has been replaced by frank discussions. In February 1972 rules of international conduct were agreed upon which should make the Pacific region a more peaceful area now and in the future. Both the People's Republic and the United States affirmed the usefulness of promoting trade and cultural exchanges as ways of improving understanding between our two peoples.

Republican Platform of 1972, p.852

All this is being done without affecting our mutual defense treaty or our continued diplomatic [p.853] relations with our valued friend and ally on Taiwan, the Republic of China.

Latin America

Republican Platform of 1972, p.853

Our common long-range interests, as well as history and geography, give the relations among nations of the Western Hemisphere a special importance. We will foster a more mature partnership among the nations of this hemisphere, with a wider sharing of ideas and responsibility, a broader understanding of diversities, and firm commitment to the common pursuit of economic progress and social justice.

Republican Platform of 1972, p.853

We believe the continuing campaign by Cuba to foment violence and support subversion in other countries makes it ineligible for readmission to the community of American states. We look forward to the day when changes in Cuba's policies will justify its re-entry into the American community—and to the day when the Cuban people achieve again their freedom and their true independence.

Africa

Republican Platform of 1972, p.853

Our ties with Africa are rooted in the heritage of many Americans and in our historic commitment to self-determination. We respect the hard-earned sovereignty of Africa's new states and will continue to do our utmost to make a meaningful contribution to their development. We have no illusions that the United States can single-handedly solve the seemingly intractable problems of apartheid and minority rule, but we can and will encourage non-violent, evolutionary change by supporting international efforts peacefully to resolve the problems of southern Africa and by maintaining our contacts with all races on the Continent.

Defense

Republican Platform of 1972, p.853

We believe in keeping America strong. In times past, both major parties shared that belief. Today this view is under attack by militants newly in control of the Democratic Party. To the alarm of free nations everywhere, the New Democratic Left now would undercut our defenses and have America retreat into virtual isolation, leaving us weak in a world still not free of aggression and threats of aggression. We categorically reject this slash-now, beg-later, approach to defense policy.

Republican Platform of 1972, p.853

Only a strong America can safely negotiate with adversaries. Only a strong America can fashion partnerships for peace.

Republican Platform of 1972, p.853

President Nixon has given the American people their best opportunity in this century to achieve lasting peace. The foundations are well laid. By adhering to a defense policy based on strength at home, partnership abroad and a willingness to negotiate everywhere, we hold that lasting peace is now achievable.

Republican Platform of 1972, p.853

We will surely fail if we go crawling to the conference table. Military weakness is not the path to peace; it is invitation to war.

A Modern, Well-Equipped Force

Republican Platform of 1972, p.853

We believe that the first prerequisite of national security is a modern, well-equipped armed force. From 1965 to 1969 the Vietnam war so absorbed the resources of the Defense Department that maintenance, modernization, and research and development fell into neglect. In the late 1960's the Soviet Union outspent the United States by billions of dollars for force modernization, facing the United States with the dangerous prospect that its forces would soon be qualitatively inferior. Our Reserve Forces and the National Guard had become a dumping ground for cast-off arms and equipment. The military posture of our country became seriously undermined.

Republican Platform of 1972, p.853

To assure our strength and counter the mounting Soviet threat, President Nixon directed:

Republican Platform of 1972, p.853

The most significant ship construction and modernization program since World War II;

Republican Platform of 1972, p.853

The development of new types of tactical aircraft such as the F-155, a lightweight fighter, and a fighter plane for close support of ground troops;

Republican Platform of 1972, p.853

Improvements in our strategic bomber force and development of the new B-1 strategic bomber;

Republican Platform of 1972, p.853

Development of a new Trident submarine and undersea missile system;

Republican Platform of 1972, p.853

Greatly increasing the capability of existing strategic missiles through multiple warheads;

Republican Platform of 1972, p.853

Strengthening of strategic defenses, including initial deployment of an anti-ballistic missile system;

Republican Platform of 1972, p.853

The largest research and development budget in history to insure continued technological superiority;

Republican Platform of 1972, p.853

Equipping of the National Guard and Reserves with the most modern and sophisticated weapons;

Republican Platform of 1972, p.853

Improved command and control communications systems.

Republican Platform of 1972, p.854

[p.854] We draw a sharp distinction between prudent reductions in defense spending and the meat-ax slashes with which some Americans are now beguiled by the political opposition. Specifically, we oppose plans to stop the Minuteman III and Poseidon programs, reduce the strategic bomber force by some 60 per cent, cancel the B-1 bomber, reduce aircraft carriers from 16 to 6, reduce tactical air wings by a third, and unilaterally reduce U.S. forces in Europe by half.

Republican Platform of 1972, p.854

These slashes are worse than misguided; they are dangerous.

Republican Platform of 1972, p.854

They world torpedo negotiations on arms and troop reductions, create a crisis of confidence with our allies, damage our own industrial and technological capacity, destabilize Europe and the Middle East, and directly endanger the nation's security.

A New Partnership

Republican Platform of 1972, p.854

The Nixon Doctrine has led to a new military strategy of realistic deterrence. Its essence is the sharing of the responsibilities and the burdens of defense. The strategy is based on the efficient utilization of the total force available—our own and our allies', and our civilian reserve elements as well as our regular forces.

Republican Platform of 1972, p.854

For years our country shouldered the responsibility for the defense of other nations. There were fears that we were attempting to be the policeman of the world. Our country found it necessary to maintain a military force of 3.5 million persons, more than a million overseas at 2,270 installations.

Republican Platform of 1972, p.854

A new partnership is emerging between the United States and other nations of the free world. Other countries are assuming a much greater responsibility for the common defense. Twice in the last two years our European allies have agreed to substantial increases in their support fear NATO forces. In Asia we have been heartened by the efforts of the Koreans, Vietnamese, Thais, Nationalist Chinese, Australians, New Zealanders and others who have sought improvements in their own forces.

Republican Platform of 1972, p.854

We have been able to reduce our military forces by more than one million men and women. We have cut by half the number deployed overseas, reduced overseas installations by more than 10 per cent, and sharply reduced the economic burden of defense spending from the Vietnam high. All this has been done by virtue of our new security posture, without impairing our own or our allies' security.

Republican Platform of 1972, p.854

We pledge to press on toward a lasting peace. To that end we declare ourselves unalterably opposed to a unilateral slash of our military power, and we reject a whimpering "come back America" retreat into isolationism.

An All-Volunteer Armed Force

Republican Platform of 1972, p.854

We wholeheartedly support an all-volunteer armed force and are proud to our historic initiatives to bring it to pass.

Republican Platform of 1972, p.854

Four years ago, the President pledged to work toward an early end of the draft that promise has been kept. Today we approach a zero draft that will enlarge the personal freedom of millions of young Americans.

Republican Platform of 1972, p.854

Prior to 1969, annual draft calls exceeded 300,000. The Selective Service System was inequitable in operation, and its rules caused prolonged uncertainty for young men awaiting call.

Republican Platform of 1972, p.854

Since 1969, the Selective Service System has been thoroughly reorganized, and local draft hostels are more representative than ever before. Today draftees are called by random selection of the youngest first, so that the maximum length of vulnerability is no longer seven years but one year only. Youth advisory committees are in operation all across the country.

Republican Platform of 1972, p.854

Of critical importance, we are nearing the elimination of draft calls altogether. In every year since 1968, draft calls have been reduced. Monthly draft calls are now down to a few thousand, and no draftees are sent involuntarily to Vietnam. We expect to achieve our goal by July 1973. Then, for the first time in a quarter-century, we hope and expect that young Americans of all ages will be free from conscription.

Republican Platform of 1972, p.854

Our political opponents have talked for years of their concern for young people. It is our Republican Administration that has taken the strong, effective action required to end the draft, with its many hardships and uncertainties for the youth of America.

Improvements in Service Life

Republican Platform of 1972, p.854

We believe that the men and women in the uniformed services deserve the gratitude and respect of all Americans and are entitled to better treatment than received in the past.

Republican Platform of 1972, p.855

For years most servicemen have been under-paid, [p.855] harassed with restrictions, and afforded few opportunities for self-development. Construction of military housing was allowed to fall badly behind.

Republican Platform of 1972, p.855

Since 1968 improvements in service life have been many and major:

Republican Platform of 1972, p.855

The largest pay raises in military history have been enacted. While increases have been in all grades, the largest have gone to new recruits whose base pay will have risen more than 300 per cent by the end of this year.

Republican Platform of 1972, p.855

Construction of new housing for military personnel and their families has increased sixfold since January 1969.

Republican Platform of 1972, p.855

Without sacrificing discipline, needlessly harsh, irksome and demeaning practices of the past have been abandoned.

Republican Platform of 1972, p.855

An effective program against dangerous drugs has been initiated.

Republican Platform of 1972, p.855

Educational and training opportunities have been expanded.

Republican Platform of 1972, p.855

Major strides have been made toward wiping out the last vestiges of racial discrimination.

Republican Platform of 1972, p.855

We regard these tasks as never completed, but we are well on the way and pledge ourselves to press forward assuring all men and women in the armed forces rewarding careers.

Better Defense Management

Republican Platform of 1972, p.855

In the 1960's, the Department of Defense became administratively top-heavy and inefficient. The acquisition of new weapons systems was handled with inadequate attention to cost or performance, and there was little recognition of the truman dimensions of the Department. Morale was low.

Republican Platform of 1972, p.855

Our improvements have been many and substantial. Healthy decentralization has taken place. The methods of acquiring new weapons systems have been reformed by such procedures as "fly before you buy," the use of prototypes and the elimination of frills. Service personnel and civilian employees are now treated as the most important asset of the Department.

Republican Platform of 1972, p.855

We have sharply reduced defense spending. In 1968, 45 per cent of the Federal budget was spent for defense and 32 per cent for human resources. In the 1973 budget the proportions were reversed—45 per cent for human resources, 32 per cent for defense. The 1973 defense budget imposes the smallest economic burden on the country of any defense budget in more than 20 years, consuming only 6.4 per cent of the estimated Gross National Product.

Arms Limitation

Republican Platform of 1972, p.855

We believe in limiting arms—not unilaterally, but by mutual agreement and with adequate safeguards.

Republican Platform of 1972, p.855

When the Nixon Administration began, the Soviet Union was rapidly building its strategic armaments, and any effort to negotiate limitations on such weapons seemed hopeless. The Soviet buildup threatened the efficacy of our strategic deterrent.

Republican Platform of 1972, p.855

The Nixon years have achieved a great breakthrough in the long-term effort to curb major armaments by international agreement and given new momentum to arms limitations generally. Of greatest importance were agreements with the Soviet leaders to limit offensive and defensive nuclear weapons. The SALT accords established mutually agreed restraints between the United States and the Soviet Union and reduced tensions throughout the world.

Republican Platform of 1972, p.855

With approval of the SALT agreements by the Congress, negotiations will be resumed to place further restrictions on nuclear weapons, and talks will begin on mutual, balanced force reductions in Europe.

Republican Platform of 1972, p.855

We believe it is imperative that these negotiations go forward under President Nixon's continuing leadership. We pledge him our full support.

For the Future

Republican Platform of 1972, p.855

We will continue the sound military policies laid down by the President—policies which guard our interests but do not dissipate our resources in vain efforts to police the world. As stated by the President:

Republican Platform of 1972, p.855

We will maintain a nuclear deterrent adequate to meet any threat to the security of the United States or of our allies.

Republican Platform of 1972, p.855

We will help other nations develop the capability of defending themselves.

Republican Platform of 1972, p.855

We will faithfully honor all of our treaty commitments.

Republican Platform of 1972, p.855

We will act to defend our interests whenever and wherever they are threatened.

Republican Platform of 1972, p.855

But where our vital interests or treaty commitments are not involved our role will be limited.

Republican Platform of 1972, p.855

We are proud of the men and women who wear our country's uniform, especially of those [p.856] who have borne the burden of fighting a difficult and unpopular war. Here and now we reject all proposals to grant amnesty to those who have broken the law by evading military service. We reject the claim that those who fled are more deserving, or obeyed a higher morality, than those next in line who served in their places.

Republican Platform of 1972, p.856

In carrying out our defense policies, we pledge to maintain at all times the level of military strength required to deter conflict, to honor our commitments to our allies, and to protect our people and vital interests against all foreign threats. We will not let America become a second-class power, dependent for survival on the good will of adversaries.

Republican Platform of 1972, p.856

We will continue to pursue arms control agreements—but we recognize that this can be successful only if we maintain sufficient strength and will fail if we allow ourselves to slip into inferiority.

A New Prosperity

Jobs, Inflation and the Economy

Republican Platform of 1972, p.856

The goal of our Party is prosperity, widely shared, sustainable in peace.

Republican Platform of 1972, p.856

We stand for full employment a job for everyone willing and able to work in an economy freed of inflation, its vigor not dependent upon war or massive military spending.

Republican Platform of 1972, p.856

Under the President's leadership our country is once again moving toward these peacetime goals. We have checked the inflation which had started to skyrocket when our Administration took office, making the difficult transition from inflation toward price stability and from war toward peace. We have brought about a rapid rise in both employment and in real income, and laid the basis for a continuing decline in the rate of unemployment.

Republican Platform of 1972, p.856

All Americans painfully recall the grave economic troubles we faced in January 1969. The Federal budget in fiscal 1968 had a deficit of more than $25 billion even though the economy was operating at capacity. Predictably, consumer prices soared by an annual rate of 6.6 per cent in the first quarter of 1969. "Jawboning" or labor and business had utterly failed. The inevitable tax increase had come too late. The kaleidoscope of "Great Society" programs added to the inflationary fires. Our international competitive position slumped from a trade surplus of $7 billion in 1964 to $800 million in 1968. Foreign confidence in the value of the dollar plummeted.

Strategies and Achievements

Republican Platform of 1972, p.856

Our Administration took these problems head on, accepting the unpopular tasks of holding down the budget, extending the temporary tax surcharge, and checking inflation. We welcomed the challenge of reorienting the economy from war to peace, as the more than two and one-half million Americans serving the military or working in defense-related industries had to be assimilated into the peacetime work force.

Republican Platform of 1972, p.856

At the same time, we kept the inflation fight and defense employment cuts from triggering a recession.

Republican Platform of 1972, p.856

The struggle to restore the health of our nation's economy required a variety of measures. Most important, the Administration developed and applied sound economic and monetary policies which provided the fundamental thrust against inflation.

Republican Platform of 1972, p.856

To supplement these basic policies, Inflation Alerts were published; a new National Commission on Productivity enlisted labor, business and public leaders against inflation and in raising real incomes through increased output per worker; proposed price increases in lumber, petroleum, steel and other commodities were modified. A new Construction Industry Stabilization Committee, with the cooperation of unions and management, braked the dangerously skyrocketing costs in the construction industry.

Republican Platform of 1972, p.856

Positive results from these efforts were swift and substantial. The rate of inflation, more than 6 per cent in early 1969, declined to less than 4 per cent in early 1971.

Republican Platform of 1972, p.856

Even so, the economic damage inflicted by past excesses had cut so deeply as to make a timely recovery impossible, forcing the temporary use of wage and price controls.

Republican Platform of 1972, p.856

These controls were extraordinary measures, not needed in a healthy free economy, last needed temporarily to recapture lost stability.

Republican Platform of 1972, p.856

Our mix of policies has worked. The nation's economic growth is once again strong and steady.

Republican Platform of 1972, p.856

The rate of increase of consumer prices is now down to 2.7 per cent.

Republican Platform of 1972, p.856

On the employment front, expenditures for manpower programs were increased from $2.3 billion to a planned $5.1 billion; new enrollees receiving [p.857] training or employment under these programs were increased by more than half a million; computerized job banks were established in all cities; more than a million young people received jobs this summer through Federal programs, 50 per cent more than last year; engineers, scientists and technicians displaced by defense reductions were given assistance under the nation-wide Technology Mobilization and Reemployment program; 13 additional weeks of unemployment compensation were authorized; and a Special Revenue Sharing Program for Manpower was proposed to train more people for more jobs—a program still shelved by the opposition Congress.

Republican Platform of 1972, p.857

Civilian employment increased at an annual rate of about 2.4 million from August 1971 to July 1972. Almost four and one-half million new civilian jobs have been added since President Nixon took office, and total employment is at its highest level in history.

Republican Platform of 1972, p.857

The total productive output of this country increased at an annual rate of 9.4 per cent in the second quarter of 1972, the highest in many years.

Republican Platform of 1972, p.857

Workers' real weekly take-home pay—the real value left after taxes and inflation—is increasing at an annual rate of 4.5 per cent, compared to less than one per cent from 1960 to 1970. For the first time in six years real spendable income is going up, while the rate of inflation has been cut in half. Time lost from strikes is at the lowest level in many years.

Republican Platform of 1972, p.857

The rate of unemployment has been reduced from 6.1 per cent to 5.5 per cent, lower than the average from 1961 through 1964 before the Vietnam buildup began, and is being steadily driven down.

Republican Platform of 1972, p.857

In negotiation with other countries we have re-valued the dollar relative to other currencies, helping to increase sales at home and abroad and increasing the number of jobs. We have initiated a reform of the international monetary and trading system and made clear our determination that this reform must lead to a strong United States position in the balance of trade and payments.

The Road Ahead

Republican Platform of 1972, p.857

We will continue to pursue sound economic policies that will eliminate inflation, further cut unemployment, raise real incomes, and strengthen our international economic position.

Republican Platform of 1972, p.857

We will fight for responsible Federal budgets to help assure steady expansion of the economy without inflation.

Republican Platform of 1972, p.857

We will support the independent Federal Reserve Board in a policy of non-inflationary monetary expansion.

Republican Platform of 1972, p.857

We have already removed some temporary controls on wages and prices and will remove them all once the economic distortions spawned in the late 1960's are repaired. We are determined to return to an unfettered economy at the earliest possible moment.

Republican Platform of 1972, p.857

We reaffirm our support for the basic principles of capitalism which underlie the private enterprise system of the United States. At a time when a small but dominant faction of the opposition Party is pressing for radical economic schemes which so often have failed around the world, we hold that nothing has done more to help the American people achieve their unmatched standard of living than the free-enterprise system.

Republican Platform of 1972, p.857

It is our conviction that government of itself cannot produce the benefits to individuals that flow from our unique combination of labor, management and capital.

Republican Platform of 1972, p.857

We will continue to promote steady expansion of the whole economy as the best route to a long-term solution of unemployment.

Republican Platform of 1972, p.857

We will devote every effort to raising productivity, primarily to raise living standards but also to hold down costs and prices and to increase the ability of American producers and workers to compete in world markets.

Republican Platform of 1972, p.857

In economic policy decisions, including tax revisions, we will emphasize incentives to work, innovate and invest; and research and development will have our full support.

Republican Platform of 1972, p.857

We are determined to improve Federal manpower programs to reduce unemployment and increase productivity by providing better information on job openings and more relevant job training. Additionally, we reaffirm our commitment to removing barriers to a full life for the mentally and physically handicapped, especially the barriers to rewarding employment. We commit ourselves to the full educational opportunities and the humane care, treatment and rehabilitation services necessary for the handicapped to become fully integrated into the social and economic main-stream.

Republican Platform of 1972, p.857

We will press on for greater competition in our economy. The energetic antitrust program of the past four years demonstrates our commitment to [p.858] free competition as our basic policy. The Antitrust Division has moved decisively to invalidate those "conglomerate" mergers which stifle competition and discourage economic concentration. The 87 antitrust cases filed in fiscal year 1972 broke the previous one-year record of more than a decade ago, during another Republican Administration.

Republican Platform of 1972, p.858

We will pursue the start we have made for reform of the international monetary and trading system, insisting on fair and equal treatment.

Republican Platform of 1972, p.858

Since the 1930's it has been illegal for United States citizens to own gold. We believe it is time to reconsider that policy. The right of American citizens to buy, hold, or sell gold should be re-established as soon as this is feasible. Review of the present policy should, of course, take account of our basic objective of achieving a strengthened world monetary system.

Taxes and Government Spending

Republican Platform of 1972, p.858

We pledge to spread the tax burden equitably, to spend the Federal revenues prudently, to guard against waste in spending, to eliminate unnecessary programs, and to make sure that each dollar spent for essential government services buys a dollar's worth of value.

Republican Platform of 1972, p.858

Federal deficit spending beyond the balance of the full employment budget is one sure way to refuel inflation, and the prime source of such spending is the United States Congress. Because of its present procedures and particularly because of its present political leadership, Congress is not handling Federal fiscal policies in a responsible manner. The Congress now permits its legislative committees—instead of its fiscal committees—to decide, independently of each other, how much should be devoted to individual programs. Total Federal spending is thus haphazard and uncontrolled. We pledge vigorous efforts to reform the Congressional budgeting process.

Republican Platform of 1972, p.858

As an immediate first step, we believe the Nation needs a rigid spending ceiling on Federal outlays each fiscal year—a ceiling controlling both the executive branch and the Congress—as President Nixon strongly recommended when he submitted his fiscal 1973 budget. Should the total of all appropriations exceed the ceiling, some or all of them would be reduced by Executive action to bring the total within the ceiling.

Republican Platform of 1972, p.858

Our tax system needs continual, timely reform. Early in this Administration we achieved the first comprehensive tax reform since 1954. The record shows that as a result of the Tax Reform Act of 1969 and the Revenue Act of 1971:

Republican Platform of 1972, p.858

9.5 million low-income Americans are removed from the Federal income tax rolls.

Republican Platform of 1972, p.858

Persons in the lowest income tax bracket will pay 82 per cent less this year than they would have paid, had the 1969 and 1971 tax reforms not been enacted; those in the $10,000 to $15,000 income range will pay 13 per cent less, and those with incomes above $100,000 will pay about 7 per cent more.

Republican Platform of 1972, p.858

This year the tax reduction for a family of four earning $7,500 a year will be $270.

Republican Platform of 1972, p.858

In this fiscal year individual taxpayers will pay $22 billion less in Federal income taxes than they would have paid if the old tax rates and structures were still in force.

Republican Platform of 1972, p.858

The tax disadvantage of single taxpayers is sharply reduced and we urge further changes to assure full equality.

Republican Platform of 1972, p.858

Working parents can now deduct more of their costs for the care of their children during working hours.

Republican Platform of 1972, p.858

The seven per cent automobile excise tax is repealed, saving the new-car buyer an average of $200 and creating more jobs in that part of the economy.

Republican Platform of 1972, p.858

This is sound tax reform, the kind that more equitably spreads the tax burden and avoids incentive-destroying tax levels which would cripple the economy and put people out of work.

Republican Platform of 1972, p.858

We reject the deceitful tax "reform" cynically represented as one that would soak the rich, but in fact one that would sharply raise the taxes of millions of families in middle-income brackets as well. We reject as well the lavish spending promised by the opposition Party which would more than double the present budget of the United States Government. This, too, would cause runaway inflation or force heavy increases in personal taxes.

Republican Platform of 1972, p.858

Taxes and government spending are inseparable. Only if the taxpayers' money is prudently managed can taxes be kept at reasonable levels.

Republican Platform of 1972, p.858

When our Administration took office, Federal spending had been mounting at an average annual rate of 17 per cent—a rate we have cut almost in half. We urge the Congress to serve all Americans by cooperating with the President in his efforts to curb increases in Federal spending—increases which will ordain more taxes or more inflation.

Republican Platform of 1972, p.859

Since 1969 we have eliminated over $5 billion [p.859] of spending on unneeded domestic and defense programs. This large saving would have been larger still, had Congress passed the Federal Economy Act of 1970 which would have discontinued other programs. We pledge to continue our efforts to purge the Government of these wasteful activities.

Republican Platform of 1972, p.859

Tax reform must continue. During the next session of Congress we pledge:

Republican Platform of 1972, p.859

To pursue such policies as Revenue Sharing that will allow property tax relief;

Republican Platform of 1972, p.859

Further tax reform to ensure that the tax burden is fairly shared;

Republican Platform of 1972, p.859

A simplified tax system to make it easier for all of us to pay no more and no less than we rightly owe;

Republican Platform of 1972, p.859

Prudent fiscal management, including the elimination of unnecessary or obsolete programs, to keep the tax burden to a minimum.

International Economic Policy

Republican Platform of 1972, p.859

In tandem with our foreign policy innovations, we have transformed our international economic policy into a dynamic instrument to advance the interests of farmers, workers, businessmen and consumers. These efforts are designed to make the products of American workers and farmers more competitive in the world. Within the last year we achieved the Smithsonian Agreements which re-valued our currency, making our exports more competitive with those of our major trading partners, and we pledge continuing negotiations further to reform the international monetary system. We also established negotiations to expand foreign market access for products produced by United States workers, with further comprehensive negotiations committed for 1973.

Republican Platform of 1972, p.859

As part of our effort to begin a new era of negotiations, we are expanding trade opportunities and the jobs related to them for American workers and businessmen. The President's Summit negotiations for example, yielded an agreement for the Soviet purchase, over a three-year period, of a minimum of $750 million in United States grains—the largest long-term commercial trade purchase agreement ever made between two nations. This amounts to a 17-percent increase in grain exports by United States farmers. A U.S.-Soviet Commercial Commission has been established, and negotiations are now underway as both countries seek a general expansion of trade.

Republican Platform of 1972, p.859

As we create a more open world market for American exports, we are not unmindful of dangers to American workers and industries from severe and rapid dislocation by changing patterns of trade. We have several agreements to protect these workers and industries—for example, for steel, beef, textiles and shoes. These actions, highly important to key American industries, were taken in ways that avoided retaliation by our trading partners and the resultant loss of American jobs.

Republican Platform of 1972, p.859

As part of this adjustment process, we pledge improvement of the assistance offered by government to facilitate readjustment on the part of workers, businessmen and affected communities;

Republican Platform of 1972, p.859

In making the world trading system a fairer one, we have vigorously enforced anti-dumping and countervailing duty laws to make them meaningful deterrents to foreign producers who would compete unfairly.

Republican Platform of 1972, p.859

The growth of multinational corporations poses both new problems and new opportunities in trade and investment areas. We pledge to ensure that international investment problems are dealt with fairly and effectively—including consideration of effects on jobs, expropriation and treatment of investors, as well as equitable principles of taxation.

Republican Platform of 1972, p.859

At the same time that we seek a better environment for American exports, we must improve our productivity and competitiveness. We must have a strong domestic economy with increased investment in new plants and equipment and an advancing technology.

Republican Platform of 1972, p.859

We pledge increased efforts to promote export opportunities, including coordination of tax policy and improved export financing techniques—designed to make America more competitive in exporting. Of critical importance will be new legislative proposals to equip American negotiators with the tools for constructing an open and fair world trading system.

Republican Platform of 1972, p.859

We deplore the practice of locating plants in foreign countries solely to take advantage of low wage rates in order to produce goods primarily fur sale in the United States. We will take action to discourage such unfair and disruptive practices that result in the loss of American jobs.

Small Business

Republican Platform of 1972, p.859

Small business, so vital to our economic system, is free enterprise in its purest sense. It holds forth opportunity to the individual, regardless of race or color, to fulfill the American dream. The seedbed [p.860] of innovation and invention, it is the starting point of many of the country's large businesses, and today its roll in our increasingly technological economy is crucial. We pledge to sustain and expand that role.

Republican Platform of 1972, p.860

We have translated this philosophy into many beneficial actions. Primarily through the Small Business Administration, we have delivered financial assistance to small business at a dramatically increasing rate. Today small business is receiving double the SBA funds it was receiving when our Administration took office. During the 1970-72 fiscal years the Agency loaned small business $3.3 billion—40 per cent of the total amount loaned in the entire 19-year history of the Small Business Administration.

Republican Platform of 1972, p.860

Financial help to minorities has been more than tripled, and now more than 17 per cent of the SBA dollar goes to minority businesses. Procurement of Federal contracts for small business has surged above $12 billion.

Republican Platform of 1972, p.860

In his first year in office, the President established a Task Force to discover ways in which the prospects of the small businessman could be improved.

Republican Platform of 1972, p.860

The findings, reported to Congress, were followed by legislative proposals to give small business tax and interest advantages, to provide incentives for more participation on small business, to make venture capital and long-term credit easier to obtain, and to open the doors for disadvantaged minorities to go into business for themselves. Some of these measures have been signed into law. Others are still in the hands of the indifferent opposition in control of Congress.

Republican Platform of 1972, p.860

The results of our efforts have been significant. Today small business is once again gaining ground. Incorporations are at a record level and the number of business failures is dropping. The current new growth of small businesses is about 100,000 units a year. For tomorrow, the challenges are many. We will:

Republican Platform of 1972, p.860

Continue to fill the capital gap in the small business community by increasing SBA financing to upwards of $3 billion next year.

Republican Platform of 1972, p.860

Provide more incentives for the private sector to join the SBA in direct action programs, such as lease guarantees, revolving lines of credit, and other sophisticated financial techniques, such as factoring and mortgage financing.

Republican Platform of 1972, p.860

Increase SBA's Community Development program so that growth-minded communities can help themselves by building industrial parks and shopping centers.

Republican Platform of 1972, p.860

Continue the rejuvenation of the Small Business Investment Company (SBIC) program, leading to greater availability of venture capital for new business enterprises.

Republican Platform of 1972, p.860

See that a fair share of all Federal dollars spent on goods and services goes to small business.

Republican Platform of 1972, p.860

Create established secondary financial markets for SBA loans, affording ready liquidity for financial institutions and opening up more financial resources to small firms.

Republican Platform of 1972, p.860

Through tax incentives, encourage the start-up of more new businesses, and work for a tax system that more fairly applies to small business.

Republican Platform of 1972, p.860

Establish special programs that will permit small firms to comply with consumer, environmental, and other new government regulations without undue financial burden.

Improving the Quality of Life

Health Care

Republican Platform of 1972, p.860

Our goal is to enable every American to secure quality health care at reasonable cost. We pledge a balanced approach—one that takes into account the problems of providing sufficient medical personnel and facilities.

Republican Platform of 1972, p.860

Last year President Nixon proposed one of the most all-inclusive health programs in our history. But the opposition Congress has dragged its feet and most of this program has yet to be enacted into law.

Republican Platform of 1972, p.860

To increase the supply of medical services, we will continue to support programs to help our schools graduate more physicians, dentists, nurses, and allied health personnel, with special emphasis on family practitioners and others who deliver primary medical care.

Republican Platform of 1972, p.860

We will also encourage the use of such allied personnel as doctors' assistants, foster new area health education centers, channel more services into geographic areas which now are medically deprived, and improve the availability of emergency medical care;

Republican Platform of 1972, p.860

We note with pride that the President has already signed the most comprehensive health manpower legislation ever enacted.

Republican Platform of 1972, p.860

To improve efficiency in providing health and medical care, we have developed and will continue to encourage a pluralistic approach to the delivery of quality health care, including innovative [p.861] experiments such as health maintenance organizations. We also support efforts to develop ambulatory medical care services to reduce hospitalization and keep costs down.

Republican Platform of 1972, p.861

To reduce the cost of health care, we stress our efforts to curb inflation in the economy; we will also expand the supply of medical services and encourage greater cost consciousness in hospitalization and medical care. In doing this we realize the importance of the doctor-patient relationship and the necessity of insuring that individuals have freedom of choice of health providers.

Republican Platform of 1972, p.861

To assure access to basic medical care for all our people, we support a program financed by employers, employees and the Federal Government to provide comprehensive health insurance coverage, including insurance against the cost of long-term and catastrophic illnesses and accidents and renal failure which necessitates dialysis, at a cost which all Americans can afford. The National Health Insurance Partnership plan and the Family Health Insurance Plan proposed by the President meet these specifications. They would build on existing private health insurance systems, not destroy them.

Republican Platform of 1972, p.861

We oppose nationalized compulsory health insurance. This approach would at least triple in taxes the amount the average citizen now pays for health and would deny families the right to choose the kind of care they prefer. Ultimately it would lower the overall quality of health care for all Americans.

Republican Platform of 1972, p.861

We believe that the most effective way of improving health in the long run is by emphasis on preventive measures.

Republican Platform of 1972, p.861

The serious physical fitness problem in our country requires urgent attention. The President recently reorganized the Council on Physical Fitness and Sports to increase the leadership of representatives of medicine, physical education, sports associations and school administrations. The Republican Party urges intensification of these efforts, particularly in the Nation's school systems, to encourage widespread participation in effective physical fitness programs.

Republican Platform of 1972, p.861

We have initiated this Nation's first all-out assault against cancer. Led by the new National Cancer Institute, the drive to eliminate this cruel killer will involve Federal spending of nearly $430 million in fiscal year 1973, almost twice the funding of just two years ago.

Republican Platform of 1972, p.861

We have also launched a major new attack on sickle cell anemia, a serious blood disorder afflicting many black Americans, and developed a comprehensive program to deal with the menace of lead-based paint poisoning, including the screening of approximately 1,500,000 Americans.

Republican Platform of 1972, p.861

We support expanded medical research to find cures for the major diseases of the heart, blood vessels, lungs and kidneys—diseases which now account for over half the deaths in the United States.

Republican Platform of 1972, p.861

We have significantly advanced efforts to combat mental retardation and established a national goal to cut its incidence in half by the year 2000.

Republican Platform of 1972, p.861

We continue to support the concept of comprehensive community mental health centers. In this fiscal year $135 million—almost three times the 1970 level—will be devoted to the staffing of 422 community mental health centers serving a population of 56 million people. We have intensified research on methods of treating mental problems, increasing our outlays from $76 million in 1969 to approximately $96 million for 1973. We continue to urge extension of private health insurance to cover mental illness.

Republican Platform of 1972, p.861

We have also improved consumer protection, health education and accident prevention programs. And in Moscow this year, President Nixon reached an agreement with the Soviet Union on health research which may yield substantial benefits in many fields in the years ahead.

Education

Republican Platform of 1972, p.861

We take pride in our leadership these last four years in lifting both quality and equality in American education—from pre-school to graduate school—working toward higher standards than ever before.

Republican Platform of 1972, p.861

Our two most pressing needs in the 1970's are the provision of quality education for all children, an equitable financing of steadily rising costs. We pledge our best efforts to deal effectively with both.

Republican Platform of 1972, p.861

Months ago President Nixon sent Congress a two-part comprehensive proposal on school busing. The first is the Student Transportation Moratorium Act of 1972—legislation to halt immediately all further court-ordered busing and give Congress time to devise permanent new arrangements for assuring desegregated, quality education.

Republican Platform of 1972, p.862

The details of such arrangements are spelled [p.862] out in a companion bill, the Equal Educational Opportunities Act. This measure would:

Republican Platform of 1972, p.862

Provide $2.5 billion in Federal aid funds to help promote quality education while preserving neighborhood schools;

Republican Platform of 1972, p.862

Accord equal educational opportunities to all children;

Republican Platform of 1972, p.862

Include an educational bill of rights for Spanish-speaking people, American Indians, and others who face special language problems in schools;

Republican Platform of 1972, p.862

Offer, for the first time, a real chance for good schooling for the hundreds of thousands of children who live in urban centers;

Republican Platform of 1972, p.862

Assure that the people's elected representatives in Congress play their proper role in developing specific methods for protecting the rights guaranteed by the 14th amendment, rather than leaving this task to judges appointed for life.

Republican Platform of 1972, p.862

We are committed to guaranteeing equality of educational opportunity and to completing the process of ending de jure school segregation.

Republican Platform of 1972, p.862

At the same time, we are irrevocably opposed to busing for racial balance. Such busing fails its stated objective—improved learning opportunities—while it achieves results no one wants—division within communities and hostility between classes and races. We regard it as unnecessary, counter-productive and wrong.

Republican Platform of 1972, p.862

We favor better education for all children, not more transportation for some children. We favor the neighborhood school concept. We favor the decisive actions the President has proposed to support these ends. If it is necessary to accomplish these purposes, we would favor consideration of an appropriate amendment to the Constitution.

Republican Platform of 1972, p.862

In the field of school finance, we favor a coordinated effort among all levels of government to break the pattern of excessive reliance on local property taxes to pay educational costs.

Republican Platform of 1972, p.862

Our nation's intellectual resources are remarkable for their strength and public availability, American intellectuals have at least two important historical roles of which we are deeply conscious. One is to inform the public, the other is to assist government by thoughtful criticism and consultation. We affirm our confidence in these functions and especially in the free play of ideas and discourse which they imply.

Republican Platform of 1972, p.862

We cherish the nation's universities as centers of learning, as conservers of our culture, and as analysts of our society and its institutions. We will continue to strive to assure their economic well-being. The financial aid we have given and will continue to give in the form of funds for scholarships, research, building programs and new teaching methods must never be used as a device for imposing political controls on our schools.

Republican Platform of 1972, p.862

We believe that universities should be centers of excellence-that they should recruit faculty on the basis of ability to teach and admit students on the basis of ability to learn. Yet, excellence can be too narrowly confined—abilities overlooked, and social conformity mistaken for educational preparation.

Republican Platform of 1972, p.862

We pledge continued support of collegiate and university efforts to insure that no group in our society—racial, economic, sexual or regional—is denied access to the opportunities of higher education.

Republican Platform of 1972, p.862

Our efforts to remedy ancient neglect of disadvantaged groups will continue in universities as well as in society at large, but we distinguish between such efforts and quotas. We believe the imposition of arbitrary quotas in the hiring of faculties or the enrollment of students has no place in our universities; we believe quotas strike at the excellence of the university.

Republican Platform of 1972, p.862

We recognize that the public should have access to the most rational and most effective kinds of education. Vocational training should be available to both young and old. We emphasize the importance of continuing education, of trades and technologies, and of all the honorable vocations which provide the society with its basic necessities. Such training must complement our more traditional forms of education; it will relieve the pressures on our universities and help us adapt to the rapid pace of technological change. Perhaps most important, it will help to restore a public sense, of importance to these essential jobs and trades.

Republican Platform of 1972, p.862

Moreover, we believe our educational system should not instruct in a vacuum, unmindful that the students ultimately will engage in a career. Our institutions of learning, from earliest years to graduate schools, can perform a vital function by coupling an awareness of the world of work to the delivery of fundamental education. We believe this kind of career education, blended into our school curricula, can help to prevent the aimlessness and frustration now experienced by large numbers of young people who leave the education system unable to cope with today's complex society.

Republican Platform of 1972, p.863

[p.863] In recognizing the fundamental necessity for quality education of all children, including the exceptional child, we recommend research and assistance in programs directed to the problems of dyslectic and hyperkinetic children who represent an estimated ten per cent of the school population.

Republican Platform of 1972, p.863

By every measure, our record in the field of education is exceptionally strong. The United States Office of Education is operating this year under its highest budget ever—$5.1 billion. Federal aid to elementary and secondary education has increased 60 per cent over the past four years. Federal aid for college students has more than tripled.

Republican Platform of 1972, p.863

We are proud of these accomplishments. We pledge to carry them forward in a manner consistent with our conviction that the Federal Government should assist but never control the educational process. But we also believe that the output of results, not the input of dollars, is the best yardstick of effectiveness in education. When this Administration took office in 1969, it found American schools deficient at many points. Our reform initiatives have included:

Republican Platform of 1972, p.863

An Office of Child Development to coordinate all Federal programs targeted on the first five years of life and to make the Head Start Program work better;

Republican Platform of 1972, p.863

A Right to Read Program, aimed at massive gains in reading ability among Americans of all ages;

Republican Platform of 1972, p.863

A Career Education curriculum which will help to prepare students for the world of work;

Republican Platform of 1972, p.863

A National Institute of Education to be a center for research on the learning process; and

Republican Platform of 1972, p.863

A proposed National Foundation for Higher Education.

Republican Platform of 1972, p.863

We have also proposed grant and loan programs to support a national commitment that no qualified student should be barred from college by lack of money. The Education Amendment of 1972 embodied substantial portions of that proposal and marked the Nation's most far-reaching commitment to make higher education available to all.

Republican Platform of 1972, p.863

Our non-public schools, both church-oriented and nonsectarian, have been our special concern. The President has emphasized the indispensable role these schools play in our educational system—from the standpoints of the large numbers of pupils they serve, the competition and diversity they help to maintain in American education, and the values they help to teach-and he has stated his determination to help halt the accelerating trend of nonpublic school closures.

Republican Platform of 1972, p.863

We believe that means which are consistent with the Constitution can be devised for channeling public financial aid to support the education of all children in schools of their parents' choice, non-public as well as public. One way to provide such aid appears to be through the granting of income tax credits.

Republican Platform of 1972, p.863

For the future, we also pledge Special Revenue Sharing for Education, continued work to develop and implement the Career Education concept, and continued efforts to establish a student financial aid system to bring together higher education within the reach of any qualified person.

Welfare Reform

Republican Platform of 1972, p.863

The Nation's welfare system is a mess. It simply must be reformed.

Republican Platform of 1972, p.863

This system, essentially unchanged since the 1930's has turned into a human and fiscal nightmare. It penalizes the poor. It provides discriminatory benefits. It kills any incentives its victims might have to work their way out of the morass.

Republican Platform of 1972, p.863

Among its victims are the taxpayers. Since 1961 the Federal cost of welfare has skyrocketed over 10 times—from slightly over $1 billion then to more than $11 billion now. State and local costs add to this gigantic expenditure. And here are things we are paying for:

Republican Platform of 1972, p.863

The present system drains work incentive from the employed poor, as they see welfare families making as much or more on the dole.

Republican Platform of 1972, p.863

Its discriminatory benefits continue to ensnare the needy, aged, blind and disabled in a web of inefficient rules and economic contradictions.

Republican Platform of 1972, p.863

It continues to break up poor families, since a father's presence makes his family ineligible for benefits in many States. Its dehumanizing lifestyle thus threatens to envelop yet another "welfare generation."

Republican Platform of 1972, p.863

Its injustices and costs threaten to alienate taxpayer support for welfare programs of any kind.

Republican Platform of 1972, p.863

Perhaps nowhere else is there a greater contrast in policy and philosophy than between the Administration's remedy for the welfare ills and the financial orgy proposed by our political opposition.

Republican Platform of 1972, p.863

President Nixon proposed to change our welfare system "to provide each person with a means [p.864] of escape from welfare into dignity." His goals were these:

Republican Platform of 1972, p.864

A decent level of payment to genuinely needy welfare recipients regardless of where they live. Incentives not to loaf, but to work.

Republican Platform of 1972, p.864

Requiring all adults who apply for welfare to register for work and job training and to accept work or training. The only exceptions would be the aged, blind and disabled and mothers of preschool children.

Republican Platform of 1972, p.864

Expanding job training and child care facilities so that recipients can accept employment.

Republican Platform of 1972, p.864

Temporary supplements to the incomes of the working poor to enable them to support their families while continuing to work.

Republican Platform of 1972, p.864

Uniform Federal payment standards for all welfare recipients.

Republican Platform of 1972, p.864

In companion actions, our efforts to improve the nutrition of poor people resulted in basic reforms in the Food Stamp Program. The number of recipients increased from some three million to 13 million, and now 8.4 million needy children participate in the School Lunch Program, almost three times the number that participated in 1968.

Republican Platform of 1972, p.864

Now, nearly 10,000 nutrition aides work in low-income communities, in 1968 there were none.

Republican Platform of 1972, p.864

Since 1969, we have increased the Federal support for family planning threefold. We will continue to support expanded family planning programs and will foster research in this area so that more parents will be better able to plan the number and spacing of their children should they wish to do so. Under no circumstances will we allow any of these programs to become compulsory or infringe upon the religious conviction or personal freedom of any individual.

Republican Platform of 1972, p.864

We all feel compassion for those who through no fault of their own cannot adequately care for themselves. We all want to help these men, women and children achieve a decent standard of living and become self-supporting.

Republican Platform of 1972, p.864

We continue to insist, however, that there are too many people on this country's welfare rolls who should not be there. With effective cooperation from the Congress, we pledge to stop these abuses.

Republican Platform of 1972, p.864

We flatly oppose programs or policies which embrace the principle of a government-guaranteed income, We reject as unconscionable the idea that all citizens have the right to be supported by the government, regardless of their ability or desire to support themselves and their families.

Republican Platform of 1972, p.864

We pledge to continue to push strongly for sound welfare reform until meaningful and helpful change is enacted into law by the Congress.

Law Enforcement

Republican Platform of 1972, p.864

We have solid evidence that our unrelenting war on crime is being won. The American people know that once again the thrust of justice in our society will be to protect the law-abiding citizenry against the criminal, rather than absolve the criminal of the consequences of his own desperate acts.

Republican Platform of 1972, p.864

Serious crimes rose only one per cent during the first quarter of this year—down from six per cent last year and 13 per cent the year before. From 1960 to 1968 major crime went up 122 per cent.

Republican Platform of 1972, p.864

The fact is, in the first quarter of 1972, 80 of our 155 largest cities had an actual decline in reported crime.

Republican Platform of 1972, p.864

In our Nation's Capitol, our anti-crime programs have been fully implemented. Through such measures as increased police, street lighting, a Narcotics Treatment Administration, court reform and special prosecuting units for major offenders, we have steadily dropped the crime rate since November 1969. By the first quarter of this year, the serious crime rate was down to half its all-time high.

Republican Platform of 1972, p.864

When our Administration took office, a mood of lawlessness was spreading rapidly, undermining the legal and moral foundations of our society. We moved at once to stop violence in America. We have:

Republican Platform of 1972, p.864

Greatly increased Federal aid to State and local law enforcement agencies across the country, with more than $1.5 billion spent on 50,000 crime-fighting projects.

Republican Platform of 1972, p.864

Augmented Justice Department funding fourfold and provided more marshals, more judges, more narcotics agents, more Assistant United States Attorneys in the field.

Republican Platform of 1972, p.864

Raised the Law Enforcement Assistance Administration budget ten-fold, earmarking $575 million of the $850 million for 1973 to upgrade State and local police and courts through revenue sharing.

Republican Platform of 1972, p.864

Added 600 new Special Agents to the FBI.

Republican Platform of 1972, p.864

Raised Federal spending on juvenile delinquency from $15 million to more than $180 million [p.865] and proposed legislation to launch a series of model youth services.

Republican Platform of 1972, p.865

Appointed Attorneys General with a keen sense of the rights of both defendants and victims, and determination to enforce the laws.

Republican Platform of 1972, p.865

Appointed judges whose respect for the rights of the accused is balanced by an appreciation of the legitimate needs of law enforcement.

Republican Platform of 1972, p.865

Added to the Supreme Court distinguished lawyers of firm judicial temperament and fidelity to the Constitution.

Republican Platform of 1972, p.865

Even more fundamentally, we have established a renewed climate of respect for law and law enforcement. Now those responsible for enforcing the law know they have the full backing of their Government.

Republican Platform of 1972, p.865

We recognize that programs involving work release, study release and half-way houses have contributed substantially to the rehabilitation of offenders and we support these programs. We "further support training programs for the staffs in our correctional institutions and will continue to see that minority group staff members are recruited to work in these institutions.

The Fight against Organized Crime

Republican Platform of 1972, p.865

To most of us, organized criminal activity seems remote and unreal—yet syndicates supply the narcotics pushed on our youth, corrupt local officials, terrify legitimate businesses and fence goods stolen from our homes. This Administration strongly supported the Organized Crime Control Act of 1970, and under our Strike Force concept we have combined Federal enforcement agencies to wage a concerted assault on organized crime. We have expanded the number of these strike forces and set a high priority for a new campaign against the syndicates.

Republican Platform of 1972, p.865

Last year we obtained indictments against more than 2,600 members or associates of organized crime syndicates—more than triple the number indicted in 1968.

Republican Platform of 1972, p.865

At last we have the lawless elements in our society on the run.

Republican Platform of 1972, p.865

The Republican Party intends to keep them running,

Rehabilitation of Offenders

Republican Platform of 1972, p.865

We have given the rehabilitation of criminal offenders more constructive, top-level attention than it has received at any time in our Nation's history. In November 1969, the President ordered a ten-year improvement program in prison facilities, correctional systems and rehabilitation methods and procedures.

Republican Platform of 1972, p.865

We believe the correctional system not only should punish, but also should educate and rehabilitate. We are determined to press ahead with reform of the system to make it more effective against crime.

Republican Platform of 1972, p.865

Almost a decade of inadequate Federal support of law enforcement has left deep scars in our society, but now a new mood pervades the country, Civil disorders and campus violence are no longer considered inevitable. Today, we see a new respect for law and order.

Republican Platform of 1972, p.865

Our goal is justice—for everyone.

Republican Platform of 1972, p.865

We pledge a tireless campaign against crime—to restore safety to our streets, and security to law-abiding citizens who have a right to enjoy their homes and communities free from fear. We pledge to:

Republican Platform of 1972, p.865

Continue our vigorous support of local police and law enforcement agencies, as well as Federal law enforcement agencies.

Republican Platform of 1972, p.865

Seek comprehensive procedural and substantive reform of the Federal Criminal Code.

Republican Platform of 1972, p.865

Accelerate the drive against organized crime. Increase the funding of the Federal judiciary to help clear away the logjam in the courts which obstructs the administration of justice.

Republican Platform of 1972, p.865

Push forward in prison reform and the rehabilitation of offenders.

Republican Platform of 1972, p.865

Intensify efforts to prevent criminal access to all weapons, including special emphasis on cheap, readily-obtainable handguns, retaining primary responsibility at the State level, with such Federal law as necessary to enable the States to meet their responsibilities.

Republican Platform of 1972, p.865

Safeguard the right of responsible citizens to collect, own and use firearms for legitimate purposes, including hunting, target shooting and self-defense. We will strongly support efforts of all law enforcement agencies to apprehend and prosecute to the limit of the law all those who use firearms in the commission of crimes.

Drug Abuse

Republican Platform of 1972, p.865

The permissiveness of the 1960's left no legacy more insidious than drug abuse. In that decade [p.866] narcotics became widely available, most tragically among our young people. The use of drugs became endowed with a sheen of false glamour identified with social protest.

Republican Platform of 1972, p.866

By the time our Nation awakened to this cancerous social ill, it found no major combat weapons available.

Republican Platform of 1972, p.866

Soon after we took office, our research disclosed there were perhaps hundreds of thousands of heroin users in the United States. Their cravings multiplied violence and crime. We found many more were abusing other drugs, such as amphetamines and barbiturates. Marijuana had become commonplace. All this was spurred by criminals using modern methods of mass distribution against outnumbered authorities lacking adequate countermeasures.

Republican Platform of 1972, p.866

We quickly launched a massive assault against drug abuse.

Republican Platform of 1972, p.866

We intercepted the supply of dangerous drugs at points of entry and impeded their internal distribution. The budget for international narcotics control was raised from $5 million to over $50 million. Narcotics control coordinators were appointed in 59 United States embassies overseas to work directly with foreign governments in stopping drug traffic. We have narcotics action agreements with over 20 countries. Turkey has announced a total ban on opium production and, with our cooperation, France has seized major heroin laboratories and drugs.

Republican Platform of 1972, p.866

To inhibit the distribution of heroin in our own country, we increased the law enforcement budget for drug control more than 10 times—from $20 million to $244 million.

Republican Platform of 1972, p.866

We are disrupting major narcotics distribution in wholesale networks through the combined efforts of the Bureau of Narcotics and Dangerous Drugs, Customs operations at our borders, and a specially credited unit of over 400 Internal Revenue agents who conduct systematic tax investigations of targeted middle and upper echelon traffickers, smugglers, and financiers. Last January we established the Office of Drug Abuse Law Enforcement to disrupt street and mid-level heroin traffickers.

Republican Platform of 1972, p.866

We established the "Heroin Hot Line"—a nationwide toll free phone number (800/368-5363)—to give the public a single number for reporting information on heroin pushers.

Republican Platform of 1972, p.866

Last year we added 2,000 more Federal narcotics agents, and the Bureau of Narcotics and Dangerous Drugs has trained over 170,000 State and local personnel.

Republican Platform of 1972, p.866

And we are getting results. This past year four times as much heroin was seized as in the year this Administration took office. Since 1969, the number of drug-related arrests has nearly doubled.

Republican Platform of 1972, p.866

For drug abuse prevention and treatment we increased the budget from $46 million to over $485 million.

Republican Platform of 1972, p.866

The demand for illicit drugs is being reduced through a massive effort directed by a newly created office in the White House. Federally funded drug treatment and rehabilitation programs were more than doubled last fiscal year, and Federal programs now have the capacity to treat more than 60,000 drug abusers a year.

Republican Platform of 1972, p.866

To alert the public, particularly the youth, to the Dangers of drugs, we established a National Clearinghouse for Drug Abuse Information in 1970 as well as a $3.5 million Drug Education and Training Program.

Republican Platform of 1972, p.866

We realize that the problem of drug abuse cannot be quickly solved, but we have launched a massive effort where practically none existed before. Nor will we relax this campaign:

Republican Platform of 1972, p.866

We pledge to seek further international agreements to restrict the production and movement of dangerous drugs.

Republican Platform of 1972, p.866

We pledge to expand our programs of education, rehabilitation, training and treatment. We will do more than ever before to conduct research into the complex psychological regions of disappointment and alienation which have led many young people to turn desperately toward drugs.

Republican Platform of 1972, p.866

We firmly oppose efforts to make drugs easily available. We equally oppose the legalization of marijuana. We intend to solve problems, not create bigger ones by legalizing drugs of unknown physical impact.

Republican Platform of 1972, p.866

We pledge the most intensive law enforcement war ever waged. We are determined to drive the pushers of dangerous drugs from the streets, schools and neighborhoods of America.

Agriculture and Rural Life

Republican Platform of 1972, p.866

Our agriculture has become the economic marvel of the world. Our American farmers and ranchers have tripled per worker production in the last 20 years, while non-farm industries have increased theirs a little over half.

Republican Platform of 1972, p.867

Yet when we took office three and a half years [p.867] ago, the farm community was being shockingly shortchanged for its remarkable achievements.

Republican Platform of 1972, p.867

Inflation was driving up both the cost of farming and the cost of living—indeed, driving up all prices except the prices of products the farmers were taking to market. Overall farm income was down. Farm exports were low. Bureaucratic planting regulations were oppressive. All across the country family farms were failing.

Republican Platform of 1972, p.867

Our moves to deal with these problems have been numerous and effective. The rate of inflation has been curbed without forcing down prices for commodities, even as we have stepped up our drive against rising food costs in the cities.

Republican Platform of 1972, p.867

Net farm income has soared to a record high of more than $18 billion. During these Republican years average net farm income has been over $2 billion a year higher than during the last two Administrations. For the same period average income per farm is up more than 40 percent.

Republican Platform of 1972, p.867

And farm exports now stand at a record $8 billion, sharply up from the $5.7 billion when we took office.

Republican Platform of 1972, p.867

Operating loans to help young farmers have reached the highest levels in history. Administration-backed legislation has given farmers much greater freedom to plant what they choose, and we have given assistance to cooperatives to strengthen the farmers' bargaining positions.

Republican Platform of 1972, p.867

Rural development has been energetically carried forward, and small towns and rural areas have been helped to adjust and grow. The loan programs of the Farmers Home Administration for farm and rural people have been dramatically increased. Electric and telephone service in rural areas has been substantially expanded, a Rural Telephone Bank has been enacted, and the Farm Credit Administration has been streamlined. The total national investment in rural development has almost tripled. Heading the Department of Agriculture have been leaders who understand and forcefully speak out for the farming people of America.

Republican Platform of 1972, p.867

Farmers are benefiting markedly from our successful efforts to expand exports—notably a $750 million sale of United States grains to the Soviet Union, with prospects of much more. Last year we negotiated a similar sale amounting to $135 million.

Republican Platform of 1972, p.867

For the future, we pledge to intensify our efforts to:

Republican Platform of 1972, p.867

Achieve a $10 billion annual export market by opening new foreign markets, while continuing to fight for fair treatment for American farm products in our traditional markets;

Republican Platform of 1972, p.867

Follow sound economic policies to brake inflation and reduce interest rates;

Republican Platform of 1972, p.867

Expand activities to assist farmers in bargaining for fair prices and reasonable terms in a rapidly changing marketing system;

Republican Platform of 1972, p.867

Keep farm prices in the private sector, not subject to price controls;

Republican Platform of 1972, p.867

Support family farms as the preferred method of organizing agricultural production, and protect them from the unfair competition of farming by tax-loss corporations and non-farm enterprises;

Republican Platform of 1972, p.867

Reform Federal estate tax laws, which often force the precipitate sale of family farms to help pay the tax, in such ways as to help support the continuance of family farms as institutions of great importance to the American way of life;

Republican Platform of 1972, p.867

Provide greater credit, technical assistance, soil and water conservation aid, environmental enhancement, economic stimulus and sympathetic leadership to America's rural areas and communities;

Republican Platform of 1972, p.867

Concentrate research on new uses of agricultural products;

Republican Platform of 1972, p.867

Continue assistance to farm cooperatives, including rural electric and telephone cooperatives, in their efforts to improve their members;

Republican Platform of 1972, p.867

Develop land and water policy that takes account of the many uses to which these resources may be put;

Republican Platform of 1972, p.867

Establish realistic environmental standards which safeguard wise resource use, while avoiding undue burdens on farmers;

Republican Platform of 1972, p.867

Use forums of national leaders to create a better understanding by all citizens, those in the cities and suburbs as well as those in small towns, of the difficult problems confronting farm and ranch families in a modern agriculture.

Republican Platform of 1972, p.867

We will not relax our efforts to increase net farm income, to narrow the spread between farm and non-farm income levels, and to pursue commodity programs that will enable farmers and ranchers to receive fair prices for what they produce.

Community Development

Republican Platform of 1972, p.867

For more than a quarter century the Federal Government has sought to assist in the conservation [p.868] and rebuilding of our urban centers. Yet, after the spending of billions of dollars and the commitment of billions more to future years, we now know that many existing programs are unsuited to the complex problems of the 1970's. Programs cast in the mold of the "big government" philosophy of the 1930's are simply incapable of meeting the challenge of today.

Republican Platform of 1972, p.868

Our Party stands, therefore, for major reform of Federal community development programs and the development of a new philosophy to cope with urban ills.

Republican Platform of 1972, p.868

Republican urban strategy rejects throwing good money after bad money. Instead, through fundamental fiscal, management and program reforms, we have created a new Federal partnership through which State, county and municipal governments can best cope with specific problems such as education, crime, drug abuse, transportation, pollution and housing.

Republican Platform of 1972, p.868

We believe the urban problems of today fall into these categories:

Republican Platform of 1972, p.868

The fiscal crises of State, county and municipal governments;

Republican Platform of 1972, p.868

The need for a better quality and greater availability of urban services;

Republican Platform of 1972, p.868

The continual requirement of physical development;

Republican Platform of 1972, p.868

The need for better locally designed, locally implemented, locally controlled solutions to the problems of individual urban areas.

Republican Platform of 1972, p.868

In the last category—the importance of grass roots planning and participation—our Republican Party has made its most important contribution to solving urban problems.

Republican Platform of 1972, p.868

We hold the government planners should be guided by the people through their locally elected representatives. We believe that real solutions require the full participation of the private sector.

Republican Platform of 1972, p.868

To help ease the fiscal crises of State, county and municipal governments, we pledge increased Federal assistance—assistance we have more than doubled in the past four years. And, as stressed elsewhere in this Platform, we remain committed to General Revenue Sharing, which could reduce the oppressive property tax.

Republican Platform of 1972, p.868

Our proposals for Special Revenue Sharing for Urban Development, transportation, manpower and law enforcement—all still bottled up by the opposition Congress—are designed to make our towns and cities places where Americans can once again live and work without physical or environmental hazard. Urban areas are already benefiting from major funding increases which we fought for in the Law Enforcement Assistance Administration programs and in our $10 billion mass transit program.

Republican Platform of 1972, p.868

Urban areas are also benefiting from our new Legacy of Parks program, which is bringing recreation opportunities closer to where people live.

Republican Platform of 1972, p.868

We are committed also to the physical development of urban areas. We have quadrupled subsidized housing starts for low and moderate income families since 1969, and effected substantial increases for construction of municipal waste treatment facilities.

Republican Platform of 1972, p.868

We strongly oppose the use of housing or community development programs to impose arbitrary housing patterns on unwilling communities. Neither do we favor dispersing large numbers of people away from their homes and neighborhoods against their will. We do believe in providing communities, with their full consent, guidance and cooperation with the means and incentives to increase the quantity and quality of housing in conjunction with providing increased access to jobs for their low-income citizens.

Republican Platform of 1972, p.868

We also pledge to carry forward our policy on encouraging the development of new towns in order to afford all Americans a wider range of residential choices. Additionally, our Special Revenue Sharing for Urban and Rural Community Development, together with General Revenue Sharing and nationwide welfare reform, are basic building blocks for a balanced policy of national growth, leading to better lives for all Americans, whether they dwell in cities, suburbs or rural areas.

Republican Platform of 1972, p.868

Our Party recognizes counties as viable units of regional government with a major role in modernizing and restructuring local services, eliminating duplication and increasing local cooperation. We urge Federal and State governments, in implementing national goals and programs, to utilize the valuable resources of counties as area-wide, general-purpose governments.

Housing

Republican Platform of 1972, p.868

Our Republican Administration has made more and better housing available to more of our citizens than ever before.

Republican Platform of 1972, p.868

We are building two-and-a-third million new homes a year—65 per cent more than the average [p.869] in the eight years of the two previous Administrations. Progress has not been in numbers alone; housing quality has also risen to an all-time high—far above that of any other country.

Republican Platform of 1972, p.869

We will maintain and increase this pattern of growth. We are determined to attain the goal of a decent home for every American.

Republican Platform of 1972, p.869

Significant numbers of Americans still lack the means for decent housing, and in such cases-where special need exists—we will continue to apply public resources to help people acquire better apartments and homes. We further pledge:

Republican Platform of 1972, p.869

Continued housing production for low and moderate income families, which has sharply increased since President Nixon took office;

Republican Platform of 1972, p.869

Improvement of housing subsidy programs and expansion of mortgage credit activities of Federal housing agencies as necessary to keep Americans the best-housed people in the world;

Republican Platform of 1972, p.869

Continued development of technological and management innovations to lower housing costs—a program begun by Operation Breakthrough, which is assisting in the development of new methods for more economical production of low-cost, high-quality homes.

Republican Platform of 1972, p.869

We urge prompt action by State, county and municipal governments to seek solutions to the serious problems caused by abandoned buildings in urban areas.

Transportation

Republican Platform of 1972, p.869

When President Nixon took office a crisis in transportation was imminent, as indicated by declining mass transportation service, mounting highway deaths, congested urban streets, long delays at airports and airport terminals, deterioration of passenger train service, and a dwindling Merchant Marine. Within two years the President had proposed and signed into law:

Republican Platform of 1972, p.869

A $10 billion, 12-year program—the Urban Mass Transportation Act of 1970—to infuse new life into mass transportation systems and help relieve urban congestion;

Republican Platform of 1972, p.869

A major 10 year program involving $280 million annually for airport development projects as well as an additional $250 million annually to expand airways systems and facilities;

Republican Platform of 1972, p.869

The Rail Passenger Service Act of 1970 to streamline and improve the Nation's passenger train service;

Republican Platform of 1972, p.869

New research and development projects, including automatic people movers, improved Metroliner and Turbo-trains, quieter aircraft jet engines, air pollution reduction for mass transportation vehicles, and experimental safety automobiles. We strongly support these research and development initiatives of the Department of Transportation.

Republican Platform of 1972, p.869

Four years ago we called attention to the decline of our Merchant Marine due to previous neglect and apathy. We promised a vigorous ship replacement program to meet the changing pattern of our foreign commerce. We also pledged to expand maritime research and development and the simplification and revision of construction and operating subsidy procedures.

Republican Platform of 1972, p.869

By the enactment of the Merchant Marine Act of 1970, we have reversed the long decline of our Merchant Marine. We reaffirm our goals set forth in 1968 and anticipate the future development of a merchant fleet that will give us defensive mobility in time of emergency as well as economic strength in time of peace.

Republican Platform of 1972, p.869

To reduce traffic and highway deaths, the National Highway Traffic Safety Administration has been reorganized and expanded, with dramatic results. In 1971, the number of traffic deaths per hundred million miles driven was the lowest in history.

Republican Platform of 1972, p.869

To help restore decision-making to the people, we have proposed a new Single Urban Fund providing almost $2 billion a year by 1975 to State and metropolitan areas to assist local authorities in solving their own transportation problems in their own way.

Republican Platform of 1972, p.869

Our proposal for Special Revenue Sharing for Transportation would also help governments close to the people meet local needs and provide greater freedom to achieve a proper balance among the Nation's major transportation modes.

Republican Platform of 1972, p.869

To revitalize the surface freight transportation industry, we have recommended measures to modernize railway equipment and operations and to update regulatory practices. These measures, on which Congress still dawdles, would help curb inflation by saving the public billions of dollars a year in freight costs. Their enactment would also expand employment and improve our balance of trade.

Republican Platform of 1972, p.869

The Nation's transportation needs are expected to double in the next 20 years. Our Party will continue to pursue policies and programs that will [p.870] meet these needs and keep the country well ahead of rapidly changing transportation demands.

Environment

Republican Platform of 1972, p.870

In January 1969, we found the Federal Government woefully unprepared to deal with the rapidly advancing environmental crisis. Our response was swift and substantial.

Republican Platform of 1972, p.870

First, new decision-making organizations were set in place—the first Council on Environmental Quality, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration. We also proposed a new Department of Natural Resources, but Congress has failed to act. We also created a National Industrial Pollution Control Council to enlist the private sector more actively against environmental decay, and Presidential Federal Property Review Board was appointed to ferret out Federal property for transfer to local park and recreational uses.

Republican Platform of 1972, p.870

Second, we gave top priority in the Federal Budget to environmental improvements. This fiscal year approximately $2.4 billion will be expended for major environmental programs—three times more than was being spent when President Nixon took office.

Republican Platform of 1972, p.870

Third, sweeping environment messages were sent to Congress in 1970, 1971 and 1972 covering air quality, water quality, toxic waste substances, ocean dumping, noise, solid waste management, land use, parklands and many other environmental concerns. Almost all of these proposals still languish in the opposition Congress.

Republican Platform of 1972, p.870

Although the President cannot move until and unless Congress passes laws in many of these areas, he nevertheless can act—and has acted—forcefully on many fronts:

Republican Platform of 1972, p.870

He has directed the Federal Government to practice ecological leadership by using low-lead gasoline and recycled paper. He has cracked down on flagrant polluters, greatly increasing prosecutions and making the first use of Federal authority to shut down major industries during an air pollution crisis. The fragile and unique Everglades were saved from a jetport. Pesticide abuses were curtailed.

Republican Platform of 1972, p.870

Strict new clean air standards were set, and in many urban centers the air is improving. Regulations were issued to make one grade of lead-free and phosphorous-free gasoline available throughout the Nation by July 1, 1974, and a phased reduction was required in the lead content of regular and premium gasolines. Auto makers were required to design air pollution control systems to assure that vehicles comply with Federal emission standards throughout their usual life.

Republican Platform of 1972, p.870

Additionally, the President launched the Legacy of Parks program to convert underutilized Federal properties to park and recreational use, with special emphasis on new parks in or near urban areas. More than 140 areas have already been made available to States, counties and municipalities for such use, including priceless stretches of ocean beach. Moreover, nearly two million acres of land have been purchased by Federal, State and local governments for recreation and for historical and natural preservation purposes.

Republican Platform of 1972, p.870

A system of recreational trails for hiking, bicycling and horseback riding will help meet the pressing recreational needs of our increasingly urbanized society. Many State, county and municipal governments are developing bicycle, hiking, and horseback trails with our active assistance through various Federal programs. We pledge our continued commitment to seeking out practical ways for more and safer bicycling opportunities within our cities and metropolitan areas.

Republican Platform of 1972, p.870

We have also provided effective leadership in international environmental activity. The President has negotiated the Great Lakes Water Quality Agreement with Canada and a Cooperative Agreement on Environmental Protection with the Soviet Union.

Republican Platform of 1972, p.870

The United Nations Conference on the Human Environment in Stockholm adopted our government's initiatives for the creation of an international fund for the environment, a continuing United Nations agency for environmental problems, and the control of ocean dumping. Our President has led the effort for a ten-year moratorium on commercial whaling everywhere in the world.

Republican Platform of 1972, p.870

We call upon the Congress to act promptly on the President's environmental proposals still stalled there more than 20 in all. These include:

Republican Platform of 1972, p.870

Legislation to control, and in some cases prohibit, the dumping of wastes into the oceans, estuaries and the Great Lakes;

Republican Platform of 1972, p.870

A Federal Noise Control Act to reduce and regulate unwanted sound from aircraft, construction and transportation equipment;

Republican Platform of 1972, p.870

Authority to control hundreds of chemical substances newly marketed each year; Legislation to encourage the States to step up [p.871] to pressing decisions on how best to use land. Both environmentally critical areas such as wetlands and growth-inducing developments such as airports would have particular scrutiny;

Republican Platform of 1972, p.871

A proposal to provide for early identification and protection of endangered wildlife species. This would, for the first time, make the taking of endangered species a Federal offense;

Republican Platform of 1972, p.871

Establishment of recreational areas near metropolitan centers such as the Gateway National Recreational Area in New York and New Jersey and the Golden Gate National Recreation Area in and around San Francisco Bay.

Republican Platform of 1972, p.871

The nostalgic notion of turning the clock back to a simpler time may be appealing but is neither practical nor desirable. We are not going to abandon the automobile, but we are going to have a clean burning engine.

Republican Platform of 1972, p.871

We are not going to give up electric lighting and modern industry, but we do expect cleanly-produced electric power to run them.

Republican Platform of 1972, p.871

We are not going to be able to do without containers for our foods and materials, but we can improve them and make them reusable or biodegradable.

Republican Platform of 1972, p.871

We pledge a workable balance between a growing economy and environmental protection. We will resolve the conflicts sensibly within that framework.

Republican Platform of 1972, p.871

We commit ourselves to comprehensive pollution control laws, vigorous implementation of those laws and rigorous research into the technological problems of pollution control. The beginnings we have made in these first years of the 1970's are evidence of our determination to follow through.

Republican Platform of 1972, p.871

We intend to leave the children of America a legacy of clean air, clean water, vast open spaces and easily accessible parks.

Natural Resources and Energy

Republican Platform of 1972, p.871

Wilderness areas, forests, fish and wildlife are precious natural resources. We have proposed 36 new wilderness areas, adding another 3.6 million acres to the National Wilderness Preservation System. We have made tough new proposals to protect endangered species of wildlife.

Republican Platform of 1972, p.871

Public lands provide us with natural beauty, wilderness and great recreational opportunities as well as minerals, timber, food and fiber. We pledge to develop and manage these lands in a balanced way, both to protect the irreplaceable environment and to maximize the benefits of their use to our society. We will continue these conservation efforts in the years ahead.

Republican Platform of 1972, p.871

We recognize and commend the humane societies and the animal welfare societies in their work to protect animals.

Republican Platform of 1972, p.871

Water supplies are not a boundless resource. The Republican Party is committed to developing additional water supplies by desalinization, the discovery of new groundwater stocks, recycling and wiser and more efficient use of the waters we have.

Republican Platform of 1972, p.871

We will continue the development of flood control, navigation improvement and reclamation projects based on valid cost-benefit estimates, including full consideration of environmental concerns.

Republican Platform of 1972, p.871

No modern nation can thrive without meeting its energy needs, and our needs are vast and growing. Last year we proposed a broad range of actions to facilitate research and development for clean energy, provide energy resources on Federal lands, assure a timely supply of nuclear fuels, use energy more efficiently, balance environmental and energy needs and better organize Federal efforts.

Republican Platform of 1972, p.871

The National Minerals Policy Act of 1970 encourages development of domestic resources by private enterprise. A program to tap our vast shale resources has been initiated consistent with the National Environmental Policy Act of 1969.

Republican Platform of 1972, p.871

We need a Department of Natural Resources to continue to develop a national, integrated energy policy and to administer and implement that policy as the United States approaches the 21st Century. Energy sources so vitally important to the welfare of our Nation are becoming increasingly interchangeable. There is nothing inherently incompatible between an adequate energy supply and a healthy environment.

Republican Platform of 1972, p.871

Indeed, vast quantities of energy are needed to do the work necessary to clean up our air and streams. Without sufficient supplies of power we will not be able to attain our goals of reducing unemployment and poverty and enhancing the American standard of living.

Republican Platform of 1972, p.871

Responsible government must consider both the short-term and the long-term aspects of our energy supplies. Avoidance of brown-outs and power disruptions now and in the future call for sound policies supporting incentives that will encourage [p.872] the exploration for, and development of, our fossil fuels. Such policies will buy us time to develop the sophisticated and complex technologies needed to utilize the exotic energy sources of the future.

Republican Platform of 1972, p.872

National security and the importance of a favorable balance of trade and balance of payments dictate that we must not permit our Nation to become overly dependent on foreign sources of energy. Since more than half our Nation's domestic fossil resources now lie under Federal lands, high priority must be given to the governmental steps necessary to the development of these resources by private industry.

Republican Platform of 1972, p.872

A liquid metal fast breeder reactor demonstration plant will be built with the financial support of the Atomic Energy Commission, the electric power industry and the Tennessee Valley Authority.

Republican Platform of 1972, p.872

We will accelerate research on harnessing thermo-nuclear energy and continue to provide leadership in the production of energy from the sun and geothermal steam. We recognize the serious problem of assuring adequate electric generating capacity in the Nation, and pledge to meet this need without doing violence to our environment.

Oceans

Republican Platform of 1972, p.872

The oceans are a vast, largely untapped reservoir of resources, a source of food, minerals, recreation and pleasure, with great potential for economic development. For their maintenance we must:

Republican Platform of 1972, p.872

Encourage the development of coastal zone management systems by the States, in cooperation with the Federal Government, to preserve the coastal environment while allowing for its prudent social and economic development;

Republican Platform of 1972, p.872

Protect the oceans from pollution through the creation of binding domestic and international legal and institutional arrangements;

Republican Platform of 1972, p.872

Foster arrangements to develop the untapped mineral resources of the seas in an equitable and environmentally sound manner;

Republican Platform of 1972, p.872

Establish domestic and international institutions for the management of the ocean fisheries. Fishing in international waters, a way of life for many Americans, must be maintained without harassment on the high seas or unreasonable restrictions;

Republican Platform of 1972, p.872

Protect and conserve marine mammals and other marine species to ensure their abundance and especially to protect species whose survival is endangered;

Republican Platform of 1972, p.872

Maintain a national capability in ocean science and technology and, through the United Nations Conference on the Law of the Sea, work to codify an international legal framework for the peaceful conduct of ocean activities.

Science and Technology

Republican Platform of 1972, p.872

Basic and applied scientific research and development are indispensable to our national security, our international competitive position, and virtually every aspect of the domestic economy. We have initiated a new research-and-development strategy which emphasizes a public-private partnership in searching out new ideas and technologies to create new jobs, new internationally competitive industries and new solutions for complex domestic problems.

Republican Platform of 1972, p.872

In support of this strategy we have increased Federal efforts in civilian research and development by 65 per cent—from $3.3 billion to $5.4 billion—and expanded research in drug abuse, law enforcement, health care, home building, motor vehicle safety, energy and child development as well as many other fields.

Republican Platform of 1972, p.872

We will place special emphasis on these areas in which breakthroughs are urgently needed: Abundant, clean energy sources;

Republican Platform of 1972, p.872

Safe, fast and pollution-free transportation; Improved emergency health care;

Republican Platform of 1972, p.872

Reduction of loss of life, health and property in natural disasters;

Republican Platform of 1972, p.872

Rehabilitation of alcoholics and addicts to dangerous drugs.

Republican Platform of 1972, p.872

Additionally, we urge the fair and energetic enforcement of all fire-prevention laws and applaud the work of the National Commission on Fire Prevention and Control. We encourage accelerated research on methods of fire prevention and suppression, including studies on flammable fabrics, hazardous materials, fire equipment and training procedures.

Republican Platform of 1972, p.872

The space program is yielding impressive dividends in earth-oriented applications of space technology—advances in medicine, industrial techniques and consumer products that would still be unknown had we not developed the technology to reach the moon. We will press ahead with the space shuttle program to replace today's expendable launch vehicles and provide low-cost access [p.873] to space for a wide variety of missions, including those related to earth resources. We pledge to continue to extend our knowledge of the most distant frontiers in space.

Republican Platform of 1972, p.873

We will also extend our exploration of the sea-bed and the sea. We will seek food for the hungry, power for future technologies, new medicines for the sick and new treatments of water for arid regions of the world.

Republican Platform of 1972, p.873

The quantities of metals and minerals needed to maintain our economic health and living standards are so huge as to require the re-use of all recoverable commodities from solid waste materials. We pledge a vigorous program of research and development in order to seek out more economical methods to recover and recycle such commodities, including the processing of municipal solid wastes.

Republican Platform of 1972, p.873

We pledge to extend the communications frontier, and to foster the development of orbiting satellite systems that will make possible wholly new, world-wide educational and entertainment programs.

Republican Platform of 1972, p.873

We recognize that the productivity of our Nation's research and development efforts can be enhanced through cooperative international projects. The signing of the Moscow agreements for cooperation in space, environment, health and science and technology has opened a new era in international relations. A similar agreement between the United States and Polish Governments will permit expansion of programs such as the jointly-funded Copernicus Astronomical Center and Krakow Children's Hospital.

Republican Platform of 1972, p.873

Finally, we pledge expanded efforts to aid unemployed scientists and engineers. We are determined to see that such on-going efforts as the Technology Mobilization and Reemployment Program are effective.

The Individual and Government

Republican Platform of 1972, p.873

Even though many urgently-needed Administration proposals have been long delayed or stopped by the oppositions Congress, we have kept our 1968 promise to make government more accountable and more responsive to the citizen. One such proposal is General Revenue Sharing with State and local governments—a means of returning to the people powers which for 40 years have grown increasingly centralized in the remote Washington bureaucracy. Another is consolidation of scores of categorical grant programs into six Special Revenue Sharing programs which would make available some $12 billion annually in broad policy fields for States and localities to apply in their own ways to their own needs. Yet another is our proposal to modernize the Executive Branch of the Federal Government by combining six Cabinet departments and several independent agencies into four new departments. So far, the opposition controlled Congress has blocked or ignored all of these proposals.

Republican Platform of 1972, p.873

In addition, we have:

Republican Platform of 1972, p.873

Improved domestic policy formulation and implementation by the new Domestic Council and Office of Management and Budget within the Executive Office of the President;

Republican Platform of 1972, p.873

Established stronger liaison between the Federal Government and the States, counties and municipalities by a new Office of Intergovernmental Relations, headed by the Vice President;

Republican Platform of 1972, p.873

Overhauled the fragmented and poorly coordinated Federal agencies concerned with drug abuse and the environment;

Republican Platform of 1972, p.873

Utilized voluntary citizen effort through the formation of the ACTION agency in government and the National Center for Voluntary Action outside of government;

Republican Platform of 1972, p.873

Proposed reorganization of the Federal regulatory agencies and appointed distinguished people to those agencies;

Republican Platform of 1972, p.873

Assured more open government, ending abuse of document classification and providing fuller information to the public.

Republican Platform of 1972, p.873

We pledge continuing reform and revitalization of government to assure a better response to individual needs.

Republican Platform of 1972, p.873

We express deep concern for the flood victims of tropical Storm Agnes, the worst natural disaster in terms of property damage in our Nation's history. Past laws were totally inadequate to meet this crisis, and we commend the President's leadership in urgently recommending the newly-enacted $1.8 billion flood relief measure, greatly expanding and enlarging the present program. We pledge to reevaluate and enlarge the national flood disaster insurance program so that it will be adequate for future emergencies.

Republican Platform of 1972, p.873

We will continue to press for the enactment of General and Special Revenue Sharing and to pursue further initiatives both to decentralize governmental activities and to transfer more such activities to the private sector.

Republican Platform of 1972, p.874

We will continue to defend the citizen's right [p.874] to privacy in our increasingly interdependent society. We oppose computerized national data banks and all other "Big Brother" schemes which endanger individual rights.

Republican Platform of 1972, p.874

We reaffirm our view that voluntary prayer should be freely permitted in public places—particularly, by school children while attending public schools—providing that such prayers are not prepared or prescribed by the state or any of its political subdivisions and that no person's participation is coerced, thus preserving the traditional separation of church and state.

Republican Platform of 1972, p.874

We remain committed to a comprehensive program of human rights, social betterment and political participation for the people of the District of Columbia. We will build on our strong record in this area—a record which includes cutting the District of Columbia crime rate in half, aggressive support for a balanced transportation system in metropolitan Washington, initiation of a Bicentennial program and celebration in the national capital region, and support for the first Congressional Delegate in nearly a century. We support voting representation for the District of Columbia in the United States Congress and will work for a system of self-government for the city which takes fair account of the needs and interests of both the Federal Government and the citizens of the District of Columbia.

Republican Platform of 1972, p.874

The Republican Party adheres to the principle of self-determination for Puerto Rico. We will welcome and support statehood for Puerto Rico if that status should be the free choice of its people in a referendum vote.

Republican Platform of 1972, p.874

Additionally, we will pursue negotiations with the Congress of Micronesia on the future political status of the Trust Territories of the Pacific Islands to meet the mutual interests of both parties. We favor extending the right of electing the territorial Governor to the people of American Samoa, and will take complementary steps to increase local self-government in American Samoa. We vigorously support such action as is necessary to permit American citizens resident in Guam, Puerto Rico and the Virgin Islands to vote for President and Vice President in national elections. We support full voting rights in committees for the Delegates to Congress from Guam and the Virgin Islands.

Republican Platform of 1972, p.874

In our territorial policy we seek a maximum degree of local self-sufficiency and self-government, while encouraging greater inclusion in Federal services and programs and greater participation in national decision-making.

Volunteerism

Republican Platform of 1972, p.874

In our free system, the people are not only the source of our social problems but also the main source of solutions. Volunteerism, therefore, an indispensable national resource, is basic to our Republican philosophy. We applaud the Administration's efforts to encourage volunteerism by all Americans and commend the millions of volunteers who are working in communities and states across the country on myriad projects. We favor further implementation of voluntary action programs throughout the fifty States to assist public and private agencies in working to assure quality life for all human beings.

Arts and Humanities

Republican Platform of 1972, p.874

The United States is experiencing a cultural renaissance of inspiring dimension. Scores of millions of our people are now supporting and participating in the arts and humanities in quest of a richer life of the mind and the spirit. Our national culture, no longer the preserve of the elite, is becoming a people's heritage of importance to the whole world.

Republican Platform of 1972, p.874

We believe, with the President, that "the Federal Government has a vital role as catalyst, innovator, and supporter of public and private efforts for cultural development."

Republican Platform of 1972, p.874

We have supported a three-year extension of the National Foundation on the Arts and the Humanities, and increased the funding of its two endowments by more than four times the level of three years ago. The State Arts Councils, which operate in all 50 States and the five special jurisdictions, have also been strengthened.

Republican Platform of 1972, p.874

The Arts Endowment has raised its support for the Nation's museums, orchestras, theatre, dance, opera companies and film centers and encouraged the creativity of individual artists and writers. In addition, the new Federal Expansion Arts Program has been sharply increased.

Republican Platform of 1972, p.874

We have encouraged Federal agencies to use the arts in their programs, sponsored an annual Design Assembly for Federal administrators, requested the National Endowment for the Arts to recommend a program for upgrading the design of Federal buildings, and moved to set new standards [p.875] of excellence in all design endeavors of the Federal Government.

Republican Platform of 1972, p.875

Moreover, the National Endowment for the Humanities, now greatly enlarged, is fostering improved teaching and scholarship in history, literature, philosophy and ethics. The Endowment also supports programs to raise levels of scholarship and teaching in Afro-American, American Indian and Mexican-American studies, has broadened its fellowship programs to include junior college teachers, and stresses adult or continuing education, including educational television and film series. We have also expanded the funding of public broadcasting.

Republican Platform of 1972, p.875

For the future, we pledge continuance of our vigorous support of the arts and humanities.

A Better Future for All

Children

Republican Platform of 1972, p.875

We believe, with the President, that the first five years of life are crucial to a child's development, and further, that every child should have the opportunity to reach his full potential as an individual.

Republican Platform of 1972, p.875

We have, therefore, established the Office of Child Development, which has taken a comprehensive approach to the development of young children, combining programs dealing with their physical, social and educational needs and development.

Republican Platform of 1972, p.875

We have undertaken a wide variety of demonstration programs to assure our children, particularly poor children, a good start in life—for example, the Parent and Child Center program for infant care, Home Start to strengthen the environment of the preschool child, and Health Start to explore new delivery systems of health care for young children.

Republican Platform of 1972, p.875

We have redirected Head Start to perform valuable full-day child care and early education services, and more than 380,000 preschool children are now in the program. We have doubled funds for early childhood demonstration programs which will develop new tools and new teaching techniques to serve children who suffer from deafness, blindness and other handicaps.

Republican Platform of 1972, p.875

So that no child will he denied the opportunity for a productive life because of inability to read effectively, we have established the Right to Read Program.

Republican Platform of 1972, p.875

To add impetus to the entire educational effort, our newly-created National Institute of Education ensures that broad research and experimentation will develop the best educational opportunities for all children. Additionally, we have taken steps to help ensure that children receive proper care while their parents are at work.

Republican Platform of 1972, p.875

Moreover, as stated elsewhere in this Platform, we have broadened nutritional assistance to poor children by nearly tripling participation in the Food Stamp Program, more than doubling the number of needy children in the school lunch program, operating a summer feeding program for three million young people, increasing the breakfast program fivefold, and doubling Federal support for child nutritional programs. We are improving medical care for poor children through more vigorous treatment procedures under Medicaid and more effectively targeting maternal and child health services to low-income mothers. We will continue to seek out new means to reach and teach children in their crucial early years.

Youth

Republican Platform of 1972, p.875

We believe that what our youth most want and need is not special treatment as a group apart, but just the opposite—the opportunity for full participation by exercising the rights and responsibilities of adults.

Republican Platform of 1972, p.875

In 1970 the President approved legislation which gave the vote to more than 11 million 18-to-20 year olds. The 26th Amendment, which places this important new right in the Constitution, has our enthusiastic backing.

Republican Platform of 1972, p.875

Our Administration has already made the draft a far less arbitrary factor in young men's lives. Now we near the point where we can end conscription altogether and achieve our goal of an all-volunteer armed force.

Republican Platform of 1972, p.875

Our total war on drug abuse has had special benefits for youth, hardest hit by this menace. Last year we held the first White House Conference ever held by and for young people themselves. The Administration gave the Conference's more than 300 recommendations a searching re view, and last spring the President returned a detailed response and action report to the conferees.

Republican Platform of 1972, p.875

The anarchy which swept major campuses in the late 1960's penalized no one more severely than the young people themselves. The recent calm on campus is, we believe, in part the result of the President's leadership in winding down the [p.876] war in Vietnam, reducing the draft, and taking a strong stand against lawlessness, but our view is that colleges themselves are responsible for maintaining a campus climate that will preserve academic freedom.

Republican Platform of 1972, p.876

We have proposed legislation to ensure that no qualified student is denied a higher education by lack of funds, and have also moved to meet the often-overlooked concerns of the two-thirds of the college-age young not in school. We have developed a new job-oriented, career-education concept, expanded Federal manpower programs and provided a record number of summer job opportunities for young men and women.

Republican Platform of 1972, p.876

To engage youthful idealism and energies more effectively, we have created the new ACTION volunteer service agency, bringing together the Peace Corps, VISTA, and other volunteer programs; and we encouraged the establishment of the independent National Center for Voluntary Action.

Republican Platform of 1972, p.876

We stand for lowering the legal age of majority in all jurisdictions to 18; and we will seek to broaden the involvement of young people in every phase of the political process—as voters, party workers and leaders, candidates and elected officials, and participants in government at municipal, State and Federal levels.

Republican Platform of 1972, p.876

We will continue to build on these solid achievements in keeping with our conviction that these young people should have the opportunity to participate fully in the affairs of our society.

Equal Rights for Women

Republican Platform of 1972, p.876

The Republican Party recognizes the great contributions women have made to our society as homemakers and mothers, as contributors to the community through volunteer work, and as members of the labor force in careers outside the home. We fully endorse the principle of equal rights, equal opportunities and equal responsibilities for women, and believe that progress in these areas is needed to achieve the full realization of the potentials of American women both in the home and outside the home.

Republican Platform of 1972, p.876

We reaffirm the President's pledge earlier this year: "The Administration will…continue its strong efforts to open equal opportunities for women, recognizing clearly that women are often denied such opportunities today. While every woman may not want a career outside the home, every woman should have the freedom to choose whatever career she wishes—and an equal chance to pursue it."

Republican Platform of 1972, p.876

This Administration has done more than any before it to help women of America achieve equality of opportunity.

Republican Platform of 1972, p.876

Because of its efforts, more top-level and middle-management positions in the Federal Government are held by women than ever before. The President has appointed a woman as his special assistant in the White House, specifically charged with the recruitment of women for policy-making jobs in thee United States Government. Women have also been named to high positions in the Civil Service Commission and the Department of Labor to ensure equal opportunities for employment and advancement at all levels of the Federal service.

Republican Platform of 1972, p.876

In addition we have:

Republican Platform of 1972, p.876

Significantly increased resources devoted to enforcement of the Fair Labor Standards Act, providing equal pay for equal work;

Republican Platform of 1972, p.876

Required all firms doing business with the Government to have affirmative action plans for the hiring and promotion of women;

Republican Platform of 1972, p.876

Requested Congress to expand the jurisdiction of the Commission on Civil Rights to cover sex discrimination;

Republican Platform of 1972, p.876

Recommended and supported passage of Title IX of the Higher Education Act opposing discrimination against women in educational institutions;

Republican Platform of 1972, p.876

Supported the Equal Employment Opportunity Act of 1972 giving the Equal Employment Opportunity Commission enforcement power in sex discrimination cases;

Republican Platform of 1972, p.876

Continued our support of the Equal Rights Amendment to the Constitution, our Party being the first national party to back this Amendment.

Republican Platform of 1972, p.876

Other factors beyond outright employer discrimination—the lack of child care facilities, for example—can limit job opportunities for women. For lower and middle income families, the President supported and signed into law a new tax provision which makes many child care expenses deductible for working parents. Part of the President's recent welfare reform proposal would provide comprehensive day care services so that women on welfare can work.

Republican Platform of 1972, p.876

We believe the primary responsibility for a child's care and upbringing lies with the family. However, we recognize that for economic and [p.877] many other reasons many parents require assistance in the care of their children.

Republican Platform of 1972, p.877

To help meet this need, we favor the development of publicly or privately run, voluntary, comprehensive, quality day care services, locally controlled but federally assisted, with the requirement that the recipients of these services will pay their fair share of the costs according to their ability.

Republican Platform of 1972, p.877

We oppose ill-considered proposals, incapable of being administered effectively, which would heavily engage the Federal Government in this area.

Republican Platform of 1972, p.877

To continue progress for women's rights, we will work toward:

Republican Platform of 1972, p.877

Ratification of the Equal Rights Amendment; Appointment of women to highest level positions in the Federal Government, including the Cabinet and Supreme Court;

Republican Platform of 1972, p.877

Equal pay for equal work;

Republican Platform of 1972, p.877

Elimination of discrimination against women at all levels in Federal Government;

Republican Platform of 1972, p.877

Elimination of discrimination against women in the criminal justice system, in sentencing, rehabilitation and prison facilities;

Republican Platform of 1972, p.877

Increased opportunities for the part time employment of women, and expanded training programs for women who want to reenter the labor force;

Republican Platform of 1972, p.877

Elimination of economic discrimination against women in credit, mortgage, insurance, property, rental and finance contracts.

Republican Platform of 1972, p.877

We pledge vigorous enforcement of all Federal statutes and executive orders barring job discrimination on the basis of sex.

Republican Platform of 1972, p.877

We are proud of the contributions made by women to better government. We regard the active involvement of women at all levels of the political process, from precinct to national status, as of great importance to our country. The Republican Party welcomes and encourages their maximum participation.

Older Americans

Republican Platform of 1972, p.877

We believe our Nation must develop a new awareness of the attitudes and needs of our older citizens. Elderly Americans are far too often forgotten Americans, relegated to lives of idleness and isolation by a society bemused with the concerns of other groups. We are distressed by the tendency of many Americans to ignore the heart-break and hardship resulting from the generation gap which separates so many of our people from those who have reached the age of retirement. We deplore what is tantamount to cruel discrimination—age discrimination in employment, and the discrimination of neglect and indifference, perhaps the cruelest of all.

Republican Platform of 1972, p.877

We commit ourselves to helping older Americans achieve greater self-reliance and greater opportunities for direct participation in the activities of our society. We believe that the later years should be, not isolated years, not years of dependency, but years of fulfillment and dignity. We believe our older people are not to be regarded as a burden but rather should be valuable participants in our society. We believe their judgement, their experience, and their talents are immensely valuable to our country.

Republican Platform of 1972, p.877

Because we so believe, we are seeking and have sought in many ways to help older Americans—for example:

Republican Platform of 1972, p.877

Federal programs of direct benefit to older Americans have increased more than $16 billion these past four years;

Republican Platform of 1972, p.877

As part of this, social security benefits are more than 50 per cent higher than they were four years ago, the largest increase in the history of social security;

Republican Platform of 1972, p.877

Social security benefits have become inflation proof by making them rise automatically to match cost of-living increases, a protection long advocated by the Republican Party;

Republican Platform of 1972, p.877

We have upgraded nursing homes. Expenditures under the Older Americans Act have gone up 800 per cent since President Nixon took office, with a strong emphasis on programs enabling older Americans to live dignified, independent lives in their own homes.

Republican Platform of 1972, p.877

The valuable counsel of older people has been sought directly through the White House Conference on Aging. The President has appointed high-level advisers on the problems of the aging to his personal staff.

Republican Platform of 1972, p.877

We have urged upon the opposition Congress—again, typically to no avail—numerous additional programs of benefit to the elderly. We will continue pressing for these new initiatives:

Republican Platform of 1972, p.877

Increase the amount of money a person can earn without losing social security benefits;

Republican Platform of 1972, p.877

Increase widow, widower, and delayed retirement benefits;

Republican Platform of 1972, p.878

Improve the effectiveness of Medicare, including [p.878] elimination of the monthly premium required under Part B of Medicare—the equivalent of more than a three per cent social security increase;

Republican Platform of 1972, p.878

Strengthen private pension plans through tax deductions to encourage their expansion, improved vesting, and protection of the investments in these funds;

Republican Platform of 1972, p.878

Reform our tax system so that persons 65 or over will receive increased tax-free income;

Republican Platform of 1972, p.878

Encourage volunteer service activities for older Americans, such as the Retired Senior Volunteer Program and the Foster Grandparents Program;

Republican Platform of 1972, p.878

Give special attention to bringing full government services within the reach of the elderly in rural areas who are often unable to share fully in their deserved benefits because of geographic inaccessibility;

Republican Platform of 1972, p.878

Upgrade other Federal activities important to the elderly including programs for nutrition, housing and nursing homes, transportation, consumer protection, and elimination of age discrimination in government and private employment.

Republican Platform of 1972, p.878

We encourage constructive efforts which will help older citizens to be better informed about existing programs and services designed to meet their needs, and we pledge to cut away excessive Federal red tape to make it easier for older Americans to receive the benefits to which they are entitled.

Working Men and Women

Republican Platform of 1972, p.878

The skill, industry and productivity of American workers are the driving force of our free economy. The Nation's labor unions, comprised of millions of working people, have advanced the well-being not only of their members but also of our entire free-enterprise system. We of the Republican Party reaffirm our strong endorsement of Organized Labor's key role in our national life.

Republican Platform of 1972, p.878

We salute the statesmanship of the labor union movement. Time and time again, at crucial moments, it has voiced its outspoken support for a firm and effective foreign policy and for keeping the Armed Forces of the United States modern and strong.

Republican Platform of 1972, p.878

The American labor movement and the Republican Party have always worked against the spread of totalitarian forms of government. Together we can continue to preserve in America the best system of government ever devised for human happiness and fulfillment.

Republican Platform of 1972, p.878

We are for the right of American workers and their families to enjoy and to retain to the greatest possible extent the rewards of their own labor.

Republican Platform of 1972, p.878

We regard collective bargaining as the cornerstone of the Nation's labor relations policy. The government's role is not to encroach upon this process but rather to aid the differing parties to make collective bargaining more effective both for themselves and for the public. In furtherance of that concept, we will continue to develop procedures whereby the imagination, ingenuity and knowledge of labor and management can more effectively seek solutions for such problems as structural adjustment and productivity.

Republican Platform of 1972, p.878

In the construction industry, for example, we will build on a new joint effort between government and all parts of the industry to solve such problems as seasonality and varying peaks of demand to ensure a stable growth in the number of skilled craftsmen.

Republican Platform of 1972, p.878

We call upon management and labor to devote their best efforts to finding better ways to conduct labor-management relations so the good of all the people can be advanced without strikes or lockouts.

Republican Platform of 1972, p.878

We will continue to search for realistic and fair solutions to emergency labor disputes, guided by two basic principles; first, that the health and safety of the people of the United States should always be paramount; and second, that collective bargaining should be kept as free as possible from government interference.

Republican Platform of 1972, p.878

For mine health and safety, we have implemented the most comprehensive legislation in the Nation's history, resulting in a major reduction in mine-related accidents. We pledge continued advancement of the health and safety of workers.

Republican Platform of 1972, p.878

We will continue to press for improved pension vesting and other statutory protections to assure that Americans will not lose their hard-earned retirement income.

Republican Platform of 1972, p.878

We pledge further modernization of the Federal Civil Service System, including emphasis on executive development. We rededicate ourselves to promotion on merit, equal opportunity, and the setting of clear incentives for higher productivity. We will give continuing close attention to the evolving labor-management relationship in the Federal service.

Republican Platform of 1972, p.878

We pledge realistic programs of education and training so that all Americans able to do so can make their own way, on their own ability, receiving [p.879] an equal and fair chance to advance themselves. We flatly oppose the notion that the hard-earned tax dollars of American workers should be used to support those who can work but choose not to, and who believe that the world owes them a living free from any responsibility or care.

Republican Platform of 1972, p.879

We are proud of our many other solid achievements on behalf of America's working people—for example:

Republican Platform of 1972, p.879

Nearly five million additional workers brought under the coverage of the unemployment insurance system, and eligibility deadlines twice extended;

Republican Platform of 1972, p.879

Funding for more than 166,000 jobs under the Emergency Employment Act;

Republican Platform of 1972, p.879

Expansion of vocational education and manpower training programs;

Republican Platform of 1972, p.879

Use of the long-neglected Trade Expansion Act to help workers who lose their jobs because of imports. We strongly favor vigorous competition by American business in the world market but in ways that do not displace American jobs;

Republican Platform of 1972, p.879

Negotiation of long-needed limitations on imports of man-made fibers, textiles and other products, thus protecting American jobs.

Republican Platform of 1972, p.879

We share the desire of all Americans for continued prosperity in peacetime. We will work closely with labor and management toward our mutual goal of assuring a job for every man and woman seeking the dignity of work.

Ending Discrimination

Republican Platform of 1972, p.879

From its beginning, our Party has led the way for equal rights and equal opportunity. This great tradition has been carried forward by the Nixon Administration.

Republican Platform of 1972, p.879

Through our efforts de jure segregation is virtually ended. We pledge continuation of these efforts until no American schoolchild suffers educational deprivation because of the color of his skin or the language he speaks and all school children are receiving high quality education. In pursuit of this goal we have proposed $2.5 billion of Federal aid to school districts to improve educational opportunities and build facilities for disadvantaged children. Further to assure minority progress, we have provided more support to predominantly black colleges than ever before—twice the amount being spent when President Nixon took office.

Republican Platform of 1972, p.879

Additionally, we have strengthened Federal enforcement of equal opportunity laws. Spending for civil rights enforcement has been increased from $75 million to $602 million—concrete evidence of our commitment to equal justice for all. The President also supported and signed into law the Equal Employment Opportunity Act of 1972, which makes the Equal Employment Opportunity Commission a much more powerful body.

Republican Platform of 1972, p.879

Working closely with leaders of construction unions, we have initiated 50 "home-town" plans which call for more than 35,000 additional minority hirings in the building trades during the next four years. We will continue to search out new employment opportunities for minorities in other fields as well. We believe such new jobs can and should be created without displacing those already at work. We will give special consideration to minority Americans who live and make their way in the rural regions of our Country—Americans too often bypassed in the advances of the general society.

Republican Platform of 1972, p.879

We have made unprecedented progress in strengthening minority participation in American business. We created the Office of Minority Business Enterprise in March 1969 to coordinate the Federal programs assisting members of minority groups who seek to establish or expand businesses. We have more than tripled Federal loans, guarantees and grants to minority-owned businesses. More minority Americans are now in our Nation's economic mainstream than at any other time in our history, and we pledge every effort to expand these gains.

Republican Platform of 1972, p.879

Minority businesses now receive 16 per cent of the Small Business Administration dollar—more than double the proportion in 1968. Many Minority Enterprise Small Business Investment Companies have been licensed since 1969 to provide venture capital for minority enterprises. More than $200 million is now available through this program, and we have requested additional funding.

Republican Platform of 1972, p.879

In late 1970, we initiated a combined Government-private program to increase minority bank deposits. This year our goal of $100 million has been reached four times over.

Republican Platform of 1972, p.879

We pledge to carry forward our efforts to place minority citizens in responsible positions—efforts we feel are already well under way. During the last four years the percentage of minority Federal employees has risen to a record high of almost 20 per cent and, perhaps more important, the quality of jobs for minority Americans has improved. We [p.880] have recruited more minority citizens for top managerial posts in Civil Service than ever before. We will see that our progress in this area will continue and grow.

Republican Platform of 1972, p.880

In 1970 President Nixon approved strong new amendments to the Voting Rights Act of 1965, and we pledge continued vigilance to ensure that the rights affirmed by this act are upheld.

Republican Platform of 1972, p.880

The cultural diversity of America's heritage groups has always been a source of strength for our society and our Party. We reaffirm our commitment to the basic American values which have made this Nation the land of opportunity for these groups, originating from all sectors of the world, from Asia to Africa to Europe to Latin America. We will continue our Party's open-door policy and work to assure all minorities full opportunity for participation in the political process. We pledge vigorous support of the Bilingual Act and the Ethnic Studies Heritage Act.

Spanish-Speaking Americans

Republican Platform of 1972, p.880

In recognition of the significant contributions to our country by our proud and independent Spanish-speaking citizens, we have developed a comprehensive program to help achieve equal opportunity.

Republican Platform of 1972, p.880

During the last four years Spanish-speaking Americans have achieved a greater role in national affairs. More than thirty have been appointed to high federal positions.

Republican Platform of 1972, p.880

To provide the same learning opportunities enjoyed by other American children, we have increased bilingual education programs almost six-fold since 1969. We initiated a 16-point employment program to help Spanish-speaking workers, created the National Economic Development Association to promote Spanish-speaking business development and expanded economic development opportunities in Spanish-speaking communities.

Republican Platform of 1972, p.880

We will work for the use of bilingual staffs in localities where this language capability is desirable for effective health care.

Indians, Alaska Natives, and Hawaiians

Republican Platform of 1972, p.880

President Nixon has evolved a totally new Indian policy which we fully support. The opposition Congress, by inaction on most of the President's proposals, has thwarted Indian rights and opportunities.

Republican Platform of 1972, p.880

We commend the Department of the Interior for its stalwart defense of Indian land and water rights, and we urge the Congress to join in support of that effort. We further request Congress to permit Indian tribal governments to assume control over the programs of the Departments of Interior and Health, Education and Welfare in their homelands, to assure Indians a role in determining how funds can best be used for their children's schools, to expand Indian economic development opportunity, to triple the funds for Indian credit and create a new Assistant Secretary of the Interior for Indian and Territorial Affairs.

Republican Platform of 1972, p.880

These reforms, all urged by the President, have been ignored by the Congress. We—with the Indian people are impatiently waiting.

Republican Platform of 1972, p.880

Knowing the Indians' love for their land and recognizing the many wrongs committed in years past, the President has restored Blue Lake in New Mexico to the Taos Pueblo and the Mr. Adams area in Washington to the Yakima Nation. We are seeking to protect Indian water rights in Pyramid Lake by bringing suit in the Supreme Court.

Republican Platform of 1972, p.880

We are fully aware of the severe problems facing the Menominee Indians in seeking to have Federal recognition restored to their tribe and promise a complete and sympathetic examination of their pleas.

Republican Platform of 1972, p.880

We have increased the Bureau of Indian Affairs' budget by 214 per cent, nearly doubled funds for Indian health, and are arranging with tribal leaders for the allocation of Bureau funds in accordance with priorities set by the tribal governments themselves.

Republican Platform of 1972, p.880

We pledge continued attention to the needs of off-reservation Indians and have launched demonstration projects at Indian centers in nine major cities. We are determined that the first Americans will not be the forgotten Americans, and that their rights will be respected.

Republican Platform of 1972, p.880

We will continue the policy of Indian preference in hiring and promotion and apply it to all levels, including management and supervisory positions in those agencies with programs affecting Indian peoples.

Republican Platform of 1972, p.880

The standard of living of Indian Americans is still far below that of any of the peoples of the United States. This intolerable level of existence should be alleviated by the enactment of new legislation designed to further Indian self-determination without termination and to close this economic gap and raise the Indian standard of life [p.881] to that of the rest of America. We favor the development of such legislation in the 93d Congress.

Republican Platform of 1972, p.881

At the President's recommendation, the Congress voted an Alaska Native Claims Settlement which confirms the titles of the Eskimos, Indians and Aleuts to 40 million acres and compensates them with a generous cash settlement.

Republican Platform of 1972, p.881

We will also preserve and continue to protect the Hawaiian Homes Commission Act which provides land already set aside for Hawaiians for homes and the opportunity to preserve their culture.

Republican Platform of 1972, p.881

Our achievements for human dignity and opportunity are specific and real, not idle promises. They have brought tremendous progress to many thousands of minority citizens and made our society more just for all.

Republican Platform of 1972, p.881

We will press on with our fight against social injustice and discrimination, building upon the achievements already made. Knowing that none of us can reap the fullest blessings of liberty until all of us can, we reaffirm our commitment to the upward struggle for universal freedom led by Abraham Lincoln a century ago.

Consumers

Republican Platform of 1972, p.881

The American consumer has a right to product safety; clearly specified qualities and values, honest descriptions and guarantees, fair credit procedures, and due recourse for fraud and deception. We are addressing these concerns forcefully, with executive action and legislative and legal initiatives.

Republican Platform of 1972, p.881

The issues involved in this accelerating awareness on the part of consumers lie close to the heart of the dynamic American market: Good products at fair prices made it great; the same things will keep it great.

Republican Platform of 1972, p.881

Enlightened business management is as interested in consumer protection and consumer education as are consumers themselves. In a market-place as competitive and diverse as ours, a company's future depends on the reputation of its products. One safety error can wipe out an established firm overnight.

Republican Platform of 1972, p.881

Unavoidably, the remoteness of business management from the retail counter tends to hamper consumers in resolving quality and performance questions. Technical innovations make it harder for the consumer to evaluate new products. Legal complexities often deny efficient remedies for deception or product failure.

Republican Platform of 1972, p.881

To assist consumers and business, President Nixon established the first Office of Consumer Affairs in the White House and made its Director a member of his personal staff and of the Cost of Living Council. We have also proposed a Buyer's Bill of Rights, including:

Republican Platform of 1972, p.881

Federal authority for the regulation of hazardous consumer products;

Republican Platform of 1972, p.881

Requirement of full disclosure of the terms of warranties and guarantees in language all can understand.

Republican Platform of 1972, p.881

We support the establishment of an independent Consumer Protection Agency to present the consumer's case in proceedings before Federal agencies and also a consumer product safety agency in the Department of Health, Education and Welfare. We oppose punitive proposals which are more anti-business than pro-consumer.

Republican Platform of 1972, p.881

We pledge vigorous enforcement of all consumer protection laws and to foster more consumer education as a vital necessity in a market-place ever increasing in variety and complexity.

Veterans

Republican Platform of 1972, p.881

We regard our Nation's veterans precisely as our President does:

Republican Platform of 1972, p.881

"Americans have long known that those who defended the great values of our Nation in wartime are of great value to the Nation when the war is over. It is traditional that the American veteran has been helped by his Nation so that he can create his own 'peace story', a story of prosperity, independence and dignity.

Republican Platform of 1972, p.881

"Veterans benefit programs have therefore become more than a recognition for services performed in the past; they have become an investment in the future of the veteran and of his country."

Republican Platform of 1972, p.881

Under Republican leadership, far more for our veterans is being done than ever before:

Republican Platform of 1972, p.881

G.I. Bill education benefits have been increased more than 35 per cent. Vietnam-era veterans have the highest assistance levels in history to help them pursue educational opportunities.

Republican Platform of 1972, p.881

Major cost-of-living adjustments have been made in Compensation and pension payments.

Republican Platform of 1972, p.881

Medical services are the best in the history of the Veterans Administration and now include a strong new drug treatment and rehabilitation program.

Republican Platform of 1972, p.881

Disability benefits have been increased.

Republican Platform of 1972, p.882

[p.882] G.I. home loan benefits have been expanded and improved.

Republican Platform of 1972, p.882

The total Administration commitment is massive—$12.4 billion for this fiscal year. This is the largest Veterans Administration budget in history, and the third largest of all Federal agencies and departments.

Republican Platform of 1972, p.882

We are giving the highest priority to the employment problems of Vietnam veterans. In 1971 we initiated a comprehensive program which recently placed more than one million Vietnam-era veterans in jobs, training and education programs. For the future, we pledge:

Republican Platform of 1972, p.882

Continuation of the Veterans Administration as a strong, independent agency;

Republican Platform of 1972, p.882

Continuation of an independent system of Veterans Administration health care facilities to provide America's veterans with the best medical care available, including appropriate attention to the problems of the ex-serviceman afflicted with drug and alcohol problems;

Republican Platform of 1972, p.882

Continuing attention to the needs of the Vietnam-era veteran, with special emphasis on employment opportunities, education and housing.

Republican Platform of 1972, p.882

Continuation of our efforts to raise GI Bill education benefits to a level commensurate with post-World War II benefits in adjusted dollars;

Republican Platform of 1972, p.882

Continued effort for a better coordinated national policy on cemeteries and burial benefits for veterans.

Republican Platform of 1972, p.882

We will not fail our obligation to the Nation's 29 million veterans and will stand ever watchful of their needs and rights.

Conclusion

Republican Platform of 1972, p.882

The record is clear.

Republican Platform of 1972, p.882

More than any President, Richard Nixon has achieved major changes in policy and direction in our government. He has restored faith—faith that our system will indeed reflect the will of the people—faith that there will be a new era of peace and human progress at home and around the world.

Republican Platform of 1972, p.882

To be sure there is unfinished business on the agenda of our ever-restless Nation. We have great concern for those who have not participated more fully in the general prosperity. The twin evils of crime and drug abuse are still to be conquered. Peace in the world is not yet won.

Republican Platform of 1972, p.882

But Republican leadership has restored stability and sanity to our land once again. We have vigorously attacked every major problem.

Republican Platform of 1972, p.882

Once again our direction is peace; once again our determination is national strength; once again we are prospering; once again, on a host of fronts, we are making progress.

Republican Platform of 1972, p.882

Now we look to tomorrow.

Republican Platform of 1972, p.882

We pledge ourselves to go forward at an accelerated pace—with a determination and zeal unmatched before.

Republican Platform of 1972, p.882

In four years we mark the 200th anniversary of the freest, most productive, most benevolent Nation of all human history. In four years we celebrate one of man's highest achievements—two hundred years as a constitutional republic founded on the noble concept that every person is a sovereign being, possessed of dignity and inalienable rights.

Republican Platform of 1972, p.882

Almost two centuries ago, the Founding Fathers envisioned a Nation of free people, at peace with themselves and the world—each with equal opportunity to pursue happiness in his own way. Much of that dream has come true; much is still to be fulfilled.

Republican Platform of 1972, p.882

We, the Republican Party, pledge ourselves to go forward, hand-in-hand with every citizen, to solve those problems that yet stand in the way of realizing that more perfect union, the dream of the Founding Fathers—a dream enhanced by the free and generous gift of people working together, not in shifting alliances of separated minorities, but in unison of spirit and purpose. We cannot favor, nor can we respect, the notion of group isolation in our United States of America. We must not divide and weaken ourselves by attitudes or policies which would segregate our citizens into separate racial, ethnic, economic, religious or social groups. It is the striving of all of us—our striving together as Americans—that will move our Nation continually onward to our Founders' dream.

Republican Platform of 1972, p.882

Building on the foundations of peace in the world, and reason and prosperity at home, our Republican Party pledges a new era of progress for man—progress toward more freedom, toward greater protection of individual rights, toward more security from want and fear, toward greater fulfillment and happiness for all.

Republican Platform of 1972, p.882

We pledge to the American people that the 200th anniversary of this Nation in 1976 will be more than a celebration of two centuries of unequaled success; we pledge it also to be the beginning of the third and greatest century for all of our countrymen and, we pray, for all people in the world.

Lloyd Corp., Ltd. v. Tanner, 1972

Title: Lloyd Corp., Ltd. v. Tanner

Author: U.S. Supreme Court

Date: June 22, 1972

Source: 407 U.S. 551

This case was argued April 18, 1972, and was decided June 22, 1972.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Syllabus

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 551

Respondents sought to distribute handbills in the interior mall area of petitioner's large privately owned shopping center. Petitioner had a strict no-handbilling rule. Petitioner's security guards requested respondents under threat of arrest to stop the handbilling, suggesting that they could resume their activities on the public streets and sidewalks adjacent to but outside the center, which respondents did. Respondents, claiming that petitioner's action violated their First Amendment rights, thereafter brought this action for injunctive and declaratory relief. The District Court, stressing that the center is "open to the general public" and "the functional equivalent of a public business district," and relying on Marsh v. Alabama, 326 U.S. 501, and Amalgamated Food Employees Union v. Logan Valley Plaza, 391 U.S. 308, held that petitioner's policy of prohibiting handbilling within the mall violated respondents' First Amendment rights. The Court of Appeals affirmed.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 551

Held: There has been no dedication of petitioner's privately owned and operated shopping center to public use so as to entitle respondents to exercise First Amendment rights therein that are unrelated to the center's operations, and petitioner's property did not lose its private character and its right to protection under the Fourteenth Amendment merely because the public is generally invited to use it for the purpose of doing business with petitioner's tenants. The facts in this case are significantly different from those in Marsh, supra, which involved a company town with "all the attributes" of a municipality, and Logan Valley, supra, which involved labor picketing designed to convey a message to patrons of a particular store, so located in the center of a large private enclave as to preclude other reasonable access to store patrons. Under the circumstances present in this case, where the handbilling was unrelated to any activity within the center and where respondents had adequate alternative means of communication, the courts below erred in holding those decisions controlling. Pp. 556-570.

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446 F.2d 545, reversed and remanded. [407 U.S. 552]

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POWELL, J., delivered the opinion of the Court, in which BURGER, C.J., and WHITE, BLACKMUN, and REHNQUIST, JJ., joined. MARSHALL, J., filed a dissenting opinion, in which DOUGLAS, BRENNAN, and STEWART, JJ., joined, post, p. 570.

POWELL, J., lead opinion

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 552

MR. JUSTICE POWELL delivered the opinion of the Court.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 552

This case presents the question reserved by the Court in Amalgamated Food Employees Union v. Logan Valley Plaza, 391 U.S. 308 (1968), as to the right of a privately owned shopping center to prohibit the distribution of handbills on its property when the handbilling is unrelated to the shopping center's operations. Relying primarily on Marsh v. Alabama, 326 U.S. 501 (1946), and Logan Valley, the United States District Court for the District of Oregon sustained an asserted First Amendment right to distribute handbills in petitioner's shopping center, and issued a permanent injunction restraining petitioner from interfering with such right. 308 F.Supp. 128 (1970). The Court of Appeals for the Ninth Circuit affirmed, 446 F.2d 545 (1971). We granted certiorari to consider petitioner's contention that the decision below [407 U.S. 553] violates rights of private property protected by the Fifth and Fourteenth Amendments. 404 U.S. 1037 (1972).

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 553

Lloyd Corp., Ltd. (Lloyd), owns a large, modern retail shopping center in Portland, Oregon. Lloyd Center embraces altogether about 50 acres, including some 20 acres of open and covered parking facilities which accommodate more than 1,000 automobiles. It has a perimeter of almost one and one-half miles, bounded by four public streets. It is crossed in varying degrees by several other public streets, all of which have adjacent public sidewalks. Lloyd owns all land and buildings within the Center except these public streets and sidewalks. There are some 60 commercial tenants, including small shops and several major department stores.

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The Center embodies a relatively new concept in shopping center design. The stores are all located within a single large, multi-level building complex sometimes referred to as the "Mall." Within this complex, in addition to the stores, there are parking facilities, malls, private sidewalks, stairways, escalators, gardens, an auditorium, and a skating rink. Some of the stores open directly on the outside public sidewalks, but most open on the interior privately owned malls. Some stores open on both. There are no public streets or public sidewalks within the building complex, which is enclosed and entirely covered except for the landscaped portions of some of the interior malls.

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The distribution of the handbills occurred in the malls. They are a distinctive feature of the Center, serving both utilitarian and esthetic functions. Essentially, they are private, interior promenades with 10-foot sidewalks serving the stores, and with a center strip 30 feet wide in which flowers and shrubs are planted, and statuary, fountains, benches, and other amenities are located. There is no vehicular traffic on the malls. An architectural [407 U.S. 554] expert described the purpose of the malls as follows:

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In order to make shopping easy and pleasant, and to help realize the goal of maximum sales [for the Center], the shops are grouped about special pedestrian ways or malls. Here, the shopper is isolated from the noise, fumes, confusion and distraction which he normally finds along city streets, and a controlled, carefree environment is provided…. 1

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Although the stores close at customary hours, the malls are not physically closed, as pedestrian window shopping is encouraged within reasonable hours. 2 LIoyd employs 12 security guards, who are commissioned as such by the city of Portland. The guards have police authority within the Center, wear uniforms similar to those worn by city police, and are licensed to carry handguns. They are employed by and subject to the control of Lloyd. Their duties are the customary ones, including shoplifting surveillance and general security.

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At a few places within the Center, small signs are embedded in the sidewalk which state:

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NOTICE—Areas In Lloyd Center Used By The [407 U.S. 555] Public Are Not Public Ways But Are For The Use Of Lloyd Center Tenants And The Public Transacting Business With Them. Permission To Use Said Areas May Be Revoked At Any Time. Lloyd Corporation, Ltd.

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The Center is open generally to the public, with a considerable effort being made to attract shoppers and prospective shoppers, and to create "customer motivation" as well as customer goodwill in the community. In this respect, the Center pursues policies comparable to those of major stores and shopping centers across the country, although the Center affords superior facilities for these purposes. Groups and organizations are permitted, by invitation and advance arrangement, to use the auditorium and other facilities. Rent is charged for use of the auditorium except with respect to certain civic and charitable organizations, such as the Cancer Society and Boy and Girl Scouts. The Center also allows limited use of the malls by the American Legion to sell poppies for disabled veterans, and by the Salvation Army and Volunteers of America to solicit Christmas contributions. It has denied similar use to other civic and charitable organizations. Political use is also forbidden, except that presidential candidates of both parties have been allowed to speak in the auditorium. 3

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The Center had been in operation for some eight years when this litigation commenced. Throughout this period, it had a policy, strictly enforced, against the distribution of handbills within the building complex and its malls. No exceptions were made with respect to handbilling, which was considered likely to annoy customers, to create litter, potentially to create disorders, [407 U.S. 556] and generally to be incompatible with the purpose of the Center and the atmosphere sought to be preserved.

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On November 14, 1968, the respondents in this case distributed within the Center handbill invitations to a meeting of the "Resistance Community" to protest the draft and the Vietnam war. The distribution, made in several different places on the mall walkways by five young people, was quiet and orderly, and there was no littering. There was a complaint from one customer. Security guards informed the respondents that they were trespassing, and would be arrested unless they stopped distributing the handbills within the Center. 4 The guards suggested that respondents distribute their literature on the public streets and sidewalks adjacent to but outside of the Center complex. Respondents left the premises as requested "to avoid arrest" and continued the handbilling outside. Subsequently this suit was instituted in the District Court, seeking declaratory and injunctive relief.

I

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The District Court, emphasizing that the Center "is open to the general public," found that it is "the functional equivalent of a public business district." 308 F.Supp. at 130. That court then held that Lloyd's "rule prohibiting the distribution of handbills within the Mall violates…First Amendment rights." 308 F.Supp. at 131. In a per curiam opinion, the Court of Appeals held that it was bound by the "factual determination" as to the character of the Center, and concluded that the decisions of this Court in Marsh v. Alabama, 326 U.S. 501 (1946), and Amalgamated Food [407 U.S. 557] Employees Union v. Logan Valley Plaza, 391 U.S. 308 (1968), compelled affirmance. 5

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Marsh involved Chickasaw, Alabama, a company town wholly owned by the Gulf Shipbuilding Corp. The opinion of the Court, by Mr. Justice Black, described Chickasaw as follows:

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Except for [ownership by a private corporation] it has all the characteristics of any other American town. The property consists of residential buildings, streets, a system of sewers, a sewage disposal plant and a "business block" on which business places are situated. A deputy of the Mobile County Sheriff, paid by the company, serves as the town s policeman. Merchants and service establishments have rented the stores and business places on the business block, and the United States uses one of the places as a post office from which six carriers deliver mail to the people of Chickasaw and the adjacent area. The town and the surrounding neighborhood, which cannot be distinguished from the Gulf property by anyone not familiar with the property lines, are thickly settled, and, according to all indications, the residents use the business block as their regular shopping center. To do so, they now, as they have for many years, make use of a company-owned paved street and sidewalk located alongside the store fronts in order to enter and leave the stores and the post office. Intersecting company-owned roads at each end of the business block lead into a four-lane public highway which runs parallel to the business block at a distance of thirty feet. There is nothing to stop [407 U.S. 558] highway traffic from coming onto the business block, and, upon arrival, a traveler may make free use of the facilities available there. In short, the town and its shopping district are accessible to and freely used by the public in general, and there is nothing to distinguish them from any other town and shopping center except the fact that the title to the property belongs to a private corporation.

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326 U.S. at 502-503. A Jehovah's Witness undertook to distribute religious literature on a sidewalk near the post office, and was arrested on a trespassing charge. In holding that First and Fourteenth Amendment rights were infringed, the Court emphasized that the business district was within a company-owned town, an anachronism long prevalent in some southern States and now rarely found. 6

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 558

In Logan Valley, the Court extended the rationale of Marsh to peaceful picketing of a store located in a large shopping center, known as Logan Valley Mall, near Altoona, Pennsylvania. Weis Markets, Inc. (Weis), an original tenant, had opened a supermarket in one of the larger stores and was employing a wholly nonunion staff. Within 10 days after Weis opened, members of Amalgamated Food Employees Union Local 590 (Union) began picketing Weis, carrying signs stating that it was a nonunion market and that its employees were not receiving union wages or other union benefits. The picketing, conducted by nonemployees, was carried out [407 U.S. 559] almost entirely in the parcel pickup area immediately adjacent to the store and on portions of the adjoining parking lot. The picketing was peaceful, with the number of pickets varying from four to 13.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 559

Weis and Logan Valley Plaza, Inc., sought and obtained an injunction against this picketing. The injunction required that all picketing be confined to public areas outside the shopping center. On appeal, the Pennsylvania Supreme Court affirmed the issuance of the injunction, and this Court granted certiorari. In framing the question, this Court stated:

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 559

The case squarely presents…the question whether Pennsylvania's generally valid rules against trespass to private property can be applied in these circumstances to bar petitioners from the Weis and Logan premises.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 559

391 U.S. at 315. The Court noted that the answer would be clear "if the shopping center premises were not privately owned, but instead constituted the business area of a municipality." Ibid. In the latter situation, it has often been held that publicly owned streets, sidewalks, and parks are so historically associated with the exercise of First Amendment rights that access to them for purposes of exercising such rights cannot be denied absolutely. Lovell v. Griffin, 303 U.S. 444 (1938); Hague v. CIO, 307 U.S. 496 (1939); Schneider v. State, 308 U.S. 147 (1939); Jamison v. Texas, 318 U.S. 413 (1943).

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 559

The Court then considered Marsh v. Alabama, supra, and concluded that:

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 559

The shopping center here is clearly the functional equivalent of the business district of Chickasaw involved in Marsh.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 559

391 U.S. at 318. But the Court was careful not to go further and say that, for all purposes and uses, the privately owned streets, [407 U.S. 560] sidewalks, and other areas of a shopping center are analogous to publicly owned facilities:

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 560

All we decide here is that, because the shopping center serves as the community business block "and is freely accessible and open to the people in the area and those passing through," Marsh v. Alabama, 326 U.S. at 508, the State may not delegate the power, through the use of its trespass laws, wholly to exclude those members of the public wishing to exercise their First Amendment rights on the premises in a manner and for a purpose generally consonant with the use to which the property is actually put.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 560

Id. at 319-320.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 560

The Court noted that the scope of its holding was limited, and expressly reserved judgment on the type of issue presented in this case:

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 560

The picketing carried on by petitioners was directed specifically at patrons of the Weis Market located within the shopping center, and the message sought to be conveyed to the public concerned the manner in which that particular market was being operated. We are, therefore, not called upon to consider whether respondents' property rights could, consistently with the First Amendment, justify a bar on picketing which was not thus directly related in its purpose to the use to which the shopping center property was being put.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 560

Id. at 320 n. 9.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 560

The Court also took specific note of the facts that the Union's picketing was "directed solely at one establishment within the shopping center," id. at 321, and that the public berms and sidewalks were "from 350 to 500 feet away from the Weis store." Id. at 322. This distance made it difficult "to communicate [with] patrons of Weis" and "to limit [the] effect [of [407 U.S. 561] the picketing] to Weis only." Id. at 322, 323. 7 Logan Valley was decided on the basis of this factual situation, and the facts in this case are significantly different.

II

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 561

The courts below considered the critical inquiry to be whether Lloyd Center was "the functional equivalent of a public business district." 8 This phrase was first used in Logan Valley, but its genesis was in Marsh. It is well to consider what Marsh actually decided. As noted above, it involved an economic anomaly of the past, "the company town." One must have seen such towns to understand that, "functionally," they were no different from municipalities of comparable size. They developed primarily in the Deep South to meet economic conditions, especially those which existed following the Civil War. Impoverished States, and especially backward areas thereof, needed an influx of industry and capital. Corporations, attracted to the area by natural resources and abundant labor, were willing to assume the role of local government. Quite literally, towns [407 U.S. 562] were built and operated by private capital with all of the customary services and utilities normally afforded by a municipal or state government: there were streets, sidewalks, sewers, public lighting, police and fire protection, business and residential areas, churches, postal facilities, and sometimes schools. In short, as Mr. Justice Black said, Chickasaw, Alabama, had "all the characteristics of any other American town." 326 U.S. at 502. The Court simply held that, where private interests were substituting for and performing the customary functions of government, First Amendment freedoms could not be denied where exercised in the customary manner on the town's sidewalks and streets. Indeed, as title to the entire town was held privately, there were no publicly owned streets, sidewalks, or parks where such rights could be exercised.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 562

Logan Valley extended Marsh to a shopping center situation in a different context from the company town setting, but it did so only in a context where the First Amendment activity was related to the shopping center's operations. There is some language in Logan Valley, unnecessary to the decision, suggesting that the key focus of Marsh was upon the "business district," and that, whenever a privately owned business district serves the public generally, its sidewalks and streets become the functional equivalents of similar public facilities. 9 As Mr. Justice Black's dissent in Logan Valley emphasized, this would be an incorrect interpretation of the Court's decision in Marsh: 10

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 562

Marsh was never intended to apply to this kind of situation. Marsh dealt with the very special [407 U.S. 563] situation of a company-owned town, complete with streets, alleys, sewers, stores, residences, and everything else that goes to make a town. The particular company town involved was Chickasaw, Alabama, which, as we stated in the opinion, except for the fact that it

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 563

is owned by the Gulf Shipbuilding Corporation…has all the characteristics of any other American town. The property consists of residential buildings, streets, a system of sewers, a sewage disposal plant and a "business block" on which business places are situated.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 563

326 U.S. at 502. Again, toward the end of the opinion, we emphasized that "the town of Chickasaw does not function differently from any other town." 326 U.S. at 508. I think it is fair to say that the basis on which the Marsh decision rested was that the property involved encompassed an area that, for all practical purposes, had been turned into a town; the area had all the attributes of a town, and was exactly like any other town in Alabama.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 563

391 U.S. at 330-331.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 563

The holding in Logan Valley was not dependent upon the suggestion that the privately owned streets and sidewalks of a business district or a shopping center are the equivalent, for First Amendment purposes, of municipally owned streets and sidewalks. No such expansive reading of the opinion of the Court is necessary or appropriate. The opinion was carefully phrased to limit its holding to the picketing involved, where the picketing was "directly related in its purpose to the use to which the shopping center property was being put," 391 U.S. at 320 n. 9, and where the store was located in the center of a large private enclave, with the consequence that no other reasonable opportunities for the pickets to convey their message to their intended audience were available. [407 U.S. 564]

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 564

Neither of these elements is present in the case now before the Court.

A

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 564

The handbilling by respondents in the malls of Lloyd Center had no relation to any purpose for which the center was built and being used. 11 It is nevertheless argued by respondents that, since the Center is open to the public, the private owner cannot enforce a restriction against handbilling on the premises. The thrust of this argument is considerably broader than the rationale of Logan Valley. It requires no relationship, direct or indirect, between the purpose of the expressive activity and the business of the shopping center. The message sought to be conveyed by respondents was directed to all members of the public, not solely to patrons of Lloyd Center or of any of its operations. Respondents could have distributed these handbills on any public street, on any public sidewalk, in any public park, or in any public building in the city of Portland.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 564

Respondents' argument, even if otherwise meritorious, misapprehends the scope of the invitation extended to the public. The invitation is to come to the Center to do business with the tenants. It is true that facilities at the Center are used for certain meetings and [407 U.S. 565] for various promotional activities. The obvious purpose, recognized widely as legitimate and responsible business activity, is to bring potential shoppers to the Center, to create a favorable impression, and to generate goodwill. There is no open-ended invitation to the public to use the Center for any and all purposes, however incompatible with the interests of both the stores and the shoppers whom they serve.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 565

MR. JUSTICE WHITE, dissenting in Logan Valley, noted the limited scope of a shopping center's invitation to the public:

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 565

In no sense are any parts of the shopping center dedicated to the public for general purposes…. The public is invited to the premises, but only in order to do business with those who maintain establishments there. The invitation is to shop for the products which are sold. There is no general invitation to use the parking lot, the pickup zone, or the sidewalk except as an adjunct to shopping. No one is invited to use the parking lot as a place to park his car while he goes elsewhere to work. The driveways and lanes for auto traffic are not offered for use as general thoroughfares leading from one public street to another. Those driveways and parking spaces are not public streets, and thus available for parades, public meetings, or other activities for which public streets are used.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 565

391 U.S. at 338.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 565

It is noteworthy that respondents' argument based on the Center's being "open to the public" would apply in varying degrees to most retail stores and service establishments across the country. They are all open to the public in the sense that customers and potential customers are invited and encouraged to enter. In terms of being open to the public, there are differences only [407 U.S. 566] of degree—not of principle—between a free-standing store and one located in a shopping center, between a small store and a large one, between a single store with some malls and open areas designed to attract customers and Lloyd Center, with its elaborate malls and interior landscaping.

B

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 566

A further fact, distinguishing the present case from Logan Valley, is that the Union pickets in that case would have been deprived of all reasonable opportunity to convey their message to patrons of the Weis store had they been denied access to the shopping center. 12 The situation at Lloyd Center was notably different. The central building complex was surrounded by public sidewalks, totaling 66 linear blocks. All persons who enter or leave the private areas within the complex must cross public streets and sidewalks, either on foot or in automobiles. When moving to and from the privately [407 U.S. 567] owned parking lots, automobiles are required by law to come to a complete stop. Handbills may be distributed conveniently to pedestrians, and also to occupants of automobiles, from these public sidewalks and streets. Indeed, respondents moved to these public areas and continued distribution of their handbills after being requested to leave the interior malls. It would be an unwarranted infringement of property rights to require them to yield to the exercise of First Amendment rights under circumstances where adequate alternative avenues of communication exist. Such an accommodation would diminish property rights without significantly enhancing the asserted right of free speech. In ordering this accommodation, the courts below erred in their interpretation of this Court's decisions in Marsh and Logan Valley.

III

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 567

The basic issue in this case is whether respondents, in the exercise of asserted First Amendment rights, may distribute handbills on Lloyd's private property contrary to its wishes and contrary to a policy enforced against all handbilling. In addressing this issue, it must be remembered that the First and Fourteenth Amendments safeguard the rights of free speech and assembly by limitations on state action, not on action by the owner of private property used nondiscriminatorily for private purposes only. The Due Process Clauses of the Fifth and Fourteenth Amendments are also relevant to this case. They provide that "[n]o person shall…be deprived of life, liberty, or property, without due process of law." There is the further proscription in the Fifth Amendment against the taking of "private property…for public use, without just compensation."

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 567

Although accommodations between the values protected by these three Amendments are sometimes necessary, [407 U.S. 568] and the courts properly have shown a special solicitude for the guarantees of the First Amendment, this Court has never held that a trespasser or an uninvited guest may exercise general rights of free speech on property privately owned and used nondiscriminatorily for private purposes only. Even where public property is involved, the Court has recognized that it is not necessarily available for speaking, picketing, or other communicative activities. Mr. Justice Black, speaking for the Court in Adderley v. Florida, 385 U.S. 39 (1966), said:

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 568

The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. For this reason, there is no merit to the petitioners' argument that they had a constitutional right to stay on the property, over the jail custodian's objections, because this "area chosen for the peaceful civil rights demonstration was not only `reasonable' but also particularly appropriate…. " Such an argument has as its major unarticulated premise the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please. That concept of constitutional law was vigorously and forthrightly rejected in two of the cases petitioner rely on, Cox v. Louisiana, [379 U.S.] at 554-555 and 563-564. We reject it again. The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 568

385 U.S. at 47-48.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 568

Respondents contend, however, that the property of a large shopping center is "open to the public," serves the same purposes as a "business district" of a municipality, and therefore has been dedicated to certain types [407 U.S. 569] of public use. The argument is that such a center has sidewalks, streets, and parking areas which are functionally similar to facilities customarily provided by municipalities. It is then asserted that all members of the public, whether invited as customers or not, have the same right of free speech as they would have on the similar public facilities in the streets of a city or town.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 569

The argument reaches too far. The Constitution by no means requires such an attenuated doctrine of dedication of private property to public use. The closest decision in theory, Marsh v. Alabama, supra, involved the assumption by a private enterprise of all of the attributes of a state-created municipality and the exercise by that enterprise of semi-official municipal functions as a delegate of the State. 13 In effect, the owner of the company town was performing the full spectrum of municipal powers, and stood in the shoes of the State. In the instant case there is no comparable assumption or exercise of municipal functions or power.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 569

Nor does property lose its private character merely because the public is generally invited to use it for designated purposes. Few would argue that a free-standing store, with abutting parking space for customers, assumes significant public attributes merely because the public is invited to shop there. Nor is size alone the controlling factor. The essentially private character of a store and its privately owned abutting property does not change by virtue of being large or clustered with other stores in a modern shopping center. This is not to say that no differences may exist with respect to government regulation [407 U.S. 570] or rights of citizens arising by virtue of the size and diversity of activities carried on within a privately owned facility serving the public. There will be, for example, problems with respect to public health and safety which vary in degree and in the appropriate government response, depending upon the size and character of a shopping center, an office building, a sports arena, or other large facility serving the public for commercial purposes. We do say that the Fifth and Fourteenth Amendment rights of private property owners, as well as the First Amendment rights of all citizens, must be respected and protected. The Framers of the Constitution certainly did not think these fundamental rights of a free society are incompatible with each other. There may be situations where accommodations between them, and the drawing of lines to assure due protection of both, are not easy. But on the facts presented in this case, the answer is clear.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 570

We hold that there has been no such dedication of Lloyd's privately owned and operated shopping center to public use as to entitle respondents to exercise therein the asserted First Amendment rights. Accordingly, we reverse the judgment and remand the case to the Court of Appeals with directions to vacate the injunction.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 570

It is so ordered.

MARSHALL, J., dissenting

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 570

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE STEWART join, dissenting.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 570

Donald Tanner, Betsy Wheeler, and Susan Roberts (respondents) brought this action for a declaratory judgment that they have the right under the First and Fourteenth Amendments to the United States Constitution to distribute handbills in a shopping center owned by petitioner and an injunction to enforce that right. [407 U.S. 571] Relying primarily on our very recent decision in Amalgamated Food Employees Union v. Logan Valley Plaza, 391 U.S. 308 (1968), the United States District Court for the District of Oregon granted the relief requested. 308 F.Supp. 128 (1970). The United States Court of Appeals for the Ninth Circuit affirmed. 446 F.2d 545 (1971). Today, this Court reverses the judgment of the Court of Appeals and attempts to distinguish this case from Logan Valley. In my view, the distinction that the Court sees between the cases does not exist. As I read the opinion of the Court, it is an attack not only on the rationale of Logan Valley, but also on this Court's longstanding decision in Marsh v. Alabama, 326 U.S. 501 (1946). Accordingly, I dissent.

I

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 571

Lloyd Center is a large, modern retail shopping center in Portland, Oregon. Sprawling over 50 acres of land, the Center offers to shoppers more than 60 commercial businesses and professional offices. It also affords more than 850,000 square feet of open and covered off-street parking space—enough to accommodate more than 1,000 vehicles. Bounded by four public streets, Lloyd Center has a perimeter of almost one and one-half miles. Four public streets running east-west and one running north-south traverse the Center, and at least six other public streets run partly into or around it. All of these streets have adjacent sidewalks. These streets and sidewalks are the only parts of the Center that are not privately owned.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 571

The principal portion of the Center is occupied by a shopping area called the "Mall." Covering approximately 25 acres of land and having a perimeter of four-fifths of a mile, the Mall, in the words of the District Court,

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 571

is a multi-level complex of buildings, parking facilities, sub-malls, sidewalks, stairways, elevators, escalators, [407 U.S. 572] bridges, and gardens, and contains a skating rink, statues, murals, benches, directories, information booths, and other facilities designed to attract visitors and make them comfortable.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 572

308 F.Supp. at 129. No public streets cross the Mall, but some stores face those streets that form the perimeter, and it is possible to enter those stores from public sidewalks. Other stores are located in the interior of the Mall, and can only be reached by using privately owned walkways.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 572

On November 14, 1968, respondents entered the Mall and distributed handbills inviting the public to a meeting to protest the draft and the Vietnam war. The distribution was peaceful, nondisruptive, and litter-free. Security guards employed by the Center approached respondents, indicated that the Center did not permit handbilling in the Mall, suggested that they distribute their materials on the public sidewalks and streets, and informed them that they could be arrested if they persisted in handbilling within the privately owned portions of the Center. These guards wore uniforms that were virtually identical to those worn by regular Portland police, and they possessed full police authority. Believing that they would be arrested if they did not leave the Mall, respondents departed, and subsequently filed this lawsuit. 1

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 572

A. The question presented by this case is whether one of the incidents of petitioner's private ownership of the Lloyd Center is the power to exclude certain [407 U.S. 573] forms of speech from its property. In other words, we must decide whether ownership of the Center gives petitioner unfettered discretion to determine whether or not it will be used as a public forum.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 573

This Court held in Marsh v. Alabama, supra, that, even though property is privately owned, under some circumstances, it may be treated as though it were publicly held, at least for purposes of the First Amendment. In Marsh, a member of the Jehovah's Witnesses religious sect was arrested and convicted of violating Alabama's criminal trespass statute when she undertook to distribute religious literature in the downtown shopping area of a privately owned town without permission of the owner. The Court reasoned that

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 573

[t]he more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 573

Id. at 506. Noting that the stifling effect produced by any ban on free expression in a community's central business district was the same whether the ban was imposed by public or private owners, the Court concluded that:

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 573

When we balance the Constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a preferred position. As we have stated before, the right to exercise the liberties safeguarded by the First Amendment "lies at the foundation of free government by free men," and we must in all cases "weigh the circumstances and…appraise the…reasons…in support of the regulation…of the rights."…In our view, the circumstance that the property rights to the premises where the deprivation of liberty here involved took place were held by others than the public is not sufficient [407 U.S. 574] to justify the State's permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties and the enforcement of such restraint by the application of a state statute.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 574

(Footnotes and citations omitted.) Id. at 509.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 574

We relied heavily on Marsh in deciding Logan Valley, supra. In Logan Valley, a shopping center in its formative stages contained a supermarket and department store. The supermarket employed a staff composed of only nonunion employees. Members of Amalgamated Food Employees Union, Local 590, began to picket the market with signs stating that the market's employees were not receiving union wages or union benefits. The picketing was carried out almost entirely in the parcel pickup area and that portion of the parking lot immediately adjacent thereto. 391 U.S. at 311. The supermarket sought and obtained an injunction from a Pennsylvania state court prohibiting the union members from trespassing upon the parking areas or in the store, the effect of which was to prohibit picketing and handbilling on any part of the private property and to relegate the union members to carrying signs on the publicly owned earthen berms that surrounded the shopping center. 2 Finding that the shopping center was the functional equivalent of the business district involved in Marsh, we could see

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 574

no reason why access to a business district in a company town, for the purpose of exercising First Amendment rights, should be constitutionally required, [407 U.S. 575] while access for the same purpose to property functioning as a business district should be limited simply because the property surrounding the "business district" is not under the same ownership.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 575

Id. at 319. Thus, we held that the union activity was constitutionally protected.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 575

B. In the instant case, the District Court found that "the Mall is the functional equivalent of a public business district" within the meaning of Marsh and Logan Valley. The Court of Appeals specifically affirmed this finding, and it is overwhelmingly supported by the record.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 575

The Lloyd Center is similar to Logan Valley Plaza in several respects: both are bordered by public roads, and the entrances of both lead directly into the public roads; both contain large parking areas and privately owned walkways leading from store to store; and the general public has unrestricted access to both. The principal differences between the two centers are that the Lloyd Center is larger than Logan Valley, that Lloyd Center contains more commercial facilities, that Lloyd Center contains a range of professional and nonprofessional services that were not found in Logan Valley, and that Lloyd Center is much more intertwined with public streets than Logan Valley. Also, as in Marsh, supra, Lloyd's private police are given full police power by the city of Portland, even though they are hired, fired, controlled, and paid by the owners of the Center. This was not true in Logan Valley.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 575

In 1954, when Lloyd's owners first acquired land for the Center, the city of Portland vacated about eight acres of public streets for their use. The ordinance accomplishing the vacation sets forth the city's view of the Center's function:

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 575

WHEREAS the Council finds that the reason for these vacations is for general building purposes to [407 U.S. 576] be used in the development of a general retail business district and the development of an adequate parking area to support said district;…the Council…finds that, in order to develop a large retail unit such as contemplated by Lloyd Corporation, Ltd., it is necessary to vacate the streets above mentioned….

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 576

(Emphasis added.) Ordinance No. 101288, Nov. 10, 1954, App. 202. The 1954 ordinance also indicates that the city of Portland was aware that, as Lloyd Center developed, it would be necessary for the city to build new streets and to take other steps to control the traffic flow that the Center would engender. App. 202, 208-209. In 1958, an emergency ordinance was passed giving the Lloyd Center an extension of time to meet various conditions on which the 1954 vacations were made. The city council viewed the projected Center as offering an "opportunity for much needed employment" and concluded that the emergency ordinance was "necessary for the immediate preservation of the public health, peace and safety of the city of Portland." Ordinance No. 107641, March 20, 1958, App. 196.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 576

In sum, the Lloyd Center is an integral part of the Portland community. From its inception, the city viewed it as a "business district" of the city, and depended on it to supply much-needed employment opportunities. To insure the success of the Center, the city carefully integrated it into the pattern of streets already established, and planned future development of streets around the Center. It is plain, therefore, that Lloyd Center is the equivalent of a public "business district" within the meaning of Marsh and Logan Valley. In fact, the Lloyd Center is much more analogous to the company town in Marsh than was the Logan Valley Plaza.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 576

Petitioner agrees with our decision in Logan Valley that it is proper for courts to treat shopping centers [407 U.S. 577] differently from other privately owned property, like private residences. The Brief for Petitioner states at pages 9-10 that

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 577

[a] shopping center, which falls somewhere between the extremes of a company town and a private residence, is neither absolutely subject to the control of the owner nor is it absolutely open to all those wishing to engage in speech activities….

\* \* \* \*

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 577

Each case requires an appropriate resolution of the conflicting interests of shopping center owners and those seeking to engage in speech activities on shopping center premises.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 577

Petitioner contends that our decision in Logan Valley struck the appropriate balance between First Amendment and private property interests. The argument is made, however, that this case should be distinguished from Logan Valley, and this is the argument that the Court accepts.

II

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 577

As I have pointed out above, Lloyd Center is even more clearly the equivalent of a public business district than was Logan Valley Plaza. The First Amendment activity in both Logan Valley and the instant case was peaceful and nondisruptive, and both cases involve traditionally acceptable modes of speech. Why then should there be a different result here? The Court's answer is that the speech in this case was directed at topics of general interest—the Vietnam war and the draft—whereas the speech in Logan Valley was directed to the activities of a store in the shopping center, and that this factual difference is of constitutional dimensions. I cannot agree.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 577

A. It is true that, in Logan Valley, we explicitly left open the question whether

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 577

property rights could, consistently [407 U.S. 578] with the First Amendment, justify a bar on picketing [or handbilling] which was not…directly related in its purpose to the use to which the shopping center property was being put.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 578

391 U.S. at 320 n. 9. But I believe that the Court errs in concluding that this issue must be faced in the instant case.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 578

The District Court observed that Lloyd Center invites schools to hold football rallies, presidential candidates to give speeches, and service organizations to hold Veterans Day ceremonies on its premises. The court also observed that the Center permits the Salvation Army, the Volunteers of America, and the American Legion to solicit funds in the Mall. Thus, the court concluded that the Center was already open to First Amendment activities, and that respondents could not constitutionally be excluded from distributing leaflets solely because Lloyd Center was not enamored of the form or substance of their speech. The Court of Appeals affirmed, taking the position that it was not extending either Logan Valley or Marsh. In other words, the District Court found that Lloyd Center had deliberately chosen to open its private property to a broad range of expression and that having done so it could not constitutionally exclude respondents, and the Court of Appeals affirmed this finding.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 578

Petitioner apparently concedes that, if the lower courts are correct, respondents should prevail. Brief for Petitioner 19. This concession is, in fact, mandated by our decision in Logan Valley, in which we specifically held that members of the public may exercise their First Amendment rights on the premises of a shopping center that is the functional equivalent of a business district if their activity is "generally consonant with the use to which the property is actually put." 391 U.S. at 320. If the property of Lloyd Center is generally open to First Amendment activity, respondents cannot be excluded. [407 U.S. 579]

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 579

On Veterans Day, Lloyd Center allows organizations to parade through the Center with flags, drummers, and color guard units and to have a speaker deliver an address on the meaning of Veterans Day and the valor of American soldiers. Presidential candidates have been permitted to speak without restriction on the issues of the day, which presumably include war and peace. The American Legion is annually given permission to sell poppies in the Mall because Lloyd Center believes that "veterans…deserves [sic] some comfort and support by the people of the United States." 3 In light of these facts, I perceive no basis for depriving respondents of the opportunity to distribute leaflets inviting patrons of the Center to attend a meeting in which different points of view would be expressed from those held by the organizations and persons privileged to use Lloyd Center as a forum for parading their ideas and symbols.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 579

I believe that the lower courts correctly held that respondents' activities were directly related in purpose to the use to which the shopping center was being put. In my view, therefore, this case presents no occasion to consider whether or not Logan Valley should be extended. But, the Court takes a different view and concludes that Lloyd Center was never opened to First Amendment activity. Even if I could agree with the Court on this point, I would not reach a different result in this case.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 579

B. If respondents had distributed handbills complaining about one or more stores in Lloyd Center or about [407 U.S. 580] the Center itself, petitioner concedes that our decision in Logan Valley would insulate that conduct from proscription by the Center. 4 I cannot see any logical reason to treat differently speech that is related to subjects other than the Center and its member stores.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 580

We must remember that it is a balance that we are striking—a balance between the freedom to speak, a freedom that is given a preferred place in our hierarchy of values, and the freedom of a private property owner to control his property. When the competing interests are fairly weighed, the balance can only be struck in favor of speech.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 580

Members of the Portland community are able to see doctors, dentists, lawyers, bankers, travel agents, and persons offering countless other services in Lloyd Center. They can buy almost anything that they want or need there. For many Portland citizens, Lloyd Center will so completely satisfy their wants that they will have no reason to go elsewhere for goods or services. If speech is to reach these people, it must reach them in Lloyd Center. The Center itself recognizes this. For example, in 1964, its director of public relations offered candidates for President and Vice President the use of the center for political speeches, boasting "that our convenient location and setting would provide the largest audience [the candidates] could attract in Oregon." App. 187.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 580

For many persons who do not have easy access to television, radio, the major newspapers, and the other forms of mass media, the only way they can express themselves to a broad range of citizens on issues of general public concern is to picket, or to handbill, or to utilize other [407 U.S. 581] free or relatively inexpensive means of communication. The only hope that these people have to be able to communicate effectively is to be permitted to speak in those areas in which most of their fellow citizens can be found. One such area is the business district of a city or town or its functional equivalent. 5 And this is why respondents have a tremendous need to express themselves within Lloyd Center.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 581

Petitioner's interests, on the other hand, pale in comparison. For example, petitioner urges that respondents' First Amendment activity would disturb the Center's customers. It is undisputed that some patrons will be disturbed by any First Amendment activity that goes on, regardless of its object. But, there is no evidence to [407 U.S. 582] indicate that speech directed to topics unrelated to the shopping center would be more likely to impair the motivation of customers to buy than speech directed to the uses to which the Center is put, which petitioner concedes is constitutionally protected under Logan Valley. On the contrary, common sense would indicate that speech that is critical of a shopping center or one or more of its stores is more likely to deter consumers from purchasing goods or services than speech on any other subject. Moreover, petitioner acknowledges that respondents have a constitutional right to "leaflet" on any subject on public streets and sidewalks within Lloyd Center. It is difficult for me to understand why leafletting in the Mall would be so much more disturbing to the Center's customers.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 582

I also find patently frivolous petitioner's argument that, if handbilling in the Mall is permitted, Lloyd Center would face inordinate difficulties in removing litter from its premises. The District Court found that respondents' activities were litter-free. Assuming, arguendo, that, if respondents had been permitted to continue their activities, litter might have resulted, I think that it is immediately apparent that, even if respondents confined their activities to the public streets and sidewalks of the Center as Lloyd's private police suggested, litter would have been a problem as the recipients of the handbills carried them to the shopping and parking areas. Petitioner concedes that it would have had to remove this litter. There is no evidence that the amount of litter would have substantially increased if respondents distributed the leaflets within the Mall. But, even assuming that the litter might have increased, that is not a sufficient reason for barring First Amendment activity. See, e.g., Schneider v. State, 308 U.S. 147 (1939). If petitioner is truly concerned about litter, it should accept a previous suggestion by this Court and prosecute those [407 U.S. 583] who throw handbills away, not those who use them for communicative purposes. 6 Id. at 162.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 583

In sum, the balance plainly must be struck in favor of speech.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 583

C. Petitioner's other grounds for denying respondents access to the Mall can be dealt with quickly. The assertion is made that petitioner had the right to regulate the manner in which First Amendment activity took place on its property, and that, because the public streets and sidewalks inside the Center offered sufficient access to the public, it was permissible to deny respondents use of the Mall. The District Court found that certain stores in the Center could only be reached by using the private walkways of the Mall. Those persons who drove into the Center, parked in the privately owned parking lots, and who entered the stores accessible only through the Mall could not be safely reached from the public streets and sidewalks. Hence, the District Court properly found that the Mall was the only place where respondents had reasonable access to all of Lloyd Center's patrons. 7 308 F.Supp. at 131. At one point in this [407 U.S. 584] litigation, petitioner also attempted to assert that it was entitled to bar respondents' distribution of leaflets on the ground that the leaflets violated the Selective Service laws. The District Court found that this contention was without merit. 308 F.Supp. at 132-133. It seems that petitioner has abandoned the contention in this Court. In any event, it is meritless for the reasons given by the District Court.

III

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 584

In his dissenting opinion in Logan Valley, 391 U.S. at 339, MR. JUSTICE WHITE said that the rationale of that case would require affirmance of a case like the instant one. MR. JUSTICE WHITE, at that time, was convinced that our decision in Logan Valley, incorrect though he thought it to be, required that all peaceful and nondisruptive speech be permitted on private property that was the functional equivalent of a public business district.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 584

As stated above, I believe that the earlier view of MR. JUSTICE WHITE is the correct one, that there is no legitimate way of following Logan Valley and not applying it to this case. But one may suspect from reading the opinion of the Court that it is Logan Valley itself that the Court finds bothersome. The vote in Logan Valley was 6-3, and that decision is only four years old. But, I am aware that the composition of this Court has radically changed in four years. The fact remains that Logan Valley is binding unless and until it is overruled. There is no valid distinction between that case and this one, and, therefore, the results in both cases should be the same. [407 U.S. 585]

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 585

While the majority is obviously troubled by the rationale of Logan Valley, it is interesting that none of the participants in this litigation have experienced any similar difficulty. Lloyd Corp. urges that Logan Valley was correctly decided, that it struck a balance that the First Amendment required us to strike, and that it has fully complied with Logan Valley with respect to labor activity. The American Retail Federation urges in its Brief as amicus curiae that a balance must be struck between the property interests of shopping center owners and the First Amendment interests of shopping center users. It does not urge that Logan Valley was incorrectly decided in any way.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 585

It is true that Lloyd Corp. and the American Retail Federation ask the Court to distinguish this case from Logan Valley, but what is more important is that they recognize that, when massive areas of private property are opened to the public, the First Amendment may come into play. They would like, of course, to limit the impact of speech on their private property, but whether or not they can do so consistently with the First Amendment is a question that this Court must resolve.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 585

We noted in Logan Valley that the large-scale movement of this country's population from the cities to the suburbs has been accompanied by the growth of suburban shopping centers. In response to this phenomenon, cities like Portland are providing for large-scale shopping areas within the city. It is obvious that privately owned shopping areas could prove to be greatly advantageous to cities. They are totally self-sufficient, needing no financial support from local government; and if, as here, they truly are the functional equivalent of a public business area, the city reaps the advantages of having such an area without paying for them. Some of the advantages are an increased tax base, a drawing attraction for residents, and a stimulus to further growth. [407 U.S. 586]

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 586

It would not be surprising in the future to see cities rely more and more on private businesses to perform functions once performed by governmental agencies. The advantage of reduced expenses and an increased tax base cannot be overstated. As governments rely on private enterprise, public property decreases in favor of privately owned property. It becomes harder and harder for citizens to find means to communicate with other citizens. Only the wealthy may find effective communication possible unless we adhere to Marsh v. Alabama and continue to hold that

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 586

[t]he more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it,

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 586

326 U.S. at 506.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 586

When there are no effective means of communication, free speech is a mere shibboleth. I believe that the First Amendment requires it to be a reality. Accordingly, I would affirm the decision of the Court of Appeals.

Footnotes

POWELL, J., lead opinion (Footnotes)

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 586

1. App. 254.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 586

2. The manager of the Center testified:

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Q. Turning now to the general policy in operation of the Lloyd Center, it's true that the malls and walkways within the center are open 24 hours a day; is that right?

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A. Well, they aren't physically closed such as putting a gate across, no. But, they are not—when people are there after hours, they are watched. And, if it is too late at night, they are told the places are closed and they should leave.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 586

Q. If I wanted to walk through the center malls of Lloyd Center at 3:00 in the morning, would anyone stop me?

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A. Depending on who the officer was on duty as to what he is supposed to do. But they would have made inquiry and followed you to see what you are doing.

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App. 49.

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3. The manager of the Center, explaining why presidential candidates were allowed to speak, said: "We do that for one reason, and that is great public interest. It…brings a great many people to Lloyd Center who may shop before they leave." App. 51.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 586

4. The city of Portland has an ordinance which makes it unlawful to trespass on private property. Portland, Ore., Police Code § 16613.

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5. The Court of Appeals also relied on Wolin v. Port of New York Authority, 392 F.2d 83 (CA2 1968).

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 586

6. In commenting on the necessity for citizens who reside in company towns to have access to information, the Court said:

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Many people in the United States live in company-owned towns. These people, just as residents of municipalities, are free citizens of their State and country. Just as all other citizens, they must make decisions which affect the welfare of community and nation. To act as good citizens, they must be informed.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 586

326 U.S. at 508.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 586

7. The Court also commented on the increasing role of shopping centers and on the problem which they would present with respect to union activities if picketing were totally proscribed within shopping center areas:

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Business enterprises located in downtown areas [on public streets and sidewalks] would be subject to on-the-spot public criticism for their [labor] practices, but businesses situated in the suburbs could largely immunize themselves from similar criticism by creating a cordon sanitaire of parking lots around their stores.

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391 U.S. at 324-325. The concurring opinion of MR. JUSTICE DOUGLAS also emphasized the related purpose of the picketing in Logan Valley: "Picketing in regard to labor conditions at the Weis Supermarket is directly related to that shopping center business." 391 U.S. at 326.

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8. 308 F.Supp. 128, 130, 132 (Ore.1970); 446 F.2d 545, 546 (CA9 1971).

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9. Amalgamated Food Employees Union v. Logan Valley Plaza, 391 U.S. 308, 319 (1968).

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10. As Mr. Justice Black was the author of the Court's opinion in Marsh, his analysis of its rationale is especially meaningful.

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11. The injunction issued against Lloyd is comprehensive. It enjoins Lloyd (and others in active concert or participation with it) from

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preventing or interfering with the distribution of noncommercial handbills in a peaceful and orderly manner in the malls and walkways within Lloyd Center at times when they are open to general public access.

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There is no limitation as to type of literature distributed except that it must be "noncommercial." Nor, indeed, is there any limitation in this injunction as to the number of persons participating in such activities or the frequency thereof. Irrespective of how controversial, offensive, distracting, or extensive the distributions may be, Lloyd has been ordered to allow all noncommercial handbilling which anyone desires to undertake within its private premises.

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12. The Court's opinion in Logan Valley described the obstacles resulting from the location of the Weis store in the shopping center, and its relation to public streets and sidewalks:

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Petitioners' picketing was directed solely at one establishment within the shopping center. The berms surrounding the center are from 350 to 500 feet away from the Weis store. All entry onto the mall premises by customers of Weis, so far as appears, is by vehicle from the roads alongside which the berms run. Thus, the placard bearing the message which petitioners seek to communicate to patrons of Weis must be read by those to whom they are directed either at a distance so great as to render them virtually indecipherable—where the Weis customers are already within the mall—or while the prospective reader is moving by car from the roads onto the mall parking areas via the entranceways cut through the berms. In addition, the pickets are placed in some danger by being forced to walk along heavily traveled roads along which traffic moves constantly at rates of speed varying from moderate to high. Likewise, the task of distributing handbills to persons in moving automobiles is vastly greater (and more hazardous) than it would be were petitioners permitted to pass them out within the mall to pedestrians.

1972, Lloyd Corp., Ltd. v. Tanner, 407 U.S. 586

391 U.S. at 321-322.

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13. Mr. Justice Black, dissenting in Logan Valley, emphasized the distinction between a privately owned shopping center and the "company town" involved in Marsh, which he said had assumed "all the attributes" of a municipality. 391 U.S. at 332. (Original emphasis.)

MARSHALL, J., dissenting (Footnotes)

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1. There is some conflict in the testimony as to precisely what the guards told respondents with respect to the likelihood that they would be arrested if they did not leave the Mall. The Agreed Facts in the Pretrial Order states that the guards said that respondents could be arrested if they refused to leave. The District Court found that the guards caused respondents to believe that they would be arrested, and that this was the reason that they left the Mall. The Court of Appeals affirmed this finding, and it is supported by the record.

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2. Logan Valley involved both picketing and handbilling, since the effect of the state court injunction was to ban both forms of expression. 391 U.S. at 322-323 and n. 12. We made it clear in Logan Valley that, while there were obvious differences between picketing and handbilling, both involved a modicum of a burden on property. We held that neither could be barred from a shopping center that was the functional equivalent of a public business district. Id. at 315-316.

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3. App. 62 (testimony of R. Horn, manager of Lloyd Center). It is widely known that the American Legion is a Veteran's organization. See 1 Encyclopedia of Associations 997 (7th ed.1972). It is also common knowledge that the poppy is the symbol sold by the Legion to finance various of its activities. At times, the proceeds from selling poppies were used to finance lobbying and other activities directed at increasing the military capacity of the United States. R. Jones, A History of the American Legion 330-332 (1946).

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4. The record indicates that, when unions have picketed inside the Mall, Lloyd Center has voiced no objections. App. 108 (testimony of R. Horn, manager of Lloyd Center). It is apparent that petitioner has no difficulty in accepting our decision in Logan Valley and in complying with it.

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5. It is evident from the Court's opinion that the majority fails to grasp the essence of our decision in Logan Valley. The Court notes that there is a difference between a free-standing store and one located in a shopping center, and between small stores and extremely large ones, but suggests that, because the difference is "of degree, not of principle" it is unimportant. This flies directly in the face of Logan Valley, where we said that as private property expands to the point where it becomes, in reality, the business district of a community, the rights of the owners to proscribe speech on the part of those invited to use the property diminish. When the Court states that this was broad language that was somehow unnecessary to our decision, it betrays its misunderstanding of the holding.

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As Mr. Justice Black and MR. JUSTICE WHITE both pointed out in dissent in Logan Valley, there was really only one issue before the Court—i.e., whether the Logan Valley Plaza was prevented by the Fourteenth Amendment from inhibiting speech even though it was private property. The critical issue was whether the private property had sufficient "public" qualities to warrant a holding that the Fourteenth Amendment reached it. We answered this question in the affirmative, and the answer was the pivotal factor in our decision. Every member of the Court was acutely aware that we were dealing with degrees, not absolutes. But we found that degrees of difference can be of constitutional dimension. While any differences between the instant case and Logan Valley are immaterial in my view, such differences as there are make this a clearer case of illegal state action.

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6. Since petitioner's security guards have full police power, they can enforce state laws against littering, just as they have enforced laws against loitering in the past. App. 45 (testimony of R. Horn, manager of Lloyd Center).

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7. The Court implies that it is willing to reverse both lower courts and hold that their findings that alternative forums for leafletting in Lloyd Center were either not as effective as the Mall or dangerous are clearly erroneous. I too have read the record in this case, and I find no warrant for such a holding. The record plainly shows that it was impossible to reach many of the shoppers in the Center without using the Mall unless respondents were willing to approach cars as they were leaving the center. The District Court and the Court of Appeals took the view that requiring respondents to run from the sidewalk, to knock on car windows, to ask that the windows be rolled down so that a handbill could be distributed, to offer the handbill, run back to the sidewalk, and to repeat this gesture for every automobile leaving Lloyd Center involved hazards not only to respondents but also to other pedestrians and automobile passengers. Having never seen Lloyd Center, except in photographs contained in the record, and having absolutely no idea of the amount of traffic entering or leaving the Center, the Court cavalierly overturns the careful findings of facts below. This, in my opinion, exceeds even the most expansive view of the proper appellate function of this Court.

United States v. United States Dist. Ct., 1972

Title: United States v. United States District Court for the Eastern District of Michigan

Author: U.S. Supreme Court

Date: June 19, 1972

Source: 407 U.S. 297

This case was argued February 24, 1972, and was decided June 19, 1972.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Syllabus

1972, United States v. United States Dist. Ct., 407 U.S. 297

The United States charged three defendants with conspiring to destroy, and one of them with destroying, Government property. In response to the defendants' pretrial motion for disclosure of electronic surveillance information, the Government filed an affidavit of the Attorney General stating that he had approved the wiretaps for the purpose of

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gather[ing] intelligence information deemed necessary to protect the nation from attempts of domestic organizations to attack and subvert the existing structure of the Government.

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On the basis of the affidavit and surveillance logs (filed in a sealed exhibit), the Government claimed that the surveillances, though warrantless, were lawful as a reasonable exercise of presidential power to protect the national security. The District Court, holding the surveillances violative of the Fourth Amendment, issued an order for disclosure of the overheard conversations, which the Court of Appeals upheld. Title III of the Omnibus Crime Control and Safe Streets Act, which authorizes court-approved electronic surveillance for specified crimes, contains a provision in 18 U.S.C. § 2511(3) that nothing in that law limits the President's constitutional power to protect against the overthrow of the Government or against "any other clear and present danger to the structure or existence of the Government." The Government relies on § 2511(3) in support of its contention that "in excepting national security surveillances from the Act's warrant requirement, Congress recognized the President's authority to conduct such surveillances without prior judicial approval."

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Held:

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1. Section 2511(3) is merely a disclaimer of congressional intent to define presidential powers in matters affecting national security, and is not a grant of authority to conduct warrantless national security surveillances. Pp. 301-308. [407 U.S. 298]

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2. The Fourth Amendment (which shields private speech from unreasonable surveillance) requires prior judicial approval for the type of domestic security surveillance involved in this case. Pp. 314-321; 323-324.

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(a) The Government's duty to safeguard domestic security must be weighed against the potential danger that unreasonable surveillances pose to individual privacy and free expression. Pp. 314-315.

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(b) The freedoms of the Fourth Amendment cannot properly be guaranteed if domestic security suveillances are conducted solely within the discretion of the Executive Branch, without the detached judgment of a neutral magistrate. Pp. 316-318.

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(c) Resort to appropriate warrant procedure would not frustrate the legitimate purposes of domestic security searches. Pp. 318-321.

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444 F.2d 651, affirmed.

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POWELL, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, MARSHALL, STEWART, and BLACKMUN, JJ., joined. DOUGLAS, J., filed a concurring opinion, post, p. 324. BURGER, C.J., concurred in the result. WHITE, J., filed an opinion concurring in the judgment, post, p. 335. REHNQUIST, J., took no part in the consideration or decision of the case. [407 U.S. 299]

POWELL, J., lead opinion

1972, United States v. United States Dist. Ct., 407 U.S. 299

MR. JUSTICE POWELL delivered the opinion of the Court.

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The issue before us is an important one for the people of our country and their Government. It involves the delicate question of the President's power, acting through the Attorney General, to authorize electronic surveillance in internal security matters without prior judicial approval. Successive Presidents for more than one-quarter of a century have authorized such surveillance in varying degrees, 1 without guidance from the Congress or a definitive decision of this Court. This case brings the issue here for the first time. Its resolution is a matter of national concern, requiring sensitivity both to the Government's right to protect itself from unlawful subversion and attack and to the citizen's right to be secure in his privacy against unreasonable Government intrusion.

1972, United States v. United States Dist. Ct., 407 U.S. 299

This case arises from a criminal proceeding in the United States District Court for the Eastern District of Michigan, in which the United States charged three defendants with conspiracy to destroy Government property in violation of 18 U.S.C. § 371. One of the defendants, Plamondon, was charged with the dynamite bombing of an office of the Central Intelligence Agency in Ann Arbor, Michigan.

1972, United States v. United States Dist. Ct., 407 U.S. 299

During pretrial proceedings, the defendants moved to compel the United States to disclose certain electronic [407 U.S. 300] surveillance information and to conduct a hearing to determine whether this information "tainted" the evidence on which the indictment was based or which the Government intended to offer at trial. In response, the Government filed an affidavit of the Attorney General, acknowledging that its agents had overheard conversations in which Plamondon had participated. The affidavit also stated that the Attorney General approved the wiretaps

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to gather intelligence information deemed necessary to protect the nation from attempts of domestic organizations to attack and subvert the existing structure of the Government. 2

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The logs of the surveillance [407 U.S. 301] were filed in a sealed exhibit for in camera inspection by the District Court.

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On the basis of the Attorney General's affidavit and the sealed exhibit, the Government asserted that the surveillance was lawful, though conducted without prior judicial approval, as a reasonable exercise of the President's power (exercised through the Attorney General) to protect the national security. The District Court held that the surveillance violated the Fourth Amendment, and ordered the Government to make full disclosure to Plamondon of his overheard conversations. 321 F.Supp. 1074 (ED Mich.1971).

1972, United States v. United States Dist. Ct., 407 U.S. 301

The Government then filed in the Court of Appeals for the Sixth Circuit a petition for a writ of mandamus to set aside the District Court order, which was stayed pending final disposition of the case. After concluding that it had jurisdiction, 3 that court held that the surveillance was unlawful, and that the District Court had properly required disclosure of the overheard conversations, 444 F.2d 651 (1971). We granted certiorari, 403 U.S. 930.

I

1972, United States v. United States Dist. Ct., 407 U.S. 301

Title III of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. §§ 2510-2520, authorizes the use of electronic surveillance for classes of crimes carefully [407 U.S. 302] specified in 18 U.S.C. § 2516. Such surveillance is subject to prior court order. Section 2518 sets forth the detailed and particularized application necessary to obtain such an order, as well as carefully circumscribed conditions for its use. The Act represents a comprehensive attempt by Congress to promote more effective control of crime while protecting the privacy of individual thought and expression. Much of Title III was drawn to meet the constitutional requirements for electronic surveillance enunciated by this Court in Berger v. New York, 388 U.S. 41 (1967), and Katz v. United States, 389 U.S. 347 (1967).

1972, United States v. United States Dist. Ct., 407 U.S. 302

Together with the elaborate surveillance requirements in Title III, there is the following proviso, 18 U.S.C. § 2511(3):

1972, United States v. United States Dist. Ct., 407 U.S. 302

Nothing contained in this chapter or in section 605 of the Communications Act of 1934 (48 Stat. 1143; 47 U.S.C. 605) shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, [407 U.S. 303] or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power.

1972, United States v. United States Dist. Ct., 407 U.S. 303

(Emphasis supplied.)

1972, United States v. United States Dist. Ct., 407 U.S. 303

The Government relies on § 2511(3). It argues that,

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in excepting national security surveillances from the Act's warrant requirement, Congress recognized the President's authority to conduct such surveillances without prior judicial approval.

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Brief for United States 7, 28. The section thus is viewed as a recognition or affirmance of a constitutional authority in the President to conduct warrantless domestic security surveillance such as that involved in this case.

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We think the language of § 2511(3), as well as the legislative history of the statute, refutes this interpretation. The relevant language is that:

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Nothing contained in this chapter…shall limit the constitutional power of the President to take such measures as he deems necessary to protect…

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against the dangers specified. At most, this is an implicit recognition that the President does have certain powers in the specified areas. Few would doubt this, as the section refers—among other things—to protection "against actual or potential attack or other hostile acts of a foreign power." But so far as the use of the President's electronic surveillance power is concerned, the language is essentially neutral.

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Section 2511(3) certainly confers no power, as the language is wholly inappropriate for such a purpose. It merely provides that the Act shall not be interpreted to limit or disturb such power as the President may have under the Constitution. In short, Congress simply left presidential powers where it found them. This view is reinforced by the general context of Title III. Section 2511(1) broadly prohibits the use of electronic [407 U.S. 304] surveillance "[e]xcept as otherwise specifically provided in this chapter." Subsection (2) thereof contains four specific exceptions. In each of the specified exceptions, the statutory language is as follows: "It shall not be unlawful…to intercept" the particular type of communication described. 4

1972, United States v. United States Dist. Ct., 407 U.S. 304

The language of subsection (3), here involved, is to be contrasted with the language of the exceptions set forth in the preceding subsection. Rather than stating that warrantless presidential uses of electronic surveillance "shall not be unlawful," and thus employing the standard language of exception, subsection (3) merely disclaims any intention to "limit the constitutional power of the President."

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The express grant of authority to conduct surveillances is found in § 2516, which authorizes the Attorney General to make application to a federal judge when surveillance may provide evidence of certain offenses. These offenses are described with meticulous care and specificity.

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Where the Act authorizes surveillance, the procedure to be followed is specified in § 2518. Subsection (1) thereof requires application to a judge of competent jurisdiction for a prior order of approval, and states in detail the information required in such application. 5 [407 U.S. 305] Subsection (3) prescribes the necessary elements of probable cause which the judge must find before issuing an order authorizing an interception. Subsection (4) sets forth the required contents of such an order. [407 U.S. 306] Subsection (5) sets strict time limits on an order. Provision is made in subsection (7) for "an emergency situation" found to exist by the Attorney General (or by the principal prosecuting attorney of a State) "with respect to conspiratorial activities threatening the national security interest." In such a situation, emergency surveillance may be conducted "if an application for an order approving the interception is made…within forty-eight hours." If such an order is not obtained, or the application therefor is denied, the interception is deemed to be a violation of the Act.

1972, United States v. United States Dist. Ct., 407 U.S. 306

In view of these and other interrelated provisions delineating permissible interceptions of particular criminal activity upon carefully specified conditions, it would have been incongruous for Congress to have legislated with respect to the important and complex area of national security in a single brief and nebulous paragraph. This would not comport with the sensitivity of the problem involved, or with the extraordinary care Congress exercised in drafting other sections of the Act. We therefore think the conclusion inescapable that Congress only intended to make clear that the Act simply did not legislate with respect to national security surveillances. 6

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The legislative history of § 2511(3) supports this interpretation. Most relevant is the colloquy between Senators Hart, Holland, and McClellan on the Senate floor:

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Mr. HOLLAND…. The section [2511(3)] from which the Senator [Hart] has read does not affirmatively [407 U.S. 307] give any power…. We are not affirmatively conferring any power upon the President. We are simply saying that nothing herein shall limit such power as the President has under the Constitution…. We certainly do not grant him a thing.

1972, United States v. United States Dist. Ct., 407 U.S. 307

There is nothing affirmative in this statement.

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Mr. McCLELLAN. Mr. President, we make it understood that we are not trying to take anything away from him.

1972, United States v. United States Dist. Ct., 407 U.S. 307

Mr. HOLLAND. The Senator is correct.

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Mr. HART. Mr. President, there is no intention here to expand by this language a constitutional power. Cleary we could not do so.

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Mr. McCLELLAN. Even though intended, we could not do so.

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Mr. HART…. However, we are agreed that this language should not be regarded as intending to grant any authority, including authority to put a bug on, that the President does not have now.

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In addition, Mr. President, as I think our exchange makes clear, nothing in section 2511(3) even attempts to define the limits of the President's national security power under present law, which I have always found extremely vague…. Section 2511(3) merely says that, if the President has such a power, then its exercise is in no way affected by title III. 7

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(Emphasis supplied.) [407 U.S. 308]

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One could hardly expect a clearer expression of congressional neutrality. The debate above explicitly indicates that nothing in § 2511(3) was intended to expand or to contract or to define whatever presidential surveillance powers existed in matters affecting the national security. If we could accept the Government's characterization of § 2511(3) as a congressionally prescribed exception to the general requirement of a warrant, it would be necessary to consider the question of whether the surveillance in this case came within the exception, and, if so, whether the statutory exception was itself constitutionally valid. But viewing § 2511(3) as a congressional disclaimer and expression of neutrality, we hold that the statute is not the measure of the executive authority asserted in this case. Rather, we must look to the constitutional powers of the President.

II

1972, United States v. United States Dist. Ct., 407 U.S. 308

It is important at the outset to emphasize the limited nature of the question before the Court. This case raises no constitutional challenge to electronic surveillance as specifically authorized by Title III of the Omnibus Crime Control and Safe Streets Act of 1968. Nor is there any question or doubt as to the necessity of obtaining a warrant in the surveillance of crimes unrelated to the national security interest. Katz v. United States, 389 U.S. 347 (1967); Berger v. New York, 388 U.S. 41 (1967). Further, the instant case requires no judgment on the scope of the President's surveillance power with respect to the activities of foreign powers, within or without this country. The Attorney General's affidavit in this case states that the surveillances were [407 U.S. 309] "deemed necessary to protect the nation from attempts of domestic organizations to attack and subvert the existing structure of Government" (emphasis supplied). There is no evidence of any involvement, directly or indirectly, of a foreign power. 8

1972, United States v. United States Dist. Ct., 407 U.S. 309

Our present inquiry, though important, is therefore a narrow one. It addresses a question left open by Katz, supra, at 358 n. 23:

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Whether safeguards other than prior authorization by a magistrate would satisfy the Fourth Amendment in a situation involving the national security….

1972, United States v. United States Dist. Ct., 407 U.S. 309

The determination of this question requires the essential Fourth Amendment inquiry into the "reasonableness" of the search and seizure in question, and the way in which that "reasonableness" derives content and meaning [407 U.S. 310] through reference to the warrant clause. Coolidge v. New Hampshire, 403 U.S. 443, 473-484 (1971).

1972, United States v. United States Dist. Ct., 407 U.S. 310

We begin the inquiry by noting that the President of the United States has the fundamental duty, under Art. II, § 1, of the Constitution, to "preserve, protect and defend the Constitution of the United States." Implicit in that duty is the power to protect our Government against those who would subvert or overthrow it by unlawful means. In the discharge of this duty, the President—through the Attorney General—may find it necessary to employ electronic surveillance to obtain intelligence information on the plans of those who plot unlawful acts against the Government. 9 The use of such surveillance in internal security cases has been sanctioned more or less continuously by various Presidents and Attorneys General since July, 1946. 10 [407 U.S. 311] Herbert Brownell, Attorney General under President Eisenhower, urged the use of electronic surveillance both in internal and international security matters on the grounds that those acting against the Government

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turn to the telephone to carry on their intrigue. The success of their plans frequently rests upon piecing together shreds of information received from many sources and many nests. The participants in the conspiracy are often dispersed and stationed in various strategic positions in government and industry throughout the country. 11

1972, United States v. United States Dist. Ct., 407 U.S. 311

Though the Government and respondents debate their seriousness and magnitude, threats and acts of sabotage against the Government exist in sufficient number to justify investigative powers with respect to them. 12 The covertness and complexity of potential unlawful conduct [407 U.S. 312] against the Government and the necessary dependency of many conspirators upon the telephone make electronic surveillance an effective investigatory instrument in certain circumstances. The marked acceleration in technological developments and sophistication in their use have resulted in new techniques for the planning, commission, and concealment of criminal activities. It would be contrary to the public interest for Government to deny to itself the prudent and lawful employment of those very techniques which are employed against the Government and its law-abiding citizens.

1972, United States v. United States Dist. Ct., 407 U.S. 312

It has been said that "[t]he most basic function of any government is to provide for the security of the individual and of his property." Miranda v. Arizona, 384 U.S. 436, 539 (1966) (WHITE, J., dissenting). And unless Government safeguards its own capacity to function and to preserve the security of its people, society itself could become so disordered that all rights and liberties would be endangered. As Chief Justice Hughes reminded us in Cox v. New Hampshire, 312 U.S. 569, 574 (1941):

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Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.

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But a recognition of these elementary truths does not make the employment by Government of electronic surveillance a welcome development—even when employed with restraint and under judicial supervision. There is, understandably, a deep-seated uneasiness and apprehension that this capability will be used to intrude upon cherished privacy of law-abiding citizens. 13 We [407 U.S. 313] look to the Bill of Rights to safeguard this privacy. Though physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed, its broader spirit now shields private speech from unreasonable surveillance. Katz v. United States, supra; Berger v. New York, supra; Silverman v. United States, 365 U.S. 505 (1961). Our decision in Katz refused to lock the Fourth Amendment into instances of actual physical trespass. Rather, the Amendment governs

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not only the seizure of tangible items, but extends as well to the recording of oral statements…without any "technical trespass under…local property law."

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Katz, supra, at 353. That decision implicitly recognized that the broad and unsuspected governmental incursions into conversational privacy which electronic surveillance entails 14 necessitate the application of Fourth Amendment safeguards.

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National security cases, moreover, often reflect a convergence of First and Fourth Amendment values not present in cases of "ordinary" crime. Though the investigative duty of the executive may be stronger in such cases, so also is there greater jeopardy to constitutionally protected speech.

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Historically, the struggle for freedom of speech and press in England was bound up with the issue of the scope of the search and seizure [407 U.S. 314] power,

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Marcus v. Search Warrant, 367 U.S. 717, 724 (1961). History abundantly documents the tendency of Government—however benevolent and benign its motive—to view with suspicion those who most fervently dispute its policies. Fourth Amendment protections become the more necessary when the targets of official surveillance may be those suspected of unorthodoxy in their political beliefs. The danger to political dissent is acute where the Government attempts to act under so vague a concept as the power to protect "domestic security." Given the difficulty of defining the domestic security interest, the danger of abuse in acting to protect that interest becomes apparent. Senator Hart addressed this dilemma in the floor debate on § 2511(3):

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As I read it—and this is my fear—we are saying that the President, on his motion, could declare—name your favorite poison—draft dodgers, Black Muslims, the Ku Klux Klan, or civil rights activists to be a clear and present danger to the structure or existence of the Government. 15

1972, United States v. United States Dist. Ct., 407 U.S. 314

The price of lawful public dissent must not be a dread of subjection to an unchecked surveillance power. Nor must the fear of unauthorized official eavesdropping deter vigorous citizen dissent and discussion of Government action in private conversation. For private dissent, no less than open public discourse, is essential to our free society.

III

1972, United States v. United States Dist. Ct., 407 U.S. 314

As the Fourth Amendment is not absolute in its terms, our task is to examine and balance the basic values at stake in this case: the duty of Government [407 U.S. 315] to protect the domestic security, and the potential danger posed by unreasonable surveillance to individual privacy and free expression. If the legitimate need of Government to safeguard domestic security requires the use of electronic surveillance, the question is whether the needs of citizens for privacy and free expression may not be better protected by requiring a warrant before such surveillance is undertaken. We must also ask whether a warrant requirement would unduly frustrate the efforts of Government to protect itself from acts of subversion and overthrow directed against it.

1972, United States v. United States Dist. Ct., 407 U.S. 315

Though the Fourth Amendment speaks broadly of "unreasonable searches and seizures," the definition of "reasonableness" turns, at least in part, on the more specific commands of the warrant clause. Some have argued that "[t]he relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable," United States v. Rabinowitz, 339 U.S. 56, 66 (1950). 16 This view, however, overlooks the second clause of the Amendment. The warrant clause of the Fourth Amendment is not dead language. Rather, it has been

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a valued part of our constitutional law for decades, and it has determined the result in scores and scores of cases in courts all over this country. It is not an inconvenience to be somehow "weighed" against the claims of police efficiency. It is, or should [407 U.S. 316] be, an important working part of our machinery of government, operating as a matter of course to check the "well-intentioned but mistakenly overzealous executive officers" who are a part of any system of law enforcement.

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Coolidge v. New Hampshire, 403 U.S. at 481. See also United States v. Rabinowitz, supra, at 68 (Frankfurter, J., dissenting); Davis v. United States, 328 U.S. 582, 604 (1946) (Frankfurter, J., dissenting).

1972, United States v. United States Dist. Ct., 407 U.S. 316

Over two centuries ago, Lord Mansfield held that common law principles prohibited warrants that ordered the arrest of unnamed individuals who the officer might conclude were guilty of seditious libel. "It is not fit," said Mansfield,

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that the receiving or judging of the information should be left to the discretion of the officer. The magistrate ought to judge; and should give certain directions to the officer.

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Leach v. Three of the King's Messengers, 19 How.St.Tr. 1001, 1027 (1765).

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Lord Mansfield's formulation touches the very heart of the Fourth Amendment directive: that, where practical, a governmental search and seizure should represent both the efforts of the officer to gather evidence of wrongful acts and the judgment of the magistrate that the collected evidence is sufficient to justify invasion of a citizen's private premises or conversation. Inherent in the concept of a warrant is its issuance by a "neutral and detached magistrate." Coolidge v. New Hampshire, supra, at 453; Katz v. United States, supra, at 356. The further requirement of "probable cause" instructs the magistrate that baseless searches shall not proceed.

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These Fourth Amendment freedoms cannot properly be guaranteed if domestic security surveillances may be conducted solely within the discretion of the Executive [407 U.S. 317] Branch. The Fourth Amendment does not contemplate the executive officers of Government as neutral and disinterested magistrates. Their duty and responsibility are to enforce the laws, to investigate, and to prosecute. Katz v. United States, supra, at 359-360 (DOUGLAS, J., concurring). But those charged with this investigative and prosecutorial duty should not be the sole judges of when to utilize constitutionally sensitive means in pursuing their tasks. The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech. 17

1972, United States v. United States Dist. Ct., 407 U.S. 317

It may well be that, in the instant case, the Government's surveillance of Plamondon's conversations was a reasonable one which readily would have gained prior judicial approval. But this Court

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has never sustained a search upon the sole ground that officers reasonably expected to find evidence of a particular crime and voluntarily confined their activities to the least intrusive means consistent with that end.

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Katz, supra, at 356-357. The Fourth Amendment contemplates a prior judicial judgment, 18 not the risk that executive discretion may be reasonably exercised. This judicial role accords with our basic constitutional doctrine that individual freedoms will best be preserved through a separation of powers and division of functions among the different branches and levels of Government. Harlan, Thoughts at a Dedication: Keeping the Judicial Function in Balance, 49 A.B.A.J. 943-944 (1963). The independent check upon executive discretion is not [407 U.S. 318] satisfied, as the Government argues, by "extremely limited" post-surveillance judicial review. 19 Indeed, post-surveillance review would never reach the surveillances which failed to result in prosecutions. Prior review by a neutral and detached magistrate is the time-tested means of effectuating Fourth Amendment rights. Beck v. Ohio, 379 U.S. 89, 96 (1964).

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It is true that there have been some exceptions to the warrant requirement. Chimel v. California, 395 U.S. 752 (1969); Terry v. Ohio, 392 U.S. 1 (1968); McDonald v. United States, 335 U.S. 451 (1948); Carroll v. United States, 267 U.S. 132 (1925). But those exceptions are few in number, and carefully delineated, Katz, supra, at 357; in general, they serve the legitimate needs of law enforcement officers to protect their own wellbeing and preserve evidence from destruction. Even while carving out those exceptions, the Court has reaffirmed the principle that the "police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure," Terry v. Ohio, supra, at 20; Chimel v. California, supra, at 762.

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The Government argues that the special circumstances applicable to domestic security surveillances necessitate a further exception to the warrant requirement. It is urged that the requirement of prior judicial review would obstruct the President in the discharge of his constitutional duty to protect domestic security. We are told further that these surveillances are directed primarily to the collecting and maintaining of intelligence with [407 U.S. 319] respect to subversive forces, and are not an attempt to gather evidence for specific criminal prosecutions. It is said that this type of surveillance should not be subject to traditional warrant requirements which were established to govern investigation of criminal activity, not ongoing intelligence gathering. Brief for United States 15-16, 23-24; Reply Brief for United States 2-3.

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The Government further insists that courts

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as a practical matter would have neither the knowledge nor the techniques necessary to determine whether there was probable cause to believe that surveillance was necessary to protect national security.

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These security problems, the Government contends, involve "a large number of complex and subtle factors" beyond the competence of courts to evaluate. Reply Brief for United States 4.

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As a final reason for exemption from a warrant requirement, the Government believes that disclosure to a magistrate of all or even a significant portion of the information involved in domestic security surveillances

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would create serious potential dangers to the national security and to the lives of informants and agents…. Secrecy is the essential ingredient in intelligence gathering; requiring prior judicial authorization would create a greater "danger of leaks…because, in addition to the judge, you have the clerk, the stenographer and some other officer like a law assistant or bailiff who may be apprised of the nature" of the surveillance.

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Brief for United States 24-25.

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These contentions in behalf of a complete exemption from the warrant requirement, when urged on behalf of the President and the national security in its domestic implications, merit the most careful consideration. We certainly do not reject them lightly, especially at a time of worldwide ferment and when civil disorders in this country are more prevalent than in the less turbulent [407 U.S. 320] periods of our history. There is, no doubt, pragmatic force to the Government's position.

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But we do not think a case has been made for the requested departure from Fourth Amendment standards. The circumstances described do not justify complete exemption of domestic security surveillance from prior judicial scrutiny. Official surveillance, whether its purpose be criminal investigation or ongoing intelligence gathering, risks infringement of constitutionally protected privacy of speech. Security surveillances are especially sensitive because of the inherent vagueness of the domestic security concept, the necessarily broad and continuing nature of intelligence gathering, and the temptation to utilize such surveillances to oversee political dissent. We recognize, as we have before, the constitutional basis of the President's domestic security role, but we think it must be exercised in a manner compatible with the Fourth Amendment. In this case, we hold that this requires an appropriate prior warrant procedure.

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We cannot accept the Government's argument that internal security matters are too subtle and complex for judicial evaluation. Courts regularly deal with the most difficult issues of our society. There is no reason to believe that federal judges will be insensitive to or uncomprehending of the issues involved in domestic security cases. Certainly courts can recognize that domestic security surveillance involves different considerations from the surveillance of "ordinary crime." If the threat is too subtle or complex for our senior law enforcement officers to convey its significance to a court, one may question whether there is probable cause for surveillance.

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Nor do we believe prior judicial approval will fracture the secrecy essential to official intelligence gathering. The investigation of criminal activity has long [407 U.S. 321] involved imparting sensitive information to judicial officers who have respected the confidentialities involved. Judges may be counted upon to be especially conscious of security requirements in national security cases. Title III of the Omnibus Crime Control and Safe Streets Act already has imposed this responsibility on the judiciary in connection with such crimes as espionage, sabotage, and treason, §§ 2516(1)(a) and (c), each of which may involve domestic as well as foreign security threats. Moreover, a warrant application involves no public or adversary proceedings: it is an ex parte request before a magistrate or judge. Whatever security dangers clerical and secretarial personnel may pose can be minimized by proper administrative measures, possibly to the point of allowing the Government itself to provide the necessary clerical assistance.

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Thus, we conclude that the Government's concerns do not justify departure in this case from the customary Fourth Amendment requirement of judicial approval prior to initiation of a search or surveillance. Although some added burden will be imposed upon the Attorney General, this inconvenience is justified in a free society to protect constitutional values. Nor do we think the Government's domestic surveillance powers will be impaired to any significant degree. A prior warrant establishes presumptive validity of the surveillance and will minimize the burden of justification in post-surveillance judicial review. By no means of least importance will be the reassurance of the public generally that indiscriminate wiretapping and bugging of law-abiding citizens cannot occur.

IV

1972, United States v. United States Dist. Ct., 407 U.S. 321

We emphasize, before concluding this opinion, the scope of our decision. As stated at the outset, this case involves only the domestic aspects of national security. We have not addressed, and express no opinion [407 U.S. 322] as to, the issues which may be involved with respect to activities of foreign powers or their agents. 20 Nor does our decision rest on the language of § 2511(3) or any other section of Title III of the Omnibus Crime Control and Safe Streets Act of 1968. That Act does not attempt to define or delineate the powers of the President to meet domestic threats to the national security.

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Moreover, we do not hold that the same type of standards and procedures prescribed by Title III are necessarily applicable to this case. We recognize that domestic security surveillance may involve different policy and practical considerations from the surveillance of "ordinary crime." The gathering of security intelligence is often long range and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to identify than in surveillance operations against many types of crime specified in Title III. Often, too, the emphasis of domestic intelligence gathering is on the prevention of unlawful activity or the enhancement of the Government's preparedness for some possible future crisis or emergency. Thus, the focus of domestic surveillance may be less precise than that directed against more conventional types of crime.

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Given these potential distinctions between Title III criminal surveillances and those involving the domestic security, Congress may wish to consider protective standards for the latter which differ from those already prescribed for specified crimes in Title III. Different standards may be compatible with the Fourth Amendment [407 U.S. 323] if they are reasonable both in relation to the legitimate need of Government for intelligence information and the protected rights of our citizens. For the warrant application may vary according to the governmental interest to be enforced and the nature of citizen rights deserving protection. As the Court said in Camara v. Municipal Court, 387 U.S. 523, 534-535 (1967):

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In cases in which the Fourth Amendment requires that a warrant to search be obtained, "probable cause" is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness…. In determining whether a particular inspection is reasonable—and thus in determining whether there is probable cause to issue a warrant for that inspection—the need for the inspection must be weighed in terms of these reasonable goals of code enforcement.

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It may be that Congress, for example, would judge that the application and affidavit showing probable cause need not follow the exact requirements of § 2518, but should allege other circumstances more appropriate to domestic security cases; that the request for prior court authorization could, in sensitive cases, be made to any member of a specially designated court (e.g., the District Court for the District of Columbia or the Court of Appeals for the District of Columbia Circuit); and that the time and reporting requirements need not be so strict as those in § 2518.

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The above paragraph does not, of course, attempt to guide the congressional judgment, but, rather, to delineate the present scope of our own opinion. We do not attempt to detail the precise standards for domestic security warrants any more than our decision in Katz sought to set the refined requirements for the specified criminal surveillances which now constitute Title III. We do [407 U.S. 324] hold, however, that, prior judicial approval is required for the type of domestic security surveillance involved in this case, and that such approval may be made in accordance with such reasonable standards as the Congress may prescribe.

V

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As the surveillance of Plamondon's conversations was unlawful, because conducted without prior judicial approval, the courts below correctly held that Alderman v. United States, 394 U.S. 165 (1969), is controlling, and that it requires disclosure to the accused of his own impermissibly intercepted conversations. As stated in Alderman,

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the trial court can and should, where appropriate, place a defendant and his counsel under enforceable orders against unwarranted disclosure of the materials which they may be entitled to inspect.

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394 U.S. at 185. 21

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The judgment of the Court of Appeals is hereby

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Affirmed.

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THE CHIEF JUSTICE concurs in the result.

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MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.

DOUGLAS, J., concurring

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MR. JUSTICE DOUGLAS, concurring.

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While I join in the opinion of the Court, I add these words in support of it.

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This is an important phase in the campaign of the police and intelligence agencies to obtain exemptions from the Warrant Clause of the Fourth Amendment. For, due to the clandestine nature of electronic eavesdropping, the need is acute for placing on the Government [407 U.S. 325] the heavy burden to show that "exigencies of the situation [make its] course imperative." 1 Other abuses, such as the search incident to arrest, have been partly deterred by the threat of damage actions against offending officers, 2 the risk of adverse publicity, or the possibility of reform through the political process. These latter safeguards, however, are ineffective against lawless wiretapping and "bugging" of which their victims are totally unaware. Moreover, even the risk of exclusion of tainted evidence would here appear to be of negligible deterrent value, inasmuch as the United States frankly concedes that the primary purpose of these searches is to fortify its intelligence collage, rather than to accumulate evidence to support indictments and convictions. If the Warrant Clause were held inapplicable here, then the federal intelligence machine would literally enjoy unchecked discretion.

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Here, federal agents wish to rummage for months on end through every conversation, no matter how intimate or personal, carried over selected telephone lines, simply to seize those few utterances which may add to their sense of the pulse of a domestic underground.

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We are told that one national security wiretap lasted for 14 months and monitored over 900 conversations. Senator Edward Kennedy found recently that "warrantless devices accounted for an average of 78 to 209 days of listening per device, as compared with a 13-day per device average for those devices installed under court order." 3 He concluded that the Government's [407 U.S. 326] revelations posed

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the frightening possibility that the conversations of untold thousands of citizens of this country are being monitored on secret devices which no judge has authorized and which may remain in operation for months and perhaps years at a time. 4

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Even the most innocent and random caller who uses or telephones into a tapped line can become a flagged number in the Government's data bank. See Laird v. Tatum, 1971 Term, No. 71-288.

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Such gross invasions of privacy epitomize the very evil to which the Warrant Clause was directed. This Court has been the unfortunate witness to the hazards of police intrusions which did not receive prior sanction by independent magistrates. For example, in Weeks v. United States, 232 U.S. 383; Mapp v. Ohio, 367 U.S. 643; and Chimel v. California, 395 U.S. 752, entire homes were ransacked pursuant to warrantless searches. Indeed, in Kremen v. United States, 353 U.S. 346, the entire contents of a cabin, totaling more than 800 items (such as "1 Dish Rag") 5 were seized incident to an arrest of its occupant and were taken to San Francisco for study by FBI agents. In a similar case, Von Cleef v. New [407 U.S. 327] Jersey, 395 U.S. 814, police, without a warrant, searched an arrestee's house for three hours, eventually seizing

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several thousand articles, including books, magazines, catalogues, mailing lists, private correspondence (both open and unopened), photographs, drawings, and film.

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Id. at 815. In Silverthorne Lumber Co. v. United States, 251 U.S. 385, federal agents "without a shadow of authority" raided the offices of one of the petitioners (the proprietors of which had earlier been jailed) and "made a clean sweep of all the books, papers and documents found there." Justice Holmes, for the Court, termed this tactic an "outrage." Id. at 390, 391. In Stanford v. Texas, 379 U.S. 476, state police seized more than 2,000 items of literature, including the writings of Mr. Justice Black, pursuant to a general search warrant issued to inspect an alleged subversive's home.

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That "domestic security" is said to be involved here does not draw this case outside the mainstream of Fourth Amendment law. Rather, the recurring desire of reigning officials to employ dragnet techniques to intimidate their critics lies at the core of that prohibition. For it was such excesses as the use of general warrants and the writs of assistance that led to the ratification of the Fourth Amendment. In Entick v. Carrington, 19 How.St.Tr. 1029, 95 Eng.Rep. 807, decided in 1765, one finds a striking parallel to the executive warrants utilized here. The Secretary of State had issued general executive warrants to his messengers authorizing them to roam about and to seize libelous material and libellants of the sovereign. Entick, a critic of the Crown, was the victim of one such general search during which his seditious publications were impounded. He brought a successful damage action for trespass against the messengers. The verdict was sustained on appeal. Lord Camden wrote that, if such sweeping tactics were validated, then

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the secret cabinets and bureaus of every [407 U.S. 328] subject in this kingdom will be thrown open to the search and inspection of a messenger, whenever the secretary of state shall think fit to charge, or even to suspect, a person to be the author, printer, or publisher of a seditious libel.

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Id. at 1063. In a related and similar proceeding, Huckle v. Money, 2 Wils. K.B. 206, 207, 95 Eng.Rep. 768, 769 (1763), the same judge who presided over Entick's appeal held for another victim of the same despotic practice, saying "[t]o enter a man's house by virtue of a nameless warrant, in order to procure evidence, is worse than the Spanish Inquisition…. " See also Wilkes v. Wood, 19 How.St.Tr. 1153, 98 Eng.Rep. 489 (1763). As early as Boyd v. United States, 116 U.S. 616, 626, and as recently as Stanford v. Texas, supra, at 485-486; Berger v. New York, 388 U.S. 41, 49-50; and Coolidge v. New Hampshire, supra, at 455 n. 9, the tyrannical invasions described and assailed in Entick, Huckle, and Wilkes, practices which also were endured by the colonists, 6 have been recognized [407 U.S. 329] as the primary abuses which ensured the Warrant Clause a prominent place in our Bill of Rights. See J. Landynski, Search and Seizure and the Supreme Court 288 (1966). N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 478 (1937); Note, Warrantless Searches In Light of Chimel: A Return To The Original Understanding, 11 Ariz.L.Rev. 457, 460 476 (1969).

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As illustrated by a flood of cases before us this Term, e.g., Laird v. Tatum, No. 71-288; Gelbard v. United States, No. 71-110; United States v. Egan, No. 71-263; United States v. Caldwell, No. 757; United States v. Gravel, No. 71-1026; Kleindienst v. Mandel, No. 71-16, we are currently in the throes of another national seizure of paranoia, resembling the hysteria which surrounded the Alien and Sedition Acts, the Palmer Raids, and the McCarthy era. Those who register dissent or who petition their governments for redress are subjected to scrutiny by grand juries, 7 by the FBI, 8 or even by the military. 9 Their associates are interrogated. [407 U.S. 330] Their home are bugged and their telephones are wiretapped. They are befriended by secret government informers. 10 Their patriotism and loyalty are questioned. 11 [407 U.S. 331] Senator Sam Ervin, who has chaired hearings on military surveillance of civilian dissidents, warns that "it is not an exaggeration to talk in terms of hundreds of thousands of…dossiers." 12 Senator Kennedy, as mentioned supra, found "the frightening possibility that the conversations of untold thousands are being monitored on secret devices." More than our privacy is implicated. Also at stake is the reach of the Government's power to intimidate its critics.

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When the Executive attempts to excuse these tactics as essential to its defense against internal subversion, we are obliged to remind it, without apology, of this Court's long commitment to the preservation of the Bill of Rights from the corrosive environment of precisely such expedients. 13 [407 U.S. 332] As Justice Brandeis said, concurring in Whitney v. California, 274 U.S. 357, 377:

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Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty.

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Chief Justice Warren put it this way in United States v. Robel, 389 U.S. 258, 264:

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[T]his concept of "national defense" cannot be deemed an end in itself, justifying any…power designed to promote such a goal. Implicit in the term "national defense" is the notion of defending those values and ideas which set this Nation apart…. It would indeed be ironic if, in the name of national defense, we would sanction the subversion of…those liberties…which [make] the defense of the Nation worthwhile.

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The Warrant Clause has stood as a barrier against intrusions by officialdom into the privacies of life. But if that barrier were lowered now to permit suspected subversives' most intimate conversations to be pillaged then why could not their abodes or mail be secretly searched by the same authority? To defeat so terrifying a claim of inherent power, we need only stand by the enduring values served by the Fourth Amendment. As we stated last Term in Coolidge v. New Hampshire, 403 U.S. 443, 455:

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In times of unrest, whether caused by crime or racial conflict or fear of internal subversion, this basic law [407 U.S. 333] and the values that it represents may appear unrealistic or "extravagant" to some. But the values were those of the authors of our fundamental constitutional concepts. In times not altogether unlike our own, they won…a right of personal security against arbitrary intrusions…. If times have changed, reducing everyman's scope to do as he pleases in an urban and industrial world, the changes have made the values served by the Fourth Amendment more, not less, important.

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We have as much or more to fear from the erosion of our sense of privacy and independence by the omnipresent electronic ear of the Government as we do from the likelihood that fomenters of domestic upheaval will modify our form of governing. 14 [407 U.S. 334]

APPENDIX TO OPINION OF DOUGLAS, J., CONCURRING

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FEDERAL WIRETAPPING AND BUGGING 1969-1970

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1972, United States v. United States Dist. Ct., 407 U.S. 334

Court Ordered Executive Ordered

1972, United States v. United States Dist. Ct., 407 U.S. 334

Devices Devices

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Days in Use

1972, United States v. United States Dist. Ct., 407 U.S. 334

Days in Minimum Maximum

1972, United States v. United States Dist. Ct., 407 U.S. 334

Year Number Use Number (Rounded) (Rounded)

1972, United States v. United States Dist. Ct., 407 U.S. 334

1969 30 462 94 8,100 20,800

1972, United States v. United States Dist. Ct., 407 U.S. 334

1970 180 2,363 113 8,100 22,600

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Ratio of Days Used Average Days in Use

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Executive Ordered: Per Device

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Court Ordered Court Executive Ordered

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Ordered Devices

1972, United States v. United States Dist. Ct., 407 U.S. 334

Year Minimum Maximum Devices Minimum Maximum

1972, United States v. United States Dist. Ct., 407 U.S. 334

1969 17.5\* 45.0\* 15.4 86.2 221.3

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1970 3.4 9.6 13.1 71.7 200.0

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\* Ratios for 1969 are less meaningful than those for 1970, since court-ordered surveillance program was in its initial stage in 1969.

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Source:

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(1) Letter from Assistant Attorney General Robert Mardian to Senator Edward M. Kennedy, March 1, 1971. Source figures withheld at request of Justice Department.

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(2) Reports of Administrative Office of U.S. Courts for 1969 and 1970. [407 U.S. 335]

WHITE, J., concurring

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MR. JUSTICE WHITE, concurring in the judgment.

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This case arises out of a two-count indictment charging conspiracy to injure and injury to Government property. Count I charged Robert Plamondon and two codefendants with conspiring with a fourth person to injure Government property with dynamite. Count II charged Plamondon alone with dynamiting and injuring Government property in Ann Arbor, Michigan. The defendants moved to compel the United States to disclose, among other things, any logs and records of electronic surveillance directed at them, at unindicted coconspirators, or at any premises of the defendants or coconspirators. They also moved for a hearing to determine whether any electronic surveillance disclosed had tainted the evidence on which the grand jury indictment was based and which the Government intended to use at trial. They asked for dismissal of the indictment if such taint were determined to exist. Opposing the motion, the United States submitted an affidavit of the Attorney General of the United States disclosing that

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[t]he defendant Plamondon has participated in conversations which were overheard by Government agents who were monitoring wiretaps which were being employed to gather intelligence information deemed necessary to protect the nation from attempts of domestic organizations to attack and subvert the existing structure of the Government,

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the wiretaps having been expressly approved by the Attorney General. The records of the intercepted conversations and copies of the memorandum reflecting the Attorney General's approval were submitted under seal, and solely for the Court's in camera inspection. 1 [407 U.S. 336]

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As characterized by the District Court, the position of the United States was that the electronic monitoring of Plamondon's conversations without judicial warrant was a lawful exercise of the power of the President to safeguard the national security. The District Court granted the motion of defendants, holding that the President had no constitutional power to employ electronic surveillance without warrant to gather information about domestic organizations. Absent probable cause and judicial authorization, the challenged wiretap infringed Plamondon's Fourth Amendment rights. The court ordered the Government to disclose to defendants the records of the monitored conversations and directed that a hearing be held to determine the existence of taint either in the indictment or in the evidence to be introduced at trial.

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The Government's petition for mandamus to require the District Court to vacate its order was denied by the Court of Appeals. 444 F.2d 651 (CA6 1971). That court held that the Fourth Amendment barred warrantless electronic surveillance of domestic organizations even if at the direction of the President. It agreed with the District Court that, because the wiretaps involved were therefore constitutionally infirm, the United States must turn over to defendants the records of overheard conversations for the purpose of determining whether the Government's evidence was tainted.

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I would affirm the Court of Appeals, but on the statutory ground urged by defendant respondents (Brief 115) without reaching or intimating any views with respect [407 U.S. 337] to the constitutional issue decided by both the District Court and the Court of Appeals.

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Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520, forbids, under pain of criminal penalties and civil actions for damages, any wiretapping or eavesdropping not undertaken in accordance with specified procedures for obtaining judicial warrants authorizing the surveillance. Section 2511(1) establishes a general prohibition against electronic eavesdropping "[e]xcept as otherwise specifically provided" in the statute. Later sections provide detailed procedures for judicial authorization of official interceptions of oral communications; when these procedures are followed, the interception is not subject to the prohibitions of § 2511(1). Section 2511(2), however, specifies other situations in which the general prohibitions of § 2511(1) do not apply. In addition, § 2511(3) provides that:

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Nothing contained in this chapter or in section 605 of the Communications Act of 1934 (48 Stat. 1143; 47 U.S.C. 605) shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents [407 U.S. 338] of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power.

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It is this subsection that lies at the heart of this case.

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The interception here was without judicial warrant, it was not covered by the provisions of § 2511(2), and it is too clear for argument that it is illegal under § 2511(1) unless it is saved by § 2511(3). The majority asserts that § 2511(3) is a "disclaimer," but not an "exception." But however it is labeled, it is apparent from the face of the section and its legislative history that, if this interception is one of those described in § 2511(3), it is not reached by the statutory ban on unwarranted electronic eavesdropping. 2

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The defendants in the District Court moved for the production of the logs of any electronic surveillance to which they might have been subjected. The Government [407 U.S. 339] responded that conversations of Plamondon had been intercepted, but took the position that turnover of surveillance records was not necessary because the interception complied with the law. Clearly, for the Government to prevail, it was necessary to demonstrate, first, that the interception involved was not subject to the statutory requirement of judicial approval for wiretapping because the surveillance was within the scope of § 2511(3), and, secondly, if the Act did not forbid the warrantless wiretap, that the surveillance was consistent with the Fourth Amendment.

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The United States has made no claim in this case that the statute may not constitutionally be applied to the surveillance at issue here. 3 Nor has it denied that, to [407 U.S. 340] comply with the Act, the surveillance must either be supported by a warrant or fall within the bounds of the exceptions provided by § 2511(3). Nevertheless, as I read the opinions of the District Court and the Court of Appeals, neither court stopped to inquire whether the challenged interception was illegal under the statute, but proceeded directly to the constitutional issue without adverting to the time-honored rule that courts should abjure constitutional issues except where necessary to decision of the case before them. Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 346-348 (1936) (concurring opinion). Because I conclude that, on the record before us, the surveillance undertaken by the Government in this case was illegal under the statute itself, I find it unnecessary, and therefore improper, to consider or decide the constitutional questions which the courts below improvidently reached.

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The threshold statutory question is simply put: was the electronic surveillance undertaken by the Government in this case a measure deemed necessary by the President to implement either the first or second branch of the exception carved out by § 2511(3) to the general requirement of a warrant?

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The answer, it seems to me, must turn on the affidavit of the Attorney General offered by the United States in opposition to defendants' motion to disclose surveillance records. It is apparent that there is nothing whatsoever in this affidavit suggesting that the surveillance was [407 U.S. 341] undertaken within the first branch of the § 2511(3) exception, that is, to protect against foreign attack, to gather foreign intelligence or to protect national security information. The sole assertion was that the monitoring at issue was employed to gather intelligence information

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deemed necessary to protect the nation from attempts of domestic organizations to attack and subvert the existing structure of the Government.

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App. 20.

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Neither can I conclude from this characterization that the wiretap employed here fell within the exception recognized by the second sentence of § 2511(3), for it utterly fails to assume responsibility for the judgment that Congress demanded: that the surveillance was necessary to prevent overthrow by force or other unlawful means, or that there was any other clear and present danger to the structure or existence of the Government. The affidavit speaks only of attempts to attack or subvert; it makes no reference to force or unlawfulness; it articulates no conclusion that the attempts involved any clear and present danger to the existence or structure of the Government.

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The shortcomings of the affidavit when measured against § 2511(3) are patent. Indeed, the United States, in oral argument, conceded no less. The specific inquiry put to Government counsel was: "Do you think the affidavit, standing alone, satisfies the Safe Streets Act?" The Assistant Attorney General answered "No, sir. We do not rely upon the affidavit itself…. " Tr. of Oral Arg. 15. 4

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Government counsel, however, seek to save their case by reference to the in camera exhibit submitted to the [407 U.S. 342] District Court to supplement the Attorney General's affidavit. 5 It is said that the exhibit includes the request for wiretap approval submitted to the Attorney General, that the request asserted the need to avert a clear and present danger to the structure and existence of the Government, and that the Attorney General endorsed his approval on the request. 6 But I am unconvinced that the mere endorsement of the Attorney General on the request for approval submitted to him must be taken as the Attorney General's own opinion that the wiretap was necessary to avert a clear and present danger to the existence or structure of the Government [407 U.S. 343] when, in an affidavit later filed in court specifically characterizing the purposes of the interception and at least impliedly the grounds for his prior approval, the Attorney General said only that the tap was undertaken to secure intelligence thought necessary to protect against attempts to attack and subvert the structure of Government. If the Attorney General's approval of the interception is to be given a judicially cognizable meaning different from the meaning he seems to have ascribed to it in his affidavit filed in court, there obviously must be further proceedings in the District Court.

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Moreover, I am reluctant to proceed in the first instance to examine the in camera material and either sustain or reject the surveillance as a necessary measure to avert the dangers referred to in § 2511(3). What Congress excepted from the warrant requirement was a surveillance which the President would assume responsibility for deeming an essential measure to protect against clear and present danger. No judge can satisfy this congressional requirement.

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Without the necessary threshold determination, the interception is, in my opinion, contrary to the terms of the statute and subject therefore to the prohibition contained in § 2515 against the use of the fruits of the warrantless electronic surveillance as evidence at any trial. 7

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There remain two additional interrelated reasons for not reaching the constitutional issue. First, even if it were determined that the Attorney General purported to [407 U.S. 344] authorize an electronic surveillance for purposes exempt from the general provisions of the Act, there would remain the issue whether his discretion was properly authorized. The United States concedes that the act of the Attorney General authorizing a warrantless wiretap is subject to judicial review to some extent, Brief for United States 21-23, and it seems improvident to proceed to constitutional questions until it is determined that the Act itself does not bar the interception here in question.

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Second, and again on the assumption that the surveillance here involved fell within the exception provided by § 2511(3), no constitutional issue need be reached in this case if the fruit of the wiretap were inadmissible on statutory grounds in the criminal proceedings pending against respondent Plamondon. Section 2511(3) itself states that

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[t]he contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial, hearing, or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power.

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(Emphasis added.) There has been no determination by the District Court that it would be reasonable to use the fruits of the wiretap against Plamondon, or that it would be necessary to do so to implement the purposes for which the tap was authorized.

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My own conclusion, again, is that, as long as nonconstitutional, statutory grounds for excluding the evidence or its fruits have not been disposed of, it is improvident to reach the constitutional issue.

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I would thus affirm the judgment of the Court of Appeals unless the Court is prepared to reconsider the necessity for an adversary, rather than an in camera, hearing with respect to taint. If in camera proceedings are sufficient and no taint is discerned by the judge, this case is over, whatever the legality of the tap.

Footnotes

POWELL, J., lead opinion (Footnotes)

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1. See n. 10, infra.

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2. The Attorney General's affidavit reads as follows:

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JOHN N. MITCHELL being duly sworn deposes and says:

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1. I am the Attorney General of the United States.

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2. This affidavit is submitted in connection with the Government's opposition to the disclosure to the defendant Plamondon of information concerning the overhearing of his conversations which occurred during the course of electronic surveillances which the Government contends were legal.

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3. The defendant Plamondon has participated in conversations which were overheard by Government agents who were monitoring wiretaps which were being employed to gather intelligence information deemed necessary to protect the nation from attempts of domestic organizations to attack and subvert the existing structure of the Government. The records of the Department of Justice reflect the installation of these wiretaps had been expressly approved by the Attorney General.

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4. Submitted with this affidavit is a sealed exhibit containing the records of the intercepted conversations, a description of the premises that were the subjects of surveillances, and copies of the memoranda reflecting the Attorney General's express approval of the installation of the surveillances.

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5. I certify that it would prejudice the national interest to disclose the particular facts concerning these surveillances other than to the court in camera. Accordingly, the sealed exhibit referred to herein is being submitted solely for the court's in camera inspection, and a copy of the sealed exhibit is not being furnished to the defendants. I would request the court, at the conclusion of its hearing on this matter, to place the sealed exhibit in a sealed envelope and return it to the Department of Justice, where it will be retained under seal so that it may be submitted to any appellate court that may review this matter.

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3. Jurisdiction was challenged before the Court of Appeals on the ground that the District Court's order was interlocutory, and not appealable under 28 U.S.C. § 1291. On this issue, the court correctly held that it did have jurisdiction, relying upon the All Writs Act, 28 U.S.C. § 1651, and cases cited in its opinion, 444 F.2d at 655-656. No attack was made in this Court as to the appropriateness of the writ of mandamus procedure.

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4. These exceptions relate to certain activities of communication common carriers and the Federal Communications Commission, and to specified situations where a party to the communication has consented to the interception.

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5. Title 18 U.S. C. § 2518, subsection (1), reads as follows:

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§ 2518. Procedure for interception of wire or oral communications

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(1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

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(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

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(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

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(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed, or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

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(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

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(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

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(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

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6. The final sentence of § 2511(3) states that the contents of an interception

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by authority of the President in the exercise of the foregoing powers may be received in evidence…only where such interception was reasonable….

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This sentence seems intended to assure that, when the President conducts lawful surveillance—pursuant to whatever power he may possess—the evidence is admissible.

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7. 114 Cong.Rec. 14751. Senator McClellan was the sponsor of the bill. The above exchange constitutes the only time that § 2511(3) was expressly debated on the Senate or House floor. The Report of the Senate Judiciary Committee is not so explicit as the exchange on the floor, but it appears to recognize that, under § 2511(3), the national security power of the President—whatever it may be—"is not to be deemed disturbed." S.Rep. No. 1097, 90th Cong., 2d Sess., 94 (1968). See also The "National Security Wiretap": Presidential Prerogative or Judicial Responsibility, where the author concludes that, in § 2511(3),

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Congress took what amounted to a position of neutral noninterference on the question of the Constitutionality of warrantless national security wiretaps authorized by the President.

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45 S. Cal.L.Rev. 888, 889 (1972).

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8. Section 2511(3) refers to "the constitutional power of the President" in two types of situations: (i) where necessary to protect against attack, other hostile acts or intelligence activities of a "foreign power"; or (ii) where necessary to protect against the overthrow of the Government or other clear and present danger to the structure or existence of the Government. Although both of the specified situations are sometimes referred to as "national security" threats, the term "national security" is used only in the first sentence of § 2511(3) with respect to the activities of foreign powers. This case involves only the second sentence of § 2511(3), with the threat emanating—according to the Attorney General's affidavit—from "domestic organizations." Although we attempt no precise definition, we use the term "domestic organization" in this opinion to mean a group or organization (whether formally or informally constituted) composed of citizens of the United States and which has no significant connection with a foreign power, its agents or agencies. No doubt there are cases where it will be difficult to distinguish between "domestic" and "foreign" unlawful activities directed against the Government of the United States where there is collaboration in varying degrees between domestic groups or organizations and agents or agencies of foreign powers. But this is not such a case.

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9. Enactment of Title III reflects congressional recognition of the importance of such surveillance in combatting various types of crime. Frank S. Hogan, District Attorney for New York County for over 25 years, described telephonic interception, pursuant to court order, as "the single most valuable weapon in law enforcement's fight against organized crime." 117 Cong.Rec. 14051. The "Crime Commission" appointed by President Johnson noted that

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[t]he great majority of law enforcement officials believe that the evidence necessary to bring criminal sanctions to bear consistently on the higher echelons of organized crime will not be obtained without the aid of electronic surveillance techniques. They maintain these techniques are indispensable to develop adequate strategic intelligence concerning organized crime, to set up specific investigations, to develop witnesses, to corroborate their testimony, and to serve as substitutes for them—each a necessary step in the evidence-gathering process in organized crime investigations and prosecutions.

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Report by the President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 201 (1967).

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10. In that month, Attorney General Tom Clark advised President Truman of the necessity of using wiretaps "in cases vitally affecting the domestic security." In May, 1940, President Roosevelt had authorized Attorney General Jackson to utilize wiretapping in matters "involving the defense of the nation," but it is questionable whether this language was meant to apply to solely domestic subversion. The nature and extent of wiretapping apparently varied under different administrations and Attorneys General, but, except for the sharp curtailment under Attorney General Ramsey Clark in the latter years of the Johnson administration, electronic surveillance has been used both against organized crime and in domestic security cases at least since the 1946 memorandum from Clark to Truman. Brief for United States 16-18; Brief for Respondents 51-56; 117 Cong.Rec. 14056.

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11. Brownell, The Public Security and Wire Tapping, 39 Cornell L.Q.195, 202 (1954). See also Rogers, The Case For Wire Tapping, 63 Yale L.J. 792 (1954).

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12. The Government asserts that there were 1,562 bombing incidents in the United States from January 1, 1971, to July 1, 1971, most of which involved Government-related facilities. Respondents dispute these statistics as incorporating many frivolous incidents, as well as bombings against nongovernmental facilities. The precise level of this activity, however, is not relevant to the disposition of this case. Brief for United States 18; Brief for Respondents 26-29; Reply Brief for United States 13.

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13. Professor Alan Westin has written on the likely course of future conflict between the value of privacy and the "new technology" of law enforcement. Much of the book details techniques of physical and electronic surveillance and such possible threats to personal privacy as psychological and personality testing and electronic information storage and retrieval. Not all of the contemporary threats to privacy emanate directly from the pressures of crime control. Privacy and Freedom (1967).

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14. Though the total number of intercepts authorized by state and federal judges pursuant to Tit. III of the 1968 Omnibus Crime Control and Safe Streets Act was 597 in 1970, each surveillance may involve interception of hundreds of different conversations. The average intercept in 1970 involved 44 people and 655 conversations, of which 295 or 45% were incriminating. 117 Cong.Rec. 14052.

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15. 114 Cong.Rec. 14750. The subsequent assurances, quoted in part I of the opinion, that § 2511(3) implied no statutory grant, contraction, or definition of presidential power eased the Senator's misgivings.

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16. This view has not been accepted. In Chimel v. California, 395 U.S. 752 (1969), the Court considered the Government's contention that the search be judged on a general "reasonableness" standard, without reference to the warrant clause. The Court concluded that argument was

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founded on little more than a subjective view regarding the acceptability of certain sorts of police conduct, and not on considerations relevant to Fourth Amendment interests. Under such an unconfined analysis, Fourth Amendment protection in this area would approach the evaporation point.

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Id. at 764-765.

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17. N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 79-105 (1937).

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18. We use the word "judicial" to connote the traditional Fourth Amendment requirement of a neutral and detached magistrate.

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19. The Government argues that domestic security wiretaps should be upheld by courts in post-surveillance review

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[u]nless it appears that the Attorney General's determination that the proposed surveillance relates to a national security matter is arbitrary and capricious, i.e., that it constitutes a clear abuse of the broad discretion that the Attorney General has to obtain all information that will be helpful to the President in protecting the Government…

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against the various unlawful acts in § 2511(3). Brief for United States 22.

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20. See n. 8, supra. For the view that warrantless surveillance, though impermissible in domestic security cases, may be constitutional where foreign powers are involved, see United States v. Smith, 321 F.Supp. 424, 425-426 (CD Cal.1971); and American Bar Association Project on Standards for Criminal Justice, Electronic Surveillance 120, 121 (Approved Draft 1971, and Feb.19-71 Supp. 11). See also United States v. Clay, 430 F.2d 165 (CA5 1970).

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21. We think it unnecessary at this time and on the facts of this case to consider the arguments advanced by the Government for a reexamination of the basis and cope of the Court' decision in Alderman.

DOUGLAS, J., concurring (Footnotes)

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1. Coolidge v. New Hampshire, 403 U.S. 443, 455; McDonald v. United States, 335 U.S. 451, 456; Chimel v. California, 395 U.S. 752; United States v. Jeffers, 342 U.S. 48, 51.

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2. See Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388.

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3. Letter from Senator Edward Kennedy to Members of the Subcommittee on Administrative Procedure and Practice of the Senate Judiciary Committee, Dec. 17, 1971, p. 2. Senator Kennedy included in his letter a chart comparing court-ordered and department-ordered wiretapping and bugging by federal agencies. This chart is reproduced in the Appendix to this opinion. For a statistical breakdown by duration, location, and implementing agency of the 1,042 wiretap orders issued in 1971 by state and federal judges, see Administrative Office of the United States Courts, Report on Applications for Orders Authorizing or Approving the Interception of Wire or Oral Communications for 1971; The Washington Post, May 14, 1972, p. A30, col. 1 (final ed.).

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4. Kennedy, supra, n. 3, at 2. See also H. Schwartz, A Report on the Costs and Benefits of Electronic Surveillance (American Civil Liberties Union 1971); Schwartz, The Legitimation of Electronic Eavesdropping: The Politics of "Law and Order," 67 Mich.L.Rev. 455 (1969).

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5. For a complete itemization of the objects seized, see the Appendix to Kremen v. United States, 353 U.S. 346, 349.

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6.

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On this side of the Atlantic, the argument concerning the validity of general search warrants centered around the writs of assistance which were used by customs officers for the detection of smuggled goods.

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N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 51 (1937). In February, 1761, all writs expired six months after the death of George II, and Boston merchants petitioned the Superior Court in opposition to the granting of any new writs. The merchants were represented by James Otis, Jr., who later became a leader in the movement for independence.

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Otis completely electrified the large audience in the court room with his denunciation of England's whole policy toward the Colonies and with his argument against general warrants. John Adams, then a young man less than twenty-six years of age and not yet admitted to the bar, was a spectator, and many years later described the scene in these oft-quoted words: "I do say in the most solemn manner that Mr. Otis's oration against the Writs of Assistance breathed into this nation the breath of life." He

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was a flame of fire! Every man of a crowded audience appeared to me to go away, as I did, ready to take arms against Writs of Assistance. Then and there was the first scene of opposition to the arbitrary claims of Great Britain. Then and there, the child Independence was born. In 15 years, namely in 1776, he grew to manhood, and declared himself free.

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Id. at 559.

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7. See Donner & Cerruti, The Grand Jury Network: How the Nixon Administration Has Secretly Perverted A Traditional Safeguard Of Individual Rights, 214 The Nation 5 (1972). See also United States v. Caldwell, O.T. 1971, No. 70-57; United States v. Gravel, O.T. 1971, No. 71-1026; Gelbard v. United States and United States v. Egan, O.T. 1971, Nos. 71-110 and 71-263. And see N.Y. Times, July 15, 1971, p. 6, col. 1 (grand jury investigation of N.Y. Times staff which published the Pentagon Papers).

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8. E.g., N.Y. Times, April 12, 1970, p. 1, col. 2 ("U.S. To Tighten Surveillance of Radicals"); N.Y. Times, Dec. 14, 1969, p. 1, col. 1 ("F.B.I.'s Informants and Bugs Collect Data On Black Panthers"); the Washington Post, May 12, 1972, p. D21, col. 5 ("When the FBI Calls, Everybody Talks"); the Washington Post, May 16, 1972, p. B15, col. 5 ("Black Activists Are FBI Targets"); the Washington Post, May 17, 1972, p. B13, col. 5 ("Bedroom Peeking Sharpens FBI Files"). And, concerning an FBI investigation of Daniel Schorr, a television correspondent critical of the Government, see N.Y. Times, Nov. 11, 1971, p. 95, col. 4; and N.Y. Times, Nov. 12, 1971, p. 13, col. 1. For the wiretapping and bugging of Dr. Martin Luther King by the FBI, see V. Navasky, Kennedy Justice 135-155 (1971). For the wiretapping of Mrs. Eleanor Roosevelt and John L. Lewis by the FBI see Theoharis & Meyer, The "National Security" Justification For Electronic Eavesdropping: An Elusive Exception, 14 Wayne L.Rev. 749, 760-761 (1968).

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9. See Laird v. Tatum, O.T. 1971, No. 71-288; see also Federal Data Banks, Computers and the Bill of Rights, Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 92d Cong., 1st Sess. (1971); N.Y. Times, Feb. 29, 1972, p. 1, col. 3.

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10.

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Informers have been used for national security reasons throughout the twentieth century. They were deployed to combat what was perceived to be an internal threat from radicals during the early 1920's. When fears began to focus on Communism, groups thought to have some connection with the Communist Party were heavily infiltrated. Infiltration of the Party itself was so intense that one former FBI agent estimated a ratio of one informant for every 5.7 members in 1962. More recently, attention has shifted to militant anti-war and civil rights groups. In part because of support for such groups among university students throughout the country, informers seem to have become ubiquitous on campus. Some insight into the scope of the current use of informers was provided by the Media Papers, FBI documents stolen in early 1971 from a Bureau office in Media, Pennsylvania. The papers disclose FBI attempts to infiltrate a conference of war resisters at Haverford College in August, 1969, and a convention of the National Association of Black Students in June, 1970. They also reveal FBI endeavors

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to recruit informers, ranging from bill collectors to apartment janitors, in an effort to develop constant surveillance in black communities and New Left organizations

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[N.Y. Times, April 8, 1971, p. 22, col. 1]. In Philadelphia's black community, for instance, a whole range of buildings "including offices of the Congress of Racial Equality, the Southern Christian Leadership Conference [and] the Black Coalition" [ibid.] was singled out for surveillance by building employees and other similar informers working for the FBI.

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Note, Developments In The Law—The National Security Interest and Civil Liberties, 85 Harv.L.Rev. 1130, 1272-1273 (1972). For accounts of the impersonation of journalists by police, FBI agents and soldiers in order to gain the confidences of dissidents, see Press Freedoms Under Pressure, Report of the Twentieth Century Fund Task Force on the Government and the Press 29-34, 86-97 (1972). For the revelation of Army infiltration of political organizations and spying on Senators, Governors and Congressmen, see Federal Data Banks, Computers and the Bill of Rights, Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 92d Cong., 1st Sess. (1971) (discussed in my dissent from the denial of certiorari in Williamson v. United States, 405 U.S. 1026). Among the Media Papers was the suggestion by the FBI that investigation of dissidents be stepped up in order to "`enhance the paranoia endemic in these circles and [to] further serve to get the point across there is an FBI agent behind every mailbox.'" N.Y. Times, March 25, 1971, p. 33, col. 1.

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11. E.g., N.Y. Times, Feb. 8, 1972, p. 1, col. 8 (Senate peace advocates said, by presidential adviser, to be aiding and abetting the enemy).

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12. Amicus curiae brief submitted by Senator Sam Ervin in Laird v. Tatum, No. 71-288, O.T. 1971, p. 8.

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13. E.g., New York Times Co. v. United States, 403 U.S. 713; Powell v. McCormack, 395 U.S. 486; United States v. Robel, 389 U.S. 258, 264; Aptheker v. Secretary of State, 378 U.S. 500; Baggett v. Bullitt, 377 U.S. 360; Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579; Duncan v. Kahanamoku, 327 U.S. 304; White v. Steer, 327 U.S. 304; De Jonge v. Oregon, 299 U.S. 353, 365; Ex parte Milligan, 4 Wall. 2; Mitchell v. Harmony, 13 How. 115. Note, The "National Security Wiretap": Presidential Prerogative or Judicial Responsibility, 45 S.Cal.L.Rev. 888, 907-912 (1972).

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14. I continue in my belief that it would be extremely difficult to write a search warrant specifically naming the particular conversations to be seized, and therefore any such attempt would amount to a general warrant, the very abuse condemned by the Fourth Amendment. As I said, dissenting in Osborn v. United States, 385 U.S. 323, 353:

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Such devices lay down a dragnet which indiscriminately sweeps in all conversations within its scope, without regard to the nature of the conversations, or the participants. A warrant authorizing such devices is no different from the general warrants the Fourth Amendment was intended to prohibit.

WHITE, J., concurring (Footnotes)

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1. The Attorney General's affidavit concluded:

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I certify that it would prejudice the national interest to disclose the particular facts concerning these surveillances other than to the court in camera. Accordingly, the sealed exhibit referred to herein is being submitted solely for the court's in camera inspection and a copy of the sealed exhibit is not being furnished to the defendants. I would request the court, at the conclusion of its hearing on this matter, to place the sealed exhibit in a sealed envelope and return it to the Department of Justice, where it will be retained under seal so that it may be submitted to any appellate court that may review this matter.

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App. 20-21.

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2. I cannot agree with the majority's analysis of the import of § 2511(3). Surely, Congress meant at least that, if a court determined that in the specified circumstances the President could constitutionally intercept communications without a warrant, the general ban of § 2511(1) would not apply. But the limitation on the applicability of § 2511(1) was not open-ended; it was confined to those situations that § 2511(3) specifically described. Thus, even assuming the constitutionality of a warrantless surveillance authorized by the President to uncover private or official graft forbidden by federal statute, the interception would be illegal under § 2511(1) because it is not the type of presidential action saved by the Act by the provision of § 2511(3). As stated in the text and n. 3, infra, the United States does not claim that Congress is powerless to require warrants for surveillances that the President otherwise would not be barred by the Fourth Amendment from undertaking without a warrant.

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3. See Tr. of Oral Arg. 13-14:

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Q…. I take it from your answer that Congress could forbid the President from doing what you suggest he has the power to do in this case?

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Mr. Mardian [Assistant Attorney General]: That issue is not before this Court—

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Q. Well, I would—my next question will suggest that it is. Would you say, though, that Congress could forbid the President?

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Mr. Mardian: I think, under the rule announced by this court in Colony Catering, that, within certain limits, the Congress could severely restrict the power of the President in this area.

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Q. Well, let's assume Congress says, then, that the Attorney General, or the President may authorize the Attorney General, in specific situations, to carry out electronic surveillance if the Attorney General certifies that there is a clear and present danger to the security of the United States?

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Mr. Mardian: I think that Congress has already provided that, and—

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Q. Well, would you say that Congress would have the power to limit surveillances to situations where those conditions were satisfied?

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Mr. Mardian: Yes, I would—I would concur in that, Your Honor.

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A colloquy appearing in the debates on the bill, appearing at 114 Cong.Rec. 14750-14751, indicates that some Senators considered § 2511(3) as merely stating an intention not to interfere with the constitutional powers that the President might otherwise have to engage in warrantless electronic surveillance. But the Department of Justice, it was said, participated in the drafting of § 2511(3), and there is no indication in the legislative history that there was any claim or thought that the supposed powers of the President reached beyond those described in the section. In any case, it seems clear that the congressional policy of noninterference was limited to the terms of § 2511(3).

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4. See also Tr. of Oral Arg. 17:

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Q…. If all the in camera document contained was what this affidavit contained, it would not comply with the Safe Streets Act?

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Mr. Mardian: I would concur in that, Your Honor.

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5. The Government appears to have shifted ground in this respect. In its initial brief to this Court, the Government quoted the Attorney General's affidavit and then said, without qualification, "These were the grounds upon which the Attorney General authorized the surveillance in the present case." Brief for United States 21. Moreover, counsel for the Government stated at oral argument

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that the in camera submission was not intended as a justification for the authorization, but simply [as] a proof of the fact that the authorization had been granted by the Attorney General of the United States, over his own signature.

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Tr. of Oral Arg. 7.

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Later at oral argument, however, the Government said:

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[T]he affidavit was never intended as the basis for justifying the surveillance in question…. The justification, and again I suggest that it is only a partial justification, is contained in the in camera exhibit which was submitted to Judge Keith…. We do not rely upon the affidavit itself, but the in camera exhibit.

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Tr. of Oral Arg. 115. And in its reply brief, the Government says flatly:

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Those [in camera] documents, and not the affidavit, are the proper basis for determining the ground upon which the Attorney General acted.

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Reply Brief for United States 9.

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6. Procedures in practice at the time of the request here in issue apparently resulted in the Attorney General's merely countersigning a request which asserted a need for a wiretap. We are told that, under present procedures, the Attorney General makes an express written finding of clear and present danger to the structure and existence of the Government before he authorizes a tap. Tr. of Oral Arg. 17-18.

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7.

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Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

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18 U.S.C. § 2515.

Furman v. Georgia, 1972

Title: Furman v. Georgia

Author: U.S. Supreme Court

Date: June 29, 1972

Source: 408 U.S. 238

This case was argued January 17, 1972, and was decided June 29, 1972, together with No. 69-5030, Jackson v. Georgia, on certiorari to the same court, and No. 69-5031, Branch v. Texas, on certiorari to the Court of Criminal Appeals of Texas.

CERTIORARI TO THE SUPREME COURT OF GEORGIA

Syllabus

1972, Furman v. Georgia, 408 U.S. 238

Imposition and carrying out of death penalty in these cases held to constitute cruel and unusual punishment in violation of Eighth and Fourteenth Amendments.

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No. 69-5003, 225 Ga. 253, 167 S.D.2d 628; No. 69-5030, 225 Ga. 790, 171 S.D.2d 501; No. 69-5031, 447 S.W.2d 932, reversed and remanded. [408 U.S. 239]

Per curiam opinion.

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PER CURIAM.

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Petitioner in No. 69-5003 was convicted of murder in Georgia, and was sentenced to death pursuant to Ga.Code Ann. § 26-1005 (Supp. 1971) (effective prior to July 1, 1969). 225 Ga. 253, 167 S.E.2d 628 (1969). Petitioner in No. 69-5030 was convicted of rape in Georgia, and was sentenced to death pursuant to Ga.Code Ann. § 26-1302 (Supp. 1971) (effective prior to July 1, 1969). 225 Ga. 790, 171 S.D.2d 501 (1969). Petitioner in No. 69-5031 was convicted of rape in Texas, and was sentenced to death pursuant to Tex.Penal Code, Art. 1189 (1961). 447 S.W.2d 932 (Ct.Crim.App. 1969). Certiorari was granted limited to the following question:

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Does the imposition and carrying out of the death penalty in [these cases] constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments?

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403 U.S. 952 (1971). The Court holds that the imposition [408 U.S. 240] and carrying out of the death penalty in these cases constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The judgment in each case is therefore reversed insofar as it leaves undisturbed the death sentence imposed, and the cases are remanded for further proceedings.

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So ordered.

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MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL have filed separate opinions in support of the judgments. THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST have filed separate dissenting opinions.

DOUGLAS, J., concurring

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MR. JUSTICE DOUGLAS, concurring.

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In these three cases the death penalty was imposed, one of them for murder, and two for rape. In each, the determination of whether the penalty should be death or a lighter punishment was left by the State to the discretion of the judge or of the jury. In each of the three cases, the trial was to a jury. They are here on petitions for certiorari which we granted limited to the question whether the imposition and execution of the death penalty constitute "cruel and unusual punishment" within the meaning of the Eighth Amendment as applied to the States by the Fourteenth. 1 I vote to vacate each judgment, believing that the exaction of the death penalty does violate the Eighth and Fourteenth Amendments. [408 U.S. 241]

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That the requirements of due process ban cruel and unusual punishment is now settled. Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 463, and 473-474 (Burton, J., dissenting); Robinson v. California, 370 U.S. 660, 667. It is also settled that the proscription of cruel and unusual punishments forbids the judicial imposition of them as well as their imposition by the legislature. Weems v. United States, 217 U.S. 349, 378-382.

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Congressman Bingham, in proposing the Fourteenth Amendment, maintained that "the privileges or immunities of citizens of the United States," as protected by the Fourteenth Amendment, included protection against "cruel and unusual punishments:"

1972, Furman v. Georgia, 408 U.S. 241

[M]any instances of State injustice and oppression have already occurred in the State legislation of this Union, of flagrant violations of the guarantied privileges of citizens of the United States, for which the national Government furnished and could furnish by law no remedy whatever. Contrary to the express letter of your Constitution, "cruel and unusual punishments" have been inflicted under State laws within this Union upon citizens not only for crimes committed, but for sacred duty done, for which and against which the Government of the United States had provided no remedy, and could provide none.

1972, Furman v. Georgia, 408 U.S. 241

Cong. Globe, 39th Cong., 1st Sess., 2542.

1972, Furman v. Georgia, 408 U.S. 241

Whether the privileges and immunities route is followed or the due process route, the result is the same.

1972, Furman v. Georgia, 408 U.S. 241

It has been assumed in our decisions that punishment by death is not cruel, unless the manner of execution can be said to be inhuman and barbarous. In re Kemmler, 136 U.S. 436, 447. It is also said in our opinions [408 U.S. 242] that the proscription of cruel and unusual punishments "is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice." Weems v. United States, supra, at 378. A like statement was made in Trop v. Dulles, 356 U.S. 86, 101, that the Eighth Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."

1972, Furman v. Georgia, 408 U.S. 242

The generality of a law inflicting capital punishment is one thing. What may be said of the validity of a law on the books and what may be done with the law in its application do, or may, lead to quite different conclusions.

1972, Furman v. Georgia, 408 U.S. 242

It would seem to be incontestable that the death penalty inflicted on one defendant is "unusual" if it discriminates against him by reason of his race, religion, wealth, social position, or class, or if it is imposed under a procedure that gives room for the play of such prejudices.

1972, Furman v. Georgia, 408 U.S. 242

There is evidence that the provision of the English Bill of Rights of 1689, from which the language of the Eighth Amendment was taken, was concerned primarily with selective or irregular application of harsh penalties, and that its aim was to forbid arbitrary and discriminatory penalties of a severe nature: 2

1972, Furman v. Georgia, 408 U.S. 242

Following the Norman conquest of England in 1066, the old system of penalties, which ensured equality between crime and punishment, suddenly disappeared. By the time systematic judicial records were kept, its demise was almost complete. With the exception of certain grave crimes for which the punishment was death or outlawry, the arbitrary fine was replaced by a discretionary [408 U.S. 243] amercement. Although amercement's discretionary character allowed the circumstances of each case to be taken into account, and the level of cash penalties to be decreased or increased accordingly, the amercement presented an opportunity for excessive or oppressive fines.

1972, Furman v. Georgia, 408 U.S. 243

The problem of excessive amercements became so prevalent that three chapters of the Magna Carta were devoted to their regulation. Maitland said of Chapter 14 that, "very likely, there was no clause in the Magna Carta more grateful to the mass of the people." Chapter 14 clearly stipulated as fundamental law a prohibition of excessiveness in punishments:

1972, Furman v. Georgia, 408 U.S. 243

A free man shall not be amerced for a trivial offence, except in accordance with the degree of the offence, and for a serious offence, he shall be amerced according to its gravity, saving his livelihood; and a merchant likewise, saving his merchandise; in the same way, a villein shall be amerced saving his wainage, if they fall into our mercy. And none of the aforesaid amercements shall be imposed except by the testimony of reputable men of the neighborhood.

1972, Furman v. Georgia, 408 U.S. 243

The English Bill of Rights, enacted December 16, 1689, stated that "excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." 3 These were the words chosen for our Eighth Amendment. A like provision had been in Virginia's Constitution of 1776, 4 and in the constitutions [408 U.S. 244] of seven other States. 5 The Northwest Ordinance, enacted under the Articles of Confederation, included a prohibition of cruel and unusual punishments. 6 But the debates of the First Congress on the Bill of Rights throw little light on its intended meaning. All that appears is the following: 7

1972, Furman v. Georgia, 408 U.S. 244

Mr. SMITH, of South Carolina, objected to the words "nor cruel and unusual punishments," the import of them being too indefinite.

1972, Furman v. Georgia, 408 U.S. 244

Mr. LIVERMORE: The clause seems to express a great deal of humanity, on which account I have no objection to it; but, as it seems to have no meaning in it, I do not think it necessary. What is meant by the terms excessive bail? Who are to be the judges? What is understood by excessive fines? It lies with the court to determine. No cruel and unusual punishment is to be inflicted; it is sometimes necessary to hang a man, villains often deserve whipping, and perhaps having their ears cut off; but are we in future to be prevented from inflicting these punishments because they are cruel? If a more lenient mode of correcting vice and deterring others from the commission of it could be invented, it would be very prudent in the Legislature to adopt it; but until we have some security that this will be done, we ought not to be restrained from making necessary laws by any declaration of this kind.

1972, Furman v. Georgia, 408 U.S. 244

The words "cruel and unusual" certainly include penalties [408 U.S. 245] that are barbaric. But the words, at least when read in light of the English proscription against selective and irregular use of penalties, suggest that it is "cruel and unusual" to apply the death penalty—or any other penalty—selectively to minorities whose numbers are few, who are outcasts of society, and who are unpopular, but whom society is willing to see suffer though it would not countenance general application of the same penalty across the board. 8 Judge Tuttle, indeed, made abundantly clear in Novak v. Beto, 43 F.2d 661, 673-679 (CA5) (concurring in part and dissenting in part), that solitary confinement may at times be "cruel and unusual" punishment. Cf. Ex parte Medley, 134 U.S. 160; Brooks v. Florida, 389 U.S. 413.

1972, Furman v. Georgia, 408 U.S. 245

The Court in McGautha v. California, 402 U.S. 183, 198, noted that, in this country, there was almost from the beginning a "rebellion against the common law rule imposing a mandatory death sentence on all convicted [408 U.S. 246] murderers." The first attempted remedy was to restrict the death penalty to defined offenses such as "premeditated" murder. 9 Ibid. But juries "took the [408 U.S. 247] law into their own hands," and refused to convict on the capital offense. Id. at 199.

1972, Furman v. Georgia, 408 U.S. 247

In order to meet the problem of jury nullification, legislatures did not try, as before, to refine further the definition of capital homicides. Instead they adopted the method of forthrightly granting juries the discretion which they had been exercising in fact.

1972, Furman v. Georgia, 408 U.S. 247

Ibid.

1972, Furman v. Georgia, 408 U.S. 247

The Court concluded:

1972, Furman v. Georgia, 408 U.S. 247

In light of history, experience, and the present limitations of human knowledge, we find it quite impossible to say that committing to the untrammeled discretion of the jury the power to pronounce life or death in capital cases is offensive to anything in the Constitution.

1972, Furman v. Georgia, 408 U.S. 247

Id. at 207.

1972, Furman v. Georgia, 408 U.S. 247

The Court refused to find constitutional dimensions in the argument that those who exercise their discretion to send a person to death should be given standards by which that discretion should be exercised. Id. at 207-208.

1972, Furman v. Georgia, 408 U.S. 247

A recent witness at the Hearings before Subcommittee No. 3 of the House Committee on the Judiciary, 92d Cong., 2d Sess., Ernest van den Haag, testifying on H.R. 8414 et al., 10 stated:

1972, Furman v. Georgia, 408 U.S. 247

Any penalty, a fine, imprisonment or the death penalty could be unfairly or unjustly applied. The [408 U.S. 248] vice in this case is not in the penalty, but in the process by which it is inflicted. It is unfair to inflict unequal penalties on equally guilty parties, or on any innocent parties, regardless of what the penalty is.

1972, Furman v. Georgia, 408 U.S. 248

Id. at 116-117. (Emphasis supplied.)

1972, Furman v. Georgia, 408 U.S. 248

But those who advance that argument overlook McGautha, supra.

1972, Furman v. Georgia, 408 U.S. 248

We are now imprisoned in the McGautha holding. Indeed, the seeds of the present cases are in McGautha. Juries (or judges, as the case may be) have practically untrammeled discretion to let an accused live or insist that he die. 11 [408 U.S. 249]

1972, Furman v. Georgia, 408 U.S. 249

Mr. Justice Field, dissenting in O'Neil v. Vermont, 144 U.S. 323, 340, said,

1972, Furman v. Georgia, 408 U.S. 249

The State may, indeed, make the drinking of one drop of liquor an offence to be punished by imprisonment, but it would be an unheard-of cruelty if it should count the drops in a single glass and make thereby a thousand offences, and thus extend the punishment for drinking the single glass of liquor to an imprisonment of almost indefinite duration.

1972, Furman v. Georgia, 408 U.S. 249

What the legislature may not do for all classes uniformly and systematically a judge or jury may not do for a class that prejudice sets apart from the community.

1972, Furman v. Georgia, 408 U.S. 249

There is increasing recognition of the fact that the basic theme of equal protection is implicit in "cruel and unusual" punishments. "A penalty…should be considered `unusually' imposed if it is administered arbitrarily or discriminatorily." 12 The same authors add that "[t]he extreme rarity with which applicable death penalty provisions are put to use raises a strong inference of arbitrariness.'' 13 The President's Commission on Law Enforcement and Administration of Justice recently concluded: 14

1972, Furman v. Georgia, 408 U.S. 249

Finally, there is evidence that the imposition of the death sentence and the exercise of dispensing power by the courts and the executive follow discriminatory patterns. The death sentence is disproportionately imposed, and carried out on the [408 U.S. 250] poor, the Negro, and the members of unpopular groups.

1972, Furman v. Georgia, 408 U.S. 250

A study of capital cases in Texas from 1924 to 1968 reached the following conclusions: 15

1972, Furman v. Georgia, 408 U.S. 250

Application of the death penalty is unequal: most of those executed were poor, young, and ignorant.

\* \* \* \*

[408 U.S. 251]

1972, Furman v. Georgia, 408 U.S. 251

Seventy-five of the 460 cases involved codefendants, who, under Texas law, were given separate trials. In several instances where a white and a Negro were co-defendants, the white was sentenced to life imprisonment or a term of years, and the Negro was given the death penalty.

1972, Furman v. Georgia, 408 U.S. 251

Another ethnic disparity is found in the type of sentence imposed for rape. The Negro convicted of rape is far more likely to get the death penalty than a term sentence, whereas whites and Latins are far more likely to get a term sentence than the death penalty.

1972, Furman v. Georgia, 408 U.S. 251

Warden Lewis E. Lawes of Sing Sing said: 16

1972, Furman v. Georgia, 408 U.S. 251

Not only does capital punishment fail in its justification, but no punishment could be invented with so many inherent defects. It is an unequal punishment in the way it is applied to the rich and to the poor. The defendant of wealth and position never goes to the electric chair or to the gallows. Juries do not intentionally favour the rich, the law is theoretically impartial, but the defendant with ample means is able to have his case presented with every favourable aspect, while the poor defendant often has a lawyer assigned by the court. Sometimes such assignment is considered part of political patronage; usually the lawyer assigned has had no experience whatever in a capital case.

1972, Furman v. Georgia, 408 U.S. 251

Former Attorney General Ramsey Clark has said, "It is the poor, the sick, the ignorant, the powerless and the hated who are executed." 17 One searches our chronicles [408 U.S. 252] in vain for the execution of any member of the affluent strata of this society. The Leopolds and Loebs are given prison terms, not sentenced to death.

1972, Furman v. Georgia, 408 U.S. 252

Jackson, a black, convicted of the rape of a white woman, was 21 years old. A court-appointed psychiatrist said that Jackson was of average education and average intelligence, that he was not an imbecile, or schizophrenic, or psychotic, that his traits were the product of environmental influences, and that he was competent to stand trial. Jackson had entered the house after the husband left for work. He held scissors against the neck of the wife, demanding money. She could find none, and a struggle ensued for the scissors, a battle which she lost, and she was then raped, Jackson keeping the scissors pressed against her neck. While there did not appear to be any long-term traumatic impact on the victim, she was bruised and abrased in the struggle, but was not hospitalized. Jackson was a convict who had escaped from a work gang in the area, a result of a three-year sentence for auto theft. He was at large for three days and during that time had committed several other offenses—burglary, auto theft, and assault and battery.

1972, Furman v. Georgia, 408 U.S. 252

Furman, a black, killed a householder while seeking to enter the home at night. Furman shot the deceased through a closed door. He was 26 years old and had finished the sixth grade in school. Pending trial, he was committed to the Georgia Central State Hospital for a psychiatric examination on his plea of insanity tendered by court-appointed counsel. The superintendent reported that a unanimous staff diagnostic conference had concluded "that this patient should retain his present diagnosis of Mental Deficiency, Mild to Moderate, with Psychotic Episodes associated with Convulsive Disorder." The physicians agreed that "at present the patient is not psychotic, but he is not capable of cooperating with his counsel in the preparation of his [408 U.S. 253] defense"; and the staff believed "that he is in need of further psychiatric hospitalization and treatment."

1972, Furman v. Georgia, 408 U.S. 253

Later, the superintendent reported that the staff diagnosis was Mental Deficiency, Mild to Moderate, with Psychotic Episodes associated with Convulsive Disorder. He concluded, however, that Furman was "not psychotic at present, knows right from wrong and is able to cooperate with his counsel in preparing his defense."

1972, Furman v. Georgia, 408 U.S. 253

Branch, a black, entered the rural home of a 65-year-old widow, a white, while she slept and raped her, holding his arm against her throat. Thereupon he demanded money, and for 30 minutes or more, the widow searched for money, finding little. As he left, Jackson said if the widow told anyone what happened, he would return and kill her. The record is barren of any medical or psychiatric evidence showing injury to her as a result of Branch's attack.

1972, Furman v. Georgia, 408 U.S. 253

He had previously been convicted of felony theft and found to be a borderline mental deficient and well below the average IQ of Texas prison inmates. He had the equivalent of five and a half years of grade school education. He had a "dull intelligence," and was in the lowest fourth percentile of his class.

1972, Furman v. Georgia, 408 U.S. 253

We cannot say from facts disclosed in these records that these defendants were sentenced to death because they were black. Yet our task is not restricted to an effort to divine what motives impelled these death penalties. Rather, we deal with a system of law and of justice that leaves to the uncontrolled discretion of judges or juries the determination whether defendants committing these crimes should die or be imprisoned. Under these laws, no standards govern the selection of the penalty. People live or die, dependent on the whim of one man or of 12.

1972, Furman v. Georgia, 408 U.S. 253

Irving Brant has given a detailed account of the Bloody Assizes, the reign of terror that occupied the [408 U.S. 254] closing years of the rule of Charles II and the opening years of the regime of James II (the Lord Chief Justice was George Jeffreys):

1972, Furman v. Georgia, 408 U.S. 254

Nobody knows how many hundreds of men, innocent or of unproved guilt, Jeffreys sent to their deaths in the pseudo trials that followed Monmouth's feeble and stupid attempt to seize the throne. When the ordeal ended, scores had been executed and 1,260 were awaiting the hangman in three counties. To be absent from home during the uprising was evidence of guilt. Mere death was considered much too mild for the villagers and farmers rounded up in these raids. The directions to a high sheriff were to provide an ax, a cleaver,

1972, Furman v. Georgia, 408 U.S. 254

a furnace or cauldron to boil their heads and quarters, and soil to boil therewith, half a bushel to each traitor, and tar to tar them with, and a sufficient number of spears and poles to fix their heads and quarters

1972, Furman v. Georgia, 408 U.S. 254

along the highways. One could have crossed a good part of northern England by their guidance.

1972, Furman v. Georgia, 408 U.S. 254

The story of The Bloody Assizes, widely known to Americans, helped to place constitutional limitations on the crime of treason and to produce a bar against cruel and unusual punishments. But in the polemics that led to the various guarantees of freedom, it had no place compared with the tremendous thrust of the trial and execution of Sidney. The hundreds of judicial murders committed by Jeffreys and his fellow judges were totally inconceivable in a free American republic, but any American could imagine himself in Sidney's place—executed for putting on paper, in his closet, words that later on came to express the basic principles of republican government. Unless barred by fundamental law, the legal rulings that permitted this [408 U.S. 255] result could easily be employed against any person whose political opinions challenged the party in power.

1972, Furman v. Georgia, 408 U.S. 255

The Bill of Rights 154-155 (1965).

1972, Furman v. Georgia, 408 U.S. 255

Those who wrote the Eighth Amendment knew what price their forebears had paid for a system based not on equal justice, but on discrimination. In those days, the target was not the blacks or the poor, but the dissenters, those who opposed absolutism in government, who struggled for a parliamentary regime, and who opposed governments' recurring efforts to foist a particular religion on the people. Id. at 155-163. But the tool of capital punishment was used with vengeance against the opposition and those unpopular with the regime. One cannot read this history without realizing that the desire for equality was reflected in the ban against "cruel and unusual punishments" contained in the Eighth Amendment.

1972, Furman v. Georgia, 408 U.S. 255

In a Nation committed to equal protection of the laws there is no permissible "caste" aspect 18 of law enforcement. Yet we know that the discretion of judges and juries in imposing the death penalty enables the penalty to be selectively applied, feeding prejudices against the accused if he is poor and despised, and lacking political clout, or if he is a member of a suspect or unpopular minority, and saving those who by social position may be in a more protected position. In ancient Hindu, law a Brahman was exempt from capital punishment, 19 and, under that law, "[g]enerally, in the law books, punishment increased in severity as social status diminished." 20 We have, I fear, taken in practice the same position, partially as a result of making the death penalty [408 U.S. 256] discretionary and partially as a result of the ability of the rich to purchase the services of the most respected and most resourceful legal talent in the Nation.

1972, Furman v. Georgia, 408 U.S. 256

The high service rendered by the "cruel and unusual" punishment clause of the Eighth Amendment is to require legislatures to write penal laws that are evenhanded, nonselective, and nonarbitrary, and to require judges to see to it that general laws are not applied sparsely, selectively, and spottily to unpopular groups.

1972, Furman v. Georgia, 408 U.S. 256

A law that stated that anyone making more than $50,000 would be exempt from the death penalty would plainly fall, as would a law that in terms said that blacks, those who never went beyond the fifth grade in school, those who made less than $3,000 a year, or those who were unpopular or unstable should be the only people executed. A law which, in the overall view, reaches that result in practice 21 has no more sanctity than a law which in terms provides the same.

1972, Furman v. Georgia, 408 U.S. 256

Thus, these discretionary statutes are unconstitutional [408 U.S. 257] in their operation. They are pregnant with discrimination, and discrimination is an ingredient not compatible with the idea of equal protection of the laws that is implicit in the ban on "cruel and unusual" punishments.

1972, Furman v. Georgia, 408 U.S. 257

Any law which is nondiscriminatory on its face may be applied in such a way as to violate the Equal Protection Clause of the Fourteenth Amendment. Yick Wo v. Hopkins, 118 U.S. 356. Such conceivably might be the fate of a mandatory death penalty, where equal or lesser sentences were imposed on the elite, a harsher one on the minorities or members of the lower castes. Whether a mandatory death penalty would otherwise be constitutional is a question I do not reach.

1972, Furman v. Georgia, 408 U.S. 257

I concur in the judgments of the Court.

BRENNAN, J., concurring

1972, Furman v. Georgia, 408 U.S. 257

MR. JUSTICE BRENNAN, concurring.

1972, Furman v. Georgia, 408 U.S. 257

The question presented in these cases is whether death is today a punishment for crime that is "cruel and unusual" and consequently, by virtue of the Eighth and Fourteenth Amendments, beyond the power of the State to inflict. 1 [408 U.S. 258]

1972, Furman v. Georgia, 408 U.S. 258

Almost a century ago, this Court observed that

1972, Furman v. Georgia, 408 U.S. 258

[d]ifficulty would attend the effort to define with exactness the extent of the constitutional provision which provides that cruel and unusual punishments shall not be inflicted.

1972, Furman v. Georgia, 408 U.S. 258

Wilkerson v. Utah, 99 U.S. 130, 135-136 (1879). Less than 15 years ago, it was again noted that "[t]he exact scope of the constitutional phrase `cruel and unusual' has not been detailed by this Court." Trop v. Dulles, 356 U.S. 86, 99 (1958). Those statement remain true today. The Cruel and Unusual Punishments Clause, like the other great clauses of the Constitution, is not susceptible of precise definition. Yet we know that the values and ideals it embodies are basic to our scheme of government. And we know also that the Clause imposes upon this Court the duty, when the issue is properly presented, to determine the constitutional validity of a challenged punishment, whatever that punishment may be. In these cases, "[t]hat issue confronts us, and the task of resolving it is inescapably ours." Id. at 103.

I

1972, Furman v. Georgia, 408 U.S. 258

We have very little evidence of the Framers' intent in including the Cruel and Unusual Punishments Clause among those restraints upon the new Government enumerated in the Bill of Rights. The absence of such a restraint from the body of the Constitution was alluded to, so far as we now know, in the debates of only two of the state ratifying conventions. In the Massachusetts convention, Mr. Holmes protested:

1972, Furman v. Georgia, 408 U.S. 258

What gives an additional glare of horror to these gloomy circumstances is the consideration that Congress have to ascertain, point out, and determine, [408 U.S. 259] what kind of punishments shall be inflicted on persons convicted of crimes. They are nowhere restrained from inventing the most cruel and unheard-of punishments, and annexing them to crimes; and there is no constitutional check on them, but that racks and gibbets may be amongst the most mild instruments of their discipline.

1972, Furman v. Georgia, 408 U.S. 259

2 J. Elliot's Debates 111 (2d ed. 1876). Holmes' fear that Congress would have unlimited power to prescribe punishments for crimes was echoed by Patrick Henry at the Virginia convention:

1972, Furman v. Georgia, 408 U.S. 259

…Congress, from their general powers, may fully go into business of human legislation. They may legislate, in criminal cases, from treason to the lowest offence—petty larceny. They may define crimes and prescribe punishments. In the definition of crimes, I trust they will be directed by what wise representatives ought to be governed by. But when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of representatives. What says our [Virginia] bill of rights.—"that excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Are you not, therefore, now calling on those gentlemen who are to compose Congress, to…define punishments without this control? Will they find sentiments there similar to this bill of rights? You let them loose; you do more—you depart from the genius of your country….

1972, Furman v. Georgia, 408 U.S. 259

In this business of legislation, your members of Congress will loose the restriction of not imposing excessive fines, demanding excessive bail, and inflicting cruel and unusual punishments. These are prohibited by your [Virginia] declaration of rights. What has distinguished our ancestors?—[408 U.S. 260] That they would not admit of tortures, or cruel and barbarous punishment.

1972, Furman v. Georgia, 408 U.S. 260

3 id. at 447. 2

1972, Furman v. Georgia, 408 U.S. 260

These two statements shed some light on what the Framers meant by "cruel and unusual punishments." Holmes referred to "the most cruel and unheard-of punishments," Henry to "tortures, or cruel and barbarous punishment." It does not follow, however, that the Framers were exclusively concerned with prohibiting torturous punishments. Holmes and Henry were objecting to the absence of a Bill of Rights, and they cited to support their objections the unrestrained legislative power to prescribe punishments for crimes. Certainly we may suppose that they invoked the specter of the most drastic punishments a legislature might devise.

1972, Furman v. Georgia, 408 U.S. 260

In addition, it is quite clear that Holmes and Henry focused wholly upon the necessity to restrain the legislative power. Because they recognized "that Congress have to ascertain, point out, and determine what kinds of punishments shall be inflicted on persons convicted of crimes," they insisted that Congress must be limited in its power to punish. Accordingly, they [408 U.S. 261] called for a "constitutional check" that would ensure that "when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of representatives." 3

1972, Furman v. Georgia, 408 U.S. 261

The only further evidence of he Framers' intent appears from the debates in the First Congress on the adoption of the Bill of Rights. 4 As the Court noted in Weems v. United States, 217 U.S. 349, 368 (1910), [408 U.S. 262] the Cruel and Unusual Punishments Clause "received very little debate." The extent of the discussion, by two opponents of the Clause in the House of Representatives, was this:

1972, Furman v. Georgia, 408 U.S. 262

Mr. SMITH, of South Carolina, objected to the words "nor cruel and unusual punishments," the import of them being too indefinite.

1972, Furman v. Georgia, 408 U.S. 262

Mr. LIVERMORE.—The [Eighth Amendment] seems to express a great deal of humanity, on which account I have no objection to it; but as it seems to have no meaning in it, I do not think it necessary…. No cruel and unusual punishment is to be inflicted; it is sometimes necessary to hang a man, villains often deserve whipping, and perhaps having their ears cut off; but are we in future to be prevented from inflicting these punishments because they are cruel? If a more lenient mode of correcting vice and deterring others from the commission of it could be invented, it would be very prudent in the Legislature to adopt it; but until we have some security that this will be done, we ought not to be restrained from making necessary laws by any declaration of this kind.

1972, Furman v. Georgia, 408 U.S. 262

The question was put on the [Eighth Amendment], and it was agreed to by a considerable majority.

1972, Furman v. Georgia, 408 U.S. 262

1 Annals of Cong. 754 (1789). 5

1972, Furman v. Georgia, 408 U.S. 262

Livermore thus agreed with Holmes and Henry that the Cruel and Unusual Punishments Clause imposed a limitation upon the legislative power to prescribe punishments. [408 U.S. 263] However, in contrast to Holmes and Henry, who were supporting the Clause, Livermore, opposing it, did not refer to punishments that were considered barbarous and torturous. Instead, he objected that the Clause might someday prevent the legislature from inflicting what were then quite common and, in his view, "necessary" punishments—death, whipping, and earcropping. 6 The only inference to be drawn from Livermore's statement is that the "considerable majority" was prepared to run that risk. No member of the House rose to reply that the Clause was intended merely to prohibit torture.

1972, Furman v. Georgia, 408 U.S. 263

Several conclusions thus emerge from the history of the adoption of the Clause. We know that the Framers' concern was directed specifically at the exercise of legislative power. They included in the Bill of Rights a prohibition upon "cruel and unusual punishments" precisely because the legislature would otherwise have had the unfettered power to prescribe punishments for crimes. Yet we cannot now know exactly what the Framers thought "cruel and unusual punishments" were. Certainly they intended to ban torturous punishments, but the available evidence does not support the further conclusion that only torturous punishments were to be outlawed. As Livermore's comments demonstrate, the Framers were well aware that the reach of the Clause was not limited to the proscription of unspeakable atrocities. Nor did they intend simply to forbid punishments considered "cruel and unusual" at the time. The "import" of the Clause is, indeed, "indefinite," and for good reason. A constitutional provision

1972, Furman v. Georgia, 408 U.S. 263

is enacted, it is true, from an experience of evils, but its general language [408 U.S. 264] should not, therefore, be necessarily confined to the form that evil had theretofore taken. Time works changes, brings into existence new conditions and purposes. Therefore a principle, to be vital, must be capable of wider application than the mischief which gave it birth.

1972, Furman v. Georgia, 408 U.S. 264

Weems v. United States, 217 U.S. at 373.

1972, Furman v. Georgia, 408 U.S. 264

It was almost 80 years before this Court had occasion to refer to the Clause. See Pervear v. The Commonwealth, 5 Wall. 475, 479-480 (1867). These early cases, as the Court pointed out in Weems v. United States, supra, at 369, did not undertake to provide "an exhaustive definition" of "cruel and unusual punishments." Most of them proceeded primarily by "looking backwards for examples by which to fix the meaning of the clause," id. at 377, concluding simply that a punishment would be "cruel and unusual" if it were similar to punishments considered "cruel and unusual" at the time the Bill of Rights was adopted. 7 In Wilkerson v. Utah, 99 U.S. at 136, for instance, the Court found it "safe to affirm that punishments of torture…and all others in the same line of unnecessary cruelty, are forbidden." The "punishments of torture," which the Court labeled "atrocities," were cases where the criminal "was embowelled alive, beheaded, and quartered," and cases "of public dissection…and burning alive." Id. at 135. Similarly, in In re Kemmler, [408 U.S. 265] 136 U.S. 436, 446 (1890), the Court declared that,

1972, Furman v. Georgia, 408 U.S. 265

if the punishment prescribed for an offence against the laws of the State were manifestly cruel and unusual, as burning at the stake, crucifixion, breaking on the wheel, or the like, it would be the duty of the courts to adjudge such penalties to be within the constitutional prohibition.

1972, Furman v. Georgia, 408 U.S. 265

The Court then observed, commenting upon the passage just quoted from Wilkerson v. Utah, supra, and applying the "manifestly cruel and unusual" test, that

1972, Furman v. Georgia, 408 U.S. 265

[p]unishments are cruel when they involve torture or a lingering death; but the punishment of death is not cruel, within the meaning of that word as used in the Constitution. It implies there something inhuman and barbarous, something more than the mere extinguishment of life.

1972, Furman v. Georgia, 408 U.S. 265

136 U.S. at 447.

1972, Furman v. Georgia, 408 U.S. 265

Had this "historical" interpretation of the Cruel and Unusual Punishments Clause prevailed, the Clause would have been effectively read out of the Bill of Rights. As the Court noted in Weems v. United States, supra, at 371, this interpretation led Story to conclude

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that the provision "would seem to be wholly unnecessary in a free government, since it is scarcely possible that any department of such a government should authorize or justify such atrocious conduct."

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And Cooley, in his book, Constitutional Limitations, said the Court,

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apparently in a struggle between the effect to be given to ancient examples and the inconsequence of a dread of them in these enlightened times,…hesitate[d] to advance definite views.

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Id. at 375. The result of a judicial application of this interpretation was not surprising. A state court, for example, upheld the constitutionality of the whipping post: "In comparison with the `barbarities of quartering, hanging in chains, castration, etc.,' it was easily reduced to insignificance." Id. at 377. [408 U.S. 266]

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But this Court in Weems decisively repudiated the "historical" interpretation of the Clause. The Court, returning to the intention of the Framers, "rel[ied] on the conditions which existed when the Constitution was adopted." And the Framers knew

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that government by the people instituted by the Constitution would not imitate the conduct of arbitrary monarchs. The abuse of power might, indeed, be apprehended, but not that it would be manifested in provisions or practices which would shock the sensibilities of men.

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Id. at 375. The Clause, then, guards against "[t]he abuse of power"; contrary to the implications in Wilkerson v. Utah, supra, and In re Kemmler, supra, the prohibition of the Clause is not "confine[d]…to such penalties and punishment as were inflicted by the Stuarts." 217 U.S. at 372. Although opponents of the Bill of Rights "felt sure that the spirit of liberty could be trusted, and that its ideals would be represented, not debased, by legislation," ibid., the Framers disagreed:

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[Patrick] Henry and those who believed as he did would take no chances. Their predominant political impulse was distrust of power, and they insisted on constitutional limitations against its abuse. But surely they intended more than to register a fear of the forms of abuse that went out of practice with the Stuarts. Surely, their [jealousy] of power had a saner justification than that. They were men of action, practical and sagacious, not beset with vain imagining, and it must have come to them that there could be exercises of cruelty by laws other than those which inflicted bodily pain or mutilation. With power in a legislature great, if not unlimited, to give criminal character to the actions of men, with power unlimited to fix terms of imprisonment with what accompaniments they [408 U.S. 267] might, what more potent instrument of cruelty could be put into the hands of power? And it was believed that power might be tempted to cruelty. This was the motive of the clause, and if we are to attribute an intelligent providence to its advocates we cannot think that it was intended to prohibit only practices like the [Stuarts',] or to prevent only an exact repetition of history. We cannot think that the possibility of a coercive cruelty being exercised through other forms of punishment was overlooked.

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Id. at 372-373.

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The Court in Weems thus recognized that this "restraint upon legislatures" possesses an "expansive and vital character" that is "`essential…to the rule of law and the maintenance of individual freedom.'" Id. at 376-377. Accordingly, the responsibility lies with the courts to make certain that the prohibition of the Clause is enforced. 8 Referring to cases in which "prominence [was] given to the power of the legislature to define crimes and their punishment," the Court said:

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We concede the power in most of its exercises. We disclaim the right to assert a judgment [408 U.S. 268] against that of the legislature of the expediency of the laws or the right to oppose the judicial power to the legislative power to define crimes and fix their punishment, unless that power encounters in its exercise a constitutional prohibition. In such case, not our discretion, but our legal duty, strictly defined and imperative in its direction, is invoked.

1972, Furman v. Georgia, 408 U.S. 268

Id. at 378. 9

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In short, this Court finally adopted the Framers' view of the Clause as a "constitutional check" to ensure that, "when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of representatives." That, indeed, is the only view consonant with our constitutional form of government. If the judicial conclusion that a punishment is "cruel and unusual" "depend[ed] upon virtually unanimous condemnation of the penalty at issue," then,

1972, Furman v. Georgia, 408 U.S. 268

[l]ike no other constitutional provision, [the Clause's] only function would be to legitimize advances already made by the other departments and opinions already the conventional wisdom.

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We know that the Framers did not envision "so narrow a role for this basic guaranty of human rights." Goldberg & Dershowitz, Declaring the Death Penalty Unconstitutional, 83 Harv.L.Rev. 1773, 1782 (1970). The right to be free of cruel and unusual punishments, like the other guarantees of the Bill of Rights, "may not be submitted to vote; [it] depend[s] on the outcome of no elections."

1972, Furman v. Georgia, 408 U.S. 268

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied [408 U.S. 269] by the courts.

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Board of Education v. Barnette, 319 U.S. 624, 638 (1943).

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Judicial enforcement of the Clause, then, cannot be evaded by invoking the obvious truth that legislatures have the power to prescribe punishments for crimes. That is precisely the reason the Clause appears in the Bill of Rights. The difficulty arises, rather, in formulating the "legal principles to be applied by the courts" when a legislatively prescribed punishment is challenged as "cruel and unusual." In formulating those constitutional principles, we must avoid the insertion of "judicial conception[s] of…wisdom or propriety," Weems v. United States, 217 U.S. at 379, yet we must not, in the guise of "judicial restraint," abdicate our fundamental responsibility to enforce the Bill of Rights. Were we to do so, the "constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality." Id. at 373. The Cruel and Unusual Punishments Clause would become, in short, "little more than good advice." Trop v. Dulles, 356 U.S. at 104.

II

1972, Furman v. Georgia, 408 U.S. 269

Ours would indeed be a simple task were we required merely to measure a challenged punishment against those that history has long condemned. That narrow and unwarranted view of the Clause, however, was left behind with the 19th century. Our task today is more complex. We know "that the words of the [Clause] are not precise, and that their scope is not static." We know, therefore, that the Clause "must draw its meaning from the evolving standards of decency that mark the progress [408 U.S. 270] of a maturing society." Id. at 100-101. 10 That knowledge, of course, is but the beginning of the inquiry.

1972, Furman v. Georgia, 408 U.S. 270

In Trop v. Dulles, supra, at 99, it was said that "[t]he question is whether [a] penalty subjects the individual to a fate forbidden by the principle of civilized treatment guaranteed by the [Clause]." It was also said that a challenged punishment must be examined "in light of the basic prohibition against inhuman treatment" embodied in the Clause. Id. at 100 n. 32. It was said, finally, that:

1972, Furman v. Georgia, 408 U.S. 270

The basic concept underlying the [Clause] is nothing less than the dignity of man. While the State has the power to punish, the [Clause] stands to assure that this power be exercised within the limits of civilized standards.

1972, Furman v. Georgia, 408 U.S. 270

Id. at 100. At bottom, then, the Cruel and Unusual Punishments Clause prohibits the infliction of uncivilized and inhuman punishments. The State, even as it punishes, must treat its members with respect for their intrinsic worth as human beings. A punishment is "cruel and unusual," therefore, if it does not comport with human dignity.

1972, Furman v. Georgia, 408 U.S. 270

This formulation, of course, does not, of itself, yield principles for assessing the constitutional validity of particular punishments. Nevertheless, even though "[t]his Court has had little occasion to give precise content to the [Clause]," ibid., there are principles recognized in our cases and inherent in the Clause sufficient to permit a judicial determination whether a challenged punishment comports with human dignity. [408 U.S. 271]

1972, Furman v. Georgia, 408 U.S. 271

The primary principle is that a punishment must not be so severe as to be degrading to the dignity of human beings. Pain, certainly, may be a factor in the judgment. The infliction of an extremely severe punishment will often entail physical suffering. See Weems v. United States, 217 U.S. at 366. 11 Yet the Framers also knew "that there could be exercises of cruelty by laws other than those which inflicted bodily pain or mutilation." Id. at 372. Even though "[t]here may be involved no physical mistreatment, no primitive torture," Trop v. Dulles, supra, at 101, severe mental pain may be inherent in the infliction of a particular punishment. See Weems v. United States, supra, at 366. 12 That, indeed, was one of the conclusions underlying the holding of the plurality in Trop v. Dulles that the punishment of expatriation violates the Clause. 13 And the [408 U.S. 272] physical and mental suffering inherent in the punishment of cadena temporal, see nn. 11-12, supra, was an obvious basis for the Court's decision in Weems v. United States that the punishment was "cruel and unusual." 14

1972, Furman v. Georgia, 408 U.S. 272

More than the presence of pain, however, is comprehended in the judgment that the extreme severity of a punishment makes it degrading to the dignity of human beings. The barbaric punishments condemned by history, "punishments which inflict torture, such as the rack, the thumbscrew, the iron boot, the stretching of limbs and the like," are, of course, "attended with acute pain and suffering." O'Neil v. Vermont, 144 U.S. 323, 339 (1892) (Field, J., dissenting). When we consider why they have been condemned, however, we realize that the pain involved is not the only reason. The true significance of these punishments is that they treat [408 U.S. 273] members of the human race as nonhumans, as objects to be toyed with and discarded. They are thus inconsistent with the fundamental premise of the Clause that even the vilest criminal remains a human being possessed of common human dignity.

1972, Furman v. Georgia, 408 U.S. 273

The infliction of an extremely severe punishment, then, like the one before the Court in Weems v. Unite States, from which "[n]o circumstance of degradation [was] omitted," 217 U.S. at 366, may reflect the attitude that the person punished is not entitled to recognition as a fellow human being. That attitude may be apparent apart from the severity of the punishment itself. In Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 464 (1947), for example, the unsuccessful electrocution, although it caused "mental anguish and physical pain," was the result of "an unforeseeable accident." Had the failure been intentional, however, the punishment would have been, like torture, so degrading and indecent as to amount to a refusal to accord the criminal human status. Indeed, a punishment may be degrading to human dignity solely because it is a punishment. A State may not punish a person for being "mentally ill, or a leper, or…afflicted with a venereal disease," or for being addicted to narcotics. Robinson v. California, 370 U.S. 660, 666 (1962). To inflict punishment for having a disease is to treat the individual as a diseased thing, rather than as a sick human being. That the punishment is not severe, "in the abstract," is irrelevant; "[e]ven one day in prison would be a cruel and unusual punishment for the `crime' of having a common cold." Id. at 667. Finally, of course, a punishment may be degrading simply by reason of its enormity. A prime example is expatriation, a "punishment more primitive than torture," Trop v. Dulles, 356 U.S. at 101, for it necessarily involves a [408 U.S. 274] denial by society of the individual's existence as a member of the human community. 15

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In determining whether a punishment comports with human dignity, we are aided also by a second principle inherent in the Clause—that the State must not arbitrarily inflict a severe punishment. This principle derives from the notion that the State does not respect human dignity when, without reason, it inflicts upon some people a severe punishment that it does not inflict upon others. Indeed, the very words "cruel and unusual punishments" imply condemnation of the arbitrary infliction of severe punishments. And, as we now know, the English history of the Clause 16 reveals a particular concern with the establishment of a safeguard against arbitrary punishments. See Granucci, "Nor Cruel and Unusual Punishments Inflicted:" The Original Meaning, 57 Calif.L.Rev. 839, 857-860 (1969). 17 [408 U.S. 275]

1972, Furman v. Georgia, 408 U.S. 275

This principle has been recognized in our cases. 18 In Wilkerson v. Utah, 99 U.S. at 133-134, the Court reviewed various treatises on military law in order to demonstrate that, under "the custom of war," shooting was a common method of inflicting the punishment of death. On that basis, the Court concluded:

1972, Furman v. Georgia, 408 U.S. 275

Cruel and unusual punishments are forbidden by the Constitution, but the authorities referred to [treatises on military law] are quite sufficient to show that the punishment of shooting as a mode of executing the death penalty for the crime of murder in the first degree is not included in that [408 U.S. 276] category, within the meaning of the [Clause]. Soldiers convicted of desertion or other capital military offenses are, in the great majority of cases, sentenced to be shot, and the ceremony for such occasions is given in great fulness by the writers upon the subject of courts-martial.

1972, Furman v. Georgia, 408 U.S. 276

Id. at 134-135. The Court thus upheld death by shooting, so far as appears, solely on the ground that it was a common method of execution. 19

1972, Furman v. Georgia, 408 U.S. 276

As Wilkerson v. Utah suggests, when a severe punishment is inflicted "in the great majority of cases" in which it is legally available, there is little likelihood that the State is inflicting it arbitrarily. If, however, the infliction of a severe punishment is "something different from that which is generally done" in such cases, Trop v. Dulles, 356 U.S. at 101 n. 32, 20 there is a substantial [408 U.S. 277] likelihood that the State, contrary to the requirements of regularity and fairness embodied in the Clause, is inflicting the punishment arbitrarily. This principle is especially important today. There is scant danger, given the political processes "in an enlightened democracy such as ours," id. at 100, that extremely severe punishments will be widely applied. The more significant function of the Clause, therefore, is to protect against the danger of their arbitrary infliction.

1972, Furman v. Georgia, 408 U.S. 277

A third principle inherent in the Clause is that a severe punishment must not be unacceptable to contemporary society. Rejection by society, of course, is a strong indication that a severe punishment doe not comport with human dignity. In applying this principle, however, we must make certain that the judicial determination is as objective as possible. 21 [408 U.S. 278] Thus, for example, Weems v. United States, 217 U.S. at 380, and Trop v. Dulles, 356 U.S. at 102-103, suggest that one factor that may be considered is the existence of the punishment in jurisdictions other than those before the Court. Wilkerson v. Utah, supra, suggests that another factor to be considered is the historic usage of the punishment. 22 Trop v. Dulles, supra, at 99, combined present acceptance with past usage by observing that

1972, Furman v. Georgia, 408 U.S. 278

the death penalty has been employed throughout our history, and, in a day when it is still widely accepted, it cannot be said to violate the constitutional concept of cruelty.

1972, Furman v. Georgia, 408 U.S. 278

In Robinson v. California, 370 U.S. at 666, which involved the infliction of punishment for narcotics addiction, the Court went a step further, concluding simply that,

1972, Furman v. Georgia, 408 U.S. 278

in the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment.

1972, Furman v. Georgia, 408 U.S. 278

The question under this principle, then, is whether there are objective indicators from which a court can conclude that contemporary society considers a severe punishment unacceptable. Accordingly, the judicial [408 U.S. 279] task is to review the history of a challenged punishment and to examine society's present practices with respect to its use. Legislative authorization, of course, does not establish acceptance. The acceptability of a severe punishment is measured not by its availability, for it might become so offensive to society as never to be inflicted, but by its use.

1972, Furman v. Georgia, 408 U.S. 279

The final principle inherent in the Clause is that a severe punishment must not be excessive. A punishment is excessive under this principle if it is unnecessary: the infliction of a severe punishment by the State cannot comport with human dignity when it is nothing more than the pointless infliction of suffering. If there is a significantly less severe punishment adequate to achieve the purposes for which the punishment is inflicted, cf. Robinson v. California, supra, at 666; id. at 677 (DOUGLAS, J., concurring); Trop v. Dulles, supra, at 114 (BRENNAN, J., concurring), the punishment inflicted is unnecessary, and therefore excessive.

1972, Furman v. Georgia, 408 U.S. 279

This principle first appeared in our cases in Mr. Justice Field's dissent in O'Neil v. Vermont, 144 U.S. at 337. 23 He there took the position that:

1972, Furman v. Georgia, 408 U.S. 279

[The Clause] is directed not only against punishments of the character mentioned [torturous punishments], but against all punishments which, by [408 U.S. 280] their excessive length or severity, are greatly disproportioned to the offences charged. The whole inhibition is against that which is excessive either in the bail required, or fine imposed, or punishment inflicted.

1972, Furman v. Georgia, 408 U.S. 280

Id. at 339-340. Although the determination that a severe punishment is excessive may be grounded in a judgment that it is disproportionate to the crime, 24 the more significant basis is that the punishment serves no penal purpose more effectively than a less severe punishment. This view of the principle was explicitly recognized by the Court in Weems v. United States, supra. There the Court, reviewing a severe punishment inflicted for the falsification of an official record, found that

1972, Furman v. Georgia, 408 U.S. 280

the highest punishment possible for a crime which may cause the loss of many thousand[s] of dollars, and to prevent which the duty of the State should be as eager as to prevent the perversion of truth in a public document, is not greater than that which may be imposed for falsifying a single item of a public account.

1972, Furman v. Georgia, 408 U.S. 280

Id. at 381. Stating that "this contrast shows more than different exercises of legislative judgment," the Court concluded that the punishment was unnecessarily severe in view of the purposes for which it was imposed. Ibid. 25 [408 U.S. 281] See also Trop v. Dulles, 356 U.S. at 111-112 (BRENNAN, J., concurring). 26

1972, Furman v. Georgia, 408 U.S. 281

There are, then, four principles by which we may determine whether a particular punishment is "cruel and unusual." The primary principle, which I believe supplies the essential predicate for the application of the others, is that a punishment must not, by its severity, be degrading to human dignity. The paradigm violation of this principle would be the infliction of a torturous punishment of the type that the Clause has always prohibited. Yet "[i]t is unlikely that any State at this moment in history," Robinson v. California, 370 U.S. at 666, would pass a law providing for the infliction of such a punishment. Indeed, no such punishment has ever been before this Court. The same may be said of the other principles. It is unlikely that this Court will confront a severe punishment that is obviously inflicted in wholly arbitrary fashion; no State would engage in a reign of blind terror. Nor is it likely that this Court will be called upon to review a severe punishment that is clearly and totally rejected throughout society; no legislature would be able even to authorize the infliction of such a punishment. Nor, finally, is it likely that this Court will have to consider a severe punishment that is patently unnecessary; no State today would inflict a severe punishment knowing that there was no reason whatever for doing so. In short, we are unlikely to have occasion to determine that a punishment is fatally offensive under any one principle. [408 U.S. 282]

1972, Furman v. Georgia, 408 U.S. 282

Since the Bill of Rights was adopted, this Court has adjudged only three punishments to be within the prohibition of the Clause. See Weems v. United States, 217 U.S. 349 (1910) (12 years in chains at hard and painful labor); Trop v. Dulles, 356 U.S. 86 (1958) (expatriation); Robinson v. California, 370 U.S. 660 (1962) (imprisonment for narcotics addiction). Each punishment, of course, was degrading to human dignity, but of none could it be said conclusively that it was fatally offensive under one or the other of the principles. Rather, these "cruel and unusual punishments" seriously implicated several of the principles, and it was the application of the principles in combination that supported the judgment. That, indeed, is not surprising. The function of these principles, after all, is simply to provide means by which a court can determine whether a challenged punishment comports with human dignity. They are, therefore, interrelated, and, in most cases, it will be their convergence that will justify the conclusion that a punishment is "cruel and unusual." The test, then, will ordinarily be a cumulative one: if a punishment is unusually severe, if there is a strong probability that it is inflicted arbitrarily, if it is substantially rejected by contemporary society, and if there is no reason to believe that it serves any penal purpose more effectively than some less severe punishment, then the continued infliction of that punishment violates the command of the Clause that the State may not inflict inhuman and uncivilized punishments upon those convicted of crimes.

III

1972, Furman v. Georgia, 408 U.S. 282

The punishment challenged in these cases is death. Death, of course, is a "traditional" punishment, Trop v. Dulles, supra, at 100, one that "has been employed throughout our history," id. at 99, and its constitutional [408 U.S. 283] background is accordingly an appropriate subject of inquiry.

1972, Furman v. Georgia, 408 U.S. 283

There is, first, a textual consideration raised by the Bill of Rights itself. The Fifth Amendment declares that if a particular crime is punishable by death, a person charged with that crime is entitled to certain procedural protections. 27 We can thus infer that the Framers recognized the existence of what was then a common punishment. We cannot, however, make the further inference that they intended to exempt this particular punishment from the express prohibition of the Cruel and Unusual Punishment Clause. 28 Nor is there any indication in the debates on the Clause that a special exception was to be made for death. If anything, the indication is to the contrary, for Livermore specifically mentioned death as a candidate for future proscription under the Clause. See supra at 262. Finally, it does not advance analysis to insist that the Framers did not believe that adoption [408 U.S. 284] of the Bill of Rights would immediately prevent the infliction of the punishment of death; neither did they believe that it would immediately prevent the infliction of other corporal punishments that, although common at the time, see n. 6, supra, are now acknowledged to be impermissible. 29

1972, Furman v. Georgia, 408 U.S. 284

There is also the consideration that this Court has decided three cases involving constitutional challenges to particular methods of inflicting this punishment. In Wilkerson v. Utah, 99 U.S. 130 (1879), and In re Kemmler, 136 U.S. 436 (1890), the Court, expressing in both cases the since-rejected "historical" view of the Clause, see supra at 264-265, approved death by shooting and death by electrocution. In Wilkerson, the Court concluded that shooting was a common method of execution, see supra at 275-276; 30 in Kemmler, the Court held that the Clause did not apply to the States, 136 U.S. at 447-449. 31 [408 U.S. 285] In Louisiana ex rel. Francis v. Resweber, supra, the Court approved a second attempt at electrocution after the first had failed. It was said that "[t]he Fourteenth [Amendment] would prohibit by its due process clause execution by a state in a cruel manner," 329 U.S. at 463, but that the abortive attempt did not make the "subsequent execution any more cruel in the constitutional sense than any other execution," id. at 464. 32 These three decisions thus reveal that the Court, while ruling upon various methods of inflicting death, has assumed in the past that death was a constitutionally permissible punishment. 33 Past assumptions, however, are not sufficient to limit the scope of our examination of this punishment today. The constitutionality of death itself under the Cruel and Unusual Punishments Clause is before this Court for the first time; we cannot avoid the question by recalling past cases that never directly considered it.

1972, Furman v. Georgia, 408 U.S. 285

The question, then, is whether the deliberate infliction of death is today consistent with the command of the Clause that the State may not inflict punishments that do not comport with human dignity. I will analyze the punishment of death in terms of the principles [408 U.S. 286] set out above and the cumulative test to which they lead: it is a denial of human dignity for the State arbitrarily to subject a person to an unusually severe punishment that society has indicated it does not regard as acceptable, and that cannot be shown to serve any penal purpose more effectively than a significantly less drastic punishment. Under these principles and this test, death is today a "cruel and unusual" punishment. Death is a unique punishment in the United States. In a society that so strongly affirms the sanctity of life, not surprisingly, the common view is that death is the ultimate sanction. This natural human feeling appears all about us. There has been no national debate about punishment, in general or by imprisonment comparable to the debate about the punishment of death. No other punishment has been so continuously restricted, see infra at 296-298, nor has any State yet abolished prisons, as some have abolished this punishment. And those States that still inflict death reserve it for the most heinous crimes. Juries, of course, have always treated death cases differently, as have governors exercising their commutation powers. Criminal defendants are of the same view.

1972, Furman v. Georgia, 408 U.S. 286

As all practicing lawyers know who have defended persons charged with capital offenses, often the only goal possible is to avoid the death penalty.

1972, Furman v. Georgia, 408 U.S. 286

Griffin v. Illinois, 351 U.S. 12, 28 (1956) (Burton and Minton, JJ., dissenting). Some legislatures have required particular procedures, such as two-stage trials and automatic appeals, applicable only in death cases.

1972, Furman v. Georgia, 408 U.S. 286

It is the universal experience in the administration of criminal justice that those charged with capital offenses are granted special considerations.

1972, Furman v. Georgia, 408 U.S. 286

Ibid. See Williams v. Florida, 399 U.S. 78, 103 (1970) (all States require juries of 12 in death cases). This Court, too, almost [408 U.S. 287] always treats death cases as a class apart. 34 And the unfortunate effect of this punishment upon the functioning of the judicial process is well known; no other punishment has a similar effect.

1972, Furman v. Georgia, 408 U.S. 287

The only explanation for the uniqueness of death is its extreme severity. Death is today an unusually severe punishment, unusual in its pain, in its finality, and in its enormity. No other existing punishment is comparable to death in terms of physical and mental suffering. Although our information is not conclusive, it appears that there is no method available that guarantees an immediate and painless death. 35 Since the discontinuance [408 U.S. 288] of flogging as a constitutionally permissible punishment, Jackson v. Bishop, 404 F.2d 571 (CA8 1968), death remains as the only punishment that may involve the conscious infliction of physical pain. In addition, we know that mental pain is an inseparable part of our practice of punishing criminals by death, for the prospect of pending execution exacts a frightful toll during the inevitable long wait between the imposition of sentence and the actual infliction of death. Cf. Ex parte Medley, 134 U.S. 160, 172 (1890). As the California Supreme Court pointed out, "the process of carrying out a verdict of death is often so degrading and brutalizing to the human spirit as to constitute psychological torture." People v. Anderson, 6 Cal.3d 28, 649, 493 P.2d 880, 894 (1972). 36 Indeed, as Mr. Justice Frankfurter noted, "the onset of insanity while awaiting [408 U.S. 289] execution of a death sentence is not a rare phenomenon." Solesbee v. Balkcom, 339 U.S. 9, 14 (1950) (dissenting opinion). The "fate of ever-increasing fear and distress" to which the expatriate is subjected, Trop v. Dulles, 356 U.S. at 102, can only exist to a greater degree for a person confined in prison awaiting death. 37

1972, Furman v. Georgia, 408 U.S. 289

The unusual severity of death is manifested most clearly in its finality and enormity. Death, in these respects, is in a class by itself. Expatriation, for example, is a punishment that "destroys for the individual the political existence that was centuries in the development," that "strips the citizen of his status in the national and international political community," and that puts "[h]is very existence" in jeopardy. Expatriation thus inherently entails "the total destruction of the individual's status in organized society." Id. at 101. "In short, the expatriate has lost the right to have rights." Id. at 102. Yet, demonstrably, expatriation is not "a fate worse than death." Id. at 125 (Frankfurter, J., dissenting). 38 Although death, like expatriation, destroys the [408 U.S. 290] individual's "political existence" and his "status in organized society," it does more, for, unlike expatriation, death also destroys "[h]is very existence." There is, too, at least the possibility that the expatriate will, in the future, regain "the right to have rights." Death forecloses even that possibility.

1972, Furman v. Georgia, 408 U.S. 290

Death is truly an awesome punishment. The calculated killing of a human being by the State involves, by its very nature, a denial of the executed person's humanity. The contrast with the plight of a person punished by imprisonment is evident. An individual in prison does not lose "the right to have rights." A prisoner retains, for example, the constitutional rights to the free exercise of religion, to be free of cruel and unusual punishments, and to treatment as a "person" for purposes of due process of law and the equal protection of the laws. A prisoner remains a member of the human family. Moreover, he retains the right of access to the courts. His punishment is not irrevocable. Apart from the common charge, grounded upon the recognition of human fallibility, that the punishment of death must inevitably be inflicted upon innocent men, we know that death has been the lot of men whose convictions were unconstitutionally secured in view of later, retroactively applied, holdings of this Court. The punishment itself may have been unconstitutionally inflicted, see Witherspoon v. Illinois, 391 U.S. 510 (1968), yet the finality of death precludes relief. An executed person has indeed "lost the right to have rights." As one 19th century proponent of punishing criminals by death declared,

1972, Furman v. Georgia, 408 U.S. 290

When a man is hung, there is an end of our relations with him. His execution is a way of saying, "You are not fit for this world, take your chance elsewhere." 39 [408 U.S. 291]

1972, Furman v. Georgia, 408 U.S. 291

In comparison to all other punishments today, then, the deliberate extinguishment of human life by the State is uniquely degrading to human dignity. I would not hesitate to hold, on that ground alone, that death is today a "cruel and unusual" punishment, were it not that death is a punishment of longstanding usage and acceptance in this country. I therefore turn to the second principle—that the State may not arbitrarily inflict an unusually severe punishment.

1972, Furman v. Georgia, 408 U.S. 291

The outstanding characteristic of our present practice of punishing criminals by death is the infrequency with which we resort to it. The evidence is conclusive that death is not the ordinary punishment for any crime.

1972, Furman v. Georgia, 408 U.S. 291

There has been a steady decline in the infliction of this punishment in every decade since the 1930's, the earliest period for which accurate statistics are available. In the 1930's, executions averaged 167 per year; in the 1940's, the average was 128; in the 1950's, it was 72; and in the years 1960-1962, it was 48. There have been a total of 46 executions since then, 36 of them in 1963-1964. 40 Yet our population and the number of capital crimes committed have increased greatly over the past four decades. The contemporary rarity of the infliction of this punishment is thus the end result of a long-continued decline. That rarity is plainly revealed by an examination of the years 1961-1970, the last 10-year period for which statistics are available. During that time, an average of 106 death sentences [408 U.S. 292] was imposed each year. 41 Not nearly that number, however, could be carried out, for many were precluded by commutations to life or a term of Years, 42 transfers to mental institutions because of insanity, 43 resentences to life or a term of years, grants of new trials and orders for resentencing, dismissals of indictments and reversals of convictions, and deaths by suicide and natural causes. 44 On January 1, 1961, the death row population was 21; on December 31, 1970, it was 608; during that span, there were 135 executions. 45 Consequently, had the 389 additions to death row also been executed, the annual average would have been 52. 46 In short, the country [408 U.S. 293] might, at most, have executed one criminal each week. In fact, of course, far fewer were executed. Even before the moratorium on executions began in 1967, executions totaled only 42 in 1961 and 47 in 1962, an average of less than one per week; the number dwindled to 21 in 1963, to 15 in 1964, and to seven in 1965; in 1966, there was one execution, and in 1967, there were two. 47

1972, Furman v. Georgia, 408 U.S. 293

When a country of over 200 million people inflicts an unusually severe punishment no more than 50 times a year, the inference is strong that the punishment is not being regularly and fairly applied. To dispel it would indeed require a clear showing of nonarbitrary infliction.

1972, Furman v. Georgia, 408 U.S. 293

Although there are no exact figures available, we know that thousands of murders and rapes are committed annually in States where death is an authorized punishment for those crimes. However the rate of infliction is characterized—as "freakishly" or "spectacularly" rare, or simply as rare—it would take the purest sophistry to deny that death is inflicted in only a minute fraction of these cases. How much rarer, after all, could the infliction of death be?

1972, Furman v. Georgia, 408 U.S. 293

When the punishment of death is inflicted in a trivial number of the cases in which it is legally available, the conclusion is virtually inescapable that it is being inflicted arbitrarily. Indeed, it smacks of little more than a lottery system. The States claim, however, that this rarity is evidence not of arbitrariness, but of informed selectivity: death is inflicted, they say, only in "extreme" cases.

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Informed selectivity, of course, is a value not to be denigrated. Yet presumably the States could make precisely the same claim if there were 10 executions per [408 U.S. 294] year, or five, or even if there were but one. That there may be as many as 50 per year does not strengthen the claim. When the rate of infliction is at this low level, it is highly implausible that only the worst criminals or the criminals who commit the worst crimes are selected for this punishment. No one has yet suggested a rational basis that could differentiate in those terms the few who die from the many who go to prison. Crimes and criminals simply do not admit of a distinction that can be drawn so finely as to explain, on that ground, the execution of such a tiny sample of those eligible. Certainly the laws that provide for this punishment do not attempt to draw that distinction; all cases to which the laws apply are necessarily "extreme." Nor is the distinction credible in fact. If, for example, petitioner Furman or his crime illustrates the "extreme," then nearly all murderers and their murders are also "extreme." 48 Furthermore, our procedures in death cases, [408 U.S. 295] rather than resulting in the selection of "extreme" cases for this punishment, actually sanction an arbitrary selection. For this Court has held that juries may, as they do, make the decision whether to impose a death sentence wholly unguided by standards governing that decision. McGautha v. California, 402 U.S. 183, 196-208 (1971). In other words, our procedures are not constructed to guard against the totally capricious selection of criminals for the punishment of death.

1972, Furman v. Georgia, 408 U.S. 295

Although it is difficult to imagine what further facts would be necessary in order to prove that death is, as my Brother STEWART puts it, "wantonly and…freakishly" inflicted, I need not conclude that arbitrary infliction is patently obvious. I am not considering this punishment by the isolated light of one principle. The probability of arbitrariness is sufficiently substantial that it can be relied upon, in combination with the other principles, in reaching a judgment on the constitutionality of this punishment.

1972, Furman v. Georgia, 408 U.S. 295

When there is a strong probability that an unusually severe and degrading punishment is being inflicted arbitrarily, we may well expect that society will disapprove of its infliction. I turn, therefore, to the third principle. An examination of the history and present operation of the American practice of punishing criminals by death reveals that this punishment has been almost totally rejected by contemporary society.

1972, Furman v. Georgia, 408 U.S. 295

I cannot add to my Brother MARSHALL's comprehensive treatment of the English and American history of [408 U.S. 296] this punishment. I emphasize, however, one significant conclusion that emerges from that history. From the beginning of our Nation, the punishment of death has stirred acute public controversy. Although pragmatic arguments for and against the punishment have been frequently advanced, this longstanding and heated controversy cannot be explained solely as the result of differences over the practical wisdom of a particular government policy. At bottom, the battle has been waged on moral grounds. The country has debated whether a society for which the dignity of the individual is the supreme value can, without a fundamental inconsistency, follow the practice of deliberately putting some of its members to death. In the United States, as in other nations of the western world,

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the struggle about this punishment has been one between ancient and deeply rooted beliefs in retribution, atonement or vengeance, on the one hand, and, on the other, beliefs in the personal value and dignity of the common man that were born of the democratic movement of the eighteenth century, as well as beliefs in the scientific approach to an understanding of the motive forces of human conduct, which are the result of the growth of the sciences of behavior during the nineteenth and twentieth centuries. 49

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It is this essentially moral conflict that forms the backdrop for the past changes in, and the present operation of, our system of imposing death as a punishment for crime.

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Our practice of punishing criminals by death has changed greatly over the years. One significant change has been in our methods of inflicting death. Although this country never embraced the more violent and repulsive methods employed in England, we did for a long time rely almost exclusively upon the gallows and the firing squad. Since the development of the supposedly [408 U.S. 297] more humane methods of electrocution late in the 19th century and lethal gas in the 20th, however, hanging and shooting have virtually ceased. 50 Our concern for decency and human dignity, moreover, has compelled changes in the circumstances surrounding the execution itself. No longer does our society countenance the spectacle of public executions, once thought desirable as a deterrent to criminal behavior by others. Today we reject public executions as debasing and brutalizing to us all.

1972, Furman v. Georgia, 408 U.S. 297

Also significant is the drastic decrease in the crimes for which the punishment of death is actually inflicted. While esoteric capital crimes remain on the books, since 1930, murder and rape have accounted for nearly 99% of the total executions, and murder alone for about 87%. 51 In addition, the crime of capital murder has itself been limited. As the Court noted in McGautha v. California, 402 U.S. at 198, there was in this country a "rebellion against the common law rule imposing a mandatory death sentence on all convicted murderers." Initially, that rebellion resulted in legislative definitions that distinguished between degrees of murder, retaining the mandatory death sentence only for murder in the first degree. Yet

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[t]his new legislative criterion for isolating crimes appropriately punishable by death soon proved as unsuccessful as the concept of "malice aforethought,"

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ibid., the common law means of separating murder from manslaughter. Not only was the distinction between degrees of murder confusing and uncertain in practice, but, even in clear cases of first-degree murder, juries continued to take the law into [408 U.S. 298] their own hands: if they felt that death was an inappropriate punishment, "they simply refused to convict of the capital offense." Id. at 199. The phenomenon of jury nullification thus remained to counteract the rigors of mandatory death sentences. Bowing to reality,

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legislatures did not try, as before, to refine further the definition of capital homicides. Instead, they adopted the method of forthrightly granting juries the discretion which they had been exercising in fact.

1972, Furman v. Georgia, 408 U.S. 298

Ibid. In consequence, virtually all death sentences today are discretionarily imposed. Finally, it is significant that nine States no longer inflict the punishment of death under any circumstances, 52 and five others have restricted it to extremely rare crimes. 53 [408 U.S. 299]

1972, Furman v. Georgia, 408 U.S. 299

Thus, although "the death penalty has been employed throughout our history," Trop v. Dulles, 356 U.S. at 99, in fact the history of this punishment is one of successive restriction. What was once a common punishment has become, in the context of a continuing moral debate, increasingly rare. The evolution of this punishment evidences not that it is an inevitable part of the American scene, but that it has proved progressively more troublesome to the national conscience. The result of this movement is our current system of administering the punishment, under which death sentences are rarely imposed and death is even more rarely inflicted. It is, of course, "We, the People" who are responsible for the rarity both of the imposition and the carrying out of this punishment. Juries, "express[ing] the conscience of the community on the ultimate question of life or death," Witherspoon v. Illinois, 391 U.S. at 519, have been able to bring themselves to vote for death in a mere 100 or so cases among the thousands tried each year where the punishment is available. Governors, elected by and acting for us, have regularly commuted a substantial number of those sentences. And it is our society that insists upon due process of law to the end that no person will be unjustly put to death, thus ensuring that many more of those sentences will not be carried out. In sum, we have made death a rare punishment today.

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The progressive decline in, and the current rarity of, the infliction of death demonstrate that our society seriously questions the appropriateness of this punishment today. The States point out that many legislatures authorize death as the punishment for certain crimes, and that substantial segments of the public, as reflected in opinion polls and referendum votes, continue to support it. Yet the availability of this punishment through statutory authorization, as well as the polls and referenda, [408 U.S. 300] which amount simply to approval of that authorization, simply underscores the extent to which our society has, in fact, rejected this punishment. When an unusually severe punishment is authorized for wide-scale application but not, because of society's refusal, inflicted save in a few instances, the inference is compelling that there is a deep-seated reluctance to inflict it. Indeed, the likelihood is great that the punishment is tolerated only because of its disuse. The objective indicator of society's view of an unusually severe punishment is what society does with it, and today society will inflict death upon only a small sample of the eligible criminals. Rejection could hardly be more complete without becoming absolute. At the very least, I must conclude that contemporary society views this punishment with substantial doubt.

1972, Furman v. Georgia, 408 U.S. 300

The final principle to be considered is that an unusually severe and degrading punishment may not be excessive in view of the purposes for which it is inflicted. This principle, too, is related to the others. When there is a strong probability that the State is arbitrarily inflicting an unusually severe punishment that is subject to grave societal doubts, it is likely also that the punishment cannot be shown to be serving any penal purpose that could not be served equally well by some less severe punishment.

1972, Furman v. Georgia, 408 U.S. 300

The States' primary claim is that death is a necessary punishment because it prevents the commission of capital crimes more effectively than any less severe punishment. The first part of this claim is that the infliction of death is necessary to stop the individuals executed from committing further crimes. The sufficient answer to this is that, if a criminal convicted of a capital crime poses a danger to society, effective administration of the State's pardon and parole laws can delay or deny his release from prison, and techniques of isolation can eliminate [408 U.S. 301] or minimize the danger while he remains confined. The more significant argument is that the threat of death prevents the commission of capital crimes because it deters potential criminals who would not be deterred by the threat of imprisonment. The argument is not based upon evidence that the threat of death is a superior deterrent. Indeed, as my Brother MARSHALL establishes, the available evidence uniformly indicates, although it does not conclusively prove, that the threat of death has no greater deterrent effect than the threat of imprisonment. The States argue, however, that they are entitled to rely upon common human experience, and that experience, they say, supports the conclusion that death must be a more effective deterrent than any less severe punishment. Because people fear death the most, the argument runs, the threat of death must be the greatest deterrent.

1972, Furman v. Georgia, 408 U.S. 301

It is important to focus upon the precise import of this argument. It is not denied that many, and probably most, capital crimes cannot be deterred by the threat of punishment. Thus, the argument can apply only to those who think rationally about the commission of capital crimes. Particularly is that true when the potential criminal, under this argument, must not only consider the risk of punishment, but also distinguish between two possible punishments. The concern, then, is with a particular type of potential criminal, the rational person who will commit a capital crime knowing that the punishment is long-term imprisonment, which may well be for the rest of his life, but will not commit the crime knowing that the punishment is death. On the face of it, the assumption that such persons exist is implausible.

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In any event, this argument cannot be appraised in the abstract. We are not presented with the theoretical question whether, under any imaginable circumstances, the [408 U.S. 302] threat of death might be a greater deterrent to the commission of capital crimes than the threat of imprisonment. We are concerned with the practice of punishing criminals by death as it exists in the United States today. Proponents of this argument necessarily admit that its validity depends upon the existence of a system in which the punishment of death is invariably and swiftly imposed. Our system, of course, satisfies neither condition. A rational person contemplating a murder or rape is confronted not with the certainty of a speedy death, but with the slightest possibility that he will be executed in the distant future. The risk of death is remote and improbable; in contrast, the risk of long-term imprisonment is near and great. In short, whatever the speculative validity of the assumption that the threat of death is a superior deterrent, there is no reason to believe that, as currently administered, the punishment of death is necessary to deter the commission of capital crimes. Whatever might be the case were all or substantially all eligible criminals quickly put to death, unverifiable possibilities are an insufficient basis upon which to conclude that the threat of death today has any greater deterrent efficacy than the threat of imprisonment. 54 [408 U.S. 303]

1972, Furman v. Georgia, 408 U.S. 303

There is, however, another aspect to the argument that the punishment of death is necessary for the protection of society. The infliction of death, the States urge, serves to manifest the community's outrage at the commission of the crime. It is, they say, a concrete public expression of moral indignation that inculcates respect for the law and helps assure a more peaceful community. Moreover, we are told, not only does the punishment of death exert this widespread moralizing influence upon community values, it also satisfies the popular demand for grievous condemnation of abhorrent crimes, and thus prevents disorder, lynching, and attempts by private citizens to take the law into their own hands.

1972, Furman v. Georgia, 408 U.S. 303

The question, however, is not whether death serves these supposed purposes of punishment, but whether death serves them more effectively than imprisonment. There is no evidence whatever that utilization of imprisonment, rather than death, encourages private blood feuds and other disorders. Surely if there were such a danger, the execution of a handful of criminals each year would not prevent it. The assertion that death alone is a sufficiently emphatic denunciation for capital crimes suffers from the same defect. If capital crimes require the punishment of death in order to provide moral reinforcement for the basic values of the community, those values can only be undermined when death is so rarely inflicted upon the criminals who commit the crimes. Furthermore, it is certainly doubtful that the infliction of death by the State does, in fact, strengthen the community's moral code; if the deliberate extinguishment of human life has any effect at all, it more likely tends to lower our respect for life and brutalize our values. That, after all, is why we no longer carry out public executions. In any event, this claim simply means that one purpose of punishment is to indicate social disapproval of crime. To serve that purpose, our [408 U.S. 304] laws distribute punishments according to the gravity of crimes, and punish more severely the crimes society regards as more serious. That purpose cannot justify any particular punishment as the upper limit of severity.

1972, Furman v. Georgia, 408 U.S. 304

There is, then, no substantial reason to believe that the punishment of death, as currently administered, is necessary for the protection of society. The only other purpose suggested, one that is independent of protection for society, is retribution. Shortly stated, retribution in this context means that criminals are put to death because they deserve it.

1972, Furman v. Georgia, 408 U.S. 304

Although it is difficult to believe that any State today wishes to proclaim adherence to "naked vengeance," Trop v. Dulles, 356 U.S. at 112 (BRENNAN, J., concurring), the States claim, in reliance upon its statutory authorization, that death is the only fit punishment for capital crimes and that this retributive purpose justifies its infliction. In the past, judged by its statutory authorization, death was considered the only fit punishment for the crime of forgery, for the first federal criminal statute provided a mandatory death penalty for that crime. Act of April 30, 1790, § 14, 1 Stat. 115. Obviously, concepts of justice change; no immutable moral order requires death for murderers and rapists. The claim that death is a just punishment necessarily refers to the existence of certain public beliefs. The claim must be that, for capital crimes, death alone comports with society's notion of proper punishment. As administered today, however, the punishment of death cannot be justified as a necessary means of exacting retribution from criminals. When the overwhelming number af criminals who commit capital crimes go to prison, it cannot be concluded that death serves the purpose of retribution more effectively than imprisonment. The asserted public belief that murderers and rapists deserve to die is flatly inconsistent with the execution of a random [408 U.S. 305] few. As the history of the punishment of death in this country shows, our society wishes to prevent crime; we have no desire to kill criminals simply to get even with them.

1972, Furman v. Georgia, 408 U.S. 305

In sum, the punishment of death is inconsistent with all four principles: death is an unusually severe and degrading punishment; there is a strong probability that it is inflicted arbitrarily; its rejection by contemporary society is virtually total; and there is no reason to believe that it serves any penal purpose more effectively than the less severe punishment of imprisonment. The function of these principles is to enable a court to determine whether a punishment comports with human dignity. Death, quite simply, does not.

IV

1972, Furman v. Georgia, 408 U.S. 305

When this country was founded, memories of the Stuart horrors were fresh and severe corporal punishments were common. Death was not then a unique punishment. The practice of punishing criminals by death, moreover, was widespread and by and large acceptable to society. Indeed, without developed prison systems, there was frequently no workable alternative. Since that time, successive restrictions, imposed against the background of a continuing moral controversy, have drastically curtailed the use of this punishment. Today death is a uniquely and unusually severe punishment. When examined by the principles applicable under the Cruel and Unusual Punishment Clause, death stands condemned as fatally offensive to human dignity. The punishment of death is therefore "cruel and unusual," and the States may no longer inflict it as a punishment for crimes. Rather than kill an arbitrary handful of criminals each year, the States will confine them in prison.

1972, Furman v. Georgia, 408 U.S. 305

The State thereby suffers nothing and loses no power. The purpose of punishment is fulfilled, crime [408 U.S. 306] is repressed by penalties of just, not tormenting, severity, its repetition is prevented, and hope is given for the reformation of the criminal.

1972, Furman v. Georgia, 408 U.S. 306

Weems v. United States, 217 U.S. at 381.

1972, Furman v. Georgia, 408 U.S. 306

I concur in the judgments of the Court.

STEWART, J., concurring

1972, Furman v. Georgia, 408 U.S. 306

MR. JUSTICE STEWART, concurring.

1972, Furman v. Georgia, 408 U.S. 306

The penalty of death differs from all other forms of criminal punishment, not in degree, but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity.

1972, Furman v. Georgia, 408 U.S. 306

For these and other reasons, at least two of my Brothers have concluded that the infliction of the death penalty is constitutionally impermissible in all circumstances under the Eighth and Fourteenth Amendments. Their case is a strong one. But I find it unnecessary to reach the ultimate question they would decide. See Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 347 (Brandeis, J., concurring).

1972, Furman v. Georgia, 408 U.S. 306

The opinions of other Justices today have set out in admirable and thorough detail the origins and judicial history of the Eighth Amendment's guarantee against the infliction of cruel and unusual punishments, 1 and the origin and judicial history of capital punishment. 2 There [408 U.S. 307] is thus no need for me to review the historical materials here, and what I have to say can, therefore, be briefly stated. Legislatures—state and federal—have sometimes specified that the penalty of death shall be the mandatory punishment for every person convicted of engaging in certain designated criminal conduct. Congress, for example, has provided that anyone convicted of acting as a spy for the enemy in time of war shall be put to death. 3 The Rhode Island Legislature has ordained the death penalty for a life term prisoner who commits murder. 4 Massachusetts has passed a law imposing the death penalty upon anyone convicted of murder in the commission of a forcible rape. 5 An Ohio law imposes the mandatory penalty of death upon the assassin of the President of the United States or the Governor of a State. 6

1972, Furman v. Georgia, 408 U.S. 307

If we were reviewing death sentences imposed under these or similar laws, we would be faced with the need to decide whether capital punishment is unconstitutional for all crimes and under all circumstances. We would need to decide whether a legislature—state or federal—could constitutionally determine that certain criminal conduct is so atrocious that society's interest in deterrence and retribution wholly outweighs any considerations of reform or rehabilitation of the perpetrator, and that, despite the inconclusive empirical evidence, 7 only [408 U.S. 308] the automatic penalty of death will provide maximum deterrence.

1972, Furman v. Georgia, 408 U.S. 308

On that score I would say only that I cannot agree that retribution is a constitutionally impermissible ingredient in the imposition of punishment. The instinct for retribution is part of the nature of man, and channeling that instinct in the administration of criminal justice serves an important purpose in promoting the stability of a society governed by law. When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they "deserve," then there are sown the seeds of anarchy—of self-help, vigilante justice, and lynch law.

1972, Furman v. Georgia, 408 U.S. 308

The constitutionality of capital punishment in the abstract is not, however, before us in these cases. For the Georgia and Texas Legislatures have not provided that the death penalty shall be imposed upon all those who are found guilty of forcible rape. 8 And the Georgia Legislature has not ordained that death shall be the automatic punishment for murder. 9 In a word, neither State [408 U.S. 309] has made a legislative determination that forcible rape and murder can be deterred only by imposing the penalty of death upon all who perpetrate those offenses. As MR. JUSTICE WHITE so tellingly puts it, the "legislative will is not frustrated if the penalty is never imposed." Post at 311.

1972, Furman v. Georgia, 408 U.S. 309

Instead, the death sentences now before us are the product of a legal system that brings them, I believe, within the very core of the Eighth Amendment's guarantee against cruel and unusual punishments, a guarantee applicable against the States through the Fourteenth Amendment. Robinson v. California, 370 U.S. 660. In the first place, it is clear that these sentences are "cruel" in the sense that they excessively go beyond, not in degree but in kind, the punishments that the state legislatures have determined to be necessary. Weems v. United States, 217 U.S. 349. In the second place, it is equally clear that these sentences are "unusual" in the sense that the penalty of death is infrequently imposed for murder, and that its imposition for rape is extraordinarily rare. 10 But I do not rest my conclusion upon these two propositions alone.

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These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders in 1967 and 1968, 11 many just as reprehensible as these, the petitioners are among a capriciously [408 U.S. 310] selected random handful upon whom the sentence of death has in fact been imposed. 12 My concurring Brothers have demonstrated that, if any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race. 13 See McLaughlin v. Florida, 379 U.S. 184. But racial discrimination has not been proved, 14 and I put it to one side. I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.

1972, Furman v. Georgia, 408 U.S. 310

For these reasons I concur in the judgments of the Court.

WHITE, J., concurring

1972, Furman v. Georgia, 408 U.S. 310

MR. JUSTICE WHITE, concurring.

1972, Furman v. Georgia, 408 U.S. 310

The facial constitutionality of statutes requiring the imposition of the death penalty for first-degree murder, for more narrowly defined categories of murder, or for rape would present quite different issues under the Eighth Amendment than are posed by the cases before us. In joining the Court's judgments, therefore, I do not at all [408 U.S. 311] intimate that the death penalty is unconstitutional per se or that there is no system of capital punishment that would comport with the Eighth Amendment. That question, ably argued by several of my Brethren, is not presented by these cases and need not be decided.

1972, Furman v. Georgia, 408 U.S. 311

The narrower question to which I address myself concerns the constitutionality of capital punishment statutes under which (1) the legislature authorizes the imposition of the death penalty for murder or rape; (2) the legislature does not itself mandate the penalty in any particular class or kind of case (that is, legislative will is not frustrated if the penalty is never imposed), but delegates to judges or juries the decisions as to those cases, if any, in which the penalty will be utilized; and (3) judges and juries have ordered the death penalty with such infrequency that the odds are now very much against imposition and execution of the penalty with respect to any convicted murderer or rapist. It is in this context that we must consider whether the execution of these petitioners would violate the Eighth Amendment.

1972, Furman v. Georgia, 408 U.S. 311

I begin with what I consider a near truism: that the death penalty could so seldom be imposed that it would cease to be a credible deterrent or measurably to contribute to any other end of punishment in the criminal justice system. It is perhaps true that, no matter how infrequently those convicted of rape or murder are executed, the penalty so imposed is not disproportionate to the crime and those executed may deserve exactly what they received. It would also be clear that executed defendants are finally and completely incapacitated from again committing rape or murder or any other crime. But when imposition of the penalty reaches a certain degree of infrequency, it would be very doubtful that any existing general need for retribution would be measurably satisfied. Nor could it be said with confidence that society's need for specific deterrence justifies death [408 U.S. 312] for so few when, for so many in like circumstances, life imprisonment or shorter prison terms are judged sufficient, or that community values are measurably reinforced by authorizing a penalty so rarely invoked.

1972, Furman v. Georgia, 408 U.S. 312

Most important, a major goal of the criminal law—to deter others by punishing the convicted criminal—would not be substantially served where the penalty is so seldom invoked that it ceases to be the credible threat essential to influence the conduct of others. For present purposes, I accept the morality and utility of punishing one person to influence another. I accept also the effectiveness of punishment generally, and need not reject the death penalty as a more effective deterrent than a lesser punishment. But common sense and experience tell us that seldom-enforced laws become ineffective measures for controlling human conduct, and that the death penalty, unless imposed with sufficient frequency, will make little contribution to deterring those crimes for which it may be exacted.

1972, Furman v. Georgia, 408 U.S. 312

The imposition and execution of the death penalty are obviously cruel in the dictionary sense. But the penalty has not been considered cruel and unusual punishment in the constitutional sense because it was thought justified by the social ends it was deemed to serve. At the moment that it ceases realistically to further these purposes, however, the emerging question is whether its imposition in such circumstances would violate the Eighth Amendment. It is my view that it would, for its imposition would then be the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes. A penalty with such negligible returns to the State would be patently excessive and cruel and unusual punishment violative of the Eighth Amendment.

1972, Furman v. Georgia, 408 U.S. 312

It is also my judgment that this point has been reached with respect to capital punishment as it is presently administered [408 U.S. 313] under the statutes involved in these cases. Concededly, it is difficult to prove as a general proposition that capital punishment, however administered, more effectively serves the ends of the criminal law than does imprisonment. But however that may be, I cannot avoid the conclusion that, as the statutes before us are now administered, the penalty is so infrequently imposed that the threat of execution is too attenuated to be of substantial service to criminal justice.

1972, Furman v. Georgia, 408 U.S. 313

I need not restate the facts and figures that appear in the opinions of my Brethren. Nor can I "prove" my conclusion from these data. But, like my Brethren, I must arrive at judgment; and I can do no more than state a conclusion based on 10 years of almost daily exposure to the facts and circumstances of hundreds and hundreds of federal and state criminal cases involving crimes for which death is the authorized penalty. That conclusion, as I have said, is that the death penalty is exacted with great infrequency even for the most atrocious crimes, and that there is no meaningful basis for distinguishing the few cases in which it is imposed from the many cases in which it is not. The short of it is that the policy of vesting sentencing authority primarily in juries—a decision largely motivated by the desire to mitigate the harshness of the law and to bring community judgment to bear on the sentence as well as guilt or innocence—has so effectively achieved its aims that capital punishment within the confines of the statutes now before us has, for all practical purposes, run its course.

1972, Furman v. Georgia, 408 U.S. 313

Judicial review, by definition, often involves a conflict between judicial and legislative judgment as to what the Constitution means or requires. In this respect, Eighth Amendment cases come to us in no different posture. It seems conceded by all that the Amendment imposes some obligations on the judiciary to judge the [408 U.S. 314] constitutionality of punishment, and that there are punishments that the Amendment would bar whether legislatively approved or not. Inevitably, then, there will be occasions when we will differ with Congress or state legislatures with respect to the validity of punishment. There will also be cases in which we shall strongly disagree among ourselves. Unfortunately, this is one of them. But, as I see it, this case is no different in kind from many others, although it may have wider impact and provoke sharper disagreement.

1972, Furman v. Georgia, 408 U.S. 314

In this respect, I add only that past and present legislative judgment with respect to the death penalty loses much of its force when viewed in light of the recurring practice of delegating sentencing authority to the jury and the fact that a jury, in its own discretion and without violating its trust or any statutory policy, may refuse to impose the death penalty no matter what the circumstances of the crime. Legislative "policy" is thus necessarily defined not by what is legislatively authorized, but by what juries and judges do in exercising the discretion so regularly conferred upon them. In my judgment, what was done in these cases violated the Eighth Amendment.

1972, Furman v. Georgia, 408 U.S. 314

I concur in the judgments of the Court.

MARSHALL, J., concurring

1972, Furman v. Georgia, 408 U.S. 314

MR. JUSTICE MARSHALL, concurring.

1972, Furman v. Georgia, 408 U.S. 314

These three cases present the question whether the death penalty is a cruel and unusual punishment prohibited by the Eighth Amendment to the United States Constitution. 1 [408 U.S. 315]

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In No. 69-5003, Furman was convicted of murder for shooting the father of five children when he discovered that Furman had broken into his home early one morning. Nos. 69-5030 and 69-5031 involve state convictions for forcible rape. Jackson was found guilty of rape during the course of a robbery in the victim's home. The rape was accomplished as he held the pointed ends of scissors at the victim's throat. Branch also was convicted of a rape committed in the victim's home. No weapon was utilized, but physical force and threats of physical force were employed.

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The criminal acts with which we are confronted are ugly, vicious, reprehensible acts. Their sheer brutality cannot and should not be minimized. But we are not called upon to condone the penalized conduct; we are asked only to examine the penalty imposed on each of the petitioners and to determine whether or not it violates the Eighth Amendment. The question then is not whether we condone rape or murder, for surely we do not; it is whether capital punishment is "a punishment no longer consistent with our own self-respect" 2 and, therefore, violative of the Eighth Amendment.

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The elasticity of the constitutional provision under consideration presents dangers of too little or too much self-restraint. 3 Hence, we must proceed with caution to answer the question presented. 4 By first examining the historical derivation of the Eighth Amendment and [408 U.S. 316] the construction given it in the past by this Court, and then exploring the history and attributes of capital punishment in this country, we can answer the question presented with objectivity and a proper measure of self-restraint.

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Candor is critical to such an inquiry. All relevant material must be marshaled and sorted and forthrightly examined. We must not only be precise as to the standards of judgment that we are utilizing, but exacting in examining the relevant material in light of those standards.

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Candor compels me to confess that I am not oblivious to the fact that this is truly a matter of life and death. Not only does it involve the lives of these three petitioners, but those of the almost 600 other condemned men and women in this country currently awaiting execution. While this fact cannot affect our ultimate decision, it necessitates that the decision be free from any possibility of error.

I

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The Eighth Amendment's ban against cruel and unusual punishments derives from English law. In 1583, John Whitgift, Archbishop of Canterbury, turned the High Commission into a permanent ecclesiastical court, and the Commission began to use torture to extract confessions from persons suspected of various offenses. 5 Sir Robert Beale protested that cruel and barbarous torture violated Magna Carta, but his protests were made in vain. 6 [408 U.S. 317]

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Cruel punishments were not confined to those accused of crimes, but were notoriously applied with even greater relish to those who were convicted. Blackstone described in ghastly detail the myriad of inhumane forms of punishment imposed on persons found guilty of any of a large number of offenses. 7 Death, of course, was the usual result. 8

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The treason trials of 1685—the "Bloody Assizes"—which followed an abortive rebellion by the Duke of Monmouth, marked the culmination of the parade of horrors, and most historians believe that it was this event that finally spurred the adoption of the English Bill of Rights containing the progenitor of our prohibition against cruel and unusual punishments. 9 The conduct of Lord Chief Justice Jeffreys at those trials has been described as an "insane lust for cruelty" which was "stimulated by orders from the King" (James II). 10 The assizes received wide publicity from Puritan pamphleteers, and doubtless had some influence on the adoption of a cruel and unusual punishments clause. But, [408 U.S. 318] the legislative history of the English Bill of Rights of 1689 indicates that the assizes may not have been as critical to the adoption of the clause as is widely thought. After William and Mary of Orange crossed the channel to invade England, James II fled. Parliament was summoned into session, and a committee was appointed to draft general statements containing "such things as are absolutely necessary to be considered for the better securing of our religion, laws and liberties." 11 An initial draft of the Bill of Rights prohibited "illegal" punishments, but a later draft referred to the infliction by James II of "illegal and cruel" punishments, and declared "cruel and unusual" punishments to be prohibited. 12 The use of the word "unusual" in the final draft appears to be inadvertent.

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This legislative history has led at least one legal historian to conclude

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that the cruel and unusual punishments clause of the Bill of Rights of 1689 was, first, an objection to the imposition of punishments that were unauthorized by statute and outside the jurisdiction of the sentencing court, and second, a reiteration of the English policy against disproportionate penalties, 13

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and not primarily a reaction to the torture of the High Commission, harsh sentences, or the assizes. [408 U.S. 319]

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Whether the English Bill of Rights prohibition against cruel and unusual punishments is properly read as a response to excessive or illegal punishments, as a reaction to barbaric and objectionable modes of punishment, or as both, there is no doubt whatever that, in borrowing the language and in including it in the Eighth Amendment, our Founding Fathers intended to outlaw torture and other cruel punishments. 14

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The precise language used in the Eighth Amendment first appeared in America on June 12, 1776, in Virginia's "Declaration of Rights," § 9 of which read: "That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." 15 This language was drawn verbatim from the English Bill of Rights of 1689. Other States adopted similar clauses, 16 and there is evidence in the debates of the various state conventions that were [408 U.S. 320] called upon to ratify the Constitution of great concern for the omission of any prohibition against torture or other cruel punishments. 17

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The Virginia Convention offers some clues as to what the Founding Fathers had in mind in prohibiting cruel and unusual punishments. At one point, George Mason advocated the adoption of a Bill of Rights, and Patrick Henry concurred, stating:

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By this Constitution, some of the best barriers of human rights are thrown away. Is there not an additional reason to have a bill of rights?…Congress, from their general powers, may fully go into business of human legislation. They may legislate, in criminal cases, from treason to the lowest offence—petty larceny. They may define crimes and prescribe punishments. In the definition of crimes, I trust they will be directed by what wise representatives ought to be governed by. But when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of representatives. What says our bill of rights.—"that excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Are you not, therefore, now calling on those gentlemen who are to compose Congress, to prescribe trials and define punishments without this control? Will they find sentiments there similar to this bill of rights? You let them loose; you do more—you depart from the genius of your country….

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In this business of legislation, your members of Congress will loose the restriction of not imposing excessive fines, demanding excessive bail, and inflicting [408 U.S. 321] cruel and unusual punishments. These are prohibited by your declaration of rights. What has distinguished our ancestors.—That they would not admit of tortures, or cruel and barbarous punishment. But Congress may introduce the practice of the civil law, in preference to that of the common law. They may introduce the practice of France, Spain, and Germany—of torturing, to extort a confession of the crime. They will say that they might as well draw examples from those countries as from Great Britain, and they will tell you that there is such a necessity of strengthening the arm of government, that they must have a criminal equity, and extort confession by torture, in order to punish with still more relentless severity. We are then lost and undone. 18

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Henry's statement indicates that he wished to insure that "relentless severity" would be prohibited by the Constitution. Other expressions with respect to the proposed Eighth Amendment by Members of the First Congress indicate that they shared Henry's view of the need for and purpose of the Cruel and Unusual Punishments Clause. 19 [408 U.S. 322]

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Thus, the history of the clause clearly establishes that it was intended to prohibit cruel punishments. We must now turn to the case law to discover the manner in which courts have given meaning to the term "cruel."

II

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This Court did not squarely face the task of interpreting the cruel and unusual punishments language for the first time until Wilkerson v. Utah, 9 U.S. 130 (1879), although the language received a cursory examination in several prior cases. See, e.g., Pervear v. Commonwealth, 5 Wall. 475 (1867). In Wilkerson, the Court unanimously upheld a sentence of public execution by shooting imposed pursuant to a conviction for premeditated murder. In his opinion for the Court, Mr. Justice Clifford wrote:

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Difficulty would attend the effort to define with exactness the extent of the constitutional provision which provides that cruel and unusual punishments shall not be inflicted; but it is safe to affirm that punishments of torture,…and all others in the same line of unnecessary cruelty, are forbidden by that amendment to the Constitution.

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99 U.S. at 135-136. Thus, the Court found that unnecessary cruelty was no more permissible than torture. To determine whether the punishment under attack was unnecessarily cruel, the Court examined the history of the Utah Territory and the then-current writings on capital punishment, and compared this Nation's practices with those of other countries. It is apparent that the Court felt it could not dispose of the question simply by referring to traditional practices; instead, it felt bound to examine developing thought.

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Eleven years passed before the Court again faced a challenge to a specific punishment under the Eighth [408 U.S. 323] Amendment. In the case of In re Kemmler, 136 U.S. 436 (1890), Chief Justice Fuller wrote an opinion for a unanimous Court upholding electrocution as a permissible mode of punishment. While the Court ostensibly held that the Eighth Amendment did not apply to the States, it is very apparent that the nature of the punishment involved was examined under the Due Process Clause of the Fourteenth Amendment. The Court held that the punishment was not objectionable. Today, Kemmler stands primarily for the proposition that a punishment is not necessarily unconstitutional simply because it is unusual, so long as the legislature has a humane purpose in selecting it. 20

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Two years later, in O'Neil v. Vermont, 144 U.S. 323 (1892), the Court reaffirmed that the Eighth Amendment was not applicable to the States. O'Neil was found guilty on 307 counts of selling liquor in violation of Vermont law. A fine of $6,140 ($20 for each offense) and the costs of prosecution ($497.96) were imposed. O'Neil was committed to prison until the fine and the costs were paid, and the court provided that, if they were not paid before a specified date, O'Neil was to be confined in the house of corrections for 19,914 days (approximately 54 years) at hard labor. Three Justices—Field, Harlan, and Brewer—dissented. They maintained not only that the Cruel and Unusual Punishments Clause was applicable to the States, but that, in O'Neil's case, it had been violated. Mr. Justice Field wrote:

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That designation [cruel and unusual], it is true, is usually applied to punishments which inflict torture, such as the rack, the thumbscrew, the iron boot, the stretching of limbs and the like, which [408 U.S. 324] are attended with acute pain and suffering…. The inhibition is directed not only against punishments of the character mentioned, but against all punishments which, by their excessive length or severity, are greatly disproportioned to the offences charged. The whole inhibition is against that which is excessive….

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Id. at 339-340.

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In Howard v. Fleming, 191 U.S. 126 (1903), the Court, in essence, followed the approach advocated by the dissenters in O'Neil. In rejecting the claim that 10-year sentences for conspiracy to defraud were cruel and unusual, the Court (per Mr. Justice Brewer) considered the nature of the crime, the purpose of the law, and the length of the sentence imposed.

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The Court used the same approach seven years later in the landmark case of Weems v. United States, 217 U.S. 349 (1910). Weems, an officer of the Bureau of Coast Guard and Transportation of the United States Government of the Philippine Islands, was convicted of falsifying a "public and official document." He was sentenced to 15 years' incarceration at hard labor with chains on his ankles, to an unusual loss of his civil rights, and to perpetual surveillance. Called upon to determine whether this was a cruel and unusual punishment, the Court found that it was. 21 The Court emphasized that the Constitution was not an "ephemeral" enactment, or one "designed to meet passing occasions." 22 Recognizing that "[t]ime works changes, [and] brings into existence new conditions and purposes," 23 the Court commented that, "[i]n the application of a constitution…[408 U.S. 325] our contemplation cannot be only of what has been, but of what may be." 24

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In striking down the penalty imposed on Weems, the Court examined the punishment in relation to the offense, compared the punishment to those inflicted for other crimes and to those imposed in other jurisdictions, and concluded that the punishment was excessive. 25 Justices White and Holmes dissented, and argued that the cruel and unusual prohibition was meant to prohibit only those things that were objectionable at the time the Constitution was adopted. 26

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Weems is a landmark case because it represents the first time that the Court invalidated a penalty prescribed by a legislature for a particular offense. The Court made it plain beyond any reasonable doubt that excessive punishments were as objectionable a those that were inherently cruel. Thus, it is apparent that the dissenters' position in O'Neil had become the opinion of the Court in Weems.

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Weems was followed by two cases that added little to our knowledge of the scope of the cruel and unusual language, Badders v. United States, 240 U.S. 391 (1916), and United States ex rel. Milwaukee Social Democratic Publishing Co. v. Burleson, 255 U.S. 407 (1921). 27 Then [408 U.S. 326] came another landmark case, Louisiana ex rel. Francis v. Resweber, 329 U.S. 459 (1947).

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Francis had been convicted of murder and sentenced to be electrocuted. The first time the current passed through him, there was a mechanical failure, and he did not die. Thereafter, Francis sought to prevent a second electrocution on the ground that it would be a cruel and unusual punishment. Eight members of the Court assumed the applicability of the Eighth Amendment to the States. 28 The Court was virtually unanimous in agreeing that "[t]he traditional humanity of modern Anglo-American law forbids the infliction of unnecessary pain," 29 but split 5-4 on whether Francis would, under the circumstances, be forced to undergo any excessive pain. Five members of the Court treated the case like In re Kemmler, and held that the legislature adopted electrocution for a humane purpose, and that its will should not be thwarted because, in its desire to reduce pain and suffering in most cases, it may have inadvertently increased suffering in one particular case. 30 [408 U.S. 327] The four dissenters felt that the case should be remanded for further facts.

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As in Weems, the Court was concerned with excessive punishments. Resweber is perhaps most significant because the analysis of cruel and unusual punishment questions first advocated by the dissenters in O'Neil was at last firmly entrenched in the minds of an entire Court.

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Trop v. Dulles, 356 U.S. 86 (1958), marked the next major cruel and unusual punishment case in this Court. Trop, a native-born American, was declared to have lost his citizenship by reason of a conviction by court-martial for wartime desertion. Writing for himself and Justices Black, DOUGLAS, and Whittaker, Chief Justice Warren concluded that loss of citizenship amounted to a cruel and unusual punishment that violated the Eighth Amendment. 31

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Emphasizing the flexibility inherent in the words "cruel and unusual," the Chief Justice wrote that "[t]he Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." 32 His approach to the problem was that utilized by the Court in Weems: he scrutinized the severity of the penalty in relation to the offense, examined the practices of other civilized nations of the world, and concluded that involuntary statelessness was an excessive and, therefore, an unconstitutional punishment. Justice Frankfurter, dissenting, urged that expatriation was not punishment, and that even if it were, it was not excessive. While he criticized the conclusion arrived at by the Chief Justice, his approach to the Eighth Amendment question was identical. [408 U.S. 328]

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Whereas, in Trop, a majority of the Court failed to agree on whether loss of citizenship was a cruel and unusual punishment, four years later, a majority did agree in Robinson v. California, 370 U.S. 660 (1962), that a sentence of 90 days' imprisonment for violation of a California statute making it a crime to "be addicted to the use of narcotics" was cruel and unusual. MR. JUSTICE STEWART, writing the opinion of the Court, reiterated what the Court had said in Weems and what Chief Justice Warren wrote in Trop—that the cruel and unusual punishment clause was not a static concept, but one that must be continually reexamined "in the light of contemporary human knowledge." 33 The fact that the penalty under attack was only 90 days evidences the Court's willingness to carefully examine the possible excessiveness of punishment in a given case even where what is involved is a penalty that is familiar and widely accepted. 34

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We distinguished Robinson in Powell v. Texas, 392 U.S. 514 (1968), where we sustained a conviction for drunkenness in a public place and a fine of $20. Four Justices dissented on the ground that Robinson was controlling. The analysis in both cases was the same; only the conclusion as to whether or not the punishment was excessive differed. Powell marked the last time prior to today's decision that the Court has had occasion to construe the meaning of the term "cruel and unusual" punishment.

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Several principles emerge from these prior cases and serve as a beacon to an enlightened decision in the instant cases. [408 U.S. 329]

III

1972, Furman v. Georgia, 408 U.S. 329

Perhaps the most important principle in analyzing "cruel and unusual" punishment questions is one that is reiterated again and again in the prior opinions of the Court: i.e., the cruel and unusual language "must draw its meaning from the evolving standard of decency that mark the progress of a maturing society." 35 Thus, a penalty that was permissible at one time in our Nation's history is not necessarily permissible today.

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The fact, therefore, that the Court, or individual Justices, may have in the past expressed an opinion that the death penalty is constitutional is not now binding on us. A fair reading of Wilkerson v. Utah, supra; In re Kemmler, supra; and Louisiana ex rel. Francis v. Resweber, supra, would certainly indicate an acceptance sub silentio of capital punishment as constitutionally permissible. Several Justices have also expressed their individual opinions that the death penalty is constitutional. 36 Yet, some of these same Justices and others have at times expressed concern over capital punishment. 37 [408 U.S. 330] There is no holding directly in point, and the very nature of the Eighth Amendment would dictate that, unless a very recent decision existed, stare decisis would bow to changing values, and the question of the constitutionality of capital punishment at a given moment in history would remain open.

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Faced with an open question, we must establish our standards for decision. The decisions discussed in the previous section imply that a punishment may be deemed cruel and unusual for any one of four distinct reasons.

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First, there are certain punishments that inherently involve so much physical pain and suffering that civilized people cannot tolerate them—e.g., use of the rack, the thumbscrew, or other modes of torture. See O'Neil v. Vermont, 144 U.S. at 339 (Field, J., dissenting). Regardless of public sentiment with respect to imposition of one of these punishments in a particular case or at any one moment in history, the Constitution prohibits it. These are punishments that have been barred since the adoption of the Bill of Rights. [408 U.S. 331]

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Second, there are punishments that are unusual, signifying that they were previously unknown as penalties for a given offense. Cf. United States ex rel. Milwaukee Social Democratic Publishing Co. v. Burleson, 255 U.S. at 435 (Brandeis, J., dissenting). If these punishments are intended to serve a humane purpose, they may be constitutionally permissible. In re Kemmler, 136 U.S. at 447; Louisiana ex rel. Francis v. Resweber, 329 U.S. at 464. Prior decisions leave open the question of just how much the word "unusual" adds to the word "cruel." I have previously indicated that use of the word "unusual" in the English Bill of Rights of 1689 was inadvertent, and there is nothing in the history of the Eighth Amendment to give flesh to its intended meaning. In light of the meager history that does exist, one would suppose that an innovative punishment would probably be constitutional if no more cruel than that punishment which it superseded. We need not decide this question here, however, for capital punishment is certainly not a recent phenomenon.

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Third, a penalty may be cruel and unusual because it is excessive and serves no valid legislative purpose. Weems v. United States, supra. The decisions previously discussed are replete with assertions that one of the primary functions of the cruel and unusual punishments clause is to prevent excessive or unnecessary penalties, e.g., Wilkerson v. Utah, 99 U.S. at 134; O'Neil v. Vermont, 144 U.S. at 339-340 (Field, J., dissenting); Weems v. United States, 217 U.S. at 381; Louisiana ex rel. Francis v. Resweber, supra; these punishments are unconstitutional even though popular sentiment may favor them. Both THE CHIEF JUSTICE and MR. JUSTICE POWELL seek to ignore or to minimize this aspect of the Court's prior decisions. But, since Mr. Justice Field first suggested that "[t]he whole inhibition [of the prohibition against cruel and unusual punishments] [408 U.S. 332] is against that which is excessive," O'Neil v. Vermont, 144 U.S. at 340, this Court has steadfastly maintained that a penalty is unconstitutional whenever it is unnecessarily harsh or cruel. This is what the Founders of this country intended; this is what their fellow citizens believed the Eighth Amendment provided; and this was the basis for our decision in Robinson v. California, supra, for the plurality opinion by Mr. Chief Justice Warren in Trop v. Dulles, supra, and for the Court's decision in Weems v. United States, supra. See also W. Bradford, An Enquiry How Far the Punishment of Death is Necessary in Pennsylvania (1793), reprinted in 12 Am.J.Legal Hist. 122, 127 (1968). It should also be noted that the "cruel and unusual" language of the Eighth Amendment immediately follows language that prohibits excessive bail and excessive fines. The entire thrust of the Eighth Amendment is, in short, against "that which is excessive."

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Fourth, where a punishment is not excessive and serves a valid legislative purpose, it still may be invalid if popular sentiment abhors it. For example, if the evidence clearly demonstrated that capital punishment served valid legislative purposes, such punishment would, nevertheless, be unconstitutional if citizens found it to be morally unacceptable. A general abhorrence on the part of the public would, in effect, equate a modern punishment with those barred since the adoption of the Eighth Amendment. There are no prior cases in this Court striking down a penalty on this ground, but the very notion of changing values requires that we recognize its existence.

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It is immediately obvious, then, that since capital punishment is not a recent phenomenon, if it violates the Constitution, it does so because it is excessive or [408 U.S. 333] unnecessary, or because it is abhorrent to currently existing moral values.

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We must proceed to the history of capital punishment in the United States.

IV

1972, Furman v. Georgia, 408 U.S. 333

Capital punishment has been used to penalize various forms of conduct by members of society since the beginnings of civilization. Its precise origins are difficult to perceive, but there is some evidence that its roots lie in violent retaliation by members of a tribe or group, or by the tribe or group itself, against persons committing hostile acts toward group members. 38 Thus, infliction of death as a penalty for objectionable conduct appears to have its beginnings in private vengeance. 39

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As individuals gradually ceded their personal prerogatives to a sovereign power, the sovereign accepted the authority to punish wrongdoing as part of its "divine right" to rule. Individual vengeance gave way to the vengeance of the state, and capital punishment became a public function. 40 Capital punishment worked its way into the laws of various countries, 41 and was inflicted in a variety of macabre and horrific ways. 42

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It was during the reign of Henry II (1154-1189) that English law first recognized that crime was more than a personal affair between the victim and the perpetrator. 43 [408 U.S. 334] The early history of capital punishment in England is set forth in McGautha v. California, 402 U.S. 183, 197-200 (1971), and need not be repeated here.

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By 1500, English law recognized eight major capital crimes: treason, petty treason (killing of husband by his wife), murder, larceny, robbery, burglary, rape, and arson. 44 Tudor and Stuart kings added many more crimes to the list of those punishable by death, and, by 1688, there were nearly 50. 45 George II (1727-1760) added nearly 36 more, and George III (1760-1820) increased the number by 60. 46

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By shortly after 1800, capital offenses numbered more than 200, and not only included crimes against person and property, but even some against the public peace. While England may, in retrospect, look particularly brutal, Blackstone points out that England was fairly civilized when compared to the rest of Europe. 47 [408 U.S. 335]

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Capital punishment was not as common a penalty in the American Colonies. "The Capitall Lawes of New England," dating from 1636, were drawn by the Massachusetts Bay Colony, and are the first written expression of capital offenses known to exist in this country. These laws make the following crimes capital offenses: idolatry, witchcraft, blasphemy, murder, assault in sudden anger, sodomy, buggery, adultery, statutory rape, rape, manstealing, perjury in a capital trial, and rebellion. Each crime is accompanied by a reference to the Old Testament to indicate its source. 48 It is not known with any certainty exactly when, or even if, these laws were enacted as drafted; and, if so, just how vigorously these laws were enforced. 49 We do know that the other Colonies had a variety of laws that spanned the spectrum of severity. 50

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By the 18th century, the list of crimes became much less theocratic and much more secular. In the average colony, there were 12 capital crimes. 51 This was far fewer than existed in England, and part of the reason was that there was a scarcity of labor in the Colonies. 52 Still, there were many executions, because "[w]ith county jails inadequate and insecure, the criminal population seemed best controlled by death, mutilation, and fines." 53

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Even in the 17th century, there was some opposition [408 U.S. 336] to capital punishment in some of the colonies. In his "Great Act" of 1682, William Penn prescribed death only for premeditated murder and treason, 54 although his reform was not long-lived. 55

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In 1776 the Philadelphia Society for Relieving Distressed Prisoners organized, and it was followed 11 years later by the Philadelphia Society for Alleviating the Miseries of Public Prisons. 56 These groups pressured for reform of all penal laws, including capital offenses. Dr. Benjamin Rush soon drafted America's first reasoned argument against capital punishment, entitled An Enquiry into the Effects of Public Punishments upon Criminals and upon Society. 57 In 1793, William Bradford, the Attorney General of Pennsylvania and later Attorney General of the United States, conducted "An Enquiry How Far the Punishment of Death is Necessary in Pennsylvania." 58 He concluded that it was doubtful whether capital punishment was at all necessary, and that, until more information could be obtained, it should be immediately eliminated for all offenses except high treason and murder. 59

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The "Enquiries" of Rush and Bradford and the Pennsylvania movement toward abolition of the death [408 U.S. 337] penalty had little immediate impact on the practices of other States. 60 But in the early 1800's, Governors George and DeWitt Clinton and Daniel Tompkins unsuccessfully urged the New York Legislature to modify or end capital punishment. During this same period, Edward Livingston, an American lawyer who later became Secretary of State and Minister to France under President Andrew Jackson, was appointed by the Louisiana Legislature to draft a new penal code. At the center of his proposal was "the total abolition of capital punishment." 61 His Introductory Report to the System of Penal Law Prepared for the State of Louisiana 62 contained a systematic rebuttal of all arguments favoring capital punishment. Drafted in 1824, it was not published until 1833. This work was a tremendous impetus to the abolition movement for the next half century.

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During the 1830's, there was a rising tide of sentiment against capital punishment. In 1834, Pennsylvania abolished public executions, 63 and, two years later, The Report on Capital Punishment Made to the Maine Legislature was published. It led to a law that prohibited the executive from issuing a warrant for execution within one year after a criminal was sentenced by the courts. The totally discretionary character of the law was at odds with almost all prior practices. The "Maine Law" resulted in little enforcement of the death penalty, which was not surprising, since the legislature's idea in passing the law was that the affirmative burden placed on the governor to issue a warrant one full year [408 U.S. 338] or more after a trial would be an effective deterrent to exercise of his power. 64 The law spread throughout New England, and led to Michigan's being the first State to abolish capital punishment in 1846. 65

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Anti-capital-punishment feeling grew in the 1840's as the literature of the period pointed out the agony of the condemned man and expressed the philosophy that repentance atoned for the worst crimes, and that true repentance derived not from fear, but from harmony with nature. 66

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By 1850, societies for abolition existed in Massachusetts, New York, Pennsylvania, Tennessee, Ohio, Alabama, Louisiana, Indiana, and Iowa. 67 New York, Massachusetts, and Pennsylvania constantly had abolition bills before their legislatures. In 1852, Rhode Island followed in the footsteps of Michigan and partially abolished capital punishment. 68 Wisconsin totally abolished the death penalty the following year. 69 Those States that did not abolish the death penalty greatly reduced its scope, and "[f]ew states outside the South had more than one or two…capital offenses" in addition to treason and murder. 70

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But the Civil War halted much of the abolition furor. One historian has said that,

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[a]fter the Civil War, men's finer sensibilities, which had once been revolted by the execution of a fellow being, seemed hardened and [408 U.S. 339] blunted. 71

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Some of the attention previously given to abolition was diverted to prison reform. An abolitionist movement still existed, however. Maine abolished the death penalty in 1876, restored it in 1883, and abolished it again in 1887; Iowa abolished capital punishment from 1872-1878; Colorado began an erratic period of de facto abolition and revival in 1872; and Kansas also abolished it de facto in 1872, and by law in 1907. 72

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One great success of the abolitionist movement in the period from 1830-1900 was almost complete elimination of mandatory capital punishment. Before the legislatures formally gave juries discretion to refrain from imposing the death penalty, the phenomenon of "jury nullification," in which juries refused to convict in cases in which they believed that death was an inappropriate penalty, was experienced. 73 Tennessee was the first State to give juries discretion, Tenn.Laws 1837-1838, c. 29, but other States quickly followed suit. Then, Rep. Curtis of New York introduced a federal bill that ultimately became law in 1897 which reduced the number of federal capital offenses from 60 to 3 (treason, murder, and rape) and gave the jury sentencing discretion in murder and rape cases. 74

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By 1917, 12 States had become abolitionist jurisdictions. 75 But, under the nervous tension of World War I, [408 U.S. 340] four of these States reinstituted capital punishment and promising movements in other State came grinding to a halt. 76 During the period following the First World War, the abolitionist movement never regained its momentum.

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It is not easy to ascertain why the movement lost its vigor. Certainly, much attention was diverted from penal reform during the economic crisis of the depression and the exhausting years of struggle during World War II. Also, executions, which had once been frequent public spectacles, became infrequent private affairs. The manner of inflicting death changed, and the horrors of the punishment were, therefore, somewhat diminished in the minds of the general public. 77

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In recent years, there has been renewed interest in modifying capital punishment. New York has moved toward abolition, 78 as have several other States. 79 In 1967, a bill was introduced in the Senate to abolish [408 U.S. 341] capital punishment for all federal crimes, but it died in committee. 80

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At the present time, 41 States, the District of Columbia, and other federal jurisdictions authorize the death penalty for at least one crime. It would be fruitless to attempt here to categorize the approach to capital punishment taken by the various States. 81 It is sufficient to note that murder is the crime most often punished by death, followed by kidnaping and treason. 82 Rape is a capital offense in 16 States and the federal system. 83

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The foregoing history demonstrates that capital punishment was carried from Europe to America but, once here, was tempered considerably. At times in our history, strong abolitionist movements have existed. But they have never been completely successful, as no more than one-quarter of the States of the Union have, at any one time, abolished the death penalty. They have had partial success, however, especially in reducing the number of capital crimes, replacing mandatory death sentences with jury discretion, and developing more humane methods of conducting executions.

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This is where our historical foray leads. The question now to be faced is whether American society has [408 U.S. 342] reached a point where abolition is not dependent on a successful grass roots movement in particular jurisdictions, but is demanded by the Eighth Amendment. To answer this question, we must first examine whether or not the death penalty is today tantamount to excessive punishment.

V

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In order to assess whether or not death is an excessive or unnecessary penalty, it is necessary to consider the reasons why a legislature might select it as punishment for one or more offenses, and examine whether less severe penalties would satisfy the legitimate legislative wants as well as capital punishment. If they would, then the death penalty is unnecessary cruelty, and, therefore, unconstitutional.

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There are six purposes conceivably served by capital punishment: retribution, deterrence, prevention of repetitive criminal acts, encouragement of guilty pleas and confessions, eugenics, and economy. These are considered seriatim below.

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A. The concept of retribution is one of the most misunderstood in all of our criminal jurisprudence. The principal source of confusion derives from the fact that, in dealing with the concept, most people confuse the question "why do men in fact punish?" with the question "what justifies men in punishing?" 84 Men may punish for any number of reasons, but the one reason that punishment is morally good or morally justifiable is that someone has broken the law. Thus, it can correctly be said that breaking the law is the sine qua non of punishment, or, in other words, that we only [408 U.S. 343] tolerate punishment as it is imposed on one who deviates from the norm established by the criminal law.

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The fact that the State may seek retribution against those who have broken its laws does not mean that retribution may then become the State's sole end in punishing. Our jurisprudence has always accepted deterrence in general, deterrence of individual recidivism, isolation of dangerous persons, and rehabilitation as proper goals of punishment. See Trop v. Dulles, 356 U.S. at 111 (BRENNAN, J., concurring). Retaliation, vengeance, and retribution have been roundly condemned as intolerable aspirations for a government in a free society.

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Punishment as retribution has been condemned by scholars for centuries, 85 and the Eighth Amendment itself was adopted to prevent punishment from becoming synonymous with vengeance.

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In Weems v. United States, 217 U.S. at 381, the Court, in the course of holding that Weems' punishment violated the Eighth Amendment, contrasted it with penalties provided for other offenses, and concluded:

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[T]his contrast shows more than different exercises of legislative judgment. It is greater than that. It condemns the sentence in this case as cruel and unusual. It exhibits a difference between unrestrained power and that which is exercised under the spirit of constitutional limitations formed to establish justice. The State thereby suffers nothing, and loses no power. The purpose of punishment is fulfilled, crime is repressed by penalties of just, not tormenting, severity, its repetition is prevented, and hope is given for the reformation of the criminal.

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(Emphasis added.) [408 U.S. 344] It is plain that the view of the Weems Court was that punishment for the sake of retribution was not permissible under the Eighth Amendment. This is the only view that the Court could have taken if the "cruel and unusual" language were to be given any meaning. Retribution surely underlies the imposition of some punishment on one who commits a criminal act. But the fact that some punishment may be imposed does not mean that any punishment is permissible. If retribution alone could serve as a justification for any particular penalty, then all penalties selected by the legislature would, by definition, be acceptable means for designating society's moral approbation of a particular act. The "cruel and unusual" language would thus be read out of the Constitution, and the fears of Patrick Henry and the other Founding Fathers would become realities. To preserve the integrity of the Eighth Amendment, the Court has consistently denigrated retribution as a permissible goal of punishment. 86 It is undoubtedly correct that there is a demand for vengeance on the part of many persons in a community against one who is convicted of a particularly offensive act. At times, a cry is heard that morality requires vengeance to evidence [408 U.S. 345] society's abhorrence of the act. 87 But the Eighth Amendment is our insulation from our baser selves. The "cruel and unusual" language limits the avenues through which vengeance can be channeled. Were this not so, the language would be empty, and a return to the rack and other tortures would be possible in a given case.

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Mr. Justice Story wrote that the Eighth Amendment's limitation on punishment

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would seem to be wholly unnecessary in a free government, since it is scarcely possible that any department of such a government should authorize or justify such atrocious conduct. 88

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I would reach an opposite conclusion—that only in a free society would men recognize their inherent weaknesses and seek to compensate for them by means of a Constitution.

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The history of the Eighth Amendment supports only the conclusion that retribution for its own sake is improper.

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B. The most hotly contested issue regarding capital punishment is whether it is better than life imprisonment as a deterrent to crime. 89

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While the contrary position has been argued, 90 it is my firm opinion that the death penalty is a more severe sanction than life imprisonment. Admittedly, there are [408 U.S. 346] some persons who would rather die than languish in prison for a lifetime. But, whether or not they should be able to choose death as an alternative is a far different question from that presented here—i.e., whether the State can impose death as a punishment. Death is irrevocable; life imprisonment is not. Death, of course, makes rehabilitation impossible; life imprisonment does not. In short, death has always been viewed as the ultimate sanction, and it seems perfectly reasonable to continue to view it as such. 91

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It must be kept in mind, then, that the question to be considered is not simply whether capital punishment is [408 U.S. 347] a deterrent, but whether it is a better deterrent than life imprisonment. 92

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There is no more complex problem than determining the deterrent efficacy of the death penalty.

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Capital punishment has obviously failed as a deterrent when a murder is committed. We can number its failures. But we cannot number its successes. No one can ever know how many people have refrained from murder because of the fear of being hanged. 93

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This is the nub of the problem, and it is exacerbated by the paucity of useful data. The United States is more fortunate than most countries, however, in that it has what are generally considered to be the world's most reliable statistics. 94

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The two strongest arguments in favor of capital punishment as a deterrent are both logical hypotheses devoid of evidentiary support, but persuasive nonetheless. The first proposition was best stated by Sir James Stephen in 1864:

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No other punishment deters men so effectually from committing crimes as the punishment of death. This is one of those propositions which it is difficult to prove simply because they are, in themselves, more obvious than any proof can make them. It is possible to display ingenuity in arguing against it, but that is all. The whole experience of mankind is in the other direction. The threat of instant death is the one to which resort has always been made when there was an absolute necessity for producing some result…. No one goes to certain [408 U.S. 348] inevitable death except by compulsion. Put the matter the other way. Was there ever yet a criminal who, when sentenced to death and brought out to die, would refuse the offer of a commutation of his sentence for the severest secondary punishment? Surely not. Why is this? It can only be because "All that a man has will he give for his life." In any secondary punishment, however terrible, there is hope; but death is death; its terrors cannot be described more forcibly. 95

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This hypothesis relates to the use of capital punishment as a deterrent for any crime. The second proposition is that,

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life imprisonment is the maximum penalty for a crime such as murder, an offender who is serving a life sentence cannot then be deterred from murdering a fellow inmate or a prison officer. 96

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This hypothesis advocates a limited deterrent effect under particular circumstances.

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Abolitionists attempt to disprove these hypotheses by amassing statistical evidence to demonstrate that there is no correlation between criminal activity and the existence or nonexistence of a capital sanction. Almost all of the evidence involves the crime of murder, since murder is punishable by death in more jurisdictions than are other offenses, 97 and almost 90% of all executions since 1930 have been pursuant to murder convictions. 98

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Thorsten Sellin, one of the leading authorities on capital punishment, has urged that, if the death penalty [408 U.S. 349] deters prospective murderers, the following hypotheses should be true:

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(a) Murders should be less frequent in states that have the death penalty than in those that have abolished it, other factors being equal. Comparisons of this nature must be made among states that are as alike as possible in all other respects—character of population, social and economic condition, etc.—in order not to introduce factors known to influence murder rates in a serious manner but present in only one of these states.

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(b) Murders should increase when the death penalty is abolished, and should decline when it is restored.

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(c) The deterrent effect should be greatest, and should therefore affect murder rates most powerfully, in those communities where the crime occurred and its consequences are most strongly brought home to the population.

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(d) Law enforcement officers would be safer from murderous attacks in states that have the death penalty than in those without it. 99

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(Footnote omitted.)

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Sellin's evidence indicates that not one of these propositions is true. This evidence has its problems, however. One is that there are no accurate figures for capital murders; there are only figures on homicides, and they, of course, include noncapital killings. 100 A second problem is that certain murders undoubtedly are misinterpreted as accidental deaths or suicides, and there [408 U.S. 350] is no way of estimating the number of such undetected crimes. A third problem is that not all homicides are reported. Despite these difficulties, most authorities have assumed that the proportion of capital murders in a State's or nation's homicide statistics remains reasonably constant, 101 and that the homicide statistics are therefore useful.

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Sellin's statistics demonstrate that there is no correlation between the murder rate and the presence or absence of the capital sanction. He compares States that have similar characteristics and finds that, irrespective of their position on capital punishment, they have similar murder rates. In the New England States, for example, there is no correlation between executions 102 and homicide rates. 103 The same is true for Midwestern States, 104 and for all others studied. Both the United Nations 105 and Great Britain 106 have acknowledged the validity of Sellin's statistics.

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Sellin also concludes that abolition and/or reintroduction of the death penalty had no effect on the homicide rates of the various States involved. 107 This conclusion is borne out by others who have made similar [408 U.S. 351] inquiries 108 and by the experience of other countries. 109 Despite problems with the statistics, 110 Sellin's evidence has been relied upon in international studies of capital punishment. 111

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Statistics also show that the deterrent effect of capital punishment is no greater in those communities where executions take place than in other communities. 112 In fact, there is some evidence that imposition of capital punishment may actually encourage crime, rather than deter it. 113 And, while police and law enforcement officers [408 U.S. 352] are the strongest advocates of capital punishment, 114 the evidence is overwhelming that police are no safer in communities that retain the sanction than in those that have abolished it. 115

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There is also a substantial body of data showing that the existence of the death penalty has virtually no effect on the homicide rate in prisons. 116 Most of the persons sentenced to death are murderers, and murderers tend to be model prisoners. 117 [408 U.S. 353]

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In sum, the only support for the theory that capital punishment is an effective deterrent is found in the hypotheses with which we began and the occasional stories about a specific individual being deterred from doing a contemplated criminal act. 118 These claims of specific deterrence are often spurious, 119 however, and may be more than counterbalanced by the tendency of capital punishment to incite certain crimes. 120

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The United Nations Committee that studied capital punishment found that

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[i]t is generally agreed between the retentionists and abolitionists, whatever their opinions about the validity of comparative studies of deterrence, that the data which now exist show no correlation between the existence of capital punishment and lower rates of capital crime. 121

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Despite the fact that abolitionists have not proved non-deterrence beyond a reasonable doubt, they have succeeded in showing by clear and convincing evidence that capital punishment is not necessary as a deterrent to crime in our society. This is all that they must do. We would shirk our judicial responsibilities if we failed to accept the presently existing statistics and demanded more proof. It may be that we now possess all the proof that anyone could ever hope to assemble on the subject. But, even if further proof were to be forthcoming, I believe there is more than enough evidence presently available for a decision in this case.

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In 1793, William Bradford studied the utility of the death penalty in Pennsylvania and found that it probably had no deterrent effect, but that more evidence [408 U.S. 354] was needed. 122 Edward Livingston reached a similar conclusion with respect to deterrence in 1833 upon completion of his study for Louisiana. 123 Virtually every study that has since been undertaken has reached the same result. 124

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In light of the massive amount of evidence before us, I see no alternative but to conclude that capital punishment cannot be justified on the basis of its deterrent effect. 125 [408 U.S. 355]

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C. Much of what must be said about the death penalty as a device to prevent recidivism is obvious—if a murderer is executed, he cannot possibly commit another offense. The fact is, however, that murderers are extremely unlikely to commit other crimes, either in prison or upon their release. 126 For the most part, they are first offenders, and, when released from prison, they are known to become model citizens. 127 Furthermore, most persons who commit capital crimes are not executed. With respect to those who are sentenced to die, it is critical to note that the jury is never asked to determine whether they are likely to be recidivists. In light of thee facts, if capital punishment were justified purely on the basis of preventing recidivism, it would have to be considered to be excessive; no general need to obliterate all capital offenders could have been demonstrated, nor any specific need in individual cases.

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D. The three final purposes which may underlie utilization of a capital sanction—encouraging guilty pleas and confessions, eugenics, and reducing state expenditures—may be dealt with quickly. If the death penalty is used to encourage guilty pleas, and thus to deter suspects from exercising their rights under the Sixth Amendment to jury trials, it is unconstitutional. United States [408 U.S. 356] v. Jackson, 390 U.S. 570 (1968). 128 Its elimination would do little to impair the State's bargaining position in criminal cases, since life imprisonment remains a severe sanction which can be used as leverage for bargaining for pleas or confessions in exchange either for charges of lesser offenses or recommendations of leniency.

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Moreover, to the extent that capital punishment is used to encourage confessions and guilty pleas, it is not being used for punishment purposes. A State that justifies capital punishment on its utility as part of the conviction process could not profess to rely on capital punishment as a deterrent. Such a State's system would be structured with twin goals only: obtaining guilty pleas and confessions and imposing imprisonment as the maximum sanction. Since life imprisonment is sufficient for bargaining purposes, the death penalty is excessive if used for the same purposes.

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In light of the previous discussion on deterrence, any suggestions concerning the eugenic benefits of capital punishment are obviously meritless. 129 As I pointed out above, there is not even any attempt made to discover which capital offenders are likely to be recidivists, let alone which are positively incurable. No test or procedure presently exists by which incurables can be screened from those who would benefit from treatment. On the one hand, due process would seem to require that we have some procedure to demonstrate incurability before execution; and, on the other hand, equal protection would then seemingly require that all incurables be executed, cf. Skinner v. Oklahoma, 316 U.S. 535 (1942). In addition, the "cruel and unusual" language [408 U.S. 357] would require that life imprisonment, treatment, and sterilization be inadequate for eugenic purposes. More importantly, this Nation has never formally professed eugenic goals, and the history of the world does not look kindly on them. If eugenics is one of our purposes, then the legislatures should say so forthrightly and design procedures to serve this goal. Until such time, I can only conclude, as has virtually everyone else who has looked at the problem, 130 that capital punishment cannot be defended on the basis of any eugenic purposes.

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As for the argument that it is cheaper to execute a capital offender than to imprison him for life, even assuming that such an argument, if true, would support. a capital sanction, it is simply incorrect. A disproportionate amount of money spent on prisons is attributable to death row. 131 Condemned men are not productive members of the prison community, although they could be, 132 and executions are expensive. 133 Appeals are often automatic, and courts admittedly spend more time with death cases. 134 [408 U.S. 358]

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At trial, the selection of jurors is likely to become a costly, time-consuming problem in a capital case, 135 and defense counsel will reasonably exhaust every possible means to save his client from execution, no matter how long the trial takes.

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During the period between conviction and execution, there are an inordinate number of collateral attacks on the conviction and attempts to obtain executive clemency, all of which exhaust the time, money, and effort of the State. There are also continual assertions that the condemned prisoner has gone insane. 136 Because there is a formally established policy of not executing insane persons, 137 great sums of money may be spent on detecting and curing mental illness in order to perform the execution. 138 Since no one wants the responsibility for the execution, the condemned man is likely to be passed back and forth from doctors to custodial officials to courts like a ping-pong ball. 139 The entire process is very costly.

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When all is said and done, there can be no doubt that it costs more to execute a man than to keep him in prison for life. 140

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E. There is but one conclusion that can be drawn from all of this—i.e., the death penalty is an excessive and unnecessary punishment that violates the Eighth [408 U.S. 359] Amendment. The statistical evidence is not convincing beyond all doubt, but it is persuasive. It is not improper at this point to take judicial notice of the fact that, for more than 200 years, men have labored to demonstrate that capital punishment serves no purpose that life imprisonment could not serve equally well. And they have done so with great success. Little, if any, evidence has been adduced to prove the contrary. The point has now been reached at which deference to the legislatures is tantamount to abdication of our judicial roles as factfinders, judges, and ultimate arbiters of the Constitution. We know that, at some point, the presumption of constitutionality accorded legislative acts gives way to a realistic assessment of those acts. This point comes when there is sufficient evidence available so that judges can determine not whether the legislature acted wisely, but whether it had any rational basis whatsoever for acting. We have this evidence before us now. There is no rational basis for concluding that capital punishment is not excessive. It therefore violates the Eighth Amendment. 141 [408 U.S. 360]

VI

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In addition, even if capital punishment is not excessive, it nonetheless violates the Eighth Amendment because it is morally unacceptable to the people of the United States at this time in their history.

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In judging whether or not a given penalty is morally acceptable, most courts have said that the punishment is valid unless "it shocks the conscience and sense of justice of the people." 142 [408 U.S. 361]

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Judge Frank once noted the problems inherent in the use of such a measuring stick:

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[The court,] before it reduces a sentence as "cruel and unusual," must have reasonably good assurances that the sentence offends the "common conscience." And, in any context, such a standard—the community's attitude—is usually an unknowable. It resembles a slithery shadow, since one can seldom learn, at all accurately, what the community, or a majority, actually feels. Even a carefully taken "public opinion poll" would be inconclusive in a case like this. 143

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While a public opinion poll obviously is of some assistance in indicating public acceptance or rejection of a specific penalty, 144 its utility cannot be very great. This is because whether or not a punishment is cruel and unusual depends not on whether its mere mention "shocks the conscience and sense of justice of the people," but on whether people who were fully informed as to the purposes of the penalty and its liabilities would find the penalty shocking, unjust, and unacceptable. 145 [408 U.S. 362]

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In other words, the question with which we must deal is not whether a substantial proportion of American citizens would today, if polled, opine that capital punishment is barbarously cruel, but whether they would find it to be so in the light of all information presently available.

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This is not to suggest that, with respect to this test of unconstitutionality, people are required to act rationally; they are not. With respect to this judgment, a violation of the Eighth Amendment is totally dependent on the predictable subjective, emotional reactions of informed citizens. 146

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It has often been noted that American citizens know almost nothing about capital punishment. 147 Some of the conclusions arrived at in the preceding section and the supporting evidence would be critical to an informed judgment on the morality of the death penalty: e.g., that the death penalty is no more effective a deterrent than life imprisonment, that convicted murderers are [408 U.S. 363] rarely executed, but are usually sentenced to a term in prison; that convicted murderers usually are model prisoners, and that they almost always become law-abiding citizens upon their release from prison; that the costs of executing a capital offender exceed the costs of imprisoning him for life; that, while in prison, a convict under sentence of death performs none of the useful functions that life prisoners perform; that no attempt is made in the sentencing process to ferret out likely recidivists for execution; and that the death penalty may actually stimulate criminal activity.

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This information would almost surely convince the average citizen that the death penalty was unwise, but a problem arises as to whether it would convince him that the penalty was morally reprehensible. This problem arises from the fact that the public's desire for retribution, even though this is a goal that the legislature cannot constitutionally pursue as is sole justification for capital punishment, might influence the citizenry's view of the morality of capital punishment. The solution to the problem lies in the fact that no one has ever seriously advanced retribution as a legitimate goal of our society. Defenses of capital punishment are always mounted on deterrent or other similar theories. This should not be surprising. It is the people of this country who have urged in the past that prisons rehabilitate as well as isolate offenders, and it is the people who have injected a sense of purpose into our penology. I cannot believe that at this stage in our history, the American people would ever knowingly support purposeless vengeance. Thus, I believe that the great mass of citizens would conclude on the basis of the material already considered that the death penalty is immoral, and therefore unconstitutional.

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But, if this information needs supplementing, I believe that the following facts would serve to convince [408 U.S. 364] even the most hesitant of citizens to condemn death as a sanction: capital punishment is imposed discriminatorily against certain identifiable classes of people; there is evidence that innocent people have been executed before their innocence can be proved; and the death penalty wreaks havoc with our entire criminal justice system. Each of these facts is considered briefly below.

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Regarding discrimination, it has been said that

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[i]t is usually the poor, the illiterate, the underprivileged, the member of the minority group—the man who, because he is without means, and is defended by a court-appointed attorney—who becomes society's sacrificial lamb…. 148 Indeed, a look at the bare statistics regarding executions is enough to betray much of the discrimination. A total of 3,859 persons have been executed since 1930, of whom 1,751 were white and 2,066 were Negro. 149 Of the executions, 3,334 were for murder; 1,664 of the executed murderers were white and 1,630 were Negro; 150 455 persons, including 48 whites and 405 Negroes, were executed for rape. 151 It is immediately apparent that Negroes were executed far more often than whites in proportion to their percentage of the population. Studies indicate that, while the higher rate of execution among Negroes is partially due to a higher rate of crime, there is evidence of racial discrimination. 152 [408 U.S. 365] Racial or other discriminations should not be surprising. In McGautha v. California, 402 U.S. at 207, this Court held

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that committing to the untrammeled discretion of the jury the power to pronounce life or death in capital cases is [not] offensive to anything in the Constitution.

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This was an open invitation to discrimination.

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There is also overwhelming evidence that the death penalty is employed against men, and not women. Only 32 women have been executed since 1930, while 3,827 men have met a similar fate. 153 It is difficult to understand why women have received such favored treatment, since the purposes allegedly served by capital punishment seemingly are equally applicable to both sexes. 154

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It also is evident that the burden of capital punishment falls upon the poor, the ignorant, and the underprivileged [408 U.S. 366] members of society. 155 It is the poor, and the members of minority groups who are least able to voice their complaints against capital punishment. Their impotence leaves them victims of a sanction that the wealthier, better-represented, just-as-guilty person can escape. So long as the capital sanction is used only against the forlorn, easily forgotten members of society, legislators are content to maintain the status quo, because change would draw attention to the problem and concern might develop. Ignorance is perpetuated, and apathy soon becomes its mate, and we have today's situation.

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Just as Americans know little about who is executed and why, they are unaware of the potential dangers of executing an innocent man. Our "beyond a reasonable doubt" burden of proof in criminal cases is intended to protect the innocent, but we know it is not foolproof. Various studies have shown that people whose innocence is later convincingly established are convicted and sentenced to death. 156 [408 U.S. 367]

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Proving one's innocence after a jury finding of guilt is almost impossible. While reviewing courts are willing to entertain all kinds of collateral attacks where a sentence of death is involved, they very rarely dispute the jury's interpretation of the evidence. This is, perhaps, as it should be. But if an innocent man has been found guilty, he must then depend on the good faith of the prosecutor's office to help him establish his innocence. There is evidence, however, that prosecutors do not welcome the idea of having convictions, which they labored hard to secure, overturned, and that their cooperation is highly unlikely. 157

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No matter how careful courts are, the possibility of perjured testimony, mistaken honest testimony, and human error remain all too real. 158 We have no way of [408 U.S. 368] judging how many innocent persons have been executed, but we can be certain that there were some. Whether there were many is an open question made difficult by the loss of those who were most knowledgeable about the crime for which they were convicted. Surely there will be more as long as capital punishment remains part of our penal law.

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While it is difficult to ascertain with certainty the degree to which the death penalty is discriminatorily imposed or the number of innocent persons sentenced to die, there is one conclusion about the penalty that is universally accepted—i.e., it "tends to distort the course of the criminal law." 159 As Mr. Justice Frankfurter said:

1972, Furman v. Georgia, 408 U.S. 368

I am strongly against capital punishment…. When life is at hazard in a trial, it sensationalizes the whole thing almost unwittingly; the effect on juries, the Bar, the public, the Judiciary, I regard as very bad. I think scientifically the claim of deterrence is not worth much. Whatever proof there may be, in my judgment, does not outweigh the social loss due to the inherent sensationalism of a trial for life. 160 [408 U.S. 369]

1972, Furman v. Georgia, 408 U.S. 369

The deleterious effects of the death penalty are also felt otherwise than at trial. For example, its very existence "inevitably sabotages a social or institutional program of reformation." 161 In short

1972, Furman v. Georgia, 408 U.S. 369

[t]he presence of the death penalty as the keystone of our penal system bedevils the administration of criminal justice all the way down the line, and is the stumbling block in the path of general reform and of the treatment of crime and criminals. 162

1972, Furman v. Georgia, 408 U.S. 369

Assuming knowledge of all the facts presently available regarding capital punishment, the average citizen would, in my opinion, find it shocking to his conscience and sense of justice. 163 For this reason alone, capital punishment cannot stand. [408 U.S. 370]

VII

1972, Furman v. Georgia, 408 U.S. 370

To arrive at the conclusion that the death penalty violates the Eighth Amendment, we have had to engage in a long and tedious journey. The amount of information that we have assembled and sorted is enormous. [408 U.S. 371] Yet I firmly believe that we have not deviated in the slightest from the principles with which we began.

1972, Furman v. Georgia, 408 U.S. 371

At a time in our history when the streets of the Nation's cities inspire fear and despair, rather than pride and hope, it is difficult to maintain objectivity and concern for our fellow citizens. But the measure of a country's greatness is its ability to retain compassion in time of crisis. No nation in the recorded history of man has a greater tradition of revering justice and fair treatment for all its citizens in times of turmoil, confusion, and tension than ours. This is a country which stands tallest in troubled times, a country that clings to fundamental principles, cherishes its constitutional heritage, and rejects simple solutions that compromise the values that lie at the roots of our democratic system.

1972, Furman v. Georgia, 408 U.S. 371

In striking down capital punishment, this Court does not malign our system of government. On the contrary, it pays homage to it. Only in a free society could right triumph in difficult times, and could civilization record its magnificent advancement. In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute. We achieve "a major milestone in the long road up from barbarism" 164 and join the approximately 70 other jurisdictions in the world which celebrate their regard for civilization and humanity by shunning capital punishment. 165

1972, Furman v. Georgia, 408 U.S. 371

I concur in the judgments of the Court.

1972, Furman v. Georgia, 408 U.S. 371

[Appendices I, II, and III follow.] [408 U.S. 372]

APPENDIX I TO OPINION OF MARSHALL, J., CONCURRING

ABOLITION OF THE DEATH PENALTY IN THE UNITED

STATES: 1846-1968

(States are listed according to year most recent action was taken)

1972, Furman v. Georgia, 408 U.S. 372

Year of Year of

1972, Furman v. Georgia, 408 U.S. 372

partial complete Year of Year of

1972, Furman v. Georgia, 408 U.S. 372

State abolition abolition restoration reabolition

1972, Furman v. Georgia, 408 U.S. 372

New York. . . . 1965 1 — — —

1972, Furman v. Georgia, 408 U.S. 372

Vermont. . . . . 1965 2 — — —

1972, Furman v. Georgia, 408 U.S. 372

West Virginia. . — 1965 — —

1972, Furman v. Georgia, 408 U.S. 372

Iowa. . . . . . — 1872 1878 1965

1972, Furman v. Georgia, 408 U.S. 372

Oregon. . . . . — 1914 1920 1964

1972, Furman v. Georgia, 408 U.S. 372

Michigan. . . . 1847 3 1963 — —

1972, Furman v. Georgia, 408 U.S. 372

Delaware. . . . — 1958 1961 —

1972, Furman v. Georgia, 408 U.S. 372

Alaska. . . . . — 1957 — —

1972, Furman v. Georgia, 408 U.S. 372

Hawaii. . . . . — 1957 — —

1972, Furman v. Georgia, 408 U.S. 372

South Dakota . — 1915 1939 —

1972, Furman v. Georgia, 408 U.S. 372

Kansas. . . . . — 1907 1935 —

1972, Furman v. Georgia, 408 U.S. 372

Missouri. . . . — 1917 1919 —

1972, Furman v. Georgia, 408 U.S. 372

Tennessee. . . . 1915 4 — 1919 —

1972, Furman v. Georgia, 408 U.S. 372

Washington. . . — 1913 1919 —

1972, Furman v. Georgia, 408 U.S. 372

Arizona. . . . . 1916 5 — 1918 —

1972, Furman v. Georgia, 408 U.S. 372

North Dakota . . 1915 6 — — —

1972, Furman v. Georgia, 408 U.S. 372

Minnesota. . . . — 1911 — —

1972, Furman v. Georgia, 408 U.S. 372

Colorado. . . . — 1897 1901 —

1972, Furman v. Georgia, 408 U.S. 372

Maine. . . . . . — 1876 1883 1887

1972, Furman v. Georgia, 408 U.S. 372

Wisconsin. . . . — 1853 — —

1972, Furman v. Georgia, 408 U.S. 372

Rhode Island . . 1852 7 — — —

APPENDIX II TO OPINION OF MARSHALL, J., CONCURRING

1972, Furman v. Georgia, 408 U.S. 372

CRUDE HOMICIDE DEATH RATES, PER 100,000 POPULATION,

1972, Furman v. Georgia, 408 U.S. 372

AND NUMBER OF EXECUTIONS IN CERTAIN

1972, Furman v. Georgia, 408 U.S. 372

AMERICAN STATES: 1920-1955

1972, Furman v. Georgia, 408 U.S. 372

Year Maine\* N.H. Vt. Mass. R.I.\* Conn.

1972, Furman v. Georgia, 408 U.S. 372

Rates Exec. Rates Exec. Rates Exec. Rates Exec.

1972, Furman v. Georgia, 408 U.S. 372

1920 1.4 1.8 2.3 2.1 1 1.8 3.9 1

1972, Furman v. Georgia, 408 U.S. 372

1921 2.2 2.2 1.7 2.8 3.1 2.9 2

1972, Furman v. Georgia, 408 U.S. 372

1922 l.7 1.6 1.1 2.6 2.2 2.9 1

1972, Furman v. Georgia, 408 U.S. 372

1923 1.7 2.7 1.4 2.8 1 3.5 3.1

1972, Furman v. Georgia, 408 U.S. 372

1924 1.5 1.6 .6 2.7 1 2.0 3.5

1972, Furman v. Georgia, 408 U.S. 372

1925 2.2 1.3 .6 2.7 1.8 3.7

1972, Furman v. Georgia, 408 U.S. 372

1926 1.1 .9 2.2 2.0 1 3.2 2.9 1

1972, Furman v. Georgia, 408 U.S. 372

1927 1.9 .7 .8 2.1 6 2.7 2.3 2

1972, Furman v. Georgia, 408 U.S. 372

1928 l.6 1.3 1.4 1.9 3 2.7 2.7

1972, Furman v. Georgia, 408 U.S. 372

1929 1.0 1.5 1.4 1.7 6 2.3 2.6 1

1972, Furman v. Georgia, 408 U.S. 372

1930 1.8 .9 1.4 1.8 2.0 3.2 2

1972, Furman v. Georgia, 408 U.S. 372

1931 1.4 2.1 1.1 1 2.0 2 2.2 2.7

1972, Furman v. Georgia, 408 U.S. 372

1932 2.0 .2 1.1 2.1 1 l.6 2.9

1972, Furman v. Georgia, 408 U.S. 372

1933 3.3 2.7 l.6 2.5 1.9 1.8

1972, Furman v. Georgia, 408 U.S. 372

1934 1.1 1.4 1.9 2.2 4 1.8 2.4

1972, Furman v. Georgia, 408 U.S. 372

1935 1.4 1.0 .3 1.8 4 1.0 1.9

1972, Furman v. Georgia, 408 U.S. 372

1936 2.2 1.0 2.1 l.6 2 1.2 2.7 1

1972, Furman v. Georgia, 408 U.S. 372

1937 1.4 1.8 1.8 1.9 2.3 2.0 1

1972, Furman v. Georgia, 408 U.S. 372

1938 1.5 1.8 1.3 1.3 3 1.2 2.1 1

1972, Furman v. Georgia, 408 U.S. 372

1939 1.2 2.3 1 .8 1.4 2 l.6 1.3

1972, Furman v. Georgia, 408 U.S. 372

1940 1.5 1.4 .8 1.5 1.4 1.8 2

1972, Furman v. Georgia, 408 U.S. 372

1941 1.1 .4 2.2 1.3 1 .8 2.2

1972, Furman v. Georgia, 408 U.S. 372

1942 1.7 .2 .9 1.3 2 1.2 2.5

1972, Furman v. Georgia, 408 U.S. 372

1943 1.7 .9 .6 .9 3 1.5 l.6 2

1972, Furman v. Georgia, 408 U.S. 372

1944 1.5 1.1 .3 1.4 .6 1.9 1

1972, Furman v. Georgia, 408 U.S. 372

1945 .9 .7 2.9 1.5 1.1 1.5 1

1972, Furman v. Georgia, 408 U.S. 372

1946 1.4 .8 1.7 1.4 1 1.5 l.6 3

1972, Furman v. Georgia, 408 U.S. 372

1947 1.2 .6 1.1 1 l.6 2 1.5 1.9

1972, Furman v. Georgia, 408 U.S. 372

1948 1.7 1.0 .8 1.4 2.7 1.7 1

1972, Furman v. Georgia, 408 U.S. 372

1949 1.7 1.5 .5 1.1 .5 1.8

1972, Furman v. Georgia, 408 U.S. 372

1950 1.5 1.3 .5 1.3 1.5 1.4

1972, Furman v. Georgia, 408 U.S. 372

1951 2.3 .6 .5 1.0 .9 2.0

1972, Furman v. Georgia, 408 U.S. 372

1952 1.0 1.5 .5 1.0 1.5 1.7

1972, Furman v. Georgia, 408 U.S. 372

1953 1.4 .9 .3 1.0 .6 1.5

1972, Furman v. Georgia, 408 U.S. 372

1954 1.7 .5 l.6 2 1.0 1.3 1.3

1972, Furman v. Georgia, 408 U.S. 372

1955 1.2 1.1 .5 1.2 1.7 1.3 3

1972, Furman v. Georgia, 408 U.S. 372

\* Maine has totally abolished the death penalty, and Rhode Island has severely limited its imposition. Based on ALI, supra, n. 98, at 25. [408 U.S. 374]

APPENDIX III TO OPINION OF MARSHALL, J., CONCURRING

1972, Furman v. Georgia, 408 U.S. 374

CRUDE HOMICIDE DEATH RATES, PER 100,000 POPULATION, AND

1972, Furman v. Georgia, 408 U.S. 374

NUMBER OF EXECUTIONS IN CERTAIN AMERICAN STATES: 1920-1955

1972, Furman v. Georgia, 408 U.S. 374

Year Mich.\* Ohio Ind. Minn.\* Iowa Wis.\* N.D.\* S.D. Neb.

1972, Furman v. Georgia, 408 U.S. 374

Rate Ex. Rate Ex. Rate Ex. Rate Ex. Rate Ex.

1972, Furman v. Georgia, 408 U.S. 374

1920 5.6 6.9 3 4.7 2 3.1 \*\* 1.7 \*\* \*\* \*\*\* 4.2

1972, Furman v. Georgia, 408 U.S. 374

1921 4.7 7.9 10 6.4 4.4 2.2 4.9

1972, Furman v. Georgia, 408 U.S. 374

1922 4.3 7.3 12 6.7 2 3.6 3 1.8 4.5

1972, Furman v. Georgia, 408 U.S. 374

1923 6.1 7.8 10 6.1 2.9 2.1 2 2.2 4.1

1972, Furman v. Georgia, 408 U.S. 374

1924 7.1 6.9 10 7.3 3.2 2.7 1 1.8 2.1 4.4

1972, Furman v. Georgia, 408 U.S. 374

1925 7.4 8.1 13 6.6 1 3.8 2.7 2 2.3 2.0 4.0

1972, Furman v. Georgia, 408 U.S. 374

1926 10.4 8.0 7 5.8 3 2.2 2.3 2.6 1.8 2.7

1972, Furman v. Georgia, 408 U.S. 374

1927 8.2 8.6 8 6.3 1 2.6 2.4 2.6 l.6 3.5

1972, Furman v. Georgia, 408 U.S. 374

1928 7.0 8.2 7 7.0 1 2.8 2.3 2.1 1.0 3.7

1972, Furman v. Georgia, 408 U.S. 374

1929 8.2 8.3 5 7.0 1 2.2 2.6 2.3 1.2 3.0

1972, Furman v. Georgia, 408 U.S. 374

1930 6.7 9.3 8 6.4 1 3.8 3.2 3.1 3.5 1.9 3.5

1972, Furman v. Georgia, 408 U.S. 374

1931 6.2 9.0 10 6.5 1 2.9 2.5 1 3.6 2.0 2.3 3.6

1972, Furman v. Georgia, 408 U.S. 374

1932 5.7 8.1 7 6.7 2 2.9 2.9 2.8 1.2 l.6 3.7

1972, Furman v. Georgia, 408 U.S. 374

1933 6.1 8.2 11 6.6 3 3.6 2.9 1.2 1.7 3.2

1972, Furman v. Georgia, 408 U.S. 374

1934 4.2 7.7 7 7.1 4 3.4 2.3 2.4 l.6 3.0 4.4

1972, Furman v. Georgia, 408 U.S. 374

1935 4.2 7.1 10 4.4 2 2.6 2.0 3 1.4 2.3 2.0 3.4

1972, Furman v. Georgia, 408 U.S. 374

1936 4.0 6.6 6 5.2 2 2.3 1.8 1.7 2.0 1.2 2.5

1972, Furman v. Georgia, 408 U.S. 374

1937 4.6 5.7 1 4.7 5 l.6 2.2 2.2 l.6 .1 2.0

1972, Furman v. Georgia, 408 U.S. 374

1938 3.4 5.1 12 4.4 8 l.6 1.4 4 2.0 2.4 .9 l.6

1972, Furman v. Georgia, 408 U.S. 374

1939 3.1 4.8 10 3.8 3 l.6 1.8 1.4 1.2 2.8

1972, Furman v. Georgia, 408 U.S. 374

1940 3.0 4.6 2 3.3 1.2 1.3 1 1.3 1.4 2.2 1.0

1972, Furman v. Georgia, 408 U.S. 374

1941 3.2 4.2 4 3.1 1 1.7 1.3 1 1.4 2.3 1.0 2.1

1972, Furman v. Georgia, 408 U.S. 374

1942 3.2 4.6 2 3.2 1 1.7 1.2 l.6 1.4 .9 1.8

1972, Furman v. Georgia, 408 U.S. 374

1943 3.3 4.4 6 2.8 1.2 1.0 1.1 .6 1.4 2.4

1972, Furman v. Georgia, 408 U.S. 374

1944 3.3 3.8 2 2.8 1.4 1.7 1 .9 .9 l.6 1.3

1972, Furman v. Georgia, 408 U.S. 374

1945 3.7 4.8 7 4.0 1 1.9 l.6 1 l.6 1.0 2.0 1.2 1

1972, Furman v. Georgia, 408 U.S. 374

1946 3.2 5.2 2 3.9 1 l.6 1.8 2 .9 1.5 1.1 2.1

1972, Furman v. Georgia, 408 U.S. 374

1947 3.8 4.9 5 3.8 1.2 1.9 1.4 .4 1.0 1 2.2

1972, Furman v. Georgia, 408 U.S. 374

1948 3.4 4.5 7 4.2 1.9 1.4 .9 .9 2.0 2.5 1

1972, Furman v. Georgia, 408 U.S. 374

1949 3.6 4.4 15 3.2 3 1.1 .9 1 1.3 .7 2.3 1.8

1972, Furman v. Georgia, 408 U.S. 374

1950 3.9 4.1 4 3.6 1 1.2 1.3 1.1 .6 1.1 2.9

1972, Furman v. Georgia, 408 U.S. 374

1951 3.7 3.8 4 3.9 1 1.3 1.5 1.1 .5 .9 1.0

1972, Furman v. Georgia, 408 U.S. 374

1952 3.3 4.0 4 3.8 1.3 1.5 1 l.6 .8 2.3 l.6 1

1972, Furman v. Georgia, 408 U.S. 374

1953 4.6 3.6 4 4.0 1.5 1.1 1.2 1.1 1.1 2.0

1972, Furman v. Georgia, 408 U.S. 374

1954 3.3 3.4 4 3.2 1.0 1.0 1.1 .5 1.5 2.3

1972, Furman v. Georgia, 408 U.S. 374

1955 3.3 3.1 3.1 1.1 1.2 1.1 .8 1.8 1.3

1972, Furman v. Georgia, 408 U.S. 374

\* Michigan, Minnesota, and Wisconsin have completely abolished capital punishment. North Dakota has severely restricted its use.

1972, Furman v. Georgia, 408 U.S. 374

\*\* Iowa, North Dakota, and South Dakota were not admitted to the national death registration area until 1923, 1924, and 1930, respectively.

1972, Furman v. Georgia, 408 U.S. 374

\*\*\* South Dakota introduced the death penalty in 1939. Based on ALI, supra, n. 8, at 28. See also id. at 32-34. [408 U.S. 375]

BURGER, J., dissenting

1972, Furman v. Georgia, 408 U.S. 375

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE BLACKMUN, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST join, dissenting.

1972, Furman v. Georgia, 408 U.S. 375

At the outset, it is important to note that only two members of the Court, MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL, have concluded that the Eighth Amendment prohibits capital punishment for all crimes and under all circumstances. MR. JUSTICE DOUGLAS has also determined that the death penalty contravenes the Eighth Amendment, although I do not read his opinion as necessarily requiring final abolition of the penalty. 1 For the reasons set forth in Parts I-IV of this opinion, I conclude that the constitutional prohibition against "cruel and unusual punishments" cannot be construed to bar the imposition of the punishment of death.

1972, Furman v. Georgia, 408 U.S. 375

MR. JUSTICE STEWART and MR. JUSTICE WHITE have concluded that petitioners' death sentences must be set aside because prevailing sentencing practices do not comply with the Eighth Amendment. For the reasons set forth in Part V of this opinion, I believe this approach fundamentally misconceives the nature of the Eighth Amendment guarantee and flies directly in the face of controlling authority of extremely recent vintage.

I

1972, Furman v. Georgia, 408 U.S. 375

If we were possessed of legislative power, I would either join with MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL or, at the very least, restrict the use of capital punishment to a small category of the most heinous crimes. Our constitutional inquiry, however, must be divorced from personal feelings as to the morality and efficacy of the death penalty, and be confined to the meaning and applicability of the uncertain language of the Eighth Amendment. There is no novelty in being called upon to interpret a constitutional provision that is less than [408 U.S. 376] self-defining, but, of all our fundamental guarantees, the ban on "cruel and unusual punishments" is one of the most difficult to translate into judicially manageable terms. The widely divergent views of the Amendment expressed in today's opinions reveal the haze that surrounds this constitutional command. Yet it is essential to our role as a court that we not seize upon the enigmatic character of the guarantee as an invitation to enact our personal predilections into law.

1972, Furman v. Georgia, 408 U.S. 376

Although the Eighth Amendment literally reads as prohibiting only those punishments that are both "cruel" and "unusual," history compels the conclusion that the Constitution prohibits all punishments of extreme and barbarous cruelty, regardless of how frequently or infrequently imposed.

1972, Furman v. Georgia, 408 U.S. 376

The most persuasive analysis of Parliament's adoption of the English Bill of Rights of 1689 the unquestioned source of the Eighth Amendment wording—suggests that the prohibition against "cruel and unusual punishments" was included therein out of aversion to severe punishments not legally authorized and not within the jurisdiction of the courts to impose. To the extent that the term "unusual" had any importance in the English version, it was apparently intended as a reference to illegal punishments. 2 [408 U.S. 377]

1972, Furman v. Georgia, 408 U.S. 377

From every indication, the Framers of the Eighth Amendment intended to give the phrase a meaning far different from that of its English precursor. The records of the debates in several of the state conventions called to ratify the 1789 draft Constitution submitted prior to the addition of the Bill of Rights show that the Framers' exclusive concern was the absence of any ban on tortures. 3 The later inclusion of the "cruel and unusual punishments" clause was in response to these objections. There was no discussion of the interrelationship of the terms "cruel" and "unusual," and there is nothing in the debates supporting the inference that the Founding Fathers would have been receptive to torturous or excessively cruel punishments even if usual in character or authorized by law.

1972, Furman v. Georgia, 408 U.S. 377

The cases decided under the Eighth Amendment are consistent with the tone of the ratifying debates. In Wilkerson v. Utah, 99 U.S. 130 (1879), this Court held that execution by shooting was not a prohibited mode of carrying out a sentence of death. Speaking to the meaning [408 U.S. 378] of the Cruel and Unusual Punishments Clause, the Court stated,

1972, Furman v. Georgia, 408 U.S. 378

[I]t is safe to affirm that punishments of torture…and all others in the same line of unnecessary cruelty, are forbidden by that amendment to the Constitution.

1972, Furman v. Georgia, 408 U.S. 378

Id. at 136. The Court made no reference to the role of the term "unusual" in the constitutional guarantee.

1972, Furman v. Georgia, 408 U.S. 378

In the case of In re Kemmler, 136 U.S. 436 (1890), the Court held the Eighth Amendment inapplicable to the States and added the following dictum:

1972, Furman v. Georgia, 408 U.S. 378

So that, if the punishment prescribed for an offence against the laws of the State were manifestly cruel and unusual, as burning at the stake, crucifixion, breaking on the wheel, or the like, it would be the duty of the courts to adjudge such penalties to be within the…[prohibition of the New York constitution]. And we think this equally true of the Eighth Amendment, in its application to Congress.

1972, Furman v. Georgia, 408 U.S. 378

…Punishments are cruel when they involve torture or a lingering death; but the punishment of death is not cruel within the meaning of that word as used in the Constitution. It implies there something inhuman and barbarous, something more than the mere extinguishment of life. This language again reveals an exclusive concern with extreme cruelty. The Court made passing reference to the finding of the New York courts that electrocution was an "unusual" punishment, but it saw no need to discuss the significance of that term as used in the Eighth Amendment.

1972, Furman v. Georgia, 408 U.S. 378

Opinions in subsequent cases also speak of extreme cruelty as though that were the sum and substance of the constitutional prohibition. See O'Neil v. Vermont, 144 U.S. 323, 339-340 (1892) (Field, J., dissenting); Weems [408 U.S. 379] v. United States, 217 U.S. 349, 372-373 (1910); Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 464 (1947). As summarized by Mr. Chief Justice Warren in the plurality opinion in Trop v. Dulles, 356 U.S. 86, 100 n. 32 (1958):

1972, Furman v. Georgia, 408 U.S. 379

Whether the word "unusual" has any qualitative meaning different from "cruel" is not clear. On the few occasions this Court has had to consider the meaning of the phrase, precise distinctions between cruelty and unusualness do not seem to have been drawn. See Weems v. United States, supra; O'Neil v. Vermont, supra; Wilkerson v. Utah, supra. These cases indicate that the Court simply examines the particular punishment involved in light of the basic prohibition against inhuman treatment, without regard to any subtleties of meaning that might be latent in the word "unusual."

1972, Furman v. Georgia, 408 U.S. 379

I do not suggest that the presence of the word "unusual" in the Eighth Amendment is merely vestigial, having no relevance to the constitutionality of any punishment that might be devised. But where, as here, we consider a punishment well known to history, and clearly authorized by legislative enactment, it disregards the history of the Eighth Amendment and all the judicial comment that has followed to rely on the term "unusual" as affecting the outcome of these cases. Instead, I view these cases as turning on the single question whether capital punishment is "cruel" in the constitutional sense. The term "unusual" cannot be read as limiting the ban on "cruel" punishments, or as somehow expanding the meaning of the term "cruel." For this reason, I am unpersuaded by the facile argument that, since capital punishment has always been cruel in the everyday sense of the word, and has become unusual due to decreased use, it is, therefore, now "cruel and unusual." [408 U.S. 380]

II

1972, Furman v. Georgia, 408 U.S. 380

Counsel for petitioners properly concede that capital punishment was not impermissibly cruel at the time of the adoption of the Eighth Amendment. Not only do the records of the debates indicate that the Founding Fathers were limited in their concern to the prevention of torture, but it is also clear from the language of the Constitution itself that there was no thought whatever of the elimination of capital punishment. The opening sentence of the Fifth Amendment is a guarantee that the death penalty not be imposed "unless on a presentment or indictment of a Grand Jury." The Double Jeopardy Clause of the Fifth Amendment is a prohibition against being "twice put in jeopardy of life" for the same offense. Similarly, the Due Process Clause commands "due process of law" before an accused can be "deprived of life, liberty, or property." Thus, the explicit language of the Constitution affirmatively acknowledges the legal power to impose capital punishment; it does not expressly or by implication acknowledge the legal power to impose any of the various punishments that have been banned as cruel since 1791. Since the Eighth Amendment was adopted on the same day in 1791 as the Fifth Amendment, it hardly needs more to establish that the death penalty was not "cruel" in the constitutional sense at that time.

1972, Furman v. Georgia, 408 U.S. 380

In the 181 years since the enactment of the Eighth Amendment, not a single decision of this Court has cast the slightest shadow of a doubt on the constitutionality of capital punishment. In rejecting Eighth Amendment attacks on particular modes of execution, the Court has more than once implicitly denied that capital punishment is impermissibly "cruel" in the constitutional sense. Wilkerson v. Utah, 99 U.S. 130 (1879); Louisiana ex rel. Francis v. Resweber, 329 U.S. at 464. In [408 U.S. 381] re Kemmler, 136 U.S. 436 (1890) (dictum). It is only 14 years since Mr. Chief Justice Warren, speaking for four members of the Court, stated without equivocation:

1972, Furman v. Georgia, 408 U.S. 381

Whatever the arguments may be against capital punishment, both on moral grounds and in terms of accomplishing the purposes of punishment—and they are forceful—the death penalty has been employed throughout our history, and, in a day when it is still widely accepted, it cannot be said to violate the constitutional concept of cruelty.

1972, Furman v. Georgia, 408 U.S. 381

Trop v. Dulles, 356 U.S. at 99. It is only one year since Mr. Justice Black made his feelings clear on the constitutional issue:

1972, Furman v. Georgia, 408 U.S. 381

The Eighth Amendment forbids "cruel and unusual punishments." In my view, these words cannot be read to outlaw capital punishment, because that penalty was in common use and authorized by law here and in the countries from which our ancestors came at the time the Amendment was adopted. It is inconceivable to me that the framers intended to end capital punishment by the Amendment.

1972, Furman v. Georgia, 408 U.S. 381

McGautha v. California, 402 U.S. 183, 226 (1971) (separate opinion). By limiting its grants of certiorari, the Court has refused even to hear argument on the Eighth Amendment claim on two occasions in the last four years. Witherspoon v. Illinois, cert. granted, 389 U.S. 1035, rev'd, 391 U.S. 510 (1968); McGautha v. California, cert. granted, 398 U.S. 936 (1970), aff'd, 402 U.S. 183 (1971). In these cases, the Court confined its attention to the procedural aspects of capital trials, it being implicit that the punishment itself could be constitutionally imposed. Nonetheless, the Court has now been asked to hold that a punishment clearly permissible under the Constitution at the time of its adoption and accepted as such by every [408 U.S. 382] member of the Court until today, is suddenly so cruel as to be incompatible with the Eighth Amendment.

1972, Furman v. Georgia, 408 U.S. 382

Before recognizing such an instant evolution in the law, it seems fair to ask what factors have changed that capital punishment should now be "cruel" in the constitutional sense as it has not been in the past. It is apparent that there has been no change of constitutional significance in the nature of the punishment itself. Twentieth century modes of execution surely involve no greater physical suffering than the means employed at the time of the Eighth Amendment's adoption. And although a man awaiting execution must inevitably experience extraordinary mental anguish, 4 no one suggests that this anguish is materially different from that experienced by condemned men in 1791, even though protracted appellate review processes have greatly increased the waiting time on "death row." To be sure, the ordeal of the condemned man may be thought cruel in the sense that all suffering is thought cruel. But if the Constitution proscribed every punishment producing severe emotional stress, then capital punishment would clearly have been impermissible in 1791.

1972, Furman v. Georgia, 408 U.S. 382

However, the inquiry cannot end here. For reasons unrelated to any change in intrinsic cruelty, the Eighth Amendment prohibition cannot fairly be limited to those punishments thought excessively cruel and barbarous at the time of the adoption of the Eighth Amendment. A punishment is inordinately cruel, in the sense we must deal with it in these cases, chiefly as perceived by the society so characterizing it. The standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change. This notion is not [408 U.S. 383] new to Eighth Amendment adjudication. In Weems v. United States, 217 U.S. 349 (1910), the Court referred with apparent approval to the opinion of the commentators that

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[t]he clause of the Constitution…may be therefore progressive, and is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice.

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217 U.S. at 378. Mr. Chief Justice Warren, writing the plurality opinion in Trop v. Dulles, supra, stated, "The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." 356 U.S. at 101. Nevertheless, the Court, up to now, has never actually held that a punishment has become impermissibly cruel due to a shift in the weight of accepted social values; nor has the Court suggested judicially manageable criteria for measuring such a shift in moral consensus.

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The Court's quiescence in this area can be attributed to the fact that, in a democratic society, legislatures, not courts, are constituted to respond to the will and consequently the moral values of the people. For this reason, early commentators suggested that the "cruel and unusual punishments" clause was an unnecessary constitutional provision. 5 As acknowledged in the principal brief for petitioners,

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both in constitutional contemplation and in fact, it is the legislature, not the Court, which responds to public opinion and immediately reflects the society's standards of decency. 6 [408 U.S. 384] Accordingly, punishments such as branding and the cutting off of ears, which were commonplace at the time of the adoption of the Constitution, passed from the penal scene without judicial intervention because they became basically offensive to the people, and the legislatures responded to this sentiment.

1972, Furman v. Georgia, 408 U.S. 384

Beyond any doubt, if we were today called upon to review such punishments, we would find them excessively cruel because we could say with complete assurance that contemporary society universally rejects such bizarre penalties. However, this speculation on the Court's probable reaction to such punishments is not, of itself, significant. The critical fact is that this Court has never had to hold that a mode of punishment authorized by a domestic legislature was so cruel as to be fundamentally at odds with our basic notions of decency. Cf. Weems v. United States, supra. Judicial findings of impermissible cruelty have been limited, for the most part, to offensive punishments devised without specific authority by prison officials, not by legislatures. See, e.g., Jackson v. Bishop, 404 F.2d 571 (CA8 198); Wright v. McMann, 387 F.2d 519 (CA2 1967). The paucity of judicial decisions invalidating legislatively prescribed punishments is powerful evidence that, in this country, legislatures have, in fact, been responsive—albeit belatedly at times—to changes in social attitudes and moral values.

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I do not suggest that the validity of legislatively authorized punishments presents no justiciable issue under the Eighth Amendment, but, rather, that the primacy of the legislative role narrowly confines the scope of judicial inquiry. Whether or not provable, and whether or not true at all times, in a democracy, the legislative judgment is presumed to embody the basic standards of decency prevailing in the society. This presumption can only be negated by unambiguous and compelling evidence of legislative default. [408 U.S. 385]

III

1972, Furman v. Georgia, 408 U.S. 385

There are no obvious indications that capital punishment offends the conscience of society to such a degree that our traditional deference to the legislative judgment must be abandoned. It is not a punishment, such as burning at the stake, that everyone would ineffably find to be repugnant to all civilized standards. Nor is it a punishment so roundly condemned that only a few aberrant legislatures have retained it on the statute books. Capital punishment is authorized by statute in 40 States, the District of Columbia, and in the federal courts for the commission of certain crimes. 7 On four occasions in the last 11 years, Congress has added to the list of federal crimes punishable by death. 8 In looking for reliable indicia of contemporary attitude, none more trustworthy has been advanced.

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One conceivable source of evidence that legislatures have abdicated their essentially barometric role with respect to community values would be public opinion polls, of which there have been many in the past decade addressed to the question of capital punishment. Without assessing the reliability of such polls, or intimating that any judicial reliance could ever be placed on them, [408 U.S. 386] it need only be noted that the reported results have shown nothing approximating the universal condemnation of capital punishment that might lead us to suspect that the legislatures in general have lost touch with current social values. 9

1972, Furman v. Georgia, 408 U.S. 386

Counsel for petitioners rely on a different body of empirical evidence. They argue, in effect, that the number of cases in which the death penalty is imposed, as compared with the number of cases in which it is statutorily available, reflects a general revulsion toward the penalty that would lead to its repeal if only it were more generally and widely enforced. It cannot be gainsaid that, by the choice of juries—and sometimes judges 10—the death penalty is imposed in far fewer than half the cases in which it is available. 11 To go further and characterize [408 U.S. 387] the rate of imposition as "freakishly rare," as petitioners insist, is unwarranted hyperbole. And regardless of its characterization, the rate, of imposition does not impel the conclusion that capital punishment is now regarded as intolerably cruel or uncivilized.

1972, Furman v. Georgia, 408 U.S. 387

It is argued that, in those capital cases where juries have recommended mercy, they have given expression to civilized values and effectively renounced the legislative authorization for capital punishment. At the same time, it is argued that, where juries have made the awesome decision to send men to their deaths, they have acted arbitrarily and without sensitivity to prevailing standards of decency. This explanation for the infrequency of imposition of capital punishment is unsupported by known facts, and is inconsistent in principle with everything this Court has ever said about the functioning of juries in capital cases.

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In McGautha v. California, supra, decided only one year ago, the Court held that there was no mandate in the Due Process Clause of the Fourteenth Amendment that juries be given instructions as to when the death penalty should be imposed. After reviewing the autonomy that juries have traditionally exercised in capital cases and noting the practical difficulties of framing manageable instructions, this Court concluded that judicially articulated standards were not needed to insure a responsible decision as to penalty. Nothing in McGautha licenses capital juries to act arbitrarily or assumes that they have so acted in the past. On the contrary, the assumption underlying the McGautha ruling is that juries "will act with [408 U.S. 388] due regard for the consequences of their decision." 402 U.S. at 208.

1972, Furman v. Georgia, 408 U.S. 388

The responsibility of juries deciding capital cases in our system of justice was nowhere better described than in Witherspoon v. Illinois, supra:

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[A] jury that must choose between life imprisonment and capital punishment can do little more—and must do nothing less—than express the conscience of the community on the ultimate question of life or death.

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And one of the most important functions any jury can perform in making such a selection is to maintain a link between contemporary community values and the penal system—a link without which the determination of punishment could hardly reflect "the evolving standards of decency that mark the progress of a maturing society."

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391 U.S. at 519 and n. 15 (emphasis added). The selectivity of juries in imposing the punishment of death is properly viewed as a refinement on, rather than a repudiation of, the statutory authorization for that penalty. Legislatures prescribe the categories of crimes for which the death penalty should be available, and, acting as "the conscience of the community," juries are entrusted to determine in individual cases that the ultimate punishment is warranted. Juries are undoubtedly influenced in this judgment by myriad factors. The motive or lack of motive of the perpetrator, the degree of injury or suffering of the victim or victims, and the degree of brutality in the commission of the crime would seem to be prominent among these factors. Given the general awareness that death is no longer a routine punishment for the crimes for which it is made available, it is hardly surprising that juries have been increasingly meticulous in their imposition of the penalty. But to [408 U.S. 389] assume from the mere fact of relative infrequency that only a random assortment of pariahs are sentenced to death is to cast grave doubt on the basic integrity of our jury system.

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It would, of course, be unrealistic to assume that juries have been perfectly consistent in choosing the cases where the death penalty is to be imposed, for no human institution performs with perfect consistency. There are doubtless prisoners on death row who would not be there had they been tried before a different jury or in a different State. In this sense, their fate has been controlled by a fortuitous circumstance. However, this element of fortuity does not stand as an indictment either of the general functioning of juries in capital cases or of the integrity of jury decisions in individual cases. There is no empirical basis for concluding that juries have generally failed to discharge in good faith the responsibility described in Witherspoon—that of choosing between life and death in individual cases according to the dictates of community values. 12 [408 U.S. 390]

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The rate of imposition of death sentences falls far short of providing the requisite unambiguous evidence that the legislatures of 40 States and the Congress have turned their backs on current or evolving standards of decency in continuing to make the death penalty available. For, if selective imposition evidences a rejection of capital punishment in those cases where it is not imposed, it surely evidences a correlative affirmation of the penalty in those cases where it is imposed. Absent some clear indication that the continued imposition of the death penalty on a selective basis is violative of prevailing standards of civilized conduct, the Eighth Amendment cannot be said to interdict its use. [408 U.S. 391]

1972, Furman v. Georgia, 408 U.S. 391

In two of these cases we have been asked to rule on the narrower question whether capital punishment offends the Eighth Amendment when imposed as the punishment for the crime of forcible rape. 13 It is true that the death penalty is authorized for rape in fewer States than it is for murder, 14 and that, even in those States, it is applied more sparingly for rape than for murder. 15 But for the reasons aptly brought out in the opinion of MR. JUSTICE POWELL, post at 456-461, I do not believe these differences can be elevated to the level of an Eighth Amendment distinction. This blunt constitutional command cannot be sharpened to carve neat distinctions corresponding to the categories of crimes defined by the legislatures.

IV

1972, Furman v. Georgia, 408 U.S. 391

Capital punishment has also been attacked as violative of the Eighth Amendment on the ground that it is not needed to achieve legitimate penal aims, and is thus "unnecessarily cruel." As a pure policy matter, this approach has much to recommend it, but it seeks to give a dimension to the Eighth Amendment that it was never intended to have and promotes a line of inquiry that this Court has never before pursued.

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The Eighth Amendment, as I have noted, was included in the Bill of Rights to guard against the use of torturous and inhuman punishments, not those of limited efficacy. One of the few to speak out against the adoption [408 U.S. 392] of the Eighth Amendment asserted that it is often necessary to use cruel punishments to deter crimes. 16 But. among those favoring the Amendment, no sentiment was expressed that a punishment of extreme cruelty could ever be justified by expediency. The dominant theme of the Eighth Amendment debates was that the ends of the criminal laws cannot justify the use of measures of extreme cruelty to achieve them. Cf. Rochin v. California, 342 U.S. 165, 172-173 (1952).

1972, Furman v. Georgia, 408 U.S. 392

The apparent seed of the "unnecessary cruelty" argument is the following language, quoted earlier, found in Wilkerson v. Utah, supra:

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Difficulty would attend the effort to define with exactness the extent of the constitutional provision which provides that cruel and unusual punishments shall not be inflicted; but it is safe to affirm that punishments of torture…and all others in the same line of unnecessary cruelty, are forbidden by that amendment to the Constitution.

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99 U.S. at 135-136 (emphasis added). To lift the italicized phrase from the context of the Wilkerson opinion and now view it as a mandate for assessing the value of punishments in achieving the aims of penology is a gross distortion; nowhere are such aims even mentioned in the Wilkerson opinion. The only fair reading of this phrase is that punishments similar to torture in their extreme cruelty are prohibited by the Eighth Amendment. In Louisiana ex rel. Francis v. Resweber, 329 U.S. at 463, 464, the Court made reference to the Eighth Amendment's prohibition against the infliction of "unnecessary pain" in carrying out an execution. The context makes abundantly clear that the Court was disapproving the wanton infliction of physical [408 U.S. 393] pain, and once again not advising pragmatic analysis of punishments approved by legislatures. 17

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Apart from these isolated uses of the word "unnecessary," nothing in the cases suggests that it is for the courts to make a determination of the efficacy of punishments. The decision in Weems v. United States, supra, is not to the contrary. In Weems, the Court held that, for the crime of falsifying public documents, the punishment imposed under the Philippine Code of 15 years' imprisonment at hard labor under shackles, followed by perpetual surveillance, loss of voting rights, loss of the right to hold public office, and loss of right to change domicile freely, was violative of the Eighth Amendment. The case is generally regarded as holding that a punishment may be excessively cruel within the meaning of the Eighth Amendment because it is grossly out of proportion to the severity of the crime; 18 some view the decision of the Court primarily as [408 U.S. 394] a reaction to the mode of the punishment itself. 19 Under any characterization of the holding, it is readily apparent that the decision grew out of the Court's overwhelming abhorrence of the imposition of the particular penalty for the particular crime; it was making an essentially moral judgment, not a dispassionate assessment of the need for the penalty. The Court specifically disclaimed "the right to assert a judgment against that of the legislature of the expediency of the laws…. " 217 U.S. at 378. Thus, apart from the fact that the Court in Weems concerned itself with the crime committed, as well as the punishment imposed, the case marks no departure from the largely unarticulable standard of extreme cruelty. However intractable that standard may be, that is what the Eighth Amendment is all about. The constitutional provision is not addressed to social utility, and does not command that enlightened principles of penology always be followed.

1972, Furman v. Georgia, 408 U.S. 394

By pursuing the necessity approach, it becomes even more apparent that it involves matters outside the purview of the Eighth Amendment. Two of the several aims of punishment are generally associated with capital punishment—retribution and deterrence. It is argued that retribution can be discounted because that, after all, is what the Eighth Amendment seeks to eliminate. There is no authority suggesting that the Eighth Amendment was intended to purge the law of its retributive elements, and the Court has consistently assumed that retribution is a legitimate dimension of the punishment of crimes. See Williams v. New York, 337 U.S. 241, 248 (1949); United States v. Lovett, 328 U.S. 303, 324 (1946) (Frankfurter, J., concurring). Furthermore, responsible legal thinkers of widely varying [408 U.S. 395] persuasions have debated the sociological and philosophical aspects of the retribution question for generations, neither side being able to convince the other. 20 It would be reading a great deal into the Eighth Amendment to hold that the punishments authorized by legislatures cannot constitutionally reflect a retributive purpose.

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The less esoteric but no less controversial question is whether the death penalty acts as a superior deterrent. Those favoring abolition find no evidence that it does. 21 Those favoring retention start from the intuitive notion that capital punishment should act as the most effective deterrent, and note that there is no convincing evidence that it does not. 22 Escape from this empirical stalemate is sought by placing the burden of proof on the States and concluding that they have failed to demonstrate that capital punishment is a more effective deterrent than life imprisonment. Numerous justifications have been advanced for shifting the burden, and they [408 U.S. 396] are not without their rhetorical appeal. However, these arguments are not descended from established constitutional principles, but are born of the urge to bypass an unresolved factual question. 23 Comparative deterrence is not a matter that lends itself to precise measurement; to shift the burden to the States is to provide an illusory solution to an enormously complex problem. If it were proper to put the States to the test of demonstrating the deterrent value of capital punishment, we could just as well ask them to prove the need for life imprisonment or any other punishment. Yet I know of no convincing evidence that life imprisonment is a more effective deterrent than 20 years' imprisonment, or even that a $10 parking ticket is a more effective deterrent than a $5 parking ticket. In fact, there are some who go so far as to challenge the notion that any punishments deter crime. 24 If the States are unable to adduce convincing proof rebutting such assertions, does it then follow that all punishments are suspect as being "cruel and unusual" within the meaning of the Constitution? On the contrary, I submit that the questions raised by the necessity approach are beyond the pale of judicial inquiry under the Eighth Amendment.

V

1972, Furman v. Georgia, 408 U.S. 396

Today the Court has not ruled that capital punishment is per se violative of the Eighth Amendment, nor has it ruled that the punishment is barred for any particular class or classes of crimes. The substantially similar concurring opinions of MR. JUSTICE STEWART and MR. JUSTICE WHITE, which are necessary to support the judgment setting aside petitioners' sentences, stop [408 U.S. 397] short of reaching the ultimate question. The actual scope of the Court's ruling, which I take to be embodied in these concurring opinions, is not entirely clear. This much, however, seems apparent: if the legislatures are to continue to authorize capital punishment for some crimes, juries and judges can no longer be permitted to make the sentencing determination in the same manner they have in the past. 25 This approach—not urged in oral arguments or briefs—misconceives the nature of the constitutional command against "cruel and unusual punishments," disregards controlling case law, and demands a rigidity in capital cases which, if possible of achievement, cannot be regarded as a welcome change. Indeed the contrary seems to be the case.

1972, Furman v. Georgia, 408 U.S. 397

As I have earlier stated, the Eighth Amendment forbids the imposition of punishments that are so cruel and inhumane as to violate society's standards of civilized conduct. The Amendment does not prohibit all punishments the States are unable to prove necessary to deter or control crime. The Amendment is not concerned with the process by which a State determines that a particular punishment is to be imposed in a particular case. And the Amendment most assuredly does not speak to the power of legislatures to confer sentencing discretion on juries, rather than to fix all sentences by statute.

1972, Furman v. Georgia, 408 U.S. 397

The critical factor in the concurring opinions of both MR. JUSTICE STEWART and MR. JUSTICE WHITE is the infrequency with which the penalty is imposed. This factor is taken not as evidence of society's abhorrence [408 U.S. 398] of capital punishment—the inference that petitioners would have the Court draw—but as the earmark of a deteriorated system of sentencing. It is concluded that petitioners' sentences must be set aside not because the punishment is impermissibly cruel, but because juries and judges have failed to exercise their sentencing discretion in acceptable fashion.

1972, Furman v. Georgia, 408 U.S. 398

To be sure, there is a recitation cast in Eighth Amendment terms: petitioners' sentences are "cruel" because they exceed that which the legislatures have deemed necessary for all cases; 26 petitioners' sentences are "unusual" because they exceed that which is imposed in most cases. 27 This application of the words of the Eighth Amendment suggests that capital punishment can be made to satisfy Eighth Amendment values if its rate of imposition is somehow multiplied; it seemingly follows that the flexible sentencing system created by the legislatures, and carried out by juries and judges, has yielded more mercy than the Eighth Amendment can stand. The implications of this approach are mildly ironical. For example, by this measure of the Eighth Amendment, the elimination of death-qualified juries in Witherspoon v. Illinois, 391 U.S. 510 (1968), can only be seen in retrospect as a setback to "the evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 356 U.S. at 101.

1972, Furman v. Georgia, 408 U.S. 398

This novel formulation of Eighth Amendment principles—albeit necessary to satisfy the terms of our limited grant of certiorari—does not lie at the heart of these concurring opinions. The decisive grievance of the opinions—not translated into Eighth Amendment terms—is that the present system of discretionary sentencing [408 U.S. 399] in capital cases has failed to produce evenhanded justice; the problem is not that too few have been sentenced to die, but that the selection process has followed no rational pattern. 28 This claim of arbitrariness is not only lacking in empirical support, 29 but also it manifestly fails to establish that the death penalty is a "cruel and unusual" punishment. The Eighth Amendment was included in the Bill of Rights to assure that certain types of punishments would never be imposed, not to channelize the sentencing process. The approach of these concurring opinions has no antecedent in the Eighth Amendment cases. It is essentially and exclusively a procedural due process argument.

1972, Furman v. Georgia, 408 U.S. 399

This ground of decision is plainly foreclosed, as well as misplaced. Only one year ago, in McGautha v. California, the Court upheld the prevailing system of sentencing in capital cases. The Court concluded:

1972, Furman v. Georgia, 408 U.S. 399

In light of history, experience, and the present limitations of human knowledge, we find it quite impossible to say that committing to the untrammeled discretion of the jury the power to pronounce life or death in capital cases is offensive to anything in the Constitution.

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402 U.S. at 207. In reaching this decision, the Court had the benefit of extensive briefing, full oral argument, and six months of careful deliberations. The Court's labors are documented by 130 pages of opinions in the United States Reports. All of the arguments and factual contentions accepted [408 U.S. 400] in the concurring opinions today were considered and rejected by the Court one year ago. McGautha was an exceedingly difficult case, and reasonable men could fairly disagree as to the result. But the Court entered its judgment, and if stare decisis means anything, that decision should be regarded as a controlling pronouncement of law.

1972, Furman v. Georgia, 408 U.S. 400

Although the Court's decision in McGautha was technically confined to the dictates of the Due Process Clause of the Fourteenth Amendment, rather than the Eighth Amendment as made applicable to the States through the Due Process Clause of the Fourteenth Amendment, it would be disingenuous to suggest that today's ruling has done anything less than overrule McGautha in the guise of an Eighth Amendment adjudication. It may be thought appropriate to subordinate principles of stare decisis where the subject is as sensitive as capital punishment and the stakes are so high, but these external considerations were no less weighty last year. This pattern of decisionmaking will do little to inspire confidence in the stability of the law.

1972, Furman v. Georgia, 408 U.S. 400

While I would not undertake to make a definitive statement as to the parameters of the Court's ruling, it is clear that, if state legislatures and the Congress wish to maintain the availability of capital punishment, significant statutory changes will have to be made. Since the two pivotal concurring opinions turn on the assumption that the punishment of death is now meted out in a random and unpredictable manner, legislative bodies may seek to bring their laws into compliance with the Court's ruling by providing standards for juries and judges to follow in determining the sentence in capital cases or by more narrowly defining the crimes for which the penalty is to be imposed. 30 If such standards can be devised or [408 U.S. 401] the crimes more meticulously defined, the result cannot be detrimental. However, Mr. Justice Harlan's opinion for the Court in McGautha convincingly demonstrates that all past efforts "to identify before the fact" the cases in which the penalty is to be imposed have been "uniformly unsuccessful." 402 U.S. at 197. One problem is that

1972, Furman v. Georgia, 408 U.S. 401

the factors which determine whether the sentence of death is the appropriate penalty in particular cases are too complex to be compressed within the limits of a simple formula….

1972, Furman v. Georgia, 408 U.S. 401

Report of Royal Commission on Capital Punishment, 1949-1953, Cmd. 8932, ¶ 498, p. 174 (1953). As the Court stated in McGautha,

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[t]he infinite variety of cases and facets to each case would make general standards either meaningless "boilerplate" or a statement of the obvious that no jury would need.

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402 U.S. at 208. But even assuming that suitable guidelines can be established, there is no assurance that sentencing patterns will change so long as juries are possessed of the power to determine the sentence or to bring in a verdict of guilt on a charge carrying a lesser sentence; juries have not been inhibited in the exercise of these powers in the past. Thus, unless the Court in McGautha misjudged the experience of history, there is little reason to believe that sentencing standards in any form will substantially alter the discretionary character of the prevailing system of sentencing in capital cases. That system may fall short of perfection, but it is yet to be shown that a different system would produce more satisfactory results.

1972, Furman v. Georgia, 408 U.S. 401

Real change could clearly be brought about if legislatures provided mandatory death sentences in such a way as to deny juries the opportunity to bring in a verdict on a lesser charge; under such a system, the death sentence could only be avoided by a verdict of acquittal. If this is the only alternative that the legislatures can safely pursue under today's ruling, I would have preferred that the Court opt for total abolition. [408 U.S. 402]

1972, Furman v. Georgia, 408 U.S. 402

It seems remarkable to me that with our basic trust in lay jurors as the keystone in our system of criminal justice, it should now be suggested that we take the most sensitive and important of all decisions away from them. I could more easily be persuaded that mandatory sentences of death, without the intervening and ameliorating impact of lay jurors, are so arbitrary and doctrinaire that they violate the Constitution. The very infrequency of death penalties imposed by jurors attests their cautious and discriminating reservation of that penalty for the most extreme cases. I had thought that nothing was clearer in history, as we noted in McGautha one year ago, than the American abhorrence of "the common law rule imposing a mandatory death sentence on all convicted murderers." 402 U.S. at 198. As the concurring opinion of MR. JUSTICE MARSHALL shows, ante at 339, the 19th century movement away from mandatory death sentences marked an enlightened introduction of flexibility into the sentencing process. It recognized that individual culpability is not always measured by the category of the crime committed. This change in sentencing practice was greeted by the Court as a humanizing development. See Winston v. United States, 172 U.S. 303 (1899); cf. Calton v. Utah, 130 U.S. 83 (1889). See also Andres v. United States, 333 U.S. 740, 753 (1948) (Frankfurter, J., concurring). I do not see how this history can be ignored, and how it can be suggested that the Eighth Amendment demands the elimination of the most sensitive feature of the sentencing system.

1972, Furman v. Georgia, 408 U.S. 402

As a general matter, the evolution of penal concepts in this country has not been marked by great progress, nor have the results up to now been crowned with significant success. If anywhere in the whole spectrum of criminal justice fresh ideas deserve sober analysis, the sentencing and correctional area ranks high on the list. But it has been widely accepted that mandatory sentences for [408 U.S. 403] crimes do not best serve the ends of the criminal justice system. Now, after the long process of drawing away from the blind imposition of uniform sentences for every person convicted of a particular offense, we are confronted with an argument perhaps implying that only the legislatures may determine that a sentence of death is appropriate, without the intervening evaluation of jurors or judges. This approach threatens to turn back the progress of penal reform, which has moved until recently at too slow a rate to absorb significant setbacks.

VI

1972, Furman v. Georgia, 408 U.S. 403

Since there is no majority of the Court on the ultimate issue presented in these cases, the future of capital punishment in this country has been left in an uncertain limbo. Rather than providing a final and unambiguous answer on the basic constitutional question, the collective impact of the majority's ruling is to demand an undetermined measure of change from the various state legislatures and the Congress. While I cannot endorse the process of decisionmaking that has yielded today's result and the restraints that that result imposes on legislative action, I am not altogether displeased that legislative bodies have been given the opportunity, and indeed unavoidable responsibility, to make a thorough reevaluation of the entire subject of capital punishment. If today's opinions demonstrate nothing else, they starkly show that this is an area where legislatures can act far more effectively than courts.

1972, Furman v. Georgia, 408 U.S. 403

The legislatures are free to eliminate capital punishment for specific crimes or to carve out limited exceptions to a general abolition of the penalty, without adherence to the conceptual strictures of the Eighth Amendment. The legislatures can and should make an assessment of the deterrent influence of capital punishment, both generally and as affecting the commission of specific types of [408 U.S. 404] crimes. If legislatures come to doubt the efficacy of capital punishment, they can abolish it, either completely or on a selective basis. If new evidence persuades them that they have acted unwisely, they can reverse their field and reinstate the penalty to the extent it is thought warranted. An Eighth Amendment ruling by judges cannot be made with such flexibility or discriminating precision.

1972, Furman v. Georgia, 408 U.S. 404

The world-wide trend toward limiting the use of capital punishment, a phenomenon to which we have been urged to give great weight, hardly points the way to a judicial solution in this country under a written Constitution. Rather, the change has generally come about through legislative action, often on a trial basis and with the retention of the penalty for certain limited classes of crimes. 31 Virtually nowhere has change been wrought by so crude a tool as the Eighth Amendment. The complete and unconditional abolition of capital punishment in this country by judicial fiat would have undermined the careful progress of the legislative trend and foreclosed further inquiry on many as yet unanswered questions in this area.

1972, Furman v. Georgia, 408 U.S. 404

Quite apart from the limitations of the Eighth Amendment itself, the preference for legislative action is justified by the inability of the courts to participate in the [408 U.S. 405] debate at the level where the controversy is focused. The case against capital punishment is not the product of legal dialectic, but rests primarily on factual claims, the truth of which cannot be tested by conventional judicial processes. The five opinions in support of the judgments differ in many respects, but they share a willingness to make sweeping factual assertions, unsupported by empirical data, concerning the manner of imposition and effectiveness of capital punishment in this country. Legislatures will have the opportunity to make a more penetrating study of these claims with the familiar and effective tools available to them as they are not to us.

1972, Furman v. Georgia, 408 U.S. 405

The highest judicial duty is to recognize the limits on judicial power and to permit the democratic processes to deal with matters falling outside of those limits. The "hydraulic pressure[s]" 32 that Holmes spoke of as being generated by cases of great import have propelled the Court to go beyond the limits of judicial power, while fortunately leaving some room for legislative judgment.

BLACKMUN, J., dissenting

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MR. JUSTICE BLACKMUN, dissenting.

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I join the respective opinions of THE CHIEF JUSTICE, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST, and add only the following, somewhat personal, comments.

1972, Furman v. Georgia, 408 U.S. 405

1. Cases such as these provide for me an excruciating agony of the spirit. I yield to no one in the depth of my distaste, antipathy, and, indeed, abhorrence, for the death penalty, with all its aspects of physical distress and fear and of moral judgment exercised by finite minds. That distaste is buttressed by a belief that capital punishment serves no useful purpose that can be demonstrated. For me, it violates childhood's training and life's experiences, and is not compatible [408 U.S. 406] with the philosophical convictions I have been able to develop. It is antagonistic to any sense of "reverence for life." Were I a legislator, I would vote against the death penalty for the policy reasons argued by counsel for the respective petitioners and expressed and adopted in the several opinions filed by the Justices who vote to reverse these judgments.

1972, Furman v. Georgia, 408 U.S. 406

2. Having lived for many years in a State that does not have the death penalty, 1 that effectively abolished it in 1911, 2 and that carried out its last execution on February 13, 1906, 3 capital punishment had never been a part of life for me. In my State, it just did not exist. So far as I can determine, the State, purely from a statistical deterrence point of view, was neither the worse nor the better for its abolition, for, as the concurring opinions observe, the statistics prove little, if anything. But the State and its citizens accepted the fact that the death penalty was not to be in the arsenal of possible punishments for any crime.

1972, Furman v. Georgia, 408 U.S. 406

3. I, perhaps alone among the present members of the Court, am on judicial record as to this. As a member of the United States Court of Appeals, I first struggled silently with the issue of capital punishment in Feguer v. United States, 302 F.2d 214 (CA8 1962), cert. denied, 371 U.S. 872 (1962). The defendant in that case may have been one of the last to be executed under federal auspices. I struggled again with the issue, and once more refrained from comment, in my writing for an en banc court in Pope v. United States, 372 F.2d 710 (CA8 1967), vacated (upon acknowledgment by the Solicitor General of error revealed by the subsequently decided United States v. Jackson, 390 U.S. 570 (1968)) and remanded, 392 U.S. 651 (1968). Finally, in Maxwell [408 U.S. 407] v. Bishop, 398 F.2d 138 (CA8 1968), vacated and remanded, sua sponte, by the Court on grounds not raised below, 398 U.S. 262 (1970), I revealed, solitarily and not for the panel, my distress and concern. 398 F.2d at 153-154. 4 And in Jackson v. Bishop, 404 F.2d 571 (CA8 1968), I had no hesitancy in writing a panel opinion that held the use of the strap by trusties upon fellow Arkansas prisoners to be a violation of the Eighth Amendment. That, however, was in-prison punishment imposed by inmate-foremen.

1972, Furman v. Georgia, 408 U.S. 407

4. The several concurring opinions acknowledge, as they must, that, until today, capital punishment was accepted and assumed as not unconstitutional per se under the Eighth Amendment or the Fourteenth Amendment. This is either the flat or the implicit holding of a unanimous Court in Wilkerson v. Utah, 99 U.S. 130, 134-135, in 1879; of a unanimous Court in In re Kemmler, 136 U.S. 436, 447, in 1890; of the Court in Weems v. United States, 217 U.S. 349, in 1910; of all those members of the Court, a majority, who addressed the issue in Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 463-464, 471-472, in 1947; of Mr. Chief Justice Warren, speaking for himself and three others (Justices Black, DOUGLAS, [408 U.S. 408] and Whittaker) in Trop v. Dulles, 356 U.S. 86, 99, in 1958; 5 in the denial of certiorari in Rudolph v. Alabama, 375 U.S. 889, in 1963 (where, however, JUSTICES DOUGLAS, BRENNAN, and Goldberg would have heard argument with respect to the imposition of the ultimate penalty on a convicted rapist who had "neither taken nor endangered human life"); and of Mr. Justice Black in McGautha v. California, 402 U.S. 183, 226, decided only last Term on May 3, 1971. 6

1972, Furman v. Georgia, 408 U.S. 408

Suddenly, however, the course of decision is now the opposite way, with the Court evidently persuaded that somehow the passage of time has taken us to a place of greater maturity and outlook. The argument, plausible and high-sounding as it may be, is not persuasive, for it is only one year since McGautha, only eight and one-half years since Rudolph, 14 years since Trop, and 25 years since Francis, and we have been presented with nothing that demonstrates a significant movement of any kind in these brief periods. The Court has just decided that it is time to strike down the death penalty. There would have been as much reason to do this [408 U.S. 409] when any of the cited cass were decided. But the Court refrained from that action on each of those occasions.

1972, Furman v. Georgia, 408 U.S. 409

The Court has recognized, and I certainly subscribe to the proposition, that the Cruel and Unusual Punishments Clause "may acquire meaning as public opinion becomes enlightened by a humane justice." Weems v. United States, 217 U.S. at 378. And Mr. Chief Justice Warren, for a plurality of the Court, referred to "the evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 356 U.S. at 101. Mr. Jefferson expressed the same thought well. 7 [408 U.S. 410]

1972, Furman v. Georgia, 408 U.S. 410

My problem, however, as I have indicated, is the suddenness of the Court's perception of progress in the human attitude since decisions of only a short while ago.

1972, Furman v. Georgia, 408 U.S. 410

5. To reverse the judgments in these cases is, of course, the easy choice. It is easier to strike the balance in favor of life and against death. It is comforting to relax in the thoughts perhaps the rationalizations—that this is the compassionate decision for a maturing society; that this is the moral and the "right" thing to do; that thereby we convince ourselves that we are moving down the road toward human decency; that we value life even though that life has taken another or others or has grievously scarred another or others and their families; and that we are less barbaric than we were in 1879, or in 1890, or in 1910, or in 1947, or in 1958, or in 1963, or a year ago, in 1971, when Wilkerson, Kemmler, Weems, Francis, Trop, Rudolph, and McGautha were, respectively, decided.

1972, Furman v. Georgia, 408 U.S. 410

This, for me, is good argument, and it makes some sense. But it is good argument and it makes sense only in a legislative and executive way, and not as a judicial expedient. As I have said above, were I a legislator, I would do all I could to sponsor and to vote for legislation abolishing the death penalty. And were I the chief executive of a sovereign State, I would be sorely tempted to exercise executive clemency as Governor Rockefeller of Arkansas did recently just before he departed from office. There—on the Legislative Branch of the State or Federal Government, and secondarily, on the Executive Branch—is where the authority and responsibility for this kind of action lies. The authority should not be taken over by the judiciary in the modern guise of an Eighth Amendment issue.

1972, Furman v. Georgia, 408 U.S. 410

I do not sit on these cases, however, as a legislator, responsive, at least in part, to the will of constituents. [408 U.S. 411] Our task here, as must so frequently be emphasized and re-emphasized, is to pass upon the constitutionality of legislation that has been enacted and that is challenged. This is the sole task for judges. We should not allow our personal preferences as to the wisdom of legislative and congressional action, or our distaste for such action, to guide our judicial decision in cases such as these. The temptations to cross that policy line are very great. In fact, as today's decision reveals, they are almost irresistible.

1972, Furman v. Georgia, 408 U.S. 411

6. The Court, in my view, is somewhat propelled toward its result by the interim decision of the California Supreme Court, with one justice dissenting, that the death penalty is violative of that State's constitution. People v. Anderson, 6 Cal. 3d 628, 493 P.2d 880 (Feb. 18, 1972). So far as I am aware, that was the first time the death penalty in its entirety has been nullified by judicial decision. Cf. Ralph v. Warden, 438 F.2d 786, 793 (CA4 1970), cert. denied, post, p. 942. California's moral problem was a profound one, for more prisoners were on death row there than in any other State. California, of course, has the right to construe its constitution as it will. Its construction, however, is hardly a precedent for federal adjudication.

1972, Furman v. Georgia, 408 U.S. 411

7. I trust the Court fully appreciates what it is doing when it decides these cases the way it does today. Not only are the capital punishment laws of 39 States and the District of Columbia struck down, but also all those provisions of the federal statutory structure that permit the death penalty apparently are voided. No longer is capital punishment possible, I suspect, for, among other crimes, treason, 18 U.S.C. § 2381; or assassination of the President, the Vice President, or those who stand elected to those positions, 18 U.S.C. § 1751; or assassination of a Member or member-elect of Congress, 18 U.S.C. § 351; or espionage, 18 U.S.C. § 794; [408 U.S. 412] or rape within the special maritime jurisdiction, 18 U.S.C. § 2031; or aircraft or motor vehicle destruction where death occurs, 18 U.S.C. § 34; or explosives offenses where death results, 18 U.S.C. §§ 844 (d) and (f); or train wrecking, 18 U.S.C. § 1992; or aircraft piracy, 49 U.S.C. § 1472(i). Also in jeopardy, perhaps, are the death penalty provisions in various Articles of the Uniform Code of Military Justice. 10 U.S.C. §§ 885, 890, 894, 899, 901, 904, 906, 913, 918, and 920. All these seem now to be discarded without a passing reference to the reasons, or the circumstances, that prompted their enactment, some very recent, and their retention in the face of efforts to repeal them.

1972, Furman v. Georgia, 408 U.S. 412

8. It is of passing interest to note a few voting facts with respect to recent federal death penalty legislation:

1972, Furman v. Georgia, 408 U.S. 412

A. The aircraft piracy statute, 49 U.S.C. § 1472(i), was enacted September 5, 1961. The Senate vote on August 10 was 92-0. It was announced that Senators Chavez, Fulbright, Neuberger, and Symington were absent, but that, if present, all four would vote yea. It was also announced, on the other side of the aisle, that Senator Butler was ill and that Senators Beall, Carlson, and Morton were absent or detained, but that those four, if present, would vote in the affirmative. These announcements, therefore, indicate that the true vote was 100-0. 107 Cong.Rec. 15440. The House passed the bill without recorded vote. 107 Cong.Rec. 16849.

1972, Furman v. Georgia, 408 U.S. 412

B. The presidential assassination statute, 18 U.S.C. § 1751, was approved August 28, 1965, without recorded votes. 111 Cong.Rec. 14103, 18026, and 20239.

1972, Furman v. Georgia, 408 U.S. 412

C. The Omnibus Crime Control Act of 1970 was approved January 2, 1971. Title IV thereof added the congressional assassination statute that is now 18 U.S.C. § 351. The recorded House vote on October 7, 1970, was 341-26, with 63 not voting and 62 of those paired. 116 Cong.Rec. 35363-35364. The Senate vote on October 8 [408 U.S. 413] was 59-0, with 41 not voting, but with 21 of these announced as favoring the bill. 116 Cong.Rec. 35743. Final votes after conference were not recorded. 116 Cong.Rec. 42150, 42199.

1972, Furman v. Georgia, 408 U.S. 413

It is impossible for me to believe that the many lawyer-members of the House and Senate—including, I might add, outstanding leaders and prominent candidates for higher office—were callously unaware and insensitive of constitutional overtones in legislation of this type. The answer, of course, is that, in 1961, in 1965, and in 1970, these elected representatives of the people—far more conscious of the temper of the times, of the maturing of society, and of the contemporary demands for man's dignity than are we who sit cloistered on this Court—took it as settled that the death penalty then, as it always had been, was not, in itself, unconstitutional. Some of those Members of Congress, I suspect, will be surprised at this Court's giant stride today.

1972, Furman v. Georgia, 408 U.S. 413

9. If the reservations expressed by my Brother STEWART (which, as I read his opinion, my Brother WHITE shares) were to command support, namely, that capital punishment may not be unconstitutional so long as it be mandatorily imposed, the result, I fear, will be that statutes struck down today will be reenacted by state legislatures to prescribe the death penalty for specified crimes without any alternative for the imposition of a lesser punishment in the discretion of the judge or jury, as the case may be. This approach, it seems to me, encourages legislation that is regressive and of an antique mold, for it eliminates the element of mercy in the imposition of punishment. I thought we had passed beyond that point in our criminology long ago.

1972, Furman v. Georgia, 408 U.S. 413

10. It is not without interest, also, to note that, although the several concurring opinions acknowledge the heinous and atrocious character of the offenses committed by the petitioners, none of those opinions makes [408 U.S. 414] reference to the misery the petitioners' crimes occasioned to the victims, to the families of the victims, and to the communities where the offenses took place. The arguments for the respective petitioners, particularly the oral arguments, were similarly and curiously devoid of reference to the victims. There is risk, of course, in a comment such as this, for it opens one to the charge of emphasizing the retributive. But see Williams v. New York, 337 U.S. 241, 248 (1949). Nevertheless, these cases are here because offenses to innocent victims were perpetrated. This fact, and the terror that occasioned it, and the fear that stalks the streets of many of our cities today perhaps deserve not to be entirely overlooked. Let us hope that, with the Court's decision, the terror imposed will be forgotten by those upon whom it was visited, and that our society will reap the hoped-for benefits of magnanimity.

1972, Furman v. Georgia, 408 U.S. 414

Although personally I may rejoice at the Court's result, I find it difficult to accept or to justify as a matter of history, of law, or of constitutional pronouncement. I fear the Court has overstepped. It has sought and has achieved an end.

POWELL, J., dissenting

1972, Furman v. Georgia, 408 U.S. 414

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN, and MR. JUSTICE REHNQUIST join, dissenting.

1972, Furman v. Georgia, 408 U.S. 414

The Court granted certiorari in these cases to consider whether the death penalty is any longer a permissible form of punishment. 403 U.S. 952 (1971). It is the judgment of five Justices that the death penalty, as customarily prescribed and implemented in this country today, offends the constitutional prohibition against cruel and unusual punishments. The reasons for that judgment are stated in five separate opinions, expressing as many separate rationales. In my view, none of these opinions provides a constitutionally adequate foundation for the Court's decision. [408 U.S. 415]

1972, Furman v. Georgia, 408 U.S. 415

MR. JUSTICE DOUGLAS concludes that capital punishment is incompatible with notions of "equal protection" that he finds to be "implicit" in the Eighth Amendment. Ante at 257. MR. JUSTICE BRENNAN bases his judgment primarily on the thesis that the penalty "does not comport with human dignity." Ante at 270. MR. JUSTICE STEWART concludes that the penalty is applied in a "wanton" and "freakish" manner. Ante at 310. For MR. JUSTICE WHITE, it is the "infrequency" with which the penalty is imposed that renders its use unconstitutional. Ante at 313. MR. JUSTICE MARSHALL finds that capital punishment is an impermissible form of punishment because it is "morally unacceptable" and "excessive." Ante at 360, 358.

1972, Furman v. Georgia, 408 U.S. 415

Although the central theme of petitioners' presentations in these cases is that the imposition of the death penalty is per se unconstitutional, only two of today's opinions explicitly conclude that so sweeping a determination is mandated by the Constitution. Both MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL call for the abolition of all existing state and federal capital punishment statutes. They intimate as well that no capital statute could be devised in the future that might comport with the Eighth Amendment. While the practical consequences of the other three opinions are less certain, they at least do not purport to render impermissible every possible statutory scheme for the use of capital punishment that legislatures might hereafter devise. 1 Insofar as these latter opinions fail, at least explicitly, [408 U.S. 416] to go as far as petitioners' contentions would carry them, their reservations are attributable to a willingness to accept only a portion of petitioners' thesis. For the reasons cogently set out in the CHIEF JUSTICE's dissenting opinion (ante at 396-403), and for reasons stated elsewhere in this opinion, I find my Brothers' "less than absolute abolition" judgments unpersuasive. Because those judgments are, for me, not dispositive, I shall focus primarily on the broader ground upon which the petitions in these cases are premised. The foundations of my disagreement with that broader thesis are equally applicable to each of the concurring opinions. I will, therefore, not endeavor to treat each one separately. Nor will I attempt to predict what forms of capital statutes, if any, may avoid condemnation in the future under the variety of views expressed by the collective majority today. That difficult task, not performed in any of the controlling opinions, must go unanswered until other cases presenting these more limited inquiries arise.

1972, Furman v. Georgia, 408 U.S. 416

Whatever uncertainties may hereafter surface, several of the consequences of today's decision are unmistakably clear. The decision is plainly one of the greatest importance. [408 U.S. 417] The Court's judgment removes the death sentences previously imposed on some 600 persons awaiting punishment in state and federal prisons throughout the country. At least for the present, it also bars the States and the Federal Government from seeking sentences of death for defendants awaiting trial on charges for which capital punishment was heretofore a potential alternative. The happy event for these countable few constitutes, however, only the most visible consequence of this decision. Less measurable, but certainly of no less significance, is the shattering effect this collection of views has on the root principles of stare decisis, federalism, judicial restraint, and—most importantly—separation of powers.

1972, Furman v. Georgia, 408 U.S. 417

The Court rejects as not decisive the clearest evidence that the Framers of the Constitution and the authors of the Fourteenth Amendment believed that those documents posed no barrier to the death penalty. The Court also brushes aside an unbroken line of precedent reaffirming the heretofore virtually unquestioned constitutionality of capital punishment. Because of the pervasiveness of the constitutional ruling sought by petitioners, and accepted in varying degrees by five members of the Court, today's departure from established precedent invalidates a staggering number of state and federal laws. The capital punishment laws of no less than 39 States 2 and the District of Columbia are nullified. In addition, numerous provisions of the Criminal Code of the United States and of the Uniform Code of Military [408 U.S. 418] Justice also are voided. The Court's judgment not only wipes out laws presently in existence, but denies to Congress and to the legislatures of the 50 States the power to adopt new policies contrary to the policy selected by the Court. Indeed, it is the view of two of my Brothers that the people of each State must be denied the prerogative to amend their constitutions to provide for capital punishment even selectively for the most heinous crime.

1972, Furman v. Georgia, 408 U.S. 418

In terms of the constitutional role of this Court, the impact of the majority's ruling is all the greater because the decision encroaches upon an area squarely within the historic prerogative of the legislative branch—both state and federal—to protect the citizenry through the designation of penalties for prohibitable conduct. It is the very sort of judgment that the legislative branch is competent to make, and for which the judiciary is ill-equipped. Throughout our history, Justices of this Court have emphasized the gravity of decisions invalidating legislative judgments, admonishing the nine men who sit on this bench of the duty of self-restraint, especially when called upon to apply the expansive due process and cruel and unusual punishment rubrics. I can recall no case in which, in the name of deciding constitutional questions, this Court has subordinated national and local democratic processes to such an extent. Before turning to address the thesis of petitioners' case against capital punishment—a thesis that has proved, at least in large measure, persuasive to a majority of this Court—I first will set out the principles that counsel against the Court's sweeping decision.

I

1972, Furman v. Georgia, 408 U.S. 418

The Constitution itself poses the first obstacle to petitioners' argument that capital punishment is per se unconstitutional. The relevant provisions are the Fifth, [408 U.S. 419] Eighth, and Fourteenth Amendments. The first of these provides in part:

1972, Furman v. Georgia, 408 U.S. 419

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury…; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;…nor be deprived of life, liberty, or property, without due process of law….

1972, Furman v. Georgia, 408 U.S. 419

Thus, the Federal Government's power was restricted in order to guarantee those charged with crimes that the prosecution would have only a single opportunity to seek imposition of the death penalty, and that the death penalty could not be exacted without due process and a grand jury indictment. The Fourteenth Amendment, adopted about 77 years after the Bill of Rights, imposed the due process limitation of the Fifth Amendment upon the States' power to authorize capital punishment.

1972, Furman v. Georgia, 408 U.S. 419

The Eighth Amendment, adopted at the same time as the Fifth, proscribes "cruel and unusual" punishments. In an effort to discern its meaning, much has been written about its history in the opinions of this Court and elsewhere. 3 That history need not be restated here since, whatever punishments the Framers of the Constitution may have intended to prohibit under the "cruel and unusual" language, there cannot be the slightest doubt that they intended no absolute bar on the Government's authority to impose the death penalty. McGautha v. [408 U.S. 420] California, 402 U.S. 183, 226 (1971) (separate opinion of Black, J.). As much is made clear by the three references to capital punishment in the Fifth Amendment. Indeed, the same body that proposed the Eighth Amendment also provided, in the first Crimes Act of 1790, for the death penalty for a number of offenses. 1 Stat. 112.

1972, Furman v. Georgia, 408 U.S. 420

Of course, the specific prohibitions within the Bill of Rights are limitations on the exercise of power; they are not an affirmative grant of power to the Government. I, therefore, do not read the several references to capital punishment as foreclosing this Court from considering whether the death penalty in a particular case offends the Eighth and Fourteenth Amendments. Nor are "cruel and unusual punishments" and "due process of law" static concepts whose meaning and scope were sealed at the time of their writing. They were designed to be dynamic and to gain meaning through application to specific circumstances, many of which were not contemplated by their authors. While flexibility in the application of these broad concepts is one of the hallmarks of our system of government, the Court is not free to read into the Constitution a meaning that is plainly at variance with its language. Both the language of the Fifth and Fourteenth Amendments and the history of the Eighth Amendment confirm beyond doubt that the death penalty was considered to be a constitutionally permissible punishment. It is, however, within the historic process of constitutional adjudication to challenge the imposition of the death penalty in some barbaric manner or as a penalty wholly disproportionate to a particular criminal act. And in making such a judgment in a case before it, a court may consider contemporary standards to the extent they are relevant. While this weighing of a punishment against the Eighth Amendment standard on a case-by-case basis is consonant with history and precedent, it is not what [408 U.S. 421] petitioners demand in these cases. They seek nothing less than the total abolition of capital punishment by judicial fiat.

II

1972, Furman v. Georgia, 408 U.S. 421

Petitioners assert that the constitutional issue is an open one uncontrolled by prior decisions of this Court. They view the several cases decided under the Eighth Amendment as assuming the constitutionality of the death penalty without focusing squarely upon the issue. I do not believe that the case law can be so easily cast aside. The Court on numerous occasions has both assumed and asserted the constitutionality of capital punishment. In several cases, that assumption provided a necessary foundation for the decision, as the issue was whether a particular means of carrying out a capital sentence would be allowed to stand. Each of those decisions necessarily was premised on the assumption that some method of exacting the penalty was permissible.

1972, Furman v. Georgia, 408 U.S. 421

The issue in the first capital case in which the Eighth Amendment was invoked, Wilkerson v. Utah, 99 U.S. 130 (1879), was whether carrying out a death sentence by public shooting was cruel and unusual punishment. A unanimous Court upheld that form of execution, noting first that the punishment itself, as distinguished from the mode of its infliction, was "not pretended by the counsel of the prisoner" (id. at 137) to be cruel and unusual. The Court went on to hold that:

1972, Furman v. Georgia, 408 U.S. 421

Cruel and unusual punishments are forbidden by the Constitution, but the authorities…are quite sufficient to show that the punishment of shooting as a mode of executing the death penalty for the crime of murder in the first degree is not included in that category….

1972, Furman v. Georgia, 408 U.S. 421

Id. at 134-135.

1972, Furman v. Georgia, 408 U.S. 421

Eleven years later, in In re Kemmler, 136 U.S. 436 (1890), the Court again faced a question involving the [408 U.S. 422] method of carrying out a capital sentence. On review of a denial of habeas corpus relief by the Supreme Court of New York, this Court was called on to decide whether electrocution, which only very recently had been adopted by the New York Legislature as a means of execution, was impermissibly cruel and unusual in violation of the Fourteenth Amendment. 4 Chief Justice Fuller, speaking for the entire Court, ruled in favor of the State. Electrocution had been selected by the legislature, after careful investigation, as "the most humane and practical method known to modern science of carrying into effect the sentence of death." Id. at 444. The Court drew a clear line between the penalty itself and the mode of its execution:

1972, Furman v. Georgia, 408 U.S. 422

Punishments are cruel when they involve torture or a lingering death; but the punishment of death [408 U.S. 423] is not cruel, within the meaning of that word as used in the Constitution. It implies there something inhuman and barbarous, something more than the mere extinguishment of life.

1972, Furman v. Georgia, 408 U.S. 423

Id. at 447.

1972, Furman v. Georgia, 408 U.S. 423

More than 50 years later, in Louisiana ex rel. Francis v. Resweber, 329 U.S. 459 (1947), the Court considered a case in which, due to a mechanical malfunction, Louisiana's initial attempt to electrocute a convicted murderer had failed. Petitioner sought to block a second attempt to execute the sentence on the ground that to do so would constitute cruel and unusual punishment. In the plurality opinion written by Mr. Justice Reed, concurred in by Chief Justice Vinson and Justices Black and Jackson, relief was denied. Again the Court focused on the manner of execution, never questioning the propriety of the death sentence itself.

1972, Furman v. Georgia, 408 U.S. 423

The case before us does not call for an examination into any punishments except that of death…. The traditional humanity of modern Anglo-American law forbids the infliction of unnecessary pain in the execution of the death sentence….

1972, Furman v. Georgia, 408 U.S. 423

…The cruelty against which the Constitution protects a convicted man is cruelty inherent in the method of punishment, not the necessary suffering involved in any method employed to extinguish life humanely.

1972, Furman v. Georgia, 408 U.S. 423

Id. at 463-464. Mr. Justice Frankfurter, unwilling to dispose of the case under the Eighth Amendment's specific prohibition, approved the second execution attempt under the Due Process Clause. He concluded that

1972, Furman v. Georgia, 408 U.S. 423

a State may be found to deny a person due process by treating even one guilty of crime in a manner that violates standards of [408 U.S. 424] decency more or less universally accepted, though not when it treats him by a mode about which opinion is fairly divided.

1972, Furman v. Georgia, 408 U.S. 424

Id. at 469-470.

1972, Furman v. Georgia, 408 U.S. 424

The four dissenting Justices, although finding a second attempt at execution to be impermissibly cruel, expressly recognized the validity of capital punishment:

1972, Furman v. Georgia, 408 U.S. 424

In determining whether the proposed procedure is unconstitutional, we must measure it against a lawful electrocution…. Electrocution, when instantaneous, can be inflicted by a state in conformity with due process of law….

1972, Furman v. Georgia, 408 U.S. 424

The all-important consideration is that the execution shall be so instantaneous and substantially painless that the punishment shall be reduced, as nearly as possible, to no more than that of death itself.

1972, Furman v. Georgia, 408 U.S. 424

Id. at 474 (original emphasis).

1972, Furman v. Georgia, 408 U.S. 424

Each of these cases involved the affirmance of a death sentence where its validity was attacked as violating the Eighth Amendment. Five opinions were written in these three cases, expressing the views of 23 Justices. While, in the narrowest sense, it is correct to say that in none was there a frontal attack upon the constitutionality of the death penalty, each opinion went well beyond an unarticulated assumption of validity. The power of the States to impose capital punishment was repeatedly and expressly recognized.

1972, Furman v. Georgia, 408 U.S. 424

In addition to these cases in which the constitutionality of the death penalty was a necessary foundation for the decision, those who today would have this Court undertake the absolute abolition of the death penalty also must reject the opinions of other cases stipulating or assuming the constitutionality of capital punishment. Trop v. Dulles, 356 U.S. 86, 99, 100 (1958); Weems v. United States, 217 U.S. 349, 382, 409 (1910) [408 U.S. 425] (White, J., joined by Holmes, J., dissenting). 5 See also McGautha v. California, 402 U.S. at 226 (separate opinion of Black, J.); Robinson v. California, 370 U.S. 660, 676 (1962) (DOUGLAS, J., concurring).

1972, Furman v. Georgia, 408 U.S. 425

The plurality opinion in Trop v. Dulles, supra, is of special interest, since it is this opinion, in large measure, that provides the foundation for the present attack on the death penalty. 6 It is anomalous that the standard urged by petitioners—"evolving standards of decency that mark the progress of a maturing society" (356 U.S. at 101)—should be derived from an opinion that so unqualifiedly rejects their arguments. Chief Justice Warren, joined by Justices Black, DOUGLAS, and Whittaker, stated flatly:

1972, Furman v. Georgia, 408 U.S. 425

At the outset, let us put to one side the death penalty as an index of the constitutional limit on punishment. Whatever the arguments may be against capital punishment, both on moral grounds and in terms of accomplishing the purposes of punishment—and they are forceful—the death penalty has been employed throughout our history, and, in a day when it is still widely accepted, it cannot be said to violate the constitutional concept of cruelty.

1972, Furman v. Georgia, 408 U.S. 425

Id. at 99. The issue in Trop was whether forfeiture of citizenship was a cruel and unusual punishment when imposed on [408 U.S. 426] a wartime deserter who had gone "over the hill" for less than a day and had willingly surrendered. In examining the consequences of the relatively novel punishment of denationalization, 7 Chief Justice Warren drew a line between "traditional" and "unusual" penalties:

1972, Furman v. Georgia, 408 U.S. 426

While the State has the power to punish, the [Eighth] Amendment stands to assure that this power be exercised within the limits of civilized standards. Fines, imprisonment and even execution may be imposed depending upon the enormity of the crime, but any technique outside the bounds of these traditional penalties is constitutionally suspect.

1972, Furman v. Georgia, 408 U.S. 426

Id. at 100. The plurality's repeated disclaimers of any attack on capital punishment itself must be viewed as more than offhand dicta since, those views were written in direct response to the strong language in Mr. Justice Frankfurter's dissent arguing that denationalization could not be a disproportionate penalty for a concededly capital offense. 8

1972, Furman v. Georgia, 408 U.S. 426

The most recent precedents of this Court—Witherspoon v. Illinois, 391 U.S. 510 (1968), and McGautha v. California, supra—are also premised to a significant degree on the constitutionality of the death penalty. While the scope of review in both cases was limited to questions involving the procedures for selecting juries [408 U.S. 427] and regulating their deliberations in capital cases, 9 those opinions were "singularly academic exercise[s]" 10 if the members of this Court were prepared at those times to find in the Constitution the complete prohibition of the death penalty. This is especially true of Mr. Justice Harlan's opinion for the Court in McGautha, in which, after a full review of the history of capital punishment, he concluded that

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we find it quite impossible to say that committing to the untrammeled discretion of the jury the power to pronounce life or death in capital cases is offensive to anything in the Constitution.

1972, Furman v. Georgia, 408 U.S. 427

Id. at 207. 11 [408 U.S. 428]

1972, Furman v. Georgia, 408 U.S. 428

Perhaps enough has been said to demonstrate the unswerving position that this Court has taken in opinions spanning the last hundred years. On virtually every occasion that any opinion has touched on the question of the constitutionality of the death penalty, it has been asserted affirmatively, or tacitly assumed, that the Constitution does not prohibit the penalty. No Justice of the Court, until today, has dissented from this consistent reading of the Constitution. The petitioners in these cases now before the Court cannot fairly avoid the weight of this substantial body of precedent merely by asserting that there is no prior decision precisely in point. Stare decisis, if it is a doctrine founded on principle, surely applies where there exists a long line of cases endorsing or necessarily assuming the validity of a particular matter of constitutional interpretation. Green v. United States, 356 U.S. 165, 189-193 (1958) (Frankfurter, J., concurring). While these oft-repeated expressions of unchallenged belief in the constitutionality of capital punishment may not justify a summary disposition of the constitutional question before us, they are views expressed and joined in over the years by no less than 29 Justices of this Court, and therefore merit the greatest respect. 12 Those who now resolve to set those views aside indeed have a heavy burden.

III

1972, Furman v. Georgia, 408 U.S. 428

Petitioners seek to avoid the authority of the foregoing cases, and the weight of express recognition in the Constitution itself, by reasoning which will not withstand analysis. The thesis of petitioners' case derives from several opinions in which members of this Court [408 U.S. 429] have recognized the dynamic nature of the prohibition against cruel and unusual punishments. The final meaning of those words was not set in 1791. Rather, to use the words of Chief Justice Warren speaking for a plurality of the Court in Trop v. Dulles, 356 U.S. at 100-101:

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[T]he words of the Amendment are not precise, and…their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.

1972, Furman v. Georgia, 408 U.S. 429

But this was not new doctrine. It was the approach to the Eighth Amendment taken by Mr. Justice McKenna in his opinion for the Court in Weems v. United States, 217 U.S. 349 (1910). Writing for four Justices sitting as the majority of the six-man Court deciding the case, he concluded that the clause must be "progressive"; it is not "fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice." Id. at 378. The same test was offered by Mr. Justice Frankfurter in his separate concurrence in Louisiana ex rel. Francis v. Resweber, 329 U.S. at 469. While he rejected the notion that the Fourteenth Amendment made the Eighth Amendment fully applicable to the States, he nonetheless found as a matter of due process that the States were prohibited from "treating even one guilty of crime in a manner that violates standards of decency more or less universally accepted."

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Whether one views the question as one of due process or of cruel and unusual punishment, as I do for convenience in this case, the issue is essentially the same. 13 The fundamental premise upon which either standard is based is that notions of what constitute cruel and unusual punishment or due process do evolve. [408 U.S. 430] Neither the Congress nor any state legislature would today tolerate pillorying, branding, or cropping or nailing of the ears—punishments that were in existence during our colonial era. 14 Should, however, any such punishment be prescribed, the courts would certainly enjoin its execution. See Jackson v. Bishop, 404 F.2d 571 (CA8 1968). Likewise, no court would approve any method of implementation of the death sentence found to involve unnecessary cruelty in light of presently available alternatives. Similarly, there may well be a process of evolving attitude with respect to the application of the death sentence for particular crimes. 15 See McGautha v. California, 402 U.S. at 242 (DOUGLAS, J., dissenting). But we are not asked to consider the permissibility of any of the several methods employed in carrying out the death sentence. Nor are we asked, at least as part of the core submission in these cases, to determine whether the penalty might be a grossly excessive punishment for some specific criminal conduct. Either inquiry would call for a discriminating evaluation of particular means, or of the relationship between particular conduct and its punishment. Petitioners' principal argument goes far beyond the traditional process of case-by-case inclusion and exclusion. Instead the argument insists on an unprecedented constitutional rule of absolute prohibition of capital punishment for any crime, regardless of its depravity and impact on society. In calling for a precipitate and final judicial end to this form of penalty as offensive to evolving standards of decency, petitioners would have this Court abandon the traditional and more refined approach consistently followed in its prior Eighth Amendment precedents. What they are saying, in effect, is that the evolutionary [408 U.S. 431] process has come suddenly to an end; that the ultimate wisdom as to the appropriateness of capital punishment under all circumstances, and for all future generations, has somehow been revealed.

1972, Furman v. Georgia, 408 U.S. 431

The prior opinions of this Court point with great clarity to reasons why those of us who sit on this Court at a particular time should act with restraint before assuming, contrary to a century of precedent, that we now know the answer for all time to come. First, where, as here, the language of the applicable provision provides great leeway, and where the underlying social policies are felt to be of vital importance, the temptation to read personal preference into the Constitution is understandably great. It is too easy to propound our subjective standards of wise policy under the rubric of more or less universally held standards of decency. See Trop v. Dulles, 356 U.S. at 103 (Warren, C.J.), 119-120 (Frankfurter, J., dissenting); Louisiana ex rel. Francis v. Resweber, 329 U.S. at 470-471 (Frankfurter, J., concurring); Weems v. United States, 217 U.S. at 378-379 (McKenna, J.).

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The second consideration dictating judicial self-restraint arises from a proper recognition of the respective roles of the legislative and judicial branches. The designation of punishments for crimes is a matter peculiarly within the sphere of the state and federal legislative bodies. See, e.g., In re Kemmler, 136 U.S. at 447; Trop v. Dulles, 356 U.S. at 103. When asked to encroach on the legislative prerogative we are well counseled to proceed with the utmost reticence. The review of legislative choices, in the performance of our duty to enforce the Constitution, has been characterized most appropriately by Mr. Justice Holmes as "the gravest and most delicate duty that this Court is called on to perform." Blodgett v. Holden, 275 U.S. 142, 147-148 (1927) (separate opinion). [408 U.S. 432]

1972, Furman v. Georgia, 408 U.S. 432

How much graver is that duty when we are not asked to pass on the constitutionality of a single penalty under the facts of a single case, but instead are urged to overturn the legislative judgments of 40 state legislatures as well as those of Congress. In so doing, is the majority able to claim, as did the Court in Weems, that it appreciates

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to the fullest the wide range of power that the legislature possesses to adapt its penal laws to conditions as they may exist and punish the crimes of men according to their forms and frequency?

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217 U.S. at 379. I think not. No more eloquent statement of the essential separation of powers limitation on our prerogative can be found than the admonition of Mr. Justice Frankfurter, dissenting in Trop. His articulation of the traditional view takes on added significance where the Court undertakes to nullify the legislative judgments of the Congress and four-fifths of the States.

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What is always basic when the power of Congress to enact legislation is challenged is the appropriate approach to judicial review of congressional legislation…. When the power of Congress to pass a statute is challenged, the function of this Court is to determine whether legislative action lies clearly outside the constitutional grant of power to which it has been, or may fairly be, referred. In making this determination, the Court sits in judgment on the action of a coordinate branch of the Government while keeping unto itself—as it must under our constitutional system—the final determination of its own power to act….

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Rigorous observance of the difference between limits of power and wise exercise of power—between questions of authority and questions of prudence—requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a [408 U.S. 433] disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail, to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of what Congress and the Executive Branch do.

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356 U.S. at 119-120. See also Mr. Justice White's dissenting opinion in Weems v. United States, 217 U.S. at 382.

IV

1972, Furman v. Georgia, 408 U.S. 433

Although determining the range of available punishments for a particular crime is a legislative function, the very presence of the Cruel and Unusual Punishments Clause within the Bill of Rights requires, in the context of a specific case, that courts decide whether particular acts of the Congress offend that Amendment. The Due Process Clause of the Fourteenth Amendment imposes on the judiciary a similar obligation to scrutinize state legislation. But the proper exercise of that constitutional obligation in the cases before us today must be founded on a full recognition of the several considerations set forth above—the affirmative references to capital punishment in the Constitution, the prevailing precedents of this Court, the limitations on the exercise of our power imposed by tested principles of judicial self-restraint, and the duty to avoid encroachment on the powers conferred upon state and federal legislatures. In the face of these considerations, only the most conclusive [408 U.S. 434] of objective demonstrations could warrant this Court in holding capital punishment per se unconstitutional. The burden of seeking so sweeping a decision against such formidable obstacles is almost insuperable. Viewed from this perspective, as I believe it must be, the case against the death penalty falls far short.

1972, Furman v. Georgia, 408 U.S. 434

Petitioners' contentions are premised, as indicated above, on the long-accepted view that concepts embodied in the Eighth and Fourteenth Amendments evolve. They present, with skill and persistence, a list of "objective indicators" which are said to demonstrate that prevailing standards of human decency have progressed to the final point of requiring the Court to hold, for all cases and for all time, that capital punishment is unconstitutional.

1972, Furman v. Georgia, 408 U.S. 434

Briefly summarized, these proffered indicia of contemporary standards of decency include the following: (i) a worldwide trend toward the disuse of the death penalty; 16 (ii) the reflection in the scholarly literature of a progressive rejection of capital punishment founded essentially on moral opposition to such treatment; 17 (iii) the decreasing numbers of executions over the last 40 years, and especially over the last decade; 18 (iv) the [408 U.S. 435] small number of death sentences rendered in relation to the number of cases in which they might have been imposed; 19 and (v) the indication of public abhorrence of [408 U.S. 436] the penalty reflected in the circumstance that executions are no longer public affairs. 20 The foregoing is an incomplete summary, but it touches the major bases of petitioners' presentation. Although they are not appropriate for consideration as objective evidence, petitioners strongly urge two additional propositions. They contend, first, that the penalty survives public condemnation only through the infrequency, arbitrariness, and discriminatory nature of its application, and, second, that there no longer exists any legitimate justification for the utilization of the ultimate penalty. These contentions, which have proved persuasive to several of the Justices constituting the majority, deserve separate consideration, and will be considered in the ensuing sections. Before turning to those arguments, I first address the argument based on "objective" factors.

1972, Furman v. Georgia, 408 U.S. 436

Any attempt to discern contemporary standards of decency through the review of objective factors must take into account several overriding considerations which petitioners choose to discount or ignore. In a democracy, [408 U.S. 437] the first indicator of the public's attitude must always be found in the legislative judgments of the people's chosen representatives. MR. JUSTICE MARSHALL's opinion today catalogues the salient statistics. Forty States, 21 the District of Columbia, and the Federal Government still authorize the death penalty for a wide variety of crimes. That number has remained relatively static since the end of World War I. Ante at 339-341. That does not mean, however, that capital punishment has become a forgotten issue in the legislative arena. As recently as January, 1971, Congress approved the death penalty for congressional assassination. 18 U.S.C. § 351. In 1965, Congress added the death penalty for presidential and vice presidential assassinations. 18 U.S.C. § 1751. Additionally, the aircraft piracy statute passed in 1961 also carries the death penalty. 49 U.S.C. § 1472(i). MR. JUSTICE BLACKMUN's dissenting opinion catalogues the impressive ease with which each of these statutes was approved. Ante at 412-413. On the converse side, a bill proposing the abolition of capital punishment for all federal crimes was introduced in 1967, but failed to reach the Senate floor. 22

1972, Furman v. Georgia, 408 U.S. 437

At the state level, New York, among other States, has recently undertaken reconsideration of its capital crimes. A law passed in 1965 restricted the use of capital punishment to the crimes of murder of a police officer and murder by a person serving a sentence of life imprisonment. N.Y.Penal Code § 125.30 (1967).

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I pause here to state that I am at a loss to understand [408 U.S. 438] how those urging this Court to pursue a course of absolute abolition as a matter of constitutional judgment can draw any support from the New York experience. As is also the case with respect to recent legislative activity in Canada 23 and Great Britain, 24 New York's decision to restrict the availability of the death penalty is a product of refined and discriminating legislative judgment, reflecting not the total rejection of capital punishment as inherently cruel, but a desire to limit it to those circumstances in which legislative judgment deems retention to be in the public interest. No such legislative flexibility is permitted by the contrary course petitioners urge this Court to follow. 25 In addition to the New York experience, a number of other States have undertaken reconsideration of capital punishment in recent years. In four States, the penalty has been put to a vote of the people through public referenda—a means likely to supply objective evidence of community standards. In Oregon, a referendum seeking abolition of capital punishment failed in 1958, but was subsequently approved in 1964. 26 Two years later, the penalty was approved in Colorado by a wide margin. 27 [408 U.S. 439] In Massachusetts in 1968, in an advisory referendum, the voters there likewise recommended retention of the penalty. In 1970, approximately 64% of the voters in Illinois approved the penalty. 28 In addition, the National Commission on Reform of Federal Criminal Laws reports that legislative committees in Massachusetts, Pennsylvania, and Maryland recommended abolition, while committees in New Jersey and Florida recommended retention. 29 The legislative views of other States have been summarized by Professor Hugo Bedau in his compilation of sources on capital punishment entitled The Death Penalty in America:

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What our legislative representatives think in the two score states which still have the death penalty may be inferred from the fate of the bills to repeal or modify the death penalty filed during recent years in the legislatures of more than half of these states. In about a dozen instances, the bills emerged from committee for a vote. But in none except Delaware did they become law. In those states where these bills were brought to the floor of the legislatures, the vote in most instances wasn't even close. 30

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This recent history of activity with respect to legislation concerning the death penalty abundantly refutes the abolitionist position.

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The second and even more direct source of information [408 U.S. 440] reflecting the public's attitude toward capital punishment is the jury. In Witherspoon v. Illinois, 391 U.S. 510 (1968), MR. JUSTICE STEWART, joined by JUSTICES BRENNAN and MARSHALL, characterized the jury's historic function in the sentencing process in the following terms:

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[T]he jury is given broad discretion to decide whether or not death is "the proper penalty" in a given case, and a juror's general views about capital punishment play an inevitable role in any such decision.

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A man who opposes the death penalty, no less than one who favors it, can make the discretionary judgment entrusted to him by the State, and can thus obey the oath he takes as a juror…. Guided by neither rule nor standard,…a jury that must choose between life imprisonment and capital punishment can do little more—and must do nothing less—than express the conscience of the community on the ultimate question of life or death.

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[O]ne of the most important functions any jury can perform in making such a selection is to maintain a link between contemporary community values and the penal system—a link without which the determination of punishment could hardly reflect "the evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles,… 31

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Any attempt to discern, therefore, where the prevailing standards of decency lie must take careful account of [408 U.S. 441] the jury's response to the question of capital punishment. During the 1960's, juries returned in excess of a thousand death sentences, a rate of approximately two per week. Whether it is true that death sentences were returned in less than 10% of the cases, as petitioners estimate, or whether some higher percentage is more accurate, 32 these totals simply do not support petitioners' assertion at oral argument that "the death penalty is virtually unanimously repudiated and condemned by the conscience of contemporary society." 33 It is also worthy of note that the annual rate of death sentences has remained relatively constant over the last 10 years, and that the figure for 1970—127 sentences—is the highest annual total since 1961. 34 It is true that the sentencing rate might be expected to rise, rather than remain constant, when the number of violent crimes increases as it has in this country. 35 And it may be conceded that the constancy in these statistics indicates the unwillingness of juries to demand the ultimate penalty in many cases where it might be imposed. But these considerations fall short of indicating that juries are imposing the death penalty with such rarity as to justify this Court in reading into this circumstance a public rejection of capital punishment. 36 [408 U.S. 442]

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One must conclude, contrary to petitioners' submission, that the indicators most likely to reflect the public's view—legislative bodies, state referenda and the juries which have the actual responsibility—do not support the contention that evolving standards of decency require total abolition of capital punishment. 37 Indeed, [408 U.S. 443] the weight of the evidence indicates that the public generally has not accepted either the morality or the social merit of the views so passionately advocated by the articulate spokesmen for abolition. But however one may assess the amorphous ebb and flow of public opinion generally on this volatile issue, this type of inquiry lies at the periphery—not the core—of the judicial process in constitutional cases. The assessment of popular opinion is essentially a legislative, not a judicial, function.

V

1972, Furman v. Georgia, 408 U.S. 443

Petitioners seek to salvage their thesis by arguing that the infrequency and discriminatory nature of the actual resort to the ultimate penalty tend to diffuse public opposition. We are told that the penalty is imposed exclusively on uninfluential minorities—"the poor and powerless, personally ugly and socially unacceptable." 38 It is urged that this pattern of application assures that large segments of the public will be either uninformed or unconcerned, and will have no reason to measure the punishment against prevailing moral standards.

1972, Furman v. Georgia, 408 U.S. 443

Implicitly, this argument concedes the unsoundness of petitioners' contention, examined above under Part IV, that objective evidence shows a present and widespread community rejection of the death penalty. It is now said, [408 U.S. 444] in effect, not that capital punishment presently offends our citizenry, but that the public would be offended if the penalty were enforced in a nondiscriminatory manner against a significant percentage of those charged with capital crimes, and if the public were thereby made aware of the moral issues surrounding capital punishment. Rather than merely registering the objective indicators on a judicial balance, we are asked ultimately to rest a far-reaching constitutional determination on a prediction regarding the subjective judgments of the mass of our people under hypothetical assumptions that may or may not be realistic.

1972, Furman v. Georgia, 408 U.S. 444

Apart from the impermissibility of basing a constitutional judgment of this magnitude on such speculative assumptions, the argument suffers from other defects. If, as petitioners urge, we are to engage in speculation, it is not at all certain that the public would experience deep-felt revulsion if the States were to execute as many sentenced capital offenders this year as they executed in the mid-1930's. 39 It seems more likely that public reaction, rather than being characterized by undifferentiated rejection, would depend upon the facts and circumstances surrounding each particular case.

1972, Furman v. Georgia, 408 U.S. 444

Members of this Court know, from the petitions and appeals that come before us regularly, that brutish and revolting murders continue to occur with disquieting frequency. Indeed, murders are so commonplace [408 U.S. 445] in our society that only the most sensational receive significant and sustained publicity. It could hardly be suggested that in any of these highly publicized murder cases—the several senseless assassinations or the too numerous shocking multiple murders that have stained this country's recent history—the public has exhibited any signs of "revulsion" at the thought of executing the convicted murderers. The public outcry, as we all know, has been quite to the contrary. Furthermore, there is little reason to suspect that the public's reaction would differ significantly in response to other less publicized murder. It is certainly arguable that many such murders, because of their senselessness or barbarousness, would evoke a public demand for the death penalty, rather than a public rejection of that alternative. Nor is there any rational basis for arguing that the public reaction to any of these crimes would be muted if the murderer were "rich and powerful." The demand for the ultimate sanction might well be greater, as a wealthy killer is hardly a sympathetic figure. While there might be specific cases in which capital punishment would be regarded as excessive and shocking to the conscience of the community, it can hardly be argued that the public's dissatisfaction with the penalty in particular cases would translate into a demand for absolute abolition.

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In pursuing the foregoing speculation, I do not suggest that it is relevant to the appropriate disposition of these cases. The purpose of the digression is to indicate that judicial decisions cannot be founded on such speculations and assumptions, however appealing they may seem.

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But the discrimination argument does not rest alone on a projection of the assumed effect on public opinion of more frequent executions. Much also is made of the undeniable fact that the death penalty has a greater impact on the lower economic strata of society, which [408 U.S. 446] include a relatively higher percentage of persons of minority racial and ethnic group backgrounds. The argument drawn from this fact is two-pronged. In part, it is merely an extension of the speculative approach pursued by petitioners, i.e., that public revulsion is suppressed in callous apathy because the penalty does not affect persons from the white middle class which constitutes the majority in this country. This aspect, however, adds little to the infrequency rationalization for public apathy which I have found unpersuasive.

1972, Furman v. Georgia, 408 U.S. 446

As MR. JUSTICE MARSHALL's opinion today demonstrates, the argument does have a more troubling aspect. It is his contention that if the average citizen were aware of the disproportionate burden of capital punishment borne by the "poor, the ignorant, and the underprivileged," he would find the penalty "shocking to his conscience and sense of justice," and would not stand for its further use. Ante at 365-366, 369. This argument, like the apathy rationale, calls for further speculation on the part of the Court. It also illuminates the quicksands upon which we are asked to base this decision. Indeed, the two contentions seem to require contradictory assumptions regarding the public's moral attitude toward capital punishment. The apathy argument is predicated on the assumption that the penalty is used against the less influential elements of society, that the public is fully aware of this, and that it tolerates use of capital punishment only because of a callous indifference to the offenders who are sentenced. MR. JUSTICE MARSHALL's argument, on the other hand, rests on the contrary assumption that the public does not know against whom the penalty is enforced, and that, if the public were educated to this fact, it would find the punishment intolerable. Ante at 369. Neither assumption can claim to be an entirely accurate portrayal of public attitude; for some, acceptance of capital punishment might be a consequence [408 U.S. 447] of hardened apathy based on the knowledge of infrequent and uneven application, while for others, acceptance may grow only out of ignorance. More significantly, however, neither supposition acknowledges what, for me, is a more basic flaw.

1972, Furman v. Georgia, 408 U.S. 447

Certainly the claim is justified that this criminal sanction falls more heavily on the relatively impoverished and underprivileged elements of society. The "have-nots" in every society always have been subject to greater pressure to commit crimes and to fewer constraints than their more affluent fellow citizens. This is, indeed, a tragic byproduct of social and economic deprivation, but it is not an argument of constitutional proportions under the Eighth or Fourteenth Amendment. The same discriminatory impact argument could be made with equal force and logic with respect to those sentenced to prison terms. The Due Process Clause admits of no distinction between the deprivation of "life" and the deprivation of "liberty." If discriminatory impact renders capital punishment cruel and unusual, it likewise renders invalid most of the prescribed penalties for crimes of violence. The root causes of the higher incidence of criminal penalties on "minorities and the poor" will not be cured by abolishing the system of penalties. Nor, indeed, could any society have a viable system of criminal justice if sanctions were abolished or ameliorated because most of those who commit crimes happen to be underprivileged. The basic problem results not from the penalties imposed for criminal conduct, but from social and economic factors that have plagued humanity since the beginning of recorded history, frustrating all efforts to create in any country at any time the perfect society in which there are no "poor," no "minorities" and no "underprivileged." 40 [408 U.S. 448] The causes underlying this problem are unrelated to the constitutional issue before the Court.

1972, Furman v. Georgia, 408 U.S. 448

Finally, yet another theory for abolishing the death penalty—reflected in varying degrees in each of the concurring opinions today—is predicated on the discriminatory impact argument. Quite apart from measuring the public's acceptance or rejection of the death penalty under the "standards of decency" rationale, MR. JUSTICE DOUGLAS finds the punishment cruel and unusual because it is "arbitrarily" invoked. He finds that "the basic theme of equal protection is implicit" in the Eighth Amendment, and that the Amendment is violated when jury sentencing may be characterized as arbitrary or discriminatory. Ante at 249. While MR. JUSTICE STEWART does not purport to rely on notions of equal protection, he also rests primarily on what he views to be a history of arbitrariness. Ante at 309-310. 41 Whatever may be the facts with respect to jury sentencing, this argument calls for a reconsideration of the "standards" aspects of the Court's decision in McGautha v. California, 402 U.S. 183 (1971). Although that is the unmistakable thrust of these opinions today, I see no reason to reassess the standards question considered so carefully in Mr. Justice Harlan's opinion for the Court [408 U.S. 449] last Term. Having so recently reaffirmed our historic dedication to entrusting the sentencing function to the jury's "untrammeled discretion" (id. at 207), it is difficult to see how the Court can now hold the entire process constitutionally defective under the Eighth Amendment. For all of these reasons, I find little merit in the various discrimination arguments, at least in the several lights in which they have been cast in these cases.

1972, Furman v. Georgia, 408 U.S. 449

Although not presented by any of the petitioners today, a different argument, premised on the Equal Protection Clause, might well be made. If a Negro defendant, for instance, could demonstrate that members of his race were being singled out for more severe punishment than others charged with the same offense, a constitutional violation might be established. This was the contention made in Maxwell v. Bishop, 398 F.2d 138 (CA8 1968), vacated and remanded on other grounds, 398 U.S. 262 (1970), in which the Eighth Circuit was asked to issue a writ of habeas corpus setting aside a death sentence imposed on a Negro defendant convicted of rape. In that case, substantial statistical evidence was introduced tending to show a pronounced disproportion in the number of Negroes receiving death sentences for rape in parts of Arkansas and elsewhere in the South. That evidence was not excluded, but was found to be insufficient to show discrimination in sentencing in Maxwell s trial. MR. JUSTICE BLACKMUN, then sitting on the Court of Appeals for the Eighth Circuit, concluded:

1972, Furman v. Georgia, 408 U.S. 449

The petitioner's argument is an interesting one, and we are not disposed to say that it could not have some validity and weight in certain situations. Like the trial court, however…we feel that the argument does not have validity and pertinent application to Maxwell's case.

\* \* \* \* [408 U.S. 450]

1972, Furman v. Georgia, 408 U.S. 450

We are not yet ready to condemn and upset the result reached in every case of a Negro rape defendant in the State of Arkansas on the basis of broad theories of social and statistical injustice….

\* \* \* \*

1972, Furman v. Georgia, 408 U.S. 450

We do not say that there is no ground for suspicion that the death penalty for rape may have been discriminatorily applied over the decades in that large area of states whose statutes provide for it. There are recognizable indicators of this. But…improper state practice of the past does not automatically invalidate a procedure of the present….

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Id. at 147-148.

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I agree that discriminatory application of the death penalty in the past, admittedly indefensible, is no justification for holding today that capital punishment is invalid in all cases in which sentences were handed out to members of the class discriminated against. But Maxwell does point the way to a means of raising the equal protection challenge that is more consonant with precedent and the Constitution's mandates than the several courses pursued by today's concurring opinions.

1972, Furman v. Georgia, 408 U.S. 450

A final comment on the racial discrimination problem seems appropriate. The possibility of racial bias in the trial and sentencing process has diminished in recent years. The segregation of our society in decades past, which contributed substantially to the severity of punishment for interracial crimes, is now no longer prevalent in this country. Likewise, the day is past when juries do not represent the minority group elements of the community. The assurance of fair trials for all citizens is greater today than at any previous time in our history. Because standards of criminal justice have "evolved" in a manner favorable to the accused, discriminatory imposition of capital punishment is far less likely today than in the past. [408 U.S. 451]

VI

1972, Furman v. Georgia, 408 U.S. 451

Petitioner in Branch v. Texas, No. 69-5031, and, to a lesser extent, the petitioners in the other cases before us today, urge that capital punishment is cruel and unusual because it no longer serves any rational legislative interests. Before turning to consider whether any of the traditional aims of punishment justify the death penalty, I should make clear the context in which I approach this aspect of the cases.

1972, Furman v. Georgia, 408 U.S. 451

First, I find no support—in the language of the Constitution, in its history, or in the cases arising under it—for the view that this Court may invalidate a category of penalties because we deem less severe penalties adequate to serve the ends of penology. While the cases affirm our authority to prohibit punishments that are cruelly inhumane (e.g., Wilkerson v. Utah, 99 U.S. at 135-136; In re Kemmler, 136 U.S. at 447), and punishments that are cruelly excessive in that they are disproportionate to particular crimes (see Part VII, infra), the precedents of this Court afford no basis for striking down a particular form of punishment because we may be persuaded that means less stringent would be equally efficacious.

1972, Furman v. Georgia, 408 U.S. 451

Secondly, if we were free to question the justifications for the use of capital punishment, a heavy burden would rest on those who attack the legislatures' judgments to prove the lack of rational justifications. This Court has long held that legislative decisions in this area, which lie within the special competency of that branch, are entitled to a presumption of validity. See, e.g., Trop v. Dulles, 356 U.S. at 103; Louisiana ex rel. Francis v. Resweber, 329 U.S. at 470 (Frankfurter, J., concurring); Weems v. United States, 217 U.S. at 378-379; In re Kemmler, 136 U.S. at 449. [408 U.S. 452]

1972, Furman v. Georgia, 408 U.S. 452

I come now to consider, subject to the reservation above expressed, the two justifications most often cited for the retention of capital punishment. The concept of retribution—though popular for centuries—is now criticized as unworthy of a civilized people. Yet this Court has acknowledged the existence of a retributive element in criminal sanctions, and has never heretofore found it impermissible. In Williams v. New York, 337 U.S. 241 (1949), Mr. Justice Black stated that,

1972, Furman v. Georgia, 408 U.S. 452

Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence.

1972, Furman v. Georgia, 408 U.S. 452

Id. at 248. It is clear, however, that the Court did not reject retribution altogether. The record in that case indicated that one of the reasons why the trial judge imposed the death penalty was his sense of revulsion at the "shocking details of the crime." Id. at 244. Although his motivation was clearly retributive, the Court upheld the trial judge's sentence. 42 Similarly, MR. JUSTICE MARSHALL noted in his plurality opinion in Powell v. Texas, 392 U.S. 514, 530 (1968), that this Court

1972, Furman v. Georgia, 408 U.S. 452

has never held that anything in the Constitution requires that penal sanctions be designed solely to achieve therapeutic or rehabilitative effects. 43 [408 U.S. 453]

1972, Furman v. Georgia, 408 U.S. 453

While retribution alone may seem an unworthy justification in a moral sense, its utility in a system of criminal justice requiring public support has long been recognized. Lord Justice Denning, now Master of the Rolls of the Court of Appeal in England, testified on this subject before the British Royal Commission on Capital Punishment:

1972, Furman v. Georgia, 408 U.S. 453

Many are inclined to test the efficacy of punishment solely by its value as a deterrent: but this is too narrow a view. Punishment is the way in which society expresses its denunciation of wrongdoing, and, in order to maintain respect for law, it is essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformative or preventive, and nothing else. If this were so, we should not send to prison a man who was guilty of motor manslaughter, but only disqualify him from driving; but would public opinion be content with this? The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrongdoer deserves it, irrespective of whether it is a deterrent or not. 44

1972, Furman v. Georgia, 408 U.S. 453

The view expressed by Lord Denning was cited approvingly in the Royal Commission's Report, recognizing "a [408 U.S. 454] strong and widespread demand for retribution." 45 MR. JUSTICE STEWART makes much the same point in his opinion today when he concludes that expression of man's retributive instincts in the sentencing process "serves an important purpose in promoting the stability of a society governed by law." Ante at 308. The view, moreover, is not without respectable support in the jurisprudential literature in this country, 46 despite a substantial body of opinion to the contrary. 47 And it is conceded on all sides that, not infrequently, cases arise that are so shocking or offensive that the public demands the ultimate penalty for the transgressor.

1972, Furman v. Georgia, 408 U.S. 454

Deterrence is a more appealing justification, although opinions again differ widely. Indeed, the deterrence issue lies at the heart of much of the debate between the abolitionists and retentionists. 48 Statistical studies, based primarily on trends in States that have abolished the penalty, tend to support the view that the death penalty has not been proved to be a superior deterrent. 49 Some dispute the validity of this conclusion, 50 pointing [408 U.S. 455] out that the studies do not show that the death penalty has no deterrent effect on any categories of crimes. On the basis of the literature and studies currently available, I find myself in agreement with the conclusions drawn by the Royal Commission following its exhaustive study of this issue:

1972, Furman v. Georgia, 408 U.S. 455

The general conclusion which we reach, after careful review of all the evidence we have been able to obtain as to the deterrent effect of capital punishment, may be stated as follows. Prima facie, the penalty of death is likely to have a stronger effect as a deterrent to normal human beings than any other form of punishment, and there is some evidence (though no convincing statistical evidence) that this is in fact so. But this effect does not operate universally or uniformly, and there are many offenders on whom it is limited and may often be negligible. It is accordingly important to view this question in a just perspective, and not base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty. 51

1972, Furman v. Georgia, 408 U.S. 455

Only recently, this Court was called on to consider the deterrence argument in relation to punishment by fines for public drunkenness. Powell v. Texas, 392 U.S. 514 (1968). The Court was unwilling to strike down the Texas statute on grounds that it lacked a rational foundation. What MR. JUSTICE MARSHALL said there would seem to have equal applicability in this case:

1972, Furman v. Georgia, 408 U.S. 455

The long-standing and still raging debate over the validity of the deterrence justification for penal sanctions has not reached any sufficiently clear conclusions to permit it to be said that such sanctions are ineffective in any particular context or for any [408 U.S. 456] particular group of people who are able to appreciate the consequences of their acts….

1972, Furman v. Georgia, 408 U.S. 456

Id. at 531.

1972, Furman v. Georgia, 408 U.S. 456

As I noted at the outset of this section, legislative judgments as to the efficacy of particular punishments are presumptively rational, and may not be struck down under the Eighth Amendment because this Court may think that some alternative sanction would be more appropriate. Even if such judgments were within the judicial prerogative, petitioners have failed to show that there exist no justifications for the legislative enactments challenged in these cases. 52 While the evidence and arguments advanced by petitioners might have proved profoundly persuasive if addressed to a legislative body, they do not approach the showing traditionally required before a court declares that the legislature has acted irrationally.

VII

1972, Furman v. Georgia, 408 U.S. 456

In two of the cases before us today, juries imposed sentences of death after convictions for rape. 53 In these cases, we are urged to hold that, even if capital punishment is permissible for some crimes, it is a cruel and unusual punishment for this crime. Petitioners in these cases rely on the Court's opinions holding that the Eighth Amendment, in addition to prohibiting punishments [408 U.S. 457] deemed barbarous and inhumane, also condemns punishments that are greatly disproportionate to the crime charged. This reading of the Amendment was first expressed by Mr. Justice Field in his dissenting opinion in O'Neil v. Vermont, 144 U.S. 323, 337 (1892), a case in which a defendant charged with a large number of violations of Vermont's liquor laws received a fine in excess of $6,600, or a 54-year jail sentence if the fine was not paid. The majority refused to consider the question on the ground that the Eighth Amendment did not apply to the States. The dissent, after carefully examining the history of that Amendment and the Fourteenth, concluded that its prohibition was binding on Vermont and that it was directed against "all punishments which, by their excessive length or severity, are greatly disproportioned to the offences charged." Id. at 339-340. 54

1972, Furman v. Georgia, 408 U.S. 457

The Court, in Weems v. United States, 217 U.S. 349 (1910), adopted Mr. Justice Field's view. The defendant in Weems, charged with falsifying Government documents, had been sentenced to serve 15 years in cadena temporal, a punishment which included carrying chains at the wrists and ankles and the perpetual loss of the right to vote and hold office. Finding the sentence grossly excessive in length and condition of imprisonment, the Court struck it down. This notion of disproportionality—that particular sentences may be cruelly excessive for particular crimes—has been cited with approval in more recent decisions of this Court. See Robinson v. California, 370 U.S. at 667; Trop v. Dulles, 356 U.S. at 100; see also Howard v. Fleming, 191 U.S. 126, 135-136 (1903).

1972, Furman v. Georgia, 408 U.S. 457

These cases, while providing a rationale for gauging the constitutionality of capital sentences imposed for rape, [408 U.S. 458] also indicate the existence of necessary limitations on the judicial function. The use of limiting terms in the various expressions of this test found in the opinions—grossly excessive, greatly disproportionate—emphasizes that the Court's power to strike down punishments as excessive must be exercised with the greatest circumspection. As I have noted earlier, nothing in the history of the Cruel and Unusual Punishments Clause indicates that it may properly be utilized by the judiciary to strike down punishment authorized by legislatures and imposed by juries—in any but the extraordinary case. This Court is not empowered to sit as a court of sentencing review, implementing the personal views of its members on the proper role of penology. To do so is to usurp a function committed to the Legislative Branch and beyond the power and competency of this Court.

1972, Furman v. Georgia, 408 U.S. 458

Operating within these narrow limits, I find it quite impossible to declare the death sentence grossly excessive for all rapes. Rape is widely recognized as among the most serious of violent crimes, as witnessed by the very fact that it is punishable by death in 16 States and by life imprisonment in most other States. 55 The several reasons why rape stands so high on the list of serious crimes are well known: it is widely viewed as the most atrocious of intrusions upon the privacy and dignity of the victim; never is the crime committed accidentally; rarely can it be said to be unpremeditated; [408 U.S. 459] often the victim suffers serious physical injury; the psychological impact can often be as great as the physical consequences; in a real sense, the threat of both types of injury is always present. 56 For these reasons, and for the reasons arguing against abolition of the death penalty altogether, the excessiveness rationale provides no basis for rejection of the penalty for rape in all cases.

1972, Furman v. Georgia, 408 U.S. 459

The argument that the death penalty for rape lacks rational justification because less severe punishments might be viewed as accomplishing the proper goals of penology is as inapposite here as it was in considering per se abolition. See Part VI supra. The state of knowledge with respect to the deterrent value of the sentence for this crime is inconclusive. 57 Moreover, what has been said about the concept of retribution applies with equal force where the crime is rape. There are many cases in which the sordid, heinous nature of a particular crime, demeaning. humiliating, and often physically or psychologically traumatic, will call for public condemnation. In a period in our country's history when the frequency of this crime is increasing alarmingly, 58 it is indeed a grave event for the Court to take from the States whatever deterrent and retributive weight the death penalty retains.

1972, Furman v. Georgia, 408 U.S. 459

Other less sweeping applications of the disproportionality concept have been suggested. Recently the Fourth Circuit struck down a death sentence in Ralph v. Warden, 438 F.2d 786 (1970), holding that the death penalty was an appropriate punishment for rape [408 U.S. 460] only where life is "endangered." Chief Judge Haynsworth, who joined in the panel's opinion, wrote separately in denying the State of Maryland's petition for rehearing in order to make clear the basis for his joinder. He stated that, for him, the appropriate test was not whether life was endangered, but whether the victim in fact suffered "grievous physical or psychological harm." Id. at 794. See Rudolph v. Alabama, 375 U.S. 88 (1963) (dissent from the denial of certiorari).

1972, Furman v. Georgia, 408 U.S. 460

It seems to me that both of these tests depart from established principles and also raise serious practical problems. How are those cases in which the victim's life is endangered to be distinguished from those in which no danger is found? The threat of serious injury is implicit in the definition of rape; the victim is either forced into submission by physical violence or by the threat of violence. Certainly that test would provide little comfort for either of the rape defendants in the cases presently before us. Both criminal acts were accomplished only after a violent struggle. Petitioner Jackson held a scissors blade against his victim's neck. Petitioner Branch had less difficulty subduing his 65-year-old victim. Both assailants threatened to kill their victims. See MR. JUSTICE DOUGLAS' opinion, ante at 252-253. The alternate test, limiting the penalty to cases in which the victim suffers physical or emotional harm, might present even greater problems of application. While most physical effects may be seen and objectively measured, the emotional impact may be impossible to gauge at any particular point in time. The extent and duration of psychological trauma may not be known or ascertainable prior to the date of trial.

1972, Furman v. Georgia, 408 U.S. 460

While I reject each of these attempts to establish specific categories of cases in which the death penalty may be deemed excessive, I view them as groping [408 U.S. 461] toward what is for me the appropriate application of the Eighth Amendment. While, in my view, the disproportionality test may not be used either to strike down the death penalty for rape altogether or to install the Court as a tribunal for sentencing review, that test may find its application in the peculiar circumstances of specific cases. Its utilization should be limited to the rare case in which the death penalty is rendered for a crime technically falling within the legislatively defined class but factually falling outside the likely legislative intent in creating the category. Specific rape cases (and specific homicides as well) can be imagined in which the conduct of the accused would render the ultimate penalty a grossly excessive punishment. Although this case-by-case approach may seem painfully slow and inadequate to those who wish the Court to assume an activist legislative role in reforming criminal punishments, it is the approach dictated both by our prior opinions and by a due recognition of the limitations of judicial power. This approach, rather than the majority's more pervasive and less refined judgment, marks for me the appropriate course under the Eighth Amendment.

VIII

1972, Furman v. Georgia, 408 U.S. 461

I now return to the overriding question in these cases: whether this Court, acting in conformity with the Constitution, can justify its judgment to abolish capital punishment as heretofore known in this country. It is important to keep in focus the enormity of the step undertaken by the Court today. Not only does it invalidate hundreds of state and federal laws, it deprives those jurisdictions of the power to legislate with respect to capital punishment in the future except in a manner consistent with the cloudily outlined views of those Justices who do not purport to undertake total abolition. [408 U.S. 462] Nothing short of an amendment to the United States Constitution can reverse the Court's judgments. Meanwhile, all flexibility is foreclosed. The normal democratic process, as well as the opportunities for the several States to respond to the will of their people expressed through ballot referenda (as in Massachusetts, Illinois, and Colorado), 59 is now shut off.

1972, Furman v. Georgia, 408 U.S. 462

The sobering disadvantage of constitutional adjudication of this magnitude is the universality and permanence of the judgment. The enduring merit of legislative action is its responsiveness to the democratic process, and to revision and change: mistaken judgments may be corrected and refinements perfected. In England 60 and Canada, 61 critical choices were made after studies canvassing all competing views, and in those countries revisions may be made in light of experience. 62 As recently as 1967, a presidential commission did consider, as part of an overall study of crime in this country, whether the death penalty should be abolished. [408 U.S. 463] The commission's unanimous recommendation was as follows:

1972, Furman v. Georgia, 408 U.S. 463

The question whether capital punishment is an appropriate sanction is a policy decision to be made by each State. Where it is retained, the types of offenses for which it is available should be strictly limited, and the law should be enforced in an evenhanded and nondiscriminatory manner, with procedures for review of death sentences that are fair and expeditious. When a State finds that it cannot administer the penalty in such a manner, or that the death penalty is being imposed but not carried into effect, the penalty should be abandoned. 63

1972, Furman v. Georgia, 408 U.S. 463

The thrust of the Commission's recommendation, as presently relevant, is that this question "is a policy decision to be made by each State." There is no hint that this decision could or should be made by the judicial branch.

1972, Furman v. Georgia, 408 U.S. 463

The National Commission on Reform of Federal Criminal Laws also considered the capital punishment issue. The introductory commentary of its final report states that "a sharp division [existed] within the Commission on the subject of capital punishment," although a [408 U.S. 464] majority favored its abolition. 64 Again, consideration of the question was directed to the propriety of retention or abolition as a legislative matter. There was no suggestion that the difference of opinion existing among commission members, and generally across the country, could or should be resolved in one stroke by a decision of this Court. 65 Similar activity was, before today, evident at the state level with reevaluation having been undertaken by special legislative committees in some States and by public ballot in others. 66

1972, Furman v. Georgia, 408 U.S. 464

With deference and respect for the views of the Justices who differ, it seems to me that all these studies—both in this country and elsewhere—suggest that, as a matter of policy and precedent, this is a classic case for the exercise of our oft-announced allegiance to judicial restraint. I know of no case in which greater gravity and delicacy have attached to the duty that this Court is called on to perform whenever legislation—state or federal—is challenged on constitutional grounds. 67 It seems to me that the sweeping judicial action undertaken today reflects a [408 U.S. 465] basic lack of faith and confidence in the democratic process. Many may regret, as I do, the failure of some legislative bodies to address the capital punishment issue with greater frankness or effectiveness. Many might decry their failure either to abolish the penalty entirely or selectively, or to establish standards for its enforcement. But impatience with the slowness, and even the unresponsiveness, of legislatures is no justification for judicial intrusion upon their historic powers. Rarely has there been a more appropriate opportunity for this Court to heed the philosophy of Mr. Justice Oliver Wendell Holmes. As Mr. Justice Frankfurter reminded the Court in Trop:

1972, Furman v. Georgia, 408 U.S. 465

[T]he whole of [Mr. Justice Holmes'] work during his thirty years of service on this Court should be a constant reminder that the power to invalidate legislation must not be exercised as if, either in constitutional theory or in the art of government, it stood as the sole bulwark against unwisdom or excesses of the moment.

1972, Furman v. Georgia, 408 U.S. 465

356 U.S. at 128.

REHNQUIST, J., dissenting

1972, Furman v. Georgia, 408 U.S. 465

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL join, dissenting.

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The Court's judgments today strike down a penalty that our Nation's legislators have thought necessary since our country was founded. My Brothers DOUGLAS, BRENNAN, and MARSHALL would, at one fell swoop, invalidate laws enacted by Congress and 40 of the 50 state legislatures, and would consign to the limbo of unconstitutionality under a single rubric penalties for offenses as varied and unique as murder, piracy, mutiny, highjacking, and desertion in the face of the enemy. My Brothers STEWART and WHITE, asserting reliance on a more limited rationale—the reluctance of judges and juries actually to impose the death penalty in the majority of capital [408 U.S. 466] cases—join in the judgments in these cases. Whatever its precise rationale, today's holding necessarily brings into sharp relief the fundamental question of the role of judicial review in a democratic society. How can government by the elected representatives of the people coexist with the power of the federal judiciary, whose members are constitutionally insulated from responsiveness to the popular will, to declare invalid laws duly enacted by the popular branches of government?

1972, Furman v. Georgia, 408 U.S. 466

The answer, of course, is found in Hamilton's Federalist Paper No. 78 and in Chief Justice Marshall's classic opinion in Marbury v. Madison, 1 Cranch. 137 (1803). An oft-told story since then, it bears summarization once more. Sovereignty resides ultimately in the people as a whole and, by adopting through their States a written Constitution for the Nation and subsequently adding amendments to that instrument, they have both granted certain powers to the National Government, and denied other powers to the National and the State Governments. Courts are exercising no more than the judicial function conferred upon them by Art. III of the Constitution when they assess, in a case before them, whether or not a particular legislative enactment is within the authority granted by the Constitution to the enacting body, and whether it runs afoul of some limitation placed by the Constitution on the authority of that body. For the theory is that the people themselves have spoken in the Constitution, and therefore its commands are superior to the commands of the legislature, which is merely an agent of the people.

1972, Furman v. Georgia, 408 U.S. 466

The Founding Fathers thus wisely sought to have the best of both worlds, the undeniable benefits of both democratic self-government and individual rights protected against possible excesses of that form of government.

1972, Furman v. Georgia, 408 U.S. 466

The courts in cases properly before them have been entrusted under the Constitution with the last word, short of constitutional amendment, as to whether a law passed [408 U.S. 467] by the legislature conforms to the Constitution. But just because courts in general, and this Court in particular, do have the last word, the admonition of Mr. Justice Stone dissenting in United States v. Butler must be constantly borne in mind:

1972, Furman v. Georgia, 408 U.S. 467

[W]hile unconstitutional exercise of power by the executive and legislative branches of the government is subject to judicial restraint, the only check upon our own exercise of power is our own sense of self-restraint.

1972, Furman v. Georgia, 408 U.S. 467

297 U.S. 1, 78-79 (1936).

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Rigorous attention to the limits of this Court's authority is likewise enjoined because of the natural desire that beguiles judges along with other human beings into imposing their own views of goodness, truth, and justice upon others. Judges differ only in that they have the power, if not the authority, to enforce their desires. This is doubtless why nearly two centuries of judicial precedent from this Court counsel the sparing use of that power. The most expansive reading of the leading constitutional cases does not remotely suggest that this Court has been granted a roving commission, either by the Founding Fathers or by the framers of the Fourteenth Amendment, to strike down laws that are based upon notions of policy or morality suddenly found unacceptable by a majority of this Court. The Framers of the Constitution would doubtless have agreed with the great English political philosopher John Stuart Mill when he observed:

1972, Furman v. Georgia, 408 U.S. 467

The disposition of mankind, whether as rulers or as fellow-citizens, to impose their own opinions and inclinations as a rule of conduct on others, is so energetically supported by some of the best and by some of the worst feelings incident to human nature, that it is hardly ever kept under restraint by anything but want of power.

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On Liberty 28 (1885). [408 U.S. 468]

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A separate reason for deference to the legislative judgment is the consequence of human error on the part of the judiciary with respect to the constitutional issue before it. Human error there is bound to be, judges being men and women, and men and women being what they are. But an error in mistakenly sustaining the constitutionality of a particular enactment, while wrongfully depriving the individual of a right secured to him by the Constitution, nonetheless does so by simply letting stand a duly enacted law of a democratically chosen legislative body. The error resulting from a mistaken upholding of an individual's constitutional claim against the validity of a legislative enactment is a good deal more serious. For the result in such a case is not to leave standing a law duly enacted by a representative assembly, but to impose upon the Nation the judicial fiat of a majority of a court of judges whose connection with the popular will is remote, at best.

1972, Furman v. Georgia, 408 U.S. 468

The task of judging constitutional cases imposed by Art. III cannot for this reason be avoided, but it must surely be approached with the deepest humility and genuine deference to legislative judgment. Today's decision to invalidate capital punishment is, I respectfully submit, significantly lacking in those attributes. For the reasons well stated in the opinions of THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL, I conclude that this decision holding unconstitutional capital punishment is not an act of judgment, but rather an act of will. It completely ignores the strictures of Mr. Justice Holmes, writing more than 40 years ago in Baldwin v. Missouri:

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I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States. As the decisions now stand, I see hardly [408 U.S. 469] any limit but the sky to the invalidating of those rights if they happen to strike a majority of this Court as for any reason undesirable. I cannot believe that the Amendment was intended to give us carte blanche to embody our economic or moral beliefs in its prohibitions. Yet I can think of no narrower reason that seems to me to justify the present and the earlier decisions to which I have referred. Of course, the words "due process of law," if taken in their literal meaning, have no application to this case; and while it is too late to deny that they have been given a much more extended and artificial signification, still we ought to remember the great caution shown by the Constitution in limiting the power of the States, and should be slow to construe the clause in the Fourteenth Amendment as committing to the Court, with no guide but the Court's own discretion, the validity of whatever laws the States may pass.

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281 U.S. 586, 595 (1930) (dissenting opinion).

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More than 20 years ago, Justice Jackson made a similar observation with respect to this Court's restriction of the States in the enforcement of their own criminal laws:

1972, Furman v. Georgia, 408 U.S. 469

The use of the due process clause to disable the States in protection of society from crime is quite as dangerous and delicate a use of federal judicial power as to use it to disable them from social or economic experimentation.

1972, Furman v. Georgia, 408 U.S. 469

Ashcraft v. Tennessee, 322 U.S. 143, 174 (1944) (dissenting opinion).

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If there can be said to be one dominant theme in the Constitution, perhaps more fully articulated in the Federalist Papers than in the instrument itself, it is the notion of checks and balances. The Framers were well aware of the natural desire of office holders as well as others to seek to expand the scope and authority of their [408 U.S. 470] particular office at the expense of others. They sought to provide against success in such efforts by erecting adequate checks and balances in the form of grants of authority to each branch of the government in order to counteract and prevent usurpation on the part of the others.

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This philosophy of the Framers is best described by one of the ablest and greatest of their number, James Madison, in Federalist No. 51:

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In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to controul the governed; and in the next place, oblige it to controul itself.

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Madison's observation applies to the Judicial Branch with at least as much force as to the Legislative and Executive Branches. While overreaching by the Legislative and Executive Branches may result in the sacrifice of individual protections that the Constitution was designed to secure against action of the State, judicial overreaching may result in sacrifice of the equally important right of the people to govern themselves. The Due Process and Equal Protection Clauses of the Fourteenth Amendment were "never intended to destroy the States' power to govern themselves." Black, J., in Oregon v. Mitchell, 400 U.S. 112, 126 (1970).

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The very nature of judicial review, as pointed out by Justice Stone in his dissent in the Butler case, makes the courts the least subject to Madisonian check in the event that they shall, for the best of motives, expand judicial authority beyond the limits contemplated by the Framers. It is for this reason that judicial self-restraint is surely an implied, if not an expressed, condition of the grant of authority of judicial review. The Court's holding in these cases has been reached, I believe, in complete disregard of that implied condition.

Footnotes

DOUGLAS, J., concurring (Footnotes)

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1. The opinion of the Supreme Court of Georgia affirming Furman's conviction of murder and sentence of death is reported in 225 Ga. 253, 167 S.E.2d 628, and its opinion affirming Jackson's conviction of rape and sentence of death is reported in 225 Ga. 790, 171 S.E.2d 501. The conviction of Branch of rape and the sentence of death were affirmed by the Court of Criminal Appeals of Texas and reported in 447 S.W.2d 932.

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2. Granucci, "Nor Cruel and Unusual Punishments Inflicted:" The Original Meaning, 57 Calif.L.Rev. 839, 845-846 (1969).

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3. 1 W. & M., Sess. 2, c. 2; 8 English Historical Documents, 166 1714, p. 122 (A. Browning ed. 1953).

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4. F. Thorpe, Federal & State Constitutions 3813 (1909).

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5. Delaware, Maryland, New Hampshire, North Carolina, Massachusetts, Pennsylvania, and South Carolina. 1 Thorpe, supra, n. 4, at 569; 3 id. at 1688, 1892; 4 id. at 2457; 5 id. at 2788, 3101; 6 id. at 3264.

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6. Set out in 1 U.S.C. XXXIX-XLI.

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7. Annals of Cong. 754 (1789).

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8.

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When, in respect of any class of offenses, the difficulty of obtaining convictions is at all general in England, we may hold it as an axiom that the law requires amendment. Such conduct in juries is the silent protest of the people against its undue severity. This was strongly exemplified in the case of prosecutions for the forgery of banknotes, when it was a capital felony. It was in vain that the charge was proved. Juries would not condemn men to the gallows for an offense of which the punishment was out of all proportion to the crime; and, as they could not mitigate the sentence, they brought in verdicts of Not Guilty. The consequence was that the law was changed; and when secondary punishments were substituted for the penalty of death, a forger had no better chance of an acquittal than any other criminal. Thus it is that the power which juries possess of refusing to put the law in force has, in the words of Lord John Russell,

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been the cause of amending many bad laws which the judges would have administered with professional bigotry, and, above all, it has this important and useful consequence that laws totally repugnant to the feelings of the community for which they are made can not long prevail in England.

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W. Forsyth, History of Trial by Jury 367-368 (2d ed. 1971).

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9. This trend was not universally applauded. In the early 1800's, England had a law that made it possible to impose the death sentence for stealing five shillings or more. 3 W. & M., c. 9, § 1. When a bill for abolishing that penalty (finally enacted in 1827, 7 & 8 Geo. 4, c. 27) was before the House of Lords in 1813, Lord Ellenborough said:

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If your Lordships look to the particular measure now under consideration, can it, I ask, be seriously maintained, that the most exemplary punishment, and the best suited to prevent the commission of this crime, ought not to be a punishment which might in some cases be inflicted? How, but by the enactments of the law now sought to be repealed, are the cottages of industrious poverty protected? What other security has a poor peasant, when he and his wife leave their home for their daily labours, that, on their return, their few articles of furniture or of clothes which they possess besides those which they carry on their backs, will be safe?…[B]y the enacting of the punishment of death, and leaving it to the discretion of the Crown to inflict that punishment or not, as the circumstances of the case may require, I am satisfied, and I am much mistaken if your Lordships are not satisfied, that this object is attained with the least possible expenditure. That the law is, as it has been termed, a bloody law, I can by no means admit. Can there be a better test than by a consideration of the number of persons who have been executed for offences of the description contained in the present Bill? Your Lordships are told what is extremely true, that this number is very small, and this very circumstance is urged as a reason for a repeal of the law; but, before your Lordships are induced to consent to such repeal, I beg to call to your consideration the number of innocent persons who might have been plundered of their property or destroyed by midnight murderers if the law now sought to be repealed had not been in existence—a law upon which all the retail trade of this commercial country depends, and which I, for one, will not consent to be put in jeopardy.

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Debate in House of Lords, Apr. 2, 1813, pp. 23-24 (Longman, Hurst, Rees, Orme, & Brown, Paternoster-Row, London 1816).

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10. H.R. 3243, 92d Cong., 1st Sess., introduced by Cong. Celler, would abolish all executions by the United States or by any State.

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H.R. 8414, 92d Cong., 1st Sess., introduced by Cong. Celler, would provide an interim stay of all executions by the United States or by any State and contains the following proposed finding:

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Congress hereby finds that there exists serious question—

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(a) whether the infliction of the death penalty amounts to cruel and unusual punishment in violation of the eighth and fourteenth amendments to the Constitution; and

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(b) whether the death penalty is inflicted discriminatorily upon members of racial minorities, in violation of the fourteenth amendment to the Constitution,

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and, in either case, whether Congress should exercise its authority under section 5 of the fourteenth amendment to prohibit the use of the death penalty.

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There is the naive view that capital punishment as "meted out in our courts, is the antithesis of barbarism." See Henry Paolucci, New York Times, May 27, 1972, p. 29, col. 1. But the Leopolds and Loebs, the Harry Thaws, the Dr. Sheppards and the Dr. Finchs of our society are never executed—only those in the lower strata, only those who are members of an unpopular minority or the poor and despised.

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11. The tension between our decision today and McGautha highlights, in my view, the correctness of MR. JUSTICE BRENNAN's dissent in that case, which I joined. 402 U.S. at 248. I should think that if the Eighth and Fourteenth Amendments prohibit the imposition of the death penalty on petitioners because they are "among a capriciously selected random handful upon whom the sentence of death has in fact been imposed," opinion of MR. JUSTICE STEWART, post, at 309-310, or because

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there is no meaningful basis for distinguishing the few cases in which [the death penalty] is imposed from the many cases in which it is not,

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opinion of MR. JUSTICE WHITE, post, at 313, statements with which I am in complete agreement—then the Due Process Clause of the Fourteenth Amendment would render unconstitutional

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capital sentencing procedures that are purposely constructed to allow the maximum possible variation from one case to the next, and [that] provide no mechanism to prevent that consciously maximized variation from reflecting merely random or arbitrary choice.

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McGautha v. California, 402 U.S. 183, 248 (BRENNAN, J., dissenting).

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12. Goldberg & Dershowitz, Declaring the Death Penalty Unconstitutional, 83 Harv.L.Rev. 1773, 1790.

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13. Id. at 1792.

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14. The Challenge of Crime in a Free Society 143 (1967).

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15. Koeninger, Capital Punishment in Texas, 1924-1968, 15 Crime & Delin. 132, 141 (1969).

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In H. Bedau, The Death Penalty in America 474 (1967 rev. ed.), it is stated:

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RACE OF THE OFFENDER BY FINAL DISPOSITION

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Final Negro White Total

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Disposition N % N % N %

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Executed 130 88.4 210 79.8 340 82.9

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Commuted 17 11.6 53 20.2 70 17.1

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Total 147 100.0 263 100.0 410 100.0

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2=4.33; P less than .05. (For discussion of statistical symbols, see Bedau, supra, at 469.)

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Although there may be a host of factors other than race involved in this frequency distribution, something more than chance has operated over the years to produce this racial difference. On the basis of this study it is not possible to indict the judicial and other public processes prior to the death row as responsible for the association between Negroes and higher frequency of executions; nor is it entirely correct to assume that from the time of their appearance on death row Negroes are discriminated against by the Pardon Board. Too many unknown or presently immeasurable factors prevent our making definitive statements about the relationship. Nevertheless, because the Negro/high-execution association is statistically present, some suspicion of racial discrimination can hardly be avoided. If such a relationship had not appeared, this kind of suspicion could have been allayed; the existence of the relationship, although not proving differential bias by the Pardon Boards over the years since 1914, strongly suggests that such bias has existed.

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The latter was a study in Pennsylvania of people on death row between 1914 and 1958, made by Wolfgang, Kelly, & Nolde and printed in 53 J.Crim.L.C. & P.S. 301 (1962). And see Hartung, Trends in the Use of Capital Punishment, 284 Annals 8, 14-17 (1952).

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16. Life and Death in Sing Sing 155-160 (1928).

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17. Crime in America 335 (1970).

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18. See Johnson, The Negro and Crime, 217 Annals 93 (1941).

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19. See J. Spellman, Political Theory of Ancient India 112 (1964).

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20. C. Drekmeier, Kingship and Community in Early India 233 (1962).

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21. Cf. B. Prettyman, Jr., Death and The Supreme Court 296-297 (1961).

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The disparity of representation in capital cases raises doubts about capital punishment itself, which has been abolished in only nine states. If a James Avery [345 U.S. 559] can be saved from electrocution because his attorney made timely objection to the selection of a jury by the use of yellow and white tickets, while an Aubry Williams [349 U.S. 375] can be sent to his death by a jury selected in precisely the same manner, we are imposing our most extreme penalty in an uneven fashion.

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The problem of proper representation is not a problem of money, as some have claimed, but of a lawyer's ability, and it is not true that only the rich have able lawyers. Both the rich and the poor usually are well represented—the poor because, more often than not, the best attorneys are appointed to defend them. It is the middle-class defendant, who can afford to hire an attorney but not a very good one, who is at a disadvantage. Certainly William Fikes [352 U.S. 191], despite the anomalous position in which he finds himself today, received as effective and intelligent a defense from his court-appointed attorneys as he would have received from an attorney his family had scraped together enough money to hire.

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And it is not only a matter of ability. An attorney must be found who is prepared to spend precious hours—the basic commodity he has to sell—on a case that seldom fully compensates him and often brings him no fee at all. The public has no conception of the time and effort devoted by attorneys to indigent cases. And, in a first-degree case, the added responsibility of having a man's life depend upon the outcome exacts a heavy toll.

BRENNAN, J., concurring (Footnotes)

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1. The Eighth Amendment provides:

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

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(Emphasis added.) The Cruel and Unusual Punishments Clause is fully applicable to the States through the Due Process Clause of the Fourteenth Amendment. Robinson v. California, 370 U.S. 660 (1962); Gideon v. Wainwright, 372 U.S. 335, 342 (1963); Malloy v. Hogan, 378 U.S. 1, 6 n. 6 (1964); Powell v. Texas, 392 U.S. 514 (1968).

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2. Henry continued:

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But Congress may introduce the practice of the civil law, in preference to that of the common law. They may introduce the practice of France, Spain, and Germany—of torturing, to extort a confession of the crime. They will say that they might as well draw examples from those countries as from Great Britain, and they will tell you that there is such a necessity of strengthening the arm of government that they must have a criminal equity, and extort confession by torture, in order to punish with still more relentless severity. We are then lost and undone.

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3 J. Elliot's Debates 447-448 (2d ed. 1876). Although these remarks have been cited as evidence that the Framers considered only torturous punishments to be "cruel and unusual," it is obvious that Henry was referring to the use of torture for the purpose of eliciting confessions from suspected criminals. Indeed, in the ensuing colloquy, see n. 3, infra. George Mason responded that the use of torture was prohibited by the right against self-incrimination contained in the Virginia Bill of Rights.

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3. It is significant that the response to Henry's plea, by George Nicholas, was simply that a Bill of Rights would be ineffective as a means of restraining the legislative power to prescribe punishments:

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But the gentleman says that, by this Constitution, they have power to make laws to define crimes and prescribe punishments, and that, consequently, we are not free from torture…. If we had no security against torture but our [Virginia] declaration of rights, we might be tortured tomorrow, for it has been repeatedly infringed and disregarded.

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3 J. Elliot's Debates, supra, at 451. George Mason misinterpreted Nicholas' response to Henry:

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Mr. GEORGE MASON replied that the worthy gentleman was mistaken in his assertion that the [Virginia] bill of rights did not prohibit torture, for that one clause expressly provided that no man can give evidence against himself, and that the worthy gentleman must know that, in those countries where torture is used, evidence was extorted from the criminal himself. Another clause of the bill of rights provided that no cruel and unusual punishments shall be inflicted; therefore, torture was included in the prohibition.

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Id. at 452. Nicholas concluded the colloquy by making his point again:

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Mr. NICHOLAS acknowledged the [Virginia] bill of rights to contain that prohibition, and that the gentleman was right with respect to the practice of extorting confession from the criminal in those countries where torture is used; but still he saw no security arising from the bill of rights as separate from the Constitution, for that it had been frequently violated with impunity.

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Ibid. There was thus no denial that the legislative power should be restrained; the dispute was whether a Bill of Rights would provide a realistic restraint. The Framers, obviously, believed it would.

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4. We have not been referred to any mention of the Cruel and Unusual Punishments Clause in the debates of the state legislatures on ratification of the Bill of Rights.

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5. The elided portion of Livermore's remarks reads:

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What is meant by the terms excessive bail? Who are to be the judges? What is understood by excessive fines? It lies with the court to determine.

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Since Livermore did not ask similar rhetorical questions about the Cruel and Unusual Punishments Clause, it is unclear whether he included the Clause in his objection that the Eighth Amendment "seems to have no meaning in it."

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6. Indeed, the first federal criminal statute, enacted by the First Congress, prescribed 39 lashes for larceny and for receiving stolen goods, and one hour in the pillory for perjury. Act of Apr. 30, 1790, §§ 16-18, 1 Stat. 116.

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7. Many of the state courts, "feeling constrained thereto by the incidences of history," Weems v. United States, 217 U.S. 349, 376 (1910), were apparently taking the same position. One court

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expressed the opinion that the provision did not apply to punishment by "fine or imprisonment or both, but such as that inflicted at the whipping post, in the pillory, burning at the stake, breaking on the wheel," etc.

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Ibid. Another court

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said that, ordinarily, the terms imply something inhuman and barbarous, torture and the like…. Other cases…selected certain tyrannical acts of the English monarchs as illustrating the meaning of the clause and the extent of its prohibition.

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Id. at 368.

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8. The Court had earlier emphasized this point in In re Kemmler, 136 U.S. 436 (1890), even while stating the narrow, "historical" interpretation of the Clause:

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This [English] Declaration of Rights had reference to the acts of the executive and judicial departments of the government of England; but the language in question as used in the constitution of the State of New York was intended particularly to operate upon the legislature of the State, to whose control the punishment of crime was almost wholly confided. So that, if the punishment prescribed for an offence against the laws of the State were manifestly cruel and unusual,…it would be the duty of the courts to adjudge such penalties to be within the constitutional prohibition. And we think this equally true of the [Clause], in its application to Congress.

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Id. at 446-447 (emphasis added).

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9. Indeed, the Court in Weems refused even to comment upon some decisions from state courts because they were "based upon sentences of courts, not upon the constitutional validity of laws." 217 U.S. at 377.

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10. The Clause

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may be therefore progressive, and is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice.

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Weems v. United States, 217 U.S. at 378.

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11.

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It may be that even the cruelty of pain is not omitted. He must bear a chain night and day. He is condemned to painful as well as hard labor. What painful labor may mean we have no exact measure. It must be something more than hard labor. It may be hard labor pressed to the point of pain.

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12.

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His prison bars and chains are removed, it is true, after twelve years, but he goes from them to a perpetual limitation of his liberty. He is forever kept under the shadow of his crime, forever kept within voice and view of the criminal magistrate, not being able to change his domicil without giving notice to the "authority immediately in charge of his surveillance," and without permission in writing. He may not seek, even in other scenes and among other people, to retrieve his fall from rectitude. Even that hope is taken from him, and he is subject to tormenting regulations that, if not so tangible as iron bars and stone walls, oppress as much by their continuity, and deprive of essential liberty.

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13.

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This punishment is offensive to cardinal principles for which the Constitution stands. It subjects the individual to a fate of ever-increasing fear and distress. He knows not what discriminations may be established against him, what proscriptions may be directed against him, and when and for what cause his existence in his native land may be terminated. He may be subject to banishment, a fate universally decried by civilized people. He is stateless, a condition deplored in the international community of democracies. It is no answer to suggest that all the disastrous consequences of this fate may not be brought to bear on a stateless person. The threat makes the punishment obnoxious.

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Trop v. Dulles, 356 U.S. 86, 102 (1958). Cf. id. at 110-111 (BRENNAN, J., concurring):

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[I]t can be supposed that the consequences of greatest weight, in terms of ultimate impact on the petitioner, are unknown and unknowable. Indeed, in truth, he may live out his life with but minor inconvenience…. Nevertheless, it cannot be denied that the impact of expatriation—especially where statelessness is the upshot—may be severe. Expatriation, in this respect, constitutes an especially demoralizing sanction. The uncertainty, and the consequent psychological hurt, which must accompany one who becomes an outcast in his own land must be reckoned a substantial factor in the ultimate judgment.

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14.

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It is cruel in its excess of imprisonment and that which accompanies and follows imprisonment. It is unusual in its character. Its punishments come under the condemnation of the bill of rights, both on account of their degree and kind.

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Weems v. United States, 217 U.S. at 377.

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15.

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There may be involved no physical mistreatment, no primitive torture. There is, instead, the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development. The punishment strips the citizen of his status in the national and international political community. His very existence is at the sufferance of the country in which he happens to find himself. While any one country may accord him some rights, and presumably, as long as he remained in this country, he would enjoy the limited rights of an alien, no country need do so, because he is stateless. Furthermore, his enjoyment of even the limited rights of an alien might be subject to termination at any time by reason of deportation. In short, the expatriate has lost the right to have rights.

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Trop v. Dulles, 356 U.S. at 101-102.

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16. "The phrase in our Constitution was taken directly from the English Declaration of Rights of [1689]…. " Id. at 100.

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17. The specific incident giving rise to the provision was the perjury trial of Titus Oates in 1685.

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None of the punishments inflicted upon Oates amounted to torture…. In the context of the Oates' case, "cruel and unusual" seems to have meant a severe punishment unauthorized by statute and not within the jurisdiction of the court to impose.

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Granucci, "Nor Cruel and Unusual Punishments Inflicted:" The Original Meaning, 57 Calif.L.Rev. 839, 859 (1969). Thus, "[t]he irregularity and anomaly of Oates' treatment was extreme." Goldberg & Dershowitz, Declaring the Death Penalty Unconstitutional, 83 Harv.L.Rev. 1773, 1789 n. 74 (1970). Although the English provision was intended to restrain the judicial and executive power, see n. 8, supra, the principle is, of course, fully applicable under our Clause, which is primarily a restraint upon the legislative power.

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18. In a case from the Philippine Territory, the Court struck down a punishment that "ha[d] no fellow in American legislation." Weems v. United States, 217 U.S. at 377. After examining the punishments imposed, under both United States and Philippine law, for similar as well as more serious crimes, id. at 380-381, the Court declared that the "contrast"

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exhibit[ed] a difference between unrestrained power and that which is exercised under the spirit of constitutional limitations formed to establish justice,

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id. at 381. And in Trop v. Dulles, supra, in which a law of Congress punishing wartime desertion by expatriation was held unconstitutional, it was emphasized that "[t]he civilized nations of the world are in virtual unanimity that statelessness is not to be imposed as punishment for crime." Id. at 102. When a severe punishment is not inflicted elsewhere, or when more serious crimes are punished less severely, there is a strong inference that the State is exercising arbitrary, "unrestrained power."

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19. In Weems v. United States, supra, at 369-370, the Court summarized the holding of Wilkerson v. Utah, 99 U.S. 130 (1879), as follows:

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The court pointed out that death was an usual punishment for murder, that it prevailed in the Territory for many years, and was inflicted by shooting, also that that mode of execution was usual under military law. It was hence concluded that it was not forbidden by the Constitution of the United States as cruel or unusual.

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20. It was said in Trop v. Dulles, supra, at 100-101, n. 32, that,

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[o]n the few occasions this Court has had to consider the meaning of the [Clause], precise distinctions between cruelty and unusualness do not seem to have been drawn…. If the word "unusual" is to have any meaning apart from the word "cruel," however, the meaning should be the ordinary one, signifying something different from that which is generally done.

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There are other statements in prior cases indicating that the word "unusual" has a distinct meaning: "We perceive nothing…unusual in this [punishment]." Pervear v. The Commonwealth, 5 Wall. 475, 480 (1867). "[T]he judgment of mankind would be that the punishment was not only an unusual, but a cruel one…. " O'Neil v. Vermont, 144 U.S. 323, 340 (1892) (Field, J., dissenting). "It is unusual in its character." Weems v. United States, supra, at 377. "And the punishment inflicted…is certainly unusual." United States ex rel. Milwaukee Social Democratic Pub. Co. v. Burleson, 255 U.S. 407, 430 (1921) (Brandeis, J., dissenting). "The punishment inflicted is not only unusual in character; it is, so far as known, unprecedented in American legal history." Id. at 435. "There is no precedent for it. What then is it, if it be not cruel, unusual and unlawful?" Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 479 (1947) (Burton, J., dissenting). "To be sure, imprisonment for ninety days is not, in the abstract, a punishment which is either cruel or unusual." Robinson v. California, 370 U.S. at 667.

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It is fair to conclude from these statements that "[w]hether the word `unusual' has any qualitative meaning different from `cruel' is not clear." Trop v. Dulles, supra, at 100 n. 32. The question, in any event, is of minor significance; this Court has never attempted to explicate the meaning of the Clause simply by parsing its words.

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21. The danger of subjective judgment is acute if the question posed is whether a punishment "shocks the most fundamental instincts of civilized man," Louisiana ex rel. Francis v. Resweber, supra, at 473 (Burton, J., dissenting), or whether "any man of right feeling and heart can refrain from shuddering," O'Neil v. Vermont, supra, at 340 (Field, J., dissenting), or whether "a cry of horror would rise from every civilized and Christian community of the country," ibid. Mr. Justice Frankfurter's concurring opinion in Louisiana ex rel. Francis v. Resweber, supra, is instructive. He warned "against finding in personal disapproval a reflection of more or less prevailing condemnation" and against

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enforcing…private view[s], rather than that consensus of society's opinion which, for purposes of due process, is the standard enjoined by the Constitution.

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Id. at 471. His conclusions were as follows:

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I cannot bring myself to believe that [the State's procedure]…offends a principle of justice "rooted in the traditions and conscience of our people."

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Id. at 470. "…I cannot say that it would be `repugnant to the conscience of mankind.'" Id. at 471. Yet nowhere in the opinion is there any explanation of how he arrived at those conclusions.

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22. Cf. Louisiana ex rel. Francis v. Resweber, supra, at 463: "The traditional humanity of modern Anglo-American law forbids the infliction of unnecessary pain in the execution of the death sentence."

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23. It may, in fact, have appeared earlier. In Pervear v. The Commonwealth, 5 Wall. at 480, the Court stated:

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We perceive nothing excessive, or cruel, or unusual in this [punishment]. The object of the law was to protect the community against the manifold evils of intemperance. The mode adopted, of prohibiting under penalties the sale and keeping for sale of intoxicating liquors without license, is the usual mode adopted in many, perhaps, all of the States. It is wholly within the discretion of State legislatures.

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This discussion suggests that the Court viewed the punishment as reasonably related to the purposes for which it was inflicted.

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24. Mr. Justice Field apparently based his conclusion upon an intuitive sense that the punishment was disproportionate to the criminal's moral guilt, although he also observed that "the punishment was greatly beyond anything required by any humane law for the offences," O'Neil v. Vermont, 144 U.S. at 340. Cf. Trop v. Dulles, 356 U.S. at 99:

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Since wartime desertion is punishable by death, there can be no argument that the penalty of denationalization is excessive in relation to the gravity of the crime.

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25.

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The State thereby suffers nothing, and loses no power. The purpose of punishment is fulfilled, crime is repressed by penalties of just, not tormenting, severity, its repetition is prevented, and hope is given for the reformation of the criminal.

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Weems v. United States, 217 U.S. at 381.

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26. The principle that a severe punishment must not be excessive does not, of course, mean that a severe punishment is constitutional merely because it is necessary. A State could not now, for example, inflict a punishment condemned by history, for any such punishment, no matter how necessary, would be intolerably offensive to human dignity. The point is simply that the unnecessary infliction of suffering is also offensive to human dignity.

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27. The Fifth Amendment provides:

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No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury…; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;…nor be deprived of life, liberty, or property, without due process of law….

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(Emphasis added.)

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28. No one, of course, now contends that the reference in the Fifth Amendment to "jeopardy of…limb" provides perpetual constitutional sanction for such corporal punishments as branding and ear-cropping, which were common punishments when the Bill of Rights was adopted. But cf. n. 29, infra. As the California Supreme Court pointed out with respect to the California Constitution:

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The Constitution expressly proscribes cruel or unusual punishments. It would be mere speculation and conjecture to ascribe to the framers an intent to exempt capital punishment from the compass of that provision solely because, at a time when the death penalty was commonly accepted, they provided elsewhere in the Constitution for special safeguards in its application.

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People v. Anderson, 6 Cal. 3d 628, 639, 493 P.2d 880, 887 (1972).

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29. Cf. McGautha v. California, 402 U.S. 183, 226 (1971) (separate opinion of Black, J.):

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The [Clause] forbids "cruel and unusual punishments." In my view, these words cannot be read to outlaw capital punishment because that penalty was in common use and authorized by law here and in the countries from which our ancestors came at the time the [Clause] was adopted. It is inconceivable to me that the framers intended to end capital punishment by the [Clause].

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Under this view, of course, any punishment that was in common use in 1791 is forever exempt from the Clause.

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30. The Court expressly noted that the constitutionality of the punishment itself was not challenged. Wilkerson v. Utah, 99 U.S. at 136-137. Indeed, it may be that the only contention made was that, in the absence of statutory sanction, the sentencing "court possessed no authority to prescribe the mode of execution." Id. at 137.

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31. Cf. McElvaine v. Brush, 142 U.S. 155, 158-159 (1891):

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We held in the case of Kemmler…that, as the legislature of the State of New York had determined that [electrocution] did not inflict cruel and unusual punishment, and its courts had sustained that determination, we were unable to perceive that the State had thereby abridged the privileges or immunities of petitioner or deprived him of due process of law.

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32. It was also asserted that the Constitution prohibits "cruelty inherent in the method of punishment," but does not prohibit "the necessary suffering involved in any method employed to extinguish life humanely." 329 U.S. at 464. No authority was cited for this assertion, and, in any event, the distinction drawn appears to be meaningless.

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33. In a non-death case, Trop v. Dulles, it was said that, "in a day when it is still widely accepted, [death] cannot be said to violate the constitutional concept of cruelty." 356 U.S. at 99 (emphasis added). This statement, of course, left open the future constitutionality of the punishment.

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34.

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That life is at stake is, of course, another important factor in creating the extraordinary situation. The difference between capital and non-capital offenses is the basis of differentiation in law in diverse ways in which the distinction becomes relevant.

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Williams v. Georgia, 349 U.S. 375, 391 (1955) (Frankfurter, J.).

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When the penalty is death, we, like state court judges, are tempted to strain the evidence and even, in close cases, the law in order to give a doubtfully condemned man another chance.

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Stein v. New York, 346 U.S. 156, 196 (1953) (Jackson, J.). "In death cases doubts such as those presented here should be resolved in favor of the accused." Andres v. United States, 333 U.S. 740, 752 (1948) (Reed, J.). Mr. Justice Harlan expressed the point strongly:

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I do not concede that whatever process is "due'"an offender faced with a fine or a prison sentence necessarily satisfies the requirements of the Constitution in a capital case. The distinction is by no means novel,…nor is it negligible, being literally that between life and death.

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Reid v. Covert, 354 U.S. 1, 77 (1957) (concurring in result). And, of course, for many years, this Court distinguished death cases from all others for purposes of the constitutional right to counsel. See Powell v. Alabama, 287 U.S. 45 (1932); Betts v. Brady, 316 U.S. 455 (1942); Bute v. Illinois, 333 U.S. 640 (1948).

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35. See Report of Royal Commission on Capital Punishment 1949-1953, ¶¶ 700-789, pp. 246-273 (1953); Hearings on S. 1760 before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, 90th Cong., 2d Sess., 19-21 (1968) (testimony of Clinton Duffy); H. Barnes & N. Teeters, New Horizons in Criminology 306-309 (3d ed. 1959); C. Chessman, Trial by Ordeal 195-202 (1955); M. DiSalle, The Power of Life and Death 84-85 (1965); C. Duffy & A. Hirschberg, 88 Men and 2 Women 13-14 (1962); B. Eshelman, Death Row Chaplain 26-29, 101-104, 159-164 (1962); R. Hammer, Between Life and Death 208-212 (1969); K. Lamott, Chronicles of San Quentin 228-231 (1961); L. Lawes, Life and Death in Sing Sing 170-171 (1928); Rubin, The Supreme Court, Cruel and Unusual Punishment, and the Death Penalty, 15 Crime & Delin. 121, 128-129 (1969); Comment, The Death Penalty Cases, 56 Calif.L.Rev. 1268, 1338-1341 (1968); Brief amici curiae filed by James V. Bennett, Clinton T. Duffy, Robert G. Sarver, Harry C. Tinsley, and Lawrence E. Wilson 12-14.

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36. See Barnes & Teeters, supra, at 309-311 (3d ed. 1959); Camus, Reflections on the Guillotine, in A. Camus, Resistance, Rebellion, and Death 131, 151-156 (1960); C. Duffy & A. Hirschberg, supra, at 68-70, 254 (1962); Hammer, supra, at 222-235, 244-250, 269-272 (1969); S. Rubin, The Law of Criminal Correction 340 (1963); Bluestone & McGahee, Reaction to Extreme Stress: Impending Death by Execution, 119 Amer.J.Psychiatry 393 (1962); Gottlieb, Capital Punishment, 15 Crime & Delin. 1, 8-10 (1969); West, Medicine and Capital Punishment, in Hearings on S. 1760 before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, 90th Cong., 2d Sess., 124 (1968); Ziferstein, Crime and Punishment, The Center Magazine 84 (Jan. 1968); Comment, The Death Penalty Cases, 56 Calif.L.Rev. 1268, 1342 (1968); Note, Mental Suffering under Sentence of Death: A Cruel and Unusual Punishment, 57 Iowa L.Rev. 814 (1972).

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37. The State, of course, does not purposely impose the lengthy waiting period in order to inflict further suffering. The impact upon the individual is not the less severe on that account. It is no answer to assert that long delays exist only because condemned criminals avail themselves of their full panoply of legal rights. The right not to be subjected to inhuman treatment cannot, of course, be played off against the right to pursue due process of law, but, apart from that, the plain truth is that it is society that demands, even against the wishes of the criminal, that all legal avenues be explored before the execution is finally carried out.

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38. It was recognized in Trop itself that expatriation is a "punishment short of death." 356 U.S. at 99. Death, however, was distinguished on the ground that it was "still widely accepted." Ibid.

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39. Stephen, Capital Punishments, 69 Fraser's Magazine 753, 763 (1864).

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40. From 1930 to 1939: 155, 153, 140, 160, 168, 199, 195, 147, 190, 160. From 1940 to 1949: 124, 123, 147, 131, 120, 117, 131, 153, 119, 119. From 1950 to 1959: 82, 105, 83, 62, 81, 76, 65, 65, 49, 49. From 1960 to 1967: 56, 42, 47, 21, 15, 7, 1, 2. Department of Justice, National Prisoner Statistics No. 46, Capital Punishment 1930-1970, p. 8 (Aug. 1971). The last execution in the United States took place on June 2, 1967. Id. at 4.

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41. 1961—140; 1962—103; 1963—93; 1964—106; 1965—86; 1966—118; 1967—85; 1968—102; 1969—97; 1970—127. Id. at 9.

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42. Commutations averaged about 18 per year. 1961—17; 1962—27; 1963—16; 1964—9; 1965—19; 1966—17; 1967—13; 1968—16; 1969—20; 1970—29. Ibid.

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43. Transfers to mental institutions averaged about three per year. 1961—3; 1962—4; 1963—1; 1964—3; 1965—4; 1966—3; 1967—3; 1968—2; 1969—1; 1970—5. Ibid.

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44. These four methods of disposition averaged about 44 per year. 1961—31, 1962—30; 1963—32; 1964—58; 1965—39; 1966—33; 1967—53; 1968—59; 1969—64; 1970—42. Ibid. Specific figures are available starting with 1967. Resentences: 1967—7; 1968—18; 1969—12; 1970—14. Grants of new trials and orders for resentencing: 1967—31; 1968—21; 1969—13; 1970—9. Dismissals of indictments and reversals of convictions: 1967—12; 1968—19; 1969—33; 1970—17. Deaths by suicide and natural causes: 1967—2; 1968—1; 1969—5; 1970—2. National Prisoner Statistics No. 42, Executions 1930-1967, p. 13 (June 1968); National Prisoner Statistics No. 45, Capital Punishment 1930-1968, p. 12 (Aug. 1969); National Prisoner statistics, supra, n. 40, at 14-15.

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45. Id. at 9.

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46. During that 10-year period, 1,177 prisoners entered death row, including 120 who were returned following new trials or treatment at mental institutions. There were 653 dispositions other than by execution, leaving 524 prisoners who might have been executed, of whom 135 actually were. Ibid.

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47. Id. at 8.

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48. The victim surprised Furman in the act of burglarizing the victim's home in the middle of the night. While escaping, Furman killed the victim with one pistol shot fired through the closed kitchen door from the outside. At the trial, Furman gave his version of the killing:

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They got me charged with murder and I admit, I admit going to these folks' home and they did caught me in there and I was coming back out, backing up and there was a wire down there on the floor. I was coming out backwards and fell back and I didn't intend to kill nobody. I didn't know they was behind the door. The gun went off and I didn't know nothing about no murder until they arrested me, and when the gun went off, I was down on the floor, and I got up and ran. That's all to it.

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App. 555. The Georgia Supreme Court accepted that version:

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The admission in open court by the accused…that, during the period in which he was involved in the commission of a criminal act at the home of the deceased, he accidentally tripped over a wire in leaving the premises causing the gun to go off, together with other facts and circumstances surrounding the death of the deceased by violent means, was sufficient to support the verdict of guilty of murder….

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Furman v. State, 225 Ga. 253, 254, 167 S.E.2d 628, 629 (1969). About Furman himself, the jury knew only that he was black and that, according to his statement at trial, he was 26 years old and worked at "Superior Upholstery." App. 54. It took the jury one hour and 35 minutes to return a verdict of guilt and a sentence of death. Id. at 64-65.

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49. T. Sellin, The Death Penalty, A Report for the Model Penal Code Project of the American Law Institute 15 (1959).

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50. Eight States still employ hanging as the method of execution, and one, Utah, also employs shooting. These nine States have accounted for less than 3% of the executions in the United States since 1930. National Prisoner Statistics, supra, n. 40, at 10-11.

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51. Id. at 8

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52. Alaska, Hawaii, Iowa, Maine, Michigan, Minnesota, Oregon, West Virginia, and Wisconsin have abolished death as a punishment for crimes. Id. at 50. In addition, the California Supreme Court held the punishment unconstitutional under the state counterpart of the Cruel and Unusual Punishments Clause. People v. Anderson, 6 Cal.3d 628, 493 P.2d 880 (1972).

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53. New Mexico, New York, North Dakota, Rhode Island, and Vermont have almost totally abolished death as a punishment for crimes. National Prisoner Statistics, supra, n. 40, at 50. Indeed, these five States might well be considered de facto abolition States. North Dakota and Rhode Island, which restricted the punishment in 1915 and 1852, respectively, have not carried out an execution since at least 1930, id. at 10; nor have there been any executions in New York, Vermont, or New Mexico since they restricted the punishment in 1965, 1965, and 1969, respectively, id. at 10-11. As of January 1, 1971, none of the five States had even a single prisoner under sentence of death. Id. at 18-19.

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In addition, six States, while retaining the punishment on the books in generally applicable form, have made virtually no use of it. Since 1930, Idaho, Montana, Nebraska, New Hampshire, South Dakota, and Wyoming have carried out a total of 22 executions. Id. at 10-11. As of January 1, 1971, these six States had a total of three prisoners under sentences of death. Id. at 18-19. Hence, assuming 25 executions in 42 years, each State averaged about one execution every 10 years.

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54. There is also the more limited argument that death is a necessary punishment when criminals are already serving or subject to a sentence of life imprisonment. If the only punishment available is further imprisonment, it is said, those criminals will have nothing to lose by committing further crimes, and accordingly, the threat of death is the sole deterrent. But "life" imprisonment is a misnomer today. Rarely, if ever, do crimes carry a mandatory life sentence without possibility of parole. That possibility ensures that criminals do not reach the point where further crimes are free of consequences. Moreover, if this argument is simply an assertion that the threat of death is a more effective deterrent than the threat of increased imprisonment by denial of release on parole, then, as noted above, there is simply no evidence to support. it.

STEWART, J., concurring (Footnotes)

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1. See , post, at 376-379; concurring opinion of MR. JUSTICE DOUGLAS, ante at 242-244; concurring opinion of MR. JUSTICE BRENNAN, ante at 258-269; concurring opinion of MR. JUSTICE MARSHALL, post at 316-328; dissenting opinion of MR. JUSTICE BLACKMUN, post at 407-409; dissenting opinion of MR. JUSTICE POWELL, post at 421-427.

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2. See dissenting opinion of THE CHIEF JUSTICE, post at 380; concurring opinion of MR. JUSTICE BRENNAN, ante at 282-285; concurring opinion of MR. JUSTICE MARSHALL, post at 333-341; dissenting opinion of MR. JUSTICE POWELL, post at 421-424.

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3. 10 U.S.C. § 906.

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4. R.I.Gen.Laws Ann. § 11-23-2.

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5. Mass.Gen.Laws Ann., c. 265, § 2.

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6. Ohio Rev.Code Ann., Tit. 29, §§ 2901.09 and 2901.10.

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7. Many statistical studies—comparing crime rates in jurisdictions with and without capital punishment and in jurisdictions before and after abolition of capital punishment—have indicated that there is little, if any, measurable deterrent effect. See H. Bedau, The Death Penalty in America 258-332 (1967 rev. ed.). There remains uncertainty, however, because of the difficulty of identifying and holding constant all other relevant variables. See Comment, The Death Penalty Cases, 56 Calif.L.Rev. 1268, 1275-1292. See also dissenting opinion of THE CHIEF JUSTICE, post at 395; concurring opinion of MR. JUSTICE MARSHALL, post at 346-354.

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8. Georgia law, at the time of the conviction and sentencing of the petitioner in No. 69-5030, left the jury a choice between the death penalty, life imprisonment, or "imprisonment and labor in the penitentiary for not less than one year nor more than 20 years." Ga.Code Ann. § 26-1302 (Supp. 1971) (effective prior to July l, 1969). The current Georgia provision for the punishment of forcible rape continues to leave the same broad sentencing leeway. Ga.Crim.Code § 26-2001 (1971 rev.) (effective July l, 1969). Texas law, under which the petitioner in No. 69-5031 was sentenced, provides that a "person guilty of rape shall be punished by death or by confinement in the penitentiary for life, or for any term of years not less than five." Texas Penal Code, Art. 1189.

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9. Georgia law, under which the petitioner in No. 69-5003 was sentenced, left the jury a choice between the death penalty and life imprisonment. Ga.Code Ann. § 26-1005 (Supp. 1971) (effective prior to July 1, 1969). Current Georgia law provides for similar sentencing leeway. Ga.Crim.Code § 26-1101 (1971 rev.) (effective July 1, 1969).

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10. See dissenting opinion of THE CHIEF JUSTICE, post at 386-387, n. 11; concurring opinion of MR. JUSTICE BRENNAN, ante at 291-293.

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11. Petitioner Branch was sentenced to death in a Texas court on July 26, 1967. Petitioner Furman was sentenced to death in a Georgia court on September 20, 1968. Petitioner Jackson was sentenced to death in a Georgia court on December 10, 1968.

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12. A former United States Attorney General has testified before the Congress that only a "small and capricious selection of offenders have been put to death. Most persons convicted of the same crimes have been imprisoned." Statement by Attorney General Clark in Hearings on S. 1760 before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, 90th Cong., 2d Sess., 93.

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In McGautha v. California, 402 U.S. 183, the Court dealt with claims under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. We expressly declined in that case to consider claims under the constitutional guarantee against cruel and unusual punishments. See 398 U.S. 936 (limited grant of certiorari).

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13. See concurring opinion of MR. JUSTICE DOUGLAS, ante, at 249-251; concurring opinion of MR. JUSTICE MARSHALL, post at 366 n. 155.

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14. Cf. Note, A Study of the California Penalty Jury in First-Degree-Murder Cases, 21 Stan.L.Rev. 1297 (1969); dissenting opinion of THE CHIEF JUSTICE, post at 389-390, n. 12.

MARSHALL, J., concurring (Footnotes)

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1. Certiorari was also granted in a fourth case, Aikens v. California, No. 68-5027, but the writ was dismissed after the California Supreme Court held that capital punishment violates the State Constitution. 406 U.S. 813. See People v. Anderson, 6 Cal.3d 628, 493 P.2d 880, cert. denied, 406 U.S. 958 (1972). The California decision reduced by slightly more than 100 the number of persons currently awaiting execution.

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2. 268 Parl.Deb., H. L. (5th ser.) 703 (1965) (Lord Chancellor Gardiner).

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3. Compare, e.g., Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 470 (1947) (Frankfurter, J., concurring), with F. Frankfurter, Of Law and Men 81 (1956). See In re Anderson, 69 Cal.2d 613, 634-635, 447 P.2d 117, 131-132 (1968) (Mosk, J., concurring); cf. McGautha v. California, 402 U.S. 183, 226 (1971) (separate opinion of Black, J.); Witherspoon v. Illinois, 391 U.S. 510, 542 (1968) (WHITE, J., dissenting).

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4. See generally Frankel, Book Review, 85 Harv.L.Rev. 354, 362 (1971).

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5. Granucci, "Nor Cruel and Unusual Punishments Inflicted:" The Original Meaning, 57 Calif.L.Rev. 839, 848 (1969).

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6. Ibid. Beale's views were conveyed from England to America, and were first written into American law by the Reverend Nathaniel Ward, who wrote the Body of Liberties for the Massachusetts Bay Colony. Clause 46 of that work read: "For bodilie punishments we allow amongst us none that are inhumane, Barbarous or cruel." 1 B. Schwartz, The Bill of Rights: A Documentary History 71, 77 (1971).

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7. 4 W. Blackstone, Commentaries \*376-377. See also 1 J. Chitty, The Criminal Law 785-786 (5th ed. 1847); Sherman, "…Nor Cruel and Unusual Punishments Inflicted," 14 Crime & Delin. 73, 74 (1968).

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8. Not content with capital punishment as a means of retribution for crimes, the English also provided for attainder ("dead in law") as the immediate and inseparable concomitant of the death sentence. The consequences of attainder were forfeiture of real and personal estates and corruption of blood. An attainted person could not inherit land or other hereditaments, nor retain those he possessed, nor transmit them by descent to any heir. Descents were also obstructed whenever posterity derived a title through one who was attainted. 4 W. Blackstone, Commentaries \*380-381.

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9. E.g., 2 J. Story, On the Constitution § 1903, p. 650 (5th ed. 1891).

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10. 2 G. Trevelyan, History of England 467 (1952 reissue).

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11. Granucci, supra, n. 5, at 854.

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12. Id. at 855.

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13. Id. at 860. In reaching this conclusion, Professor Granucci relies primarily on the trial of Titus Oates as the impetus behind the adoption of the clause. Oates was a minister of the Church of England who proclaimed the existence of a plot to assassinate King Charles II. He was tried for perjury, convicted, and sentenced to a fine of 2,000 marks, life imprisonment, whippings, pillorying four times a year, and defrocking. Oates petitioned both the House of Commons and the House of Lords for release from judgment. The House of Lords rejected his petition, but a minority of its members concluded that the King's Bench had no jurisdiction to compel defrocking, and that the other punishments were barbarous, inhumane, unchristian, and unauthorized by law. The House of Commons agreed with the dissenting Lords. Id. at 857-859.

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The author also relies on the dictionary definition of "cruel," which meant "severe" or "hard" in the 17th century, to support his conclusion. Ibid.

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14. Most historians reach this conclusion by reading the history of the Cruel and Unusual Punishments Clause as indicating that it was a reaction to inhumane punishments. Professor Granucci reaches the same conclusion by finding that the draftsmen of the Constitution misread the British history and erroneously relied on Blackstone. Granucci, supra, n. 5, at 862-865. It is clear, however, that, prior to the adoption of the Amendment, there was some feeling that a safeguard against cruelty was needed, and that this feeling had support in past practices. See n. 6, supra, and accompanying text.

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15, Grannucci, supra, n. 5, at 840; 1 Schwartz, supra, n. 6, at 276, 278.

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16. See, e.g., Delaware Declaration of Rights (1776), Maryland Declaration of Rights (1776), Massachusetts Declaration of Rights (1780), and New Hampshire Bill of Rights (1783). 1 Schwartz, supra, n. 6, at 276, 278; 279, 281; 337, 343; 374, 379.

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17. See 2 J. Elliot's Debates 111 (2d ed. 1876); 3 id. at 47-481. See also, 2 Schwartz, supra, n. 6, at 629, 674, 762, 852, 968.

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18. 3 Elliot, supra, n. 17, at 446-448. A comment by George Mason which misinterprets a criticism leveled at himself and Patrick Henry is further evidence of the intention to prohibit torture and the like by prohibiting cruel and unusual punishments. Id. at 452.

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19. Annals of Cong. 782-783 (1789). There is some recognition of the fact that a prohibition against cruel and unusual punishments is a flexible prohibition that may change in meaning as the mores of a society change, and that may eventually bar certain punishments not barred when the Constitution was adopted. Ibid. (remarks of Mr. Livermore of New Hampshire). There is also evidence that the general opinion at the time the Eighth Amendment was adopted was that it prohibited every punishment that was not "evidently necessary." W. Bradford, An Enquiry How Far the Punishment of Death is Necessary in Pennsylvania (1793), reprinted in 12 Am.J.Legal Hist. 122, 127 (1968).

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20. The New York Court of Appeals had recognized the unusual nature of the execution, but attributed it to a legislative desire to minimize the pain of persons executed.

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21. The prohibition against cruel and unusual punishments relevant to Weems was that found in the Philippine Bill of Rights. It was, however, borrowed from the Eighth Amendment to the United States Constitution, and had the same meaning. 217 U.S. at 367.

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22. Id. at 373.

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23. Ibid.

1972, Furman v. Georgia, 408 U.S. 470

24. Ibid.

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25. Id. at 381.

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26. Id. at 389-413. Mr. Justice Black expressed a similar point of view in his separate opinion in McGautha v. California, 402 U.S. at 226 (1971).

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27. Badders was found guilty on seven counts of using the mails as part of a scheme to defraud. He was sentenced to concurrent five-year sentences and to a $1,000 fine on each count. The Court summarily rejected his claim that the sentence was a cruel and unusual punishment. In United States ex rel. Milwaukee Social Democratic Publishing Co. v. Burleson, 255 U.S. 407 (1921), the Court upheld the denial of second-class mailing privileges to a newspaper that had allegedly printed articles conveying false reports of United States conduct during the First World War with intent to cause disloyalty. Mr. Justice Brandeis dissented, and indicated his belief that the "punishment" was unusual and possibly excessive under Weems v. United States, 217 U.S. 349 (1910). There is nothing in either of these cases demonstrating a departure from the approach used in Weems, or adding anything to it.

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28. Mr. Justice Frankfurter was the only member of the Court unwilling to make this assumption. However, like Chief Justice Fuller in In re Kemmler, 136 U.S. 436 (1890), he examined the propriety of the punishment under the Due Process Clause of the Fourteenth Amendment. 329 U.S. at 471. As MR. JUSTICE POWELL makes clear, Mr. Justice Frankfurter's analysis was different only in form from that of his Brethren; in substance, his test was fundamentally identical to that used by the rest of the Court.

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29. Id. at 463.

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30. English law required a second attempt at execution if the first attempt failed. L. Radzinowicz, A History of English Criminal Law 185-186 (1948).

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31. MR. JUSTICE BRENNAN concurred, and concluded that the statute authorizing deprivations of citizenship exceeded Congress' legislative powers. 356 U.S. at 114.

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32. Id. at 101.

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33. 370 U.S. at 666.

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34. Robinson v. California, 370 U.S. 660 (1962), removes any lingering doubts as to whether the Eighth Amendment's prohibition against cruel and unusual punishments is binding on the States. See also Powell v. Texas, 392 U.S. 514 (1968).

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35. Trop v. Dulles, 356 U.S. 86, 101 (1958). See also Weems v. United States, 217 U.S. at 373; Robinson v. California, 370 U.S. at 666. See also n. 19, supra.

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36. E.g., McGautha v. California, 402 U.S. at 226 (separate opinion of Black, J.); Trop v. Dulles, supra, at 99 (Warren, C.J.), 125 (Frankfurter, J., dissenting).

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37. See, e.g., Louisiana ex rel. Francis v. Resweber, 329 U.S. at 474 (Burton, J., dissenting); Trop v. Dulles, supra, at 99 (Warren, C.J.); Rudolph v. Alabama, 375 U.S. 889 (1963) (Goldberg, J., dissenting from denial of certiorari); F. Frankfurter, Of Law and Men 81 (1956).

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There is no violation of the principle of stare decisis in a decision that capital punishment now violates the Eighth Amendment. The last case that implied that capital punishment was still permissible was Trop v. Dulles, supra, at 99. Not only was the implication purely dictum, but it was also made in the context of a flexible analysis that recognized that, as public opinion changed, the validity of the penalty would have to be reexamined. Trop v. Dulles is nearly 15 years old now, and 15 years change many minds about many things. MR. JUSTICE POWELL suggests, however, that our recent decisions in Witherspoon v. Illinois, 391 U.S. 510 (1968), and McGautha v. California, 402 U.S. 183 (1971), imply that capital punishment is constitutionally permissible because, if they are viewed any other way, they amount to little more than an academic exercise. In my view, this distorts the "rule of four" by which this Court decides which cases and which issues it will consider, and in what order. See United States v. Generes, 405 U.S. 93, 113 (1972) (DOUGLAS, J., dissenting). There are many reasons why four members of the Court might have wanted to consider the issues presented in those cases before considering the difficult question that is now before us. While I do not intend to catalogue these reasons here, it should suffice to note that I do not believe that those decisions can, in any way, fairly be used to support any inference whatever that the instant cases have already been disposed of sub silentio.

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38. Ancel, The Problem of the Death Penalty, in Capital Punishment 4-5 (T. Sellin ed. 1967); G. Scott, The History of Capital Punishment 1 (1950).

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39. Scott, supra, n. 38, at 1.

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40. Id. at 2; Ancel, supra, n. 38, at 4-5.

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41. The Code of Hammurabi is one of the first known laws to have recognized the concept of an "eye for an eye," and consequently to have accepted death as an appropriate punishment for homicide. E. Block, And May God Have Mercy…13-14 (1962).

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42. Scott, supra, n. 38, at 19-33.

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43. Id. at 5. Prior to this time, the laws of Alfred (871-901) provided that one who willfully slayed another should die, at least under certain circumstances. 3 J. Stephen, History of the Criminal Law of England 24 (1883). But punishment was apparently left largely to private enforcement.

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44. T. Plucknett, A Concise History of the Common Law 424-454 (5th ed. 1956).

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45. Introduction in H. Bedau, The Death Penalty in America 1 (1967 rev. ed.).

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46. Ibid.

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47. 4 W. Blackstone, Commentaries \*377. How many persons were actually executed for committing capital offenses is not known. See Bedau, supra, n. 45, at 3; L. Radzinowicz, A History of English Criminal Law 151, 153 (1948); Sellin, Two Myths in the History of Capital Punishment, 50 J.Crim.L.C. & P.S. 114 (1959). "Benefit of clergy" mitigated the harshness of the law somewhat. This concept arose from the struggle between church and state and originally provided that members of the clergy should be tried in ecclesiastical courts. Eventually, all first offenders were entitled to "benefit of clergy." Bedau, supra, at 4.

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48. G. Haskins, The Capitall Lawes of New England, Harv.L.Sch.Bull. 111 (Feb. 1956).

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49. Compare Haskins, supra, n. 48, with E. Powers, Crime and Punishment in Early Massachusetts, 1620-1692 (1966). See also Bedau, supra, n. 45, at 5.

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50. Id. at 6.

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51. Filler, Movements to Abolish the Death Penalty in the United States, 284 Annals Am.Acad.Pol. & Soc.Sci. 124 (1952).

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52. Ibid.

1972, Furman v. Georgia, 408 U.S. 470

53. Ibid. (footnotes omitted).

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54. Ibid.; Bedau, supra, n. 45, at 6.

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55. For an unknown reason, Pennsylvania adopted the harsher penal code of England upon William Penn's death in 1718. There was no evidence, however of an increase in crime between 1682 and 1718. Filler, supra, n. 51, at 124. In 1794, Pennsylvania eliminated capital punishment except for "murder of the first degree," which included all "willful, deliberate or premeditated" killings. The death penalty was mandatory for this crime. Pa.Stat. 1794, c. 1777. Virginia followed Pennsylvania's lead and enacted similar legislation. Other States followed suit.

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56. Filler, supra, n. 51, at 124.

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57. Id. at 124-125.

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58. Reprinted in 12 Am.J.Legal Hist. 122 (1968).

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59. His advice was in large measure followed. See n. 55, supra.

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60. One scholar has noted that the early abolition movement in the United States lacked the leadership of major public figures. Bedau, supra, n. 45, at 8.

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61. Ibid.; Filler, supra, n. 51, at 126-127.

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62. See Scott, supra, n. 38, at 114-116.

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63. Filler, supra, n. 51, at 127.

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64. Davis, The Movement to Abolish Capital Punishment in America, 1787-1861, 63 Am.Hist.Rev. 23, 33 (1957).

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65. Filler, supra, n. 51, at 128. Capital punishment was abolished for all crimes but treason. The law was enacted in 1846, but did not go into effect until 1847.

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66. Davis, supra, n. 64, at 29-30.

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67. Filler, supra, n. 51, at 129.

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68. Id. at 130.

1972, Furman v. Georgia, 408 U.S. 470

69. Ibid.

1972, Furman v. Georgia, 408 U.S. 470

70. Bedau, supra, n. 45, at 10.

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71. Davis, supra, n. 64, at 46.

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72. Kansas restored it in 1935. See Appendix I to this opinion, infra at 372.

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73. See McGautha v. California, 402 U.S. at 199.

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74. Filler, supra, n. 51, at 133. See also Winston v. United States, 172 U.S. 303 (1899). More than 90% of the executions since 1930 in this country have been for offenses with a discretionary death penalty. Bedau, The Courts, the Constitution, and Capital Punishment, 1968 Utah L.Rev. 201, 204.

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75. See n. 72, supra.

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76. Filler, supra, n. 51, at 134.

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77. Sellin, Executions in the United States, in Capital Punishment 35 T. Sellin ed. (1967); United Nations, Department of Economic and Social Affairs, Capital Punishment, Pt. II, ¶¶ 82-85, pp. 101-102 (1968).

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78. New York authorizes the death penalty only for murder of a police officer or for murder by a life term prisoner. N.Y.Penal Code § 125.30 (1967).

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79. See generally Bedau, supra, n. 74. Nine States do not authorize capital punishment under any circumstances: Alaska, Hawaii, Iowa, Maine, Michigan, Minnesota, Oregon, West Virginia, and Wisconsin. Puerto Rico and the Virgin Islands also have no provision for capital punishment. Bedau, supra, n. 45, at 39. Those States that severely restrict the imposition of the death penalty are: New Mexico, N.M.Stat.Ann. § 40A-29-2.1 (1972); New York, N.Y.Penal Code § 125.30 (1967); North Dakota, N.D.Cent.Code §§ 12-07-01, 12-27-13 (1960); Rhode Island, R.I.Gen.Laws § 1123-2 (1970); Vermont, Vt.Stat.Ann., Tit. 13, § 2303 (Supp. 1971). California is the only State in which the judiciary has declared capital punishment to be invalid. See n. 1, supra.

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80. See generally Hearings on S. 1760 before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, 90th Cong., 2d Sess. (1968).

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81. Extensive compilations of the capital crimes in particular States can be found in Bedau, supra, n. 45, at 39-52, and in the Brief for the Petitioner in No. 68-5027, App. G (Aikens v. California, 406 U.S. 813 (1972)). An attempt is made to break down capital offenses into categories in Finkel, A Survey of Capital Offenses, in Capital Punishment 22 (T. Sellin ed. 1967).

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82. Bedau, supra, n. 45, at 43.

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83. Ibid. See also Ralph v. Warden, 438 F.2d 786, 791-792 (CA4 1970).

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84. See Hart, Murder and the Principles of Punishment: England and the United States, 52 Nw.U.L.Rev. 433, 448 (1957); Report of Royal Commission on Capital Punishment, 1949-1953, Cmd. 8932, ¶¶ 52-53, PP. 17-18 (1953). See generally, Reichert, Capital Punishment Reconsidered, 47 Ky.L.J. 397, 399 (1959).

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85. See, e.g., C. Beccaria, On Crimes and Punishment (tr. by H. Paolucci 1963); 1 Archibold, On the Practice, Pleading, and Evidence in Criminal Cases §§ 11-17, pp. XV-XIX (T. Waterman 7th ed. 1860).

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86. See, e.g., Rudolph v. Alabama, 375 U.S. 889 (1963) (Goldberg, J., dissenting from denial of certiorari); Trop v. Dulles, 356 U.S. at 97 (Warren, C.J.), 113 (BRENNAN, J., concurring); Morissette v. United States, 342 U.S. 246 (1952); Williams v. New York, 337 U.S. 241 (1949). In Powell v. Texas, 392 U.S. at 530, we said:

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This Court has never held that anything in the Constitution requires that penal sanctions be designed solely to achieve therapeutic or rehabilitative effects….

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This is, of course, correct, since deterrence and isolation are clearly recognized as proper. E.g., Trop v. Dulles, supra, at 111 (BRENNAN, J., concurring). There is absolutely nothing in the language, the rationale, or the holding of Powell v. Texas, that implies that retribution for its own sake is a proper legislative aim in punishing.

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87. See, e.g., Vellenga, Christianity and The Death Penalty, in Bedau, supra, n. 45, at 123-130; Hook, The Death Sentence, in Bedau, supra, at 146-154. See also Ehrenzweig, A Psychoanalysis of the Insanity Plea—Clues to the Problems of Criminal Responsibility and Insanity in the Death Cell, 73 Yale L.J. 425, 433-439 (1964).

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88. 2 J. Story, On the Constitution § 1903, p. 650 (5th ed. 1891).

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89. Note, The Death Penalty Cases, 56 Calif.L.Rev. 1268, 1275 (1968); Note, Justice or Revenge?, 60 Dick.L.Rev. 342, 343 (1956); Royal Commission, supra, n. 84, ¶ 55, at 18.

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90. Barzun, In Favor of Capital Punishment, in Bedau, supra, n. 45, at 154, 163; Hook, supra, n. 87, at 152.

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91. See Commonwealth v. Elliott, 371 Pa. 70, 78, 89 A.2d 782, 786 (1952) (Musmanno, J., dissenting); F. Frankfurter, Of Law and Men 101 (1956). The assertion that life imprisonment may somehow be more cruel than death is usually rejected as frivolous. Hence, I confess to surprise at finding the assertion being made in various ways in today's opinions. If there were any merit to the contention, it would do much to undercut even the retributive motive for imposing capital punishment. In any event, there is no better response to such an assertion than that of former Pennsylvania Supreme Court Justice Musmanno in his dissent in Commonwealth v. Elliott, supra, at 79-80, 89 A.2d at 787:

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One of the judges of the lower court indicated from the bench that a sentence of life imprisonment is not to be regarded as a leaser penalty than that of death. I challenge that statement categorically. It can be stated as a universal truth stretching from nadir to zenith that, regardless of circumstances, no one wants to die. Some person may, in an instant of spiritual or physical agony express a desire for death as an anodyne from intolerable pain, but that desire is never full-hearted, because there is always the reserve of realization that the silken cord of life is not broken by a mere wishing. There is no person in the actual extremity of dropping from the precipice of life who does not desperately reach for a crag of time to which to cling even for a moment against the awful eternity of silence below. With all its "slings and arrows of outrageous fortune," life is yet sweet and death is always cruel.

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Attention should also be given to the hypothesis of Sir James Stephen, quoted in the text, infra at 347-348.

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92. See Bedau, Deterrence and the Death Penalty: A Reconsideration, 61 J.Crim.L.C. & P.S. 539, 542 (1970).

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93. Royal Commission, supra, n. 84, ¶ 59, at 20.

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94. United Nations, supra, n. 77, 1134, at 117. The great advantage that this country has is that it can compare abolitionist and retentionist States with geographic, economic, and cultural similarities.

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95. Reprinted in Royal Commission, supra, n. 84, ¶ 57, at 19.

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96. United Nations, supra, n. 77, ¶ 139, at 118.

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97. See Bedau, supra, n. 45, at 43.

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98. T. Sellin, The Death Penalty, A Report for the Model Penal Code Project of the American Law Institute (ALI) 5 (1959); Morris, Thoughts on Capital Punishment, 35 Wash.L.Rev. & St. Bar J. 335, 340 (1960).

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99. Sellin, supra, n. 98, at 21.

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100. Such crimes might include lesser forms of homicide or homicide by a child or a lunatic. Id. at 22; The Laws, The Crimes, and The Executions, in Bedau, supra, n. 45, at 32, 61.

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101. Sutherland, Murder and the Death Penalty, 15 J.Crim.L. & Crim. 522 (1925); ALI, supra, n. 98, at 22; Bedau, supra, n. 45, at 73.

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102. Executions were chosen for purposes of comparison because whatever impact capital punishment had would surely be most forcefully felt where punishment was actually imposed.

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103. See Appendix II to this opinion, infra at 373.

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104. See Appendix III to this opinion, infra at 374.

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105. United Nations, supra, n. 77, ¶ 134, at 117.

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106. Royal Commission, supra, n. 84, at 349-351. Accord, Vold, Extent and Trend of Capital Crimes in United States, 284 Annals Am.Acad.Pol. & Soc.Sci. 1, 4 (1952).

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107. Sellin, supra, n. 98, at 34.

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108. See, e.g., Guillot, Abolition and Restoration of the Death Penalty in Missouri, in Bedau, supra, n. 45, at 351, 358-359; Cobin, Abolition and Restoration of the Death Penalty in Delaware, in Bedau, supra, at 359, 371-372.

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109. Sellin, supra, n. 98, at 38-39; Royal Commission, supra, n. 84, at 353; United Nations, supra, n. 77, 130-136, at 116-118.

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110. One problem is that the statistics for the 19th century are especially suspect; another is that de jure abolition may have been preceded by de facto abolition which would have distorted the figures. It should also be noted that the figures for several States reflect homicide convictions, rather than homicide rates.

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111. Royal Commission, supra, n. 84, ¶ 65, at 23; 346-349; United Nations, supra, n. 77, 132, at 117.

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112. Hayner & Cranor, The Death Penalty in Washington State, 284 Annals Am.Acad.Pol. & Soc.Sci. 101 (1952); Graves, A Doctor Looks at Capital Punishment 10 Med.Arts & Sci. 137 (1956); Dann, The Deterrent Effect of Capital Punishment, Bull. 29, Friends Social Service Series, Committee on Philanthropic Labor and Philadelphia Yearly Meeting of Friends (1935); Savitz, A Study in Capital Punishment, 49 J.Crim.L.C. & P.S. 338 (1958); United Nations, supra, n. 77, ¶ 135, at 118.

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113. Graves, supra, n. 112; Hearings, supra, n. 80, at 23 (testimony of C. Duffy), 126 (statement of Dr. West); T. Reik, The Compulsion to Confess 474 (1959); McCafferty, Major Trends in the Use of Capital Punishment, 25 Fed.Prob., No. 3, P. 15 (Sept. 1961). Capital punishment may provide an outlet for suicidal impulses or a means of achieving notoriety, for example.

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114. See, e.g., Gerstein, A Prosecutor Looks at Capital Punishment, 51 J.Crim.L.C. & P.S. 252 (1960); Hoover, Statements in Favor of the Death Penalty, in Bedau, supra, n. 45, at 130; Younger, Capital Punishment: A Sharp Medicine Reconsidered, 42 A.B.A.J. 113 (1956). But see Symposium on Capital Punishment, District Attorneys' Assn. of State of New York, Jan. 27, 1961, 7 N.Y.L.F. 249, 267 (1961) (statement of A. Herman, head of the homicide bureau of the New York City District Attorney's office).

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115. Sellin, supra, n. 98, at 56-58; Koeninger, Capital Punishment in Texas, 1924-1968, 15 Crime & Delin. 132 (1969); Sellin, Does the Death Penalty Protect Municipal Police, in Bedau, supra, n. 45, at 284; United Nations, supra, n. 77, ¶ 136, at 118.

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116. L. Lawes, Life and Death in Sing Sing 150 (1928); McGee, Capital Punishment as Seen by a Correctional Administrator, 28 Fed.Prob., No. 2, p. 11 (June 1964); 1950 Survey of the International Penal and Penitentiary Commission, cited in Sellin, supra, n. 98, at 70-72; Sellin, Prisons Homicides, in Capital Punishment 154 (T. Sellin ed. 1967); cf. Akman, Homicides and Assaults in Canadian Prisons, in Capital Punishment, supra, at 161-168. The argument can be made that the reason for the good record of murderers is that those who are likely to be recidivists are executed. There is, however, no evidence to show that, in choosing between life and death sentences, juries select the lesser penalties for those persons they believe are unlikely to commit future crimes.

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117. E.g., United Nations, supra, n. 77, ¶ 144, at 119; B. Eshelman & F. Riley, Death Row Chaplain 224 (1962). This is supported also by overwhelming statistics showing an extremely low rate of recidivism for convicted murderers who are released from prison. Royal Commission, supra, n. 84, App. 15, at 486-491; Sellin, supra, n. 98, at 72-79; United Nations, supra, n. 77, ¶ 144, at 119.

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118. See, e.g., The Question of Deterrence, in Bedau, supra, n. 45, at 267.

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119. Ibid. and n. 11; Note, The Death Penalty Cases, 56 Calif.L.Rev. 1268, 1282-1283 (1968).

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120. See n. 113, supra.

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121. United Nations, supra, n. 77, ¶ 159, at 123.

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122. See nn. 58 and 59, supra, and accompanying text.

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123. See n. 62, supra, and accompanying text.

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124. Graves, A Doctor Looks at Capital Punishment, 10 Med.Arts. & Sci. 137 (1956); Royal Commission, supra, n. 84, ¶ 60, at 20-21; Schuessler, The Deterrent Influence of the Death Penalty, 284 Annals Am.Acad.Pol. & Soc.Sci. 54 (1952); United Nations, supra, n. 77, ¶ 142, at 119; M. Wolfgang, Patterns in Criminal Homicide (1958).

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One would assume that if deterrence were enhanced by capital punishment, the increased deterrence would be most effective with respect to the premeditating murderer or the hired killer who plots his crime before committing it. But such people rarely expect to be caught, and usually assume that, if they are caught, they will either be acquitted or sentenced to prison. This is a fairly dependable assumption, since a reliable estimate is that one person is executed for every 100 capital murders known to the police. Hart, Murder and the Principles of Punishment: England and the United States, 52 Nw.U.L.Rev. 433, 444-445 (1957). For capital punishment to deter anybody, it must be a certain result of a criminal act, cf. Ex parte Medley, 134 U.S. 160 (1890), and it is not. It must also follow swiftly upon completion of the offense, and it cannot in our complicated due process system of justice. See, e.g., The Question of Deterrence, in Bedau, supra, n. 45, at 258, 271-272; DiSalle, Trends in the Abolition of Capital Punishment, 1969 U.Toledo L.Rev. 1, 4. It is ironic that those persons whom we would like to deter the most have the least to fear from the death penalty, and recognize that fact. Sellin, Address for Canadian Society for Abolition of the Death Penalty, Feb. 7, 1965, in 8 Crim.L.Q. 36, 48 (1966); Proceedings of the Section of Criminal Law of the ABA, Aug. 24, 1959, p. 7 (M. DiSalle).

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125. In reaching this conclusion, I maintain agreement with that portion of Stephen's hypothesis that suggests that convicted criminals fear death more than they fear life imprisonment. As I stated earlier, the death penalty is a more severe sanction. The error in the hypothesis lies in its assumption that, because men fear death more than imprisonment after they are convicted, they necessarily must weigh potential penalties prior to committing criminal acts, and that they will conform their behavior so as to insure that, if caught, they will receive the lesser penalty. It is extremely unlikely that much thought is given to penalties before the act is committed, and, even if it were, the preceding footnote explains why such thought would not lead to deterrence.

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126. See n. 117, supra.

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127. See, e.g., Royal Commission, supra, n. 84, App. 15, at 486-491.

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128. Jackson applies to the States under the criteria articulated in Duncan v. Louisiana, 391 U.S. 145, 149 (1968).

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129. See, e.g., Barzun, In Favor of Capital Punishment, in Bedau, supra, n. 45, at 154.

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130. See, e.g., Death as a Punishment, in Bedau, supra, at 214, 226-228; Caldwell, Why is the Death Penalty Retained?, 284 Annals Am.Acad.Pol. & Soc.Sci. 45, 50 (1952); Johnson, Selective Factors in Capital Punishment, 36 Social Forces 165, 169 (1957); Sellin, Capital Punishment, 25 Fed.Prob., No. 3, p. 3 (Sept. 1961). We should not be surprised at the lack of merit in the eugenic arguments. There simply is no evidence that mentally ill persons who commit capital offenses constitute a psychiatric entity distinct from other mentally disordered patients, or that they do not respond as readily to treatment. Cruvant & Waldrop, The Murderer in the Mental Institution, 284 Annals Am.Acad.Pol. & Soc.Sci. 35, 43 (1952).

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131. Caldwell, supra, n. 130, at 48; McGee, supra, n. 116.

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132. McGee, supra, at 13-14; Bailey, Rehabilitation on Death Row, in Bedau, supra, n. 45, at 556.

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133. T. Thomas, This Life We Take 20 (3d ed. 1965).

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134. Stein v. New York, 346 U.S. 156, 196 (1953) (Jackson, J.); cf. Reid v. Covert, 354 U.S. 1, 77 (1957) (Harlan, J., concurring in result).

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135. See, e.g., Witherspoon v. Illinois, 391 U.S. 510 (1968).

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136. Slovenko, And the Penalty is (Sometimes) Death, 24 Antioch Review 351 (1964).

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137. See, e.g., Caritativo v. California, 357 U.S. 549 (1958).

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138. To others, as well as to the author of this opinion, this practice has seemed a strange way to spend money. See, e.g., T. Arnold, The Symbols of Government 10-13 (1935).

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139. Slovenko, supra, n. 136, at 363.

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140. B. Eshelman & F. Riley, Death Row Chaplain 226 (1962); Caldwell, supra, n. 130, at 48; McGee, supra, n. 116, at 13; Sellin, supra, n. 130, at 3 (Sept. 1961).

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141. This analysis parallels in some ways the analysis used in striking down legislation on the ground that it violates Fourteenth Amendment concepts of substantive due process. See Packer, Making the Punishment Fit the Crime, 77 Harv.L.Rev. 1071, 1074 (1964). There is one difference, however. Capital punishment is unconstitutional because it is excessive and unnecessary punishment, not because it is irrational.

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The concepts of cruel and unusual punishment and substantive due process become so close as to merge when the substantive due process argument is stated in the following manner: because capital punishment deprives an individual of a fundamental right (i.e., the right to life), Johnson v. Zerbst, 304 U.S. 458, 462 (1938), the State needs a compelling interest to justify it. See Note, The Death Penalty Cases, 56 Calif.L.Rev. 1268, 1324-1354 (1968). Thus stated, the substantive due process argument reiterates what is essentially the primary purpose of the Cruel and Unusual Punishments Clause of the Eighth Amendment—i.e., punishment may not be more severe than is necessary to serve the legitimate interests of the State.

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THE CHIEF JUSTICE asserts that if we hold that capital punishment is unconstitutional because it is excessive, we will next have to determine whether a 10-year prison sentence rather than a five-year sentence, is also excessive, or whether a $5 fine would not do equally well as a $10 fine. He may be correct that such determinations will have to be made, but, as in these cases, those persons challenging the penalty will bear a heavy burden of demonstrating that it is excessive. These cases arise after 200 years of inquiry, 200 years of public debate and 200 years of marshaling evidence. The burden placed on those challenging capital punishment could not have been greater. I am convinced that they have met their burden. Whether a similar burden will prove too great in future cases is a question that we can resolve in time.

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142. United States v. Rosenberg, 195 F.2d 583, 608 (CA2) (Frank, J.), cert. denied, 344 U.S. 838 (1952). See also Kasper v. Brittain, 245 F.2d 92, 96 (CA6), cert. denied, 355 U.S. 834 (1957) ("shocking to the sense of justice"); People v. Morris, 80 Mich. 634, 639, 45 N.W. 591, 592 (1890) ("shock the moral sense of the people"). In Repouille v. United States, 165 F.2d 152 (CA2 1947), and Schmidt v. United States, 177 F.2d 450, 451 (CA2 1949), Judge Learned Hand wrote that the standard of "good moral character" in the Nationality Act was to be judged by "the generally accepted moral conventions current at the time." 165 F.2d at 153. Judge Frank, who was later to author the Rosenberg opinion, in which a similar standard was adopted, dissented in Repouille and urged that the correct standard was the "attitude of our ethical leaders." 165 F.2d at 154. In light of Rosenberg, it is apparent that Judge Frank would require a much broader based moral approbation before striking down a punishment as cruel and unusual than he would for merely holding that conduct was evidence of bad moral character under a legislative act. 1

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143. United States v. Rosenberg, supra, at 608.

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144. See Repouille v. United States, supra, at 153. In Witherspoon v. Illinois, 391 U.S. at 520, the Court cited a public opinion poll that showed that 42% of the American people favored capital punishment, while 47% opposed it. But the polls have shown great fluctuation. See What Do Americans Think of the Death Penalty?, in Bedau, supra, n. 45, at 231-241.

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145. The fact that the constitutionality of capital punishment turns on the opinion of an informed citizenry undercuts the argument that, since the legislature is the voice of the people, its retention of capital punishment must represent the will of the people. So few people have been executed in the past decade that capital punishment is a subject only rarely brought to the attention of the average American. Lack of exposure to the problem is likely to lead to indifference, and indifference and ignorance result in preservation of the status quo, whether or not that is desirable, or desired.

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It might be argued that, in choosing to remain indifferent and uninformed, citizens reflect their judgment that capital punishment is really a question of utility, not morality, and not one, therefore. of great concern. As attractive as this is on its face, it cannot be correct, because such an argument requires that the choice to remain ignorant or indifferent be a viable one. That, in turn, requires that it be a knowledgeable choice. It is therefore imperative for constitutional purposes to attempt to discern the probable opinion of an informed electorate.

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146. Cf. Packer, Making the Punishment Fit the Crime, 77 Harv.L.Rev. 1071, 1076 (1964).

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147. E.g., Gold, A Psychiatric Review of Capital Punishment, 6 J. Forensic Sci. 465, 466 (1961); A. Koestler, Reflections on Hanging 164 (1957); cf. C. Duffy & A. Hirshberg, 88 Men and 2 Women 257-258 (1962).

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148. Hearings, supra, n. 80, at 11 (statement of M. DiSalle).

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149. National Prisoner Statistics No. 45, Capital Punishment 1930-1968, p. 7 (Aug. 1969).

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150. Ibid.

1972, Furman v. Georgia, 408 U.S. 470

151. Ibid.

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152. Alexander, The Abolition of Capital Punishment, Proceedings of the 96th Congress of Correction of the American Correctional Association, Baltimore, Md., 57 (1966); Criminal Justice: The General Aspects, in Bedau, supra, n. 45, at 405, 411-414; Bedau. Death Sentences in New Jersey, 1907-1960, 19 Rutgers L.Rev. 1, 18-21, 52-53 (1964); R. Clark, Crime in America 335 (1970); Hochkammer, The Capital Punishment Controversy, 60 J.Crim.L.C. & P.S. 360, 361-362 (1969); Johnson, The Negro and Crime, 217 Annals Am.Acad.Pol. & Soc.Sci. 93, 95, 99 (1941); Johnson, Selective Factors in Capital Punishment, 36 Social Forces 165 (1957); United Nations, supra, n. 77, ¶ 69, at 98; Williams, The Death Penalty and the Negro, 67 Crisis 501, 511 (1960); M. Wolfgang & B. Cohen, Crime and Race: Conceptions and Misconceptions 77, 80-81, 85-86 (1970); Wolfgang, Kelly, & Nolde, Comparison of the Executed and the Commuted Among Admissions to Death Row, 53 J.Crim.L.C. & P.S. 301 (1962). MR. JUSTICE DOUGLAS explores the discriminatory application of the death penalty at great length, ante at 249-257.

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153. National Prisoner Statistics No. 45, Capital Punishment 1930-1968, p. 28 (Aug. 1969).

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154. Men kill between four and five times more frequently than women. See Wolfgang, A Sociological Analysis of Criminal Homicide, in Bedau, supra, n. 45, at 74, 75. Hence, it would not be irregular to see four or five times as many men executed as women. The statistics show a startlingly greater disparity, however. United Nations, supra, n. 77, 67, at 97-98.

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155. Criminal Justice: The General Aspects, in Bedau, supra, at 405, 411; Bedau, Capital Punishment in Oregon, 1903-64, 45 Ore.L.Rev. 1 (1965); Bedau, Death Sentences in New Jersey, 1907-1960, 19 Rutgers L.Rev. 1 (1964); R. Clark, Crime in America 335 (1970); C. Duffy & A. Hirshberg, 88 Men and 2 Women 256-257 (1962); Carter & Smith, The Death Penalty in California: A Statistical and Composite Portrait, 15 Crime & Delin. 62 (1969); Hearings, supra, n. 80, at 124-125 (statement of Dr. West); Koeninger, Capital Punishment in Texas, 1924-1968, 15 Crime & Delin. 132 (1969); McGee, supra, n. 116, at 11-12.

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156. See, e.g., E. Borchard, Convicting the Innocent (1932); J. Frank & B. Frank, Not Guilty (1957); E. Gardner, Court of Last Resort (1952). These three books examine cases in which innocent persons were sentenced to die. None of the innocents was actually executed, however. Bedau has abstracted 74 cases occurring in the United States since 1893 in which a wrongful conviction for murder was alleged and usually proved "beyond doubt." In almost every case, the convictions were sustained on appeal. Bedau seriously contends that innocent persons were actually executed. Murder, Errors of Justice, and Capital Punishment, in Bedau, supra, n. 45, at 434, 438. See also Black, The Crisis in Capital Punishment, 31 Md.L.Rev. 289 (1971); Hirschberg, Wrongful Convictions, 13 Rocky Mt.L.Rev. 20 (1940); Pollak, The Errors of Justice, 284 Annals Am.Acad.Pol. & Soc.Sci. 115 (1952).

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157. E. Gardner, Court of Last Resort 178 (1952).

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158. MR. JUSTICE DOUGLAS recognized this fact when he wrote:

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One who reviews the records of criminal trials need not look long to find an instance where the issue of guilt or innocence hangs in delicate balance. A judge who denies a stay of execution in a capital case often wonders if an innocent man is going to his death….

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Those doubts exist because our system of criminal justice does not work with the efficiency of a machine—errors are made and innocent as well as guilty people are sometimes punished….

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…We believe that it is better for ten guilty people to be set free than for one innocent man to be unjustly imprisoned.

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Yet the sad truth is that a cog in the machine often slip: memories fail; mistaken identifications are made; those who wield the power of life and death itself—the police officer, the witness, the prosecutor, the juror, and even the judge—become overzealous in their concern that criminals be brought to justice. And at times there is a venal combination between the police and a witness.

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Foreword, J. Frank & B. Frank, Not Guilty 11-12 (1957).

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There has been an "incredible lag" between the development of modern scientific methods of investigation and their application to criminal cases. When modern methodology is available, prosecutors have the resources to utilize it, whereas defense counsel often may not. Lassers, Proof of Guilt in Capital Cases—An Unscience, 58 J.Crim.L.C. & P.S. 310 (1967). This increases the chances of error.

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159. Ehrmann, The Death Penalty and the Administration of Justice, 284 Annals Am.Acad.Pol. & Soc.Sci. 73, 83 (1952).

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160. F. Frankfurter, Of Law and Men 81 (1956).

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161. B. Eshelman & F. Riley, Death Row Chaplain 222 (1962).

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162. McCafferty, Major Trends in the Use of Capital Punishment, 25 Fed.Prob., No. 3, pp. 15, 21 (Sept. 1961) (quoting Dr. S. Glueck of Harvard University).

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163. MR. JUSTICE POWELL suggests that this conclusion is speculative, and he is certainly correct. But the mere recognition of this truth does not undercut the validity of the conclusion. MR. JUSTICE POWELL himself concedes that judges somehow know that certain punishments are no longer acceptable in our society; for example, he refers to branding and pillorying. Whence comes this knowledge? The answer is that it comes from our intuition as human beings that our fellow human beings no longer will tolerate such punishments

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I agree wholeheartedly with the implication in my Brother POWELL's opinion that judges are not free to strike down penalties that they find personally offensive. But I disagree with his suggestion that it is improper for judges to ask themselves whether a specific punishment is morally acceptable to the American public. Contrary to some current thought, judges have not lived lives isolated from a broad range of human experience. They have come into contact with many people, many ways of life, and many philosophies. They have learned to share with their fellow human beings common views of morality. If, after drawing on this experience and considering the vast range of people and views that they have encountered, judges conclude that these people would not knowingly tolerate a specific penalty in light of its costs, then this conclusion is entitled to weight. See Frankel, Book Review, 85 Harv.L.Rev. 354 (1971). Judges can find assistance in determining whether they are being objective, rather than subjective, by referring to the attitudes of the persons whom most citizens consider our "ethical leaders." See Repouille v. United States, 165 F.2d at 154 (Frank, J., dissenting).

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I must also admit that I am confused as to the point that my Brother POWELL seeks to make regarding the underprivileged members of our society. If he is stating that this Court cannot solve all of their problems in the context of this case, or even many of them, I would agree with him. But if he is opining that it is only the poor, the ignorant, the racial minorities, and the hapless in our society who are executed; that they are executed for no real reason other than to satisfy some vague notion of society's cry for vengeance; and that, knowing these things, the people of this country would not care, then I most urgently disagree.

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There is too much crime, too much killing, too much hatred in this country. If the legislatures could eradicate these elements from our lives by utilizing capital punishment, then there would be a valid purpose for the sanction, and the public would surely accept it. It would be constitutional. As THE CHIEF JUSTICE and MR. JUSTICE POWELL point out, however, capital punishment has been with us a long time. What purpose has it served? The evidence is that it has served none. I cannot agree that the American people have been so hardened, so embittered, that they want to take the life of one who performs even the basest criminal act knowing that the execution is nothing more than bloodlust. This has not been my experience with my fellow citizens. Rather, I have found that they earnestly desire their system of punishments to make sense in order that it can be a morally justifiable system. See generally Arnold, The Criminal Trial As a Symbol of Public Morality, in Criminal Justice In Our Time 137 (A. Howard ed. 1967).

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164. 164 R. Clark, Crime in America 336 (1970).

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165. Some jurisdictions have de facto abolition; others have de jure. Id. at 330; Hearings, supra, n. 80, at 9-10 (statement of M. DiSalle). See generally Patrick, The Status of Capital Punishment: A World Perspective, 56 J.Crim.L.C. & P.S. 397 (1965); United Nations, supra, n. 77, ¶¶ 10-17, 63-65, at 83-85, 96-97; Brief for Petitioner in No. 68-5027, App. E (Aikens v. California, 406 U.S. 813 (1972)).

MARSHALL, J., concurring (Footnotes)

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1. Death penalty retained for persons found guilty of killing a peace officer who is acting in line of duty, and for prisoners under a life sentence who murder a guard or inmate while in confinement or while escaping from confinement.

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2. Death penalty retained for persons convicted of first-degree murder who commit a second "unrelated" murder, and for the first-degree murder of any law enforcement officer or prison employee who is in the performance of the duties of his office

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3. Death penalty retained for treason. Partial abolition was voted in 1846, but was not put into effect until 1847.

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4. Death penalty retained for rape.

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5. Death penalty retained for treason

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6. Death penalty retained for treason, and for first-degree murder committed by a prisoner who is serving a life sentence for first-degree murder

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7. Death penalty retained for persons convicted of committing murder while serving a life sentence for any offense.

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Based on National Prisoner Statistics No. 45, Capital Punishment 1930-1968, p. 30 (Aug. 1969). [408 U.S. 373]

BURGER, J., dissenting (Footnotes)

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1. See n. 25, infra.

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2. See Granucci, "Nor Cruel and Unusual Punishments Inflicted:" The Original Meaning, 57 Calif.L.Rev. 839, 85860 (1969). Earlier drafts of the Bill of Rights used the phrase "cruel and illegal." It is thought that the change to the "cruel and unusual" wording was inadvertent, and not intended to work any change in meaning. Ibid. The historical background of the English Bill of Rights is set forth in the opinion of MR. JUSTICE MARSHALL, ante at 316-318.

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It is intimated in the opinion of MR. JUSTICE DOUGLAS, ante at 242-245, that the term "unusual" was included in the English Bill of Rights as a protest against the discriminatory application of punishments to minorities. However, the history of capital punishment in England dramatically reveals that no premium was placed on equal justice for all, either before or after the Bill of Rights of 1689. From the time of Richard I until 1826, the death penalty was authorized in England for treason and all felonies except larceny and mayhem, with the further exception that persons entitled to benefit of clergy were subject to no penalty, or, at most, a very lenient penalty upon the commission of a felony. Benefit of clergy grew out of the exemption of the clergy from the jurisdiction of the lay courts. The exemption expanded to include assistants to clergymen, and, by 1689, any male who could read. Although, by 1689, numerous felonies had been deemed "nonclergyable," the disparity in punishments imposed on the educated and uneducated remained for most felonies until the early 18th century. See 1 J. Stephen, History of the Criminal Law of England 458 et seq. (1883).

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3. See 2 J. Elliot's Debates 111 (2d ed. 1876); 3 id. at 447-448, 451-452.

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4. But see Bluestone & McGahee, Reaction to Extreme Stress: Impending Death by Execution, 119 Am.J.Psychiatry 393 (1962).

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5. See 2 J. Story, On the Constitution § 1903 (5th ed. 1891); 1 T. Cooley, Constitutional Limitations 694 (8th ed. 1927). See also Joseph Story on Capital Punishment (ed. by J. Hogan), 43 Calif.L.Rev. 76 (1955).

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6. Brief for Petitioner in Aikens v. California, No. 68-5027, p. 19 (cert. dismissed, 406 U.S. 813 (1972)). See post, at 443 n. 38. This, plainly, was the foundation of Mr. Justice Black's strong views on this subject expressed most recently in McGautha v. California, 402 U.S. 183, 226 (1971) (separate opinion).

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7. See Department of Justice, National Prisoner Statistics No. 46, Capital Punishment 1930-1970, p. 50 (Aug. 1971). Since the publication of the Department of Justice report, capital punishment has been judicially abolished in California, People v. Anderson, 6 Cal. 3d 628, 493 P.2d 880, cert. denied, 406 U.S. 958 (1972). The States where capital punishment is no longer authorized are Alaska, California, Hawaii, Iowa, Maine, Michigan, Minnesota, Oregon, West Virginia, and Wisconsin.

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8. See Act of Jan. 2, 1971, Pub.L. 91-644, Tit. IV, § 15, 84 Stat. 1891, 18 U.S.C. § 351; Act of Oct. 15, 1970, Pub.L. 91-452, Tit. XI, § 1102(a), 84 Stat. 956, 18 U.S.C. § 844(f)(i); Act of Aug. 28, 1965, 79 Stat. 580, 18 U.S.C. § 1751; Act of Sept. 5, 1961, § 1, 75 Stat. 466, 49 U.S.C. § 1472(i). See also opinion of MR. JUSTICE BLACKMUN, post at 412-413.

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9. A 1966 poll indicated that 42% of those polled favored capital punishment while 47% opposed it, and 11% had no opinion. A 1969 poll found 51% in favor, 40% opposed, and 9% with no opinion. See Erskine, The Polls: Capital Punishment, 34 Public Opinion Quarterly 290 (1970).

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10. The jury plays the predominant role in sentencing in capital cases in this country. Available evidence indicates that where the judge determines the sentence, the death penalty is imposed with a slightly greater frequency than where the jury makes the determination. H. Kalven & H. Zeisel, The American Jury 436 (1966).

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11. In the decade from 1961-1970, an average of 106 persons per year received the death sentence in the United States, ranging from a low of 85 in 1967 to a high of 140 in 1961; 127 persons received the death sentence in 1970. Department of Justice, National Prisoner Statistics No. 46, Capital Punishment 1930-1970, p. 9. See also Bedau, The Death Penalty in America, 35 Fed.Prob., No. 2, p. 32 (1971). Although accurate figures are difficult to obtain, it is thought that from 15% to 20% of those convicted of murder are sentenced to death in States where it is authorized. See, e.g., McGee, Capital Punishment as Seen by a Correctional Administrator, 28 Fed.Prob., No. 2, pp. 11, 12 (1964); Bedau, Death Sentences in New Jersey 1907-1960, 19 Rutgers L.Rev. 1, 30 (1964); Florida Division of Corrections, Seventh Biennial Report (July 1, 1968, to June 30, 1970) 82 (1970); H. Kalven & H. Zeisel, The American Jury 435-436 (1966). The rate of imposition for rape and the few other crimes made punishable by death in certain States is considerably lower. See, e.g., Florida Division of Corrections, Seventh Biennial Report, supra, at 83; Partington, The Incidence of the Death Penalty for Rape in Virginia, 22 Wash. & Lee L.Rev. 43-44, 71-73 (1965).

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12. Counsel for petitioners make the conclusory statement that "[t]hose who are selected to die are the poor and powerless, personally ugly and socially unacceptable." Brief for Petitioner in No. 68-5027, p. 51. However, the sources cited contain no empirical findings to undermine the general premise that juries impose the death penalty in the most extreme cases. One study has discerned a statistically noticeable difference between the rate of imposition on blue collar and white collar defendants; the study otherwise concludes that juries do follow rational patterns in imposing the sentence of death. Note, A Study of the California Penalty Jury in First-Degree-Murder Cases, 21 Stan.L.Rev. 1297 (1969). See also H. Kalven & H. Zeisel, The American Jury 434-449 (1966).

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Statistics are also cited to show that the death penalty has been imposed in a racially discriminatory manner. Such statistics suggest, at least as a historical matter, that Negroes have been sentenced to death with greater frequency than whites in several States, particularly for the crime of interracial rape. See, e.g., Koeninger, Capital Punishment in Texas, 1924-1968, 15 Crime & Delin. 132 (1969); Note, Capital Punishment in Virginia, 58 Va.L.Rev. 97 (1972). If a statute that authorizes the discretionary imposition of a particular penalty for a particular crime is used primarily against defendants of a certain race, and if the pattern of use can be fairly explained only by reference to the race of the defendants, the Equal Protection Clause of the Fourteenth Amendment forbids continued enforcement of that statute in its existing form. Cf. Yick Wo v. Hopkins, 118 U.S. 356 (1886); Gomillion v. Lightfoot, 364 U.S. 339 (1960).

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To establish that the statutory authorization for a particular penalty is inconsistent with the dictates of the Equal Protection Clause, it is not enough to show how it was applied in the distant past. The statistics that have been referred to us cover periods when Negroes were systematically excluded from jury service and when racial segregation was the official policy in many States. Data of more recent vintage are essential. See Maxwell v. Bishop, 398 F.2d 138, 148 (CA8 1968), vacated, 398 U.S. 262 (1970). While no statistical survey could be expected to bring forth absolute and irrefutable proof of a discriminatory pattern of imposition, a strong showing would have to be made, taking all relevant factors into account.

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It must be noted that any equal protection claim is totally distinct from the Eighth Amendment question to which our grant of certiorari was limited in these cases. Evidence of a discriminatory pattern of enforcement does not imply that any use of a particular punishment is so morally repugnant as to violate the Eighth Amendment.

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13. Jackson v. Georgia, No. 65030; Branch v. Texas, No. 69-5031.

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14. Rape is punishable by death in 16 States and in the federal courts when committed within the special maritime and territorial jurisdiction of the United States. 18 U.S.C. § 2031. The States authorizing capital punishment for rape are Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.

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15. See n. 11, supra.

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16. l Annals of Cong. 754 (1789) (remarks of Rep. Livermore).

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17. Petitioner Francis had been sentenced to be electrocuted for the crime of murder. He was placed in the electric chair, and the executioner threw the switch. Due to a mechanical difficulty, death did not result. A new death warrant was issued fixing a second date for execution. The Court held that the proposed execution would not constitute cruel and unusual punishment or double jeopardy.

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18. There is no serious claim of disproportionality presented in these cases. Murder and forcible rape have always been regarded as among the most serious crimes. It cannot be said that the punishment of death is out of all proportion to the severity of these crimes.

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The Court's decision in Robinson v. California, 370 U.S. 660 (1962), can be viewed as an extension of the disproportionality doctrine of the Eighth Amendment. The Court held that a statute making it a crime punishable by imprisonment to be a narcotics addict violated the Eighth Amendment. The Court in effect ruled that the status of being an addict is not a criminal act, and that any criminal punishment imposed for addiction exceeds the penal power of the States. The Court made no analysis of the necessity of imprisonment as a means of curbing addiction.

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19. See Packer, Making the Punishment Fit the Crime, 77 Harv. L.Rev.1071, 1075 (1964).

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20. See Hart, The Aims of the Criminal Law, 23 Law & Contemp. Prob. 401 (1958); H. Packer, The Limits of the Criminal Sanction 37-39 (1968); M. Cohen, Reason and Law 41-44 (1950); Report of Royal Commission on Capital Punishment, 1949-1953, Cmd. 8932, ¶ 52, pp. 17-18 (1953); Hart, Murder and the Principles of Punishment: England and the United States, 52 NW.U.L.Rev 433, 446-455 (1957); H. L. A. Hart, Law, Liberty and Morality 60-69 (1963).

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21. See, e.g., Sellin, Homicides in Retentionist and Abolitionist States, in Capital Punishment 135 et seq. (T. Sellin ed. 1967); Schuessler, The Deterrent Influence of the Death Penalty, 284 Annals 54 (1952).

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22. See, e.g., Hoover, Statements in Favor of the Death Penalty, in H. Bedau, The Death Penalty in America 130 (1967 rev. ed.); Allen, Capital Punishment: Your Protection and Mine, in The Death Penalty in America, supra, at 135. See also Hart, 52 NW.U.L.Rev. supra, at 457; Bedau, The Death Penalty in America, supra, at 265-266.

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23. See Powell v. Texas, 392 U.S. 514, 531 (1968) (MARSHALL, J.) (plurality opinion).

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24. See, e.g., K. Menninger, The Crime of Punishment 206-208 (1968).

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25. Much in the concurring opinion of MR. JUSTICE DOUGLAS similarly suggests that it is the sentencing system, rather than the punishment itself, that is constitutionally infirm. However, the opinion also indicates that, in the wake of the Court's decision in McGautha v. California, 402 U.S. 183 (1971), the validity of the sentencing process is no longer open to question.

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26. See concurring opinion of MR. JUSTICE STEWART, ante at 309-310; concurring opinion of MR. JUSTICE WHITE, ante at 312.

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27. See concurring opinion of MR. JUSTICE STEWART, ante at 309-310; cf. concurring opinion of MR. JUSTICE WHITE, ante at 312.

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28. This point is more heavily emphasized in the opinion of MR. JUSTICE STEWART than in that of MR. JUSTICE WHITE. However, since MR. JUSTICE WHITE allows for statutes providing a mandatory death penalty for "more narrowly defined categories" of crimes, it appears that he, too, is more concerned with a regularized sentencing process than with the aggregate number of death sentences imposed for all crimes.

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29. See n. 12, supra.

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30. It was pointed out in the Court's opinion in McGautha that these two alternatives are substantially equivalent. 402 U.S. at 206 n. 16.

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31. See Patrick, The Status of Capital Punishment: A World Perspective, 56 J.Crim.L.C. & P.S. 397 (1965). In England, for example, 1957 legislation limited capital punishment to murder, treason, piracy with violence, dockyards arson, and some military offenses. The Murder (Abolition of Death Penalty) Act 1965 eliminated the penalty for murder on a five-year trial basis. 2 Pub. Gen. Acts, c. 71, p. 1577 (Nov. 8, 1965). This abolition was made permanent in 1969. See 793 Parl.Deb., H.C. (5th ser.) 1294-1298 (1969); 306 Parl.Deb., H.L. (5th ser.) 1317-1322 (1969). Canada has also undertaken limited abolition on a five-year experimental basis. Stats. of Canada 1967-1968, 16 & 17 Eliz. 2, c. 15, p. 145.

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32. Northern Securities Co. v. United States, 193 U.S. 197, 401 (1904) (dissenting opinion).

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1. Minn.Stat. § 609.10 (1971).

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2. Minn.Laws 1911, c. 387.

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3. See W. Trenerry, Murder in Minnesota 163-167 (1962).

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4.

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It is obvious, we think, that the efforts on behalf of Maxwell would not thus be continuing, and his case reappearing in this court were it not for the fact that it is the death penalty, rather than life imprisonment, which he received on his rape conviction. This fact makes the decisional process in a case of this kind particularly excruciating for the author of this opinion[11] who is not personally convinced of the rightness of capital punishment and who questions it as an effective deterrent. But the advisability of capital punishment is a policy matter ordinarily to be resolved by the legislature or through executive clemency, and not by the judiciary. We note, for what that notice may be worth, that the death penalty for rape remains available under federal statutes. 18 U.S.C. § 203; 10 U.S.C. § 920(a).

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The designated footnote observed that my fellow judges did not join in my comment.

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5.

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At the outset, let us put to one side the death penalty as an index of the constitutional limit on punishment. Whatever the arguments may be against capital punishment, both on moral grounds and in terms of accomplishing the purposes of punishment—and they are forceful—the death penalty has been employed throughout our history, and, in a day when it is still widely accepted, it cannot be said to violate the constitutional concept of cruelty….

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6.

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The Eighth Amendment forbids "cruel and unusual punishments." In my view, these words cannot be read to outlaw capital punishment, because that penalty was in common use and authorized by law here and in the countries from which our ancestors came at the time the Amendment was adopted. It is inconceivable to me that the framers intended to end capital punishment by the Amendment. Although some people have urged that this Court should amend the Constitution by interpretation to keep it abreast of modern ideas, I have never believed that lifetime judges in our system have any such legislative power.

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7.

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Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well; I belonged to it, and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present; and forty years of experience in government is worth a century of book-reading; and this they would say themselves, were they to rise from the dead…. I know…that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors…. Let us follow no such examples, nor weakly believe that one generation is not as capable as another of taking care of itself, and of ordering its own affairs. Let us, as our sister States have done, avail ourselves of our reason and experience, to correct the crude essays of our first and unexperienced, although wise virtuous, and well-meaning councils. And lastly, let us provide in our Constitution for its revision at stated periods.

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Letter to Samuel Kercheval, July 12, 1816, 15 The Writings of Thomas Jefferson 40-42 (Memorial ed. 1904).

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1. MR. JUSTICE DOUGLAS holds only that

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the Eighth Amendment [requires] legislatures to write penal laws that are evenhanded, nonselective, and nonarbitrary, and [requires] judges to see to it that general laws are not applied sparsely, selectively, and spottily to unpopular groups.

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Ante at 256. The import of this rationale is that, while all existing laws must fall, it remains theoretically possible for a State or Congress to devise a statute capable of withstanding a claim of discriminatory application. MR. JUSTICE STEWART, in addition to reserving judgment on at least four presently existing statutes (ante at 307), indicates that statutes making capital punishment mandatory for any category of crime, or providing some other means of assuring against "wanton" and "freakish" application (ante at 310), would present a difficult question that he does not reach today. MR. JUSTICE WHITE, for somewhat different reasons, appears to come to the conclusion that a mandatory system of punishment might prove acceptable. Ante p. 310.

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The brief and selective references, in my opinion above and in this note, to the opinions of other Justices obviously do not adequately summarize the thoughtful and scholarly views set forth in their full opinions. I have tried merely to select what seem to me to be the respective points of primary emphasis in each of the majority's opinions.

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2. While statutes in 40 States permit capital punishment for a variety of crimes, the constitutionality of a very few mandatory statutes remains undecided. See concurring opinions by MR. JUSTICE STEWART and MR. JUSTICE WHITE. Since Rhode Island's only capital statute—murder by a life term prisoner—is mandatory, no law in that State is struck down by virtue of the Court's decision today.

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3. For a thorough presentation of the history of the Cruel and Unusual Punishment Clause see MR. JUSTICE MARSHALL's opinion today, ante at 316-328. See also Weems v. United States, 217 U.S. 349, 389-409 (1910) (White, J., dissenting); O'Neil v. Vermont, 144 U.S. 323, 337 (1892) (Field, J., dissenting); Cranucci, "Nor Cruel and Unusual Punishments Inflicted:" The Original Meaning, 57 Calif.L.Rev. 839 (1969).

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4. The Court pointed out that the Eighth Amendment applied only to the Federal Government, and not to the States. The Court's power in relation to state action was limited to protecting privileges and immunities and to assuring due process of law, both within the Fourteenth Amendment. The standard—for purposes of due process—was held to be whether the State had exerted its authority, "within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions." 136 U.S. at 448. The State of Georgia, in No. 69-5003 and No. 69-5030, has placed great emphasis on this discussion in In re Kemmler, 136 U.S. 436 (1890), and has urged that the instant cases should all be decided under the more expansive tests of due process, rather than under the Cruel and Unusual Punishments Clause per se. Irrespective whether the decisions of this Court are viewed as "incorporating" the Eighth Amendment (see Robinson v. California, 370 U.S. 660 (1962); Powell v. Texas, 392 U.S. 514 (1968)), it seems clear that the tests for applying these two provisions are fundamentally identical. Compare Mr. Justice Frankfurter's test in Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 470 (1947) (concurring opinion), with Mr. Chief Justice Warren's test in Trop v. Dulles, 356 U.S. 86, 100-101 (1958).

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5. Mr. Justice White stated:

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Death was a well-known method of punishment prescribed by law, and it was, of course, painful, and, in that sense, was cruel. But the infliction of this punishment was clearly not prohibited by the word cruel, although that word manifestly was intended to forbid the resort to barbarous and unnecessary methods of bodily torture, in executing even the penalty of death.

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217 U.S. at 409.

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6. See Part III, infra.

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7. In footnote 32, at 100-101, the plurality opinion indicates that denationalization "was never explicitly sanctioned by this Government until 1940, and never tested against the Constitution until this day."

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8.

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It seems scarcely arguable that loss of citizenship is within the Eighth Amendment's prohibition because disproportionate to an offense that is capital and has been so from the first year of Independence…. Is constitutional dialectic so empty of reason that it can be seriously urged that loss of citizenship is a fate worse than death?

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Id. at 125.

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9. 398 U.S. 936 (1970); 402 U.S. at 306 (BRENNAN, J., dissenting). While the constitutionality per se of capital punishment has been assumed almost without question, recently members of this Court have expressed the desire to consider the constitutionality of the death penalty with respect to its imposition for specific crimes. Rudolph v. Alabama, 375 U.S. 889 (1963) (dissent from the denial of certiorari).

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10. Brief for Respondent in Branch v. Texas, No. 69-5031, p. 6.

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11. While the implicit assumption in McGautha v. California, 402 U.S. 183 (1971), of the acceptability of death as a form of punishment must prove troublesome for those who urge total abolition, it presents an even more severe problem of stare decisis for those Justices who treat the Eighth Amendment essentially as a process prohibition. MR. JUSTICE DOUGLAS, while stating that the Court is "now imprisoned in…McGautha" (ante at 248), concludes that capital punishment is unacceptable precisely because the procedure governing its imposition is arbitrary and discriminatory. MR. JUSTICE STEWART, taking a not dissimilar tack on the merits, disposes of McGautha in a footnote reference indicating that it is not applicable because the question there arose under the Due Process Clause. Ante at 310 n. 12. MR. JUSTICE WHITE, who also finds the death penalty intolerable because of the process for its implementation, makes no attempt to distinguish McGautha's clear holding. For the reasons expressed in the CHIEF JUSTICE's opinion, McGautha simply cannot be distinguished. Ante at 399-403. These various opinions would, in fact, overrule that recent precedent.

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12. This number includes all the Justices who participated in Wilkerson v. Utah, 99 U.S. 130 (1879), Kemmler, and Louisiana ex rel. Francis as well as those who joined in the plurality and dissenting opinions in Trop and the dissenting opinion in Weems.

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13. See n. 4, supra.

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14. See, e.g., Ex parte Wilson, 114 U.S. 417, 427-428 (1885).

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15. See Part VII, infra.

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16. See, e.g., T. Sellin, The Death Penalty, A Report for the Model Penal Code Project of the American Law Institute (1959); United Nations, Department of Economic and Social Affairs, Capital Punishment (1968); 2 National Commission on Reform of Federal Criminal Laws, Working Papers, 1351 n. 13 (1970).

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17. The literature on the moral question is legion. Representative collections of the strongly held views on both sides may be found in H. Bedau, The Death Penalty in America (1967 rev. ed.), and in Royal Commission on Capital Punishment, Minutes of Evidence (1949-1953).

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18. Department of Justice, National Prisoner Statistics No. 46, Capital Punishment 1930-1970 (Aug. 1971) (191 executions during the 1960's; no executions since June 2, 1967); President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 143 (1967) ("[t]he most salient characteristic of capital punishment is that it is infrequently applied").

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Petitioners concede, as they must, that little weight can be given to the lack of executions in recent years. A de facto moratorium has existed for five years now while cases challenging the procedures for implementing the capital sentence have been reexamined by this Court. McGautha v. California, 402 U.S. 183 (1971); Witherspoon v. Illinois, 391 U.S. 510 (1968). The infrequency of executions during the years before the moratorium became fully effective may be attributable in part to decisions of this Court giving expanded scope to the criminal procedural protections of the Bill of Rights, especially under the Fourth and Fifth Amendments. E.g., Miranda v. Arizona, 384 U.S. 436 (1966); Mapp v. Ohio, 367 U.S. 643 (1961). Additionally, decisions of the early 1960's amplifying the scope of the federal habeas corpus remedy also may help account for a reduction in the number of executions. E.g., Fay v. Noia, 372 U.S. 391 (1963); Townsend v. Sain, 372 U.S. 293 (1963). The major effect of either expanded procedural protections or extended collateral remedies may well have been simply to postpone the date of execution for some capital offenders, thereby leaving them ultimately in the moratorium limbo.

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19. An exact figure for the number of death sentences imposed by the sentencing authorities—judge or jury—in the various jurisdictions is difficult to determine. But the National Prisoner Statistics (hereafter NPS) show the numbers of persons received at the state and federal prisons under sentence of death. This number, however, does not account for those who may have been sentenced and retained in local facilities during the pendency of their appeals. Accepting with this reservation the NPS figures as a minimum, the most recent statistics show that at least 1,057 persons were sentenced to death during the decade of the 1960's. NPS, supra, n. 18, at 9.

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No fully reliable statistics are available on the nationwide ratio of death sentences to cases in which death was a statutorily permissible punishment. At oral argument, counsel for petitioner in No. 69-5003 estimated that the ratio is 12 or 13 to one. Tr. of Oral Arg. in Furman v. Georgia, No. 69-5003, p. 11. Others have found a higher correlation. See McGee, Capital Punishment as Seen by a Correctional Administrator, 28 Fed. Prob., No. 2, pp. 11, 12 (1964) (one out of every five, or 20%, of persons convicted of murder received the death penalty in California); Bedau, Death Sentences in New Jersey 1907-1960, 19 Rutgers L.Rev. 1 (1964) (between 1916 and 1955, 157 out of 652 persons charged with murder received the death sentence in New Jersey—about 20%; between 1956 and 1960, 13 out of 61 received the death sentence—also about 20%); H. Kalven & H. Ziesel, The American Jury 435-436 (1966) (21 of 111 murder cases resulted in death sentences during three representative years during the mid-1950's); see also Koeninger, Capital Punishment in Texas, 1924-1968, 15 Crime & Delin. 132 (1969).

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20. See, e.g., People v. Anderson, 6 Cal. 3d 628, 493 P.2d 880, cert. denied, 406 U.S. 958 (1972); Goldberg & Dershowitz, Declaring the Death Penalty Unconstitutional, 83 Harv.L.Rev. 1773, 1783 (1970). But see F. Frankfurter, Of Law and Men 97-98 (1956) (reprint of testimony before the Royal Commission on Capital Punishment).

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21. Nine States have abolished capital punishment without resort to the courts. See H. Bedau, supra, n. 17, at 39. California has been the only State to abolish capital punishment judicially. People v. Anderson, supra.

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22. Hearings on S. 1760 before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, 90th Cong., 2d Sess. (1968).

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23. Canada has recently undertaken a five-year experiment—similar to that conducted in England—abolishing the death penalty for most crimes. Stats. of Canada 1967-1968, 16 & 17 Eliz. 2, c. 15, p. 145. However, capital punishment is still prescribed for some crimes, including murder of a police officer or corrections official, treason, and piracy.

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24. Great Britain, after many years of controversy over the death penalty, undertook a five-year experiment in abolition in 1965. Murder (Abolition of Death Penalty) Act 1965, 2 Pub.Gen.Acts, c. 71, p. 1577. Although abolition for murder became final in 1969, the penalty was retained for several crimes, including treason, piracy, and dockyards arson.

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25. See n. 62, infra.

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26. See Bedau, supra, n. 17, at 233.

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27. Ibid. (approximately 65% of the voters approved the death penalty).

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28. See Bedau, The Death Penalty in America, 35 Fed.Prob., No. 2, pp. 32, 34 (1971).

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29. National Commission, supra, n. 16, at 1365.

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30. Bedau, supra, n. 17, at 232. See, e.g., State v. Davis, 158 Conn. 341, 356-359, 260 A.2d 587, 595-596 (1969), in which the Connecticut Supreme Court pointed out that the state legislature had considered the question of abolition during the 1961, 1963, 1965, 1967, and 1969 sessions, and had "specifically declined to abolish the death penalty" every time.

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31. 391 U.S. at 519 and n. 15. See also McGautha v. California, 402 U.S. at 201-202; Williams v. New York, 337 U.S. 241, 253 (1949) (Murphy, J., dissenting) ("[i]n our criminal courts, the jury sits as the representative of the community"); W. Douglas, We the Judges 389 (1956); Holmes, Law in Science and Science in Law, 12 Harv.L.Rev. 443, 460 (1899).

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32. See n. 19, supra.

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33. Tr. of Oral Arg. in Aikens v. California, No. 68-5027, p. 21. Although the petition for certiorari in this case was dismissed after oral argument, Aikens v. California, 406 U.S. 813 (1972), the same counsel argued both this case and Furman. He stated at the outset that his argument was equally applicable to each ease.

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34. National Prisoner Statistics, supra, n. 18.

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35. FBI, Uniform Crime Reports—1970, pp. 7-14 (1971).

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36. Public opinion polls, while of little probative relevance, corroborate substantially the conclusion derived from examining legislative activity and jury sentencing—opinion on capital punishment is "fairly divided." Louisiana ex rel. Francis v. Resweber, 329 U.S. at 470 (Frankfurter, J., concurring). See, e.g., Witherspoon v. Illinois, 391 U.S. at 520 n. 16 (1966 poll finding 42% in favor of the death penalty and 47% opposed); Goldberg & Dershowitz, supra, n. 20, at 1781 n. 39 (1969 poll shows 51% in favor of retention—the same percentage as in 1960); H. Bedau, The Death Penalty in America 231-241 (1967 rev. ed.); Bedau, The Death Penalty in America, 35 Fed. Prob., No. 2, pp. 32, 34-35 (1971).

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37. If, as petitioners suggest, the judicial branch itself reflects the prevailing standards of human decency in our society, it may be relevant to note the conclusion reached by state courts in recent years on the question of the acceptability of capital punishment. In the last five years alone, since the de facto "moratorium" on executions began (see n. 18, supra), the appellate courts of 26 States have passed on the constitutionality of the death penalty under the Eighth Amendment and under similar provisions of most state constitutions. Every court, except the California Supreme Court, People v. Anderson, 6 Cal. 3d 628, 493 P.2d 880, cert. denied, 406 U.S. 958 (1972), has found the penalty to be constitutional. Those States, and the year of the most recent decision on the issue, are: Alabama (1971); Arizona (1969); Colorado (1967); Connecticut (1969); Delaware (1971); Florida (1969); Georgia (1971); Illinois (1970); Kansas (1968); Kentucky (1971); Louisiana (1971); Maryland (1971); Missouri (1971); Nebraska (1967); Nevada (1970); New Jersey (1971); New Mexico (1969); North Carolina (1972); Ohio (1971); Oklahoma (1971); South Carolina (1970); Texas (1971); Utah (1969); Virginia (1971); Washington (1971). While the majority of these state court opinions do not give the issue more than summary exposition, many have considered the question at some length, and, indeed, some have considered the issue under the "evolving standards" rubric. See, e.g., State v. Davis, 158 Conn. 341, 356-359, 260 A.2d 587, 595-596 (1969); State v. Crook, 253 La. 961, 967-970, 221 So.2d 473, 475-476 (1969); Bartholomey v. State, 260 Md. 504, 273 A.2d 164 (1971); State v. Alvarez, 182 Neb. 358, 366-367, 154 N.W.2d 746, 751752 (1967); State v. Pace, 80 N. M. 364, 371-372, 456 P.2d 197, 204-205 (1969). Every federal court that has passed on the issue has ruled that the death penalty is not per se unconstitutional. See, e.g., Ralph v. Warden, 438 F.2d 786, 793 (CA4 1970); Jackson v. Dickson, 325 F.2d 573, 575 (CA9 1963), cert. denied, 377 U.S. 957 (1964).

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38. Brief for Petitioner in No. 68-5027, p. 51. Although the Aikens case is no longer before us (see n. 33, supra), the petitioners in Furman and Jackson have incorporated petitioner's brief in Aikens by reference. See Brief for Petitioner in No. 69-5003, pp. 11-12; Brief for Petitioner in No. 69-5030, pp. 11-12.

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39. In 1935, available statistics indicate that 184 convicted murderers were executed. That is the highest, annual total for any year since statistics have become available. NPS, supra, n. 18. The year 1935 is chosen by petitioners in stating their thesis:

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If, in fact, 184 murderers were to be executed in this year 1971, we submit it is palpable that the public conscience of the Nation would be profoundly and fundamentally revolted, and that the death penalty for murder would be abolished forthwith as the atavistic horror that it is.

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Brief for Petitioner in No. 68-5027, p. 26 (see n. 38, supra).

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40. Not all murders, and certainly not all crimes, are committed by persons classifiable as "underprivileged." Many crimes of violence are committed by professional criminals who willingly choose to prey upon society as an easy and remunerative way of life. Moreover, the terms "underprivileged," the "poor" and the "powerless" are relative and inexact, often conveying subjective connotations which vary widely depending upon the viewpoint and purpose of the user.

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41. Similarly, MR. JUSTICE WHITE exhibits concern for a lack of any "meaningful basis for distinguishing the few cases in which [the death penalty] is imposed from the many cases in which it is not." Ante at 313. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL treat the arbitrariness question in the same manner that it is handled by petitioners—as an element of the approach calling for total abolition.

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42. In Morissette v. United States, 342 U.S. 246 (1952), Mr. Justice Jackson spoke of the "tardy and unfinished substitution of deterrence and reformation in place of retaliation and vengeance as the motivation for public prosecution." Id. at 251. He also noted that the penalties for invasions of the rights of property are high as a consequence of the "public demand for retribution." Id. at 260.

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43. See also Massiah v. United States, 377 U.S. 201, 207 (1964) (WHITE, J., dissenting) (noting the existence of a "profound dispute about whether we should punish, deter, rehabilitate or cure"); Robinson v. California, 370 U.S. at 674 (DOUGLAS, J., concurring); Louisiana ex rel. Francis v. Resweber, 329 U.S. at 470-471 (Mr. Justice Frankfurter's admonition that the Court is not empowered to act simply because of a "feeling of revulsion against a State's insistence on its pound of flesh"); United States v. Lovett, 328 U.S. 303, 324 (1946) (Frankfurter, J., concurring) ("[p]unishment presupposes an offense, not necessarily an act previously declared criminal, but an act for which retribution is exacted").

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44. Royal Commission on Capital Punishment, Minutes of Evidence 207 (1949-1953).

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45. Report of Royal Commission on Capital Punishment, 1949-1953, Cmd. 8932, ¶ 53, p. 18.

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46. M. Cohen, Reason and Law 50 (1950); H. Packer, The Limits of the Criminal Sanction 11-12 (1968); Hart, The Aims of the Criminal Law, 23 Law & Contemp. Prob. 401 (1958).

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47. The authorities are collected in Comment, The Death Penalty Cases, 56 Calif.L.Rev. 1268, 1297-1301 (1968). The competing contentions are summarized in the Working Papers of the National Commission on Reform of Federal Criminal Laws, supra, n. 16, at 1358-1359. See also the persuasive treatment of this issue by Dr. Karl Menninger in The Crime of Punishment 190-218 (1966).

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48. See, e.g., H. Bedau, The Death Penalty in America 260 (1967 rev. ed.); National Commission, supra, n. 16, at 1352.

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49. See Sellin, supra, n. 16, at 152.

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50. The countervailing considerations, tending to undercut the force of Professor Sellin's statistical studies, are collected in National Commission, supra, n. 16, at 1354; Bedau, supra, n. 48, at 265-266; Hart, Murder and the Principles of Punishment: England and the United States, 52 Nw.U.L.Rev. 433, 455-460 (1957).

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51. Report of the Royal Commission, supra, n. 45, ¶ 68, at 24.

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52. It is worthy of note that the heart of the argument here—that there are no legitimate justifications—was impliedly repudiated last Term by both the majority and dissenting opinions in McGautha v. California, 402 U.S. 183 (1971). The argument in that case centered on the proposition that due process requires that the standards governing the jury's exercise of its sentencing function be elucidated. As MR. JUSTICE BRENNAN's dissent made clear, whatever standards might be thought to exist arise out of the list of justifications for the death penalty—retribution, deterrence, etc. Id. at 284. If no such standards exist, the controversy last Term was a hollow one indeed.

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53. Jackson v. Georgia, No. 69-5030; Branch v. Texas, No. 69-5031.

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54. Mr. Justice Harlan, joined by Mr. Justice Brewer, dissented separately, but agreed that the State had inflicted a cruel and unusual punishment. Id. at 371.

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55. In addition to the States in which rape is a capital offense, statutes in 28 States prescribe life imprisonment as a permissible punishment for at least some category of rape. Also indicative of the seriousness with which the crime of rape is viewed, is the fact that, in nine of the 10 States that have abolished death as a punishment for any crime, the maximum term of years for rape is the same as for first-degree murder. Statistical studies have shown that the average prison term served by rapists is longer than for any category of offense other than murder. J. MacDonald, Rape—Offenders and Their Victims 298 (1971).

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56. Id. at 63-64; Packer, Making the Punishment Fit the Crime, 77 Harv.L.Rev. 1071, 1077 (1964).

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57. See MacDonald, supra, n. 55, at 314; Chambliss, Types of Deviance and the Effectiveness of Legal Sanctions, 1967 Wis.L.Rev. 703.

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58. FBI, Uniform Crime Report—1970, p. 14 (1971) (during the 1960's, the incidence of rape rose 121%).

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59. See text accompanying nn. 27 & 28, supra.

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60. See n. 24, supra.

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61. See n. 23, supra.

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62. Recent legislative activity in New York State serves to underline the preferability of legislative action over constitutional adjudication. New York abolished the death penalty for murder in 1965, leaving only a few crimes for which the penalty is still available. See text accompanying n. 25, supra. On April 27, 1972, a bill that would have restored the death penalty was considered by the State Assembly. After several hours of heated debate, the bill was narrowly defeated by a vote of 65 to 59. N.Y. Times, Apr. 28, 1972, p. 1, col. 1. After seven years of disuse of the death penalty, the representatives of the people in that State had not come finally to rest on the question of capital punishment. Because the 1965 decision had been the product of the popular will, it could have been undone by an exercise of the same democratic process. No such flexibility is permitted when abolition, even though not absolute, flows from constitutional adjudication.

1972, Furman v. Georgia, 408 U.S. 373

63. President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 143 (1967) (chaired by Nicholas Katzenbach, then Attorney General of the United States). The text of the Report stated, among other things, that the abolition of the death penalty "is being widely debated in the States"; that it is "impossible to say with certainty whether capital punishment significantly reduces the incidence of heinous crimes"; that "[w]hatever views one may have on the efficacy of the death penalty as a deterrent, it clearly has an undesirable impact on the administration of criminal justice"; and that "[a]ll members of the Commission agree that the present situation in the administration of the death penalty in many States is intolerable." Ibid. As a member of this Presidential Commission I subscribed then, and do now, to the recommendations and views above quoted.

1972, Furman v. Georgia, 408 U.S. 373

64. Final Report of the National Commission on Reform of Federal Criminal Laws 310 (1971).

1972, Furman v. Georgia, 408 U.S. 373

65. The American Law Institute, after years of study, decided not to take an official position on the question of capital punishment, although the Advisory Committee favored abolition by a vote of 18-2. The Council was more evenly divided, but all were in agreement that many States would undoubtedly retain the punishment and that, therefore, the Institute's efforts should be directed toward providing standards for its implementation. ALI, Model Penal Code 65 (Tent. draft No. 9, 1959).

1972, Furman v. Georgia, 408 U.S. 373

66. See text accompanying nn. 26 through 30, supra.

1972, Furman v. Georgia, 408 U.S. 373

67. Blodgett v. Holden, 275 U.S. 142, 148 (1927) (separate opinion of Holmes, J.). See also Trop v. Dulles, 356 U.S. at 128 (Frankfurter, J., dissenting):

1972, Furman v. Georgia, 408 U.S. 373

The awesome power of this Court to invalidate…legislation, because in practice it is bounded only by our own prudence in discerning the limits of the Court's constitutional function, must be exercised with the utmost restraint.

President Nixon's Address Announcing the Conclusion of an Agreement on Ending the War in Vietnam, 1973

Title: President Nixon's Address Announcing the Conclusion of an Agreement on Ending the War in Vietnam

Author: Richard M. Nixon

Date: January 23, 1973

Source: Public Papers of the Presidents, Nixon, 1973, pp.18-20

Public Papers of Nixon, 1973, p.18

Good evening:

Public Papers of Nixon, 1973, p.18

I have asked for this radio and television time tonight for the purpose of announcing that we today have concluded an agreement to end the war and bring peace with honor in Vietnam and in Southeast Asia.

Public Papers of Nixon, 1973, p.18

The following statement is being issued at this moment in Washington and Hanoi:

Public Papers of Nixon, 1973, p.18

At 12:30 Paris time today, January 23, 1973, the Agreement on Ending the War and Restoring Peace in Vietnam was initialed by Dr. Henry Kissinger on behalf of the United States, and Special Adviser Le Duc Tho on behalf of the Democratic Republic of Vietnam.

Public Papers of Nixon, 1973, p.18

The agreement will be formally signed by the parties participating in the Paris Conference on Vietnam on January 27, 1973, at the International Conference Center in Paris.

Public Papers of Nixon, 1973, p.18

The cease-fire will take effect at 2400 Greenwich Mean Time, January 27, 1973. The United States and the Democratic Republic of Vietnam express the hope that this agreement will insure stable peace in Vietnam and contribute to the preservation of lasting peace in Indochina and Southeast Asia.

Public Papers of Nixon, 1973, p.18

That concludes the formal statement. Throughout the years of negotiations, we have insisted on peace with honor. In my addresses to the Nation from this room of January 25 and May 8 [1972], I set forth the goals that we considered essential for peace with honor.

Public Papers of Nixon, 1973, p.18–p.19

In the settlement that has now been [p.19] agreed to, all the conditions that I laid down then have been met:

Public Papers of Nixon, 1973, p.19

A cease-fire, internationally supervised, will begin at 7 p.m., this Saturday, January 27, Washington time.

Public Papers of Nixon, 1973, p.19

Within 60 days from this Saturday, all Americans held prisoners of war throughout Indochina will be released. There will be the fullest possible accounting for all of those who are missing in action.

Public Papers of Nixon, 1973, p.19

During the same 60-day period, all American forces will be withdrawn from South Vietnam.

Public Papers of Nixon, 1973, p.19

The people of South Vietnam have been guaranteed the right to determine their own future, without outside interference.

Public Papers of Nixon, 1973, p.19

By joint agreement, the full text of the agreement and the protocol to carry it out will be issued tomorrow.

Public Papers of Nixon, 1973, p.19

Throughout these negotiations we have been in the closest consultation with President Thieu and other representatives of the Republic of Vietnam. This settlement meets the goals and has the full support of President Thieu and the Government of the Republic of Vietnam, as well as that of our other allies who are affected.

Public Papers of Nixon, 1973, p.19

The United States will continue to recognize the Government of the Republic of Vietnam as the sole legitimate government of South Vietnam.

Public Papers of Nixon, 1973, p.19

We shall continue to aid South Vietnam within the terms of the agreement, and we shall support efforts by the people of South Vietnam to settle their problems peacefully among themselves.

Public Papers of Nixon, 1973, p.19

We must recognize that ending the war is only the first step toward building the peace. All parties must now see to it that this is a peace that lasts, and also a peace that heals—and a peace that not only ends the war in Southeast Asia but contributes to the prospects of peace in the whole world.

Public Papers of Nixon, 1973, p.19

This will mean that the terms of the agreement must be scrupulously adhered to. We shall do everything the agreement requires of us, and we shall expect the other parties to do everything it requires of them. We shall also expect other interested nations to help insure that the agreement is carried out and peace is maintained.

Public Papers of Nixon, 1973, p.19

As this long and very difficult war ends, I would like to address a few special words to each of those who have been parties in the conflict.

Public Papers of Nixon, 1973, p.19

First, to the people and Government of South Vietnam: By your courage, by your sacrifice, you have won the precious right to determine your own future, and you have developed the strength to defend that right. We look forward to working with you in the future—friends in peace as we have been allies in war.

Public Papers of Nixon, 1973, p.19

To the leaders of North Vietnam: As we have ended the war through negotiations, let us now build a peace of reconciliation. For our part, we are prepared to make a major effort to help achieve that goal. But just as reciprocity was needed to end the war, so too will it be needed to build and strengthen the peace.

Public Papers of Nixon, 1973, p.19

To the other major powers that have been involved even indirectly: Now is the time for mutual restraint so that the peace we have achieved can last.

Public Papers of Nixon, 1973, p.19–p.20

And finally, to all of you who are listening, the American people: Your steadfastness in supporting our insistence on peace with honor has made peace with honor possible. I know that you would not have wanted that peace jeopardized. With our secret negotiations at the sensitive stage they were in during this recent period, for me to have discussed publicly [p.20] our efforts to secure peace would not only have violated our understanding with North Vietnam, it would have seriously harmed and possibly destroyed the chances for peace. Therefore, I know that you now can understand why, during these past several weeks, I have not made any public statements about those efforts.

Public Papers of Nixon, 1973, p.20

The important thing was not to talk about peace, but to get peace—and to get the right kind of peace. This we have done.

Public Papers of Nixon, 1973, p.20

Now that we have achieved an honorable agreement, let us be proud that America did not settle for a peace that would have betrayed our allies, that would have abandoned our prisoners of war, or that would have ended the war for us but would have continued the war for the 50 million people of Indochina. Let us be proud of the 2 1/2 million young Americans who served in Vietnam, who served with honor and distinction in one of the most selfless enterprises in the history of nations. And let us be proud of those who sacrificed, who gave their lives so that the people of South Vietnam might live in freedom and so that the world might live in peace.

Public Papers of Nixon, 1973, p.20

In particular, I would like to say a word to some of the bravest people I have ever met—the wives, the children, the families of our prisoners of war and the missing in action. When others called on us to settle on any terms, you had the courage to stand for the right kind of peace so that those who died and those who suffered would not have died and suffered in vain, and so that where this generation knew war, the next generation would know peace. Nothing means more to me at this moment than the fact that your long vigil is coming to an end.

Public Papers of Nixon, 1973, p.20

Just yesterday, a great American, who once occupied this office, died. In his life, President Johnson endured the vilification of those who sought to portray him as a man of war. But there was nothing he cared about more deeply than achieving a lasting peace in the world.

Public Papers of Nixon, 1973, p.20

I remember the last time I talked with him. It was just the day after New Year's. He spoke then of his concern with bringing peace, with making it the right kind of peace, and I was grateful that he once again expressed his support for my efforts to gain such a peace. No one would have welcomed this peace more than he.

Public Papers of Nixon, 1973, p.20

And I know .he would join me in asking-for those who died and for those who live—let us consecrate this moment by resolving together to make the peace we have achieved a peace that will last. Thank you and good evening.

Public Papers of Nixon, 1973, p.20

NOTE: The President spoke at 10:01 p.m. in the Oval Office at the White House. His address was broadcast live on nationwide radio and television. An advance text of the President's address was released on the same day.

Public Papers of Nixon, 1973, p.20

Before delivering the address, the President met separately with members of the Cabinet and 6 members of the bipartisan leadership of the Congress.

Public Papers of Nixon, 1973, p.20

On January 24, 1973, the President met with the expanded bipartisan leadership of the Congress to discuss the agreement. On the same day, the White House released the following related material: the texts of the agreement and protocol to the agreement; the transcript of a news briefing on the agreement by Henry A. Kissinger, Assistant to the President for National Security Affairs; and fact sheets on the basic elements of the agreement, the International Commission of Control and Supervision, and the Four-Party Joint Military Commission. The texts of the agreement and protocol and Dr. Kissinger's news briefing are printed in the Weekly Compilation of Presidential Documents (vol. 9, pp. 45-74).

Roe v. Wade, 1973

Title: Roe v. Wade

Author: U.S. Supreme Court

Date: January 22, 1973

Source: 410 U.S. 113

This case was argued December 13, 1971, and was reargued October 11, 1972. The case was decided January 22, 1973.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

Syllabus

1973, Roe v. Wade, 410 U.S. 113

A pregnant single woman (Roe) brought a class action challenging the constitutionality of the Texas criminal abortion laws, which proscribe procuring or attempting an abortion except on medical advice for the purpose of saving the mother's life. A licensed physician (Hallford), who had two state abortion prosecutions pending against him, was permitted to intervene. A childless married couple (the Does), the wife not being pregnant, separately attacked the laws, basing alleged injury on the future possibilities of contraceptive failure, pregnancy, unpreparedness for parenthood, and impairment of the wife's health. A three-judge District Court, which consolidated the actions, held that Roe and Hallford, and members of their classes, had standing to sue and presented justiciable controversies. Ruling that declaratory, though not injunctive, relief was warranted, the court declared the abortion statutes void as vague and overbroadly infringing those plaintiffs' Ninth and Fourteenth Amendment rights. The court ruled the Does' complaint not justiciable. Appellants directly appealed to this Court on the injunctive rulings, and appellee cross-appealed from the District Court's grant of declaratory relief to Roe and Hallford.

1973, Roe v. Wade, 410 U.S. 113

Held:

1973, Roe v. Wade, 410 U.S. 113

1. While 28 U.S.C. § 1253 authorizes no direct appeal to this Court from the grant or denial of declaratory relief alone, review is not foreclosed when the case is properly before the Court on appeal from specific denial of injunctive relief and the arguments as to both injunctive and declaratory relief are necessarily identical. P. 123.

1973, Roe v. Wade, 410 U.S. 113

2. Roe has standing to sue; the Does and Hallford do not. Pp. 123-129.

1973, Roe v. Wade, 410 U.S. 113

(a) Contrary to appellee's contention, the natural termination of Roe's pregnancy did not moot her suit. Litigation involving pregnancy, which is "capable of repetition, yet evading review," is an exception to the usual federal rule that an actual controversy [410 U.S. 114] must exist at review stages, and not simply when the action is initiated. Pp. 124-125.

1973, Roe v. Wade, 410 U.S. 114

(b) The District Court correctly refused injunctive, but erred in granting declaratory, relief to Hallford, who alleged no federally protected right not assertable as a defense against the good faith state prosecutions pending against him. Samuels v. Mackell, 401 U.S. 66. Pp. 125-127.

1973, Roe v. Wade, 410 U.S. 114

(c) The Does' complaint, based as it is on contingencies, any one or more of which may not occur, is too speculative to present an actual case or controversy. Pp. 127-129.

1973, Roe v. Wade, 410 U.S. 114

3. State criminal abortion laws, like those involved here, that except from criminality only a life-saving procedure on the mother's behalf without regard to the stage of her pregnancy and other interests involved violate the Due Process Clause of the Fourteenth Amendment, which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy. Though the State cannot override that right, it has legitimate interests in protecting both the pregnant woman's health and the potentiality of human life, each of which interests grows and reaches a "compelling" point at various stages of the woman's approach to term. Pp. 147-164.

1973, Roe v. Wade, 410 U.S. 114

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician. Pp. 163, 164.

1973, Roe v. Wade, 410 U.S. 114

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health. Pp. 163, 164.

1973, Roe v. Wade, 410 U.S. 114

(c) For the stage subsequent to viability the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion except where necessary, in appropriate medical judgment, for the preservation of the life or health of the mother. Pp. 163-164; 164-165.

1973, Roe v. Wade, 410 U.S. 114

4. The State may define the term "physician" to mean only a physician currently licensed by the State, and may proscribe any abortion by a person who is not a physician as so defined. P. 165.

1973, Roe v. Wade, 410 U.S. 114

5. It is unnecessary to decide the injunctive relief issue, since the Texas authorities will doubtless fully recognize the Court's ruling [410 U.S. 115] that the Texas criminal abortion statutes are unconstitutional. P. 166.

1973, Roe v. Wade, 410 U.S. 115

314 F.Supp. 1217, affirmed in part and reversed in part.

1973, Roe v. Wade, 410 U.S. 115

BLACKMUN, J., delivered the opinion of the Court, in which BURGER, C.J., and DOUGLAS, BRENNAN, STEWART, MARSHALL, and POWELL, JJ., joined. BURGER, C.J., post, p. 207, DOUGLAS, J., post, p. 209, and STEWART, J., post, p. 167, filed concurring opinions. WHITE, J., filed a dissenting opinion, in which REHNQUIST, J., joined, post, p. 221. REHNQUIST, J., filed a dissenting opinion, post, p. 171. [410 U.S. 116]

BLACKMUN, J., lead opinion

1973, Roe v. Wade, 410 U.S. 116

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

1973, Roe v. Wade, 410 U.S. 116

This Texas federal appeal and its Georgia companion, Doe v. Bolton, post, p. 179, present constitutional challenges to state criminal abortion legislation. The Texas statutes under attack here are typical of those that have been in effect in many States for approximately a century. The Georgia statutes, in contrast, have a modern cast, and are a legislative product that, to an extent at least, obviously reflects the influences of recent attitudinal change, of advancing medical knowledge and techniques, and of new thinking about an old issue.

1973, Roe v. Wade, 410 U.S. 116

We forthwith acknowledge our awareness of the sensitive and emotional nature of the abortion controversy, of the vigorous opposing views, even among physicians, and of the deep and seemingly absolute convictions that the subject inspires. One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusions about abortion.

1973, Roe v. Wade, 410 U.S. 116

In addition, population growth, pollution, poverty, and racial overtones tend to complicate and not to simplify the problem.

1973, Roe v. Wade, 410 U.S. 116

Our task, of course, is to resolve the issue by constitutional measurement, free of emotion and of predilection. We seek earnestly to do this, and, because we do, we [410 U.S. 117] have inquired into, and in this opinion place some emphasis upon, medical and medical-legal history and what that history reveals about man's attitudes toward the abortion procedure over the centuries. We bear in mind, too, Mr. Justice Holmes' admonition in his now-vindicated dissent in Lochner v. New York, 198 U.S. 45, 76 (1905):

1973, Roe v. Wade, 410 U.S. 117

[The Constitution] is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

I

1973, Roe v. Wade, 410 U.S. 117

The Texas statutes that concern us here are Arts. 1191-1194 and 1196 of the State's Penal Code. 1 These make it a crime to "procure an abortion," as therein [410 U.S. 118] defined, or to attempt one, except with respect to "an abortion procured or attempted by medical advice for the purpose of saving the life of the mother." Similar statutes are in existence in a majority of the States. 2 [410 U.S. 119]

1973, Roe v. Wade, 410 U.S. 119

Texas first enacted a criminal abortion statute in 1854. Texas Laws 1854, c. 49, § 1, set forth in 3 H. Gammel, Laws of Texas 1502 (1898). This was soon modified into language that has remained substantially unchanged to the present time. See Texas Penal Code of 1857, c. 7, Arts. 531-536; G. Paschal, Laws of Texas, Arts. 2192-2197 (1866); Texas Rev.Stat., c. 8, Arts. 536-541 (1879); Texas Rev.Crim.Stat., Arts. 1071-1076 (1911). The final article in each of these compilations provided the same exception, as does the present Article 1196, for an abortion by "medical advice for the purpose of saving the life of the mother." 3 [410 U.S. 120]

II

1973, Roe v. Wade, 410 U.S. 120

Jane Roe, 4 a single woman who was residing in Dallas County, Texas, instituted this federal action in March 1970 against the District Attorney of the county. She sought a declaratory judgment that the Texas criminal abortion statutes were unconstitutional on their face, and an injunction restraining the defendant from enforcing the statutes.

1973, Roe v. Wade, 410 U.S. 120

Roe alleged that she was unmarried and pregnant; that she wished to terminate her pregnancy by an abortion "performed by a competent, licensed physician, under safe, clinical conditions"; that she was unable to get a "legal" abortion in Texas because her life did not appear to be threatened by the continuation of her pregnancy; and that she could not afford to travel to another jurisdiction in order to secure a legal abortion under safe conditions. She claimed that the Texas statutes were unconstitutionally vague and that they abridged her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. By an amendment to her complaint, Roe purported to sue "on behalf of herself and all other women" similarly situated.

1973, Roe v. Wade, 410 U.S. 120

James Hubert Hallford, a licensed physician, sought and was granted leave to intervene in Roe's action. In his complaint, he alleged that he had been arrested previously for violations of the Texas abortion statutes, and [410 U.S. 121] that two such prosecutions were pending against him. He described conditions of patients who came to him seeking abortions, and he claimed that for many cases he, as a physician, was unable to determine whether they fell within or outside the exception recognized by Article 1196. He alleged that, as a consequence, the statutes were vague and uncertain, in violation of the Fourteenth Amendment, and that they violated his own and his patients' rights to privacy in the doctor-patient relationship and his own right to practice medicine, rights he claimed were guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.

1973, Roe v. Wade, 410 U.S. 121

John and Mary Doe, 5 a married couple, filed a companion complaint to that of Roe. They also named the District Attorney as defendant, claimed like constitutional deprivations, and sought declaratory and injunctive relief. The Does alleged that they were a childless couple; that Mrs. Doe was suffering from a "neural-chemical" disorder; that her physician had "advised her to avoid pregnancy until such time as her condition has materially improved" (although a pregnancy at the present time would not present "a serious risk" to her life); that, pursuant to medical advice, she had discontinued use of birth control pills; and that, if she should become pregnant, she would want to terminate the pregnancy by an abortion performed by a competent, licensed physician under safe, clinical conditions. By an amendment to their complaint, the Does purported to sue "on behalf of themselves and all couples similarly situated."

1973, Roe v. Wade, 410 U.S. 121

The two actions were consolidated and heard together by a duly convened three-judge district court. The suits thus presented the situations of the pregnant single woman, the childless couple, with the wife not pregnant, [410 U.S. 122] and the licensed practicing physician, all joining in the attack on the Texas criminal abortion statutes. Upon the filing of affidavits, motions were made for dismissal and for summary judgment. The court held that Roe and members of her class, and Dr. Hallford, had standing to sue and presented justiciable controversies, but that the Does had failed to allege facts sufficient to state a present controversy, and did not have standing. It concluded that, with respect to the requests for a declaratory judgment, abstention was not warranted. On the merits, the District Court held that the

1973, Roe v. Wade, 410 U.S. 122

fundamental right of single women and married persons to choose whether to have children is protected by the Ninth Amendment, through the Fourteenth Amendment,

1973, Roe v. Wade, 410 U.S. 122

and that the Texas criminal abortion statutes were void on their face because they were both unconstitutionally vague and constituted an overbroad infringement of the plaintiffs' Ninth Amendment rights. The court then held that abstention was warranted with respect to the requests for an injunction. It therefore dismissed the Does' complaint, declared the abortion statutes void, and dismissed the application for injunctive relief. 314 F.Supp. 1217, 1225 (ND Tex.1970).

1973, Roe v. Wade, 410 U.S. 122

The plaintiffs Roe and Doe and the intervenor Hallford, pursuant to 28 U.S.C. § 1253, have appealed to this Court from that part of the District Court's judgment denying the injunction. The defendant District Attorney has purported to cross-appeal, pursuant to the same statute, from the court's grant of declaratory relief to Roe and Hallford. Both sides also have taken protective appeals to the United States Court of Appeals for the Fifth Circuit. That court ordered the appeals held in abeyance pending decision here. We postponed decision on jurisdiction to the hearing on the merits. 402 U.S. 941 (1971) [410 U.S. 123]

1973, Roe v. Wade, 410 U.S. 123

It might have been preferable if the defendant, pursuant to our Rule 20, had presented to us a petition for certiorari before judgment in the Court of Appeals with respect to the granting of the plaintiffs' prayer for declaratory relief. Our decisions in Mitchell v. Donovan, 398 U.S. 427 (1970), and Gunn v. University Committee, 399 U.S. 383 (1970), are to the effect that § 1253 does not authorize an appeal to this Court from the grant or denial of declaratory relief alone. We conclude, nevertheless, that those decisions do not foreclose our review of both the injunctive and the declaratory aspects of a case of this kind when it is properly here, as this one is, on appeal under 1253 from specific denial of injunctive relief, and the arguments as to both aspects are necessarily identical. See Carter v. Jury Comm'n, 396 U.S. 320 (1970); Florida Lime Growers v. Jacobsen, 362 U.S. 73, 80-81 (1960). It would be destructive of time and energy for all concerned were we to rule otherwise. Cf. Doe v. Bolton, post, p. 179.

IV

1973, Roe v. Wade, 410 U.S. 123

We are next confronted with issues of justiciability, standing, and abstention. Have Roe and the Does established that "personal stake in the outcome of the controversy," Baker v. Carr, 369 U.S. 186, 204 (1962), that insures that

1973, Roe v. Wade, 410 U.S. 123

the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution,

1973, Roe v. Wade, 410 U.S. 123

Flast v. Cohen, 392 U.S. 83, 101 (1968), and Sierra Club v. Morton, 405 U.S. 727, 732 (1972)? And what effect did the pendency of criminal abortion charges against Dr. Hallford in state court have upon the propriety of the federal court's granting relief to him as a plaintiff-intervenor? [410 U.S. 124]

1973, Roe v. Wade, 410 U.S. 124

A. Jane Roe. Despite the use of the pseudonym, no suggestion is made that Roe is a fictitious person. For purposes of her case, we accept as true, and as established, her existence; her pregnant state, as of the inception of her suit in March 1970 and as late as May 21 of that year when she filed an alias affidavit with the District Court; and her inability to obtain a legal abortion in Texas.

1973, Roe v. Wade, 410 U.S. 124

Viewing Roe's case as of the time of its filing and thereafter until as late a May, there can be little dispute that it then presented a case or controversy and that, wholly apart from the class aspects, she, as a pregnant single woman thwarted by the Texas criminal abortion laws, had standing to challenge those statutes. Abele v. Markle, 452 F.2d 1121, 1125 (CA2 1971); Crossen v. Breckenridge, 446 F.2d 833, 838-839 (CA6 1971); Poe v. Menghini, 339 F.Supp. 986, 990-991 (Kan.1972). See Truax v. Raich, 239 U.S. 33 (1915). Indeed, we do not read the appellee's brief as really asserting anything to the contrary. The "logical nexus between the status asserted and the claim sought to be adjudicated," Flast v. Cohen, 392 U.S. at 102, and the necessary degree of contentiousness, Golden v. Zwickler, 394 U.S. 103 (1969), are both present.

1973, Roe v. Wade, 410 U.S. 124

The appellee notes, however, that the record does not disclose that Roe was pregnant at the time of the District Court hearing on May 22, 1970, 6 or on the following June 17 when the court's opinion and judgment were filed. And he suggests that Roe's case must now be moot because she and all other members of her class are no longer subject to any 1970 pregnancy. [410 U.S. 125]

1973, Roe v. Wade, 410 U.S. 125

The usual rule in federal cases is that an actual controversy must exist at stages of appellate or certiorari review, and not simply at the date the action is initiated. United States v. Munsingwear, Inc., 340 U.S. 36 (1950); Golden v. Zwickler, supra; SEC v. Medical Committee for Human Rights, 404 U.S. 403 (1972).

1973, Roe v. Wade, 410 U.S. 125

But when, as here, pregnancy is a significant fact in the litigation, the normal 266-day human gestation period is so short that the pregnancy will come to term before the usual appellate process is complete. If that termination makes a case moot, pregnancy litigation seldom will survive much beyond the trial stage, and appellate review will be effectively denied. Our law should not be that rigid. Pregnancy often comes more than once to the same woman, and in the general population, if man is to survive, it will always be with us. Pregnancy provides a classic justification for a conclusion of nonmootness. It truly could be "capable of repetition, yet evading review." Southern Pacific Terminal Co. v. ICC, 219 U.S. 498, 515 (1911). See Moore v. Ogilvie, 394 U.S. 814, 816 (1969); Carroll v. Princess Anne, 393 U.S. 175, 178-179 (1968); United States v. W. T. Grant Co., 345 U.S. 629, 632-633 (1953).

1973, Roe v. Wade, 410 U.S. 125

We, therefore, agree with the District Court that Jane Roe had standing to undertake this litigation, that she presented a justiciable controversy, and that the termination of her 1970 pregnancy has not rendered her case moot.

1973, Roe v. Wade, 410 U.S. 125

B. Dr. Hallford. The doctor's position is different. He entered Roe's litigation as a plaintiff-intervenor, alleging in his complaint that he:

1973, Roe v. Wade, 410 U.S. 125

[I]n the past has been arrested for violating the Texas Abortion Laws and at the present time stands charged by indictment with violating said laws in the Criminal District Court of Dallas County, Texas to-wit: (1) The State of Texas vs. [410 U.S. 126] James H. Hallford, No. C-69-5307-IH, and (2) The State of Texas vs. James H. Hallford, No. C-692524-H. In both cases, the defendant is charged with abortion….

1973, Roe v. Wade, 410 U.S. 126

In his application for leave to intervene, the doctor made like representations as to the abortion charges pending in the state court. These representations were also repeated in the affidavit he executed and filed in support of his motion for summary judgment.

1973, Roe v. Wade, 410 U.S. 126

Dr. Hallford is, therefore, in the position of seeking, in a federal court, declaratory and injunctive relief with respect to the same statutes under which he stands charged in criminal prosecutions simultaneously pending in state court. Although he stated that he has been arrested in the past for violating the State's abortion laws, he makes no allegation of any substantial and immediate threat to any federally protected right that cannot be asserted in his defense against the state prosecutions. Neither is there any allegation of harassment or bad faith prosecution. In order to escape the rule articulated in the cases cited in the next paragraph of this opinion that, absent harassment and bad faith, a defendant in a pending state criminal case cannot affirmatively challenge in federal court the statutes under which the State is prosecuting him, Dr. Hallford seeks to distinguish his status as a present state defendant from his status as a "potential future defendant," and to assert only the latter for standing purposes here.

1973, Roe v. Wade, 410 U.S. 126

We see no merit in that distinction. Our decision in Samuels v. Mackell, 401 U.S. 66 (1971), compels the conclusion that the District Court erred when it granted declaratory relief to Dr. Hallford instead of refraining from so doing. The court, of course, was correct in refusing to grant injunctive relief to the doctor. The reasons supportive of that action, however, are those expressed in Samuels v. Mackell, supra, and in Younger v. [410 U.S. 127] Harris, 401 U.S. 37 (1971); Boyle v. Landry, 401 U.S. 77 (1971); Perez v. Ledesma, 401 U.S. 82 (1971); and Byrne v. Karaleis, 401 U.S. 216 (1971). See also Dombrowski v. Pfister, 380 U.S. 479 (1965). We note, in passing, that Younger and its companion cases were decided after the three-judge District Court decision in this case.

1973, Roe v. Wade, 410 U.S. 127

Dr. Hallford's complaint in intervention, therefore, is to be dismissed. 7 He is remitted to his defenses in the state criminal proceedings against him. We reverse the judgment of the District Court insofar as it granted Dr. Hallford relief and failed to dismiss his complaint in intervention.

1973, Roe v. Wade, 410 U.S. 127

C. The Does. In view of our ruling as to Roe's standing in her case, the issue of the Does' standing in their case has little significance. The claims they assert are essentially the same as those of Roe, and they attack the same statutes. Nevertheless, we briefly note the Does' posture.

1973, Roe v. Wade, 410 U.S. 127

Their pleadings present them as a childless married couple, the woman not being pregnant, who have no desire to have children at this time because of their having received medical advice that Mrs. Doe should avoid pregnancy, and for "other highly personal reasons." But they "fear…they may face the prospect of becoming [410 U.S. 128] parents." And if pregnancy ensues, they "would want to terminate" it by an abortion. They assert an inability to obtain an abortion legally in Texas and, consequently, the prospect of obtaining an illegal abortion there or of going outside Texas to some place where the procedure could be obtained legally and competently.

1973, Roe v. Wade, 410 U.S. 128

We thus have as plaintiffs a married couple who have, as their asserted immediate and present injury, only an alleged "detrimental effect upon [their] marital happiness" because they are forced to "the choice of refraining from normal sexual relations or of endangering Mary Doe's health through a possible pregnancy." Their claim is that, sometime in the future, Mrs. Doe might become pregnant because of possible failure of contraceptive measures, and, at that time in the future, she might want an abortion that might then be illegal under the Texas statutes.

1973, Roe v. Wade, 410 U.S. 128

This very phrasing of the Does' position reveals its speculative character. Their alleged injury rests on possible future contraceptive failure, possible future pregnancy, possible future unpreparedness for parenthood, and possible future impairment of health. Any one or more of these several possibilities may not take place, and all may not combine. In the Does' estimation, these possibilities might have some real or imagined impact upon their marital happiness. But we are not prepared to say that the bare allegation of so indirect an injury is sufficient to present an actual case or controversy. Younger v. Harris, 401 U.S. at 41-42; Golden v. Zwickler, 394 U.S. at 109-110; Abele v. Markle, 452 F.2d at 1124-1125; Crossen v. Breckenridge, 446 F.2d at 839. The Does' claim falls far short of those resolved otherwise in the cases that the Does urge upon us, namely, Investment Co. Institute v. Camp, 401 U.S. 617 (1971); Data Processing Service v. Camp, 397 U.S. 150 (1970); [410 U.S. 129] and Epperson v. Arkansas, 393 U.S. 97 (1968). See also Truax v. Raich, 239 U.S. 33 (1915).

1973, Roe v. Wade, 410 U.S. 129

The Does therefore are not appropriate plaintiffs in this litigation. Their complaint was properly dismissed by the District Court, and we affirm that dismissal.

V

1973, Roe v. Wade, 410 U.S. 129

The principal thrust of appellant's attack on the Texas statutes is that they improperly invade a right, said to be possessed by the pregnant woman, to choose to terminate her pregnancy. Appellant would discover this right in the concept of personal "liberty" embodied in the Fourteenth Amendment's Due Process Clause; or in personal, marital, familial, and sexual privacy said to be protected by the Bill of Rights or its penumbras, see Griswold v. Connecticut, 381 U.S. 479 (1965); Eisenstadt v. Baird, 405 U.S. 438 (1972); id. at 460 (WHITE, J., concurring in result); or among those rights reserved to the people by the Ninth Amendment, Griswold v. Connecticut, 381 U.S. at 486 (Goldberg, J., concurring). Before addressing this claim, we feel it desirable briefly to survey, in several aspects, the history of abortion, for such insight as that history may afford us, and then to examine the state purposes and interests behind the criminal abortion laws.

VI

1973, Roe v. Wade, 410 U.S. 129

It perhaps is not generally appreciated that the restrictive criminal abortion laws in effect in a majority of States today are of relatively recent vintage. Those laws, generally proscribing abortion or its attempt at any time during pregnancy except when necessary to preserve the pregnant woman's life, are not of ancient or even of common law origin. Instead, they derive from statutory changes effected, for the most part, in the latter half of the 19th century. [410 U.S. 130]

1973, Roe v. Wade, 410 U.S. 130

1. Ancient attitudes. These are not capable of precise determination. We are told that, at the time of the Persian Empire, abortifacients were known, and that criminal abortions were severely punished. 8 We are also told, however, that abortion was practiced in Greek times as well as in the Roman Era, 9 and that "it was resorted to without scruple." 10 The Ephesian, Soranos, often described as the greatest of the ancient gynecologists, appears to have been generally opposed to Rome's prevailing free-abortion practices. He found it necessary to think first of the life of the mother, and he resorted to abortion when, upon this standard, he felt the procedure advisable. 11 Greek and Roman law afforded little protection to the unborn. If abortion was prosecuted in some places, it seems to have been based on a concept of a violation of the father's right to his offspring. Ancient religion did not bar abortion. 12

1973, Roe v. Wade, 410 U.S. 130

2. The Hippocratic Oath. What then of the famous Oath that has stood so long as the ethical guide of the medical profession and that bears the name of the great Greek (460(?)-377(?) B. C.), who has been described [410 U.S. 131] as the Father of Medicine, the "wisest and the greatest practitioner of his art," and the "most important and most complete medical personality of antiquity," who dominated the medical schools of his time, and who typified the sum of the medical knowledge of the past? 13 The Oath varies somewhat according to the particular translation, but in any translation the content is clear:

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I will give no deadly medicine to anyone if asked, nor suggest any such counsel; and in like manner, I will not give to a woman a pessary to produce abortion, 14

1973, Roe v. Wade, 410 U.S. 131

or

1973, Roe v. Wade, 410 U.S. 131

I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect. Similarly, I will not give to a woman an abortive remedy. 15

1973, Roe v. Wade, 410 U.S. 131

Although the Oath is not mentioned in any of the principal briefs in this case or in Doe v. Bolton, post, p. 179, it represents the apex of the development of strict ethical concepts in medicine, and its influence endures to this day. Why did not the authority of Hippocrates dissuade abortion practice in his time and that of Rome? The late Dr. Edelstein provides us with a theory: 16 The Oath was not uncontested even in Hippocrates' day; only the Pythagorean school of philosophers frowned upon the related act of suicide. Most Greek thinkers, on the other hand, commended abortion, at least prior to viability. See Plato, Republic, V, 461; Aristotle, Politics, VII, 1335b 25. For the Pythagoreans, however, it was a matter of dogma. For them, the embryo was animate from the moment of conception, and abortion meant destruction of a living being. The abortion clause of the Oath, therefore, "echoes Pythagorean doctrines," [410 U.S. 132] and "[i]n no other stratum of Greek opinion were such views held or proposed in the same spirit of uncompromising austerity." 17

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Dr. Edelstein then concludes that the Oath originated in a group representing only a small segment of Greek opinion, and that it certainly was not accepted by all ancient physicians. He points out that medical writings down to Galen (A.D. 130-200) "give evidence of the violation of almost every one of its injunctions." 18 But with the end of antiquity, a decided change took place. Resistance against suicide and against abortion became common. The Oath came to be popular. The emerging teachings of Christianity were in agreement with the Pythagorean ethic. The Oath "became the nucleus of all medical ethics," and "was applauded as the embodiment of truth." Thus, suggests Dr. Edelstein, it is "a Pythagorean manifesto, and not the expression of an absolute standard of medical conduct." 19

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This, it seems to us, is a satisfactory and acceptable explanation of the Hippocratic Oath's apparent rigidity. It enables us to understand, in historical context, a long-accepted and revered statement of medical ethics.

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3. The common law. It is undisputed that, at common law, abortion performed before "quickening"—the first recognizable movement of the fetus in utero, appearing usually from the 16th to the 18th week of pregnancy 20—was not an indictable offense. 21 The absence [410 U.S. 133] of a common law crime for pre-quickening abortion appears to have developed from a confluence of earlier philosophical, theological, and civil and canon law concepts of when life begins. These disciplines variously approached the question in terms of the point at which the embryo or fetus became "formed" or recognizably human, or in terms of when a "person" came into being, that is, infused with a "soul" or "animated." A loose consensus evolved in early English law that these events occurred at some point between conception and live birth. 22 This was "mediate animation." Although [410 U.S. 134] Christian theology and the canon law came to fix the point of animation at 40 days for a male and 80 days for a female, a view that persisted until the 19th century, there was otherwise little agreement about the precise time of formation or animation. There was agreement, however, that, prior to this point, the fetus was to be regarded as part of the mother, and its destruction, therefore, was not homicide. Due to continued uncertainty about the precise time when animation occurred, to the lack of any empirical basis for the 40-80-day view, and perhaps to Aquinas' definition of movement as one of the two first principles of life, Bracton focused upon quickening as the critical point. The significance of quickening was echoed by later common law scholars, and found its way into the received common law in this country.

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Whether abortion of a quick fetus was a felony at common law, or even a lesser crime, is still disputed. Bracton, writing early in the 13th century, thought it homicide. 23 But the later and predominant view, following the great common law scholars, has been that it was, at most, a lesser offense. In a frequently cited [410 U.S. 135] passage, Coke took the position that abortion of a woman "quick with childe" is "a great misprision, and no murder." 24 Blackstone followed, saying that, while abortion after quickening had once been considered manslaughter (though not murder), "modern law" took a less severe view. 25 A recent review of the common law precedents argues, however, that those precedents contradict Coke, and that even post-quickening abortion was never established as a common law crime. 26 This is of some importance, because, while most American courts ruled, in holding or dictum, that abortion of an unquickened fetus was not criminal under their received common law, 27 others followed Coke in stating that abortion [410 U.S. 136] of a quick fetus was a "misprision," a term they translated to mean "misdemeanor." 28 That their reliance on Coke on this aspect of the law was uncritical and, apparently in all the reported cases, dictum (due probably to the paucity of common law prosecutions for post-quickening abortion), makes it now appear doubtful that abortion was ever firmly established as a common law crime even with respect to the destruction of a quick fetus.

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4. The English statutory law. England's first criminal abortion statute, Lord Ellenborough's Act, 43 Geo. 3, c. 58, came in 1803. It made abortion of a quick fetus, § 1, a capital crime, but, in § 2, it provided lesser penalties for the felony of abortion before quickening, and thus preserved the "quickening" distinction. This contrast was continued in the general revision of 1828, 9 Geo. 4, c. 31, § 13. It disappeared, however, together with the death penalty, in 1837, 7 Will. 4 & 1 Vict., c. 85. § 6, and did not reappear in the Offenses Against the Person Act of 1861, 24 & 25 Vict., c. 100, § 59, that formed the core of English anti-abortion law until the liberalizing reforms of 1967. In 1929, the Infant Life (Preservation) Act, 19 & 20 Geo. 5, c. 34, came into being. Its emphasis was upon the destruction of "the life of a child capable of being born alive." It made a willful act performed with the necessary intent a felony. It contained a proviso that one was not to be [410 U.S. 137] found guilty of the offense

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unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

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A seemingly notable development in the English law was the case of Rex v. Bourne, [1939] 1 K.B. 687. This case apparently answered in the affirmative the question whether an abortion necessary to preserve the life of the pregnant woman was excepted from the criminal penalties of the 1861 Act. In his instructions to the jury, Judge Macnaghten referred to the 1929 Act, and observed that that Act related to "the case where a child is killed by a willful act at the time when it is being delivered in the ordinary course of nature." Id. at 691. He concluded that the 1861 Act's use of the word "unlawfully," imported the same meaning expressed by the specific proviso in the 1929 Act, even though there was no mention of preserving the mother's life in the 1861 Act. He then construed the phrase "preserving the life of the mother" broadly, that is, "in a reasonable sense," to include a serious and permanent threat to the mother's health, and instructed the jury to acquit Dr. Bourne if it found he had acted in a good faith belief that the abortion was necessary for this purpose. Id. at 693-694. The jury did acquit.

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Recently, Parliament enacted a new abortion law. This is the Abortion Act of 1967, 15 & 16 Eliz. 2, c. 87. The Act permits a licensed physician to perform an abortion where two other licensed physicians agree (a)

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that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated,

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or (b)

1973, Roe v. Wade, 410 U.S. 137

that there is a substantial risk that, if the child were born it would suffer from such physical or mental abnormalities as [410 U.S. 138] to be seriously handicapped.

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The Act also provides that, in making this determination, "account may be taken of the pregnant woman's actual or reasonably foreseeable environment." It also permits a physician, without the concurrence of others, to terminate a pregnancy where he is of the good faith opinion that the abortion "is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman."

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5. The American law. In this country, the law in effect in all but a few States until mid-19th century was the preexisting English common law. Connecticut, the first State to enact abortion legislation, adopted in 1821 that part of Lord Ellenborough's Act that related to a woman "quick with child." 29 The death penalty was not imposed. Abortion before quickening was made a crime in that State only in 1860. 30 In 1828, New York enacted legislation 31 that, in two respects, was to serve as a model for early anti-abortion statutes. First, while barring destruction of an unquickened fetus as well as a quick fetus, it made the former only a misdemeanor, but the latter second-degree manslaughter. Second, it incorporated a concept of therapeutic abortion by providing that an abortion was excused if it

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shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose.

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By 1840, when Texas had received the common law, 32 only eight American States [410 U.S. 139] had statutes dealing with abortion. 33 It was not until after the War Between the States that legislation began generally to replace the common law. Most of these initial statutes dealt severely with abortion after quickening, but were lenient with it before quickening. Most punished attempts equally with completed abortions. While many statutes included the exception for an abortion thought by one or more physicians to be necessary to save the mother's life, that provision soon disappeared, and the typical law required that the procedure actually be necessary for that purpose. Gradually, in the middle and late 19th century, the quickening distinction disappeared from the statutory law of most States and the degree of the offense and the penalties were increased. By the end of the 1950's, a large majority of the jurisdictions banned abortion, however and whenever performed, unless done to save or preserve the life of the mother. 34 The exceptions, Alabama and the District of Columbia, permitted abortion to preserve the mother's health. 35 Three States permitted abortions that were not "unlawfully" performed or that were not "without lawful justification," leaving interpretation of those standards to the courts. 36 In [410 U.S. 140] the past several years, however, a trend toward liberalization of abortion statutes has resulted in adoption, by about one-third of the States, of less stringent laws, most of them patterned after the ALI Model Penal Code, § 230.3, 37 set forth as Appendix B to the opinion in Doe v. Bolton, post, p. 205.

1973, Roe v. Wade, 410 U.S. 140

It is thus apparent that, at common law, at the time of the adoption of our Constitution, and throughout the major portion of the 19th century, abortion was viewed with less disfavor than under most American statutes currently in effect. Phrasing it another way, a woman enjoyed a substantially broader right to terminate a pregnancy than she does in most States today. At least with respect to the early stage of pregnancy, and very possibly without such a limitation, the opportunity [410 U.S. 141] to make this choice was present in this country well into the 19th century. Even later, the law continued for some time to treat less punitively an abortion procured in early pregnancy.

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6. The position of the American Medical Association. The anti-abortion mood prevalent in this country in the late 19th century was shared by the medical profession. Indeed, the attitude of the profession may have played a significant role in the enactment of stringent criminal abortion legislation during that period.

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An AMA Committee on Criminal Abortion was appointed in May, 1857. It presented its report, 12 Trans. of the Am.Med.Assn. 778 (1859), to the Twelfth Annual Meeting. That report observed that the Committee had been appointed to investigate criminal abortion "with a view to its general suppression." It deplored abortion and its frequency and it listed three causes of "this general demoralization":

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The first of these causes is a widespread popular ignorance of the true character of the crime—a belief, even among mothers themselves, that the foetus is not alive till after the period of quickening.

1973, Roe v. Wade, 410 U.S. 141

The second of the agents alluded to is the fact that the profession themselves are frequently supposed careless of foetal life….

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The third reason of the frightful extent of this crime is found in the grave defects of our laws, both common and statute, as regards the independent and actual existence of the child before birth, as a living being. These errors, which are sufficient in most instances to prevent conviction, are based, and only based, upon mistaken and exploded medical dogmas. With strange inconsistency, the law fully acknowledges the foetus in utero and its inherent rights, for civil purposes; while personally and as criminally affected, it fails to recognize it, [410 U.S. 142] and to its life as yet denies all protection.

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Id. at 776. The Committee then offered, and the Association adopted, resolutions protesting "against such unwarrantable destruction of human life," calling upon state legislatures to revise their abortion laws, and requesting the cooperation of state medical societies "in pressing the subject." Id. at 28, 78.

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In 1871, a long and vivid report was submitted by the Committee on Criminal Abortion. It ended with the observation,

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We had to deal with human life. In a matter of less importance, we could entertain no compromise. An honest judge on the bench would call things by their proper names. We could do no less.

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22 Trans. of the Am.Med.Assn. 268 (1871). It proffered resolutions, adopted by the Association, id. at 38-39, recommending, among other things, that it

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be unlawful and unprofessional for any physician to induce abortion or premature labor without the concurrent opinion of at least one respectable consulting physician, and then always with a view to the safety of the child—if that be possible,

1973, Roe v. Wade, 410 U.S. 142

and calling

1973, Roe v. Wade, 410 U.S. 142

the attention of the clergy of all denominations to the perverted views of morality entertained by a large class of females—aye, and men also, on this important question.

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Except for periodic condemnation of the criminal abortionist, no further formal AMA action took place until 1967. In that year, the Committee on Human Reproduction urged the adoption of a stated policy of opposition to induced abortion except when there is "documented medical evidence" of a threat to the health or life of the mother, or that the child "may be born with incapacitating physical deformity or mental deficiency," or that a pregnancy "resulting from legally established statutory or forcible rape or incest may constitute a threat to the mental or physical health of the [410 U.S. 143] patient," two other physicians "chosen because of their recognized professional competence have examined the patient and have concurred in writing," and the procedure "is performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals." The providing of medical information by physicians to state legislatures in their consideration of legislation regarding therapeutic abortion was "to be considered consistent with the principles of ethics of the American Medical Association." This recommendation was adopted by the House of Delegates. Proceedings of the AMA House of Delegates 40-51 (June 1967).

1973, Roe v. Wade, 410 U.S. 143

In 1970, after the introduction of a variety of proposed resolutions and of a report from its Board of Trustees, a reference committee noted "polarization of the medical profession on this controversial issue"; division among those who had testified; a difference of opinion among AMA councils and.committees; "the remarkable shift in testimony" in six months, felt to be influenced "by the rapid changes in state laws and by the judicial decisions which tend to make abortion more freely available; " and a feeling "that this trend will continue." On June 25, 1970, the House of Delegates adopted preambles and most of the resolutions proposed by the reference committee. The preambles emphasized "the best interests of the patient," "sound clinical judgment," and "informed patient consent," in contrast to "mere acquiescence to the patient's demand." The resolutions asserted that abortion is a medical procedure that should be performed by a licensed physician in an accredited hospital only after consultation with two other physicians and in conformity with state law, and that no party to the procedure should be required to violate personally held moral principles. 38 Proceedings [410 U.S. 144] of the AMA House of Delegates 220 (June 1970). The AMA Judicial Council rendered a complementary opinion. 39

1973, Roe v. Wade, 410 U.S. 144

7. The position of the American Public Health Association. In October, 1970, the Executive Board of the APHA adopted Standards for Abortion Services. These were five in number:

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a. Rapid and simple abortion referral must be readily available through state and local public [410 U.S. 145] health departments, medical societies, or other nonprofit organizations.

1973, Roe v. Wade, 410 U.S. 145

b. An important function of counseling should be to simplify and expedite the provision of abortion services; it should not delay the obtaining of these services.

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c. Psychiatric consultation should not be mandatory. As in the case of other specialized medical services, psychiatric consultation should be sought for definite indications, and not on a routine basis.

1973, Roe v. Wade, 410 U.S. 145

d. A wide range of individuals from appropriately trained, sympathetic volunteers to highly skilled physicians may qualify as abortion counselors.

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e. Contraception and/or sterilization should be discussed with each abortion patient.

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Recommended Standards for Abortion Services, 61 Am.J.Pub.Health 396 (1971). Among factors pertinent to life and health risks associated with abortion were three that "are recognized as important":

1973, Roe v. Wade, 410 U.S. 145

a. the skill of the physician,

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b. the environment in which the abortion is performed, and above all

1973, Roe v. Wade, 410 U.S. 145

c. the duration of pregnancy, as determined by uterine size and confirmed by menstrual history.

1973, Roe v. Wade, 410 U.S. 145

Id. at 397.

1973, Roe v. Wade, 410 U.S. 145

It was said that "a well equipped hospital" offers more protection

1973, Roe v. Wade, 410 U.S. 145

to cope with unforeseen difficulties than an office or clinic without such resources…. The factor of gestational age is of overriding importance.

1973, Roe v. Wade, 410 U.S. 145

Thus, it was recommended that abortions in the second trimester and early abortions in the presence of existing medical complications be performed in hospitals as inpatient procedures. For pregnancies in the first trimester, [410 U.S. 146] abortion in the hospital with or without overnight stay "is probably the safest practice." An abortion in an extramural facility, however, is an acceptable alternative "provided arrangements exist in advance to admit patients promptly if unforeseen complications develop." Standards for an abortion facility were listed. It was said that, at present, abortions should be performed by physicians or osteopaths who are licensed to practice and who have "adequate training." Id. at 398.

1973, Roe v. Wade, 410 U.S. 146

8. The position of the American Bar Association. At its meeting in February, 1972, the ABA House of Delegates approved, with 17 opposing votes, the Uniform Abortion Act that had been drafted and approved the preceding August by the Conference of Commissioners on Uniform State Laws. 58 A.B.A.J. 380 (1972). We set forth the Act in full in the margin. 40 The [410 U.S. 147] Opinion of the Court Conference has appended an enlightening Prefatory Note. 41

VII

1973, Roe v. Wade, 410 U.S. 147

Three reasons have been advanced to explain historically the enactment of criminal abortion laws in the 19th century and to justify their continued existence. [410 U.S. 148]

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It has been argued occasionally that these laws were the product of a Victorian social concern to discourage illicit sexual conduct. Texas, however, does not advance this justification in the present case, and it appears that no court or commentator has taken the argument seriously. 42 The appellants and amici contend, moreover, that this is not a proper state purpose, at all and suggest that, if it were, the Texas statutes are overbroad in protecting it, since the law fails to distinguish between married and unwed mothers.

1973, Roe v. Wade, 410 U.S. 148

A second reason is concerned with abortion as a medical procedure. When most criminal abortion laws were first enacted, the procedure was a hazardous one for the woman. 43 This was particularly true prior to the [410 U.S. 149] development of antisepsis. Antiseptic techniques, of course, were based on discoveries by Lister, Pasteur, and others first announced in 1867, but were not generally accepted and employed until about the turn of the century. Abortion mortality was high. Even after 1900, and perhaps until as late as the development of antibiotics in the 1940's, standard modern techniques such as dilation and curettage were not nearly so safe as they are today. Thus, it has been argued that a State's real concern in enacting a criminal abortion law was to protect the pregnant woman, that is, to restrain her from submitting to a procedure that placed her life in serious jeopardy.

1973, Roe v. Wade, 410 U.S. 149

Modern medical techniques have altered this situation. Appellants and various amici refer to medical data indicating that abortion in early pregnancy, that is, prior to the end of the first trimester, although not without its risk, is now relatively safe. Mortality rates for women undergoing early abortions, where the procedure is legal, appear to be as low as or lower than the rates for normal childbirth. 44 Consequently, any interest of the State in protecting the woman from an inherently hazardous procedure, except when it would be equally dangerous for her to forgo it, has largely disappeared. Of course, important state interests in the areas of health and medical standards do remain. [410 U.S. 150] The State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that insure maximum safety for the patient. This interest obviously extends at least to the performing physician and his staff, to the facilities involved, to the availability of after-care, and to adequate provision for any complication or emergency that might arise. The prevalence of high mortality rates at illegal "abortion mills" strengthens, rather than weakens, the State's interest in regulating the conditions under which abortions are performed. Moreover, the risk to the woman increases as her pregnancy continues. Thus, the State retains a definite interest in protecting the woman's own health and safety when an abortion is proposed at a late stage of pregnancy.

1973, Roe v. Wade, 410 U.S. 150

The third reason is the State's interest—some phrase it in terms of duty—in protecting prenatal life. Some of the argument for this justification rests on the theory that a new human life is present from the moment of conception. 45 The State's interest and general obligation to protect life then extends, it is argued, to prenatal life. Only when the life of the pregnant mother herself is at stake, balanced against the life she carries within her, should the interest of the embryo or fetus not prevail. Logically, of course, a legitimate state interest in this area need not stand or fall on acceptance of the belief that life begins at conception or at some other point prior to live birth. In assessing the State's interest, recognition may be given to the less rigid claim that as long as at least potential life is involved, the State may assert interests beyond the protection of the pregnant woman alone. [410 U.S. 151]

1973, Roe v. Wade, 410 U.S. 151

Parties challenging state abortion laws have sharply disputed in some courts the contention that a purpose of these laws, when enacted, was to protect prenatal life. 46 Pointing to the absence of legislative history to support the contention, they claim that most state laws were designed solely to protect the woman. Because medical advances have lessened this concern, at least with respect to abortion in early pregnancy, they argue that with respect to such abortions the laws can no longer be justified by any state interest. There is some scholarly support for this view of original purpose. 47 The few state courts called upon to interpret their laws in the late 19th and early 20th centuries did focus on the State's interest in protecting the woman's health, rather than in preserving the embryo and fetus. 48 Proponents of this view point out that in many States, including Texas, 49 by statute or judicial interpretation, the pregnant woman herself could not be prosecuted for self-abortion or for cooperating in an abortion performed upon her by another. 50 They claim that adoption of the "quickening" distinction through received common [410 U.S. 152] law and state statutes tacitly recognizes the greater health hazards inherent in late abortion and impliedly repudiates the theory that life begins at conception.

1973, Roe v. Wade, 410 U.S. 152

It is with these interests, and the eight to be attached to them, that this case is concerned.

VIII

1973, Roe v. Wade, 410 U.S. 152

The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as Union Pacific R. Co. v. Botsford, 141 U.S. 250, 251 (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment, Stanley v. Georgia, 394 U.S. 557, 564 (1969); in the Fourth and Fifth Amendments, Terry v. Ohio, 392 U.S. 1, 8-9 (1968), Katz v. United States, 389 U.S. 347, 350 (1967), Boyd v. United States, 116 U.S. 616 (1886), see Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting); in the penumbras of the Bill of Rights, Griswold v. Connecticut, 381 U.S. at 484-485; in the Ninth Amendment, id. at 486 (Goldberg, J., concurring); or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment, see Meyer v. Nebraska, 262 U.S. 390, 399 (1923). These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty," Palko v. Connecticut, 302 U.S. 319, 325 (1937), are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, Loving v. Virginia, 388 U.S. 1, 12 (1967); procreation, Skinner v. Oklahoma, 316 U.S. 535, 541-542 (1942); contraception, Eisenstadt v. Baird, 405 U.S. at 453-454; id. at 460, 463-465 [410 U.S. 153] (WHITE, J., concurring in result); family relationships, Prince v. Massachusetts, 321 U.S. 158, 166 (1944); and childrearing and education, Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925), Meyer v. Nebraska, supra.

1973, Roe v. Wade, 410 U.S. 153

This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation.

1973, Roe v. Wade, 410 U.S. 153

On the basis of elements such as these, appellant and some amici argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. Appellant's arguments that Texas either has no valid interest at all in regulating the abortion decision, or no interest strong enough to support any limitation upon the woman's sole determination, are unpersuasive. The [410 U.S. 154] Court's decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate. As noted above, a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute. In fact, it is not clear to us that the claim asserted by some amici that one has an unlimited right to do with one's body as one pleases bears a close relationship to the right of privacy previously articulated in the Court's decisions. The Court has refused to recognize an unlimited right of this kind in the past. Jacobson v. Massachusetts, 197 U.S. 11 (1905) (vaccination); Buck v. Bell, 274 U.S. 200 (1927) ( sterilization).

1973, Roe v. Wade, 410 U.S. 154

We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified, and must be considered against important state interests in regulation.

1973, Roe v. Wade, 410 U.S. 154

We note that those federal and state courts that have recently considered abortion law challenges have reached the same conclusion. A majority, in addition to the District Court in the present case, have held state laws unconstitutional, at least in part, because of vagueness or because of overbreadth and abridgment of rights. Abele v. Markle, 342 F.Supp. 800 (Conn.1972), appeal docketed, No. 72-56; Abele v. Markle, 351 F.Supp. 224 (Conn.1972), appeal docketed, No. 72-730; Doe v. Bolton, 319 F.Supp. 1048 (ND Ga.1970), appeal decided today, post, p. 179; Doe v. Scott, 321 F.Supp. 1385 (ND Ill.1971), appeal docketed, No. 70-105; Poe v. Menghini, 339 F.Supp. 986 (Kan.1972); YWCA v. Kuler, 342 F.Supp. 1048 (NJ 1972); Babbitz v. McCann, [410 U.S. 155] 310 F.Supp. 293 (ED Wis.1970), appeal dismissed, 400 U.S. 1 (1970); People v. Belous, 71 Cal.2d 954, 458 P.2d 194 (1969), cert. denied, 397 U.S. 915 (1970); State v. Barquet, 262 So.2d 431 (Fla.1972).

1973, Roe v. Wade, 410 U.S. 155

Others have sustained state statutes. Crossen v. Attorney General, 344 F.Supp. 587 (ED Ky.1972), appeal docketed, No. 72-256; Rosen v. Louisiana State Board of Medical Examiners, 318 F.Supp. 1217 (ED La.1970), appeal docketed, No. 70-42; Corkey v. Edwards, 322 F.Supp. 1248 (WDNC 1971), appeal docketed, No. 71-92; Steinberg v. Brown, 321 F.Supp. 741 (ND Ohio 1970); Doe v. Rampton (Utah 1971), appeal docketed, No. 71-5666; Cheaney v. State, \_\_\_ Ind. \_\_\_, 285 N.E.2d 265 (1972); Spears v. State, 257 So.2d 876 (Miss. 1972); State v. Munson, 86 S.D. 663, 201 N.W.2d 123 (1972), appeal docketed, No. 72-631.

1973, Roe v. Wade, 410 U.S. 155

Although the results are divided, most of these courts have agreed that the right of privacy, however based, is broad enough to cover the abortion decision; that the right, nonetheless, is not absolute, and is subject to some limitations; and that, at some point, the state interests as to protection of health, medical standards, and prenatal life, become dominant. We agree with this approach.

1973, Roe v. Wade, 410 U.S. 155

Where certain "fundamental rights" are involved, the Court has held that regulation limiting these rights may be justified only by a "compelling state interest," Kramer v. Union Free School District, 395 U.S. 621, 627 (1969); Shapiro v. Thompson, 394 U.S. 618, 634 (1969), Sherbert v. Verner, 374 U.S. 398, 406 (1963), and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake. Griswold v. Connecticut, 381 U.S. at 485; Aptheker v. Secretary of State, 378 U.S. 500, 508 (1964); Cantwell v. Connecticut, 310 U.S. 296, 307-308 (1940); see [410 U.S. 156] Eisenstadt v. Baird, 405 U.S. at 460, 463-464 (WHITE, J., concurring in result).

1973, Roe v. Wade, 410 U.S. 156

In the recent abortion cases cited above, courts have recognized these principles. Those striking down state laws have generally scrutinized the State's interests in protecting health and potential life, and have concluded that neither interest justified broad limitations on the reasons for which a physician and his pregnant patient might decide that she should have an abortion in the early stages of pregnancy. Courts sustaining state laws have held that the State's determinations to protect health or prenatal life are dominant and constitutionally justifiable.

IX

1973, Roe v. Wade, 410 U.S. 156

The District Court held that the appellee failed to meet his burden of demonstrating that the Texas statute's infringement upon Roe's rights was necessary to support a compelling state interest, and that, although the appellee presented "several compelling justifications for state presence in the area of abortions," the statutes outstripped these justifications and swept "far beyond any areas of compelling state interest." 314 F.Supp. at 1222-1223. Appellant and appellee both contest that holding. Appellant, as has been indicated, claims an absolute right that bars any state imposition of criminal penalties in the area. Appellee argues that the State's determination to recognize and protect prenatal life from and after conception constitutes a compelling state interest. As noted above, we do not agree fully with either formulation.

1973, Roe v. Wade, 410 U.S. 156

A. The appellee and certain amici argue that the fetus is a "person" within the language and meaning of the Fourteenth Amendment. In support of this, they outline at length and in detail the well known facts of fetal development. If this suggestion of personhood is established, the appellant's case, of course, collapses, [410 U.S. 157] for the fetus' right to life would then be guaranteed specifically by the Amendment. The appellant conceded as much on reargument. 51 On the other hand, the appellee conceded on reargument 52 that no case could be cited that holds that a fetus is a person within the meaning of the Fourteenth Amendment.

1973, Roe v. Wade, 410 U.S. 157

The Constitution does not define "person" in so many words. Section 1 of the Fourteenth Amendment contains three references to "person." The first, in defining "citizens," speaks of "persons born or naturalized in the United States." The word also appears both in the Due Process Clause and in the Equal Protection Clause. "Person" is used in other places in the Constitution: in the listing of qualifications for Representatives and Senators, Art. I, § 2, cl. 2, and § 3, cl. 3; in the Apportionment Clause, Art. I, § 2, cl. 3; 53 in the Migration and Importation provision, Art. I, § 9, cl. 1; in the Emolument Clause, Art. I, § 9, cl. 8; in the Electors provisions, Art. II, § 1, cl. 2, and the superseded cl. 3; in the provision outlining qualifications for the office of President, Art. II, § 1, cl. 5; in the Extradition provisions, Art. IV, § 2, cl. 2, and the superseded Fugitive Slave Clause 3; and in the Fifth, Twelfth, and Twenty-second Amendments, as well as in §§ 2 and 3 of the Fourteenth Amendment. But in nearly all these instances, the use of the word is such that it has application only post-natally. None indicates, with any assurance, that it has any possible pre-natal application. 54 [410 U.S. 158]

1973, Roe v. Wade, 410 U.S. 158

All this, together with our observation, supra, that, throughout the major portion of the 19th century, prevailing legal abortion practices were far freer than they are today, persuades us that the word "person," as used in the Fourteenth Amendment, does not include the unborn. 55 This is in accord with the results reached in those few cases where the issue has been squarely presented. McGarvey v. Magee-Womens Hospital, 340 F.Supp. 751 (WD Pa.1972); Byrn v. New York City Health & Hospitals Corp., 31 N.Y.2d 194, 286 N.E.2d 887 (1972), appeal docketed, No. 72-434; Abele v. Markle, 351 F.Supp. 224 (Conn.1972), appeal docketed, No. 72-730. Cf. Cheaney v. State, \_\_\_ Ind. at \_\_\_, 285 N.E.2d at 270; Montana v. Rogers, 278 F.2d 68, 72 (CA7 1960), aff'd sub nom. Montana v. Kennedy, 366 U.S. 308 (1961); Keeler v. Superior Court, 2 Cal.3d 619, 470 P.2d 617 (1970); State v. Dickinson, 28 [410 U.S. 159] Ohio St.2d 65, 275 N.E.2d 599 (1971). Indeed, our decision in United States v. Vuitch, 402 U.S. 62 (1971), inferentially is to the same effect, for we there would not have indulged in statutory interpretation favorable to abortion in specified circumstances if the necessary consequence was the termination of life entitled to Fourteenth Amendment protection.

1973, Roe v. Wade, 410 U.S. 159

This conclusion, however, does not of itself fully answer the contentions raised by Texas, and we pass on to other considerations.

1973, Roe v. Wade, 410 U.S. 159

B. The pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus, if one accepts the medical definitions of the developing young in the human uterus. See Dorland's Illustrated Medical Dictionary 478-479, 547 (24th ed.1965). The situation therefore is inherently different from marital intimacy, or bedroom possession of obscene material, or marriage, or procreation, or education, with which Eisenstadt and Griswold, Stanley, Loving, Skinner, and Pierce and Meyer were respectively concerned. As we have intimated above, it is reasonable and appropriate for a State to decide that, at some point in time another interest, that of health of the mother or that of potential human life, becomes significantly involved. The woman's privacy is no longer sole and any right of privacy she possesses must be measured accordingly.

1973, Roe v. Wade, 410 U.S. 159

Texas urges that, apart from the Fourteenth Amendment, life begins at conception and is present throughout pregnancy, and that, therefore, the State has a compelling interest in protecting that life from and after conception. We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer. [410 U.S. 160]

1973, Roe v. Wade, 410 U.S. 160

It should be sufficient to note briefly the wide divergence of thinking on this most sensitive and difficult question. There has always been strong support for the view that life does not begin until live' birth. This was the belief of the Stoics. 56 It appears to be the predominant, though not the unanimous, attitude of the Jewish faith. 57 It may be taken to represent also the position of a large segment of the Protestant community, insofar as that can be ascertained; organized groups that have taken a formal position on the abortion issue have generally regarded abortion as a matter for the conscience of the individual and her family. 58 As we have noted, the common law found greater significance in quickening. Physician and their scientific colleagues have regarded that event with less interest and have tended to focus either upon conception, upon live birth, or upon the interim point at which the fetus becomes "viable," that is, potentially able to live outside the mother's womb, albeit with artificial aid. 59 Viability is usually placed at about seven months (28 weeks) but may occur earlier, even at 24 weeks. 60 The Aristotelian theory of "mediate animation," that held sway throughout the Middle Ages and the Renaissance in Europe, continued to be official Roman Catholic dogma until the 19th century, despite opposition to this "ensoulment" theory from those in the Church who would recognize the existence of life from [410 U.S. 161] the moment of conception. 61 The latter is now, of course, the official belief of the Catholic Church. As one brief amicus discloses, this is a view strongly held by many non-Catholics as well, and by many physicians. Substantial problems for precise definition of this view are posed, however, by new embryological data that purport to indicate that conception is a "process" over time, rather than an event, and by new medical techniques such as menstrual extraction, the "morning-after" pill, implantation of embryos, artificial insemination, and even artificial wombs. 62

1973, Roe v. Wade, 410 U.S. 161

In areas other than criminal abortion, the law has been reluctant to endorse any theory that life, as we recognize it, begins before live birth, or to accord legal rights to the unborn except in narrowly defined situations and except when the rights are contingent upon live birth. For example, the traditional rule of tort law denied recovery for prenatal injuries even though the child was born alive. 63 That rule has been changed in almost every jurisdiction. In most States, recovery is said to be permitted only if the fetus was viable, or at least quick, when the injuries were sustained, though few [410 U.S. 162] courts have squarely so held. 64 In a recent development, generally opposed by the commentators, some States permit the parents of a stillborn child to maintain an action for wrongful death because of prenatal injuries. 65 Such an action, however, would appear to be one to vindicate the parents' interest and is thus consistent with the view that the fetus, at most, represents only the potentiality of life. Similarly, unborn children have been recognized as acquiring rights or interests by way of inheritance or other devolution of property, and have been represented by guardians ad litem. 66 Perfection of the interests involved, again, has generally been contingent upon live birth. In short, the unborn have never been recognized in the law as persons in the whole sense.

X

1973, Roe v. Wade, 410 U.S. 162

In view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake. We repeat, however, that the State does have an important and legitimate interest in preserving and protecting the health of the pregnant woman, whether she be a resident of the State or a nonresident who seeks medical consultation and treatment there, and that it has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches [410 U.S. 163] term and, at a point during pregnancy, each becomes "compelling."

1973, Roe v. Wade, 410 U.S. 163

With respect to the State's important and legitimate interest in the health of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester. This is so because of the now-established medical fact, referred to above at 149, that, until the end of the first trimester mortality in abortion may be less than mortality in normal childbirth. It follows that, from and after this point, a State may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health. Examples of permissible state regulation in this area are requirements as to the qualifications of the person who is to perform the abortion; as to the licensure of that person; as to the facility in which the procedure is to be performed, that is, whether it must be a hospital or may be a clinic or some other place of less-than-hospital status; as to the licensing of the facility; and the like.

1973, Roe v. Wade, 410 U.S. 163

This means, on the other hand, that, for the period of pregnancy prior to this "compelling" point, the attending physician, in consultation with his patient, is free to determine, without regulation by the State, that, in his medical judgment, the patient's pregnancy should be terminated. If that decision is reached, the judgment may be effectuated by an abortion free of interference by the State.

1973, Roe v. Wade, 410 U.S. 163

With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion [410 U.S. 164] during that period, except when it is necessary to preserve the life or health of the mother.

1973, Roe v. Wade, 410 U.S. 164

Measured against these standards, Art. 1196 of the Texas Penal Code, in restricting legal abortions to those "procured or attempted by medical advice for the purpose of saving the life of the mother," sweeps too broadly. The statute makes no distinction between abortions performed early in pregnancy and those performed later, and it limits to a single reason, "saving" the mother's life, the legal justification for the procedure. The statute, therefore, cannot survive the constitutional attack made upon it here.

1973, Roe v. Wade, 410 U.S. 164

This conclusion makes it unnecessary for us to consider the additional challenge to the Texas statute asserted on grounds of vagueness. See United States v. Vuitch, 402 U.S. at 67-72.

XI

1973, Roe v. Wade, 410 U.S. 164

To summarize and to repeat:

1973, Roe v. Wade, 410 U.S. 164

1. A state criminal abortion statute of the current Texas type, that excepts from criminality only a lifesaving procedure on behalf of the mother, without regard to pregnancy stage and without recognition of the other interests involved, is violative of the Due Process Clause of the Fourteenth Amendment.

1973, Roe v. Wade, 410 U.S. 164

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

1973, Roe v. Wade, 410 U.S. 164

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

1973, Roe v. Wade, 410 U.S. 164

(c) For the stage subsequent to viability, the State in promoting its interest in the potentiality of human life [410 U.S. 165] may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

1973, Roe v. Wade, 410 U.S. 165

2. The State may define the term "physician," as it has been employed in the preceding paragraphs of this Part XI of this opinion, to mean only a physician currently licensed by the State, and may proscribe any abortion by a person who is not a physician as so defined.

1973, Roe v. Wade, 410 U.S. 165

In Doe v. Bolton, post, p. 179, procedural requirements contained in one of the modern abortion statutes are considered. That opinion and this one, of course, are to be read together. 67

1973, Roe v. Wade, 410 U.S. 165

This holding, we feel, is consistent with the relative weights of the respective interests involved, with the lessons and examples of medical and legal history, with the lenity of the common law, and with the demands of the profound problems of the present day. The decision leaves the State free to place increasing restrictions on abortion as the period of pregnancy lengthens, so long as those restrictions are tailored to the recognized state interests. The decision vindicates the right of the physician to administer medical treatment according to his professional judgment up to the points where important [410 U.S. 166] state interests provide compelling justifications for intervention. Up to those points, the abortion decision in all its aspects is inherently, and primarily, a medical decision, and basic responsibility for it must rest with the physician. If an individual practitioner abuses the privilege of exercising proper medical judgment, the usual remedies, judicial and intra-professional, are available.

XII

1973, Roe v. Wade, 410 U.S. 166

Our conclusion that Art. 1196 is unconstitutional means, of course, that the Texas abortion statutes, as a unit, must fall. The exception of Art. 1196 cannot be struck down separately, for then the State would be left with a statute proscribing all abortion procedures no matter how medically urgent the case.

1973, Roe v. Wade, 410 U.S. 166

Although the District Court granted appellant Roe declaratory relief, it stopped short of issuing an injunction against enforcement of the Texas statutes. The Court has recognized that different considerations enter into a federal court's decision as to declaratory relief, on the one hand, and injunctive relief, on the other. Zwickler v. Koota, 389 U.S. 241, 252-255 (1967); Dombrowski v. Pfister, 380 U.S. 479 (1965). We are not dealing with a statute that, on its face, appears to abridge free expression, an area of particular concern under Dombrowski and refined in Younger v. Harris, 401 U.S. at 50.

1973, Roe v. Wade, 410 U.S. 166

We find it unnecessary to decide whether the District Court erred in withholding injunctive relief, for we assume the Texas prosecutorial authorities will give full credence to this decision that the present criminal abortion statutes of that State are unconstitutional.

1973, Roe v. Wade, 410 U.S. 166

The judgment of the District Court as to intervenor Hallford is reversed, and Dr. Hallford's complaint in intervention is dismissed. In all other respects, the judgment [410 U.S. 167] of the District Court is affirmed. Costs are allowed to the appellee.

1973, Roe v. Wade, 410 U.S. 167

It is so ordered.

1973, Roe v. Wade, 410 U.S. 167

[For concurring opinion of MR. CHIEF JUSTICE BURGER, see post, p. 207.]

1973, Roe v. Wade, 410 U.S. 167

[For concurring opinion of MR. JUSTICE DOUGLAS, see post, p. 209.]

1973, Roe v. Wade, 410 U.S. 167

[For dissenting opinion of MR. JUSTICE WHITE, see post, p. 221.]

STEWART, J., concurring

1973, Roe v. Wade, 410 U.S. 167

MR. JUSTICE STEWART, concurring.

1973, Roe v. Wade, 410 U.S. 167

In 1963, this Court, in Ferguson v. Skrupa, 372 U.S. 726, purported to sound the death knell for the doctrine of substantive due process, a doctrine under which many state laws had in the past been held to violate the Fourteenth Amendment. As Mr. Justice Black's opinion for the Court in Skrupa put it:

1973, Roe v. Wade, 410 U.S. 167

We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.

1973, Roe v. Wade, 410 U.S. 167

Id. at 730. 1

1973, Roe v. Wade, 410 U.S. 167

Barely two years later, in Griswold v. Connecticut, 381 U.S. 479, the Court held a Connecticut birth control law unconstitutional. In view of what had been so recently said in Skrupa, the Court's opinion in Griswold understandably did its best to avoid reliance on the Due Process Clause of the Fourteenth Amendment as the ground for decision. Yet the Connecticut law did not violate any provision of the Bill of Rights, nor any other specific provision of the Constitution. 2 So it was clear [410 U.S. 168] to me then, and it is equally clear to me now, that the Griswold decision can be rationally understood only as a holding that the Connecticut statute substantively invaded the "liberty" that is protected by the Due Process Clause of the Fourteenth Amendment. 3 As so understood, Griswold stands as one in a long line of pre-Skrupa cases decided under the doctrine of substantive due process, and I now accept it as such.

1973, Roe v. Wade, 410 U.S. 168

"In a Constitution for a free people, there can be no doubt that the meaning of `liberty' must be broad indeed." Board of Regents v. Roth, 408 U.S. 564, 572. The Constitution nowhere mentions a specific right of personal choice in matters of marriage and family life, but the "liberty" protected by the Due Process Clause of the Fourteenth Amendment covers more than those freedoms explicitly named in the Bill of Rights. See Schware v. Board of Bar Examiners, 353 U.S. 232, 238-239; Pierce v. Society of Sisters, 268 U.S. 510, 534-535; Meyer v. Nebraska, 262 U.S. 390, 399-400. Cf. Shapiro v. Thompson, 394 U.S. 618, 629-630; United States v. Guest, 383 U.S. 745, 757-758; Carrington v. Rash, 380 U.S. 89, 96; Aptheker v. Secretary of State, 378 U.S. 500, 505; Kent v. Dulles, 357 U.S. 116, 127; Bolling v. Sharpe, 347 U.S. 497, 499-500; Truax v. Raich, 239 U.S. 33, 41. [410 U.S. 169]

1973, Roe v. Wade, 410 U.S. 169

As Mr. Justice Harlan once wrote:

1973, Roe v. Wade, 410 U.S. 169

[T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This "liberty" is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints…and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment.

1973, Roe v. Wade, 410 U.S. 169

Poe v. Ullman, 367 U.S. 497, 543 (opinion dissenting from dismissal of appeal) (citations omitted). In the words of Mr. Justice Frankfurter,

1973, Roe v. Wade, 410 U.S. 169

Great concepts like…"liberty"…were purposely left to gather meaning from experience. For they relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged.

1973, Roe v. Wade, 410 U.S. 169

National Mutual Ins. Co. v. Tidewater Transfer Co., 337 U.S. 582, 646 (dissenting opinion).

1973, Roe v. Wade, 410 U.S. 169

Several decisions of this Court make clear that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. Loving v. Virginia, 388 U.S. 1, 12; Griswold v. Connecticut, supra; Pierce v. Society of Sisters, supra; Meyer v. Nebraska, supra. See also Prince v. Massachusetts, 321 U.S. 158, 166; Skinner v. Oklahoma, 316 U.S. 535, 541. As recently as last Term, in Eisenstadt v. Baird, 405 U.S. 438, 453, we recognized

1973, Roe v. Wade, 410 U.S. 169

the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person [410 U.S. 170] as the decision whether to bear or beget a child.

1973, Roe v. Wade, 410 U.S. 170

That right necessarily includes the right of a woman to decide whether or not to terminate her pregnancy.

1973, Roe v. Wade, 410 U.S. 170

Certainly the interests of a woman in giving of her physical and emotional self during pregnancy and the interests that will be affected throughout her life by the birth and raising of a child are of a far greater degree of significance and personal intimacy than the right to send a child to private school protected in Pierce v. Society of Sisters, 268 U.S. 510 (1925), or the right to teach a foreign language protected in Meyer v. Nebraska, 262 U.S. 390 (1923).

1973, Roe v. Wade, 410 U.S. 170

Abele v. Markle, 351 F.Supp. 224, 227 (Conn.1972).

1973, Roe v. Wade, 410 U.S. 170

Clearly, therefore, the Court today is correct in holding that the right asserted by Jane Roe is embraced within the personal liberty protected by the Due Process Clause of the Fourteenth Amendment.

1973, Roe v. Wade, 410 U.S. 170

It is evident that the Texas abortion statute infringes that right directly. Indeed, it is difficult to imagine a more complete abridgment of a constitutional freedom than that worked by the inflexible criminal statute now in force in Texas. The question then becomes whether the state interests advanced to justify this abridgment can survive the "particularly careful scrutiny" that the Fourteenth Amendment here requires.

1973, Roe v. Wade, 410 U.S. 170

The asserted state interests are protection of the health and safety of the pregnant woman, and protection of the potential future human life within her. These are legitimate objectives, amply sufficient to permit a State to regulate abortions as it does other surgical procedures, and perhaps sufficient to permit a State to regulate abortions more stringently, or even to prohibit them in the late stages of pregnancy. But such legislation is not before us, and I think the Court today has thoroughly demonstrated that these state interests cannot constitutionally support the broad abridgment of personal [410 U.S. 171] liberty worked by the existing Texas law. Accordingly, I join the Court's opinion holding that that law is invalid under the Due Process Clause of the Fourteenth Amendment.

REHNQUIST, J., dissenting

1973, Roe v. Wade, 410 U.S. 171

MR. JUSTICE REHNQUIST, dissenting.

1973, Roe v. Wade, 410 U.S. 171

The Court's opinion brings to the decision of this troubling question both extensive historical fact and a wealth of legal scholarship. While the opinion thus commands my respect, I find myself nonetheless in fundamental disagreement with those parts of it that invalidate the Texas statute in question, and therefore dissent.

I

1973, Roe v. Wade, 410 U.S. 171

The Court's opinion decides that a State may impose virtually no restriction on the performance of abortions during the first trimester of pregnancy. Our previous decisions indicate that a necessary predicate for such an opinion is a plaintiff who was in her first trimester of pregnancy at some time during the pendency of her lawsuit. While a party may vindicate his own constitutional rights, he may not seek vindication for the rights of others. Moose Lodge v. Irvis, 407 U.S. 163 (1972); Sierra, Club v. Morton, 405 U.S. 727 (1972). The Court's statement of facts in this case makes clear, however, that the record in no way indicates the presence of such a plaintiff. We know only that plaintiff Roe at the time of filing her complaint was a pregnant woman; for aught that appears in this record, she may have been in her last trimester of pregnancy as of the date the complaint was filed.

1973, Roe v. Wade, 410 U.S. 171

Nothing in the Court's opinion indicates that Texas might not constitutionally apply its proscription of abortion as written to a woman in that stage of pregnancy. Nonetheless, the Court uses her complaint against the Texas statute as a fulcrum for deciding that States may [410 U.S. 172] impose virtually no restrictions on medical abortions performed during the first trimester of pregnancy. In deciding such a hypothetical lawsuit, the Court departs from the longstanding admonition that it should never "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." Liverpool, New York & Philadelphia S.S. Co. v. Commissioners of Emigration, 113 U.S. 33, 39 (1885). See also Ashwander v. TVA, 297 U.S. 288, 345 (1936) (Brandeis, J., concurring).

II

1973, Roe v. Wade, 410 U.S. 172

Even if there were a plaintiff in this case capable of litigating the issue which the Court decides, I would reach a conclusion opposite to that reached by the Court. I have difficulty in concluding, as the Court does, that the right of "privacy" is involved in this case. Texas, by the statute here challenged, bars the performance of a medical abortion by a licensed physician on a plaintiff such as Roe. A transaction resulting in an operation such as this is not "private" in the ordinary usage of that word. Nor is the "privacy" that the Court finds here even a distant relative of the freedom from searches and seizures protected by the Fourth Amendment to the Constitution, which the Court has referred to as embodying a right to privacy. Katz v. United States, 389 U.S. 347 (1967).

1973, Roe v. Wade, 410 U.S. 172

If the Court means by the term "privacy" no more than that the claim of a person to be free from unwanted state regulation of consensual transactions may be a form of "liberty" protected by the Fourteenth Amendment, there is no doubt that similar claims have been upheld in our earlier decisions on the basis of that liberty. I agree with the statement of MR. JUSTICE STEWART in his concurring opinion that the "liberty," against deprivation of which without due process the Fourteenth [410 U.S. 173] Amendment protects, embraces more than the rights found in the Bill of Rights. But that liberty is not guaranteed absolutely against deprivation, only against deprivation without due process of law. The test traditionally applied in the area of social and economic legislation is whether or not a law such as that challenged has a rational relation to a valid state objective. Williamson v. Lee Optical Co., 348 U.S. 483, 491 (1955). The Due Process Clause of the Fourteenth Amendment undoubtedly does place a limit, albeit a broad one, on legislative power to enact laws such as this. If the Texas statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective under the test stated in Williamson, supra. But the Court's sweeping invalidation of any restrictions on abortion during the first trimester is impossible to justify under that standard, and the conscious weighing of competing factors that the Court's opinion apparently substitutes for the established test is far more appropriate to a legislative judgment than to a judicial one.

1973, Roe v. Wade, 410 U.S. 173

The Court eschews the history of the Fourteenth Amendment in its reliance on the "compelling state interest" test. See Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 179 (1972) (dissenting opinion). But the Court adds a new wrinkle to this test by transposing it from the legal considerations associated with the Equal Protection Clause of the Fourteenth Amendment to this case arising under the Due Process Clause of the Fourteenth Amendment. Unless I misapprehend the consequences of this transplanting of the "compelling state interest test," the Court's opinion will accomplish the seemingly impossible feat of leaving this area of the law more confused than it found it. [410 U.S. 174]

1973, Roe v. Wade, 410 U.S. 174

While the Court's opinion quotes from the dissent of Mr. Justice Holmes in Lochner v. New York, 198 U.S. 45, 74 (1905), the result it reaches is more closely attuned to the majority opinion of Mr. Justice Peckham in that case. As in Lochner and similar cases applying substantive due process standards to economic and social welfare legislation, the adoption of the compelling state interest standard will inevitably require this Court to examine the legislative policies and pass on the wisdom of these policies in the very process of deciding whether a particular state interest put forward may or may not be "compelling." The decision here to break pregnancy into three distinct terms and to outline the permissible restrictions the State may impose in each one, for example, partakes more of judicial legislation than it does of a determination of the intent of the drafters of the Fourteenth Amendment.

1973, Roe v. Wade, 410 U.S. 174

The fact that a majority of the States reflecting, after all, the majority sentiment in those States, have had restrictions on abortions for at least a century is a strong indication, it seems to me, that the asserted right to an abortion is not "so rooted in the traditions and conscience of our people as to be ranked as fundamental," Snyder v. Massachusetts, 291 U.S. 97, 105 (1934). Even today, when society's views on abortion are changing, the very existence of the debate is evidence that the "right" to an abortion is not so universally accepted as the appellant would have us believe.

1973, Roe v. Wade, 410 U.S. 174

To reach its result, the Court necessarily has had to find within the scope of the Fourteenth Amendment a right that was apparently completely unknown to the drafters of the Amendment. As early as 1821, the first state law dealing directly with abortion was enacted by the Connecticut Legislature. Conn.Stat., Tit. 22, §§ 14, 16. By the time of the adoption of the Fourteenth [410 U.S. 175] Amendment in 1868, there were at least 36 laws enacted by state or territorial legislatures limiting abortion. 1 While many States have amended or updated [410 U.S. 176] their laws, 21 of the laws on the books in 1868 remain in effect today. 2 Indeed, the Texas statute struck down today was, as the majority notes, first enacted in 1857, [410 U.S. 177] and "has remained substantially unchanged to the present time." Ante at 119.

1973, Roe v. Wade, 410 U.S. 177

There apparently was no question concerning the validity of this provision or of any of the other state statutes when the Fourteenth Amendment was adopted. The only conclusion possible from this history is that the drafters did not intend to have the Fourteenth Amendment withdraw from the States the power to legislate with respect to this matter.

III

1973, Roe v. Wade, 410 U.S. 177

Even if one were to agree that the case that the Court decides were here, and that the enunciation of the substantive constitutional law in the Court's opinion were proper, the actual disposition of the case by the Court is still difficult to justify. The Texas statute is struck down in toto, even though the Court apparently concedes that, at later periods of pregnancy Texas might impose these self-same statutory limitations on abortion. My understanding of past practice is that a statute found [410 U.S. 178] to be invalid as applied to a particular plaintiff, but not unconstitutional as a whole, is not simply "struck down" but is, instead, declared unconstitutional as applied to the fact situation before the Court. Yick Wo v. Hopkins, 118 U.S. 356 (1886); Street v. New York, 394 U.S. 576 (1969).

1973, Roe v. Wade, 410 U.S. 178

For all of the foregoing reasons, I respectfully dissent.

Footnotes

BLACKMUN, J., lead opinion (Footnotes)

1973, Roe v. Wade, 410 U.S. 178

1.

1973, Roe v. Wade, 410 U.S. 178

Article 1191. Abortion

1973, Roe v. Wade, 410 U.S. 178

If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By "abortion" is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused.

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Art. 1192. Furnishing the means

1973, Roe v. Wade, 410 U.S. 178

Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.

1973, Roe v. Wade, 410 U.S. 178

Art. 1193. Attempt at abortion

1973, Roe v. Wade, 410 U.S. 178

If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion, provided it be shown that such means were calculated to produce that result, and shall be fined not less than one hundred nor more than one thousand dollars.

1973, Roe v. Wade, 410 U.S. 178

Art. 1194. Murder in producing abortion

1973, Roe v. Wade, 410 U.S. 178

If the death of the mother is occasioned by an abortion so produced or by an attempt to effect the same it is murder.

1973, Roe v. Wade, 410 U.S. 178

Art. 1196. By medical advice

1973, Roe v. Wade, 410 U.S. 178

Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.

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The foregoing Articles, together with Art. 1195, compose Chapter 9 of Title 15 of the Penal Code. Article 1195, not attacked here, reads:

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Art. 1195. Destroying unborn child

1973, Roe v. Wade, 410 U.S. 178

Whoever shall during parturition of the mother destroy the vitality or life in a child in a state of being born and before actual birth, which child would otherwise have been born alive, shall be confined in the penitentiary for life or for not less than five years.

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2. Ariz.Rev.Stat.Ann. § 13-211 (1956); Conn.Pub. Act No. 1 (May 1972 special session) (in 4 Conn.Leg.Serv. 677 (1972)), and Conn.Gen.Stat.Rev. §§ 53-29, 53-30 (1968) (or unborn child); Idaho Code § 18-601 (1948); Ill.Rev.Stat., c. 38, § 23-1 (1971); Ind.Code § 35-1-58-1 (1971); Iowa Code § 701.1 (1971); Ky.Rev.Stat. § 436.020 (1962); La.Rev.Stat. § 37: 1285(6) (1964) (loss of medical license) (but see § 14:87 (Supp. 1972) containing no exception for the life of the mother under the criminal statute); Me.Rev.Stat. Ann, Tit. 17, § 51 (1964); Mass.Gen.Laws Ann., c. 272, § 19 (1970) (using the term "unlawfully," construed to exclude an abortion to save the mother's life, Kudish v. Bd. of Registration, 356 Mass. 98, 248 N.E.2d 264 (1969)); Mich.Comp.Laws § 750.14 (1948); Minn.Stat. § 617.18 (1971); Mo.Rev.Stat. § 559.100 (1969); Mont.Rev.Codes Ann. § 94-401 (1969); Neb.Rev.Stat. § 28-405 (1964); Nev.Rev.Stat. § 200.220 (1967); N.H.Rev.Stat.Ann. § 585: 13 (1955); N.J.Stat.Ann. § 2A:87-1 (1969) ("without lawful justification"); N.D.Cent.Code §§ 12-25-01, 12-25-02 (1960); Ohio Rev.Code Ann. § 2901.16 (1953); Okla.Stat.Ann., Tit. 21, § 861 (1972-1973 Supp.); Pa.Stat.Ann., Tit. 18, §§ 4718, 4719 (1963) ("unlawful"); R.I.Gen.Laws Ann. § 11-3-1 (1969); S.D.Comp.Laws Ann. § 22-17-1 (1967); Tenn.Code Ann. §§ 39-301, 39-302 (1956); Utah Code Ann. §§ 76-2-1, 76-2-2 (1953); Vt.Stat.Ann., Tit. 13, § 101 (1958); W.Va.Code Ann. § 61-2-8 (1966); Wis.Stat. § 940.04 (1969); Wyo.Stat.Ann. §§ 6-77, 6-78 (1957).

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3. Long ago, a suggestion was made that the Texas statutes were unconstitutionally vague because of definitional deficiencies. The Texas Court of Criminal Appeals disposed of that suggestion peremptorily, saying only,

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It is also insisted in the motion in arrest of judgment that the statute is unconstitutional and void in that it does not sufficiently define or describe the offense of abortion. We do not concur in respect to this question.

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Jackson v. State, 55 Tex.Cr.R. 79, 89, 115 S.W. 262, 268 (1908). The same court recently has held again that the State's abortion statutes are not unconstitutionally vague or overbroad. Thompson v. State (Ct.Crim.App. Tex.1971), appeal docketed, No. 71-1200. The court held that "the State of Texas has a compelling interest to protect fetal life"; that Art. 1191 "is designed to protect fetal life"; that the Texas homicide statutes, particularly Art. 1205 of the Penal Code, are intended to protect a person "in existence by actual birth," and thereby implicitly recognize other human life that is not "in existence by actual birth"; that the definition of human life is for the legislature and not the courts; that Art. 1196 "is more definite than the District of Columbia statute upheld in [United States v.] Vuitch" (402 U.S. 62); and that the Texas statute "is not vague and indefinite or overbroad." A physician's abortion conviction was affirmed.

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In Thompson, n. 2, the court observed that any issue as to the burden of proof under the exemption of Art. 1196 "is not before us." But see Veevers v. State, 172 Tex.Cr.R. 162, 168-169, 354 S.W.2d 161, 166-167 (1962). Cf. United States v. Vuitch, 402 U.S. 62, 69-71 (1971).

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4. The name is a pseudonym.

1973, Roe v. Wade, 410 U.S. 178

5. These names are pseudonyms.

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6. The appellee twice states in his brief that the hearing before the District Court was held on July 22, 1970. Brief for Appellee 13. The docket entries, App. 2, and the transcript, App. 76, reveal this to be an error. The July date appears to be the time of the reporter's transcription. See App. 77.

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7. We need not consider what different result, if any, would follow if Dr. Hallford's intervention were on behalf of a class. His complaint in intervention does not purport to assert a class suit, and makes no reference to any class apart from an allegation that he "and others similarly situated" must necessarily guess at the meaning of Art. 1196. His application for leave to intervene goes somewhat further, for it asserts that plaintiff Roe does not adequately protect the interest of the doctor "and the class of people who are physicians…[and] the class of people who are…patients…. " The leave application, however, is not the complaint. Despite the District Court's statement to the contrary, 314 F.Supp. at 1225, we fail to perceive the essentials of a class suit in the Hallford complaint.

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8. A. Castiglioni, A History of Medicine 84 (2d ed.1947), E. Krumbhaar, translator and editor (hereinafter Castiglioni).

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9. J. Ricci, The Genealogy of Gynaecology 52, 84, 113, 149 (2d ed.1950) (hereinafter Ricci); L. Lader, Abortion 75-77 (1966) (hereinafter Lader), K. Niswander, Medical Abortion Practices in the United States, in Abortion and the Law 37, 38-40 (D. Smith ed.1967); G. Williams, The Sanctity of Life and the Criminal Law 148 (1957) (hereinafter Williams); J. Noonan, An Almost Absolute Value in History, in The Morality of Abortion 1, 3-7 (J. Noonan ed.1970) (hereinafter Noonan); Quay, Justifiable Abortion—Medical and Legal Foundations (pt. 2), 49 Geo.L.J. 395, 40622 (1961) (hereinafter Quay).

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10. L. Edelstein, The Hippocratic Oath 10 (1943) (hereinafter Edelstein). But see Castiglioni 227.

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11. Edelstein 12; Ricci 113-114, 118-119; Noonan 5.

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12. Edelstein 13-14

1973, Roe v. Wade, 410 U.S. 178

13. Castiglioni 148.

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14. Id. at 154.

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15. Edelstein 3.

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16. Id. at 12, 15-18.

1973, Roe v. Wade, 410 U.S. 178

17. Id. at 18; Lader 76.

1973, Roe v. Wade, 410 U.S. 178

18. Edelstein 63.

1973, Roe v. Wade, 410 U.S. 178

19. Id. at 64.

1973, Roe v. Wade, 410 U.S. 178

20. Dorand's Illustrated Medical Dictionary 1261 (24th ed.1965).

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21. E. Coke, Institutes III \*50; 1 W. Hawkins, Pleas of the Crown, c. 31, § 16 (4th ed. 1762); 1 W. Blackstone, Commentaries \*129-130; M. Hale, Pleas of the Crown 433 (1st Amer. ed. 1847). For discussions of the role of the quickening concept in English common law, see Lader 78; Noonan 223-226; Means, The Law of New York Concerning Abortion and the Status of the Foetus, 1664-1968: A Case of Cessation of Constitutionality (pt. 1), 14 N.Y.L.F. 411, 418-428 (1968) (hereinafter Means I); Stern, Abortion: Reform and the Law, 59 J.Crim.L.C. & P.S. 84 (1968) (hereinafter Stern); Quay 430-432; Williams 152.

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22. Early philosophers believed that the embryo or fetus did not become formed and begin to live until at least 40 days after conception for a male and 80 to 90 days for a female. See, for example, Aristotle, Hist.Anim. 7.3.583b; Gen.Anim. 2.3.736, 2.5.741; Hippocrates, Lib. de Nat.Puer., No. 10. Aristotle's thinking derived from his three-stage theory of life: vegetable, animal, rational. The vegetable stage was reached at conception, the animal at "animation," and the rational soon after live birth. This theory, together with the 40/80 day view, came to be accepted by early Christian thinkers.

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The theological debate was reflected in the writings of St. Augustine, who made a distinction between embryo inanimatus, not yet endowed with a soul, and embryo animatus. He may have drawn upon Exodus 21:22. At one point, however, he expressed the view that human powers cannot determine the point during fetal development at which the critical change occurs. See Augustine, De Origine Animae 4.4 (Pub.Law 44.527). See also W. Reany, The Creation of the Human Soul, c. 2 and 83-86 (1932); Huser, The Crime of Abortion in Canon Law 15 (Catholic Univ. of America, Canon Law Studies No. 162, Washington, D.C.1942).

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Galen, in three treatises related to embryology, accepted the thinking of Aristotle and his followers. Quay 426-427. Later, Augustine on abortion was incorporated by Gratian into the Decretum, published about 1140. Decretum Magistri Gratiani 2.32.2.7 to 2.32.2.10, in 1 Corpus Juris Canonici 1122, 1123 (A. Friedburg, 2d ed. 1879). This Decretal and the Decretals that followed were recognized as the definitive body of canon law until the new Code of 1917.

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For discussions of the canon law treatment, see Means I, pp. 411-412; Noonan 20-26; Quay 426-430; see also J. Noonan, Contraception: A History of Its Treatment by the Catholic Theologians and Canonists 18-29 (1965).

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23. Bracton took the position that abortion by blow or poison was homicide "if the foetus be already formed and animated, and particularly if it be animated." 2 H. Bracton, De Legibus et Consuetudinibus Angliae 279 (T. Twiss ed. 1879), or, as a later translation puts it, "if the foetus is already formed or quickened, especially if it is quickened," 2 H. Bracton, On the Laws and Customs of England 341 (S. Thorne ed.1968). See Quay 431; see also 2 Fleta 661 (Book 1, c. 23) (Selden Society ed.1955).

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24. E. Coke, Institutes III \*50.

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25. 1 W. Blackstone, Commentaries \*129-130.

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26. Means, The Phoenix of Abortional Freedom: Is a Penumbral or Ninth-Amendment Right About to Arise from the Nineteenth Century Legislative Ashes of a Fourteenth Century Common Law Liberty?, 17 N.Y.L.F. 335 (1971) (hereinafter Means II). The author examines the two principal precedents cited marginally by Coke, both contrary to his dictum, and traces the treatment of these and other cases by earlier commentators. He concludes that Coke, who himself participated as an advocate in an abortion case in 1601, may have intentionally misstated the law. The author even suggests a reason: Coke's strong feelings against abortion, coupled with his determination to assert common law (secular) jurisdiction to assess penalties for an offense that traditionally had been an exclusively ecclesiastical or canon law crime. See also Lader 78-79, who notes that some scholars doubt that the common law ever was applied to abortion; that the English ecclesiastical courts seem to have lost interest in the problem after 1527; and that the preamble to the English legislation of 1803, 43 Geo. 3, c. 58, § 1, referred to in the text, infra at 136, states that "no adequate means have been hitherto provided for the prevention and punishment of such offenses."

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27. Commonwealth v. Bangs, 9 Mass. 387, 388 (1812); Commonwealth v. Parker, 50 Mass. (9 Metc.) 263, 265-266 (1845); State v. Cooper, 22 N.J.L. 52, 58 (1849); Abrams v. Foshee, 3 Iowa 274, 278-280 (1856); Smith v. Gaffard, 31 Ala. 45, 51 (1857); Mitchell v. Commonwealth, 78 Ky. 204, 210 (1879); Eggart v. State, 40 Fla. 527, 532, 25 So. 144, 145 (1898); State v. Alcorn, 7 Idaho 599, 606, 64 P. 1014, 1016 (1901); Edwards v. State, 79 Neb. 251, 252, 112 N.W. 611, 612 (1907); Gray v. State, 77 Tex.Cr.R. 221, 224, 178 S.W. 337, 338 (1915); Miller v. Bennett, 190 Va. 162, 169, 56 S.E.2d 217, 221 (1949). Contra, Mills v. Commonwealth, 13 Pa. 631, 633 (1850); State v. Slagle, 83 N.C. 630, 632 (1880).

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28. See Smith v. State, 33 Me. 48, 55 (1851); Evans v. People, 49 N.Y. 86, 88 (1872); Lamb v. State, 67 Md. 524, 533, 10 A. 208 (1887).

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29. Conn.Stat., Tit. 20, § 14 (1821).

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30. Conn.Pub. Acts, c. 71, § 1 (1860).

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31. N.Y.Rev.Stat., pt. 4, c. 1, Tit. 2, Art. 1, § 9, p. 661, and Tit. 6, § 21, p. 694 (1829).

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32. Act of Jan. 20, 1840, § 1, set forth in 2 H. Gammel, Laws of Texas 177-178 (1898); see Grigsby v. Reib, 105 Tex. 597, 600, 153 S.W. 1124, 1125 (1913).

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33. The early statutes are discussed in Quay 435-438. See also Lader 85-88; Stern 85-86; and Means II 37376.

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34. Criminal abortion statutes in effect in the States as of 1961, together with historical statutory development and important judicial interpretations of the state statutes, are cited and quoted in Quay 447-520. See Comment, A Survey of the Present Statutory and Case Law on Abortion: The Contradictions and the Problems, 1972 U.Ill.L.F. 177, 179, classifying the abortion statutes and listing 25 States as permitting abortion only if necessary to save or preserve the mother's life.

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35. Ala.Code, Tit. 14, § 9 (1958); D.C.Code Ann. § 22-201 (1967).

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36. Mass.Gen.Laws Ann., c. 272, § 19 (1970); N.J.Stat.Ann. § 2A: 87-1 (1969); Pa.Stat.Ann., Tit. 18, §§ 4718, 4719 (1963).

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37. Fourteen States have adopted some form of the ALI statute. See Ark.Stat.Ann. §§ 41-303 to 41-310 (Supp. 1971); Calif.Health & Safety Code §§ 25950-25955.5 (Supp. 1972); Colo.Rev.Stat.Ann. §§ 40-2-50 to 40-2-53 (Cum.Supp. 1967); Del.Code Ann., Tit. 24, §§ 1790-1793 (Supp. 1972); Florida Law of Apr. 13, 1972, c. 72-196, 1972 Fla.Sess.Law Serv., pp. 380-382; Ga.Code §§ 26-1201 to 26-1203 (1972); Kan.Stat.Ann. § 21-3407 (Supp. 1971); Md.Ann.Code, Art. 43, §§ 137-139 (1971); Miss.Code Ann. § 2223 (Supp. 1972); N.M.Stat.Ann. §§ 40A-5-1 to 40A-5-3 (1972); N.C.Gen.Stat. § 14-45.1 (Supp. 1971); Ore.Rev.Stat. §§ 435.405 to 435.495 (1971); S.C.Code Ann. §§ 16-82 to 16-89 (1962 and Supp. 1971); Va.Code Ann. §§ 18.1-62 to 18.1-62.3 (Supp. 1972). Mr. Justice Clark described some of these States as having "led the way." Religion, Morality, and Abortion: A Constitutional Appraisal, 2 Loyola U. (L.A.) L.Rev. 1, 11 (1969).

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By the end of 1970, four other States had repealed criminal penalties for abortions performed in early pregnancy by a licensed physician, subject to stated procedural and health requirements. Alaska Stat. § 11.15.060 (1970); Haw.Rev.Stat. § 453-16 (Supp. 1971); N.Y.Penal Code § 125.05, subd. 3 (Supp. 1972-1973); Wash.Rev.Code §§ 9.02.060 to 9.02.080 (Supp. 1972). The precise status of criminal abortion laws in some States is made unclear by recent decisions in state and federal courts striking down existing state laws, in whole or in part.

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38.

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Whereas, Abortion, like any other medical procedure, should not be performed when contrary to the best interests of the patient since good medical practice requires due consideration for the patient's welfare, and not mere acquiescence to the patient's demand; and

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Whereas, The standards of sound clinical judgment, which, together with informed patient consent, should be determinative according to the merits of each individual case; therefore be it

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RESOLVED, That abortion is a medical procedure and should be performed only by a duly licensed physician and surgeon in an accredited hospital acting only after consultation with two other physicians chosen because of their professional competency and in conformance with standards of good medical practice and the Medical Practice Act of his State; and be it further

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RESOLVED, That no physician or other professional personnel shall be compelled to perform any act which violates his good medical judgment. Neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally held moral principles. In these circumstances, good medical practice requires only that the physician or other professional personnel withdraw from the case so long as the withdrawal is consistent with good medical practice.

1973, Roe v. Wade, 410 U.S. 178

Proceedings of the AMA House of Delegates 220 (June 1970).

1973, Roe v. Wade, 410 U.S. 178

39.

1973, Roe v. Wade, 410 U.S. 178

The Principles of Medical Ethics of the AMA do not prohibit a physician from performing an abortion that is performed in accordance with good medical practice and under circumstances that do not violate the laws of the community in which he practices.

1973, Roe v. Wade, 410 U.S. 178

In the matter of abortions, as of any other medical procedure, the Judicial Council becomes involved whenever there is alleged violation of the Principles of Medical Ethics as established by the House of Delegates.

1973, Roe v. Wade, 410 U.S. 178

40.

UNIFORM ABORTION ACT

1973, Roe v. Wade, 410 U.S. 178

SECTION 1. [Abortion Defined; When Authorized.]

1973, Roe v. Wade, 410 U.S. 178

(a) "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

1973, Roe v. Wade, 410 U.S. 178

(b) An abortion may be performed in this state only if it is performed:

1973, Roe v. Wade, 410 U.S. 178

(1) by a physician licensed to practice medicine [or osteopathy] in this state or by a physician practicing medicine [or osteopathy] in the employ of the government of the United States or of this state, [and the abortion is performed] [in the physician's office or in a medical clinic, or] in a hospital approved by the [Department of Health] or operated by the United States, this state, or any department, agency, [or political subdivision of either;] or by a female upon herself upon the advice of the physician; and

1973, Roe v. Wade, 410 U.S. 178

(2) within [20] weeks after the commencement of the pregnancy [or after [20] weeks only if the physician has reasonable cause to believe (i) there is a substantial risk that continuance of the pregnancy would endanger the life of the mother or would gravely impair the physical or mental health of the mother, (ii) that the child would be born with grave physical or mental defect, or (iii) that the pregnancy resulted from rape or incest, or illicit intercourse with a girl under the age of 16 years].

1973, Roe v. Wade, 410 U.S. 178

SECTION 2. [Penalty.] Any person who performs or procures an abortion other than authorized by this Act is guilty of a [felony] and, upon conviction thereof, may be sentenced to pay a fine not exceeding [$1,000] or to imprisonment [in the state penitentiary] not exceeding [5 years], or both.

1973, Roe v. Wade, 410 U.S. 178

SECTION 3. [Uniformity of Interpretation.] This Act shall be construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

1973, Roe v. Wade, 410 U.S. 178

SECTION 4. [Short Title.] This Act may be cited as the Uniform Abortion Act.

1973, Roe v. Wade, 410 U.S. 178

SECTION 5. [Severability.] If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

1973, Roe v. Wade, 410 U.S. 178

SECTION 6. [Repeal.] The following acts and parts of acts are repealed:

1973, Roe v. Wade, 410 U.S. 178

(1)

1973, Roe v. Wade, 410 U.S. 178

(2)

1973, Roe v. Wade, 410 U.S. 178

(3)

1973, Roe v. Wade, 410 U.S. 178

SECTION 7. [Time of Taking Effect.] This Act shall take effect \_\_\_\_\_\_\_\_\_.

1973, Roe v. Wade, 410 U.S. 178

41.

1973, Roe v. Wade, 410 U.S. 178

This Act is based largely upon the New York abortion act following a review of the more recent laws on abortion in several states and upon recognition of a more liberal trend in laws on this subject. Recognition was given also to the several decisions in state and federal courts which show a further trend toward liberalization of abortion laws, especially during the first trimester of pregnancy.

1973, Roe v. Wade, 410 U.S. 178

Recognizing that a number of problems appeared in New York, a shorter time period for "unlimited" abortions was advisable. The time period was bracketed to permit the various states to insert a figure more in keeping with the different conditions that might exist among the states. Likewise, the language limiting the place or places in which abortions may be performed was also bracketed to account for different conditions among the states. In addition, limitations on abortions after the initial "unlimited" period were placed in brackets so that individual states may adopt all or any of these reasons, or place further restrictions upon abortions after the initial period.

1973, Roe v. Wade, 410 U.S. 178

This Act does not contain any provision relating to medical review committees or prohibitions against sanctions imposed upon medical personnel refusing to participate in abortions because of religious or other similar reasons, or the like. Such provisions, while related, do not directly pertain to when, where, or by whom abortions may be performed; however, the Act is not drafted to exclude such a provision by a state wishing to enact the same.

1973, Roe v. Wade, 410 U.S. 178

42. See, for example, YWCA v. Kugler, 342 F.Supp. 1048, 1074 (N.J.1972); Abele v. Markle, 342 F.Supp. 800, 805-806 (Conn.1972) (Newman, J., concurring in result), appeal docketed, No. 72-56; Walsingham v. State, 250 So.2d 857, 863 (Ervin, J., concurring) (Fla.1971); State v. Gedicke, 43 N.J.L. 86, 90 (1881); Means II 381-382.

1973, Roe v. Wade, 410 U.S. 178

43. See C. Haagensen & W. Lloyd, A Hundred Years of Medicine 19 (1943).

1973, Roe v. Wade, 410 U.S. 178

44. Potts, Postconceptive Control of Fertility, 8 Int'l J. of G. & O. 957, 967 (1970) (England and Wales); Abortion Mortality, 20 Morbidity and Mortality 208, 209 (June 12, 1971) (U.S. Dept. of HEW, Public Health Service) (New York City); Tietze, United States: Therapeutic Abortions, 1963-1968, 59 Studies in Family Planning 5, 7 (1970); Tietze, Mortality with Contraception and Induced Abortion, 45 Studies in Family Planning 6 (1969) (Japan, Czechoslovakia, Hungary); Tietze Lehfeldt, Legal Abortion in Eastern Europe, 175 J.A.M.A. 1149, 1152 (April 1961). Other sources are discussed in Lader 17-23.

1973, Roe v. Wade, 410 U.S. 178

45. See Brief of Amicus National Right to Life Committee; R. Drinan, The Inviolability of the Right to Be Born, in Abortion and the Law 107 (D. Smith ed.1967); Louisell, Abortion, The Practice of Medicine and the Due Process of Law, 16 U.C.L.A.L.Rev. 233 (1969); Noonan 1.

1973, Roe v. Wade, 410 U.S. 178

46. See, e.g., Abele v. Markle, 342 F.Supp. 800 (Conn.1972), appeal docketed, No. 72-56.

1973, Roe v. Wade, 410 U.S. 178

47. See discussions in Means I and Means II.

1973, Roe v. Wade, 410 U.S. 178

48. See, e.g., State v. Murphy, 27 N.J.L. 112, 114 (1858).

1973, Roe v. Wade, 410 U.S. 178

49. Watson v. State, 9 Tex.App. 237, 244-245 (1880); Moore v. State, 37 Tex. Cr.R. 552, 561, 40 S.W. 287, 290 (1897); Shaw v. State, 73 Tex.Cr.R. 337, 339, 165 S.W. 930, 931 (1914); Fondren v. State, 74 Tex.Cr.R. 552, 557, 169 S.W. 411, 414 (1914); Gray v. State, 77 Tex.Cr.R. 221, 229, 178 S.W. 337, 341 (1915). There is no immunity in Texas for the father who is not married to the mother. Hammett v. State, 84 Tex.Cr.R. 635, 209 S.W. 661 (1919); Thompson v. State (Ct.Crim.App. Tex.1971), appeal docketed, No. 71-1200.

1973, Roe v. Wade, 410 U.S. 178

50. See Smith v. State, 33 Me. at 55; In re Vince, 2 N.J. 443, 450, 67 A.2d 141, 144 (1949). A short discussion of the modern law on this issue is contained in the Comment to the ALI's Model Penal Code § 207.11, at 158 and nn. 35-37 (Tent.Draft No. 9, 1959).

1973, Roe v. Wade, 410 U.S. 178

51. Tr. of Oral Rearg. 20-21.

1973, Roe v. Wade, 410 U.S. 178

52. Tr. of Oral Rearg. 24.

1973, Roe v. Wade, 410 U.S. 178

53. We are not aware that in the taking of any census under this clause, a fetus has ever been counted.

1973, Roe v. Wade, 410 U.S. 178

54. When Texas urges that a fetus is entitled to Fourteenth Amendment protection as a person, it faces a dilemma. Neither in Texas nor in any other State are all abortions prohibited. Despite broad proscription, an exception always exists. The exception contained in Art. 1196, for an abortion procured or attempted by medical advice for the purpose of saving the life of the mother, is typical. But if the fetus is a person who is not to be deprived of life without due process of law, and if the mother's condition is the sole determinant, does not the Texas exception appear to be out of line with the Amendment's command?

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There are other inconsistencies between Fourteenth Amendment status and the typical abortion statute. It has already been pointed out, n. 49, supra, that, in Texas, the woman is not a principal or an accomplice with respect to an abortion upon her. If the fetus is a person, why is the woman not a principal or an accomplice? Further, the penalty for criminal abortion specified by Art. 1195 is significantly less than the maximum penalty for murder prescribed by Art. 1257 of the Texas Penal Code. If the fetus is a person, may the penalties be different?

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55. Cf. the Wisconsin abortion statute, defining "unborn child" to mean "a human being from the time of conception until it is born alive," Wis.Stat. § 940.04(6) (1969), and the new Connecticut statute, Pub.Act No. 1 (May 1972 special session), declaring it to be the public policy of the State and the legislative intent "to protect and preserve human life from the moment of conception."

1973, Roe v. Wade, 410 U.S. 178

56. Edelstein 16.

1973, Roe v. Wade, 410 U.S. 178

57. Lader 97-99; D. Feldman, Birth Control in Jewish Law 251-294 (1968). For a stricter view, see I. Jakobovits, Jewish Views on Abortion, in Abortion and the Law 124 (D. Smith ed.1967).

1973, Roe v. Wade, 410 U.S. 178

58. Amicus Brief for the American Ethical Union et al. For the position of the National Council of Churches and of other denominations, see Lader 99-101.

1973, Roe v. Wade, 410 U.S. 178

59. Hellman & J. Pritchard, Williams Obstetrics 493 (14th ed.1971); Dorland's Illustrated Medical Dictionary 1689 (24th ed.1965).

1973, Roe v. Wade, 410 U.S. 178

60. Hellman & Pritchard, supra, n. 59, at 493.

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61. For discussions of the development of the Roman Catholic position, see D. Callahan, Abortion: Law, Choice, and Morality 409-447 (1970); Noonan 1.

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62. See Brodie, The New Biology and the Prenatal Child, 9 J.Family L. 391, 397 (1970); Gorney, The New Biology and the Future of Man, 15 U.C.L.A.L.Rev. 273 (1968); Note, Criminal Law—Abortion—The "Morning-After Pill" and Other Pre-Implantation Birth-Control Methods and the Law, 46 Ore.L.Rev. 211 (1967); G. Taylor, The Biological Time Bomb 32 (1968); A. Rosenfeld, The Second Genesis 138-139 (1969); Smith, Through a Test Tube Darkly: Artificial Insemination and the Law, 67 Mich.L.Rev. 127 (1968); Note, Artificial Insemination and the Law, 1968 U.Ill.L.F. 203.

1973, Roe v. Wade, 410 U.S. 178

63. W. Prosser, The Law of Torts 335-338 (4th ed.1971); 2 F. Harper & F. James, The Law of Torts 1028-1031 (1956); Note, 63 Harv.L.Rev. 173 (1949).

1973, Roe v. Wade, 410 U.S. 178

64. See cases cited in Prosser, supra, n. 63, at 336-338; Annotation, Action for Death of Unborn Child, 15 A.L.R.3d 992 (1967).

1973, Roe v. Wade, 410 U.S. 178

65. Prosser, supra, n. 63, at 338; Note, The Law and the Unborn Child: The Legal and Logical Inconsistencies, 46 Notre Dame Law. 349, 354-360 (1971).

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66. Louisell, Abortion, The Practice of Medicine and the Due Process of Law, 16 U.C.L.A.L.Rev. 233, 235-238 (1969); Note, 56 Iowa L.Rev. 994, 999-1000 (1971); Note, The Law and the Unborn Child, 46 Notre Dame Law. 349, 351-354 (1971).

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67. Neither in this opinion nor in Doe v. Bolton, post, p. 179, do we discuss the father's rights, if any exist in the constitutional context, in the abortion decision. No paternal right has been asserted in either of the cases, and the Texas and the Georgia statutes on their face take no cognizance of the father. We are aware that some statutes recognize the father under certain circumstances. North Carolina, for example, N.C.Gen.Stat. § 14-45.1 (Supp. 1971), requires written permission for the abortion from the husband when the woman is a married minor, that is, when she is less than 18 years of age, 41 N.C.A.G. 489 (1971); if the woman is an unmarried minor, written permission from the parents is required. We need not now decide whether provisions of this kind are constitutional.

STEWART, J., concurring (Footnotes)

1973, Roe v. Wade, 410 U.S. 178

1. Only Mr. Justice Harlan failed to join the Court's opinion, 372 U.S. at 733.

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2. There is no constitutional right of privacy, as such.

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[The Fourth] Amendment protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all. Other provisions of the Constitution protect personal privacy from other forms of governmental invasion. But the protection of a person's General right to privacy—his right to be let alone by other people—is, like the protection of his property and of his very life, left largely to the law of the individual States.

1973, Roe v. Wade, 410 U.S. 178

Katz v. United States, 389 U.S. 347, 350-351 (footnotes omitted).

1973, Roe v. Wade, 410 U.S. 178

3. This was also clear to Mr. Justice Black, 381 U.S. at 507 (dissenting opinion); to Mr. Justice Harlan, 381 U.S. at 499 (opinion concurring in the judgment); and to MR. JUSTICE WHITE, 381 U.S. at 502 (opinion concurring in the judgment). See also Mr. Justice Harlan's thorough and thoughtful opinion dissenting from dismissal of the appeal in Poe v. Ullman, 367 U.S. 497, 522.

REHNQUIST, J., dissenting (Footnotes)

1973, Roe v. Wade, 410 U.S. 178

1. Jurisdictions having enacted abortion laws prior to the adoption of the Fourteenth Amendment in 1868:

1973, Roe v. Wade, 410 U.S. 178

1. Alabama—Ala. Acts, c. 6, § 2 (1840).

1973, Roe v. Wade, 410 U.S. 178

2. Arizona—Howell Code, c. 10, § 45 (1865).

1973, Roe v. Wade, 410 U.S. 178

3. Arkansas—Ark.Rev.Stat., c. 44, div. III, Art. II, § 6 (1838).

1973, Roe v. Wade, 410 U.S. 178

4. California—Cal.Sess.Laws, c. 99, § 45, p. 233 (1849-1850).

1973, Roe v. Wade, 410 U.S. 178

5. Colorado (Terr.)—Colo. Gen.Laws of Terr. of Colo. 1st Sess., § 42, pp 296-297 (1861).

1973, Roe v. Wade, 410 U.S. 178

6. Connecticut—Conn.Stat., Tit. 20, §§ 14, 16 (1821). By 1868, this statute had been replaced by another abortion law. Conn.Pub. Acts, c. 71, §§ 1, 2, p. 65 (1860).

1973, Roe v. Wade, 410 U.S. 178

7. Florida—Fla.Acts 1st Sess., c. 1637, subc. 3, §§ 10, 11, subc. 8, §§ 9, 10, 11 (1868), as amended, now Fla.Stat.Ann. §§ 782.09, 782.10, 797.01, 797.02, 782.16 (1965).

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8. Georgia Pen.Code, 4th Div., § 20 (1833).

1973, Roe v. Wade, 410 U.S. 178

9. Kingdom of Hawaii—Hawaii Pen.Code, c. 12, §§ 1, 2, 3 (1850).

1973, Roe v. Wade, 410 U.S. 178

10. Idaho (Terr.)—Idaho (Terr.) Laws, Crimes and Punishments §§ 33, 34, 42, pp. 441, 443 (1863).

1973, Roe v. Wade, 410 U.S. 178

11. Illinois—Ill.Rev. Criminal Code §§ 40, 41, 46, pp. 130, 131 (1827). By 1868, this statute had been replaced by a subsequent enactment. Ill.Pub.Laws §§ 1, 2, 3, p. 89 (1867).

1973, Roe v. Wade, 410 U.S. 178

12. Indiana—Ind.Rev.Stat. §§ 1, 3, p. 224 (1838). By 1868, this statute had been superseded by a subsequent enactment. Ind.Laws, c. LXXXI, § 2 (1859).

1973, Roe v. Wade, 410 U.S. 178

13. Iowa (Terr.)—Iowa (Terr.) Stat., 1st Legis., 1st Sess., § 18, p. 145 (1838). By 1868, this statute had been superseded by a subsequent enactment. Iowa (Terr.) Rev.Stat., c. 49, §§ 10, 13 (1843).

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14. Kansas (Terr.)—Kan. (Terr.) Stat., c. 48, §§ 9, 10, 39 (1855). By 1868, this statute had been superseded by a subsequent enactment. Kan. (Terr.) Laws, c. 28, §§ 9, 10, 37 (1859).

1973, Roe v. Wade, 410 U.S. 178

15. Louisiana—La.Rev.Stat., Crimes and Offenses § 24, p. 138 (1856).

1973, Roe v. Wade, 410 U.S. 178

16. Maine—Me.Rev.Stat., c. 160, §§ 11, 12, 13, 14 (1840).

1973, Roe v. Wade, 410 U.S. 178

17. Maryland—Md.Laws, c. 179, § 2, p. 315 (1868).

1973, Roe v. Wade, 410 U.S. 178

18. Massachusetts—Mass. Acts & Resolves, c. 27 (1845).

1973, Roe v. Wade, 410 U.S. 178

19. Michigan—Mich.Rev.Stat., c. 153, §§ 32, 33, 34, p. 662 (1846).

1973, Roe v. Wade, 410 U.S. 178

20. Minnesota (Terr.)—Minn. (Terr.) Rev.Stat., c. 100, § 10, 11, p. 493 (1851).

1973, Roe v. Wade, 410 U.S. 178

21. Mississippi—Miss.Code, c. 64, §§ 8, 9, p. 958 (1848).

1973, Roe v. Wade, 410 U.S. 178

22. Missouri—Mo.Rev.Stat., Art. II, §§ 9, 10, 36, pp. 168, 172 (1835).

1973, Roe v. Wade, 410 U.S. 178

23. Montana (Terr.)—Mont. (Terr.) Laws, Criminal Practice Acts § 41, p. 184 (1864).

1973, Roe v. Wade, 410 U.S. 178

24. Nevada (Terr.)—Nev. (Terr.) Laws, c. 28, § 42, p. 63 (1861).

1973, Roe v. Wade, 410 U.S. 178

25. New Hampshire—N.H.Laws, c. 743, § 1, p. 708 (1848).

1973, Roe v. Wade, 410 U.S. 178

26. New Jersey—N.J.Laws, p. 266 (1849).

1973, Roe v. Wade, 410 U.S. 178

27. New York—N.Y.Rev.Stat., pt. 4, c. 1, Tit 2, §§ 8, 9, pp. 12-13 (1828). By 1868, this statute had been superseded. N.Y.Laws, c. 260, §§ 1, pp. 285-286 (1845); N.Y.Laws, c. 22, § 1, p. 19 (1846).

1973, Roe v. Wade, 410 U.S. 178

28. Ohio—Ohio Gen.Stat. §§ 111(1), 112(2), p. 252 (1841).

1973, Roe v. Wade, 410 U.S. 178

29. Oregon—Ore. Gen.Laws, Crim.Code, c. 43, § 509, p. 528 (1845-1864).

1973, Roe v. Wade, 410 U.S. 178

30. Pennsylvania—Pa.Laws No. 374, §§ 87, 88, 89 (1860).

1973, Roe v. Wade, 410 U.S. 178

31. Texas—Tex. Gen.Stat. Dig., c. VII, Arts. 531-536, p. 524 (Oldham & White 1859).

1973, Roe v. Wade, 410 U.S. 178

32. Vermont—Vt. Acts No. 33, § 1 (1846). By 1868, this statute had been amended. Vt.Acts No. 57, §§ 1, 3 (1867).

1973, Roe v. Wade, 410 U.S. 178

33. Virginia—Va.Acts, Tit. II, c. 3, § 9, p. 96 (1848).

1973, Roe v. Wade, 410 U.S. 178

34. Washington (Terr.)—Wash. (Terr.) Stats., c. II, §§ 37, 38, p. 81 (1854).

1973, Roe v. Wade, 410 U.S. 178

35. West Virginia—See Va. Acts., Tit. II, c. 3, § 9, p. 96 (1848); W.Va.Const., Art. XI, par. 8 (1863).

1973, Roe v. Wade, 410 U.S. 178

36. Wisconsin—Wis.Rev.Stat., c. 133, §§ 10, 11 (1849). By 1868, this statute had been superseded. Wis.Rev.Stat., c. 164, §§ 10, 11; c. 169, §§ 58, 59 (1858).

1973, Roe v. Wade, 410 U.S. 178

2. Abortion laws in effect in 1868 and still applicable as of August, 1970:

1973, Roe v. Wade, 410 U.S. 178

1. Arizona (1865).

1973, Roe v. Wade, 410 U.S. 178

2. Connecticut (1860).

1973, Roe v. Wade, 410 U.S. 178

3. Florida (1868).

1973, Roe v. Wade, 410 U.S. 178

4. Idaho (1863).

1973, Roe v. Wade, 410 U.S. 178

5. Indiana (1838).

1973, Roe v. Wade, 410 U.S. 178

6. Iowa (1843)

1973, Roe v. Wade, 410 U.S. 178

7. Maine (1840).

1973, Roe v. Wade, 410 U.S. 178

8. Massachusetts (1845).

1973, Roe v. Wade, 410 U.S. 178

9. Michigan (1846).

1973, Roe v. Wade, 410 U.S. 178

10. Minnesota (1851).

1973, Roe v. Wade, 410 U.S. 178

11. Missouri (1835).

1973, Roe v. Wade, 410 U.S. 178

12. Montana (1864).

1973, Roe v. Wade, 410 U.S. 178

13. Nevada (1861).

1973, Roe v. Wade, 410 U.S. 178

14. New Hampshire (1848).

1973, Roe v. Wade, 410 U.S. 178

15. New Jersey (1849).

1973, Roe v. Wade, 410 U.S. 178

16. Ohio (1841).

1973, Roe v. Wade, 410 U.S. 178

17. Pennsylvania (1860).

1973, Roe v. Wade, 410 U.S. 178

18. Texas (1859).

1973, Roe v. Wade, 410 U.S. 178

19. Vermont (1867).

1973, Roe v. Wade, 410 U.S. 178

20. West Virginia (1863).

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21. Wisconsin (1858).

Miller v. California, 1973

Title: Miller v. California

Author: U.S. Supreme Court

Date: June 21, 1973

Source: 413 U.S. 15

This case was argued January 18-19, 1972, and was reargued November 7, 1972. The case was decided June 21, 1973.

APPEAL FROM THE APPELLATE DEPARTMENT, SUPERIOR COURT

OF CALIFORNIA, COUNTY OF ORANGE

Syllabus

1973, Miller v. California, 413 U.S. 15

Appellant was convicted of mailing unsolicited sexually explicit material in violation of a California statute that approximately incorporated the obscenity test formulated in Memoirs v. Massachusetts, 383 U.S. 413, 418 (plurality opinion). The trial court instructed the jury to evaluate the materials by the contemporary community standards of California. Appellant's conviction was affirmed on appeal. In lieu of the obscenity criteria enunciated by the Memoirs plurality, it is held:

1973, Miller v. California, 413 U.S. 15

1. Obscene material is not protected by the First Amendment. Roth v. United States, 354 U.S. 476, reaffirmed. A work may be subject to state regulation where that work, taken as a whole, appeals to the prurient interest in sex; portrays, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and, taken as a whole, does not have serious literary, artistic, political, or scientific value. Pp. 23-24.

1973, Miller v. California, 413 U.S. 15

2. The basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest, Roth, supra, at 489, (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. If a state obscenity law is thus limited, First Amendment values are adequately protected by ultimate independent appellate review of constitutional claims when necessary. Pp. 24-25.

1973, Miller v. California, 413 U.S. 15

3. The test of "utterly without redeeming social value" articulated in Memoirs, supra, is rejected as a constitutional standard. Pp. 24-25.

1973, Miller v. California, 413 U.S. 15

4. The jury may measure the essentially factual issues of prurient appeal and patent offensiveness by the standard that prevails in the forum community, and need not employ a "national standard." Pp. 30-34.

1973, Miller v. California, 413 U.S. 15

Vacated and remanded. [413 U.S. 16]

1973, Miller v. California, 413 U.S. 16

BURGER, C.J., delivered the opinion of the Court, in which WHITE, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. DOUGLAS, J., filed a dissenting opinion, post, p. 37. BRENNAN, J., filed a dissenting opinion, in which STEWART and MARSHALL, JJ., joined, post, p. 47.

BURGER, J., lead opinion

1973, Miller v. California, 413 U.S. 16

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

1973, Miller v. California, 413 U.S. 16

This is one of a group of "obscenity-pornography" cases being reviewed by the Court in a reexamination of standards enunciated in earlier cases involving what Mr. Justice Harlan called "the intractable obscenity problem." Interstate Circuit, Inc. v. Dallas, 390 U.S. 676, 704 (1968) (concurring and dissenting).

1973, Miller v. California, 413 U.S. 16

Appellant conducted a mass mailing campaign to advertise the sale of illustrated books, euphemistically called "adult" material. After a jury trial, he was convicted of violating California Penal Code § 311.2(a), a misdemeanor, by knowingly distributing obscene matter, 1 [413 U.S. 17] and the Appellate Department, Superior Court of California, County of Orange, summarily affirmed the judgment without opinion. Appellant's conviction was specifically [413 U.S. 18] based on his conduct in causing five unsolicited advertising brochures to be sent through the mail in an envelope addressed to a restaurant in Newport Beach, California. The envelope was opened by the manager of the restaurant and his mother. They had not requested the brochures; they complained to the police.

1973, Miller v. California, 413 U.S. 18

The brochures advertise four books entitled "Intercourse," "Man-Woman," "Sex Orgies Illustrated," and "An Illustrated History of Pornography," and a film entitled "Marital Intercourse." While the brochures contain some descriptive printed material, primarily they consist of pictures and drawings very explicitly depicting men and women in groups of two or more engaging in a variety of sexual activities, with genitals often prominently displayed.

I

1973, Miller v. California, 413 U.S. 18

This case involves the application of a State's criminal obscenity statute to a situation in which sexually explicit materials have been thrust by aggressive sales action upon unwilling recipients who had in no way indicated any desire to receive such materials. This Court has recognized that the States have a legitimate interest in prohibiting dissemination or exhibition of obscene material 2 [413 U.S. 19] when the mode of dissemination carries with it a significant danger of offending the sensibilities of unwilling recipients or of exposure to juveniles. Stanley v. Georgia, 394 U.S. 557, 567 (1969); Ginsberg v. New York, 390 U.S. 629, 637-643 (1968); Interstate Circuit, Inc. v. Dallas, supra, at 690; Redrup v. New York, 386 U.S. 767, 769 (1967); Jacobellis v. Ohio, 378 U.S. 184, 195 (1964). See Rabe v. Washington, 405 U.S. 313, 317 (1972) (BURGER, C.J., concurring); United States v. Reidel, 402 U.S. 351, 360-362 (1971) (opinion of MARSHALL, J.); Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 502 (1952); Breard v. Alexandria, 341 U.S. 622, 644 645 (1951); Kovacs v. Cooper, 336 U.S. 77, 88-89 (1949); Prince v. Massachusetts, 321 U.S. 158, 169-170 (1944). Cf. Butler v. Michigan, 32 U.S. 380, 382-383 (1957); Public Utilities Comm'n v. Pollak, 343 U.S. 451, 464-465 (1952) It is in this context that we are called [413 U.S. 20] on to define the standards which must be used to identify obscene material that a State may regulate without infringing on the First Amendment as applicable to the States through the Fourteenth Amendment.

1973, Miller v. California, 413 U.S. 20

The dissent of MR. JUSTICE BRENNAN reviews the background of the obscenity problem, but since the Court now undertakes to formulate standards more concrete than those in the past, it is useful for us to focus on two of the landmark cases in the somewhat tortured history of the Court's obscenity decisions. In Roth v. United States, 354 U.S. 476 (1957), the Court sustained a conviction under a federal statute punishing the mailing of "obscene, lewd, lascivious or filthy…" materials. The key to that holding was the Court's rejection of the claim that obscene materials were protected by the First Amendment. Five Justices joined in the opinion stating:

1973, Miller v. California, 413 U.S. 20

All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the [First Amendment] guaranties, unless excludable because they encroach upon the limited area of more important interests. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance…. This is the same judgment expressed by this Court in Chaplinsky v. New Hampshire, 315 U.S. 568, 571-572:

1973, Miller v. California, 413 U.S. 20

…There are certain well defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene…. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social [413 U.S. 21] value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.…

1973, Miller v. California, 413 U.S. 21

[Emphasis by Court in Roth opinion.]

1973, Miller v. California, 413 U.S. 21

We hold that obscenity is not within the area of constitutionally protected speech or press.

1973, Miller v. California, 413 U.S. 21

354 U.S. at 48 85 (footnotes omitted).

1973, Miller v. California, 413 U.S. 21

Nine years later, in Memoirs v. Massachusetts, 383 U.S. 413 (1966), the Court veered sharply away from the Roth concept and, with only three Justices in the plurality opinion, articulated a new test of obscenity. The plurality held that, under the Roth definition,

1973, Miller v. California, 413 U.S. 21

as elaborated in subsequent cases, three elements must coalesce: it must be established that (a) the dominant theme of the material, taken as a whole, appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value.

1973, Miller v. California, 413 U.S. 21

Id. at 418. The sharpness of the break with Roth, represented by the third element of the Memoirs test and emphasized by MR. JUSTICE WHITE's dissent, id. at 460-462, was further underscored when the Memoirs plurality went on to state:

1973, Miller v. California, 413 U.S. 21

The Supreme Judicial Court erred in holding that a book need not be "unqualifiedly worthless before it can be deemed obscene." A book cannot be proscribed unless it is found to be utterly without redeeming social value.

1973, Miller v. California, 413 U.S. 21

Id. at 419 (emphasis in original).

1973, Miller v. California, 413 U.S. 21

While Roth presumed "obscenity" to be "utterly without redeeming social importance," Memoirs required [413 U.S. 22] that to prove obscenity it must be affirmatively established that the material is "utterly without redeeming social value." Thus, even as they repeated the words of Roth, the Memoirs plurality produced a drastically altered test that called on the prosecution to prove a negative, i.e., that the material was "utterly without redeeming social value"—a burden virtually impossible to discharge under our criminal standards of proof. Such considerations caused Mr. Justice Harlan to wonder if the "utterly without redeeming social value" test had any meaning at all. See Memoirs v. Massachusetts, id. at 459 (Harlan, J., dissenting). See also id. at 461 (WHITE, J., dissenting); United States v. Groner, 479 F.2d 577, 579581 (CA5 1973).

1973, Miller v. California, 413 U.S. 22

Apart from the initial formulation in the Roth case, no majority of the Court has at any given time been able to agree on a standard to determine what constitutes obscene, pornographic material subject to regulation under the States' police power. See, e.g., Redrup v. New York, 386 U.S. at 770-771. We have seen "a variety of views among the members of the Court unmatched in any other course of constitutional adjudication." Interstate Circuit, Inc. v. Dallas, 390 U.S. at 704-705 (Harlan, J., concurring and dissenting) (footnote omitted). 3 This is not remarkable, for in the area [413 U.S. 23] of freedom of speech and press the courts must always remain sensitive to any infringement on genuinely serious literary, artistic, political, or scientific expression. This is an area in which there are few eternal verities.

1973, Miller v. California, 413 U.S. 23

The case we now review was tried on the theory that the California Penal Code § 311 approximately incorporates the three-stage Memoirs test, supra. But now the Memoirs test has been abandoned as unworkable by its author, 4 and no Member of the Court today supports the Memoirs formulation.

II

1973, Miller v. California, 413 U.S. 23

This much has been categorically settled by the Court, that obscene material is unprotected by the First Amendment. Kois v. Wisconsin, 408 U.S. 229 (1972); United States v. Reidel, 402 U.S. at 354; Roth v. United States, supra, at 485. 5 "The First and Fourteenth Amendments have never been treated as absolutes [footnote omitted]." Breard v. Alexandria, 341 U.S. at 642, and cases cited. See Times Film Corp. v. Chicago, 365 U.S. 43, 47-50 (1961); Joseph Burstyn, Inc. v. Wilson, 343 U.S. at 502. We acknowledge, however, the inherent dangers of undertaking to regulate any form of expression. State statutes designed to regulate obscene materials must be [413 U.S. 24] carefully limited. See Interstate Circuit, Inc. v. Dallas, supra, at 682-685. As a result, we now confine the permissible scope of such regulation to works which depict or describe sexual conduct. That conduct must be specifically defined by the applicable state law, as written or authoritatively construed. 6 A state offense must also be limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.

1973, Miller v. California, 413 U.S. 24

The basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest, Kois v. Wisconsin, supra, at 230, quoting Roth v. United States, supra, at 489; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. We do not adopt as a constitutional standard the "utterly without redeeming social value" test of Memoirs v. Massachusetts, [413 U.S. 25] 383 U.S. at 419; that concept has never commanded the adherence of more than three Justices at one time. 7 See supra at 21. If a state law that regulates obscene material is thus limited, as written or construed, the First Amendment values applicable to the States through the Fourteenth Amendment are adequately protected by the ultimate power of appellate courts to conduct an independent review of constitutional claims when necessary. See Kois v. Wisconsin, supra, at 232; Memoirs v. Massachusetts, supra, at 459-460 (Harlan, J., dissenting); Jacobellis v. Ohio, 378 U.S. at 204 (Harlan, J., dissenting); New York Times Co. v. Sullivan, 376 U.S. 254, 284-285 (1964); Roth v. United States, supra, at 497-498 (Harlan, J., concurring and dissenting).

1973, Miller v. California, 413 U.S. 25

We emphasize that it is not our function to propose regulatory schemes for the States. That must await their concrete legislative efforts. It is possible, however, to give a few plain examples of what a state statute could define for regulation under part (b) of the standard announced in this opinion, supra:

1973, Miller v. California, 413 U.S. 25

(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.

1973, Miller v. California, 413 U.S. 25

(b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.

1973, Miller v. California, 413 U.S. 25

Sex and nudity may not be exploited without limit by films or pictures exhibited or sold in places of public accommodation any more than live sex and nudity can [413 U.S. 26] be exhibited or sold without limit in such public places. 8 At a minimum, prurient, patently offensive depiction or description of sexual conduct must have serious literary, artistic, political, or scientific value to merit First Amendment protection. See Kois v. Wisconsin, supra, at 230-232; Roth v. United States, supra, at 487; Thornhill v. Alabama, 310 U.S. 88, 101-102 (1940). For example, medical books for the education of physicians and related personnel necessarily use graphic illustrations and descriptions of human anatomy. In resolving the inevitably sensitive questions of fact and law, we must continue to rely on the jury system, accompanied by the safeguards that judges, rules of evidence, presumption of innocence, and other protective features provide, as we do with rape, murder, and a host of other offenses against society and its individual members. 9

1973, Miller v. California, 413 U.S. 26

MR. JUSTICE BRENNAN, author of the opinions of the Court, or the plurality opinions, in Roth v. United States, supra; Jacobellis v. Ohio, supra; Ginzburg v. United [413 U.S. 27] States, 383 U.S. 463 (1966), Mishkin v. New York, 383 U.S. 502 (1966); and Memoirs v. Massachusetts, supra, has abandoned his former position and now maintains that no formulation of this Court, the Congress, or the States can adequately distinguish obscene material unprotected by the First Amendment from protected expression, Paris Adult Theatre I v. Slaton, post, p. 73 (BRENNAN, J., dissenting). Paradoxically, MR. JUSTICE BRENNAN indicates that suppression of unprotected obscene material is permissible to avoid exposure to unconsenting adults, as in this case, and to juveniles, although he gives no indication of how the division between protected and nonprotected materials may be drawn with greater precision for these purposes than for regulation of commercial exposure to consenting adults only. Nor does he indicate where in the Constitution he finds the authority to distinguish between a willing "adult" one month past the state law age of majority and a willing "juvenile" one month younger.

1973, Miller v. California, 413 U.S. 27

Under the holdings announced today, no one will be subject to prosecution for the sale or exposure of obscene materials unless these materials depict or describe patently offensive "hard core" sexual conduct specifically defined by the regulating state law, as written or construed. We are satisfied that these specific prerequisites will provide fair notice to a dealer in such materials that his public and commercial activities may bring prosecution. See Roth v. United States, supra, at 491-492. Cf. Ginsberg v. New York, 390 U.S. at 643. 10 If [413 U.S. 28] the inability to define regulated materials with ultimate, god-like precision altogether removes the power of the States or the Congress to regulate, then "hard core" pornography may be exposed without limit to the juvenile, the passerby, and the consenting adult alike, as, indeed, MR. JUSTICE DOUGLAS contends. As to MR. JUSTICE DOUGLAS' position, see United States v. Thirty-seven Photographs, 402 U.S. 363, 379-380 (1971) (Black, J., joined by DOUGLAS, J., dissenting); Ginzburg v. United States, supra, at 476, 491-492 (Black, J., and DOUGLAS, J., dissenting); Jacobellis v. Ohio, supra, at 196 (Black, J., joined by DOUGLAS, J., concurring); Roth, supra, at 508-514 (DOUGLAS, J., dissenting). In this belief, however, MR. JUSTICE DOUGLAS now stands alone.

1973, Miller v. California, 413 U.S. 28

MR. JUSTICE BRENNAN also emphasizes "institutional stress" in justification of his change of view. Noting that "[t]he number of obscenity cases on our docket gives ample testimony to the burden that has been placed upon this Court," he quite rightly remarks that the examination of contested materials "is hardly a source of edification to the members of this Court." Paris Adult [413 U.S. 29] Theatre I v. Slaton, post, at 92, 93. He also notes, and we agree, that "uncertainty of the standards creates a continuing source of tension between state and federal courts…. "

1973, Miller v. California, 413 U.S. 29

The problem is…that one cannot say with certainty that material is obscene until at least five members of this Court, applying inevitably obscure standards, have pronounced it so.

1973, Miller v. California, 413 U.S. 29

Id. at 93, 92.

1973, Miller v. California, 413 U.S. 29

It is certainly true that the absence, since Roth, of a single majority view of this Court as to proper standards for testing obscenity has placed a strain on both state and federal courts. But today, for the first time since Roth was decided in 1957, a majority of this Court has agreed on concrete guidelines to isolate "hard core" pornography from expression protected by the First Amendment. Now we may abandon the casual practice of Redrup v. New York, 386 U.S. 767 (1967), and attempt to provide positive guidance to federal and state courts alike.

1973, Miller v. California, 413 U.S. 29

This may not be an easy road, free from difficulty. But no amount of "fatigue" should lead us to adopt a convenient "institutional" rationale—an absolutist, "anything goes" view of the First Amendment—because it will lighten our burdens. 11 "Such an abnegation of judicial supervision in this field would be inconsistent with our duty to uphold the constitutional guarantees." Jacobellis v. Ohio, supra, at 187-188 (opinion of BRENNAN, J.). Nor should we remedy "tension between state and federal courts" by arbitrarily depriving the States of a power reserved to them under the Constitution, a power which they have enjoyed and exercised continuously from before the adoption of the First Amendment to this day. See Roth v. United States, supra, at 482-485.

1973, Miller v. California, 413 U.S. 29

Our duty admits of no "substitute for facing up [413 U.S. 30] to the tough individual problems of constitutional judgment involved in every obscenity case." [Roth v. United States, supra, at 498]; see Manual Enterprises, Inc. v. Day, 370 U.S. 478, 488 (opinion of Harlan, J.) [footnote omitted].

1973, Miller v. California, 413 U.S. 30

Jacobellis v. Ohio, supra, at 188 (opinion of BRENNAN, J.).

III

1973, Miller v. California, 413 U.S. 30

Under a National Constitution, fundamental First Amendment limitations on the powers of the States do not vary from community to community, but this does not mean that there are, or should or can be, fixed, uniform national standards of precisely what appeals to the "prurient interest" or is "patently offensive." These are essentially questions of fact, and our Nation is simply too big and too diverse for this Court to reasonably expect that such standards could be articulated for all 50 States in a single formulation, even assuming the prerequisite consensus exists. When triers of fact are asked to decide whether "the average person, applying contemporary community standards" would consider certain materials "prurient," it would be unrealistic to require that the answer be based on some abstract formulation. The adversary system, with lay jurors as the usual ultimate factfinders in criminal prosecutions, has historically permitted triers of fact to draw on the standards of their community, guided always by limiting instructions on the law. To require a State to structure obscenity proceedings around evidence of a national "community standard" would be an exercise in futility.

1973, Miller v. California, 413 U.S. 30

As noted before, this case was tried on the theory that the California obscenity statute sought to incorporate the tripartite test of Memoirs. This, a "national" standard of First Amendment protection enumerated by a plurality of this Court, was correctly regarded at the time of trial as limiting state prosecution under the controlling case [413 U.S. 31] law. The jury, however, was explicitly instructed that, in determining whether the "dominant theme of the material as a whole…appeals to the prurient interest," and, in determining whether the material "goes substantially beyond customary limits of candor and affronts contemporary community standards of decency," it was to apply "contemporary community standards of the State of California."

1973, Miller v. California, 413 U.S. 31

During the trial, both the prosecution and the defense assumed that the relevant "community standards" in making the factual determination of obscenity were those of the State of California, not some hypothetical standard of the entire United States of America. Defense counsel at trial never objected to the testimony of the State's expert on community standards 12 or to the instructions of the trial judge on "state-wide" standards. On appeal to the Appellate Department, Superior Court of California, County of Orange, appellant for the first time contended that application of state, rather than national, standards violated the First and Fourteenth Amendments.

1973, Miller v. California, 413 U.S. 31

We conclude that neither the State's alleged failure to offer evidence of "national standards," nor the trial court's charge that the jury consider state community standards, were constitutional errors. Nothing in the First Amendment requires that a jury must consider hypothetical and unascertainable "national standards" when attempting to determine whether certain materials are obscene as a matter [413 U.S. 32] of fact. Mr. Chief Justice Warren pointedly commented in his dissent in Jacobellis v. Ohio, supra, at 200:

1973, Miller v. California, 413 U.S. 32

It is my belief that, when the Court said in Roth that obscenity is to be defined by reference to "community standards," it meant community standards—not a national standard, as is sometimes argued. I believe that there is no provable "national standard."…At all events, this Court has not been able to enunciate one, and it would be unreasonable to expect local courts to divine one.

1973, Miller v. California, 413 U.S. 32

It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas, or New York City. 13 [413 U.S. 33] See Hoyt v. Minnesota, 399 U.S. at 524-525 (1970) (BLACKMUN, J., dissenting); Walker v. Ohio, 398 U.S. at 434 (1970) (BURGER, C.J., dissenting); id. at 434-435 (Harlan, J., dissenting); Cain v. Kentucky, 397 U.S. 319 (1970) (BURGER, C.J., dissenting); id. at 319-320 (Harlan, J., dissenting); United States v. Groner, 479 F.2d at 581-583; O'Meara & Shaffer, Obscenity in The Supreme Court: A Note on Jacobellis v. Ohio, 40 Notre Dame Law. 1, 6-7 (1964). See also Memoirs v. Massachusetts, 383 U.S. at 458 (Harlan, J., dissenting); Jacobellis v. Ohio, supra, at 203-204 (Harlan, J., dissenting); Roth v. United States, supra, at 505-506 (Harlan, J., concurring and dissenting). People in different States vary in their tastes and attitudes, and this diversity is not to be strangled by the absolutism of imposed uniformity. As the Court made clear in Mishkin v. New York, 383 U.S. at 508-509, the primary concern with requiring a jury to apply the standard of "the average person, applying contemporary community standards" is to be certain that, so far as material is not aimed at a deviant group, it will be judged by its impact on an average person, rather than a particularly susceptible or sensitive person—or indeed a totally insensitive one. See Roth v. United States, supra, at 489. Cf. the now discredited test in Regina v. Hicklin, [1868] L.R. 3 Q.B. 360. We hold that the requirement that the jury evaluate the materials with reference to "contemporary [413 U.S. 34] standards of the State of California" serves this protective purpose and is constitutionally adequate. 14

IV

1973, Miller v. California, 413 U.S. 34

The dissenting Justices sound the alarm of repression. But, in our view, to equate the free and robust exchange of ideas and political debate with commercial exploitation of obscene material demeans the grand conception of the First Amendment and its high purposes in the historic struggle for freedom. It is a "misuse of the great guarantees of free speech and free press…. " Breard v. Alexandria, 341 U.S. at 645. The First Amendment protects works which, taken as a whole, have serious literary, artistic, political, or scientific value, regardless of whether the government or a majority of the people approve of the ideas these works represent.

1973, Miller v. California, 413 U.S. 34

The protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of [413 U.S. 35] political and social changes desired by the people,

1973, Miller v. California, 413 U.S. 35

Roth v. United States, supra, at 484 (emphasis added). See Kois v. Wisconsin, 408 U.S. at 230-232; Thornhill v. Alabama, 310 U.S. at 101-102. But the public portrayal of hard-core sexual conduct for its own sake, and for the ensuing commercial gain, is a different matter. 15

1973, Miller v. California, 413 U.S. 35

There is no evidence, empirical or historical, that the stern 19th century American censorship of public distribution and display of material relating to sex, see Roth v. United States, supra, at 482-485, in any way limited or affected expression of serious literary, artistic, political, or scientific ideas. On the contrary, it is beyond any question that the era following Thomas Jefferson to Theodore Roosevelt was an "extraordinarily vigorous period" not just in economics and politics, but in belles lettres and in "the outlying fields of social and political philosophies." 16 We do not see the harsh hand [413 U.S. 36] of censorship of ideas—good or bad, sound or unsound—and "repression" of political liberty lurking in every state regulation of commercial exploitation of human interest in sex.

1973, Miller v. California, 413 U.S. 36

MR. JUSTICE BRENNAN finds "it is hard to see how state-ordered regimentation of our minds can ever be forestalled." Paris Adult Theatre I v. Slaton, post, at 110 (BRENNAN, J., dissenting). These doleful anticipations assume that courts cannot distinguish commerce in ideas, protected by the First Amendment, from commercial exploitation of obscene material. Moreover, state regulation of hard-core pornography so as to make it unavailable to nonadults, a regulation which MR. JUSTICE BRENNAN finds constitutionally permissible, has all the elements of "censorship" for adults; indeed even more rigid enforcement techniques may be called for with such dichotomy of regulation. See Interstate Circuit, Inc. v. Dallas, 390 U.S. at 690. 17 One can concede that the "sexual revolution" of recent years may have had useful byproducts in striking layers of prudery from a subject long irrationally kept from needed ventilation. But it does not follow that no regulation of patently offensive "hard core" materials is needed or permissible; civilized people do not allow unregulated access to heroin because it is a derivative of medicinal morphlne.

1973, Miller v. California, 413 U.S. 36

In sum, we (a) reaffirm the Roth holding that obscene material is not protected by the First Amendment; (b) hold that such material can be regulated by the States, subject to the specific safeguards enunciated [413 U.S. 37] above, without a showing that the material is "utterly without redeeming social value"; and (c) hold that obscenity is to be determined by applying "contemporary community standards," see Kois v. Wisconsin, supra, at 230, and Roth v. United States, supra, at 489, not "national standards." The judgment of the Appellate Department of the Superior Court, Orange County, California, is vacated and the case remanded to that court for further proceedings not inconsistent with the First Amendment standards established by this opinion. See United States v. 12 200-ft. Reels of Film, post at 130 n. 7.

1973, Miller v. California, 413 U.S. 37

Vacated and remanded.

DOUGLAS, J., dissenting

1973, Miller v. California, 413 U.S. 37

MR. JUSTICE DOUGLAS, dissenting.

I

1973, Miller v. California, 413 U.S. 37

Today we leave open the way for California 1 to send a man to prison for distributing brochures that advertise books and a movie under freshly written standards defining obscenity which until today is decision were never the part of any law.

1973, Miller v. California, 413 U.S. 37

The Court has worked hard to define obscenity and concededly has failed. In Roth v. United States, 354 U.S. 476, it ruled that "[o]bscene material is material which deals with sex in a manner appealing to prurient interest." Id. at 487. Obscenity, it was said, was rejected by the First Amendment because it is "utterly without redeeming [413 U.S. 38] social importance." Id. at 484. The presence of a "prurient interest" was to be determined by "contemporary community standards." Id. at 489. That test, it has been said, could not be determined by one standard here and another standard there, Jacobellis v. Ohio, 378 U.S. 184, 194, but "on the basis of a national standard." Id. at 195. My Brother STEWART, in Jacobellis, commented that the difficulty of the Court in giving content to obscenity was that it was "faced with the task of trying to define what may be indefinable." Id. at 197.

1973, Miller v. California, 413 U.S. 38

In Memoirs v. Massachusetts, 383 U.S. 413, 418, the Roth test was elaborated to read as follows:

1973, Miller v. California, 413 U.S. 38

[T]hree elements must coalesce: it must be established that (a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value.

1973, Miller v. California, 413 U.S. 38

In Ginzburg v. United States, 383 U.S. 463, a publisher was sent to prison, not for the kind of books and periodicals he sold, but for the manner in which the publications were advertised. The "leer of the sensualist" was said to permeate the advertisements. Id. at 468. The Court said,

1973, Miller v. California, 413 U.S. 38

Where the purveyor's sole emphasis is on the sexually provocative aspects of his publications, that fact may be decisive in the determination of obscenity.

1973, Miller v. California, 413 U.S. 38

Id. at 470. As Mr. Justice Black said in dissent,

1973, Miller v. California, 413 U.S. 38

…Ginzburg…is now finally and authoritatively condemned to serve five years in prison for distributing printed matter about sex which neither Ginzburg nor anyone else could possibly have known to be criminal.

1973, Miller v. California, 413 U.S. 38

Id. at 476. That observation by Mr. Justice Black is underlined by the fact that the Ginzburg decision was five to four. [413 U.S. 39]

1973, Miller v. California, 413 U.S. 39

A further refinement was added by Ginsberg v. New York, 390 U.S. 629, 641, where the Court held that "it was not irrational for the legislature to find that exposure to material condemned by the statute is harmful to minors."

1973, Miller v. California, 413 U.S. 39

But even those members of this Court who had created the new and changing standards of "obscenity" could not agree on their application. And so we adopted a per curiam treatment of so-called obscene publications that seemed to pass constitutional muster under the several constitutional tests which had been formulated. See Redrup v. New York, 386 U.S. 767. Some condemn it if its "dominant tendency might be to `deprave or corrupt' a reader." 2 Others look not to the content of the book, but to whether it is advertised "`to appeal to the erotic interests of customers.'" 3 Some condemn only "hard-core pornography," but even then a true definition is lacking. It has indeed been said of that definition, "I could never succeed in [defining it] intelligibly," but "I know it when I see it." 4

1973, Miller v. California, 413 U.S. 39

Today we would add a new three-pronged test:

1973, Miller v. California, 413 U.S. 39

(a) whether "the average person, applying contemporary community standards," would find that the work, taken as a whole, appeals to the prurient interest,…(b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

1973, Miller v. California, 413 U.S. 39

Those are the standards we ourselves have written into the Constitution. 5 Yet how under these vague tests can [413 U.S. 40] we sustain convictions for the sale of an article prior to the time when some court has declared it to be obscene?

1973, Miller v. California, 413 U.S. 40

Today the Court retreats from the earlier formulations of the constitutional test and undertakes to make new definitions. This effort, like the earlier ones, is earnest and well intentioned. The difficulty is that we do not deal with constitutional terms, since "obscenity" is not mentioned in the Constitution or Bill of Rights. And the First Amendment makes no such exception from "the press" which it undertakes to protect nor, as I have said on other occasions, is an exception necessarily implied, for there was no recognized exception to the free press at the time the Bill of Rights was adopted which treated "obscene" publications differently from other types of papers, magazines, and books. So there are no constitutional guidelines for deciding what is and what is not "obscene." The Court is at large because we deal with tastes and standards of literature. What shocks me may [413 U.S. 41] be sustenance for my neighbor. What causes one person to boil up in rage over one pamphlet or movie may reflect only his neurosis, not shared by others. We deal here with a regime of censorship which, if adopted, should be done by constitutional amendment after full debate by the people.

1973, Miller v. California, 413 U.S. 41

Obscenity cases usually generate tremendous emotional outbursts. They have no business being in the courts. If a constitutional amendment authorized censorship, the censor would probably be an administrative agency. Then criminal prosecutions could follow as, if, and when publishers defied the censor and sold their literature. Under that regime, a publisher would know when he was on dangerous ground. Under the present regime—whether the old standards or the new ones are used—the criminal law becomes a trap. A brand new test would put a publisher behind bars under a new law improvised by the courts after the publication. That was done in Ginzburg, and has all the evils of an ex post facto law.

1973, Miller v. California, 413 U.S. 41

My contention is that, until a civil proceeding has placed a tract beyond the pale, no criminal prosecution should be sustained. For no more vivid illustration of vague and uncertain laws could be designed than those we have fashioned. As Mr. Justice Harlan has said:

1973, Miller v. California, 413 U.S. 41

The upshot of all this divergence in viewpoint is that anyone who undertakes to examine the Court's decisions since Roth which have held particular material obscene or not obscene would find himself in utter bewilderment.

1973, Miller v. California, 413 U.S. 41

Interstate Circuit, Inc. v. Dallas, 390 U.S. 676, 707.

1973, Miller v. California, 413 U.S. 41

In Bouie v. City of Columbia, 378 U.S. 347, we upset a conviction for remaining on property after being asked to leave, while the only unlawful act charged by the statute was entering. We held that the defendants had received no "fair warning, at the time of their conduct" [413 U.S. 42] while on the property "that the act for which they now stand convicted was rendered criminal" by the state statute. Id. at 355. The same requirement of "fair warning" is due here, as much as in Bouie. The latter involved racial discrimination; the present case involves rights earnestly urged as being protected by the First Amendment. In any case—certainly when constitutional rights are concerned—we should not allow men to go to prison or be fined when they had no "fair warning" that what they did was criminal conduct.

II

1973, Miller v. California, 413 U.S. 42

If a specific book, play, paper, or motion picture has in a civil proceeding been condemned as obscene and review of that finding has been completed, and thereafter a person publishes, shows, or displays that particular book or film, then a vague law has been made specific. There would remain the underlying question whether the First Amendment allows an implied exception in the case of obscenity. I do not think it does, 6 and my views [413 U.S. 43] on the issue have been stated over and over again. 7 But at least a criminal prosecution brought at that juncture would not violate the time-honored "void for vagueness" test. 8

1973, Miller v. California, 413 U.S. 43

No such protective procedure has been designed by California in this case. Obscenity—which even we cannot define with precision—is a hodge-podge. To send [413 U.S. 44] men to jail for violating standards they cannot understand, construe, and apply is a monstrous thing to do in a Nation dedicated to fair trials and due process.

III

1973, Miller v. California, 413 U.S. 44

While the right to know is the corollary of the right to speak or publish, no one can be forced by government to listen to disclosure that he finds offensive. That was the basis of my dissent in Public Utilities Comm'n v. Pollak, 343 U.S. 451, 467, where I protested against making streetcar passengers a "captive" audience. There is no "captive audience" problem in these obscenity cases. No one is being compelled to look or to listen. Those who enter newsstands or bookstalls may be offended by what they see. But they are not compelled by the State to frequent those places; and it is only state or governmental action against which the First Amendment, applicable to the States by virtue of the Fourteenth, raises a ban.

1973, Miller v. California, 413 U.S. 44

The idea that the First Amendment permits government to ban publications that are "offensive" to some people puts an ominous gloss on freedom of the press. That test would make it possible to ban any paper or any journal or magazine in some benighted place. The First Amendment was designed "to invite dispute," to induce "a condition of unrest," to "create dissatisfaction with conditions as they are," and even to stir "people to anger." Terminiello v. Chicago, 337 U.S. 1, 4. The idea that the First Amendment permits punishment for ideas that are "offensive" to the particular judge or jury sitting in judgment is astounding. No greater leveler of speech or literature has ever been designed. To give the power to the censor, as we do today, is to make a sharp and radical break with the traditions of a free society. The First Amendment was not fashioned as a vehicle for [413 U.S. 45] dispensing tranquilizers to the people. Its prime function was to keep debate open to "offensive" as well as to "staid" people. The tendency throughout history has been to subdue the individual and to exalt the power of government. The use of the standard "offensive" gives authority to government that cuts the very vitals out of the First Amendment. 9 As is intimated by the Court's opinion, the materials before us may be garbage. But so is much of what is said in political campaigns, in the daily press, on TV, or over the radio. By reason of the First Amendment—and solely because of it—speakers and publishers have not been threatened or subdued because their thoughts and ideas may be "offensive" to some.

1973, Miller v. California, 413 U.S. 45

The standard "offensive" is unconstitutional in yet another way. In Coates v. City of Cincinnati, 402 U.S. 611, we had before us a municipal ordinance that made it a crime for three or more persons to assemble on a street and conduct themselves "in a manner annoying to persons [413 U.S. 46] passing by." We struck it down, saying:

1973, Miller v. California, 413 U.S. 46

If three or more people meet together on a sidewalk or street corner, they must conduct themselves so as not to annoy any police officer or other person who should happen to pass by. In our opinion, this ordinance is unconstitutionally vague because it subjects the exercise of the right of assembly to an unascertainable standard, and unconstitutionally broad because it authorizes the punishment of constitutionally protected conduct.

1973, Miller v. California, 413 U.S. 46

Conduct that annoys some people does not annoy others. Thus, the ordinance is vague not in the sense that it requires a person to conform his conduct to an imprecise but comprehensive normative standard, but rather in the sense that no standard of conduct is specified at all.

1973, Miller v. California, 413 U.S. 46

Id. at 614.

1973, Miller v. California, 413 U.S. 46

How we can deny Ohio the convenience of punishing people who "annoy" others and allow California power to punish people who publish materials "offensive" to some people is difficult to square with constitutional requirements.

1973, Miller v. California, 413 U.S. 46

If there are to be restraints on what is obscene, then a constitutional amendment should be the way of achieving the end. There are societies where religion and mathematics are the only free segments. It would be a dark day for America if that were our destiny. But the people can make it such if they choose to write obscenity into the Constitution and define it.

1973, Miller v. California, 413 U.S. 46

We deal with highly emotional, not rational, questions. To many, the Song of Solomon is obscene. I do not think we, the judges, were ever given the constitutional power to make definitions of obscenity. If it is to be defined, let the people debate and decide by a constitutional amendment what they want to ban as obscene and what standards they want the legislatures and the courts to apply. Perhaps the people will decide that the path towards a mature, integrated society requires [413 U.S. 47] that all ideas competing for acceptance must have no censor. Perhaps they will decide otherwise. Whatever the choice, the courts will have some guidelines. Now we have none except our own predilections.

BRENNAN, J., dissenting

1973, Miller v. California, 413 U.S. 47

MR. JUSTICE BRENNAN, with whom MR. JUSTICE STEWART and MR. JUSTICE MARSHALL join, dissenting.

1973, Miller v. California, 413 U.S. 47

In my dissent in Paris Adult Theatre I v. Slaton, post, p. 73, decided this date, I noted that I had no occasion to consider the extent of state power to regulate the distribution of sexually oriented material to juveniles or the offensive exposure of such material to unconsenting adults. In the case before us, appellant was convicted of distributing obscene matter in violation of California Penal Code § 311.2, on the basis of evidence that he had caused to be mailed unsolicited brochures advertising various books and a movie. I need not now decide whether a statute might be drawn to impose, within the requirements of the First Amendment, criminal penalties for the precise conduct at issue here. For it is clear that, under my dissent in Paris Adult Theatre I, the statute under which the prosecution was brought is unconstitutionally overbroad, and therefore invalid on its face.\*

1973, Miller v. California, 413 U.S. 47

[T]he transcendent value to all society of constitutionally protected expression is deemed to justify allowing 'attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity.

1973, Miller v. California, 413 U.S. 47

Gooding v. Wilson, 405 U.S. 518, 521 (1972), quoting [413 U.S. 48] from Dombrowski v. Pfister, 380 U.S. 479, 486 (1965). See also Baggett v. Bullitt, 377 U.S. 360, 366 (1964); Coates v. City of Cincinnati, 402 U.S. 611, 616 (1971); id. at 619-620 (WHITE, J., dissenting); United States v. Raines, 362 U.S. 17, 21-22 (1960); NAACP v. Button, 371 U.S. 415, 433 (1963). Since my view in Paris Adult Theatre I represents a substantial departure from the course of our prior decisions, and since the state courts have as yet had no opportunity to consider whether a "readily apparent construction suggests itself as a vehicle for rehabilitating the [statute] in a single prosecution," Dombrowski v. Pfister, supra, at 491, I would reverse the judgment of the Appellate Department of the Superior Court and remand the case for proceedings not inconsistent with this opinion. See Coates v. City of Cincinnati, supra, at 616.

Footnotes

BURGER, J., lead opinion (Footnotes)

1973, Miller v. California, 413 U.S. 48

1. At the time of the commission of the alleged offense, which was prior to June 25, 1969, §§ 311.2(a) and 311 of the California Penal Code read in relevant part:

1973, Miller v. California, 413 U.S. 48

§ 311.2 Sending or bringing into state for sale or distribution; printing, exhibiting, distributing or possessing within state

1973, Miller v. California, 413 U.S. 48

(a) Every person who knowingly: sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state prepares, publishes, prints, exhibits, distributes, or offers to distribute, or has in his possession with intent to distribute or to exhibit or offer to distribute, any obscene matter is guilty of a misdemeanor….

1973, Miller v. California, 413 U.S. 48

§ 311. Definitions

1973, Miller v. California, 413 U.S. 48

As used in this chapter:

1973, Miller v. California, 413 U.S. 48

(a) "Obscene" means that to the average person, applying contemporary standards, the predominant appeal of the matter, taken as a whole, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters and is matter which is utterly without redeeming social importance.

1973, Miller v. California, 413 U.S. 48

(b) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.

1973, Miller v. California, 413 U.S. 48

(c) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

1973, Miller v. California, 413 U.S. 48

(d) "Distribute" means to transfer possession of, whether with or without consideration.

1973, Miller v. California, 413 U.S. 48

(e) "Knowingly" means having knowledge that the matter is obscene.

1973, Miller v. California, 413 U.S. 48

Section 311(e) of the California Penal Code, supra, was amended on June 25, 1969, to read as follows:

1973, Miller v. California, 413 U.S. 48

(e) "Knowingly" means being aware of the character of the matter.

1973, Miller v. California, 413 U.S. 48

Cal. Amended Stats.1969, c. 249, § 1, p. 598. Despite appellant's contentions to the contrary, the record indicates that the new § 311(e) was not applied ex post facto to his case, but only the old § 311(e) as construed by state decisions prior to the commission of the alleged offense. See People v. Pinkus, 256 Cal.App.2d 941, 948-950, 63 Cal.Rptr. 680, 685-686 (App. Dept., Superior Ct., Los Angeles, 1967); People v. Campise, 242 Cal.App.2d 905, 914, 51 Cal.Rptr. 815, 821 (App.Dept., Superior Ct., San Diego, 1966). Cf. Bouie v. City of Columbia, 378 U.S. 347 (1964). Nor did § 311.2, supra, as applied, create any "direct, immediate burden on the performance of the postal functions," or infringe on congressional commerce powers under Art. I, § 8, cl. 3. Roth v. United States, 354 U.S. 476, 494 (1957), quoting Railway Mail Assn. v. Corsi, 326 U.S. 88, 96 (1945). See also Mishkin v. New York, 383 U.S. 502, 506 (1966); Smith v. California, 361 U.S. 147, 150-152 (1959).

1973, Miller v. California, 413 U.S. 48

2. This Court has defined "obscene material" as "material which deals with sex in a manner appealing to prurient interest," Roth v. United States, supra, at 487, but the Roth definition does not reflect the precise meaning of "obscene" as traditionally used in the English language. Derived from the Latin obscaenus ob, to, plus caenum, filth, "obscene" is defined in the Webster's Third New International Dictionary (Unabridged 1969) as

1973, Miller v. California, 413 U.S. 48

1a: disgusting to the senses…b: grossly repugnant to the generally accepted notions of what is appropriate…2: offensive or revolting as countering or violating some ideal or principle.

1973, Miller v. California, 413 U.S. 48

The Oxford English Dictionary (1933 ed.) gives a similar definition, "[o]ffensive to the senses, or to taste or refinement; disgusting, repulsive, filthy, foul, abominable, loathsome."

1973, Miller v. California, 413 U.S. 48

The material we are discussing in this case is more accurately defined as "pornography" or "pornographic material." "Pornography" derives from the Greek (porne, harlot, and graphos, writing). The word now means

1973, Miller v. California, 413 U.S. 48

1: a description of prostitutes or prostitution 2: a depiction (as in writing or painting) of licentiousness or lewdness: a portrayal of erotic behavior designed to cause sexual excitement.

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Webster's Third New International Dictionary, supra. Pornographic material which is obscene forms a sub-group of all "obscene" expression, but not the whole, at least as the word "obscene" is now used in our language. We note, therefore, that the words "obscene material," as used in this case, have a specific judicial meaning which derives from the Roth case, i.e., obscene material "which deals with sex." Roth, supra, at 487. See also ALI Model Penal Code § 251.4(1) "Obscene Defined." (Official Draft 1962.)

1973, Miller v. California, 413 U.S. 48

3. In the absence of a majority view, this Court was compelled to embark on the practice of summarily reversing convictions for the dissemination of materials that, at least five members of the Court, applying their separate tests, found to be protected by the First Amendment. Redrup v. New York, 386 U.S. 767 (1967). Thirty-one cases have been decided in this manner. Beyond the necessity of circumstances, however, no justification has ever been offered in support of the Redrup "policy." See Walker v. Ohio, 398 U.S. at 434-435 (1970) (dissenting opinions of BURGER, C.J., and Harlan, J.). The Redrup procedure has cast us in the role of an unreviewable board of censorship for the 50 States, subjectively judging each piece of material brought before us.

1973, Miller v. California, 413 U.S. 48

4. See the dissenting opinion of MR. JUSTICE BRENNAN in Paris Adult Theatre I v. Slaton, post, p. 73.

1973, Miller v. California, 413 U.S. 48

5. As Mr. Chief Justice Warren stated, dissenting, in Jacobellis v. Ohio, 378 U.S. 184, 200 (1964):

1973, Miller v. California, 413 U.S. 48

For all the sound and fury that the Roth test has generated, it has not been proved unsound, and I believe that we should try to live with it—at least until a more satisfactory definition is evolved. No government—be it federal, state, or local—should be forced to choose between repressing all material, including that within the realm of decency, and allowing unrestrained license to publish any material, no matter how vile. There must be a rule of reason in this as in other areas of the law, and we have attempted in the Roth case to provide such a rule.

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6. See, e.g., Oregon Laws 1971, c. 743, Art. 29, §§ 255-262, and Hawaii Penal Code, Tit. 37, §§ 1210-1216, 1972 Hawaii Session Laws, Act 9, c. 12, pt.. II, pp. 126-129, as examples of state laws directed at depiction of defined physical conduct, as opposed to expression. Other state formulations could be equally valid in this respect. In giving the Oregon and Hawaii statutes as examples, we do not wish to be understood as approving of them in all other respects nor as establishing their limits as the extent of state power.

1973, Miller v. California, 413 U.S. 48

We do not hold, as MR. JUSTICE BRENNAN intimates, that all States other than Oregon must now enact new obscenity statutes. Other existing state statutes, as construed heretofore or hereafter, may well be adequate. See United States v. 12 200-ft. Reel of Film, post, at 130 n. 7.

1973, Miller v. California, 413 U.S. 48

7. "A quotation from Voltaire in the flyleaf of a book will not constitutionally redeem an otherwise obscene publication…. " Kois v. Wisconsin, 408 U.S. 229, 231 (1972). See Memoirs v. Massachusetts, 383 U.S. 413, 461 (1966) (WHITE, J., dissenting). We also reject, as a constitutional standard, the ambiguous concept of "social importance." See id. at 462 (WHITE, J., dissenting).

1973, Miller v. California, 413 U.S. 48

8. Although we are not presented here with the problem of regulating lewd public conduct itself, the States have greater power to regulate nonverbal, physical conduct than to suppress depictions or descriptions of the same behavior. In United States v. O'Brien, 391 U.S. 367, 377 (1968), a case not dealing with obscenity, the Court held a State regulation of conduct which itself embodied both speech and nonspeech elements to be

1973, Miller v. California, 413 U.S. 48

sufficiently justified if…it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

1973, Miller v. California, 413 U.S. 48

See California v. LaRue, 409 U.S. 109, 117-118 (1972).

1973, Miller v. California, 413 U.S. 48

9. The mere fact juries may reach different conclusions as to the same material does not mean that constitutional rights are abridged. As this Court observed in Roth v. United States, 354 U.S. at 492 n. 30,

1973, Miller v. California, 413 U.S. 48

it is common experience that different juries may reach different results under any criminal statute. That is one of the consequences we accept under our jury system. Cf. Dunlop v. United States, 165 U.S. 486, 499-500.

1973, Miller v. California, 413 U.S. 48

10. As MR. JUSTICE BRENNAN stated for the Court in Roth v. United States, supra at 491-492:

1973, Miller v. California, 413 U.S. 48

Many decisions have recognized that these terms of obscenity statutes are not precise. [Footnote omitted.] This Court, however, has consistently held that lack of precision is not itself offensive to the requirements of due process. "…[T]he Constitution does not require impossible standards;" all that is required is that the language "conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices…. " United States v. Petrillo, 332 U.S. 1, 7-8. These words, applied according to the proper standard for judging obscenity, already discussed, give adequate warning of the conduct proscribed and mark

1973, Miller v. California, 413 U.S. 48

…boundaries sufficiently distinct for judges and juries fairly to administer the law…. That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense….

1973, Miller v. California, 413 U.S. 48

Id. at 7. See also United States v. Harriss, 347 U.S. 612, 624, n. 15; Boyce Motor Lines, Inc. v. United States, 342 U.S. 337, 340; United States v. Ragen, 314 U.S. 513, 523-524; United States v. Wurzbach, 280 U.S. 396; Hygrade Provision Co. v. Sherman, 266 U.S. 497; Fox v. Washington, 236 U.S. 273; Nash v. United States, 229 U.S. 373.

1973, Miller v. California, 413 U.S. 48

11. We must note, in addition, that any assumption concerning the relative burdens of the past and the probable burden under the standards now adopted is pure speculation.

1973, Miller v. California, 413 U.S. 48

12. The record simply does not support appellant's contention, belatedly raised on appeal, that the State's expert was unqualified to give evidence on California "community standards." The expert, a police officer with many years of specialization in obscenity offenses, had conducted an extensive state-wide survey and had given expert evidence on 26 occasions in the year prior to this trial. Allowing such expert testimony was certainly not constitutional error. Cf. United States v. Augenblick, 393 U.S. 348, 356 (1969).

1973, Miller v. California, 413 U.S. 48

13. In Jacobellis v. Ohio, 378 U.S. 184 (1964), two Justices argued that application of "local" community standards would run the risk of preventing dissemination of materials in some places because sellers would be unwilling to risk criminal conviction by testing variations in standards from place to place. Id. at 193-195 (opinion of BRENNAN, J., joined by Goldberg, J.). The use of "national" standards, however, necessarily implies that materials found tolerable in some places, but not under the "national" criteria, will nevertheless be unavailable where they are acceptable. Thus, in terms of danger to free expression, the potential for suppression seems at least as great in the application of a single nationwide standard as in allowing distribution in accordance with local tastes, a point which Mr. Justice Harlan often emphasized. See Roth v. United States, 354 U.S. at 506.

1973, Miller v. California, 413 U.S. 48

Appellant also argues that adherence to a "national standard" is necessary "in order to avoid unconscionable burdens on the free flow of interstate commerce." As noted supra at 18 n. 1, the application of domestic state police powers in this case did not intrude on any congressional powers under Art. I, § 8, cl. 3, for there is no indication that appellant's materials were ever distributed interstate. Appellant's argument would appear without substance in any event. Obscene material may be validly regulated by a State in the exercise of its traditional local power to protect the general welfare of its population despite some possible incidental effect on the flow of such materials across state lines. See, e.g., Head v. New Mexico Board, 374 U.S. 424 (1963); Huron Portland Cement Co. v. Detroit, 362 U.S. 440 (1960); Breard v. Alexandria, 341 U.S. 622 (1951); H. P. Hood & Sons v. Du Mond, 336 U.S. 525 (1949); Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945); Baldwin v. G.A.F. Seelig, Inc., 294 U.S. 511 (1935); Sligh v. Kirkwood, 237 U.S. 52 (1915).

1973, Miller v. California, 413 U.S. 48

14. Appellant's jurisdictional statement contends that he was subjected to "double jeopardy" because a Los Angeles County trial judge dismissed, before trial, a prior prosecution based on the same brochures, but apparently alleging exposures at a different time in a different setting. Appellant argues that, once material has been found not to be obscene in one proceeding, the State is "collaterally estopped" from ever alleging it to be obscene in a different proceeding. It is not clear from the record that appellant properly raised this issue, better regarded as a question of procedural due process than a "double jeopardy" claim, in the state courts below. Appellant failed to address any portion of his brief on the merits to this issue, and appellee contends that the question was waived under California law because it was improperly pleaded at trial. Nor is it totally clear from the record before us what collateral effect the pretrial dismissal might have under state law. The dismissal was based, at least in part, on a failure of the prosecution to present affirmative evidence required by state law, evidence which was apparently presented in this case. Appellant's contention, therefore, is best left to the California courts for further consideration on remand. The issue is not, in any event, a proper subject for appeal. See Mishkin v. New York, 383 U.S. 502, 512-514 (1966).

1973, Miller v. California, 413 U.S. 48

15. In the apt words of Mr. Chief Justice Warren, appellant in this case was

1973, Miller v. California, 413 U.S. 48

plainly engaged in the commercial exploitation of the morbid and shameful craving for materials with prurient effect. I believe that the State and Federal Governments can constitutionally punish such conduct. That is all that these cases present to us, and that is all we need to decide.

1973, Miller v. California, 413 U.S. 48

Roth v. United States, supra, at 496 (concurring opinion).

1973, Miller v. California, 413 U.S. 48

16. See 2 V. Parrington, Main Currents in American Thought ix et seq. (1930). As to the latter part of the 19th century, Parrington observed

1973, Miller v. California, 413 U.S. 48

A new age had come and other dreams—the age and the dreams of a middle-class sovereignty…. From the crude and vast romanticisms of that vigorous sovereignty emerged eventually a spirit of realistic criticism, seeking to evaluate the worth of this new America, and discover if possible other philosophies to take the place of those which had gone down in the fierce battles of the Civil War.

1973, Miller v. California, 413 U.S. 48

Id. at 474. Cf. 2 S. Morison, H. Commager & W. Leuchtenburg, The Growth of the American Republic 197-233 (6th ed.1969); Paths of American Thought 123-166, 203-290 (A. Schlesinger & M. White ed.1963) (articles of Fleming, Lerner, Morton & Lucia White, E. Rostow, Samuelson, Kazin, Hofstadter); and H. Wish, Society and Thought in Modern America 337-386 (1952).

1973, Miller v. California, 413 U.S. 48

17.

1973, Miller v. California, 413 U.S. 48

[W]e have indicated…that, because of its strong and abiding interest in youth, a State may regulate the dissemination to juveniles of, and their access to, material objectionable as to them, but which a State clearly could not regulate as to adults. Ginsberg v. New York,…[390 U.S. 629 (1968)].

1973, Miller v. California, 413 U.S. 48

Interstate Circuit, Inc. v. Dallas, 390 U.S. 676, 690 (1968) (footnote omitted).

DOUGLAS, J., dissenting (Footnotes)

1973, Miller v. California, 413 U.S. 48

1. California defines "obscene matter" as

1973, Miller v. California, 413 U.S. 48

matter, taken as a whole, the predominant appeal of which to the average person, applying contemporary standards, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion; and is matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which taken as a whole is utterly without redeeming social importance.

1973, Miller v. California, 413 U.S. 48

Calif. Penal Code § 311(a).

1973, Miller v. California, 413 U.S. 48

2. Roth v. United States, 354 U.S. 476, 502 (opinion of Harlan, J.).

1973, Miller v. California, 413 U.S. 48

3. Ginzburg v. United States, 383 U.S. 463, 467.

1973, Miller v. California, 413 U.S. 48

4. Jacobellis v. Ohio, 378 U.S. 184, 197 (STEWART, J., concurring).

1973, Miller v. California, 413 U.S. 48

5. At the conclusion of a two-year study, the U.S. Commission on Obscenity and Pornography determined that the standards we have written interfere with constitutionally protected materials:

1973, Miller v. California, 413 U.S. 48

Society's attempts to legislate for adults in the area of obscenity have not been successful. Present laws prohibiting the consensual sale or distribution of explicit sexual materials to adults are extremely unsatisfactory in their practical application. The Constitution permits material to be deemed "obscene" for adults only if, as a whole, it appeals to the "prurient" interest of the average person, is "patently offensive" in light of "community standards," and lacks "redeeming social value." These vague and highly subjective aesthetic, psychological and moral tests do not provide meaningful guidance for law enforcement officials, juries or courts. As a result, law is inconsistently and sometimes erroneously applied, and the distinctions made by courts between prohibited and permissible materials often appear indefensible. Errors in the application of the law and uncertainty about its scope also cause interference with the communication of constitutionally protected materials.

1973, Miller v. California, 413 U.S. 48

Report of the Commission on Obscenity and Pornography 53 (1970).

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6. It is said that "obscene" publications can be banned on authority of restraints on communications incident to decrees restraining unlawful business monopolies or unlawful restraints of trade, Sugar Institute v. United States, 297 U.S. 553, 597, or communications respecting the sale of spurious or fraudulent securities. Hall v. Geier-Jones Co., 242 U.S. 539, 549; Caldwell v. Sioux Falls Stock Yards Co., 242 U.S. 559, 567; Merrick v. Halsey & Co., 242 U.S. 568, 584. The First Amendment answer is that, whenever speech and conduct are brigaded—as they are when one shouts "Fire" in a crowded theater—speech can be outlawed. Mr. Justice Black, writing for a unanimous Court in Giboney v. Empire Storage Co., 336 U.S. 490, stated that labor unions could be restrained from picketing a firm in support of a secondary boycott which a State had validly outlawed. Mr. Justice Black said:

1973, Miller v. California, 413 U.S. 48

It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute. We reject the contention now.

1973, Miller v. California, 413 U.S. 48

Id. at 498.

1973, Miller v. California, 413 U.S. 48

7. See United States v. 12 200-ft. Reels of Film, post, p. 123; United States v. Orito, post, p. 139; Kois v. Wisconsin, 408 U.S. 229; Byrne v. Karalexis, 396 U.S. 976, 977; Ginsberg v. New York, 390 U.S. 629, 650; Jacobs v. New York, 388 U.S. 431, 436; Ginzburg v. United States, 383 U.S. 463, 482; Memoirs v. Massachusetts, 383 U.S. 413, 424; Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 72; Times Film Corp. v. Chicago, 365 U.S. 43, 78; Smith v. California, 361 U.S. 147, 167; Kingsley Pictures Corp. v. Regents, 360 U.S. 684, 697; Roth v. United States, 354 U.S. 476, 508; Kingsley Books, Inc. v. Brown, 354 U.S. 436, 446; Superior Films, Inc. v. Department of Education, 346 U.S. 587, 588; Gelling v. Texas, 343 U.S. 60.

1973, Miller v. California, 413 U.S. 48

8. The Commission on Obscenity and Pornography has advocated such a procedure:

1973, Miller v. California, 413 U.S. 48

The Commission recommends the enactment, in all jurisdictions which enact or retain provisions prohibiting the dissemination of sexual materials to adults or young persons, of legislation authorizing prosecutors to obtain declaratory judgments as to whether particular materials fall within existing legal prohibitions….

1973, Miller v. California, 413 U.S. 48

A declaratory judgment procedure…would permit prosecutors to proceed civilly, rather than through the criminal process, against suspected violations of obscenity prohibition. If such civil procedures are utilized, penalties would be imposed for violation of the law only with respect to conduct occurring after a civil declaration is obtained. The Commission believes this course of action to be appropriate whenever there is any existing doubt regarding the legal status of materials; where other alternatives are available, the criminal process should not ordinarily be invoked against persons who might have reasonably believed, in good faith, that the books or films they distributed were entitled to constitutional protection, for the threat of criminal sanctions might otherwise deter the free distribution of constitutionally protected material.

1973, Miller v. California, 413 U.S. 48

Report of the Commission on Obscenity and Pornography 63 (1970).

1973, Miller v. California, 413 U.S. 48

9. Obscenity law has had a capricious history:

1973, Miller v. California, 413 U.S. 48

The white slave traffic was first exposed by W. T. Stead in a magazine article, "The Maiden Tribute." The English law did absolutely nothing to the profiteers in vice, but put Stead in prison for a year for writing about an indecent subject. When the law supplies no definite standard of criminality, a judge, in deciding what is indecent or profane, may consciously disregard the sound test of present injury, and proceeding upon an entirely different theory may condemn the defendant because his words express ideas which are thought liable to cause bad future consequences. Thus, musical comedies enjoy almost unbridled license, while a problem play is often forbidden because opposed to our views of marriage. In the same way, the law of blasphemy has been used against Shelley's Queen Mab and the decorous promulgation of pantheistic ideas on the ground that to attack religion is to loosen the bonds of society and endanger the state. This is simply a round-about modern method to make heterodoxy in sex matters and even in religion a crime.

1973, Miller v. California, 413 U.S. 48

Z. Chafee, Free Speech in the United States 151 (1942).

BRENNAN, J., dissenting (Footnotes)

1973, Miller v. California, 413 U.S. 48

\* Cal. Penal Code § 311.2(a) provides that

1973, Miller v. California, 413 U.S. 48

Every person who knowingly: sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state prepares, publishes, prints, exhibits, distributes, or offers to distribute, or has in his possession with intent to distribute or to exhibit or offer to distribute, any obscene matter is guilty of a misdemeanor.

President Nixon's Address to the Nation About Policies To Deal With the Energy Shortages, 1973

Title: President Nixon's Address to the Nation About Policies To Deal With the Energy Shortages

Author: Richard M. Nixon

Date: November 7, 1973

Source: Public Papers of the Presidents, Nixon, 1973, pp.916-922

Public Papers of Nixon, 1973, p.916

Good evening:

Public Papers of Nixon, 1973, p.916

I want to talk to you tonight about a serious national problem, a problem we must all face together in the months and years ahead.

Public Papers of Nixon, 1973, p.916

As America has grown and prospered in recent years, our energy demands have begun to exceed available supplies. In recent months, we have taken many actions to increase supplies and to reduce consumption. But even with our best efforts, we knew that a period of temporary shortages was inevitable.

Public Papers of Nixon, 1973, p.916

Unfortunately, our expectations for this winter have now been sharply altered by the recent conflict in the Middle East. Because of that war, most of the Middle Eastern oil producers have reduced overall production and cut off their shipments of oil to the United States. By the end of this month, more than 2 million barrels a day of oil we expected to import into the United States will no longer be available.

Public Papers of Nixon, 1973, p.916

We must, therefore, face up to a very stark fact: We are heading toward the most acute shortages of energy since World War II. Our supply of petroleum this winter will be at least 10 percent short of our anticipated demands, and it could fall short by as much as 17 percent.

Public Papers of Nixon, 1973, p.916

Now, even before war broke out in the Middle East, these prospective shortages were the subject of intensive discussions among members of my Administration, leaders of the Congress, Governors, mayors, and other groups. From these discussions has emerged a broad agreement that we, as a nation, must now set upon a new course.

Public Papers of Nixon, 1973, p.916

In the short run, this course means that we must use less energy—that means less heat, less electricity, less gasoline. In the long run, it means that we must develop new sources of energy which will give us the capacity to meet our needs without relying on any foreign nation.

Public Papers of Nixon, 1973, p.916

The immediate shortage will affect the lives of each and every one of us. In our factories, our cars, our homes, our offices, we will have to use less fuel than we are accustomed to using. Some school and factory schedules may be realigned, and some jet airplane flights will be canceled.

Public Papers of Nixon, 1973, p.916

This does not mean that we are going to run out of gasoline or that air travel will stop or that we will freeze in our homes or offices anyplace in America. The fuel crisis need not mean genuine suffering for any American. But it will require some sacrifice by all Americans.

Public Papers of Nixon, 1973, p.916

We must be sure that our most vital needs are met first—and that our least important activities are the first to be cut back. And we must be sure that while the fat from our economy is being trimmed, the muscle is not seriously damaged.

Public Papers of Nixon, 1973, p.916

To help us carry out that responsibility, I am tonight announcing the following steps:

Public Papers of Nixon, 1973, p.916

First, I am directing that industries and utilities which use coal—which is our most abundant resource—be prevented from converting from coal to oil. Efforts will also be made to convert power plants from the use of oil to the use of coal.

Public Papers of Nixon, 1973, p.916

Second, we are allocating reduced quantities of fuel for aircraft. Now, this is going to lead to a cutback of more than 10 percent of the number of flights and some rescheduling of arrival and departure times.

Public Papers of Nixon, 1973, p.916–p.917

Third, there will be reductions of approximately [p.917] 15 percent in the supply of heating oil for homes and offices and other establishments. To be sure that there is enough oil to go around for the entire winter, all over the country, it will be essential for all of us to live and work in lower temperatures. We must ask everyone to lower the thermostat in your home by at least 6 degrees so that we can achieve a national daytime average of 68 degrees. Incidentally, my doctor tells me that in a temperature of 66 to 68 degrees, you are really more healthy than when it is 75 to 78, if that is any comfort. In offices, factories, and commercial establishments, we must ask that you achieve the equivalent of a to-degree reduction by either lowering the thermostat or curtailing working hours.

Public Papers of Nixon, 1973, p.917

Fourth, I am ordering additional reductions in the consumption of energy by the Federal Government. We have already taken steps to reduce the Government's consumption by 7 percent. The cuts must now go deeper and must be made by every agency and every department in the Government. I am directing that daytime temperatures in Federal offices be reduced immediately to a level of between 65 and 68 degrees, and that means in this room, too, as well as in every other room in the White House. In addition, I am ordering that all vehicles owned by the Federal Government—and there are over a half-million of them-travel no faster than 50 miles per hour except in emergencies. This is a step which I have also asked Governors, mayors, and local officials to take immediately with regard to vehicles under their authority.

Public Papers of Nixon, 1973, p.917

Fifth, I am asking the Atomic Energy Commission to speed up the licensing and construction of nuclear plants. We must seek to reduce the time required to bring nuclear plants on line—nuclear plants that can produce power—to bring them on line from 10 years to 6 years, reduce that time lag.

Public Papers of Nixon, 1973, p.917

Sixth, I am asking that Governors and mayors reinforce these actions by taking appropriate steps at the State and local level. We have already learned, for example, from the State of Oregon, that considerable amounts of energy can be saved simply by curbing unnecessary lighting and slightly altering the school year. I am recommending that other communities follow this example and also seek ways to stagger working hours, to encourage greater use of mass transit and carpooling.

Public Papers of Nixon, 1973, p.917

How many times have you gone along the highway or the freeway, wherever the case may be, and see hundreds and hundreds of cars with only one individual in that car? This we must all cooperate to change.

Public Papers of Nixon, 1973, p.917

Consistent with safety and economic considerations, I am also asking Governors to take steps to reduce highway speed limits to 50 miles per hour. This action alone, if it is adopted on a nationwide basis, could save over 200,000 barrels of oil a day—just reducing the speed limit to 50 miles per hour.

Public Papers of Nixon, 1973, p.917

Now, all of these actions will result in substantial savings of energy. More than that, most of these are actions that we can take right now—without further delay.

Public Papers of Nixon, 1973, p.917

The key to their success lies, however, not just here in Washington but in every home, in every community across this country. If each of us joins in this effort, joins with the spirit and the determination that have always graced the American character, then half the battle will already be won.

Public Papers of Nixon, 1973, p.917–p.918

But we should recognize that even these steps, as essential as they are, may not be [p.918] enough. We must be prepared to take additional steps, and for that purpose, additional authorities must be provided by the Congress.

Public Papers of Nixon, 1973, p.918

I have therefore directed my chief adviser for energy policy, Governor Love, and other Administration officials, to work closely with the Congress in developing an emergency energy act.

Public Papers of Nixon, 1973, p.918

I met with the leaders of the Congress this morning, and I asked that they act on this legislation on a priority, urgent basis. It is imperative that this legislation be on my desk for signature before the Congress recesses this December.

Public Papers of Nixon, 1973, p.918

Because of the hard work that has already been done on this bill by Senators Jackson and Fannin and others, I am confident that we can meet that goal and that I will have the bill on this desk and will be able to sign it.

Public Papers of Nixon, 1973, p.918

This proposed legislation would enable the executive branch to meet the energy emergency in several important ways:

Public Papers of Nixon, 1973, p.918

First, it would authorize an immediate return to daylight saving time on a year round basis.

Public Papers of Nixon, 1973, p.918

Second, it would provide the necessary authority to relax environmental regulations on a temporary, case-by-case basis, thus permitting an appropriate balancing of our environmental interests, which all of us share, with our energy requirements, which, of course, are indispensable.

Public Papers of Nixon, 1973, p.918

Third, it would grant authority to impose special energy conservation measures, such as restrictions on the working hours for shopping centers and other commercial establishments.

Public Papers of Nixon, 1973, p.918

And fourth, it would approve and fund increased exploration, development, and production from our naval petroleum reserves. Now, these reserves are rich sources of oil. From one of them alone—Elk Hills in California—we could produce more than 160,000 barrels of oil a day within 2 months.

Public Papers of Nixon, 1973, p.918

Fifth, it would provide the Federal Government with authority to reduce highway speed limits throughout the Nation.

Public Papers of Nixon, 1973, p.918

And finally, it would expand the power of the Government's regulatory agencies to adjust the schedules of planes, ships, and other carriers.

Public Papers of Nixon, 1973, p.918

If shortages persist despite all of these actions and despite inevitable increases in the price of energy products, it may then become necessary—may become necessary-to take even stronger measures.

Public Papers of Nixon, 1973, p.918

It is only prudent that we be ready to cut the consumption of oil products, such as gasoline, by rationing or by a fair system of taxation, and consequently, I have directed that contingency plans, if this becomes necessary, be prepared for that purpose.

Public Papers of Nixon, 1973, p.918

Now, some of you may wonder whether we are turning back the clock to another age. Gas rationing, oil shortages, reduced speed limits—they all sound like a way of life we left behind with Glenn Miller and the war of the forties. Well, in fact, part of our current problem also stems from war—the war in the Middle East. But our deeper energy problems come not from war, but from peace and from abundance. We are running out of energy today because our economy has grown enormously and because in prosperity what were once considered luxuries are now considered necessities.

Public Papers of Nixon, 1973, p.918

How many of you can remember when it was very unusual to have a home air-conditioned? And yet, this is very common in almost all parts of the Nation.

Public Papers of Nixon, 1973, p.918–p.919

As a result, the average American will consume as much energy in the next [p.919] 7 days as most other people in the world will consume in an entire year. We have only 6 percent of the world's people in America, but we consume over 30 percent of all the energy in the world.

Public Papers of Nixon, 1973, p.919

Now, our growing demands have bumped up against the limits of available supply, and until we provide new sources of energy for tomorrow, we must be prepared to tighten our belts today.

Public Papers of Nixon, 1973, p.919

Let me turn now to our long-range plans.

Public Papers of Nixon, 1973, p.919

While a resolution of the immediate crisis is our highest priority, we must also act now to prevent a recurrence of such a crisis in the future. This is a matter of bipartisan concern. It is going to require a bipartisan response.

Public Papers of Nixon, 1973, p.919

Two years ago, in the first energy message any President has ever sent to the Congress, I called attention to our urgent energy problem. Last April, this year, I reaffirmed to the Congress the magnitude of that problem, and I called for action on seven major legislative initiatives. Again in June, I called for action. I have done so frequently since then.

Public Papers of Nixon, 1973, p.919

But thus far, not one major energy bill that I have asked for has been enacted. I realize that the Congress has been distracted in this period by other matters. But the time has now come for the Congress to get on with this urgent business-providing the legislation that will meet not only the current crisis but also the long-range challenge 'that we face.

Public Papers of Nixon, 1973, p.919

Our failure to act now on our long-term energy problems could seriously endanger the capacity of our farms and of our factories to employ Americans at record-breaking rates—nearly 86 million people are now at work in this country-and to provide the highest standard of living we or any other nation has ever known in history.

Public Papers of Nixon, 1973, p.919

It could reduce the capacity of our farmers to provide the food we need. It could jeopardize our entire transportation system. It could seriously weaken the ability of America to continue to give the leadership which only we can provide to keep the peace that we have won at such great cost for thousands of our finest young Americans.

Public Papers of Nixon, 1973, p.919

That is why it is time to act now on vital energy legislation that will affect our daily lives, not just this year, but for years to come.

Public Papers of Nixon, 1973, p.919

We must have the legislation now which will authorize construction of the Alaska pipeline—legislation which is not burdened with irrelevant and unnecessary provisions.

Public Papers of Nixon, 1973, p.919

We must have legislative authority to encourage production of our vast quantities of natural gas, one of the cleanest and best sources of energy.

Public Papers of Nixon, 1973, p.919

We must have the legal ability to set reasonable standards for the surface mining of coal.

Public Papers of Nixon, 1973, p.919

And we must have the organizational structures to meet and administer our energy programs.

Public Papers of Nixon, 1973, p.919

And therefore, tonight, as I did this morning in meeting with the Congressional leaders, I again urge the Congress to give its attention to the initiatives I recommended 6 months ago to meet these needs that I have described.

Public Papers of Nixon, 1973, p.919–p.920

Finally, I have stressed repeatedly the necessity of increasing our energy research and development efforts. Last June, I announced a 5-year, $10 billion program to develop better ways of using energy and to explore and develop new energy sources. Last month, I announced plans for an [p.920] immediate acceleration of that program.

Public Papers of Nixon, 1973, p.920

We can take heart from the fact that we in the United States have half the world's known coal reserves. We have huge, untapped sources of natural gas. We have the most advanced nuclear technology known to man. We have oil in our continental shelves. We have oil shale out in the western part of the United States, and we have some of the finest technical and scientific minds in the world. In short, we have all the resources we need to meet the great challenge before us. Now we must demonstrate the will to meet that challenge.

Public Papers of Nixon, 1973, p.920

In World War II, America was faced with the necessity of rapidly developing an atomic capability. The circumstances were grave. Responding to that challenge, this Nation brought together its finest scientific skills and its finest administrative skills in what was known as the Manhattan Project. With all the needed resources at its command, with the highest priority assigned to its efforts, the Manhattan Project gave us the atomic capacity that helped to end the war in the Pacific and to bring peace to the world.

Public Papers of Nixon, 1973, p.920

Twenty years later, responding to a different challenge, we focused our scientific and technological genius on the frontiers of space. We pledged to put a man on the Moon before 1970, and on July 20, 1969, Neil Armstrong made that historic "giant leap for mankind" when he stepped on the Moon.

Public Papers of Nixon, 1973, p.920

The lessons of the Apollo project and of the earlier Manhattan Project are the same lessons that are taught by the whole of American history: Whenever the American people are faced with a clear goal and they are challenged to meet it, we can do extraordinary things.

Public Papers of Nixon, 1973, p.920

Today the challenge is to regain the strength that we had earlier in this century, the strength of self-sufficiency. Our ability to meet our own energy needs is directly limited to our continued ability to act decisively and independently at home and abroad in the service of peace, not only for America but for all nations in the world.

Public Papers of Nixon, 1973, p.920

I have ordered funding of this effort to achieve self-sufficiency far in excess of the funds that were expended on the Manhattan Project. But money is only one of the ingredients essential to the success of such a project. We must also have a unified .commitment to that goal. We must have unified direction of the effort to accomplish it.

Public Papers of Nixon, 1973, p.920

Because of the urgent need for an organization that would provide focused leadership for this effort, I am asking the Congress to consider my proposal for an Energy Research and Development Administration, separate from any other organizational initiatives, and to enact this legislation in the present session of the Congress.

Public Papers of Nixon, 1973, p.920

Let us unite in committing the resources of this Nation to a major new endeavor, an endeavor that in this Bicentennial Era we can appropriately call "Project Independence."

Public Papers of Nixon, 1973, p.920

Let us set as our national goal, in the spirit of Apollo, with the determination of the Manhattan Project, that by the end of this decade we will have developed the potential to meet our own energy needs without depending on any foreign energy sources.

Public Papers of Nixon, 1973, p.920

Let us pledge that by 1980, under Project Independence, we shall be able to meet America's energy needs from America's own energy resources.

Public Papers of Nixon, 1973, p.921

In speaking to you tonight in terms as direct as these, my concern has been to lay before you the full facts of the Nation's energy/shortage. It is important that each of us understands what the situation is and how the efforts we together can take to help to meet it are essential to our total effort.

Public Papers of Nixon, 1973, p.921

No people in the world perform more nobly than the American people when called upon to unite in the service of their country. I am supremely confident that while the days and weeks ahead may be a time of some hardship for many of us, they Will also be a time of renewed commitment and concentration to the national interest.

Public Papers of Nixon, 1973, p.921

We have an energy crisis, but there is no crisis of the American spirit. Let us go forward, then, doing what needs to be done, proud of what we have accomplished together in the past and confident of what we can accomplish together in the future.

Public Papers of Nixon, 1973, p.921

Let us find in this time of national necessity a renewed awareness of our capacities as a people, a deeper sense of our responsibilities as a nation, and an increased understanding that the measure and the meaning of America has always been determined by the devotion which each of us brings to our duty as citizens of America.

Public Papers of Nixon, 1973, p.921

I should like to close with a personal note.

Public Papers of Nixon, 1973, p.921

It was just one year ago that I was reelected as President of the United States of America. During this past year we have made great progress in achieving the goals that I set forth in my reelection campaign.

Public Papers of Nixon, 1973, p.921

We have ended the longest war in America's history. All of our prisoners of war have been returned home. And for the first time in 25 years, no young Americans are being drafted into the armed services. We have made progress toward our goal of a real prosperity, a prosperity without war. The rate of unemployment is down to 4 1/2 percent, which is the lowest unemployment in peacetime that we have had in 16 years, and we are finally beginning to make progress in our fight against the rise in the cost of living.

Public Papers of Nixon, 1973, p.921

These are substantial achievements in this year 1973. But I would be less than candid if I were not to admit that this has not been an easy year in some other respects, as all of you are quite aware.

Public Papers of Nixon, 1973, p.921

As a result of the deplorable Watergate matter, great numbers of Americans have had doubts raised as to the integrity of the President of the United States. I have even noted that some publications have called on me to resign the Office of President of the United States.

Public Papers of Nixon, 1973, p.921

Tonight I would like to give my answer to those who have suggested that I resign.

Public Papers of Nixon, 1973, p.921

I have no intention whatever of walking away from the job I was elected to do. As long as I am physically able, I am going to continue to work 16 to 18 hours a day for the cause of a real peace abroad, and for the cause of prosperity without inflation and without war at home. And in the months ahead, I shall do everything that I can to see that any doubts as to the integrity of the man who occupies the highest office in this land—to remove those doubts where they exist.

Public Papers of Nixon, 1973, p.921–p.922

And I am confident that in those months ahead, the American people will come to realize that I have not violated [p.922] the trust that they placed in me when they elected me as President of the United States in the past, and I pledge to you tonight that I shall always do everything that I can to be worthy of that trust in the future.

Public Papers of Nixon, 1973, p.922

Thank you and good night.

Public Papers of Nixon, 1973, p.922

NOTE: The President spoke at 7:30 p.m. from the Oval Office at the White House. The address was broadcast live on nationwide radio and television. An advance text of his address was released on the same day.

Public Papers of Nixon, 1973, p.922

The White House also released a fact sheet and the transcript of a news briefing on the contents of the President's address by John A. Love, Director of the Energy Policy Office.

Prior to his address, the President met separately during the day with members of the bipartisan Congressional leadership; a group of Governors, mayors, and county officials; and a group of business leaders and representatives of labor and consumer groups.

Public Papers of Nixon, 1973, p.922

On November 7 and 8, 1973, the President sent telegrams to Governors, mayors, and county officials, recommending specific actions to meet the energy shortages.

Public Papers of Nixon, 1973, p.922

On November 14, the White House announced that the President had directed Director Love to form a Special Action Group to report to the President on steps being taken to achieve the conservation of energy for which the President had asked and to coordinate the energy activities of the Administration with the initial, primary emphasis on short-term problems and solutions.

President Nixon's State of the Union Address, 1974

Title: President Nixon's State of the Union Address

Author: Richard M. Nixon

Date: January 30, 1974

Source: Public Papers of the Presidents, Nixon, 1974, pp.47-55

Public Papers of Nixon, 1974, p.47

Mr. Speaker, Mr. President, my colleagues in the Congress, our distinguished guests, my fellow Americans:

Public Papers of Nixon, 1974, p.47

We meet here tonight at a time of great challenge and great opportunities for America. We meet at a time when we face great problems at home and abroad that will test the strength of our fiber as a nation. But we also meet at a time when that fiber has been tested, and it has proved strong.

Public Papers of Nixon, 1974, p.47

America is a great and good land, and we are a great and good land because we are a strong, free, creative people and because America is the single greatest force for peace anywhere in the world. Today, as always in our history, we can base our confidence in what the American people will achieve in the future on the record of what the American people have achieved in the past.

Public Papers of Nixon, 1974, p.47

Tonight, for the first time in 12 years, a President of the United States can report to the Congress on the state of a Union at peace with every nation of the world. Because of this, in the 22,000-word message on the state of the Union that I have just handed to the Speaker of the House and the President of the Senate, I have been able to deal primarily with the problems of peace with what we can do here at home in America for the American people—rather than with the problems of war.

Public Papers of Nixon, 1974, p.47

The measures I have outlined in this message set an agenda for truly significant progress for this Nation and the world in 1974. Before we chart where we are going, let us see how far we have come.

Public Papers of Nixon, 1974, p.47

It was 5 years ago on the steps of this Capitol that I took the oath of office as your President. In those 5 years, because of the initiatives undertaken by this Administration, the world has changed. America has changed. As a result of those changes, America is safer today, more prosperous today, with greater opportunity for more of its people than ever before in our history.

Public Papers of Nixon, 1974, p.47

Five years ago, America was at war in Southeast Asia. We were locked in confrontation with the Soviet Union. We were in hostile isolation from a quarter of the world's people who lived in Mainland China.

Public Papers of Nixon, 1974, p.47

Five years ago, our cities were burning and besieged.

Public Papers of Nixon, 1974, p.47

Five years ago, our college campuses were a battleground.

Public Papers of Nixon, 1974, p.47

Five years ago, crime was increasing at a rate that struck fear across the Nation.

Public Papers of Nixon, 1974, p.47

Five years ago, the spiraling rise in drug addiction was threatening human and social tragedy of massive proportion, and there was no program to deal with it.

Public Papers of Nixon, 1974, p.47

Five years ago—as young Americans bad done for a generation before that-America's youth still lived under the shadow of the military draft.

Public Papers of Nixon, 1974, p.47

Five years ago, there was no national program to preserve our environment. Day by day, our air was getting dirtier, our water was getting more foul.

Public Papers of Nixon, 1974, p.47

And 5 years ago, American agriculture was practically a depressed industry with 100,000 farm families abandoning the farm every year.

Public Papers of Nixon, 1974, p.47–p.48

As we look at America today, we find ourselves challenged by new problems. But we also find a record of progress to confound the professional criers of doom and prophets of despair. We met the [p.48] challenges we faced 5 years ago, and we will be equally confident of meeting those that we face today.

Public Papers of Nixon, 1974, p.48

Let us see for a moment how we have met them.

Public Papers of Nixon, 1974, p.48

After more than 10 years of military involvement, all of our troops have returned from Southeast Asia, and they have returned with honor. And we can be proud of the fact that our courageous prisoners of war, for whom a dinner was held in Washington tonight, that they came home with their heads high, on their feet and not on their knees.

Public Papers of Nixon, 1974, p.48

In our relations with the Soviet Union, we have turned away from a policy of confrontation to one of negotiation. For the first time since World War II, the world's two strongest powers are working together toward peace in the world. With the People's Republic of China after a generation of hostile isolation, we have begun a period of peaceful exchange and expanding trade.

Public Papers of Nixon, 1974, p.48

Peace has returned to our cities, to our campuses. The 17-year rise in crime has been stopped. We can confidently say today that we are finally beginning to win the war against crime. Right here in this Nation's Capital—which a few years ago was threatening to become the crime capital of the world—the rate in crime has been cut in half. A massive campaign against drug abuse has been organized. And the rate of new heroin addiction, the most vicious threat of all, is decreasing rather than increasing.

Public Papers of Nixon, 1974, p.48

For the first time in a generation, no young Americans are being drafted into the armed services of the United States. And for the first time ever, we have organized a massive national effort to protect the environment. Our air is getting cleaner, our water is getting purer, and our agriculture, which was depressed, is prospering. Farm income is up 70 percent, farm production is setting all-time records, and the billions of dollars the taxpayers were paying in subsidies has been cut to nearly zero.

Public Papers of Nixon, 1974, p.48

Overall, Americans are living more abundantly than ever before, today. More than 2 1/2 million new jobs were created in the past year alone. That is the biggest percentage increase in nearly 20 years. People are earning more. What they earn buys more, more than ever before in history. In the past 5 years, the average American's real spendable income—that is, what you really can buy with your income, even after allowing for taxes and inflation—has increased by 16 percent.

Public Papers of Nixon, 1974, p.48

Despite this record of achievement, as we turn to the year ahead we hear once again the familiar voice of the perennial prophets of gloom telling us now that because of the need to fight inflation, because of the energy shortage, America may be headed for a recession.

Public Papers of Nixon, 1974, p.48

Let me speak to that issue head on. There will be no recession in the United States of America. Primarily due to our energy crisis, our economy is passing through a difficult period. But I pledge to you tonight that the full powers of this Government will be used to keep America's economy producing and to protect the jobs of America's workers.

Public Papers of Nixon, 1974, p.48

We are engaged in a long and hard fight against inflation. There have been, and there will be in the future, ups and downs in that fight. But if this Congress cooperates in our efforts to hold down the cost of Government, we shall win our fight to hold down the cost of living for the American people.

Public Papers of Nixon, 1974, p.48–p.49

As we look back over our history, the years that stand out as the ones of signal [p.49] achievement are those in which the Administration and the Congress, whether one party or the other, working together, had the wisdom and the foresight to select those particular initiatives for which the Nation was ready and the moment was right—and in which they seized the moment and acted.

Public Papers of Nixon, 1974, p.49

Looking at the year 1974 which lies before us, there are 10 key areas in which landmark accomplishments are possible this year in America. If we make these our national agenda, this is what we will achieve in 1974:

Public Papers of Nixon, 1974, p.49

We will break the back of the energy crisis; we will lay the foundation for our future capacity to meet America's energy needs from America's own resources.

Public Papers of Nixon, 1974, p.49

And we will take another giant stride toward lasting peace in the world—not only by continuing our policy of negotiation rather than confrontation where the great powers are concerned but also by helping toward the achievement of a just and lasting settlement in the Middle East.

Public Papers of Nixon, 1974, p.49

We will check the rise in prices without administering the harsh medicine of recession, and we will move the economy into a steady period of growth at a sustainable level.

Public Papers of Nixon, 1974, p.49

We will establish a new system that makes high-quality health care available to every American in a dignified manner and at a price he can afford.

Public Papers of Nixon, 1974, p.49

We will make our States and localities more responsive to the needs of their own citizens.

Public Papers of Nixon, 1974, p.49

We will make a crucial breakthrough toward better transportation in our towns and in our cities across America.

Public Papers of Nixon, 1974, p.49

We will reform our system of Federal aid to education, to provide it when it is needed, where it is needed, so that it will do the most for those who need it the most.

Public Papers of Nixon, 1974, p.49

We will make an historic beginning on the task of defining and protecting the right of personal privacy for every American.

Public Papers of Nixon, 1974, p.49

And we will start on a new road toward reform of a welfare system that bleeds the taxpayer, corrodes the community, and demeans those it is intended to assist.

Public Papers of Nixon, 1974, p.49

And together with the other nations of the world, we will establish the economic framework within which Americans will share more fully in an expanding worldwide trade and prosperity in the years ahead, with more open access to both markets and supplies.

Public Papers of Nixon, 1974, p.49

In all of the 186 State of the Union messages delivered from this place, in our history this is the first in which the one priority, the first priority, is energy. Let me begin by reporting a new development which I know will be welcome news to every American. As you know, we have committed ourselves to an active role in helping to achieve a just and durable peace in the Middle East, on the basis of full implementation of Security Council Resolutions 242 and 338. The first step in the process is the disengagement of Egyptian and Israeli forces which is now taking place.

Public Papers of Nixon, 1974, p.49

Because of this hopeful development, I can announce tonight that I have been assured, through my personal contacts with friendly leaders in the Middle Eastern area, that an urgent meeting will be called in the immediate future to discuss the lifting of the oil embargo.

Public Papers of Nixon, 1974, p.49

This is an encouraging sign. However, it should be clearly understood by our friends in the Middle East that the United States will not be coerced on this issue.

Public Papers of Nixon, 1974, p.50

Regardless of the outcome of this meeting, the cooperation of the American people in our energy conservation program has already gone a long way towards achieving a goal to which I am deeply dedicated. Let us do everything we can to avoid gasoline rationing in the United States of America.

Public Papers of Nixon, 1974, p.50

Last week, I sent to the Congress a comprehensive special message setting forth our energy situation, recommending the legislative measures which are necessary to a program for meeting our needs. If the embargo is lifted, this will ease the crisis, but it will not mean an end to the energy shortage in America. Voluntary conservation will continue to be necessary. And let me take this occasion to pay tribute once again to the splendid spirit of cooperation the American people have shown which has made possible our success in meeting this emergency up to this time.

Public Papers of Nixon, 1974, p.50

The new legislation I have requested will also remain necessary. Therefore, I urge again that the energy measures that I have proposed be made the first priority of this session of the Congress. These measures will require the oil companies and other energy producers to provide the public with the necessary information on their supplies. They will prevent the injustice of windfall profits for a few as a result of the sacrifices of the millions of Americans. And they will give us the organization, the incentives, the authorities needed to deal with the short-term emergency and to move toward meeting our long-term needs.

Public Papers of Nixon, 1974, p.50

Just as 1970 was the year in which we began a full-scale effort to protect the environment, 1974 must be the year in which we organize a full-scale effort to provide for our energy needs, not only in this decade but through the 21st century.

Public Papers of Nixon, 1974, p.50

As we move toward the celebration 2 years from now of the 200th anniversary of this Nation's independence, let us press vigorously on toward the goal I announced last November for Project Independence. Let this be our national goal: At the end of this decade, in the year 1980, the United States will not be dependent on any other country for the energy we need to provide our jobs, to heat our homes, and to keep our transportation moving.

Public Papers of Nixon, 1974, p.50

To indicate the size of the Government commitment, to spur energy research and development, we plan to spend $10 billion in Federal funds over the next 5 years. That is an enormous amount. But during the same 5 years, private enterprise will be investing as much as $200 billion-and in 10 years, $500 billion—to develop the new resources, the new technology, the new capacity America will require for its energy needs in the 1980's. That is just a measure of the magnitude of the project we are undertaking.

Public Papers of Nixon, 1974, p.50

But America performs best when called to its biggest tasks. It can truly be said that only in America could a task so tremendous be achieved so quickly, and achieved not by regimentation, but through the effort and ingenuity of a free people, working in a free system.

Public Papers of Nixon, 1974, p.50–p.51

Turning now to the rest of the agenda for 1974, the time is at hand this year to bring comprehensive, high quality health care within the reach of every American. I shall propose a sweeping new program that will assure comprehensive health insurance protection to millions of Americans who cannot now obtain it or afford it, with vastly improved protection against catastrophic illnesses. This will be a plan [p.51] that maintains the high standards of quality in America's health care. And it will not require additional taxes.

Public Papers of Nixon, 1974, p.51

Now, I recognize that other plans have been put forward that would cost $80 billion or even $100 billion and that would put our whole health care system under the heavy hand of the Federal Government. This is the wrong approach. This has been tried abroad, and it has failed. It is not the way we do things here in America. This kind of plan would threaten the quality of care provided by our whole health care system. The right way is one that builds on the strengths of the present system and one that does not destroy those strengths, one based on partnership, not paternalism. Most important of all, let us keep this as the guiding principle of our health programs. Government has a great role to play, but we must always make sure that our doctors will be working for their patients and not for the Federal Government.

Public Papers of Nixon, 1974, p.51

Many of you will recall that in my State of the Union Address 3 years ago, I commented that "Most Americans today are simply fed up with government at all levels," and I recommended a sweeping set of proposals to revitalize State and local governments, to make them more responsive to the people they serve. I can report to you today that as a result of revenue sharing passed by the Congress, and other measures, we have made progress toward that goal. After 40 years of moving power from the States and the communities to Washington, D.C., we have begun moving power back from Washington to the States and communities and, most important, to the people of America.

Public Papers of Nixon, 1974, p.51

In this session of the Congress, I believe we are near the breakthrough point on efforts which I have suggested, proposals to let people themselves make their own decisions for their own communities and, in particular, on those to provide broad new flexibility in Federal aid for community development, for economic development, for education. And I look forward to working with the Congress, with members of both parties in resolving whatever remaining differences we have in this legislation so that we can make available nearly $5 1/2 billion to our States and localities to use not for what a Federal bureaucrat may want, but for what their own people in those communities want. The decision should be theirs.

Public Papers of Nixon, 1974, p.51

I think all of us recognize that the energy crisis has given new urgency to the need to improve public transportation, not only in our cities but in rural areas as well. The program I have proposed this year will give communities not only more money but also more freedom to balance their own transportation needs. It will mark the strongest Federal commitment ever to the improvement of mass transit as an essential element of the improvement of life in our towns and cities.

Public Papers of Nixon, 1974, p.51

One goal on which all Americans agree is that our children should have the very best education this great Nation can provide.

Public Papers of Nixon, 1974, p.51–p.52

In a special message last week, I recommended a number of important new measures that can make 1974 a year of truly significant advances for our schools and for the children they serve. If the Congress will act on these proposals, more flexible funding will enable each Federal dollar to meet better the particular need of each particular school district. Advance funding will give school authorities a chance to make each year's plans, knowing ahead of time what Federal funds they are going to receive. Special targeting will [p.52] give special help to the truly disadvantaged among our people. College students faced with rising costs for their education will be able to draw on an expanded program of loans and grants. These advances are a needed investment in America's most precious resource, our next generation. And I urge the Congress to act on this legislation in 1974.

Public Papers of Nixon, 1974, p.52

One measure of a truly free society is the vigor with which it protects the liberties of its individual citizens. As technology has advanced in America, it has increasingly encroached on one of those liberties—what I term the right of personal privacy. Modern information systems, data banks, credit records, mailing list abuses, electronic snooping, the collection of personal data for one purpose that may be used for another—all these have left millions of Americans deeply concerned by the privacy they cherish.

Public Papers of Nixon, 1974, p.52

And the time has come, therefore, for a major initiative to define the nature and extent of the basic rights of privacy and to erect new safeguards to ensure that those rights are respected.

Public Papers of Nixon, 1974, p.52

I shall launch such an effort this year at the highest levels of the Administration, and I look forward again to working with this Congress in establishing a new set of standards that respect the legitimate needs of society, but that also recognize personal privacy as a cardinal principle of American liberty.

Public Papers of Nixon, 1974, p.52

Many of those in this Chamber tonight will recall that it was 3 years ago that I termed the Nation's welfare system "a monstrous, consuming outrage—an outrage against the community, against the taxpayer, and particularly against the children that it is supposed to help."

Public Papers of Nixon, 1974, p.52

That system is still an outrage. By improving its administration, we have been able to reduce some of the abuses. As a result, last year, for the first time in 18 years, there has been a halt in the growth of the welfare caseload. But as a system, our welfare program still needs reform as urgently today as it did when I first proposed in 1969 that we completely replace it with a different system.

Public Papers of Nixon, 1974, p.52

In these final 3 years of my Administration, I urge the Congress to join me in mounting a major new effort to replace the discredited present welfare system with one that works, one that is fair to those who need help or cannot help themselves, fair to the community, and fair to the taxpayer. And let us have as our goal that there will be no Government program which makes it more profitable to go on welfare than to go to work.

Public Papers of Nixon, 1974, p.52

I recognize that from the debates that have taken place within the Congress over the past 3 years on this program that we cannot expect enactment overnight of a new reform. But I do propose that the Congress and the Administration together make this the year in which we discuss, debate, and shape such a reform so that it can be enacted as quickly as possible.

Public Papers of Nixon, 1974, p.52

America's own prosperity in the years ahead depends on our sharing fully and equitably in an expanding world prosperity. Historic negotiations will take place this year that will enable us to ensure fair treatment in international markets for American workers, American farmers, American investors, and American consumers.

Public Papers of Nixon, 1974, p.52–p.53

It is vital that the authorities contained in the trade bill I submitted to the Congress be enacted so that the United States can negotiate flexibly and vigorously on behalf of American interests. These negotiations can usher in a new era of international trade that not only increases the [p.53] prosperity of all nations but also strengthens the peace among all nations.

Public Papers of Nixon, 1974, p.53

In the past 5 years, we have made more progress toward a lasting structure of peace in the world than in any comparable time in the Nation's history. We could not have made that progress if we had not maintained the military strength of America. Thomas Jefferson once observed that the price of liberty is eternal vigilance. By the same token, and for the same reason, in today's world the price of peace is a strong defense as far as the United States is concerned.

Public Papers of Nixon, 1974, p.53

In the past 5 years, we have steadily reduced the burden of national defense as a share of the budget, bringing it down from 44 percent in 1969 to 29 percent in the current year. We have cut our military manpower over the past 5 years by more than a third, from 3.5 million to 2.2 million.

Public Papers of Nixon, 1974, p.53

In the coming year, however, increased expenditures will be needed. They will be needed to assure the continued readiness of our military forces, to preserve present force levels in the face of rising costs, and to give us the military strength we must have if our security is to be maintained and if our initiatives for peace are to succeed.

Public Papers of Nixon, 1974, p.53

The question is not whether we can afford to maintain the necessary strength of our defense, the question is whether we can afford not to maintain it, and the answer to that question is no. We must never allow America to become the second strongest nation in the world.

Public Papers of Nixon, 1974, p.53

I do not say this with any sense of belligerence, because I recognize the fact that is recognized around the world. America's military strength has always been maintained to keep the peace, never to break it. It has always been used to defend freedom, never to destroy it. The world's peace, as well as our own, depends on our remaining as strong as we need to be as long as we need to be.

Public Papers of Nixon, 1974, p.53

In this year 1974, we will be negotiating with the Soviet Union to place further limits on strategic nuclear arms. Together with our allies, we will be negotiating with the nations of the Warsaw Pact on mutual and balanced reduction of forces in Europe. And we will continue our efforts to promote peaceful economic development in Latin America, in Africa, in Asia. We will press for full compliance with the peace accords that brought an end to American fighting in Indochina, including particularly a provision that promised the fullest possible accounting for those Americans who are missing in action.

Public Papers of Nixon, 1974, p.53

And having in mind the energy crisis to which I have referred to earlier, we will be working with the other nations of the world toward agreement on means by which oil supplies can be assured at reasonable prices on a stable basis in a fair way to the consuming and producing nations alike.

Public Papers of Nixon, 1974, p.53

All of these are steps toward a future in which the world's peace and prosperity, and ours as well as a result, are made more secure.

Public Papers of Nixon, 1974, p.53

Throughout the 5 years that I have served as your President, I have had one overriding aim, and that was to establish a new structure of peace in the world that can free future generations of the scourge of war. I can understand that others may have different priorities. This has been and this will remain my first priority and the chief legacy I hope to leave from the 8 years of my Presidency.

Public Papers of Nixon, 1974, p.53–p.54

This does not mean that we shall not have other priorities, because as we [p.54] strengthen the peace, we must also continue each year a steady strengthening of our society here at home. Our conscience requires it, our interests require it, and we must insist upon it.

Public Papers of Nixon, 1974, p.54

As we create more jobs, as we build a better health care system, as we improve our education, as we develop new sources of energy, as we provide more abundantly for the elderly and the poor, as we strengthen the system of private enterprise that produces our prosperity as we do all of this and even more, we solidify those essential bonds that hold us together as a nation.

Public Papers of Nixon, 1974, p.54

Even more importantly, we advance what in the final analysis government in America is all about.

Public Papers of Nixon, 1974, p.54

What it is all about is more freedom, more security, a better life for each one of the 211 million people that live in this land.

Public Papers of Nixon, 1974, p.54

We cannot afford to neglect progress at home while pursuing peace abroad. But neither can Ave afford to neglect peace abroad while pursuing progress at home. With a stable peace, all is possible, but without peace, nothing is possible.

Public Papers of Nixon, 1974, p.54

In the written message that I have just delivered to the Speaker and to the President of the Senate, I commented that one of the continuing challenges facing us in the legislative process is that of the timing and pacing of our initiatives, selecting each year among many worthy projects those that are ripe for action at that time.

Public Papers of Nixon, 1974, p.54

What is true in terms of our domestic initiatives is true also in the world. This period we now are in, in the world—and I say this as one who has seen so much of the world, not only in these past 5 years but going back over many years—we are in a period which presents a juncture of historic forces unique in this century. They provide an opportunity we may never have again to create a structure of peace solid enough to last a lifetime and more, not just peace in our time but peace in our children's time as well. It is on the way we respond to this opportunity, more than anything else, that history will judge whether we in America have met our responsibility. And I am confident we will meet that great historic responsibility which is ours today.

Public Papers of Nixon, 1974, p.54

It was 27 years ago that John F. Kennedy and I sat in this Chamber, as freshmen Congressmen, hearing our first State of the Union address delivered by Harry Truman. I know from my talks with him, as members of the Labor Committee on which we both served, that neither of us then even dreamed that either one or both might eventually be standing in this place that I now stand in now and that he once stood in, before me. It may well be that one of the freshmen Members of the 93d Congress, one of you out there, will deliver his own State of the Union message 27 years from now, in the year 2001.

Public Papers of Nixon, 1974, p.54

Well, whichever one it is, I want you to be able to look back with pride and to say that your first years here were great years and recall that you were here in this 93d Congress when America ended its longest war and began its longest peace.

[At this point, the President paused to acknowledge applause from the audience. He then resumed speaking.]

Public Papers of Nixon, 1974, p.54–p.55

Mr. Speaker, and Mr. President, and my distinguished colleagues and our guests: I would like to add a personal word with regard to an issue that has been of great concern to all Americans over the past year. I refer, of course, to the investigations of the so-called Watergate affair. As you know, I have provided to the [p.55] Special Prosecutor voluntarily a great deal of material. I believe that I have provided all the material that he needs to conclude his investigations and to proceed to prosecute the guilty and to clear the innocent.

Public Papers of Nixon, 1974, p.55

I believe the time has come to bring that investigation and the other investigations of this matter to an end. One year of Watergate is enough.

Public Papers of Nixon, 1974, p.55

And the time has come, my colleagues, for not only the Executive, the President, but the Members of Congress, for all of us to join together in devoting our full energies to these great issues that I have discussed tonight which involve the welfare of all of the American people in so many different ways, as well as the peace of the world.

Public Papers of Nixon, 1974, p.55

I recognize that the House Judiciary Committee has a special responsibility in this area, and I want to indicate on this occasion that I will cooperate with the Judiciary Committee in its investigation. I will cooperate so that it can conclude its investigation, make its decision, and I will cooperate in any way that I consider consistent with my responsibilities to the Office of the Presidency of the United States.

Public Papers of Nixon, 1974, p.55

There is only one limitation. I will follow the precedent that has been followed by and defended by every President from George Washington to Lyndon B. Johnson of never doing anything that weakens the Office of the President of the United States or impairs the ability of the Presidents of the future to make the great decisions that are so essential to this Nation and the world.

Public Papers of Nixon, 1974, p.55

Another point I should like to make very briefly: Like every Member of the House and Senate assembled here tonight, I was elected to the office that I hold. And like every Member of the House and Senate, when I was elected to that office, I knew that I was elected for the purpose of doing a job and doing it as well as I possibly can. And I want you to know that I have no intention whatever of ever walking away from the job that the people elected me to do for the people of the United States.

Public Papers of Nixon, 1974, p.55

Now, needless to say, it would be understatement if I were not to admit that the year 1973 was not a very easy year for me personally or for my family. And as I have already indicated, the year 1974 presents very great and serious problems, as very great and serious opportunities are also presented.

Public Papers of Nixon, 1974, p.55

But my colleagues, this I believe: With the help of God, who has blessed this land so richly, with the cooperation of the Congress, and with the support of the American people, we can and we will make the year 1974 a year of unprecedented progress toward our goal of building a structure of lasting peace in the world and a new prosperity without war in the United States of America.

Public Papers of Nixon, 1974, p.55

NOTE: The President spoke at 9:05 p.m. in the House Chamber of the Capitol after being introduced by Carl Albert, Speaker of the House of Representatives. The address was broadcast live on nationwide radio and television.

Public Papers of Nixon, 1974, p.55

Earlier in the day, the President met at the White House with Vice President Ford and members of the Republican Congressional leadership—Senators Hugh Scott and Robert P. Griffin and Representatives John J. Rhodes and Leslie C. Arends—to discuss the address and message.

President Nixon's Address to the Nation Announcing Decision To Resign the Office of President of the United States, 1974

Title: President Nixon's Address to the Nation Announcing Decision To Resign the Office of President of the United States

Author: Richard M. Nixon

Date: August 8, 1974

Source: Public Papers of the Presidents, Nixon, 1974, pp.626-630

Public Papers of Nixon, 1974, p.626

Good evening:

Public Papers of Nixon, 1974, p.626

This is the 37th time I have spoken to you from this office, where so many decisions have been made that shaped the history of this Nation. Each time I have done so to discuss with you some matter that I believe affected the national interest.

Public Papers of Nixon, 1974, p.627

In all the decisions I have made in my public life, I have always tried to do what was best for the Nation. Throughout the long and difficult period of Watergate, I have felt it was my duty to persevere, to make every possible effort to complete the term of office to which you elected me.

Public Papers of Nixon, 1974, p.627

In the past few days, however, it has become evident to me that I no longer have a strong enough political base in the Congress to justify continuing that effort. As long as there was such a base, I felt strongly that it was necessary to see the constitutional process through to its conclusion, that to do otherwise would be unfaithful to the spirit of that deliberately difficult process and a dangerously destabilizing precedent for the future.

Public Papers of Nixon, 1974, p.627

But with the disappearance of that base, I now believe that the constitutional purpose has been served, and there is no longer a need for the process to be prolonged.

Public Papers of Nixon, 1974, p.627

I would have preferred to carry through to the finish, whatever the personal agony it would have involved, and my family unanimously urged me to do so. But the interests of the Nation must always come before any personal considerations.

Public Papers of Nixon, 1974, p.627

From the discussions I have had with Congressional and other leaders, I have concluded that because of the Watergate matter, I might not have the support of the Congress that I would consider necessary to back the very difficult decisions and carry out the duties of this office in the way the interests of the Nation will require.

Public Papers of Nixon, 1974, p.627

I have never been a quitter. To leave office before my term is completed is abhorrent to every instinct in my body. But as President, I must put the interests of America first. America needs a full-time President and a full-time Congress, particularly at this time with problems we face at home and abroad.

Public Papers of Nixon, 1974, p.627

To continue to fight through the months ahead for my personal vindication would almost totally absorb the time and attention of both the President and the Congress in a period when our entire focus should be on the great issues of peace abroad and prosperity without inflation at home.

Public Papers of Nixon, 1974, p.627

Therefore, I shall resign the Presidency effective at noon tomorrow. Vice President Ford will be sworn in as President at that hour in this office.

Public Papers of Nixon, 1974, p.627

As I recall the high hopes for America with which we began this second term, I feel a great sadness that I will not be here in this office working on your behalf to achieve those hopes in the next 2 1/2 years. But in turning over direction of the Government to Vice President Ford, I know, as I told the Nation when I nominated him for that office 10 months ago, that the leadership of America will be in good hands.

Public Papers of Nixon, 1974, p.627

In passing this office to the Vice President, I also do so with the profound sense of the weight of responsibility that will fall on his shoulders tomorrow and, therefore, of the understanding, the patience, the cooperation he will need from all Americans.

Public Papers of Nixon, 1974, p.627

As he assumes that responsibility, he will deserve the help and the support of all of us. As we look to the future, the first essential is to begin healing the wounds of this Nation, to put the bitterness and divisions of the recent past behind us and to rediscover those shared ideals that lie at the heart of our strength and unity as a great and as a free people.

Public Papers of Nixon, 1974, p.627–p.628

By taking this action, I hope that I [p.628] will have hastened the start of that process of healing which is so desperately needed in America.

Public Papers of Nixon, 1974, p.628

I regret deeply any injuries that may have been done in the course of the events that led to this decision. I would say only that if some of my judgments were wrong—and some were wrong—they were made in what I believed at the time to be the best interest of the Nation.

Public Papers of Nixon, 1974, p.628

To those who have stood with me during these past difficult months—to my family, my friends, to many others who joined in supporting my cause because they believed it was right—I will be eternally grateful for your support.

Public Papers of Nixon, 1974, p.628

And to those who have not felt able to give me your support, let me say I leave with no bitterness toward those who have opposed me, because all of us, in the final analysis, have been concerned with the good of the country, however our judgments might differ.

Public Papers of Nixon, 1974, p.628

So, let us all now join together in affirming that common commitment and in helping our new President succeed for the benefit of all Americans.

Public Papers of Nixon, 1974, p.628

I shall leave this office with regret at not completing my term, but with gratitude for the privilege of serving as your President for the past 5 1/2 years. These years have been a momentous time in the history of our Nation and the world. They have been a time of achievement in which we can all be proud, achievements that represent the shared efforts of the Administration, the Congress, and the people.

Public Papers of Nixon, 1974, p.628

But the challenges ahead are equally great, 'and they, too, will require the support and the efforts of the Congress and the people working in cooperation with the new Administration.

Public Papers of Nixon, 1974, p.628

We have ended America's longest war, but in the work of securing a lasting peace in the world, the goals ahead are even more far-reaching and more difficult. We must 'complete a structure of peace so that it will be said of this generation, our generation of Americans, by the people of all nations, not only that we ended one war but that we prevented future wars.

Public Papers of Nixon, 1974, p.628

We have unlocked the doors that for a quarter of a century stood between the United States and the People's Republic of China.

Public Papers of Nixon, 1974, p.628

We must now ensure that the one quarter of the world's people who live in the People's Republic of China will be and remain not our enemies, but our friends.

Public Papers of Nixon, 1974, p.628

In the Middle East, 100 million people in the Arab countries, many of whom have considered us their enemy for nearly 20 years, now look on us as their friends. We must continue to build on that friendship so that peace can settle at last over the Middle East and so that the cradle of civilization will not become its grave.

Public Papers of Nixon, 1974, p.628

Together with the Soviet Union, we have made the crucial breakthroughs that have begun the process of limiting nuclear arms. But we must set as our goal not just limiting but reducing and, finally, destroying these terrible weapons so that they cannot destroy civilization and so that 'the threat of nuclear war will no longer hang over the world and the people.

Public Papers of Nixon, 1974, p.628

We have opened the new relation with the Soviet Union. We must continue to develop and expand that new relationship so that the two strongest nations of the world will live together in cooperation, rather than confrontation.

Public Papers of Nixon, 1974, p.628–p.629

Around the world in Asia, in Africa, in Latin America, in the Middle East-there are millions of people who live in terrible poverty, even starvation. We must [p.629] keep as our goal turning away from production for war and expanding production for peace so that people everywhere on this Earth can at last look forward in their children's time, if not in our own time, to having the necessities for a decent life.

Public Papers of Nixon, 1974, p.629

Here in America, we are fortunate that most of our people have not only the blessings of liberty but also the means to live full and good and, by the world's standards, even abundant lives. We must press on, however', toward a goal, not only of more and better jobs but of full opportunity for every American and of what we are striving so hard right now to achieve, prosperity without inflation.

Public Papers of Nixon, 1974, p.629

For more than a quarter of a century in public life, I have shared in the turbulent history of this era. I have fought for what I believed in. I have tried, to the best of my ability, to discharge those duties and meet those responsibilities that were entrusted to me.

Public Papers of Nixon, 1974, p.629

Sometimes I have succeeded and sometimes I have failed, but always I have taken heart from what Theodore Roosevelt once said about the man in the arena, "whose face is marred by dust and sweat and blood, who strives valiantly, who errs and comes short again and again because there is not effort without error and shortcoming, but who does actually strive to do the deed, who knows the great enthusiasms, the great devotions, who spends himself in a worthy cause, who at the best knows in the end the triumphs of high achievements and who at the worst, if he fails, at least fails while daring greatly."

Public Papers of Nixon, 1974, p.629

I pledge to you tonight that as long as I have a breath of life in my body, I shall continue in that spirit. I shall continue to work for the great causes to which I have been dedicated throughout my years as a Congressman, a Senator, Vice President, and President, the cause of peace, not just for America but among all nations-prosperity, justice, and opportunity for all of our people.

Public Papers of Nixon, 1974, p.629

There is one cause above all to which I have been devoted and to which I shall always be devoted for as long as I live.

Public Papers of Nixon, 1974, p.629

When I first took the oath of office as President 5 1/2 years ago, I made this sacred commitment: to "consecrate my office, my energies, and all the wisdom I can summon to the cause of peace among nations."

Public Papers of Nixon, 1974, p.629

I have done my very best in all the days since to be true to that pledge. As a result of these efforts, I am confident that the world is a safer place today, not only for the people of America but for the people of all nations, and that all of our children have a better chance than before of living in peace rather than dying in war.

Public Papers of Nixon, 1974, p.629

This, more than anything, is what I hoped to achieve when I sought the Presidency. This, more than anything, is what I hope will be my legacy to you, to our country, as I leave the Presidency.

Public Papers of Nixon, 1974, p.629

To have served in this office is to have felt a very personal sense of kinship with each and every American. In leaving it, I do so with this prayer: May God's grace be with you in all the days ahead.

Public Papers of Nixon, 1974, p.629

NOTE: The President spoke at 9:01 p.m. from the Oval Office at the White House. The address was broadcast live on nationwide radio and television.

Public Papers of Nixon, 1974, p.629

Prior to delivering the address, the President met separately with a group of bipartisan Congressional leaders in his office at the Old Executive Office Building and a group of more than 40 Members of Congress in the Cabinet Room at the White House.

Public Papers of Nixon, 1974, p.629–p.630

On August 7, 1974, Senators Hugh Scott and Barry Goldwater and Representative John J. Rhodes met with the President in the Oval Office at the White House. The White House [p.630] released a transcript of their news briefing on the meeting on the same day. The briefing is printed in the Weekly Compilation of Presidential Documents (vol. 10, p. 1010).

Nixon's Letter Resigning the Office of President of the United States, 1974

Title: Nixon's Letter Resigning the Office of President of the United States

Author: Richard M. Nixon

Date: August 9, 1974

Source: Public Papers of the Presidents, Nixon, 1974, p.633

Public Papers of Nixon, 1974, p.633

Dear Mr. Secretary:

I hereby resign the Office of President of the United States.

Sincerely,

RICHARD NIXON

[The Honorable Henry A. Kissinger, The Secretary of State, Washington, D.C. 20520]

Public Papers of Nixon, 1974, p.633

NOTE: The President's letter of resignation was delivered to Secretary Kissinger in his White House office at 11:35 a.m., August 9, by Assistant to the President Alexander M. Haig, Jr.

President Ford's Remarks on Signing a Proclamation Granting Pardon to Richard Nixon, 1974

Title: President Ford's Remarks on Signing a Proclamation Granting Pardon to Richard Nixon

Author: Gerald Ford

Date: September 8, 1974

Source: Public Papers of the Presidents, Ford, 1974, pp.101-103

Public Papers of the Presidents, Ford, 1974, p.101

Ladies and gentlemen:

Public Papers of the Presidents, Ford, 1974, p.101

I have come to a decision which I felt I should tell you and all of my fellow American citizens, as soon as I was certain in my own mind and in my own conscience that it is the right thing to do.

Public Papers of the Presidents, Ford, 1974, p.101

I have learned already in this office that the difficult decisions always come to this desk. I must admit that many of them do not look at all the same as the hypothetical questions that I have answered freely and perhaps too fast on previous occasions.

Public Papers of the Presidents, Ford, 1974, p.101

My customary policy is to try and get all the facts and to consider the opinions of my countrymen and to take counsel with my most valued friends. But these seldom agree, and in the end, the decision is mine. To procrastinate, to agonize, and to wait for a more favorable turn of events that may never come or more compelling external pressures that may as well be wrong as right, is itself a decision of sorts and a weak and potentially dangerous course for a President to follow.

Public Papers of the Presidents, Ford, 1974, p.101

I have promised to uphold the Constitution, to do what is right as God gives me to see the right, and to do the very best that I can for America.

Public Papers of the Presidents, Ford, 1974, p.101

I have asked your help and your prayers, not only when I became President but many times since. The Constitution is the supreme law of our land and it governs our actions as citizens. Only the laws of God, which govern our consciences, are superior to it.

Public Papers of the Presidents, Ford, 1974, p.101

As we are a nation under God, so I am sworn to uphold our laws with the help of God. And I have sought such guidance and searched my own conscience with special diligence to determine the right thing for me to do with respect to my predecessor in this place, Richard Nixon, and his loyal wife and family.

Public Papers of the Presidents, Ford, 1974, p.101

Theirs is an American tragedy in which we all have played a part. It could go on and on and on, or someone must write the end to it. I have concluded that only I can do that, and if I can, I must.

Public Papers of the Presidents, Ford, 1974, p.102

There are no historic or legal precedents to which I can turn in this matter, none that precisely fit the circumstances of a private citizen who has resigned the Presidency of the United States. But it is common knowledge that serious allegations and accusations hang like a sword over our former President's head, threatening his health as he tries to reshape his life, a great part of which was spent in the service of this country and by the mandate of its people.

Public Papers of the Presidents, Ford, 1974, p.102

After years of bitter controversy and divisive national debate, I have been advised, and I am compelled to conclude that many months and perhaps more years will have to pass before Richard Nixon could obtain a fair trial by jury in any jurisdiction of the United States under governing decisions of the Supreme Court.

Public Papers of the Presidents, Ford, 1974, p.102

I deeply believe in equal justice for all Americans, whatever their station or former station. The law, whether human or divine, is no respecter of persons; but the law is a respecter of reality.

Public Papers of the Presidents, Ford, 1974, p.102

The facts, as I see them, are that a former President of the United States, instead of enjoying equal treatment with any other citizen accused of violating the law, would be cruelly and excessively penalized either in preserving the presumption of his innocence or in obtaining a speedy determination of his guilt in order to repay a legal debt to society.

Public Papers of the Presidents, Ford, 1974, p.102

During this long period of delay and potential litigation, ugly passions would again be aroused. And our people would again be polarized in their opinions. And the credibility of our free institutions of government would again be challenged at home and abroad.

Public Papers of the Presidents, Ford, 1974, p.102

In the end, the courts might well hold that Richard Nixon had been denied due process, and the verdict of history would even more be inconclusive with respect to those charges arising out of the period of his Presidency, of which I am presently aware.

Public Papers of the Presidents, Ford, 1974, p.102

But it is not the ultimate fate of Richard Nixon that most concerns me, though surely it deeply troubles every decent and every compassionate person. My concern is the immediate future of this great country.

Public Papers of the Presidents, Ford, 1974, p.102

In this, I dare not depend upon my personal sympathy as a long-time friend of the former President, nor my professional judgment as a lawyer, and I do not.

Public Papers of the Presidents, Ford, 1974, p.102

As President, my primary concern must always be the greatest good of all the people of the United States whose servant I am. As a man, my first consideration is to be true to my own convictions and my own conscience.

Public Papers of the Presidents, Ford, 1974, p.102–p.103

My conscience tells me clearly and certainly that I cannot prolong the bad dreams that continue to reopen a chapter that is closed. My conscience tells me that only I, as President, have the constitutional power to firmly shut and seal this [p.103] book. My conscience tells me it is my duty, not merely to proclaim domestic tranquillity but to use every means that I have to insure it.

Public Papers of the Presidents, Ford, 1974, p.103

I do believe that the buck stops here, that I cannot rely upon public opinion polls to tell me what is right.

Public Papers of the Presidents, Ford, 1974, p.103

I do believe that right makes might and that if I am wrong, 10 angels swearing I was right would make no difference.

Public Papers of the Presidents, Ford, 1974, p.103

I do believe, with all my heart and mind and spirit, that I, not as President but as a humble servant of God, will receive justice without mercy if I fail to show mercy.

Public Papers of the Presidents, Ford, 1974, p.103

Finally, I feel that Richard Nixon and his loved ones have suffered enough and will continue to suffer, no matter what I do, no matter what we, as a great and good nation, can do together to make his goal of peace come true.

[At this point, the President began reading from the proclamation granting the pardon.]

Public Papers of the Presidents, Ford, 1974, p.103

"Now, therefore, I, Gerald R. Ford, President of the United States, pursuant to the pardon power conferred upon me by Article II, Section 2, of the Constitution, have granted and by these presents do grant a full, free, and absolute pardon unto Richard Nixon for all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from July (January) 20, 1969 through August 9, 1974."

[The President signed the proclamation and then resumed reading.]

Public Papers of the Presidents, Ford, 1974, p.103

"In witness whereof, I have hereunto set my hand this eighth day of September, in the year of our Lord nineteen hundred and seventy-four, and of the Independence of the United States of America the one hundred and ninety ninth."

Public Papers of the Presidents, Ford, 1974, p.103

NOTE: The President spoke at 11:05 a.m. in the Oval Office at the White House, where he signed Proclamation 4311 granting the pardon.

President Ford's State of the Union Address, 1975

Title: President Ford's State of the Union Address

Author: Gerald Ford

Date: January 15, 1975

Source: Public Papers of the Presidents, Ford, 1975, pp.36-46

Public Papers of the Presidents, Ford, 1975, p.36

Mr. Speaker, Mr. Vice President, Members of the 94th Congress, and distinguished guests:

Public Papers of the Presidents, Ford, 1975, p.36

Twenty-six years ago, a freshman Congressman, a young fellow with lots of idealism who was out to change the world, stood before Sam Rayburn in the well of the House and solemnly swore to the same oath that all of you took yesterday—an unforgettable experience, and I congratulate you all.

Public Papers of the Presidents, Ford, 1975, p.36

Two days later, that same freshman stood at the back of this great Chamber-over there someplace—as President Truman, all charged up by his single-handed election victory, reported as the Constitution requires on the state of the Union.

Public Papers of the Presidents, Ford, 1975, p.36

When the bipartisan applause stopped, President Truman said, "I am happy to report to this 81st Congress that the state of the Union is good. Our Nation is better able than ever before to meet the needs of the American people, and to give them their fair chance in the pursuit of happiness. [It] is foremost among the nations of the world in the search for peace."

Public Papers of the Presidents, Ford, 1975, p.36

Today, that freshman Member from Michigan stands where Mr. Truman stood, and I must say to you that the state of the Union is not good: Millions of Americans are out of work.

Public Papers of the Presidents, Ford, 1975, p.36

Recession and inflation are eroding the money of millions more.

Public Papers of the Presidents, Ford, 1975, p.36

Prices are too high, and sales are too slow.

Public Papers of the Presidents, Ford, 1975, p.37

This year's Federal deficit will be about $30 billion; next year's probably $45 billion.

Public Papers of the Presidents, Ford, 1975, p.37

The national debt will rise to over $500 billion.

Public Papers of the Presidents, Ford, 1975, p.37

Our plant capacity and productivity are not increasing fast enough.

Public Papers of the Presidents, Ford, 1975, p.37

We depend on others for essential energy.

Public Papers of the Presidents, Ford, 1975, p.37

Some people question their Government's ability to make hard decisions and stick with them; they expect Washington politics as usual.

Public Papers of the Presidents, Ford, 1975, p.37

Yet, what President Truman said on January 5, 1949, is even more true in 1975. We are better able to meet our people's needs. All Americans do have a fairer chance to pursue happiness. Not only are we still the foremost nation in the pursuit of peace but today's prospects of attaining it are infinitely brighter.

Public Papers of the Presidents, Ford, 1975, p.37

There were 59 million Americans employed at the start of 1949; now there are more than 85 million Americans who have jobs. In comparable dollars, the average income of the American family has doubled during the past 26 years.

Public Papers of the Presidents, Ford, 1975, p.37

Now, I want to speak very bluntly. I've got bad news, and I don't expect much, if any, applause. The American people want action, and it will take both the Congress and the President to give them what they want. Progress and solutions can be achieved, and they will be achieved.

Public Papers of the Presidents, Ford, 1975, p.37

My message today is not intended to address all of the complex needs of America. I will send separate messages making specific recommendations for domestic legislation, such as the extension of general revenue sharing and the Voting Rights Act.

Public Papers of the Presidents, Ford, 1975, p.37

The moment has come to move in a new direction. We can do this by fashioning a new partnership between the Congress on the one hand, the White House on the other, and the people we both represent.

Public Papers of the Presidents, Ford, 1975, p.37

Let us mobilize the most powerful and most creative industrial nation that ever existed on this Earth to put all our people to work. The emphasis on our economic efforts must now shift from inflation to jobs.

Public Papers of the Presidents, Ford, 1975, p.37

To bolster business and industry and to create new jobs, I propose a 1-year tax reduction of $16 billion. Three-quarters would go to individuals and one-quarter to promote business investment.

Public Papers of the Presidents, Ford, 1975, p.37

This cash rebate to individuals amounts to 12 percent of 1974 tax payments-a total cut of $12 billion, with a maximum of $1,000 per return.

Public Papers of the Presidents, Ford, 1975, p.37

I call on the Congress to act by April 1. If you do—and I hope you will—the Treasury can send the first check for half of the rebate in May and the second by September.

Public Papers of the Presidents, Ford, 1975, p.37–p.38

The other one-fourth of the cut, about $4 billion, will go to business, including farms, to promote expansion and to create more jobs. The 1-year reduction for [p.38] businesses would be in the form of a liberalized investment tax credit increasing the rate to 12 percent for all businesses.

Public Papers of the Presidents, Ford, 1975, p.38

This tax cut does not include the more fundamental reforms needed in our tax system. But it points us in the right direction—allowing taxpayers rather than the Government to spend their pay.

Public Papers of the Presidents, Ford, 1975, p.38

Cutting taxes now is essential if we are to turn the economy around. A tax cut offers the best hope of creating more jobs. Unfortunately, it will increase the size of the budget deficit. Therefore, it is more important than ever that we take steps to control the growth of Federal expenditures.

Public Papers of the Presidents, Ford, 1975, p.38

Part of our trouble is that we have been self-indulgent. For decades, we have been voting ever-increasing levels of Government benefits, and now the bill has come due. We have been adding so many new programs that the size and the growth of the Federal budget has taken on a life of its own.

Public Papers of the Presidents, Ford, 1975, p.38

One characteristic of these programs is that their cost increases automatically every year because the number of people eligible for most of the benefits increases every year. When these programs are enacted, there is no dollar amount set. No one knows what they will cost. All we know is that whatever they cost last year, they will cost more next year.

Public Papers of the Presidents, Ford, 1975, p.38

It is a question of simple arithmetic. Unless we check the excessive growth of Federal expenditures or impose on ourselves matching increases in taxes, we will continue to run huge inflationary deficits in the Federal budget.

Public Papers of the Presidents, Ford, 1975, p.38

If we project the current built-in momentum of Federal spending through the next 15 years, State, Federal, and local government expenditures could easily comprise half of our gross national product. This compares with less than a third in 1975.

Public Papers of the Presidents, Ford, 1975, p.38

I have just concluded the process of preparing the budget submissions for fiscal year 1976. In that budget, I will propose legislation to restrain the growth of a number of existing programs. I have also concluded that no new spending programs can be initiated this year, except for energy. Further, I will not hesitate to veto any new spending programs adopted by the Congress.

Public Papers of the Presidents, Ford, 1975, p.38

As an additional step toward putting the Federal Government's house in order, I recommend a 5-percent limit on Federal pay increases in 1975. In all Government programs tied to the Consumer Price Index—including social security, civil service and military retirement pay, and food stamps—I also propose a 1-year maximum increase of 5 percent.

Public Papers of the Presidents, Ford, 1975, p.38–p.39

None of these recommended ceiling limitations, over which Congress has final authority, are easy to propose, because in most cases they involve anticipated payments to many, many deserving people. Nonetheless, it must be done. I must [p.39] emphasize that I am not asking to eliminate, to reduce, to freeze these payments. I am merely recommending that we slow down the rate at which these payments increase and these programs grow.

Public Papers of the Presidents, Ford, 1975, p.39

Only a reduction in the growth of spending can keep Federal borrowing down and reduce the damage to the private sector from high interest rates. Only a reduction in spending can make it possible for the Federal Reserve System to avoid an inflationary growth in the money supply and thus restore balance to our economy. A major reduction in the growth of Federal spending can help dispel the uncertainty that so many feel about our economy and put us on the way to curing our economic ills.

Public Papers of the Presidents, Ford, 1975, p.39

If we don't act to slow down the rate of increase in Federal spending, the United States Treasury will be legally obligated to spend more than $360 billion in fiscal year 1976, even if no new programs are enacted. These are not matters of conjecture or prediction, but again, a matter of simple arithmetic. The size of these numbers and their implications for our everyday life and the health of our economic system are shocking.

Public Papers of the Presidents, Ford, 1975, p.39

I submitted to the last Congress a list of budget deferrals and rescissions. There will be more cuts recommended in the budget that I will submit. Even so, the level of outlays for fiscal year 1976 is still much, much too high. Not only is it too high for this year but the decisions we make now will inevitably have a major and growing impact on expenditure levels in future years. I think this is a very fundamental issue that we, the Congress and I, must jointly solve.

Public Papers of the Presidents, Ford, 1975, p.39

Economic disruptions we and others are experiencing stem in part from the fact that the world price of petroleum has quadrupled in the last year. But in all honesty, we cannot put all of the blame on the oil-exporting nations. We, the United States, are not blameless. Our growing dependence upon foreign sources has been adding to our vulnerability for years and years, and we did nothing to prepare ourselves for such an event as the embargo of 1973.

Public Papers of the Presidents, Ford, 1975, p.39

During the 1960's, this country had a surplus capacity of crude oil which we were able to make available to our trading partners whenever there was a disruption of supply. This surplus capacity enabled us to influence both supplies and prices of crude oil throughout the world. Our excess capacity neutralized any effort at establishing an effective cartel, and thus the rest of the world was assured of adequate supplies of oil at reasonable prices.

Public Papers of the Presidents, Ford, 1975, p.39–p.40

By 1970, our surplus capacity had vanished, and as a consequence, the latent power of the oil cartel could emerge in full force. Europe and Japan, both heavily dependent on imported oil, now struggle to keep their economies in [p.40] balance. Even the United States, our country, which is far more self-sufficient than most other industrial countries, has been .put under serious pressure.

Public Papers of the Presidents, Ford, 1975, p.40

I am proposing a program which will begin to restore our country's surplus capacity in total energy. In this way, we will be able to assure ourselves reliable and adequate energy and help foster a new world energy stability for other major consuming nations.

Public Papers of the Presidents, Ford, 1975, p.40

But this Nation and, in fact, the world must face the prospect of energy difficulties between now and 1985. This program will impose burdens on all of us with the aim of reducing our consumption of energy and increasing our production. Great attention has been paid to the considerations of fairness, and I can assure you that the burdens will not fall more harshly on those less able to bear them.

Public Papers of the Presidents, Ford, 1975, p.40

I am recommending a plan to make us invulnerable to cutoffs of foreign oil. It will require sacrifices, but it—and this is most important—it will work.

Public Papers of the Presidents, Ford, 1975, p.40

I have set the following national energy goals to assure that our future is as secure and as productive as our past:

Public Papers of the Presidents, Ford, 1975, p.40

First, we must reduce oil imports by 1 million barrels per day by the end of this year and by 2 million barrels per day by the end of 1977.

Public Papers of the Presidents, Ford, 1975, p.40

Second, we must end vulnerability to economic disruption by foreign suppliers by 1985.

Public Papers of the Presidents, Ford, 1975, p.40

Third, we must develop our energy technology and resources so that the United States has the ability to supply a significant share of the energy needs of the free world by the end of this century.

Public Papers of the Presidents, Ford, 1975, p.40

To attain these objectives, we need immediate action to cut imports. Unfortunately, in the short term there are only a limited number of actions which can increase domestic supply. I will press for all of them.

Public Papers of the Presidents, Ford, 1975, p.40

I urge quick action on the necessary legislation to allow commercial production at the Elk Hills, California, Naval Petroleum Reserve. In order that we make greater use of domestic coal resources, I am submitting amendments to the Energy Supply and Environmental Coordination Act which will greatly increase the number of powerplants that can be promptly converted to coal.

Public Papers of the Presidents, Ford, 1975, p.40–p.41

Obviously, voluntary conservation continues to be essential, but tougher programs are needed—and needed now. Therefore, I am using Presidential powers to raise the fee on all imported crude oil and petroleum products. The crude oil fee level will be increased $1 per barrel on February 1, by $2 per barrel on March 1, and by $3 per barrel on April 1. I will take actions to reduce undue hardships on any geographical region. The foregoing are interim administrative [p.41] actions. They will be rescinded when the broader but necessary legislation is enacted.

Public Papers of the Presidents, Ford, 1975, p.41

To that end, I am requesting the Congress to act within 90 days on a more comprehensive energy tax program. It includes: excise taxes and import fees totaling $2 per barrel on product imports and on all crude oil; deregulation of new natural gas and enactment of a natural gas excise tax.

Public Papers of the Presidents, Ford, 1975, p.41

I plan to take Presidential initiative to decontrol the price of domestic crude oil on April 1. I urge the Congress to enact a windfall profits tax by that date to ensure that oil producers do not profit unduly.

Public Papers of the Presidents, Ford, 1975, p.41

The sooner Congress acts, the more effective the oil conservation program will be and the quicker the Federal revenues can be returned to our people.

Public Papers of the Presidents, Ford, 1975, p.41

I am prepared to use Presidential authority to limit imports, as necessary, to guarantee success.

Public Papers of the Presidents, Ford, 1975, p.41

I want you to know that before deciding on my energy conservation program, I considered rationing and higher gasoline taxes as alternatives. In my judgment, neither would achieve the desired results and both would produce unacceptable inequities.

Public Papers of the Presidents, Ford, 1975, p.41

A massive program must be initiated to increase energy supply, to cut demand, and provide new standby emergency programs to achieve the independence we want by 1985. The largest part of increased oil production must come from new frontier areas on the Outer Continental Shelf and from the Naval Petroleum Reserve No. 4 in Alaska. It is the intent of this Administration to move ahead with exploration, leasing, and production on those frontier areas of the Outer Continental Shelf where the environmental risks are acceptable.

Public Papers of the Presidents, Ford, 1975, p.41

Use of our most abundant domestic resource—coal—is severely limited. We must strike a reasonable compromise on environmental concerns with coal. I am submitting Clean Air [Act] amendments which will allow greater coal use without sacrificing clean air goals.

Public Papers of the Presidents, Ford, 1975, p.41

I vetoed the strip mining legislation passed by the last Congress. 1 With appropriate changes, I will sign a revised version when it comes to the White House.

1 See 1974 volume, Item 326.

Public Papers of the Presidents, Ford, 1975, p.41

I am proposing a number of actions to energize our nuclear power program. I will submit legislation to expedite nuclear leasing [licensing] and the rapid selection of sites.

Public Papers of the Presidents, Ford, 1975, p.41–p.42

In recent months, utilities have cancelled or postponed over 60 percent of planned nuclear expansion and 30 percent of planned additions to non-nuclear [p.42] capacity. Financing problems for that industry are worsening. I am therefore recommending that the 1-year investment tax credit of 12 percent be extended an additional 2 years to specifically speed the construction of powerplants that do not use natural gas or oil. I am also submitting proposals for selective reform of State utility commission regulations.

Public Papers of the Presidents, Ford, 1975, p.42

To provide the critical stability for our domestic energy production in the face of world price uncertainty, I will request legislation to authorize and require tariffs, import quotas, or price floors to protect our energy prices at levels which will achieve energy independence.

Public Papers of the Presidents, Ford, 1975, p.42

Increasing energy supplies is not enough. We must take additional steps to cut long-term consumption. I therefore propose to the Congress: legislation to make thermal efficiency standards mandatory for all new buildings in the United States; a new tax credit of up to $150 for those homeowners who install insulation equipment; the establishment of an energy conservation program to help low-income families purchase insulation supplies; legislation to modify and defer automotive pollution standards for 5 years, which will enable us to improve automobile gas mileage by 40 percent by 1980.

Public Papers of the Presidents, Ford, 1975, p.42

These proposals and actions, cumulatively, can reduce our dependence on foreign energy supplies from 3 to 5 million barrels per day by 1985. To make the United States invulnerable to foreign disruption, I propose standby emergency legislation and a strategic storage program of 1 billion barrels of oil for domestic needs and 300 million barrels for national defense purposes.

Public Papers of the Presidents, Ford, 1975, p.42

I will ask for the funds needed for energy research and development activities. I have established a goal of 1 million barrels of synthetic fuels and shale oil production per day by 1985 together with an incentive program to achieve it.

Public Papers of the Presidents, Ford, 1975, p.42

I have a very deep belief in America's capabilities. Within the next 10 years, my program envisions: 200 major nuclear powerplants; 250 major new coal mines; 150 major coal-fired powerplants; 30 major new [oil] refineries; 20 major new synthetic fuel plants; the drilling of many thousands of new oil wells; the insulation of 18 million homes; and the manufacturing and the sale of millions of new automobiles, trucks, and buses that use much less fuel.

Public Papers of the Presidents, Ford, 1975, p.42

I happen to believe that we can do it. In another crisis—the one in 1942 President Franklin D. Roosevelt said this country would build 60,000 [50,000] military aircraft. By 1943, production in that program had reached 125,000 aircraft annually. They did it then. We can do it now.

Public Papers of the Presidents, Ford, 1975, p.42–p.43

If the Congress and the American people will work with me to attain these targets, they will be achieved and will be surpassed. From adversity, let us seize opportunity. Revenues of some $30 billion from [p.43] higher energy taxes designed to encourage conservation must be refunded to the American people in a manner which corrects distortions in our tax system wrought by inflation.

Public Papers of the Presidents, Ford, 1975, p.43

People have been pushed into higher tax brackets by inflation, with consequent reduction in their actual spending power. Business taxes are similarly distorted because inflation exaggerates reported profits, resulting in excessive taxes.

Public Papers of the Presidents, Ford, 1975, p.43

Accordingly, I propose that future individual income taxes be reduced by $16.5 billion. This will be done by raising the low-income allowance and reducing tax rates. This continuing tax cut will primarily benefit lower- and middle-income taxpayers.

Public Papers of the Presidents, Ford, 1975, p.43

For example, a typical family of four with a gross income of $5,600 now pays $185 in Federal income taxes. Under this tax cut plan, they would pay nothing. A family of four with a gross income of $12,500 now pays $1,260 in Federal taxes. My proposal reduces that total by $300. Families grossing $20,000 would receive a reduction of $210.

Public Papers of the Presidents, Ford, 1975, p.43

Those with the very lowest incomes, who can least afford higher costs, must also be compensated. I propose a payment of $80 to every person 18 years of age and older in that very limited category.

Public Papers of the Presidents, Ford, 1975, p.43

State and local governments will receive $2 billion in additional revenue sharing to offset their increased energy costs.

Public Papers of the Presidents, Ford, 1975, p.43

To offset inflationary distortions and to generate more economic activity, the corporate tax rate will be reduced from 48 percent to 42 percent.

Public Papers of the Presidents, Ford, 1975, p.43

Now let me turn, if I might, to the international dimension of the present crisis. At no time in our peacetime history has the state of the Nation depended more heavily on the state of the world. And seldom, if ever, has the state of the world depended more heavily on the state of our Nation.

Public Papers of the Presidents, Ford, 1975, p.43

The economic distress is global. We will not solve it at home unless we help to remedy the profound economic dislocation abroad. World trade and monetary structure provides markets, energy, food, and vital raw materials—for all nations. This international system is now in jeopardy.

Public Papers of the Presidents, Ford, 1975, p.43

This Nation can be proud of significant achievements in recent years in solving problems and crises. The Berlin agreement, the SALT agreements, our new relationship with China, the unprecedented efforts in the Middle East are immensely encouraging. But the world is not free from crisis. In a world of 150 nations, where nuclear technology is proliferating and regional conflicts continue, international security cannot be taken for granted.

Public Papers of the Presidents, Ford, 1975, p.43–p.44

So, let there be no mistake about it: International cooperation is a vital factor [p.44] of our lives today. This is not a moment for the American people to turn inward. More than ever before, our own well-being depends on America's determination and America's leadership in the whole wide world.

Public Papers of the Presidents, Ford, 1975, p.44

We are a great Nation—spiritually, politically, militarily, diplomatically, and economically. America's commitment to international security has sustained the safety of allies and friends in many areas—in the Middle East, in Europe, and in Asia. Our turning away would unleash new instabilities, new dangers around the globe, which, in turn, would threaten our own security.

Public Papers of the Presidents, Ford, 1975, p.44

At the end of World War II, we turned a similar challenge into an historic opportunity and, I might add, an historic achievement. An old order was in disarray; political and economic institutions were shattered. In that period, this Nation and its partners built new institutions, new mechanisms of mutual support and cooperation. Today, as then, we face an historic opportunity. If we act imaginatively and boldly, as we acted then, this period will in retrospect be seen as one of the great creative moments of our Nation's history. The whole world is watching to see how we respond.

Public Papers of the Presidents, Ford, 1975, p.44

A resurgent American economy would do more to restore the confidence of the world in its own future than anything else we can do. The program that this Congress passes can demonstrate to the world that we have started to put our own house in order. If we can show that this Nation is able and willing to help other nations meet the common challenge, it can demonstrate that the United States will fulfill its responsibilities as a leader among nations.

Public Papers of the Presidents, Ford, 1975, p.44

Quite frankly, at stake is the future of industrialized democracies, which have perceived their destiny in common and sustained it in common for 30 years.

Public Papers of the Presidents, Ford, 1975, p.44

The developing nations are also at a turning point. The poorest nations see their hopes of feeding their hungry and developing their societies shattered by the economic crisis. The long-term economic future for the producers of raw materials also depends on cooperative solutions.

Public Papers of the Presidents, Ford, 1975, p.44

Our relations with the Communist countries are a basic factor of the world environment. We must seek to build a long-term basis for coexistence. We will stand by our principles. We will stand by our interests. We will act firmly when challenged. The kind of a world we want depends on a broad policy of creating mutual incentives for restraint and for cooperation.

Public Papers of the Presidents, Ford, 1975, p.44

As we move forward to meet our global challenges and opportunities, we must have the tools to do the job.

Public Papers of the Presidents, Ford, 1975, p.44–p.45

Our military forces are strong and ready. This military strength deters aggression against our allies, stabilizes our relations with former adversaries, and [p.45] protects our homeland. Fully adequate conventional and strategic forces cost many, many billions, but these dollars are sound insurance for our safety and for a more peaceful world.

Public Papers of the Presidents, Ford, 1975, p.45

Military strength alone is not sufficient. Effective diplomacy is also essential in preventing conflict, in building world understanding. The Vladivostok negotiations with the Soviet Union represent a major step in moderating strategic arms competition. My recent discussions with the leaders of the Atlantic community, Japan, and South Korea have contributed to meeting the common challenge.

Public Papers of the Presidents, Ford, 1975, p.45

But we have serious problems before us that require cooperation between the President and the Congress. By the Constitution and tradition, the execution of foreign policy is the responsibility of the President.

Public Papers of the Presidents, Ford, 1975, p.45

In recent years, under the stress of the Vietnam war, legislative restrictions on the President's ability to execute foreign policy and military decisions have proliferated. As a Member of the Congress, I opposed some and I approved others. As President, I welcome the advice and cooperation of the House and the Senate.

Public Papers of the Presidents, Ford, 1975, p.45

But if our foreign policy is to be successful, we cannot rigidly restrict in legislation the ability of the President to act. The conduct of negotiations is ill-suited to such limitations. Legislative restrictions, intended for the best motives and purposes, can have the opposite result, as we have seen most recently in our trade relations with the Soviet Union.

Public Papers of the Presidents, Ford, 1975, p.45

For my part, I pledge this Administration will act in the closest consultation with the Congress as we face delicate situations and troubled times throughout the globe.

Public Papers of the Presidents, Ford, 1975, p.45

When I became President only 5 months ago, I promised the last Congress a policy of communication, conciliation, compromise, and cooperation. I renew that pledge to the new Members of this Congress.

Public Papers of the Presidents, Ford, 1975, p.45

Let me sum it up. America needs a new direction, which I have sought to chart here today—a change of course which will: put the unemployed back to work; increase real income and production; restrain the growth of Federal Government spending; achieve energy independence; and advance the cause of world understanding.

Public Papers of the Presidents, Ford, 1975, p.45

We have the ability. We have the know-how. In partnership with the American people, we will achieve these objectives.

Public Papers of the Presidents, Ford, 1975, p.45–p.46

As our 200th anniversary approaches, we owe it to ourselves and to posterity to rebuild our political and economic strength. Let us make America once [p.46] again and for centuries more to come what it has so long been—a stronghold and a beacon-light of liberty for the whole world.

Thank you.

Public Papers of the Presidents, Ford, 1975, p.46

NOTE: The President delivered his address at 1:06 p.m. in the House Chamber at the Capitol. He was introduced by Carl Albert, Speaker of the House of Representatives. The address was broadcast live on radio and television.

President Ford's Annual Message to the Congress: The Economic Report of the President, 1975

Title: President Ford's Annual Message to the Congress: The Economic Report of the President

Author: Gerald Ford

Date: February 4, 1975

Source: Public Papers of the Presidents, Ford, 1975, pp.172-178

Public Papers of the Presidents, Ford, 1975, p.172

To the Congress of the United States:

Public Papers of the Presidents, Ford, 1975, p.172

The economy is in a severe recession. Unemployment is too high and will rise higher. The rate of inflation is also too high although some progress has been made in lowering it. Interest rates have fallen from the exceptional peaks reached in the summer of 1974, but they reflect the rate of inflation and remain much too high.

Public Papers of the Presidents, Ford, 1975, p.172

Moreover, even as we seek solutions to these problems, we must also seek solutions to our energy problem. We must embark upon effective programs to conserve energy and develop new sources if we are to reduce the proportion of our oil imported from unreliable sources. Failure or delay in this endeavor will mean a continued increase in this Nation's dependence on foreign sources of oil.

Public Papers of the Presidents, Ford, 1975, p.172

We therefore confront three problems: the immediate problem of recession and unemployment, the continuing problem of inflation, and the newer problem of reducing America's vulnerability to oil embargoes.

Public Papers of the Presidents, Ford, 1975, p.172–p.173

These problems are as urgent as they are important. The solutions we have [p.173] proposed are the result of careful study, but they will not produce swift and immediate results. I believe that these programs and proposals will be effective. I urge the Congress to adopt them and to help me follow through with further measures that changing circumstances may make desirable. In our efforts we must recognize that the remedies we devise must be both effective and consistent with the long-term objectives that are important for the future well-being of our economy. For the sake of taking one step forward we must not adopt policies which will eventually carry us two steps backward.

Public Papers of the Presidents, Ford, 1975, p.173

As I proposed to you in my State of the Union message, the economy needs an immediate 1-year tax cut of $16 billion. This is an essential first move in any program to restore purchasing power, rebuild the confidence of consumers, and increase investment incentives for business.

Public Papers of the Presidents, Ford, 1975, p.173

Several different proposals to reduce individual taxes were considered carefully in our search for the best way to help the economy. We chose the method that would best provide immediate stimulus to the economy without permanently exacerbating our budget problem. Accordingly, I recommend a 12 percent rebate of 1974 taxes, up to a maximum of $1,000. The rebate will be paid in two large lump-sum payments totaling $12 billion, the first beginning in May and the second by September.

Public Papers of the Presidents, Ford, 1975, p.173

I have also proposed a $4-billion investment tax credit which would encourage businessmen to make new commitments and expenditures now on projects that can be put in place this year or by the end of next year.

Public Papers of the Presidents, Ford, 1975, p.173

The prompt enactment of the $16-billion tax reduction is a matter of utmost urgency if we are to bolster the natural forces of economic recovery. But in recognizing the need for a temporary tax cut, I am not unmindful of the fact that it will increase the size of the budget deficit. This is .all the more reason to intensify our efforts to restrain the growth in Federal spending. I have asked Congress to institute actions which will pare $17 billion from the fiscal 1976 budget. Even so, we foresee a deficit of more than $50 billion for the fiscal year beginning July 1. Moreover, even without new expenditure initiatives, the budget deficit is likely to remain excessively large in fiscal 1977. As a consequence, I will propose no new expenditure programs except those required by the energy program.

Public Papers of the Presidents, Ford, 1975, p.173–p.174

I am also asking the Congress to join me in finding additional ways to slow the rate of increase in Federal spending. Budget outlays for new programs or for expansion of existing ones would have their economic effect long after the economic recovery gets under way. It is essential that the deficit be reduced markedly as the economy begins to return toward full employment. Control of [p.174] expenditures is the only way we can halt an extraordinary increase in the portion of our incomes which Government will take in the future.

Public Papers of the Presidents, Ford, 1975, p.174

A simple calculation shows the size of the problem which we face. Transfer payments to individuals by the Federal Government have increased, after adjustment for inflation, by almost 9 percent annually during the past two decades. A continuation of this trend for the next two decades, along with only modest increases in other Federal expenditures and in those of State and local governments, would lift the expenditures by government at all levels from about one-third of the gross national product to more than one-half. Spending on this scale would require a substantial increase in the tax burden on the average American family. This could easily stifle the incentive and enterprise which is essential to continued improvements in productivity and in our standard of living.

Public Papers of the Presidents, Ford, 1975, p.174

The achievement of our independence in energy will be neither quick nor easy. No matter what programs are adopted, perseverence by the American people and a willingness to accept inconvenience will be required in order to reach this important goal. The American economy was built on the basis of lowcost energy. The design of our industrial plants and production processes reflect this central element in the American experience. Cheap energy freed the architects of our office buildings from the need to plan for energy efficiency. It made private homes cheaper because expensive insulation was not required when energy was more abundant. Cheap energy also made suburban life accessible to more citizens, and it has given the mobility of the automobile to rural and city dwellers alike.

Public Papers of the Presidents, Ford, 1975, p.174

The low cost of energy during most of the twentieth century was made possible by abundant resources of domestic oil, natural gas, and coal. This era has now come to an end. We have held the price of natural gas below the levels required to encourage investment in exploration and development of new supplies, and below the price which would have encouraged more careful use. By taking advantage of relatively inexpensive foreign supplies of oil, we improved the quality of life for Americans and saved our own oil for future use. By. neglecting to prepare for the possibility of import disruptions, however, we left ourselves overly dependent upon unreliable foreign supplies.

Public Papers of the Presidents, Ford, 1975, p.174–p.175

Present circumstances and the future security of the American economy leave no choice but to adjust to a higher relative price of energy products. We have, in fact, already begun to do so, although I emphasize that there is a long way to go. Consumers have already become more conscious of energy efficiency in their purchases. The higher cost of energy has already induced industry to save energy [p.175] by introducing new production techniques and by investing in energy-conserving capital equipment. These efforts must be stimulated and maintained until our consumption patterns and our industrial structure adjust to the new relationship between the costs of energy, labor, and capital.

Public Papers of the Presidents, Ford, 1975, p.175

This process of adjustment has been slowed because U.S. energy costs have not been allowed to increase at .an appropriate rate. Prices of about two-thirds of our domestic crude oil are still being held at less than half the cost of imported oil, and natural gas prices are being held at even lower levels. Such artificially low prices encourage the wasteful use of energy and inhibit future production. If there is no change in our pricing policy for domestic energy and in our consumption habits, by 1985 one-half of our oil will have to be imported, much of it from unreliable sources. Since our economy depends so heavily on energy, it is imperative that we make ourselves less vulnerable to supply cutoffs and the monopolistic pricing of some foreign oil producers.

Public Papers of the Presidents, Ford, 1975, p.175

The need for reliable energy supplies for our economy is the foundation of my proposed energy program. The principal purpose is to permit and encourage our economy to adjust its consumption of energy to the new realities of the market place during the last part of the twentieth century. The reduction in our dependence on unreliable sources of oil will require Government action, but even in this vital area the role of Government in economic life should be limited to those functions that it can perform better than the private sector.

Public Papers of the Presidents, Ford, 1975, p.175

There are two courses open to us in resolving our energy problem: the first is administered rationing and allocation; the second is use of the price mechanism. An energy rationing program might be acceptable for a brief period, but an effective program will require us to hold down consumption for an extended period. A rationing program for a period of 5 years or more would be both intolerable and ineffective. The costs in slower decision making alone would be enormous. Rationing would mean that every new company would have to petition the Government for a license to purchase or sell fuel. It would mean that any new plant expansion or any new industrial process would require approval. It would mean similar restrictions on homebuilders, who already find it impossible in much of the Nation to obtain natural gas hookups. After 5 or 10 years such a rigid program would surely sap the vitality of the American economy by substituting bureaucratic decisions for those of the market place. It would be impossible to devise a fair long-term rationing system. The only practical and effective way to achieve energy independence, therefore, is by allowing prices of oil and gas to move higher—high enough to discourage consumption and encourage the exploration and development of new energy sources.

Public Papers of the Presidents, Ford, 1975, p.176

I have, therefore, recommended an excise tax on domestic crude oil and natural gas and an import fee on imported oil, as well as decontrol of the price of crude oil. These actions will raise the price of all energy-intensive products and reduce oil consumption and imports. I have requested the Congress to enact a tax on producers of domestic crude oil to prevent windfall profits as a result of price decontrol.

Public Papers of the Presidents, Ford, 1975, p.176

Other aspects of my program will provide assurances that imports will not be allowed to disrupt the domestic energy market. Amendments to the Clean Air Act to allow more use of coal without major environmental damage, and incentives to speed the development of nuclear energy and synthetic fuels will simultaneously increase domestic energy production.

Public Papers of the Presidents, Ford, 1975, p.176

Taken as a whole, the energy package will reduce the damage from any future import disruption to manageable proportions. The energy program however will entail costs. The import fee and tax combination will raise approximately $30 billion from energy consumers. However, I have also proposed a fair and equitable program of permanent tax reductions to compensate consumers for these higher costs. These will include income tax reductions of $16 billion for individuals, along with direct rebates of $2 billion to low-income citizens who pay little or no taxes, corporate tax reductions of $6 billion, a $2-billion increase in revenue sharing payments to State and local governments, and a $3-billion increase in Federal expenditures.

Public Papers of the Presidents, Ford, 1975, p.176

Although appropriate fiscal and energy policies are central to restoring the balance of our economy, they will be supplemented by initiatives in a number of other areas. I was pleased to sign into law in December unemployment compensation legislation which provides extended benefits and expanded coverage for the unemployed. The budget also provides for a significant expansion in public service employment. I also urge the Congress to remove the remaining restrictions on agricultural production and enact legislation to strengthen financial institutions and assist the financial position of corporations. I have also asked for actions to strengthen the Administration's antitrust investigative power and to permit more competition in the transportation industry.

Public Papers of the Presidents, Ford, 1975, p.176–p.177

We sometimes discover when we seek to accomplish several objectives simultaneously that the goals are not always completely compatible. Action to achieve one goal sometimes works to the detriment of another. I recognize that the $16-billion anti-recession tax cut, which adds to an already large Federal deficit, might delay achieving price stability. But a prompt tax cut is essential. My program will raise the price of energy to consumers; but when completed this [p.177] necessary adjustment should not hamper our progress toward the goal of a much slower rate of increase in the general price level in the years ahead.

Public Papers of the Presidents, Ford, 1975, p.177

As we face our short-term problems, we cannot afford to ignore the future implications of our policy initiatives. Fiscal and monetary policies must support the economy during 1975. In supporting the economy, however, we must not allow victory in the battle against inflation to slip beyond our grasp. It is vital that we look beyond the unemployment problem to the need to achieve a reduction in inflation not only in 1975 but also in 1976 and beyond.

Public Papers of the Presidents, Ford, 1975, p.177

The future economic well-being of our Nation requires restoring a greater measure of price stability. This will call for more responsible policies by your Government. The stakes are high. Inflation reduces the purchasing power of our incomes, squeezes profits, and distorts our capital markets. The ability of our free economy to provide an ever higher standard of living would be weakened. We must not be lulled into a belief that inflation need no longer be a major concern of economic policy now that the rate at which prices are increasing appears to be slowing.

Public Papers of the Presidents, Ford, 1975, p.177

The proposals I have made to deal with the problems of recession, inflation, and energy recognize that the American economy is more and more a part of the world economy. What we do affects the economies of other nations, and what happens abroad affects our economy. Close communication, coordination of policies, and consultations with the leaders of other nations will be essential as we deal with our economic and financial difficulties, many of which are common to all the industrial countries of the Western World.

Public Papers of the Presidents, Ford, 1975, p.177

We are already cooperating to ensure that the international monetary system withstands the pressures placed on it by higher oil prices. The passage of the Trade Reform Act of 1974 will make it possible to begin critical negotiations this year on further liberalizing the international trading system, and we will continue to work with other countries toward solutions to the special problems of food and energy.

Public Papers of the Presidents, Ford, 1975, p.177

The economic problems that have emerged during the 1970's are difficult. Some of them reflect years of misdirection. Our efforts to solve the Nation's economic difficulties must be directed toward solutions that will not give rise to even bigger problems later. The year 1975 must be the one in which we face our economic problems and start the course toward real solutions.

GERALD R. FORD

February 4, 1975.

Public Papers of the Presidents, Ford, 1975, p.178

NOTE: The President's message, together with the Annual Report of the Council of Economic Advisers, is printed in the "Economic Report of the President, Transmitted to the Congress February 1975" (Government Printing Office, 359 pp.).

President Ford's Statement Following Evacuation of United States Personnel From the Republic of Vietnam, 1975

Title: President Ford's Statement Following Evacuation of United States Personnel From the Republic of Vietnam

Author: Gerald Ford

Date: April 29, 1975

Source: Public Papers of the Presidents, Ford, 1975, p.605

Public Papers of the Presidents, Ford, 1975, p.605

DURING the past week, I had ordered the reduction of American personnel in the United States mission in Saigon to levels that could be quickly evacuated during an emergency, while enabling that mission to continue to fulfill its duties.

Public Papers of the Presidents, Ford, 1975, p.605

During the day on Monday, Washington time, the airport at Saigon came under persistent rocket as well as artillery fire and was effectively closed. The military situation in the area deteriorated rapidly.

Public Papers of the Presidents, Ford, 1975, p.605

I therefore ordered the evacuation of all American personnel remaining in South Vietnam.

Public Papers of the Presidents, Ford, 1975, p.605

The evacuation has been completed. I commend the personnel of the Armed Forces who accomplished it as well as Ambassador Graham Martin and the staff of his mission, who served so well under difficult conditions.

Public Papers of the Presidents, Ford, 1975, p.605

This action closes a chapter in the American experience. I ask all Americans to close ranks, to avoid recrimination about the past, to look ahead to the many goals we share, and to work together on the great tasks that remain to be accomplished.

Public Papers of the Presidents, Ford, 1975, p.605

NOTE: On April 29, 1975, approximately 1,000 U.S. and 5,500 Vietnamese personnel were removed from the Saigon area. The 16-hour operation was accomplished with a fleet of 81 helicopters flying from U.S. Navy ships sailing off the coast of the Republic of Vietnam.

President Ford's Telephone Conversation With the Astronauts of the Apollo-Soyuz Test Project Following Recovery of Their Spacecraft, 1975

Title: President Ford's Telephone Conversation With the Astronauts of the Apollo-Soyuz Test Project Following Recovery of Their Spacecraft

Author: Gerald Ford

Date: July 24, 1975

Source: Public Papers of the Presidents, Ford, 1975, pp.1027-1029

Public Papers of the Presidents, Ford, 1975, p.1027

THE PRESIDENT. Tom and Deke and Vance, welcome home. On behalf of your fellow Americans—about 214 million of them—congratulations and thanks for a very successful and extremely productive flight in space. We are delighted to have you back safely, and we are very, very proud of the great job that you did.

Public Papers of the Presidents, Ford, 1975, p.1027

Your safe return marks the close of the Apollo program. And you and all of the rest who have been participants should be extremely proud of its success, from the beginning to the present. And as you know better than all of us, your particular flight also adds a new dimension, that of international cooperation, and that is extremely vital now and in the days ahead.

Public Papers of the Presidents, Ford, 1975, p.1027

And I understand from the technicians that your new docking system offers a foundation on which to build future cooperative efforts and in the next decade could be a very valuable tool for space rescues.

Public Papers of the Presidents, Ford, 1975, p.1027

I know, of course, that all three of you are darn glad to get home, or almost home, and that your wives—Faye, Marge, and Joan—are probably listening to this conversation—at least I hope so, because I want them to know we are all proud of their husbands who have done a superb job on behalf of our country.

Public Papers of the Presidents, Ford, 1975, p.1027

Tom, if I might add a lighter note, I understand that as soon as you get checked out, you are going to spend a little time in the next few days helping Vance with his Russian.

Public Papers of the Presidents, Ford, 1975, p.1027

BRIG. GEN. THOMAS P. STAFFORD. Maybe it was an Oklahoma accent, Mr. President. Vance was superb at his Russian.

Public Papers of the Presidents, Ford, 1975, p.1027

THE PRESIDENT. Well, Tom, since this was your fourth mission, I understand you have spent more than 500 hours in space. Would you tell us how this mission compares with your previous one?

Public Papers of the Presidents, Ford, 1975, p.1027

GENERAL STAFFORD. Mr. President, it was completely different in one phase, as far as the international part of it. The other parts were somewhat similar, but it was just so meaningful to us to have this opportunity to work in both the diplomatic and the management areas, besides flying the spacecraft—from all three of us.

Public Papers of the Presidents, Ford, 1975, p.1027

Deke?

Public Papers of the Presidents, Ford, 1975, p.1027–p.1028

DONALD K. SLAYTON. Yes, sir, Mr. President, I think it was a great honor to be [p.1028] able to fly this flight, and I am surprised it came off as well as it did. We are looking forward to doing more.

Public Papers of the Presidents, Ford, 1975, p.1028

THE PRESIDENT. I hope it was not so routine that it was dull.

Public Papers of the Presidents, Ford, 1975, p.1028

MR. SLAYTON. It wasn't dull at all. It was beautiful. And we had a lot of work to do, and I think we enjoyed it a lot.

Public Papers of the Presidents, Ford, 1975, p.1028

THE PRESIDENT. Well, Deke, one of your colleagues that I talked with told me that you are aging a bit to be an astronaut. How does it feel for an old-timer to be in space?

Public Papers of the Presidents, Ford, 1975, p.1028

MR. SLAYTON. Well, it feels great, sir. I can't really explain it. I hope we can show you a few pictures when we have an opportunity, and that might help to make you appreciate it as much as we did. But I think the only way you are really going to appreciate it is to get up there. And I hope some day we can take you up there in the old space shuttle.

Public Papers of the Presidents, Ford, 1975, p.1028

THE PRESIDENT. I saw you moving around there a few times. You looked as agile as those younger fellows that you were helping out.

Public Papers of the Presidents, Ford, 1975, p.1028

Let me say that the word that I would like to pass on to Deke is that your brother and his wife, who had an unfortunate accident just a day or two before you took off, I understand have come along well, and we certainly wish them all a very rapid recovery following that accident.

Public Papers of the Presidents, Ford, 1975, p.1028

MR. SLAYTON. Thank you very much, Mr. President. I certainly appreciate your concern.

Public Papers of the Presidents, Ford, 1975, p.1028

THE PRESIDENT. Vance, would you mind making a comment or two? You brought the Apollo in. What was your biggest challenge in the encounter on this particular mission?

Public Papers of the Presidents, Ford, 1975, p.1028

VANCE BRAND. I think probably the last 2 days, where I had the most to do. The entry itself was probably the biggest challenge, Mr. President, and I thought it was really interesting. That fireball was really beautiful, and it was really pretty neat skimming over the Earth at 25,000 miles an hour.

Public Papers of the Presidents, Ford, 1975, p.1028

THE PRESIDENT. To all three of you, how will it feel to have an opportunity to sleep in a regular sack for a change?

Public Papers of the Presidents, Ford, 1975, p.1028

GENERAL STAFFORD. Fantastic, Mr. President, fantastic.

Public Papers of the Presidents, Ford, 1975, p.1028

Say, the two cosmonauts said they certainly appreciated the call from you while they were up there, and they were remembering when they were with you down there at the picnic.

Public Papers of the Presidents, Ford, 1975, p.1028

THE PRESIDENT. Well, I am sure you were as glad as we were that their recovery went without any incident, without any problem, and I am sure that they feel the same way about the successful landing of all of you.

Public Papers of the Presidents, Ford, 1975, p.1028–p.1029

I know you have got a lot of important business to do, so let me just say your [p.1029] achievements—that of all three of you, with the two cosmonauts—your achievements are historic. It is a part of our history, which was written by the recovery forces that have been ready at any time in each case of reentry.

Public Papers of the Presidents, Ford, 1975, p.1029

Before I do hang up, I would like to extend my congratulations for a very outstanding performance to Captain Neiger, Commanding Officer of the U.S.S. New Orleans, and to his ship's company. They, of course, were standing by and did a first-class job and have achieved an outstanding record.

Public Papers of the Presidents, Ford, 1975, p.1029

The crew, as you know better than I, picked up the Apollo 14 crew in February of 1971 and was responsible for the safe recovery of both the Skylab 3 and Skylab 4 astronauts. We thank them and congratulate them on their performance as a part of this overall team.

Public Papers of the Presidents, Ford, 1975, p.1029

Your successful completion of this mission, I say with emphasis, has opened a new era of international cooperation. I strongly hope—as I am sure the Americans that are listening or watching and all others do—we hope that this first international manned flight will provide all of us with an example to remember for many, many years to come.

Public Papers of the Presidents, Ford, 1975, p.1029

We are proud of you, and we thank you, and good luck. And I will see you back in Washington soon, I hope. It is nice to wave to you on the screen. Okay, good luck, fellows.

Public Papers of the Presidents, Ford, 1975, p.1029

NOTE: The President spoke at 6:15 p.m. from the Oval Office at the White House to the astronauts on board the U.S.S. New Orleans. The conversation was broadcast live on radio and television.

President Ford's Remarks Upon Signing a Bill Extending the Voting Rights Act of 1965

Title: President Ford's Remarks Upon Signing a Bill Extending the Voting Rights Act of 1965

Author: Gerald Ford

Date: August 6, 1975

Source: Public Papers of the Presidents, Ford, 1975, pp.1118-1119

Public Papers of the Presidents, Ford, 1975, p.1118

Mr. Vice President, distinguished Members of the Congress, and other distinguished guests:

Public Papers of the Presidents, Ford, 1975, p.1118

I am very pleased to sign today H.R. 6219, which extends as well as broadens the provisions of the Voting Rights Act of 1965.

Public Papers of the Presidents, Ford, 1975, p.1119

The right to vote is at the very foundation of our American system, and nothing must interfere with this very precious right. Today is the 10th anniversary of the signing by President Johnson of the Voting Rights Act of 1965, which I supported as a Member of the House of Representatives.

Public Papers of the Presidents, Ford, 1975, p.1119

In the past decade, the voting rights of millions and millions of Americans have been protected and our system of government has been strengthened immeasurably. The bill that I will sign today extends the temporary provisions of the act for 7 more years and broadens the provisions to bar discrimination against Spanish-speaking Americans, American Indians, Alaskan natives, and Asian Americans.

Public Papers of the Presidents, Ford, 1975, p.1119

Further, this bill will permit private citizens, as well as the Attorney General, to initiate suits to protect the voting rights of citizens in any State where discrimination occurs. There must be no question whatsoever about the right of each eligible American, each eligible citizen to participate in our elective process. The extension of this act will help to ensure that right.

Public Papers of the Presidents, Ford, 1975, p.1119

I thank the Members of the Congress, I thank their staffs, and I thank all the others who have been helpful in making this signing possible.

Public Papers of the Presidents, Ford, 1975, p.1119

NOTE: The President spoke at 12:09 p.m. in the Rose Garden at the White House.

Public Papers of the Presidents, Ford, 1975, p.1119

As enacted, H.R. 6219 is Public Law 94-73 (89 Stat. 400).

President Ford's Message on the Observance of Women's Equality Day, 1975

Title: President Ford's Message on the Observance of Women's Equality Day

Author: Gerald Ford

Date: August 26, 1975

Source: Public Papers of the Presidents, Ford, 1975, p.1244

Public Papers of the Presidents, Ford, 1975, p.1244

THE CELEBRATION of Women's Equality Day reminds us of how much more needs to be done to make equal opportunity a reality in our national life. Last year the United States joined with nations around the world in proclaiming 1975 as International Women's Year. This should add even greater encouragement to our national goals in this vitally important area.

Public Papers of the Presidents, Ford, 1975, p.1244

Women's Equality Day gives me another welcome chance to assure all Americans that their Government is firmly committed to achieving a record during this important year which will be a source of national pride to us and inspiration to others. We are determined to make our Government a showcase of equal opportunity. Guided by the firm belief that our Nation derives its vitality from this basic concept, we shall not waiver in our task to make it the cornerstone of daily life throughout our country.

GERALD R. FORD

President Ford's Statement Following Announcement of an Oil Price Increase by the Organization of Petroleum Exporting Countries, 1975

Title: President Ford's Statement Following Announcement of an Oil Price Increase by the Organization of Petroleum Exporting Countries

Author: Gerald Ford

Date: September 27, 1975

Source: Public Papers of the Presidents, Ford, 1975, pp.1536-1537

Public Papers of the Presidents, Ford, 1975, p.1536

I STRONGLY regret the price increase announced today by OPEC, even though it reflects a moderating influence by some oil-producing countries. While the increase was not as large as some expected, nevertheless it will have a significant impact. It will worsen inflation throughout the world, and it will hamper the fragile process of economic recovery. It will hit the poorer countries the hardest.

Public Papers of the Presidents, Ford, 1975, p.1536

In my State of the Union Message in January, I warned the Members of Congress that we would become more and more vulnerable to oil price increases imposed on us by other people in other countries unless the Congress acted quickly to approve my program to free America from its dependence on foreign oil suppliers. And today's action by OPEC demonstrates vividly that my warning was accurate.

Public Papers of the Presidents, Ford, 1975, p.1536

The American people should realize that Congress has refused to take any step to reduce our vulnerability to such whims of the OPEC oil cartel. So long as Congress refuses to enact a program which will allow America to produce its own energy with its own workers and to set its own prices, we will find ourselves increasingly vulnerable to OPEC.

Public Papers of the Presidents, Ford, 1975, p.1536

We will continue to be vulnerable to arbitrary OPEC price increases, which will take away billions of American dollars and thousands of America's jobs, until Congress faces up to the energy problem and makes the hard decisions for Americans to regain their energy independence.

Public Papers of the Presidents, Ford, 1975, p.1536

Those Members of Congress who refuse to adopt an energy program would like the American people to believe they are trying to hold energy prices down. They are wrong, as today's OPEC decision demonstrates.

Public Papers of the Presidents, Ford, 1975, p.1536

During the 4 years of so-called controls since 1971, our bill for imported oil has gone up more than 700 percent. Inaction or wrong action by the Congress means higher prices and increased dependence.

Public Papers of the Presidents, Ford, 1975, p.1536

Every day, we are forced to buy more and more oil from OPEC at higher and higher prices.

Public Papers of the Presidents, Ford, 1975, p.1536

Congress must adopt an energy program which will permit us to control our own supply and set our own prices.

Public Papers of the Presidents, Ford, 1975, p.1536–p.1537

Until Congress acts constructively, we will continue to lose American dollars [p.1537] and American jobs to foreign energy producers. I hope that today's OPEC action will finally get the message through to the Members of Congress that we cannot afford to remain vulnerable and without an energy policy.

Public Papers of the Presidents, Ford, 1975, p.1537

NOTE: The 10-percent oil price increase was announced in Vienna, Austria, where the Organization was meeting.

President Ford's Veto of a Bill To Increase Price Support Levels for Tobacco, 1975

Title: President Ford's Veto of a Bill To Increase Price Support Levels for Tobacco, 1975

Author: Gerald Ford

Date: October 1, 1975

Source: Public Papers of the Presidents, Ford, 1975, p.1563

[Dated September 30, 1975. Released October 1, 1975]

Public Papers of the Presidents, Ford, 1975, p.1563

To the House of Representatives:

Public Papers of the Presidents, Ford, 1975, p.1563

I return herewith, without my approval, H.R. 9497, an Act "To amend the computation of the level of price support for tobacco."

Public Papers of the Presidents, Ford, 1975, p.1563

Although I am concerned about the hardships that many U.S. tobacco growers have encountered this year due to adverse weather conditions and lower-than-expected export markets, the long-range interests of the grower will be best served by a vigorous domestic tobacco industry which can compete successfully in international markets. H.R. 9497 would be an obstacle in achieving this goal. In the face of slackening world demand for United States tobacco, higher prices would make our product less competitive, thus endangering the $1 billion net trade surplus we now enjoy in this commodity.

Public Papers of the Presidents, Ford, 1975, p.1563

At a time when we are attempting to reduce the inflationary pressures in the economy by holding down the size of federal deficits, H.R. 9497 would increase budget outlays during this fiscal year and the transition period by an estimated $157 million.

Public Papers of the Presidents, Ford, 1975, p.1563

In summary, I believe this bill would adversely affect our tobacco exports, lower farm income in the long run and increase federal spending at a critical time in our economic recovery.

GERALD R. FORD

The White House,

September 30, 1975.

Public Papers of the Presidents, Ford, 1975, p.1563

NOTE: The House of Representatives reconsidered H.R. 9497 on October 1, 1975, and the bill was referred to committee.

The text of the veto message was released at Omaha, Nebr.

President Ford's State of the Union Address, 1976

Title: President Ford's State of the Union Address

Author: Gerald Ford

Date: January 19, 1976

Source: Public Papers of the Presidents, Ford, 1976, pp.31-42

Public Papers of the Presidents, Ford, 1976, p.31

Mr. Speaker, Mr. Vice President, Members of the 94th Congress, and distinguished guests:

Public Papers of the Presidents, Ford, 1976, p.31

As we begin our Bicentennial, America is still one of the youngest nations in recorded history. Long before our forefathers came to these shores, men and women had been struggling on this planet to forge a better life for themselves and their families.

Public Papers of the Presidents, Ford, 1976, p.31

In man's long, upward march from savagery and slavery—throughout the nearly 2,000 years of the Christian calendar, the nearly 6,000 years of Jewish reckoning—there have been many deep, terrifying valleys, but also many bright and towering peaks.

Public Papers of the Presidents, Ford, 1976, p.31

One peak stands highest in the ranges of human history. One example shines forth of a people uniting to produce abundance and to share the good life fairly and with freedom. One union holds out the promise of justice and opportunity for every citizen: That union is the United States of America.

Public Papers of the Presidents, Ford, 1976, p.31

We have not remade paradise on Earth. We know perfection will not be found here. But think for a minute how far we have come in 200 years.

Public Papers of the Presidents, Ford, 1976, p.31

We came from many roots, and we have many branches. Yet all Americans across the eight generations that separate us from the stirring deeds of 1776, those who know no other homeland and those who just found refuge among our shores, say in unison:

Public Papers of the Presidents, Ford, 1976, p.31

I am proud of America, and I am proud to be an American. Life will be a little better here for my children than for me. I believe this not because I am told to believe it, but because life has been better for me than it was for my father and my mother. I know it will be better for my children because my hands, my brains, my voice, and my vote can help make it happen.

Public Papers of the Presidents, Ford, 1976, p.31

It has happened here in America. It has happened to you and to me. Government exists to create and preserve conditions in which people can translate their ideas into practical reality. In the best of times, much is lost in translation. But we try. Sometimes we have tried and failed. Always we have had the best of intentions.

Public Papers of the Presidents, Ford, 1976, p.31–p.32

But in the recent past, we sometimes forgot the sound principles that guided us through most of our history. We wanted to accomplish great things and [p.32] solve age-old problems. And we became overconfident of our abilities. We tried to be a policeman abroad and the indulgent parent here at home.

Public Papers of the Presidents, Ford, 1976, p.32

We thought we could transform the country through massive national programs, but often the programs did not work. Too often they only made things worse. In our rush to accomplish great deeds quickly, we trampled on sound principles of restraint and endangered the rights of individuals. We unbalanced our economic system by the huge and unprecedented growth of Federal expenditures and borrowing. And we were not totally honest with ourselves about how much these programs would cost and how we would pay for them. Finally, we shifted our emphasis from defense to domestic problems while our adversaries continued a massive buildup of arms.

Public Papers of the Presidents, Ford, 1976, p.32

The time has now come for a fundamentally different approach for a new realism that is true to the great principles upon which this Nation was founded.

Public Papers of the Presidents, Ford, 1976, p.32

We must introduce a new balance to our economy—a balance that favors not only sound, active government but also a much more vigorous, healthy economy that can create new jobs and hold down prices.

Public Papers of the Presidents, Ford, 1976, p.32

We must introduce a new balance in the relationship between the individual and the government—a balance that favors greater individual freedom and self-reliance.

Public Papers of the Presidents, Ford, 1976, p.32

We must strike a new balance in our system of federalism—a balance that favors greater responsibility and freedom for the leaders of our State and local governments.

Public Papers of the Presidents, Ford, 1976, p.32

We must introduce a new balance between the spending on domestic programs and spending on defense—a balance that ensures we will fully meet our obligation to the needy while also protecting our security in a world that is still hostile to freedom.

Public Papers of the Presidents, Ford, 1976, p.32

And in all that we do, we must be more honest with the American people, promising them no more than we can deliver and delivering all that we promise.

Public Papers of the Presidents, Ford, 1976, p.32

The genius of America has been its incredible ability to improve the lives of its citizens through a unique combination of governmental and free citizen activity.

Public Papers of the Presidents, Ford, 1976, p.32

History and experience tells us that moral progress cannot come in comfortable and in complacent times, but out of trial and out of confusion. Tom Paine aroused the troubled Americans of 1776 to stand up to the times that try men's souls because the harder the conflict, the more glorious the triumph.

Public Papers of the Presidents, Ford, 1976, p.32

Just a year ago I reported that the state of the Union was not good. Tonight, I report that the state of our Union is better—in many ways a lot better—but still not good enough.

Public Papers of the Presidents, Ford, 1976, p.33

To paraphrase Tom Paine, 1975 was not a year for summer soldiers and sum shine patriots. It was a year of fears and alarms and of dire forecasts—most of which never happened and won't happen.

Public Papers of the Presidents, Ford, 1976, p.33

As you recall, the year 1975 opened with rancor and with bitterness. Political misdeeds of the past had neither been forgotten nor forgiven. The longest, most divisive war in our history was winding toward an unhappy conclusion. Many feared that the end of that foreign war of men and machines meant the beginning of a domestic war of recrimination and reprisal. Friends and adversaries abroad were asking whether America had lost its nerve. Finally, our economy was ravaged by inflation—inflation that was plunging us into the worse recession in four decades. At the same time, Americans became increasingly alienated from big institutions. They were steadily losing confidence, not just in big government but in big business, big labor, and big education, among others. Ours was a troubled land.

Public Papers of the Presidents, Ford, 1976, p.33

And so, 1975 was a year of hard decisions, difficult compromises, and a new realism that taught us something important about America. It brought back a needed measure of common sense, steadfastness, and self-discipline.

Public Papers of the Presidents, Ford, 1976, p.33

Americans did not panic or demand instant but useless cures. In all sectors, people met their difficult problems with the restraint and with responsibility worthy of their great heritage.

Public Papers of the Presidents, Ford, 1976, p.33

Add up the separate pieces of progress in 1975, subtract the setbacks, and the sum total shows that we are not only headed in a new direction, a direction which I proposed 12 months ago, but it turned out to be the right direction.

Public Papers of the Presidents, Ford, 1976, p.33

It is the right direction because it follows the truly revolutionary American concept of 1776, which holds that in a free society the making of public policy and successful problemsolving involves much more than government. It involves a full partnership among all branches and all levels of government, private institutions, and individual citizens.

Public Papers of the Presidents, Ford, 1976, p.33

Common sense tells me to stick to that steady course.

Public Papers of the Presidents, Ford, 1976, p.33

Take the state of our economy. Last January, most things were rapidly getting worse. This January, most things are slowly but surely getting better.

Public Papers of the Presidents, Ford, 1976, p.33

The worst recession since World War II turned around in April. The best cost-of-living news of the past year is that double-digit inflation of 12 percent or higher was cut almost in half. The worst—unemployment remains far too high.

Public Papers of the Presidents, Ford, 1976, p.33

Today, nearly 1,700,000 more Americans are working than at the bottom of the recession. At year's end, people were again being hired much faster than they Were being laid off.

Public Papers of the Presidents, Ford, 1976, p.34

Yet, let's be honest. Many Americans have not yet felt these changes in their daily lives. They still see prices going up far too fast, and they still know the fear of unemployment.

Public Papers of the Presidents, Ford, 1976, p.34

We are also a growing nation. We need more and more jobs every year. Today's economy has produced over 85 million jobs for Americans, but we need a lot more jobs, especially for the young.

Public Papers of the Presidents, Ford, 1976, p.34

My first objective is to have sound economic growth without inflation.

Public Papers of the Presidents, Ford, 1976, p.34

We all know from recent experience what runaway inflation does to ruin every other worthy purpose. We are slowing it. We must stop it cold.

Public Papers of the Presidents, Ford, 1976, p.34

For many Americans, the way to a healthy, noninflationary economy has become increasingly apparent. The Government must stop spending so much and stop borrowing so much of our money. More money must remain in private hands where it will do the most good. To hold down the cost of living, we must hold down the cost of government.

Public Papers of the Presidents, Ford, 1976, p.34

In the past decade, the Federal budget has been growing at an average rate of over 10 percent a year. The budget I am submitting Wednesday cuts this rate of growth in half. I have kept my promise to submit a budget for the next fiscal year of $395 billion. In fact, it is $394.2 billion.

Public Papers of the Presidents, Ford, 1976, p.34

By holding down the growth of Federal spending, we can afford additional tax cuts and return to the people who pay taxes more decisionmaking power over their own lives.

Public Papers of the Presidents, Ford, 1976, p.34

Last month I signed legislation to extend the 1975 tax reductions for the first 6 months of this year. I now propose that effective July 1, 1976, we give our taxpayers a tax cut of approximately $10 billion more than Congress agreed to in December.

Public Papers of the Presidents, Ford, 1976, p.34

My broader tax reduction would mean that for a family of four making $15,000 a year, there will be $227 more in take-home pay annually. Hardworking Americans caught in the middle can really use that kind of extra cash.

Public Papers of the Presidents, Ford, 1976, p.34

My recommendations for a firm restraint on the growth of Federal spending and for greater tax reduction are simple and straightforward. For every dollar saved in cutting the growth in the Federal budget, we can have an added dollar of Federal tax reduction.

Public Papers of the Presidents, Ford, 1976, p.34

We can achieve a balanced budget by 1979 if we have the courage and the wisdom to continue to reduce the growth of Federal spending.

Public Papers of the Presidents, Ford, 1976, p.34

One test of a healthy economy is a job for every American who wants to work. Government—our kind of government—cannot create that many jobs. But the Federal Government can create conditions and incentives for private business and industry to make more and more jobs.

Public Papers of the Presidents, Ford, 1976, p.35

Five out of six jobs in this country are in private business and in industry. Common sense tells us this is the place to look for more jobs and to find them faster. I mean real, rewarding, permanent jobs.

Public Papers of the Presidents, Ford, 1976, p.35

To achieve this we must offer the American people greater incentives to invest in the future. My tax proposals are a major step in that direction. To supplement these proposals, I ask that Congress enact changes in Federal tax laws that will speed up plant expansion and the purchase of new equipment. My recommendations will concentrate this job-creation tax incentive in areas where the unemployment rate now runs over 7 percent. Legislation to get this started must be approved at the earliest possible date.

Public Papers of the Presidents, Ford, 1976, p.35

Within the strict budget total that I will recommend for the coming year, I will ask for additional housing assistance for 500,000 families. These programs will expand housing opportunities, spur construction, and help to house moderate- and low-income families.

Public Papers of the Presidents, Ford, 1976, p.35

We had a disappointing year in the housing industry in 1975. But with lower interest rates and available mortgage money, we can have a healthy recovery in 1976.

Public Papers of the Presidents, Ford, 1976, p.35

A necessary condition of a healthy economy is freedom from the petty tyranny of massive government regulation. We are wasting literally millions of working hours costing billions of taxpayers' and consumers' dollars because of bureaucratic redtape. The American farmer, who now feeds 215 million Americans, but also millions worldwide, has shown how touch more he can produce without the shackles of government control.

Public Papers of the Presidents, Ford, 1976, p.35

Now, we badly need reforms in other key areas in our economy: the airlines, trucking, railroads, and financial institutions. I have submitted concrete plans in each of these areas, not to help this or that industry, but to foster competition and to bring prices down for the consumer.

Public Papers of the Presidents, Ford, 1976, p.35

This administration, in addition, will strictly enforce the Federal antitrust laws for the very same purposes.

Public Papers of the Presidents, Ford, 1976, p.35

Taking a longer look at America's future, there can be neither sustained growth nor more jobs unless we continue to have an assured supply of energy to run our economy. Domestic production of oil and gas is still declining. Our dependence on foreign oil at high prices is still too great, draining jobs and dollars away from our own economy at the rate of $125 per year for every American.

Public Papers of the Presidents, Ford, 1976, p.35–p.36

Last month, I signed a compromise national energy bill which enacts a part of my comprehensive energy independence program. This legislation was late, [p.36] not the complete answer to energy independence, but still a start in the right direction.

Public Papers of the Presidents, Ford, 1976, p.36

I again urge the Congress to move ahead immediately on the remainder of my energy proposals to make America invulnerable to the foreign oil cartel.

Public Papers of the Presidents, Ford, 1976, p.36

My proposals, as all of you know, would reduce domestic natural gas shortages; allow production from Federal petroleum reserves; stimulate effective conservation, including revitalization of our railroads and the expansion of our urban transportation systems; develop more and cleaner energy from our vast coal resources; expedite clean and safe nuclear power production; create a new national energy independence authority to stimulate vital energy investment; and accelerate development of technology to capture energy from the Sun and the Earth for this and future generations.

Public Papers of the Presidents, Ford, 1976, p.36

Also, I ask, for the sake of future generations, that we preserve the family farm and family-owned small business. Both strengthen America and give stability to our economy. I will propose estate tax changes so that family businesses and family farms can be handed down from generation to generation without having to be sold to pay taxes.

Public Papers of the Presidents, Ford, 1976, p.36

I propose tax changes to encourage people to invest in America's future, and their own, through a plan that gives moderate-income families income tax benefits if they make long-term investments in common stock in American companies.

Public Papers of the Presidents, Ford, 1976, p.36

The Federal Government must and will respond to clear-cut national needs-for this and future generations.

Public Papers of the Presidents, Ford, 1976, p.36

Hospital and medical services in America are among the best in the world, but the cost of a serious and extended illness can quickly wipe out a family's lifetime savings. Increasing health costs are of deep concern to all and a powerful force pushing up the cost of living. The burden of catastrophic illness can be borne by very few in our society. We must eliminate this fear from every family.

Public Papers of the Presidents, Ford, 1976, p.36

I propose catastrophic health insurance for everybody covered by Medicare. To finance this added protection, fees for short-term care will go up somewhat, but nobody after reaching age 65 will have to pay more than $500 a year for covered hospital or nursing home care, nor more than $250 for 1 year's doctor bills.

Public Papers of the Presidents, Ford, 1976, p.36–p.37

We cannot realistically afford federally dictated national health insurance providing full coverage for all 215 million Americans. The experience of other countries raises questions about the quality as well as the cost of such plans. But I do envision the day when we may use the private health insurance system [p.37] to offer more middle-income families high quality health services at prices they can afford and shield them also from their catastrophic illnesses.

Public Papers of the Presidents, Ford, 1976, p.37

Using resources now available, I propose improving the Medicare and other Federal health programs to help those who really need protection—older people and the poor. To help States and local governments give better health care to the poor, I propose that we combine 16 existing Federal programs, including Medicaid, into a single $10 billion Federal grant.

Public Papers of the Presidents, Ford, 1976, p.37

Funds would be divided among States under a new formula which provides a larger share of Federal money to those States that have a larger share of low-income families.

Public Papers of the Presidents, Ford, 1976, p.37

I will take further steps to improve the quality of medical and hospital care for those who have served in our Armed Forces.

Public Papers of the Presidents, Ford, 1976, p.37

Now let me speak about social security. Our Federal social security system for people who have worked and contributed to it for all their lives is a vital part of our economic system. Its value is no longer debatable. In my budget for fiscal year 1977, I am recommending that the full cost-of-living increases in the social security benefits be paid during the coming year.

Public Papers of the Presidents, Ford, 1976, p.37

But I am concerned about the integrity of our Social Security Trust Fund that enables people—those retired and those still working who will retire—to count on this source of retirement income. Younger workers watch their deductions rise and wonder if they will be adequately protected in the future. We must meet this challenge head on. Simple arithmetic warns all of us that the Social Security Trust Fund is headed for trouble. Unless we act soon to make sure the fund takes in as much as it pays out, there will be no security for old or for young.

Public Papers of the Presidents, Ford, 1976, p.37

I must, therefore, recommend a three-tenths of 1 percent increase in both employer and employee social security taxes effective January 1, 1977. This will cost each covered employee less than 1 extra dollar a week and will ensure the integrity of the trust fund.

Public Papers of the Presidents, Ford, 1976, p.37

As we rebuild our economy, we have a continuing responsibility to provide a temporary cushion to the unemployed. At my request, the Congress enacted two extensions and two expansions in unemployment insurance which helped those who were jobless during 1975. These programs will continue in 1976.

Public Papers of the Presidents, Ford, 1976, p.37

In my fiscal year 1977 budget, I am also requesting funds to continue proven job training and employment opportunity programs for millions of other Americans.

Public Papers of the Presidents, Ford, 1976, p.37–p.38

Compassion and a sense of community—two of America's greatest strengths throughout our history—tell us we must take care of our neighbors who cannot [p.38] take care of themselves. The host of Federal programs in this field reflect our generosity as a people.

Public Papers of the Presidents, Ford, 1976, p.38

But everyone realizes that when it comes to welfare, government at all levels is not doing the job well. Too many of our welfare programs are inequitable and invite abuse. Too many of our welfare programs have problems from beginning to end. Worse, we are wasting badly needed resources without reaching many of the truly needy.

Public Papers of the Presidents, Ford, 1976, p.38

Complex welfare programs cannot be reformed overnight. Surely we cannot simply dump welfare into the laps of the 50 States, their local taxpayers, or their private charities, and just walk away from it. Nor is it the right time for massive and sweeping changes while we are still recovering from the recession.

Public Papers of the Presidents, Ford, 1976, p.38

Nevertheless, there are still plenty of improvements that we can make. I will ask Congress for Presidential authority to tighten up the rules for eligibility and benefits.

Public Papers of the Presidents, Ford, 1976, p.38

Last year I twice sought long overdue reform of the scandal-riddled food stamp program. This year I say again: Let's give food stamps to those most in need. Let's not give any to those who don't need them.

Public Papers of the Presidents, Ford, 1976, p.38

Protecting the life and property of the citizen at home is the responsibility of all public officials, but is primarily the job of local and State law enforcement authorities.

Public Papers of the Presidents, Ford, 1976, p.38

Americans have always found the very thought of a Federal police force repugnant, and so do I. But there are proper ways in which we can help to insure domestic tranquility as the Constitution charges us.

Public Papers of the Presidents, Ford, 1976, p.38

My recommendations on how to control violent crime were submitted to the Congress last June with strong emphasis on protecting the innocent victims of crime. To keep a convicted criminal from committing more crimes, we must put him in prison so he cannot harm more law-abiding citizens. To be effective, this punishment must be swift and it must be certain.

Public Papers of the Presidents, Ford, 1976, p.38

Too often, criminals are not sent to prison after conviction but are allowed to return to the streets. Some judges are reluctant to send convicted criminals to prison because of inadequate facilities. To alleviate this problem at the Federal level, my new budget proposes the construction of four new Federal facilities.

Public Papers of the Presidents, Ford, 1976, p.38

To speed Federal justice, I propose an increase this year in the United States attorneys prosecuting Federal crimes and the reinforcement of the number of United States marshals. Additional Federal judges are needed, as recommended by me and the Judicial Conference.

Public Papers of the Presidents, Ford, 1976, p.38–p.39

Another major threat to every American's person and property is the criminal carrying a handgun. The way to cut down on the criminal use of guns is not [p.39] to take guns away from the law-abiding citizen, but to impose mandatory sentences for crimes in which a gun is used, make it harder to obtain cheap guns for criminal purposes, and concentrate gun control enforcement in highcrime areas.

Public Papers of the Presidents, Ford, 1976, p.39

My budget recommends 500 additional Federal agents in the 11 largest metropolitan high-crime areas to help local authorities stop criminals from selling and using handguns.

Public Papers of the Presidents, Ford, 1976, p.39

The sale of hard drugs is tragically on the increase again. I have directed all agencies of the Federal Government to step up law enforcement efforts against those who deal in drugs. In 1975, I am glad to report, Federal agents seized substantially more heroin coming into our country than in 1974.

Public Papers of the Presidents, Ford, 1976, p.39

As President, I have talked personally with the leaders of Mexico, Colombia, and Turkey to urge greater efforts by their Governments to control effectively the production and shipment of hard drugs.

Public Papers of the Presidents, Ford, 1976, p.39

I recommended months ago that the Congress enact mandatory fixed sentences for persons convicted of Federal crimes involving the sale of hard drugs. Hard drugs, we all know, degrade the spirit as they destroy the body of their users.

Public Papers of the Presidents, Ford, 1976, p.39

It is unrealistic and misleading to hold out the hope that the Federal Government can move into every neighborhood and clean up crime. Under the Constitution, the greatest responsibility for curbing crime lies with State and local authorities. They are the frontline fighters in the war against crime.

Public Papers of the Presidents, Ford, 1976, p.39

There are definite ways in which the Federal Government can help them. I will propose in the new budget that Congress authorize almost $7 billion over the next 5 years to assist State and local governments to protect the safety and property of all their citizens.

Public Papers of the Presidents, Ford, 1976, p.39

As President, I pledge the strict enforcement of Federal laws and—by example, support, and leadership—to help State and local authorities enforce their laws. Together, we must protect the victims of crime and ensure domestic tranquility.

Public Papers of the Presidents, Ford, 1976, p.39

Last year I strongly recommended a 5-year extension of the existing revenue sharing legislation, which thus far has provided $23½ billion to help State and local units of government solve problems at home. This program has been effective with decisionmaking transferred from the Federal Government to locally elected officials. Congress must act this year, or State and local units of government will have to drop programs or raise local taxes.

Public Papers of the Presidents, Ford, 1976, p.39–p.40

Including my health care program reforms, I propose to consolidate some 59 separate Federal programs and provide flexible Federal dollar grants to help States, cities, and local agencies in such important areas as education, child [p.40] nutrition, and social services. This flexible system will do the job better and do it closer to home.

Public Papers of the Presidents, Ford, 1976, p.40

The protection of the lives and property of Americans from foreign enemies is one of my primary responsibilities as President.

Public Papers of the Presidents, Ford, 1976, p.40

In a world of instant communications and intercontinental ballistic missiles, in a world economy that is global and interdependent, our relations with other nations become more, not less, important to the lives of Americans.

Public Papers of the Presidents, Ford, 1976, p.40

America has had a unique role in the world since the day of our independence 200 years ago. And ever since the end of World War II, we have borne—successfully—a heavy responsibility for ensuring a stable world order and hope for human progress.

Public Papers of the Presidents, Ford, 1976, p.40

Today, the state of our foreign policy is sound and strong. We are at peace, and I will do all in my power to keep it that way.

Public Papers of the Presidents, Ford, 1976, p.40

Our military forces are capable and ready. Our military power is without equal, and I intend to keep it that way.

Public Papers of the Presidents, Ford, 1976, p.40

Our principal alliances with the industrial democracies of the Atlantic community and Japan have never been more solid.

Public Papers of the Presidents, Ford, 1976, p.40

A further agreement to limit the strategic arms race may be achieved.

Public Papers of the Presidents, Ford, 1976, p.40

We have an improving relationship with China, the world's most populous nation.

Public Papers of the Presidents, Ford, 1976, p.40

The key elements for peace among the nations of the Middle East now exist. Our traditional friendships in Latin America, Africa, and Asia continue.

Public Papers of the Presidents, Ford, 1976, p.40

We have taken the role of leadership in launching a serious and hopeful dialog between the industrial world and the developing world.

Public Papers of the Presidents, Ford, 1976, p.40

We have helped to achieve significant reform of the international monetary system.

Public Papers of the Presidents, Ford, 1976, p.40

We should be proud of what America, what our country, has accomplished in these areas, and I believe the American people are.

Public Papers of the Presidents, Ford, 1976, p.40

The American people have heard too much about how terrible our mistakes, how evil our deeds, and how misguided our purposes. The American people know better.

Public Papers of the Presidents, Ford, 1976, p.40

The truth is we are the world's greatest democracy. We remain the symbol of man's aspiration for liberty and well-being. We are the embodiment of hope for progress.

Public Papers of the Presidents, Ford, 1976, p.40

I say it is time we quit downgrading ourselves as a nation. Of course, it is our responsibility to learn the right lesson from past mistakes. It is our duty to see that they never happen again. But our greater duty is to look to the future. The world's troubles will not go away.

Public Papers of the Presidents, Ford, 1976, p.41

The American people want strong and effective international and defense policies. In our constitutional system, these policies should reflect consultation and accommodation between the President and the Congress. But in the final analysis, as the framers of our Constitution knew from hard experience, the foreign relations of the United States can be conducted effectively only if there is strong central direction that allows flexibility of action. That responsibility clearly rests with the President.

Public Papers of the Presidents, Ford, 1976, p.41

I pledge to the American people policies which seek a secure, just, and peaceful world. I pledge to the Congress to work with you to that end.

Public Papers of the Presidents, Ford, 1976, p.41

We must not face a future in which we can no longer help our friends, such as Angola, even in limited and carefully controlled ways. We must not lose all capacity to respond short of military intervention.

Public Papers of the Presidents, Ford, 1976, p.41

Some hasty actions of the Congress during the past year—most recently in respect to Angola—were, in my view, very shortsighted. Unfortunately, they are still very much on the minds of our allies and our adversaries.

Public Papers of the Presidents, Ford, 1976, p.41

A strong defense posture gives weight to our values and our views in international negotiations. It assures the vigor of our alliances. And it sustains our efforts to promote settlements of international conflicts. Only from a position of strength can we negotiate a balanced agreement to limit the growth of nuclear arms. Only a balanced agreement will serve our interests and minimize the threat of nuclear confrontation.

Public Papers of the Presidents, Ford, 1976, p.41

The defense budget I will submit to the Congress for fiscal year 1977 will show an essential increase over the current year. It provides for real growth in purchasing power over this year's defense budget, which includes the cost of the all-volunteer force.

Public Papers of the Presidents, Ford, 1976, p.41

We are continuing to make economies to enhance the efficiency of our military forces. But the budget I will submit represents the necessity of American strength for the real world in which we live.

Public Papers of the Presidents, Ford, 1976, p.41

As conflict and rivalry persist in the world, our United States intelligence capabilities must be the best in the world.

Public Papers of the Presidents, Ford, 1976, p.41

The crippling of our foreign intelligence services increases the danger of American involvement in direct armed conflict. Our adversaries are encouraged to attempt new adventures while our own ability to monitor events and to influence events short of military action is undermined. Without effective intelligence capability, the United States stands blindfolded and hobbled.

Public Papers of the Presidents, Ford, 1976, p.41–p.42

In the near future, I will take actions to reform and strengthen our intelligence community. I ask for your positive cooperation. It is time to go beyond [p.42] sensationalism and ensure an effective, responsible, and responsive intelligence capability.

Public Papers of the Presidents, Ford, 1976, p.42

Tonight I have spoken about our problems at home and abroad. I have recommended policies that will meet the challenge of our third century. I have no doubt that our Union will endure, better, stronger, and with more individual freedom. We can see forward only dimly—1 year, 5 years, a generation perhaps. Like our forefathers, we know that if we meet the challenges of our own time with a common sense of purpose and conviction, if we remain true to our Constitution and to our ideals, then we can know that the future will be better than the past.

Public Papers of the Presidents, Ford, 1976, p.42

I see America today crossing a threshold, not just because it is our Bicentennial but because we have been tested in adversity. We have taken a new look at what we want to be and what we want our Nation to become.

Public Papers of the Presidents, Ford, 1976, p.42

I see America resurgent, certain once again that life will be better for our children than it is for us, seeking strength that cannot be counted in megatons and riches that cannot be eroded by inflation.

Public Papers of the Presidents, Ford, 1976, p.42

I see these United States of America moving forward as before toward a more perfect Union where the government serves and the people rule.

Public Papers of the Presidents, Ford, 1976, p.42

We will not make this happen simply by making speeches, good or bad, yours or mine, but by hard work and hard decisions made with courage and with common sense.

Public Papers of the Presidents, Ford, 1976, p.42

I have heard many inspiring Presidential speeches, but the words I remember best were spoken by Dwight D. Eisenhower. "America is not good because' it is great," the President said. "America is great because it is good."

Public Papers of the Presidents, Ford, 1976, p.42

President Eisenhower was raised in a poor but religious home in the heart of America. His simple words echoed President Lincoln's eloquent testament that "right makes might." And Lincoln in turn evoked the silent image of George Washington kneeling in prayer at Valley Forge.

Public Papers of the Presidents, Ford, 1976, p.42

So, all these magic memories which link eight generations of Americans are summed up in the inscription just above me. How many times have we seen it? "In God We Trust."

Public Papers of the Presidents, Ford, 1976, p.42

Let us engrave it now in each of our hearts as we begin our Bicentennial.

Public Papers of the Presidents, Ford, 1976, p.42

NOTE: The President delivered his address at 9 p.m. in the House Chamber at the Capitol. He was introduced by Carl Albert, Speaker of the House of Representatives. The address was broadcast live on radio and television.

President Ford's Special Message to the Congress on Older Americans, 1976

Title: President Ford's Special Message to the Congress on Older Americans, 1976

Author: Gerald Ford

Date: February 9, 1976

Source: Public Papers of the Presidents, Ford, 1976, pp.235-239

Public Papers of the Presidents, Ford, 1976, p.235

To the Congress of the United States:

Public Papers of the Presidents, Ford, 1976, p.235

I ask the Congress to join with me in making improvements in programs serving the elderly.

Public Papers of the Presidents, Ford, 1976, p.235

As President, I intend to do everything in my power to help our nation demonstrate by its deeds a deep concern for the dignity and worth of our older persons. By so doing, our nation will continue to benefit from the contributions that older persons can make to the strengthening of our nation.

Public Papers of the Presidents, Ford, 1976, p.235

The proposals being forwarded to Congress are directly related to the health and security of older Americans. Their prompt enactment will demonstrate our concern that lifetimes of sacrifice and hard work conclude in hope rather than despair.

Public Papers of the Presidents, Ford, 1976, p.235

The single greatest threat to the quality of life of older Americans is inflation. Our first priority continues to be the fight against inflation. We have been able to reduce by nearly half the double digit inflation experienced in 1974. But the retired, living on fixed incomes, have been particularly hard hit and the progress we have made in reducing inflation has not benefited them enough. We will continue our efforts to reduce federal spending, balance the budget, and reduce taxes. The particular vulnerability of the aged to the burdens of inflation, however, requires that specific' improvements be made in two major Federal programs, Social Security and Medicare.

Public Papers of the Presidents, Ford, 1976, p.236

We must begin by insuring that the Social Security system is beyond challenge. Maintaining the integrity of the system is a vital obligation each generation has to those who have worked hard and contributed to it all their lives. I strongly reaffirm my commitment to a stable and financially sound Social Security system. My 1977 budget and legislative program include several elements which I believe are essential to protect the solvency and integrity of the system.

Public Papers of the Presidents, Ford, 1976, p.236

First, to help protect our retired and disabled citizens against the hardships of inflation, my budget request to the Congress includes a full cost of living increase in Social Security benefits, to be effective with checks received in July 1976. This will help maintain the purchasing power of 32 million Americans.

Public Papers of the Presidents, Ford, 1976, p.236

Second, to insure the financial integrity of the Social Security trust funds, I am proposing legislation to increase payroll taxes by three-tenths of one percent each for employees and employers. This increase will cost no worker more than $1 a week, and most will pay less. These additional revenues are needed to stabilize the trust funds so that current income will be certain to either equal or exceed current outgo.

Public Papers of the Presidents, Ford, 1976, p.236

Third, to avoid serious future financing problems I will submit later this year a change in the Social Security laws to correct a serious flaw in the current system. The current formula which determines benefits for workers who retire in the future does not properly reflect wage and price fluctuations. This is an inadvertent error which could lead to unnecessarily inflated benefits.

Public Papers of the Presidents, Ford, 1976, p.236

The change I am proposing will not affect cost of living increases in benefits after retirement, and will in no way alter the benefit levels of current recipients. On the other hand, it will protect future generations against unnecessary costs and excessive tax increases.

Public Papers of the Presidents, Ford, 1976, p.236

I believe that the prompt enactment of all of these proposals is necessary to maintain a sound Social Security system and to preserve its financial integrity.

Public Papers of the Presidents, Ford, 1976, p.236

Income security is not our only concern. We need to focus also on the special health care needs of our elder citizens. Medicare and other Federal health programs have been successful in improving access to quality medical care for the aged. Before the inception of Medicare and Medicaid in 1966, per capita health expenditures for our aged were $445 per year. Just eight years later, in FY 1974, per capita health expenditures for the elderly had increased to $1218, an increase of 174 percent. But despite the dramatic increase in medical services made possible by public programs, some problems remain.

Public Papers of the Presidents, Ford, 1976, p.236–p.237

There are weaknesses in the Medicare program which must be corrected. Three particular aspects of the current program concern me: 1) its failure to provide our elderly with protection against catastrophic illness costs, 2) the [p.237] serious effects that health care cost inflation is having on the Medicare program, and 3) lack of incentives to encourage efficient and economical use of hospital and medical services. My proposal addresses each of these problems.

Public Papers of the Presidents, Ford, 1976, p.237

In my State of the Union Message I proposed protection against catastrophic health expenditures for Medicare beneficiaries. This will be accomplished in two ways. First, I propose extending Medicare benefits by providing coverage for unlimited days of hospital and skilled nursing facility care for beneficiaries. Second, I propose to limit the out-of-pocket expenses of beneficiaries, for covered services, to $500 per year for hospital and skilled nursing services and $250 per year for physician and other non-institutional medical services.

Public Papers of the Presidents, Ford, 1976, p.237

This will mean that each year over a billion dollars of benefit payments will be targeted for handling the financial burden of prolonged illness. Millions of older persons live in fear of being stricken by an illness that will call for expensive hospital and medical care over a long period of time. Most often they do not have the resources to pay the bills. The members of their families share their fears because they also do not have the resources to pay such large bills. We have been talking about this problem for many years. We have it within our power to act now so that today's older persons will not be forced to live under this kind of a shadow. I urge the Congress to act promptly.

Public Papers of the Presidents, Ford, 1976, p.237

Added steps are needed to slow down the inflation of health costs and to help in the financing of this catastrophic protection. Therefore, I am recommending that the Congress limit increases in medicare payment rates in 1977 and 1978 to 7% a day for hospitals and 4% for physician services.

Public Papers of the Presidents, Ford, 1976, p.237

Additional cost-sharing provisions are also needed to encourage economical use of the hospital and medical services included under Medicare. Therefore, I am recommending that patients pay 10% of hospital and nursing home charges after the first day and that the existing deductible for medical services be increased from $60 to $77 annually.

Public Papers of the Presidents, Ford, 1976, p.237

The savings from placing a limit on increases in Medicare payment rates and some of the revenue from increased cost sharing will be used to finance the catastrophic illness program.

Public Papers of the Presidents, Ford, 1976, p.237

I feel that, on balance, these proposals will provide our elder citizens with protection against catastrophic illness costs, promote efficient utilization of services, and moderate the increases in health care costs.

Public Papers of the Presidents, Ford, 1976, p.237

The legislative proposals which I have described are only part of the over-all effort we are making on behalf of older Americans. Current conditions call for continued and intensified action on a broad front.

Public Papers of the Presidents, Ford, 1976, p.238

We have made progress in recent years. We have responded, for example, to recommendations made at the 1971 White House Conference on Aging. A Supplemental Security Income program was enacted. Social Security benefits have been increased in accord with increases in the cost of living. The Social Security retirement test was liberalized. Many inequities in payments to women have been eliminated. The 35 million workers who have earned rights in private pension plans now have increased protection.

Public Papers of the Presidents, Ford, 1976, p.238

In addition we have continued to strengthen the Older Americans Act. I have supported the concept of the Older Americans Act since its inception in 1965, and last November signed the most recent amendments into law.

Public Papers of the Presidents, Ford, 1976, p.238

A key component of the Older Americans Act is the national network on aging which provides a solid foundation on which action can be based. I am pleased that we have been able to assist in setting up this network of 56 State and 489 Area Agencies on Aging, and 700 local nutrition agencies. These local nutrition agencies for example provide 300,000 hot meals a day five days a week.

Public Papers of the Presidents, Ford, 1976, p.238

The network provides a structure which can be used to attack other important problems. A concern of mine is that the voice of the elderly, as consumers, be heard in the governmental decision-making process. The network on aging offers opportunities for this through membership on advisory councils related to State and Area Agencies on Aging, Nutrition Project Agencies and by participation in public hearings on the annual State and Area Plans. Such involvement can and will have a significant impact on determining what services for the aging are to be given the highest priorities at the local level.

Public Papers of the Presidents, Ford, 1976, p.238

The principal goal of this National Network on Aging is to bring into being coordinated comprehensive systems for the provision of service to the elderly at the community level. I join in the call for hard and creative work at all levels-Federal, State and Area in order to achieve this objective. I am confident that progress can be made.

Public Papers of the Presidents, Ford, 1976, p.238

Toward this end, the Administration on Aging and a number of Federal Departments and agencies have signed agreements which will help to make available to older persons a fair share of the Federal funds available in such areas as housing, transportation, social services, law enforcement, adult education and manpower—resources which can play a major role in enabling older persons to continue to live in their own homes.

Public Papers of the Presidents, Ford, 1976, p.238–p.239

Despite these efforts, however, five percent of our older men and women require the assistance provided by skilled nursing homes and other long term care facilities. To assist these citizens, an ombudsman process, related solely to the persons in these facilities, is being put into operation by the National Network [p.239] on Aging. We believe that this program will help to resolve individual complaints, facilitate important citizen involvement in the vigorous enforcement of Federal, State and local laws designed to improve health and safety standards, and to improve the quality of care in these facilities.

Public Papers of the Presidents, Ford, 1976, p.239

Today's older persons have made invaluable contributions to the strengthening of our nation. They have provided the nation with a vision and strength that has resulted in unprecedented advancements in all of the areas of our life. Our national moral strength is due in no small part to the significance of their contributions. We must continue and strengthen both our commitment to doing everything we can to respond to the needs of the elderly and our determination to draw on their strengths.

Public Papers of the Presidents, Ford, 1976, p.239

Our entire history has been marked by a tradition of growth and progress. Each succeeding generation can measure its progress in part by its ability to recognize, respect and renew the contributions of earlier generations. I believe that the Social Security and Medicare improvements I am proposing, when combined with the action programs under the Older Americans Act, will insure a measure of progress for the elderly and thus provide real hope for us all.

GERALD R. FORD

The White House,

February 9, 1976.

President Ford's Special Message to Congress Proposing Elementary and Secondary Education Reform Legislation, 1976

Title: President Ford's Special Message to Congress Proposing Elementary and Secondary Education Reform Legislation

Author: Gerald Ford

Date: March 1, 1976

Source: Public Papers of the Presidents, Ford, 1976, pp.500-502

Public Papers of the Presidents, Ford, 1976, p.500

To the Congress of the United States:

Public Papers of the Presidents, Ford, 1976, p.500

The education of our children is vital to the future of the United States. From the start, our Founding Fathers knew that ignorance and free government could not coexist. Our nation has acted from the beginning on the sound principle that control over our schools should remain at the State and local level. Nothing could be more destructive of the diversity of thought and opinion necessary for national progress than an excess of control by the central government.

Public Papers of the Presidents, Ford, 1976, p.500

In recent years, our national sense of fairness and equity has led to an increasing number of Federal programs of aid to education. The Federal government has recognized a responsibility to help ensure adequate educational opportunities for those with special needs, such as the educationally deprived and the handicapped. We have appropriately provided States and localities with added resources to help them improve opportunities for such students. At the same time, we have channeled our aid into too many narrow and restrictive categorical programs. As a result, we have made it more difficult for the schools to educate.

Public Papers of the Presidents, Ford, 1976, p.500

It is time that we reconcile our good intentions with the recognition that we at the Federal level cannot know what is best for every school child in every classroom in the country.

Public Papers of the Presidents, Ford, 1976, p.500

In my State of the Union address, I spoke of the need for a new realism and a new balance in our system of Federalism—a balance that favors greater responsibility and freedom for the leaders of our State and local governments.

Public Papers of the Presidents, Ford, 1976, p.500

Our experience in education demonstrates that those principles are not abstract political philosophy, but guides to the concrete action we must take to help assure the survival of our system of free government. We must continually guard against Federal control over public schools.

Public Papers of the Presidents, Ford, 1976, p.500–p.501

I am proposing today the Financial Assistance for Elementary and Secondary Education Act which will consolidate 24 existing programs into one block [p.501] grant. The focus of this block grant will be on improved educational opportunities for those with special needs—the handicapped and educationally deprived. Federal funds will be provided with a minimum of Federal regulation and a maximum of local control..My proposal is based on the conviction that education needs can be most effectively and creatively met by allowing States greater flexibility in the use of Federal funds.

Public Papers of the Presidents, Ford, 1976, p.501

I am particularly pleased at the extent to which my proposal reflects extensive consultations with individuals, organizations representing publicly elected officials and leaders in the education community. The proposal has been modified and strengthened since the time of my State of the Union message as a result of suggestions we received. I am convinced it represents essential changes in our system of providing aid to education.

Public Papers of the Presidents, Ford, 1976, p.501

My proposals will consolidate programs in the following areas:

• Elementary and Secondary Education

• Education for the Handicapped

• Adult Education

• Vocational Education

Public Papers of the Presidents, Ford, 1976, p.501

To assure that students with special needs receive proper attention the proposed legislation provides that 75 percent of a State's allocation be spent on the educationally deprived and handicapped, and that vocational education programs continue to be supported. The same strong civil rights compliance procedures that exist in the programs to be consolidated are included in this legislation.

Public Papers of the Presidents, Ford, 1976, p.501

Under the proposed legislation, funds will be allocated to States based on a formula which takes into account the number of school-aged children and the number of children from low-income families. No State will receive less money than it did in Fiscal Year 1976 under the programs to be consolidated. Further, local education agencies will be assured that the funds will reach the local level, where children are taught and where control should be exercised.

Public Papers of the Presidents, Ford, 1976, p.501

Vocational education is an important part of our total education system. Here, too, my proposal seeks greater flexibility at the local level while maintaining Federal support. States would be required to spend a portion of the funds they receive on vocational education, giving special emphasis to the educationally deprived and the handicapped.

Public Papers of the Presidents, Ford, 1976, p.501

Non-public school and Indian tribal children would continue to be eligible for assistance under this proposal. Where States do not serve such children, the Commissioner of Education will arrange to provide funds directly, using the appropriate share of the State's funds.

Public Papers of the Presidents, Ford, 1976, p.502

The proposed legislation will require States to develop a plan, with public participation, for the use of Federal funds. All interested citizens, students, parents and appropriate public and private institutions will participate in the development of the plan. States will be required to develop procedures for independent monitoring of compliance with their plan. State progress will be measured against the plan, but the plan itself will not be subject to Federal approval.

Public Papers of the Presidents, Ford, 1976, p.502

For Fiscal Year 1977 I am requesting $3.3 billion for the education block grant. For the next three fiscal years, I am proposing authorizations of $3.5 billion, $3.7 billion and $3.9 billion. For too long the real issue in our education programs—Federal versus State and local control—has been obscured by endless bickering over funding levels. Hopefully, with these request levels, we can focus the attention where it belongs, on reform of our education support programs.

Public Papers of the Presidents, Ford, 1976, p.502

Enactment of this legislation will allow people at the State and local level to stop worrying about entangling Federal red tape and turn their full attention to educating our youth.

Public Papers of the Presidents, Ford, 1976, p.502

I urge prompt and favorable consideration of the Financial Assistance for Elementary and Secondary Education Act.

GERALD R. FORD

The White House,

March 1, 1976.

President Ford's Remarks Aboard the U.S.S. Forrestal During Operation Sail in New York Harbor, 1976

Title: President Ford's Remarks Aboard the U.S.S. Forrestal During Operation Sail in New York Harbor

Author: Gerald Ford

Date: July 4, 1976

Source: Public Papers of the Presidents, Ford, 1976, pp.1972-1973

Public Papers of the Presidents, Ford, 1976, p.1972

Secretary Middendorf, Ambassador Mosbacher, Admiral Kidd, Captain Barth, John Warner, Your Excellencies, distinguished guests, ladies and gentlemen:

Public Papers of the Presidents, Ford, 1976, p.1972

At the outset, let me express my gratitude and appreciation on behalf of all the American people for everybody who had any part of making Operation Sail a success. I congratulate each and every one of you for a superb job.

Public Papers of the Presidents, Ford, 1976, p.1972

It is a great pleasure for me to join my fellow Americans and the citizens of the world in this celebration of America's 200th birthday. No tribute could be more spectacular than the grand international armada which fills this great harbor today. The magnificent array of "Tall Ships" and naval vessels, the proud emissaries of 30 other nations, form an escort of special grace and beauty as the United States of America enters its third century of independence.

Public Papers of the Presidents, Ford, 1976, p.1972

As we view this dramatic scene, we are reminded that America is a proud family of many peoples from many lands. We are reminded, as well, how the sea and ships have played a vital role in the life of our country. Our discoverers and explorers were sea voyagers from many nations. Our earliest colonists, seeking a new life in a new land, first had to test their strength and spirit against the Atlantic.

Public Papers of the Presidents, Ford, 1976, p.1972

The U.S. Navy and the navies of our allies played a leading part in winning and defending the freedom we celebrate today. That tradition of strength and courage spans two centuries, from the time of John Paul Jones to the battles of Midway and Leyte Gulf.

Public Papers of the Presidents, Ford, 1976, p.1972

Since we became a nation, the sea has also been a passageway for millions and millions of people from all over the world who have come to America to share its bounty and its opportunity and to enrich our future in return. In this harbor stands the Statue of Liberty, herself an immigrant from France, lifting her torch to those who come to join the American adventure.

Public Papers of the Presidents, Ford, 1976, p.1972

As we close the log of our second century, we begin an uncharted voyage toward the future. What may lie along that course and where it may finally take us, we cannot know. But we do know this: Americans have always moved ahead with confidence, as we do now, with a firm reliance on the protection of divine providence and guided by the fixed star of freedom.

Public Papers of the Presidents, Ford, 1976, p.1972

So, let us journey together into the seas of tomorrow. For America, the future is a friend.

Public Papers of the Presidents, Ford, 1976, p.1973

Thank you very kindly.

Public Papers of the Presidents, Ford, 1976, p.1973

NOTE: The President spoke at 2:06 p.m. on the flight deck of the U.S.S. Forrestal, the host ship of the International Naval Review in New York Harbor. In his opening remarks, he referred to J. William Middendorf II, Secretary of the Navy; Emil Mosbacher, Jr., Operation Sail chairman and Chief of Protocol for the State Department 1969-72; Adm. Isaac C. Kidd, Jr., USN, Commander in Chief of the Atlantic Fleet; Capt. Joseph J. Barth, USN, U.S.S. Forrestal commanding officer; and John W. Warner, Administrator of the American Revolution Bicentennial Administration.

Public Papers of the Presidents, Ford, 1976, p.1973

Prior to his remarks, the President rang the ship's bell 13 times—symbolizing the Thirteen Original Colonies—which began the simultaneous ringing of bells across America in commemoration of the Bicentennial.

President Ford's Telephone Conversation With NASA Officials on the Mars Landing of the Viking I Spacecraft, 1976

Title: President Ford's Telephone Conversation With NASA Officials on the Mars Landing of the Viking I Spacecraft

Author: Gerald Ford

Date: July 20, 1976

Source: Public Papers of the Presidents, Ford, 1976, pp.2050-2053

Public Papers of the Presidents, Ford, 1976, p.2050

THE PRESIDENT. Dr. Fletcher?

Public Papers of the Presidents, Ford, 1976, p.2050

DR. FLETCHER. Hello, Mr. President. Jim Martin and myself are on the line.

Public Papers of the Presidents, Ford, 1976, p.2050

THE PRESIDENT. It's nice to talk to you, Jim Martin.

Public Papers of the Presidents, Ford, 1976, p.2050

Let me congratulate Dr. Jim Fletcher, the Administrator of NASA, and you, the Viking Project Coordinator, for the just wonderful and most remarkable success in this historic mission. I also think it appropriate to thank the thousands and thousands of dedicated scientists, technicians, and other NASA personnel involved across the country, as well as those from universities and private industry who gave such invaluable assistance over the long period of development and production.

Public Papers of the Presidents, Ford, 1976, p.2050–p.2051

I think it's amazing to think that in the span of a single lifetime, the exploration of air and space has grown from the dreams of a very, very few individuals to such a massive cooperative reality. We have gone from a flight of a few seconds [p.2051] and a few hundred feet for a yearlong journey to Mars, crossing some 440 million miles.

Public Papers of the Presidents, Ford, 1976, p.2051

Unfortunately, your search for a safe landing forced you to delay the Viking's landing beyond the scheduled July 4 date. But by an extraordinary coincidence, today is another historic anniversary. Seven years ago, July 20, 1969, we received a transmission from the Moon telling us, "The Eagle has landed."

Public Papers of the Presidents, Ford, 1976, p.2051

Today's landing, like that one, represents the realization of a dream that is many, many centuries old. In a sense it is even more significant, for today we are touching another planet, one that has long excited mankind's imagination. And this mission offers the possibility of a momentous discovery in the history of mankind—the existence of life elsewhere in the universe.

Public Papers of the Presidents, Ford, 1976, p.2051

If the experiments of Vikings I and II do not reveal living organisms, they will learn other secrets of the universe. They will tell us a good many things about our own planet—opening up new possibilities for exploration—and should produce knowledge that will improve the quality of life right here on Earth.

Public Papers of the Presidents, Ford, 1976, p.2051

Our achievements in space represent not only the height of technological skills, they also reflect the best in our country—our character, the capacity for creativity and sacrifice, and a willingness to reach into the unknown.

Public Papers of the Presidents, Ford, 1976, p.2051

To both of you Jims and your associates, I have designated today, July 20, 1976, as Space Exploration Day [Proclamation 4449], and I strongly encourage all Americans to follow the progress of our Viking missions and to reflect on our journey into the unknown.

Public Papers of the Presidents, Ford, 1976, p.2051

Now, either one of you two Jims, could I ask a few questions?

Public Papers of the Presidents, Ford, 1976, p.2051

DR. FLETCHER. Carry on, Mr. President.

Public Papers of the Presidents, Ford, 1976, p.2051

THE PRESIDENT. As far as I can tell—what kind of shape is the spacecraft in?

Public Papers of the Presidents, Ford, 1976, p.2051

MR. MARTIN. This is Jim Martin.

Public Papers of the Presidents, Ford, 1976, p.2051

THE PRESIDENT. Yes, Jim.

Public Papers of the Presidents, Ford, 1976, p.2051

MR. MARTIN. Mr. President, the spacecraft appears to be extremely healthy.

Public Papers of the Presidents, Ford, 1976, p.2051

All the telemetry indications we have say that it landed softly and safely. It is just taking beautiful pictures.

Public Papers of the Presidents, Ford, 1976, p.2051

THE PRESIDENT. Just a few moments ago, before I came on the line, I saw some of the pictures. And it's almost impossible to visualize that that quality of photography could be transmitted from 400-and-some million miles back to the United States and have such a clear resolution.

Public Papers of the Presidents, Ford, 1976, p.2051

What kind of movement, if any, do we anticipate and, if there is any movement on Mars, how will it appear?

Public Papers of the Presidents, Ford, 1976, p.2051–p.2052

MR. MARTIN. Well, Mr. President, if there is real fast movement, like an [p.2052] animal, I am afraid it will appear as a blur. If there is slow movement, like a rock rolling along or a slow cloud moving by in the distance, we will probably see that go by.

Public Papers of the Presidents, Ford, 1976, p.2052

Right now, all we are seeing is the landscape with what may be blue sky in the distance. We have only black and white at the moment, and we can't quite see what is on the landscape at the moment. But if anything moves slowly along the landscape, we would see it.

Public Papers of the Presidents, Ford, 1976, p.2052

THE PRESIDENT. Will you have other pictures which will be more definitive in a more localized area?

Public Papers of the Presidents, Ford, 1976, p.2052

MR. MARTIN. Yes, we plan to take, over the next 2 or 3 days, a series that will be right out in front of the lander where we hope to dig a sample about 8 days from now. We will look for a safe place to dig up some dirt that we will then put into the biology experiments and into the organic analysis experiments.

Public Papers of the Presidents, Ford, 1976, p.2052

THE PRESIDENT. Is there any time limit on how long you can take pictures of this quality?

Public Papers of the Presidents, Ford, 1976, p.2052

MR. MARTIN. No, we believe from all of our testing that we should be able to take pictures through the primary mission, which extends to about the middle of November. There is nothing really to wear out. This is a line scan camera, facsimile camera. It takes a line at a time. That is why it takes quite a while to take a picture. We will only get three or four pictures per day, but they should all continue to be of this quality.

Public Papers of the Presidents, Ford, 1976, p.2052

THE PRESIDENT. How long does it take, once the picture is taken, to get the necessary resolution back to us here on Earth?

Public Papers of the Presidents, Ford, 1976, p.2052

MR. MARTIN. The first picture you saw, which included the footpad, took about 5 minutes to take on Mars, and then it is transmitted by a relay radio up to the orbiter flying overhead. Then the orbiter sends the picture to Earth, and it takes about four times as long. So, it took 20 minutes to send back the first picture from the orbiter. And then this bigger picture that is coming in now with the panorama will take about 40 minutes to come back to Earth.

Public Papers of the Presidents, Ford, 1976, p.2052

THE PRESIDENT. Well, apparently everything is going extremely well. Your spectrometers, your so-called cookers, as they are called—everything is going A-OK?

Public Papers of the Presidents, Ford, 1976, p.2052

MR. MARTIN. Everything is really fine. We, of course, haven't and won't operate some of the instruments for a few days. We did measure the constituents and composition of the atmosphere as we came down through it, and all indications are that the instruments worked just fine. We don't know yet what the atmosphere is, but we will know in a few hours.

Public Papers of the Presidents, Ford, 1976, p.2052

THE PRESIDENT. When do you anticipate that Viking II will go through the same process?

Public Papers of the Presidents, Ford, 1976, p.2053

MR. MARTIN. Viking II arrives at the planet on August 7, and we will put it into orbit on that day. Right now, our nominal plan is to land it on September 4.

Public Papers of the Presidents, Ford, 1976, p.2053

THE PRESIDENT. Have you picked the place where it will land, or not?

Public Papers of the Presidents, Ford, 1976, p.2053

MR. MARTIN. Not yet, Mr. President.

Public Papers of the Presidents, Ford, 1976, p.2053

DR. FLETCHER. No, Mr. President, we are still looking for two choices-one south of the Equator, and one up closer to the polar cap, about 45 degrees north latitude.

Public Papers of the Presidents, Ford, 1976, p.2053

THE PRESIDENT. Well, the two of them then will be there simultaneously and operating from different locations?

Public Papers of the Presidents, Ford, 1976, p.2053

MR. MARTIN. Yes, that is one of our hopes, because we have a seismometer on board, and if we can measure a Mars quake with both landers, then we can locate quite precisely where it is on the surface of the planet.

Public Papers of the Presidents, Ford, 1976, p.2053

THE PRESIDENT. Do we have any plans for a Viking III, et cetera?

Public Papers of the Presidents, Ford, 1976, p.2053

DR. FLETCHER. Mr. President, we are thinking very hard about that right now. I just got a big bunch of applause from our team on that question.

Public Papers of the Presidents, Ford, 1976, p.2053

THE PRESIDENT. I suspected that there might be approval among all of you for such a landing and such a project.

Public Papers of the Presidents, Ford, 1976, p.2053

MR. MARTIN. Mr. President, the team is ready for Vikings III, IV, V, and VI.

Public Papers of the Presidents, Ford, 1976, p.2053

THE PRESIDENT. Well, give everybody my very best, will you, Jim Fletcher and Jim Martin? And thank all of those there with you and transmit to all of the others, whether they were in our colleges, universities, in NASA, or wherever else they were, for a job well done. And let me express to each of you and all of the group, my very best wishes for a great job. We are all very proud of you.

Public Papers of the Presidents, Ford, 1976, p.2053

MR. MARTIN. We appreciate those kind words, Mr. President.

Public Papers of the Presidents, Ford, 1976, p.2053

THE PRESIDENT. Good luck.

Public Papers of the Presidents, Ford, 1976, p.2053

NOTE: The President spoke at 9:21 a.m. from the Oval Office at the White House to Dr. Fletcher and Mr. Martin at the Jet Propulsion Laboratory in Pasadena, Calif.

Democratic Platform of 1976

Title: Democratic Platform of 1976

Author: Democratic Party

Date: 1976

Source: National Party Platforms, pp.915-946

Preamble

Democratic Platform, 1976, p.915

We meet to adopt a Democratic platform, and to nominate Democratic candidates for President and Vice President of the United States, almost 200 years from the day that our revolutionary founders declared this country's independence from the British crown.

Democratic Platform, 1976, p.915

The founder of the Democratic Party—Thomas Jefferson of Virginia—set forth the reasons for this separation and expressed the basic tenets of democratic government: That all persons are created equal, that they are endowed by their creator with unalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these rights, Governments are instituted among People, deriving their just powers from the consent of the governed.

Democratic Platform, 1976, p.915

These truths may still be self-evident, but they have been tragically abused by our national government during the past eight years.

Democratic Platform, 1976, p.915

Two Republican Administrations have both misused and mismanaged the powers of national government, obstructing the pursuit of economic and social opportunity, causing needless hardship and despair among millions of our fellow citizens.

Democratic Platform, 1976, p.915

Two Republican Administrations have betrayed the people's trust and have created suspicion and [p.916] distrust of government through illegal and unconstitutional actions.

Democratic Platform, 1976, p.916

We acknowledge that no political party, nor any President or Vice President, possesses answers to all of the problems that face us as a nation, but neither do we concede that every human problem is beyond our control. We recognize further that the present distrust of government cannot be transformed easily into confidence.

Democratic Platform, 1976, p.916

It is within our power to recapture, in the governing of this nation, the basic tenets of fairness, equality, opportunity and rule of law that motivated our revolutionary founders.

Democratic Platform, 1976, p.916

We do pledge a government that has as its guiding concern, the needs and aspirations of all the people, rather than the perquisites and special privilege of the few.

Democratic Platform, 1976, p.916

We do pledge a government that listens, that is truthful, and that is not afraid to admit its mistakes.

Democratic Platform, 1976, p.916

We do pledge a government that will be committed to a fairer distribution of wealth, income and power.

Democratic Platform, 1976, p.916

We do pledge a government in which the new Democratic President will work closely with the leaders of the Congress on a regular, systematic basis so that the people can see the results of unity.

Democratic Platform, 1976, p.916

We do pledge a government in which the Democratic members in both houses of Congress will seek a unity of purpose on the principles of the party.

Democratic Platform, 1976, p.916

Now, as we enter our 200th year as a nation, we as a party, with a sense of our obligations, pledge a reaffirmation of this nation's founding principles.

Democratic Platform, 1976, p.916

In this platform of the Democratic Party, we present a clear alternative to the failures of preceding administrations and a projection of the common future to which we aspire: a world at peace; a just society of equals; a society without violence; a society in consonance with its natural environment, affording freedom to the individual and the opportunity to develop to the fullest human Potential.

I. Full Employment, Price Stability and Balanced Growth

Democratic Platform, 1976, p.916

The Democratic Party's concern for human dignity and freedom has been directed at increasing the economic opportunities for all our citizens and reducing the economic deprivation and inequities that have stained the record of American democracy.

Democratic Platform, 1976, p.916

Today, millions of people are unemployed. Unemployment represents mental anxiety, fear of harassment over unpaid bills, idle hours, loss of self-esteem, strained family relationships, deprivation of children and youth, alcoholism, drug abuse and crime. A job is a key measure of a person's place in society—whether as a full-fledged participant or on the outside. Jobs are the solution to poverty, hunger and other basic needs of workers and their families. Jobs enable a person to translate legal rights of equality into reality.

Democratic Platform, 1976, p.916

Our industrial capacity is also wastefully under-utilized. There are houses to build, urban centers to rebuild, roads and railroads to construct and repair, rivers to clean, and new sources of energy to develop. Something is wrong when there is work to be done, and the people who are willing to do it are without jobs. What we have lacked is leadership.

Republican Mismanagement

Democratic Platform, 1976, p.916

During the past 25 years, the American economy has suffered five major recessions, all under Republican administrations. During the past eight years, we have had two costly recessions with continuing unprecedented peacetime inflation. "Stagflation" has become a new word in our language just as it has become a product of Republican economic policy. Never before have we had soaring inflation in the midst of a major recession.

Democratic Platform, 1976, p.916

Stagnation, waste and human suffering are the legacy left to the American people by Republican economic policies. During the past five years, U.S. economic growth has averaged only 1-1/2 per cent per year compared with an historical average of about 4 per cent. Because of this shortfall, the nation has lost some $500–billion in the production of goods and services, and, if Republican rule continues, we can expect to lose another $600–$800–billion by 1980.

Democratic Platform, 1976, p.916

Ten million people are unemployed right now, and twenty to thirty million were jobless at some time in each of the last two years. For major groups in the labor force—minorities, women, youth, older workers, farm, factory and construction workers—unemployment has been, and remains, at depression levels.[p.917]

Democratic Platform, 1976, p.917

The rising cost of food, clothing, housing, energy and health care has eroded the income of the average American family, and has pushed persons on fixed incomes to the brink of economic disaster. Since 1970, the annual rate of inflation has averaged more than 6 percent and is projected by the Ford administration to continue at an unprecedented peacetime rate of 6 to 7 per cent until 1978.

Democratic Platform, 1976, p.917

The depressed production and high unemployment rates of the Nixon-Ford administrations have produced federal deficits totaling $242 billion. Those who should be working and paying taxes are collecting unemployment compensation or other welfare payments in order to survive. For every one per cent increase in the unemployment rate—for every one million Americans out of work—we all pay $3 billion more in unemployment compensation and $2 billion in welfare and related costs, and lose $14 billion in taxes. In fiscal 1976, $76 billion was lost to the federal government through increased recession-related expenditures and lost revenues. In addition, state and local governments lost $27 billion in revenues. A return to full employment will eliminate such deficits. With prudent management of existing programs, full employment revenues will permit the financing of national Democratic initiatives.

Democratic Platform, 1976, p.917

For millions of Americans, the Republican Party has substituted welfare for work. Huge sums will be spent on food stamps and medical care for families of the unemployed. Social insurance costs are greatly increased. This year alone the federal government will spend nearly $20 billion on unemployment compensation. In contrast, spending on job development is only $2–1/2 billion. The goal of the new Democratic administration will be to turn unemployment cheeks into pay cheeks.

What Democrats Can Achieve

Democratic Platform, 1976, p.917

In contrast to the record of Republican mismanagement, the most recent eight years of Democratic leadership, under John F. Kennedy and Lyndon B. Johnson, produced economic growth that was virtually uninterrupted. The unemployment rate dropped from 6.7 per cent in 1961 to 3.6 per cent in 1968, and most segments of the population benefited. Inflation increased at an average annual rate of only 2 per cent, and the purchasing power of the average family steadily increased. In 1960, about 40 million people were living in poverty. Over the next eight years, 14–1/2 million people moved out of poverty because of training opportunities, increased jobs and higher incomes. Since 1968, the number of persons living in poverty has remained virtually unchanged.

Democratic Platform, 1976, p.917

We have met the goals of full employment with stable prices in the past and can do it again. The Democratic Party is committed to the right of all adult Americans willing, able and seeking work to have opportunities for useful jobs at living wages. To make that commitment meaningful, we pledge ourselves to the support of legislation that will make every responsible effort to reduce adult unemployment to 3 per cent within 4 years.

Modernizing Economic Policy

Democratic Platform, 1976, p.917

To meet our goals we must set annual targets for employment, production and price stability; the Federal Reserve must be made a full partner in national economic decisions and become responsive to the economic goals of Congress and the President; credit must be generally available at reasonable interest rates; tax, spending and credit policies must be carefully coordinated with our economic goals, and coordinated within the framework of national economic planning.

Democratic Platform, 1976, p.917

Of special importance is the need for national economic planning capability. This planning capability should provide roles for Congress and the Executive as equal partners in the process and provide for full participation by the private sector, and state and local government. Government must plan ahead just like any business, and this type of planning can be implemented without the creation of a new bureaucracy but rather through the well-defined use of existing bodies and techniques. If we do not plan, but continue to react to crisis after crisis, our economic performance will be further eroded.

Full Employment Policies

Democratic Platform, 1976, p.917

Institutional reforms and the use of conventional tax, spending and credit policies must be accompanied by a broad range of carefully-targeted employment programs that will reduce unemployment in the private sector, and in regions, states and groups that have special employment problems.

Democratic Platform, 1976, p.917

[p.918] The lack of formal coordination among federal, state and local governments is a major obstacle to full employment. The absence of economic policy coordination is particularly visible during times of high unemployment. Recessions reduce tax revenues, and increase unemployment-related expenditures for state and local governments. To maintain balanced budgets or reduce budget deficits these governments are forced to increase taxes and cut services—actions that directly undermine federal efforts to stimulate the economy.

Democratic Platform, 1976, p.918

Consistent and coherent economic policy requires federal anti-recession grant programs to state and local government, accompanied by public employment, public works projects and direct stimulus to the private sector. In each case, the programs should be phased in automatically when unemployment rises and phased out as it declines.

Democratic Platform, 1976, p.918

Even during periods of normal economic growth there are communities and regions of the country—particularly central cities and rural areas—that do not fully participate in national economic prosperity. The Democratic Party has supported national economic policies which have consciously sought to aid regions in the nation which have been afflicted with poverty, or newer regions which have needed resources for development. These policies were soundly conceived and have been successful. Today, we have different areas and regions in economic decline and once again face a problem of balanced economic growth. To restore balance, national economic policy should be designed to target federal resources in areas of greatest need. To make low interest loans to businesses and state and local governments for the purpose of encouraging private sector investment in chronically depressed areas, we endorse consideration of programs such as a domestic development bank or federally insured taxable state and local bonds with adequate funding, proper management and public disclosure.

Democratic Platform, 1976, p.918

Special problems faced by young people, especially minorities, entering the labor force persist regardless of the state of the economy. To meet the needs of youth, we should consolidate existing youth employment programs; improve training, apprenticeship, internship and job-counseling programs at the high school and college levels; and permit youth participation in public employment projects.

Democratic Platform, 1976, p.918

There are people who will be especially difficult to employ. Special means for training and locating jobs for these people in the private sector, and, to the extent required, in public employment, should be established. Every effort should be made to create jobs in the private sector. Clearly, useful public jobs are far superior to welfare and unemployment payments. The federal government has the responsibility to ensure that all Americans able, willing and seeking work are provided opportunities for useful jobs.

Equal Employment Opportunity

Democratic Platform, 1976, p.918

We must be absolutely certain that no person is excluded from the fullest opportunity for economic and social participation in our society on the basis of sex, age, color, religion or national origin. Minority unemployment has historically been at least double the aggregate unemployment rate, with incomes at two-thirds the national average. Special emphasis must be placed on closing this gap.

Democratic Platform, 1976, p.918

Accordingly, we reaffirm this Party's commitment to full and vigorous enforcement of all equal opportunities laws and affirmative action. The principal agencies charged with anti-discrimination enforcement in jobs—the Equal Employment Opportunity Commission, the Department of Labor, and the Justice Department—are locked into such overlapping and uncoordinated strategies that a greatly improved government-wide system for the delivery of equal job and promotion opportunities must be developed and adequate funding committed to that end. New remedies to provide equal opportunities need exploration.

Anti-Inflation Policies

Democratic Platform, 1976, p.918

The economic and social costs of inflation have been enormous. Inflation is a tax that erodes the income of our workers, distorts business investment decisions, and redistributes income in favor of the rich, Americans on fixed incomes, such as the elderly, are often pushed into poverty by this cruel tax.

Democratic Platform, 1976, p.918

The Ford administration and its economic advisors have been consistently wrong about the sources and cures of the inflation that has plagued our nation and our people. Fighting inflation by curtailing production and increasing unemployment has done nothing to restrain it. With the [p.919] current high level of unemployment and low level of capacity utilization, we can increase production and employment without rekindling inflation.

Democratic Platform, 1976, p.919

A comprehensive anti-inflation policy must be established to assure relative price stability. Such a program should emphasize increased production and productivity and should take other measures to enhance the stability and flexibility of our economy.

Democratic Platform, 1976, p.919

The see-saw progress of our economy over the past eight years has disrupted economic growth. Much of the instability has been created by stop-and-go monetary policies. High interest rates and the recurring underutilization of our manufacturing plant and equipment have retarded new investment. The high cost of credit has stifled small businesses and virtually halted the housing industry. Unemployment in the construction industry has been raised to depression levels and home ownership has been priced beyond the reach of the majority of the people.

Democratic Platform, 1976, p.919

Stable economic growth with moderate interest rates will not only place downward pressure on prices through greater efficiency and productivity, but will reduce the prospects for future shortages of supply by increasing the production of essential goods and services and by providing a more predictable environment for business investment.

Democratic Platform, 1976, p.919

The government must also work to improve the ability of our economy to respond to change. Competition in the private sector, a re-examination, reform and consolidation of the existing regulatory structure, and promotion of a freer but fair system of international trade will aid in achieving that goal.

Democratic Platform, 1976, p.919

At times, direct government involvement in wage and price decisions may be required to insure price stability. But we do not believe that such involvement requires a comprehensive system of mandatory controls at this time. It will require that businesses and labor must meet fair standards of wage and price change. A strong domestic council on price and wage stability should be established with particular attention to restraining price increases in those sectors of our economy where prices are "administered" and where price competition does not exist.

Democratic Platform, 1976, p.919

The federal government should hold public hearings, investigate and publish facts on price, profit, wage and interest rate increases that seriously threaten national price stability. Such investigations and proper planning can focus public opinion and awareness on the direction of price, profit, wage and interest rate decisions.

Democratic Platform, 1976, p.919

Finally, tax policy should be used if necessary to maintain the real income of workers as was done with the 1975 tax cut.

Economic Justice

Democratic Platform, 1976, p.919

The Democratic Party has a long history of opposition to the undue concentration of wealth and economic power. It is estimated that about three-quarters of the country's total wealth is owned by one-fifth of the people. The rest of our population struggles to make ends meet in the face of rising prices and taxes.

Democratic Platform, 1976, p.919

Anti-trust enforcement. The next Democratic administration will commit itself to move vigorously against anti-competitive concentration of power within the business sector. This can be accomplished in part by strengthening the anti-trust laws and insuring adequate commitment and resources for the enforcement of these laws. But we must go beyond this negative remedy to a positive policy for encouraging the development of a small business, including the family farm.

Democratic Platform, 1976, p.919

Small businesses. A healthy and growing small business community is prerequisite for increasing competition and a thriving national economy. While most people would accept this view, the federal government has in the past impeded the growth of small businesses.

Democratic Platform, 1976, p.919

To alleviate the unfavorable conditions for small businesses, we must make every effort to assure the availability of loans to small business, including direct government loans at reasonable interest rates particularly to those in greatest need, such as minority-owned businesses. For example, efforts should be made to strengthen minority business programs, and increase minority opportunities for business ownership. We support similar programs and opportunities for women. Federal contract and procurement opportunities in such areas as housing, transportation and energy should support efforts to increase the volume of minority and small business involvement. Regulatory agencies and the regulated small business must work together to see that federal regulations are met, without applying a stranglehold on the small firm or farm and with less paper work and red tape.

Democratic Platform, 1976, p.919

Tax reform. Economic [p.920] justice will also require a firm commitment to tax reform at all levels. In recent years there has been a shift in the tax burden from the rich to the working people of this country. The Internal Revenue Code offers massive tax welfare to the wealthiest income groups in the population and only higher taxes for the average citizen. In 1973, there were 622 people with adjusted income of $100,000 or more who still managed to pay no tax. Most families pay between 20 and 25 per cent of their income in taxes.

Democratic Platform, 1976, p.920

We have had endless talk about the need for tax reform and fairness in our federal tax system. It is now time for action.

Democratic Platform, 1976, p.920

We pledge the Democratic Party to a complete overhaul of the present tax system, which will review all special tax provisions to ensure that they are justified and distributed equitably among our citizens. A responsible Democratic tax reform program could save over $5–billion in the first year with larger savings in the future.

Democratic Platform, 1976, p.920

We will strengthen the internal revenue tax code so that high income citizens pay a reasonable tax on all economic income.

Democratic Platform, 1976, p.920

We will reduce the use of unjustified tax shelters in such areas as oil and gas, tax-loss farming, real estate, and movies.

Democratic Platform, 1976, p.920

We will eliminate unnecessary and ineffective tax provisions to business and substitute effective incentives to encourage small business and capital formation in all businesses. Our commitment to full employment and sustained purchasing power will also provide a strong incentive for capital formation.

Democratic Platform, 1976, p.920

We will end abuses in the tax treatment of income from foreign sources; such as special tax treatment and incentives for multinational corporations that drain jobs and capital from the American economy.

Democratic Platform, 1976, p.920

We will overhaul federal estate and gift taxes to provide an effective and equitable structure to promote tax justice and alleviate some of the legitimate problems faced by farmers, small business men and women and others who would otherwise be forced to liquidate assets in order to pay the tax.

Democratic Platform, 1976, p.920

We will seek and eliminate provisions that encourage uneconomic corporate mergers and acquisitions.

Democratic Platform, 1976, p.920

We will eliminate tax inequities that adversely affect individuals on the basis of sex or marital status.

Democratic Platform, 1976, p.920

We will curb expense account deductions.

Democratic Platform, 1976, p.920

And we will protect the rights of all taxpayers against oppressive procedures, harassment and invasions of privacy by the Internal Revenue Service.

Democratic Platform, 1976, p.920

At present, many federal government tax and expenditure programs have a profound but unintended and undesirable impact on jobs and on where people and business locate. Tax policies and other indirect subsidies have promoted deterioration of cities and regions. These policies should be reversed.

Democratic Platform, 1976, p.920

There are other areas of taxation where change is also needed. The Ford administration's unwise and unfair proposal to raise the regressive social security tax gives new urgency to the Democratic Party's goal of redistributing the burden of the social security tax by raising the wage base for earnings subject to the tax with effective exemptions and deductions to ease the impact on low income workers and two-earner families. Further revision in the Social Security program will be required so that women are treated as individuals.

Democratic Platform, 1976, p.920

The Democratic Party should make a reappraisal of the appropriate sources of federal revenues. The historical distribution of the tax burden between corporations and individuals, and among the various types of federal taxes, has changed dramatically in recent years. For example, the corporate tax share of federal revenue has declined from 30 per cent in 1954 to 14 per cent in 1975.

Labor Standards and Rights

Democratic Platform, 1976, p.920

The purpose of fair labor standards legislation has been the maintenance of the minimum standards necessary for the health, efficiency and general well-being of workers. Recent inflation has eroded the real value of the current minimum wage. This rapid devaluation of basic income for working people makes a periodic review of the level of the minimum wage essential. Such a review should insure that the minimum wage rate at least keep pace with the increase in the cost of living.

Democratic Platform, 1976, p.920

Raising the pay standard for overtime work, additional hiring of part-time persons and flexible work schedules will increase the independence of [p.921] workers and create additional job opportunities, especially for women. We also support the principle of equal pay for comparable work.

Democratic Platform, 1976, p.921

We are committed to full implementation and enforcement of the Equal Credit Opportunity Act.

Democratic Platform, 1976, p.921

Over a generation ago this nation established a labor policy whose purpose is to encourage the practice and procedure of collective bargaining and the right of workers to organize to obtain this goal. The Democratic Party is committed to extending the benefit of the policy to all workers and to removing the barriers to its administration. We support the right of public employees and agricultural workers to organize and bargain collectively. We urge the adoption of appropriate federal legislation to ensure this goal.

Democratic Platform, 1976, p.921

We will seek to amend the Fair Labor Standards Act to speed up redress of grievances of workers asserting their legal rights.

Democratic Platform, 1976, p.921

We will seek to enforce and, where necessary, to amend the National Labor Relations Act to eliminate delays and inequities and to provide for more effective remedies and administration.

Democratic Platform, 1976, p.921

We will support the full right of construction workers to picket a job site peacefully.

Democratic Platform, 1976, p.921

We will seek repeal of Section 14(b) of the Taft-Hartley Act which allows states to legislate the anti-union open shop.

Democratic Platform, 1976, p.921

We will maintain strong support for the process of voluntary arbitration, and we will enact minimum federal standards for workers compensation laws and for eligibility, benefit amounts, benefit duration and other essential features of the unemployment insurance program. Unemployment insurance should cover all wage and salary workers.

Democratic Platform, 1976, p.921

The Occupational Safety and Health Act of 1970 should cover all employees and be enforced as intended when the law was enacted. Early and periodic review of its provisions should be made to insure that they are reasonable and workable.

Democratic Platform, 1976, p.921

The Democratic Party will also seek to enact a comprehensive mine safety law, utilizing the most effective and independent enforcement by the federal government and support special legislation providing adequate compensation to coal miners and their dependents who have suffered disablement or death as a result of the black lung disease.

Democratic Platform, 1976, p.921

We believe these policies will put America back to work, bring balanced growth to our economy

Democratic Platform, 1976, p.921

and give all Americans an opportunity to share in the expanding prosperity that will come from a new Democratic administration.

II. Government Reform and Business Accountability

Democratic Platform, 1976, p.921

The current Republican administration did not invent inept government, but it has saddled the country with ineffective government; captive government, subservient to the special pleading of private economic interests; insensitive government, trampling over the rights of average citizens; and remote government, secretive and unresponsive.

Democratic Platform, 1976, p.921

Democrats believe that the cure for these ills is not the abandonment of governmental responsibility for addressing national problems, but the restoration of legitimate popular control over the organs and activities of government.

Democratic Platform, 1976, p.921

There must be an ever-increasing accountability of government to the people. The Democratic Party is pledged to the fulfillment of four fundamental citizen rights of governance: the right to competent government; the right to responsive government; the right to integrity in government; the right to fair dealing by government.

The Right to Competent Government

Democratic Platform, 1976, p.921

The Democratic Party is committed to the adoption of reforms such as zero-based budgeting, mandatory reorganization timetables, and sunset laws which do not jeopardize the implementation of basic human and political rights. These reforms are designed to terminate or merge existing agencies and programs, or to renew them, only after assuring elimination of duplication, overlap, and conflicting programs and authorities, and the matching of funding levels to public needs. In addition, we seek flexibility to reflect changing public needs, the use of alternatives to regulation and the elimination of special interest favoritism and bias.

Democratic Platform, 1976, p.921

To assure that government remains responsive to the people's elected representatives, the Democratic Party supports stepped-up congressional agency oversight and program evaluation, including full implementation of the congressional budget process; an expanded, more forceful role for the General Accounting Office in performing legislative audits for Congress; and restraint by [p.922] the President in exercising executive privilege designed to withhold necessary information from Congress.

The Right to Responsive Government

Democratic Platform, 1976, p.922

To begin to restore the shaken faith of Americans that the government in Washington is their government—responsive to their needs and desires, not the special interests of wealth, entrenched political influence, or bureaucratic self-interest—government decision-making must be opened up to citizen advocacy and participation.

Democratic Platform, 1976, p.922

Governmental decision-making behind closed doors is the natural enemy of the people. The Democratic Party is committed to openness throughout government: at regulatory commissions, advisory committee meetings and at hearings. Public calendars of scheduled meetings between regulators and the regulated, and freedom of information policies, should be designed to facilitate rather than frustrate citizen access to documents and information.

Democratic Platform, 1976, p.922

All persons and citizen groups must be given standing to challenge illegal or unconstitutional government action in court and to compel appropriate action. Where a court or an agency finds evidence of government malfeasance or neglect those who brought forward such evidence should be compensated for their reasonable expenses in doing so.

Democratic Platform, 1976, p.922

Democrats have long sought—against fierce Republican and big business opposition—the creation and maintenance of an independent consumer agency with the staff and power to intervene in regulatory matters on behalf of the consuming and using public. Many states have already demonstrated that such independent public or consumer advocates can win important victories for the public interest in proceedings before state regulatory agencies and courts.

Democratic Platform, 1976, p.922

This nation's Civil Service numbers countless strong and effective public servants. It was the resistance of earnest and steadfast federal workers that stemmed the Nixon-Ford efforts to undermine the integrity of the Civil Service. The reorganization of government which we envision will protect the job rights of civil servants and permit them to more effectively serve the public.

Democratic Platform, 1976, p.922

The Democratic Party is committed to the review and overhaul of Civil Service laws to assure:

Democratic Platform, 1976, p.922

insulation from political cronyism, accountability for nonfeasance as well as malfeasance, protection for the public servant who speaks out to identify corruption or failure, performance standards and incentives to reward efficiency and innovation and to assure nondiscrimination and affirmative action in the recruitment, hiring and promotion of civil service employees.

Democratic Platform, 1976, p.922

We support the revision of the Hatch Act so as to extend to federal workers the same political rights enjoyed by other Americans as a birthright, while still protecting the Civil Service from political abuse.

The Right to Integrity in Government

Democratic Platform, 1976, p.922

The Democratic Party is pledged to the concept of full public disclosure by major public officials and urges appropriate legislation to effectuate this policy.

Democratic Platform, 1976, p.922

We support divestiture of all financial holdings which directly conflict with official responsibilities and the development of uniform standards, review procedures and sanctions to identify and eliminate potential conflicts of interest.

Democratic Platform, 1976, p.922

Tough, competent regulatory commissioners with proven commitment to the public interest are urgently needed.

Democratic Platform, 1976, p.922

We will seek restrictions on "revolving door" careerism—the shuttling back and forth of officials between jobs in regulatory or procurement agencies and in regulated industries and government contractors.

Democratic Platform, 1976, p.922

All diplomats, federal judges and other major officials should be selected on a basis of qualifications. At all levels of government services, we will recruit, appoint and promote women and minorities.

Democratic Platform, 1976, p.922

We support legislation to ensure that the activities of lobbyists be more thoroughly revealed both within the Congress and the Executive agencies.

Democratic Platform, 1976, p.922

The Democratic Party has led the fight to take the presidency off the auction block by championing the public financing of presidential elections. The public has responded with enthusiastic use of the $1 income tax checkoff. Similar steps must now be taken for congressional candidates. We call for legislative action to provide for partial public financing on a matching basis of the congressional elections, and the exploration of further [p.923] reforms to insure the integrity of the electoral process.

The Right to Fair Dealing by Government

Democratic Platform, 1976, p.923

A citizen has the right to expect fair treatment from government. Democrats are determined to find a means to make that right a reality.

Democratic Platform, 1976, p.923

An Office of Citizen Advocacy should be established as part of the executive branch, independent of any agency, with full access to agency records and with both the power and the responsibility to investigate complaints.

Democratic Platform, 1976, p.923

Freedom of information requirements must be interpreted in keeping with the right of the individual to be free from anonymous accusation or slander. Each citizen has the right to know and to review any information directly concerning him or her held by the government for any purpose whatsoever under the Freedom of Information Act and the Privacy Act of 1974, other than those exceptions set out in the Freedom of Information Act. Such information should be forthcoming promptly, without harassment and at a minimal cost to the citizen.

Democratic Platform, 1976, p.923

Appropriate remedies must be found for citizens who suffer hardship as the result of abuse of investigative or prosecutorial powers.

Business Accountability

Democratic Platform, 1976, p.923

The Democratic Party believes that competition is preferable to regulation and that government has a responsibility to seek the removal of unreasonable restraints and barriers to competition, to restore and, where necessary, to stimulate the operation of market forces. Unnecessary, regulation should be eliminated or revised, and the burden of excessive paperwork and red tape imposed on citizens and businesses should be removed.

Democratic Platform, 1976, p.923

The Democratic Party encourages innovation and efficiency in the private sector.

Democratic Platform, 1976, p.923

The Democratic Party also believes that strengthening consumer sovereignty—the ability of consumers to exercise free choice, to demand satisfaction, and to obtain direct redress of grievances—is similarly preferable to the present indirect government protection of consumers. However, government must not shirk its responsibility to impose and rigorously enforce regulation where necessary to ensure health, safety and fairness.

Democratic Platform, 1976, p.923

We reiterate our support for unflinching antitrust enforcement, and for the selection of an Attorney General free of political obligation and committed to rigorous antitrust prosecution.

Democratic Platform, 1976, p.923

We shall encourage consumer groups to establish and operate consumer cooperatives that will enable consumers to provide themselves marketplace alternatives and to provide a competitive spur to profit-oriented enterprises.

Democratic Platform, 1976, p.923

We support responsible cost savings in the delivery of professional services including the use of low-cost paraprofessionals, efficient group practice and federal standards for state no-fault insurance programs.

Democratic Platform, 1976, p.923

We reiterate our support for full funding of neighborhood legal services for the poor.

Democratic Platform, 1976, p.923

The Democratic Party is also committed to strengthening the knowledge and bargaining power of consumers through government-supported systems for developing objective product performance standards; advertising and labeling requirements for the disclosure of essential consumer information; and efficient and low-cost redress of consumer complaints including strengthened small claims courts, informal dispute settlement mechanisms, and consumer class actions.

Democratic Platform, 1976, p.923

The Democratic Party is committed to making the U.S. Postal Service function properly as an essential public service.

Democratic Platform, 1976, p.923

We reaffirm the historic Democratic commitment to assure the wholesomeness of consumer products such as food, chemicals, drugs and cosmetics, and the safety of automobiles, toys and appliances. Regulations demanding safe performance can be developed in a way that minimizes their own costs and actually stimulates product innovation beneficial to consumers.

III. Government and Human Needs

Democratic Platform, 1976, p.923

The American people are demanding that their national government act more efficiently and effectively in those areas of urgent human needs such as welfare reform, health care and education.

Democratic Platform, 1976, p.923

However, beyond these strong national initiatives, state and local governments must be given an increased, permanent role in administering social programs. The federal government's role should be the constructive one of establishing standards and goals with increased state and local participation. There is a need for a new blueprint for the public sector, one which identifies and [p.924] responds to national problems, and recognizes the proper point of administration for both new and existing programs. In shifting administrative responsibility, such programs must meet minimum federal standards.

Democratic Platform, 1976, p.924

Government must concentrate, not scatter, its resources. It should not divide our people by inadequate and demanding programs. The initiatives we propose do not require larger bureaucracy. They do require committed government.

Democratic Platform, 1976, p.924

The Democratic Party realizes that accomplishing our goals in the areas of human needs will require time and resources. Additional resources will become available as we implement our full-employment policies. Federal revenues also grow over time. After full-employment has been achieved, $20 billion of increased revenue will be generated by a fully operating economy each year. The program detailed in the areas of human needs cannot be accomplished immediately, but an orderly beginning can be made and the effort expanded as additional resources become available.

Health Care

Democratic Platform, 1976, p.924

In 1975, national health expenditures averaged $547 per person—an almost 40 per cent increase in four years. Inflation and recession have combined to erode the effectiveness of the Medicare and Medicaid programs.

Democratic Platform, 1976, p.924

An increasingly high proportion of health costs have been shifted back to the elderly. An increasing Republican emphasis on restricting eligibility and services is emasculating basic medical care for older citizens who cannot meet the rising costs of good health.

Democratic Platform, 1976, p.924

We need a comprehensive national health insurance system with universal and mandatory coverage. Such a national health insurance system should be financed by a combination of employer-employee shared payroll taxes and general tax revenues. Consideration should be given to developing a means of support for national health insurance that taxes all forms of economic income. We must achieve all that is practical while we strive for what is ideal, taking intelligent steps to make adequate health services a right for all our people. As resources permit, this system should not discriminate against the mentally ill.

Democratic Platform, 1976, p.924

Maximum personal interrelationships between patients and their physicians should be preserved. We should experiment with new forms of medical care delivery to mold a national health policy that will meet our needs in a fiscally responsible manner.

Democratic Platform, 1976, p.924

We must shift our emphasis in both private and public health care away from hospitalization and acute-care services to preventive medicine and the early detection of the major cripplers and killers of the American people. We further support increased federal aid to the government laboratories as well as private institutions to seek the cure to heart disease, cancer, sickle cell anemia, paralysis from spinal cord injury, drug addiction and other such afflictions.

Democratic Platform, 1976, p.924

National health insurance must also bring about a more responsive consumer-oriented system of health care delivery. Incentives must be used to increase the number of primary health care providers, and shift emphasis away from limited-application, technology-intensive programs. By reducing the barriers to primary preventive care, we can lower the need for costly hospitalization. Communities must be encouraged to avoid duplication of expensive technologies and meet the genuine needs of their populations. The development of community health centers must be resumed. We must develop new health careers, and promote a better distribution of health care professionals, including the more efficient use of paramedics. All levels of government should concern themselves with increasing the number of doctors and para-medical personnel in the field of primary health care.

Democratic Platform, 1976, p.924

A further need is the comprehensive treatment of mental illness, including the development of Community Mental Health Centers that provide comprehensive social services not only to alleviate, but to prevent mental stresses resulting from social isolation and economic dislocation. Of particular importance is improved access to the health care system by underserved population groups.

Democratic Platform, 1976, p.924

We must have national health insurance with strong built-in cost and quality controls. Rates for institutional care and physicians' services should be set in advance, prospectively. Alternative approaches to health care delivery, based on prepayment financing, should be encouraged and developed.

Democratic Platform, 1976, p.924

Americans are currently spending $133 billion for health care—8.3% of our Gross National Product. A return to full employment and the maintenance thereafter of stable economic growth will [p.925] permit the orderly and progressive development of a comprehensive national health insurance program which is federally financed. Savings will result from the removal of inefficiency and waste in the current multiple public and private insurance programs and the structural integration of the delivery system to eliminate duplication and waste. The cost of such a program need not exceed the share of the GNP this nation currently expends on health care; but the resulting improvement of health service would represent a major improvement in the quality of life enjoyed by Americans at all economic levels.

Welfare Reform

Democratic Platform, 1976, p.925

Fundamental welfare reform is necessary. The problems with our current chaotic and inequitable system of public assistance are notorious. Existing welfare programs encourage family instability. They have few meaningful work incentives. They do little or nothing for the working poor on substandard incomes. The patchwork of federal, state and local programs encourages unfair variations in benefit levels among the states, and benefits in many states are well below the standards for even lowest-income budgets.

Democratic Platform, 1976, p.925

Of the current programs, only Food Stamps give universal coverage to all Americans in financial need. Cash assistance, housing aid and health care subsidies divide recipients into arbitrary categories. People with real needs who do not fit existing categories are ignored altogether.

Democratic Platform, 1976, p.925

The current complexity of the welfare structure requires armies of bureaucrats at all levels of government. Food Stamps, Aid to Families with Dependent Children, and Medicaid are burdened by unbelievably complex regulations, statutes and court orders. Both the recipients of these benefits, and the citizen who pays for them, suffer as a result. The fact that our current system is administered and funded at different levels of government makes it difficult to take initiatives to improve the status of the poor.

Democratic Platform, 1976, p.925

We should move toward replacement of our existing inadequate and wasteful system with a simplified system of income maintenance, substantially financed by the federal government, which includes a requirement that those able to work be provided with appropriate available jobs or job training opportunities. Those persons who are physically able to work (other than mothers with dependent children) should be required to accept appropriate available jobs or job training. This maintenance system should embody certain basic principles. First and most important, it should provide an income floor both for the working poor and the poor not in the labor market. It must treat stable and broken families equally. It must incorporate a simple schedule of work incentives that guarantees equitable levels of assistance to the working poor. This reform may require an initial additional investment, but it offers the prospect of stabilization of welfare costs over the long run, and the assurance that the objectives of this expenditure will be accomplished.

Democratic Platform, 1976, p.925

As an interim step, and as a means of providing immediate federal fiscal relief to state and local governments, local governments should no longer be required to bear the burden of welfare costs. Further, there should be a phased reduction in the states' share of welfare costs.

Civil and Political Rights

Democratic Platform, 1976, p.925

To achieve a just and healthy society and enhance respect and trust in our institutions, we must insure that all citizens are treated equally before the law and given the opportunity, regardless of race, color, sex, religion, age, language or national origin, to participate fully in the economic, social and political processes and to vindicate their legal and constitutional rights.

Democratic Platform, 1976, p.925

In reaffirmation of this principle, an historic commitment of the Democratic Party, we pledge vigorous federal programs and policies of compensatory opportunity to remedy for many Americans the generations of injustice and deprivation; and full funding of programs to secure the implementation and enforcement of civil rights.

Democratic Platform, 1976, p.925

We seek ratification of the Equal Rights Amendment, to insure that sex discrimination in all its forms will be ended, implementation of Title IX, and elimination of discrimination against women in all federal programs.

Democratic Platform, 1976, p.925

We support the right of all Americans to vote for President no matter where they live; vigorous enforcement of voting rights legislation to assure the constitutional rights of minority and language-minority citizens; the passage of legislation providing for registration by mail in federal elections to erase existing barriers to voter participation; and full home rule for the District of Columbia, including authority over its budget and local [p.926] revenues, elimination of federal restrictions in matters which are purely local and voting representation in the Congress, and the declaration of the birthday of the great civil rights leader, Martin Luther King, Jr., as a national holiday.

Democratic Platform, 1976, p.926

We pledge effective and vigorous action to protect citizens' privacy from bureaucratic technological intrusions, such as wiretapping and bugging without judicial scrutiny and supervision; and a full and complete pardon for those who are in legal or financial jeopardy because of their peace fill opposition to the Vietnam War, with deserters to be considered on a case-by-case basis.

Democratic Platform, 1976, p.926

We fully recognize the religious and ethical nature of the concerns which many Americans have on the subject of abortion. We feel, however, that it is undesirable to attempt to amend the U.S. Constitution to overturn the Supreme Court decision in this area.

Democratic Platform, 1976, p.926

The Democratic Party reaffirms and strengthens its legal and moral trust responsibilities to the American Indian. We believe it is honorable to obey and implement our treaty obligations to the first Americans. In discharging our duty, we shall exert all and necessary assistance to afford the American Indians the protection of their land, their water and their civil rights.

Democratic Platform, 1976, p.926

Federal laws relating to American Indians and the functions and purposes of the Bureau of Indian Affairs should be reexamined.

Democratic Platform, 1976, p.926

We support a provision in the immigration laws to facilitate acquisition of citizenship by Resident Aliens.

Democratic Platform, 1976, p.926

We are committed to Puerto Rico's right to enjoy full self-determination and a relationship that can evolve in ways that will most benefit U.S. citizens in Puerto Rico. The Democratic Party respects and supports the present desire of the people of Puerto Rico to freely associate in permanent union with the United States, as an autonomous commonwealth or as a State.

Education

Democratic Platform, 1976, p.926

The goal of our educational policy is to provide our citizens with the knowledge and skills they need to live successfully. In pursuing this goal, we will seek adequate funding, implementation and enforcement of requirements in the education programs already approved by Congress.

Democratic Platform, 1976, p.926

We should strengthen federal support of existing programs that stress improvement of reading and math skills. Title I of the Elementary and Secondary Education Act must reach those it is intended to benefit to effectively increase these primary skills. "Break-throughs" in compensatory education require a concentration of resources on each individual child and a mix of home and school activities that is not possible with the underfunded Republican programs. Compensatory education is realistic only when there is a stable sequence of funding that allows proper planning and continuity of programs, an impossibility under Republican veto and impoundment politics.

Democratic Platform, 1976, p.926

We should also work to expand federal support in areas of educational need that have not yet been addressed sufficiently by the public schools—education of the handicapped, bilingual education and vocational education, and early childhood education. We propose federally financed, family centered developmental and educational child care programs—operated by the public schools or other local organizations, including both private and community—and that they be available to all who need and desire them. We support efforts to provide for the basic nutritional needs of students.

Democratic Platform, 1976, p.926

We recognize the right of all citizens to education, pursuant to Title VI of the Civil Rights Act of 1968, and the need in affected communities for bilingual and bicultural educational programs. We call for compliance with civil rights requirements in hiring and promotion in school systems.

Democratic Platform, 1976, p.926

For the disadvantaged child, equal opportunity requires concentrated spending. And for all children, we must guarantee that jurisdictions of differing financial capacity can spend equal amounts on education. These goals do not conflict but complement each other.

Democratic Platform, 1976, p.926

The principle that a child's education should depend on the property wealth of his or her school jurisdiction has been discredited in the last few years. With increased federal funds, it is possible to enhance educational opportunity by eliminating spending disparities within state borders. State-based equalizations, even state takeover of education costs, to relieve the overburdened property taxpayer and to avoid the inequities in the existing finance system, should be encouraged.

Democratic Platform, 1976, p.926

The essential purpose of school desegregation is to give all children the same educational opportunities. We will continue to support that goal. The Supreme Court decision of 1954 and the aftermath were based on the recognition that separate educational facilities are inherently [p.927] unequal. It is clearly our responsibility as a party and as citizens to support the principles of our Constitution.

Democratic Platform, 1976, p.927

The Democratic Party pledges its concerted help through special consultation, matching funds, incentive grants and other mechanisms to communities which seek education, integrated both in terms of race and economic class, through equitable, reasonable and constitutional arrangements. Mandatory transportation of students beyond their neighborhoods for the purpose of desegregation remains a judicial tool of the last resort for the purpose of achieving school desegregation. The Democratic Party will be an active ally of those communities which seek to enhance the quality as well as the integration of educational opportunities. We encourage a variety of other measures, including the redrawing of attendance lines, pairing of schools, use of the "magnet school" concept, strong fair housing enforcement, and other techniques for the achievement of racial and economic integration.

Democratic Platform, 1976, p.927

The Party reaffirms its support of public school education. The Party also renews its commitment to the support of a constitutionally acceptable method of providing tax aid for the education of all pupils in non-segregated schools in order to insure parental freedom in choosing the best education for their children. Specifically, the Party will continue to advocate constitutionally permissible federal education legislation which provides for the equitable participation in federal programs of all low- and moderate-income pupils attending all the nation's schools.

Democratic Platform, 1976, p.927

The Party commits itself to support of adult education and training which will provide skills upgrading.

Democratic Platform, 1976, p.927

In higher education, our Party is strongly committed to extending postsecondary opportunities for students from low- and middle-income families, including older students and students who eau attend only part-time. The Basic Educational Opportunity Grants should be funded at the full payment schedule, and campus-based programs of aid must be supported to provide a reasonable choice of institutions as well as access. With a coordinated and reliable system of grants, loans and work study, we can relieve the crisis in costs that could shut all but the affluent out of our colleges and universities.

Democratic Platform, 1976, p.927

The federal government and the states must develop strategies to support institutions of higher education from both public and private sources. The federal government should directly provide cost of education payments to all higher education institutions, including predominantly black colleges, to help cover per-student costs, which far exceed those covered by tuition and fees.

Democratic Platform, 1976, p.927

Finally, government must systematically support basic and applied research in the liberal arts, the sciences, education and the professions—without political interference or bureaucratic restraint. The federal investment in graduate education should be sustained and selectively increased to meet the need for highly trained individuals. Trainee-ships and fellowships should be provided to attract the most talented students, especially among minority groups and women.

Democratic Platform, 1976, p.927

Libraries should receive continuous guaranteed support and the presently impounded funds for nationwide library planning and development should be released immediately.

Social Services

Democratic Platform, 1976, p.927

The Nixon-Ford administration would limit eligibility for federally-subsidized social services to the very poor. Social services can make significant changes in the lives of the non-poor, as well. The problems of alcoholism, drug abuse, mental retardation, child abuse or neglect, and mental illness arise at every income level, and quality day-care has become increasingly urgent for low- and middle-income families. Federal grants to the states should support a broad community-based program of social services to low- and middle-income families, to assure that these programs reach their intended populations.

Democratic Platform, 1976, p.927

The states are now being required to take over an increasing share of existing social service programs. In 1972, the ceiling for federal social service grants was frozen at $2.5 billion, and subsequent inflation of 28 per cent has reduced the effective federal aid to existing programs. While there must certainly be a ceiling on such grants, it should be raised to compensate for inflation and to encourage states and localities to expand social services to low- and moderate-income families.

Disabled Citizens

Democratic Platform, 1976, p.927

We support greater recognition of the problems of the disabled and legislation assuring that all people with disabilities have reasonable access to all public accommodations and facilities. The [p.928] Democratic Party supports affirmative action goals for employment of the disabled.

Older Citizens

Democratic Platform, 1976, p.928

The Democratic Party has always emphasized that adequate income and health care for senior citizens are basic federal government responsibilities. The recent failure of government to reduce unemployment and alleviate the impact of the rising costs of food, housing and energy have placed a heavy burden on those who live on fixed and limited incomes, especially the elderly. Our other platform proposals in these areas are designed to help achieve an adequate income level for the elderly.

Democratic Platform, 1976, p.928

We will not permit an erosion of social security benefits, and while our ultimate goal is a health security system ensuring comprehensive and quality care for all Americans, health costs paid by senior citizens under the present system must be reduced.

Democratic Platform, 1976, p.928

We believe that Medicare should be made available to Americans abroad who are eligible for Social Security.

Democratic Platform, 1976, p.928

Democrats strongly support employment programs and the liberalization of the allowable earnings limitation under Social Security for older Americans who wish to continue working and living as productive citizens. We will put an end to delay in implementation of nutrition programs for the elderly and give high priority to a transportation policy for senior citizens under the Older Americans Act. We pledge to enforce vigorously health and safety standards for nursing homes, and seek alternatives which allow senior citizens where possible to remain in their own homes.

Veterans

Democratic Platform, 1976, p.928

America's veterans have been rhetorically praised by the Nixon-Ford administration at the same time that they have been denied adequate medical, educational, pension and employment benefits.

Democratic Platform, 1976, p.928

Vietnam veterans have borne the brunt of unemployment and economic mismanagement at home. As late as December 1975, the unemployment rate for Vietnam veterans was over 10 per cent. Younger Vietnam veterans (ages 20–24) have had unemployment rates almost twice the rate of similarly-aged non-veterans. Job training, placement, and information and counseling programs for veterans are inadequate.

Democratic Platform, 1976, p.928

The Veterans Administration health care program requires adequate funding and improved management and health care delivery in order to provide high quality service and effectively meet the changing needs of the patient population.

Democratic Platform, 1976, p.928

The next Democratic administration must act to rescue pensioner veterans below the poverty line. Thirty per cent of the veterans and 50 per cent of the widows receiving pensions have total incomes below the poverty line. Cost of living increases should be automatic in the veterans' pension and disability system.

Democratic Platform, 1976, p.928

Educational assistance should be expanded two years for those veterans already enrolled and drawing benefits in VA-approved educational and training programs.

The Arts and Humanities

Democratic Platform, 1976, p.928

We recognize the essential role played by arts and humanities in the development of America. Our nation cannot afford to be materially rich and spiritually poor. We endorse a strong role for the federal government in reinforcing the vitality and improving the economic strength of the nation's artists and arts institutions, while recognizing that artists must be absolutely free of any government control. We would support the growth and development of the National Endowments for the Arts and Humanities through adequate funding, the development of special anti-recession employment programs for artists, copyright reforms to protect the rights of authors, artists and performers, and revision of the tax laws that unfairly penalize artists. We further pledge our support for the concept and adequate financing of public broadcasting.

IV. States, Counties and Cities

Democratic Platform, 1976, p.928

More than eight years ago, the Kerner Commission on Civil Disorders concluded that the disorders of the 1960s were caused by the deteriorating conditions of life in our urban centers—abject poverty, widespread unemployment, uninhabitable housing, declining services, rampant crime and disintegrating families. Many of these same problems plagued rural America as well. Little has been done by the Republican administrations to deal with the fundamental challenges to our society. This policy of neglect gives the lie to the current administration's rhetorical commitment to state and local governments.

Democratic Platform, 1976, p.928

By tolerating intolerable unemployment, by [p.929] vetoing programs for the poor, the old, and the ill, by abandoning the veterans and the young, and by withholding necessary funds for the decaying cities, the Nixon-Ford years have been years of retrogression in the nation's efforts to meet the needs of our cities. By abdicating responsibility for meeting these needs at the national level, the current administration has placed impossible burdens on fiscally hard-pressed state and local governments. In turn, local governments have been forced to rely excessively on the steadily diminishing and regressive property tax—which was originally designed to cover property related services and was never intended to support the services now required in many of our cities and towns.

Democratic Platform, 1976, p.929

Federal policies and programs have inadvertently exacerbated the urban crisis. Within the framework of a new partnership of federal, state and local governments, and the private sector, the Democratic Party is pledged to the development of America's first national urban policy. Central to the success of that policy are the Democratic Party's commitments to full employment, incentives for urban and rural economic development, welfare reform, adequate health care, equalization of education expenditures, energy conservation and environmental quality. If progress were made in these areas, much of the inappropriately placed fiscal burden would be removed, and local governments could better fulfill their appropriate responsibilities.

Democratic Platform, 1976, p.929

To assist further in relieving both the fiscal and service delivery problems of states and local governments, the Democratic Party reaffirms its support for general revenue sharing as a base for the fiscal health of all levels of government, acknowledging that the civil rights and citizens' participation provisions must be strengthened. We further believe that there must be an increase in the annual funding to compensate for the erosion of inflation. We believe the distribution formula should be adjusted to reflect better community and state needs, poverty levels, and tax effort.

Democratic Platform, 1976, p.929

Finally, to alleviate the financial burden placed on our cities by the combination of inflation and recession, the Democratic Party restates its support for an emergency anti-recession aid to states and cities particularly hard hit by recession.

Housing and Community Development

Democratic Platform, 1976, p.929

In the past eight Republican years, housing has become a necessity priced as a luxury. Housing prices have nearly doubled in the past six years and housing starts have dropped by almost one-quarter. The effect is that over three-fourths of American families cannot afford to buy an average-priced home. The basic national goal of providing decent housing and available shelter has been sacrificed to misguided tax, spending and credit policies which were supposed to achieve price stability but have failed to meet that goal. As a result, we do not have decent housing or price stability. The vision of the Housing Act of 1968, the result of three decades of enlightened Democratic housing policy, has been lost. The Democratic Party reasserts these goals, and pledges to achieve them.

Democratic Platform, 1976, p.929

The Democratic Party believes it is time for a housing and urban development policy which recognizes the needs and difficulties of both the buying and renting public and the housing industry. We support a revitalized housing program which will be able to meet the public's need for housing at reasonable cost and the industry's need for relief from years of stagnation and now-chronic unemployment.

Democratic Platform, 1976, p.929

We support direct federal subsidies and low interest loans to encourage the construction of low and moderate income housing. Such subsidies shall not result in unreasonable profit for builders, developers or credit institutions.

Democratic Platform, 1976, p.929

We support the expansion of the highly successful programs of direct federal subsidies to provide housing for the elderly.

Democratic Platform, 1976, p.929

We call for greatly increased emphasis on the rehabilitation of existing housing to rebuild our neighborhoods—a priority which is undercut by the current pattern of federal housing money which includes actual prohibitions to the use of funds for rehabilitation.

Democratic Platform, 1976, p.929

We encourage public and private commitments to the preservation and renovation of our country's historic landmarks so that they can continue as a vital part of our commercial and residential architectural heritage.

Democratic Platform, 1976, p.929

We will work to assure that credit institutions make greater effort to direct mortgage money into the financing of private housing.

Democratic Platform, 1976, p.929

We will take all necessary steps to prohibit the practice of red-lining by private financial institutions, the FHA, and the secondary mortgage market which have had the effect of depriving certain areas of the necessary mortgage funds which [p.930] they need to upgrade themselves. We will further encourage an increase in loans and subsidies for housing and rehabilitation, especially in poverty stricken areas.

Democratic Platform, 1976, p.930

We support greater flexibility in the use of community development block grants at the local level.

Democratic Platform, 1976, p.930

The current Housing and Community Development Act should be reformed and restructured so that its allocation, monitoring, and citizen participation features better address the needs of local communities, major cities and underdeveloped rural areas.

Democratic Platform, 1976, p.930

The revitalization of our cities must proceed with an understanding that housing, jobs and related community facilities are all critical to a successful program. The Democratic Party will create the necessary incentives to insure that private and public jobs are available to meet the employment needs of these communities and pledges a more careful planning process for the location of the federal government's own employment-creating facilities.

Democratic Platform, 1976, p.930

The Democratic Party proposes a revitalization of the Federal Housing Administration as a potent institution to stabilize new construction and existing housing markets. To this end, the Agency's policies must be simplified, its operating practices and insurance rate structures modernized and the sense of public service which was the hallmark of the FHA for so many years must be restored. In addition, we propose automatic triggering of direct production subsidies and a steady flow of mortgage funds during periods when housing starts fall below acceptable levels.

Democratic Platform, 1976, p.930

Women, the elderly, single persons and minorities are still excluded from exercising their right to select shelter in the areas of their choice, and many "high-risk" communities are systematically denied access to the capital they require. The Democratic Party pledges itself to the aggressive enforcement of the Fair Housing Act; to the promotion and enforcement of equal opportunity in housing; and to the pursuit of new regulatory and incentive policies aimed at providing minority groups and women with equal access to mortgage credit.

Democratic Platform, 1976, p.930

In addition to direct attacks upon such known violations of the law, a comprehensive approach to these problems must include policies aimed at the underlying causes of unequal credit allocations. The Democratic Party pledges itself to aggressive policies designed to assure lender that their commitments will be backed by government resources, so that investment risks will be shared by the public and private sectors.

The Special Needs of Older Cities

Democratic Platform, 1976, p.930

The Democratic Party recognizes that a number of major, older cities—including the nation's largest city—have been forced to undertake even greater social responsibilities, which have resulted in unprecedented fiscal crises. There is a national interest in helping such cities in their present travail, and a new Democratic President and the Congress shall undertake a massive effort to do so.

Law Enforcement and Law Observance

Democratic Platform, 1976, p.930

The total crime bill in the United States has been estimated at $90 billion a year, almost as much as the cost of our national defense. But over and above the economic impact, the raging and unchecked growth of crime seriously impairs the confidence of many of our citizens in their ability to walk on safe streets, to live securely in peaceful and happy homes, and to work safely in their places of business. Fear mounts along with the crime rate. Homes are made into fortresses. In large sections of every major city, people are afraid to go out at night. Outside big cities, the crime rate is growing even faster, so that suburbs, small towns and rural areas are no longer secure havens.

Democratic Platform, 1976, p.930

Defaulting on their "law and order" promises, the Republicans in the last eight years have let the rising tide of crime soil the highest levels government, allowed the crime rate to skyrocket and failed to reform the criminal justice system. Recognizing that law enforcement is essentially a local responsibility, we declare that control of crime is an urgent national priority and pledge the efforts of the Democratic Party to insure that the federal government act effectively to reverse these trends and to be an effective partner to reverse cities and states in a well-coordinated war on crime.

Democratic Platform, 1976, p.930

We must restore confidence in the criminal justice system by insuring that detection, conviction and punishment of lawbreakers is swift and sure; that the criminal justice system is just and efficient; that jobs, decent housing and educational opportunities provide a real alternative to crime to those who suffer enforced poverty and injustice We pledge equally vigorous [p.931] prosecution and punishment for corporate crime, consumer fraud and deception; programs to combat child abuse and crimes against the elderly; criminal laws that reflect national needs; application of the law with a balanced and fair hand; a judiciary that renders equal justice for all; criminal sentences that provide punishment that actually punishes and rehabilitation that actually rehabilitates; and a correctional system emphasizing effective job training, educational and post-release programs. Only such measures will restore the faith of the citizens in our criminal justice system.

Democratic Platform, 1976, p.931

Toward these ends, we support a major reform of the criminal justice system, but we oppose any legislative effort to introduce repressive and anti-civil libertarian measures in the guise of reform of the criminal code.

Democratic Platform, 1976, p.931

The Law Enforcement Assistance Administration has not done its job adequately. Federal funding for crime-fighting must be wholly revamped to more efficiently assist local and state governments in strengthening their law enforcement and criminal justice systems, rather than spend money on the purchase of expensive equipment, much of it useless.

Democratic Platform, 1976, p.931

Citizen confidence in law enforcement can be enhanced through increased citizen participation, by informing citizens of police and prosecutor policies, assuring that police departments reflect a cross-section of the communities they serve, establishing neighborhood forums to settle simple disputes, restoring the grand jury to fair and vigorous independence, establishing adequate victim compensation programs, and reaffirming our respect for the individual's right to privacy.

Democratic Platform, 1976, p.931

Coordinated action is necessary to end the vicious cycle of drug addiction and crime. We must break up organized crime syndicates dealing in drugs, take necessary action to get drug pushers off the streets, provide drug users with effective rehabilitation programs, including medical assistance, ensure that all young people are aware of the costs of a life of drug dependency, and use worldwide efforts to stop international production and trafficking in illict drugs.

Democratic Platform, 1976, p.931

A Democratic Congress in 1974 passed the Juvenile Justice and Delinquency Prevention Act to come to grips with the fact that juveniles account for almost half of the serious crimes in the United States, and to remedy the fact that federal programs thus far have not met the crisis of juvenile delinquency. We pledge funding and implementation of this Act, which has been ignored by the Republican Administration.

Democratic Platform, 1976, p.931

Handguns simplify and intensify violent crime. Ways must be found to curtail the availability of these weapons. The Democratic Party must provide the leadership for a coordinated federal and state effort to strengthen the presently inadequate controls over the manufacture, assembly, distribution and possession of handguns and to ban Saturday night specials.

Democratic Platform, 1976, p.931

Furthermore, since people and not guns commit crimes, we support mandatory sentencing for individuals convicted of committing a felony with a gun.

Democratic Platform, 1976, p.931

The Democratic Party, however, affirms the right of sportsmen to possess guns for purely hunting and target-shooting purposes.

Democratic Platform, 1976, p.931

The full implementation of these policies will not in themselves stop lawlessness. To insure professionally trained and equitably rewarded police forces, law enforcement officers must be properly recruited and trained, and provided with decent wages, working conditions, support staff, and federal death benefits for those killed in line of duty.

Democratic Platform, 1976, p.931

Effective police forces cannot operate without just and speedy court systems. We must reform bail and pre-trial detention procedures. We must assure speedy trials and ease court congestion by increasing the number of judges, prosecutors and public defenders. We must improve and streamline courthouse management procedures, require criminal justice records to be accurate and responsible, and establish fair and more uniform sentencing for crimes.

Democratic Platform, 1976, p.931

Courts should give priority to crimes which are serious enough to deserve imprisonment. Law enforcement should emphasize the prosecution of crimes against persons and property as a higher priority than victimless crimes. Current rape laws need to be amended to abolish archaic evidence rules that discriminate against rape victims.

Democratic Platform, 1976, p.931

We pledge that the Democratic Party will not tolerate abuses of governmental processes and unconstitutional action by the government itself. Recognizing the value of legitimate intelligence efforts to combat espionage and major crime, we call for new legislation to ensure that these efforts will no longer be used as an excuse for abuses such as bugging, wiretaps, mail opening and disruption aimed at lawful political and private activities.

Democratic Platform, 1976, p.931

The Attorney General in the next [p.932] Democratic administration will be an independent, non-political official of the highest integrity. If lawlessness is found at any level, in any branch, immediate and decisive action will be taken to root it out. To that end, we will establish the machinery for appointing an independent Special Prosecutor whenever needed.

Democratic Platform, 1976, p.932

As a party, as a nation, we must commit ourselves to the elimination of injustice wherever it plagues our government, our people and our future.

Transportation

Democratic Platform, 1976, p.932

An effective national transportation policy must be grounded in an understanding of all transportation systems and their consequences for costs, reliability, safety, environmental quality and energy savings. Without public transportation, the rights of all citizens to jobs and social services cannot be met.

Democratic Platform, 1976, p.932

To that end, we will work to expand substantially the discretion available to states and cities in the use of federal transportation money, for either operating expenses or capital programs on the modes of transportation which they choose. A greater share of Highway Trust Fund money should also be available on a flexible basis.

Democratic Platform, 1976, p.932

We will change further the current restrictive limits on the use of mass transit funds by urban and rural localities so that greater amounts can be used as operating subsidies; we emphatically oppose the Republican administration's efforts to reduce federal operating subsidies.

Democratic Platform, 1976, p.932

We are committed to dealing with the transportation needs of rural America by upgrading secondary roads and bridges and by completion of the original plan of 1956 for the interstate highway system where it benefits rural Americans. Among other benefits, these measures would help overcome the problems of getting products to market, and services to isolated persons in need.

Democratic Platform, 1976, p.932

We will take whatever action is necessary to reorganize and revitalize our nation's railroads.

Democratic Platform, 1976, p.932

We are also committed to the support of healthy trucking and bus, inland waterway and air transport systems.

Democratic Platform, 1976, p.932

A program of national rail and road rehabilitation and improved mass transit would not only mean better transportation for our people, but it would also put thousands of unemployed construction workers back to work and make them productive tax-paying citizens once again.

Democratic Platform, 1976, p.932

Further, it would move toward the Democratic Party's goal of assuring balanced transportation services for all areas of the nation—urban and rural. Such a policy is intended to reorganize both pressing urban needs and the sorry state of rural public transportation.

Rural Development

Democratic Platform, 1976, p.932

The problems of rural America are closely linked to those of our cities. Rural poor and the rural elderly suffer under the same economic pressures and have at least as many social needs as their counterparts in the cities. The absence of rural jobs and rural vitality and the continuing demise of the family farm have promoted a migration to our cities which is beyond the capacity of the cities to absorb. Over 20 million Americans moved to urban areas between 1940 and 1960 alone. We pledge to develop programs to make the family farm economically healthy again so as to be attractive to young people.

Democratic Platform, 1976, p.932

To that end, the Democratic Party pledges to strengthen the economy and thereby create jobs in our great agricultural and rural areas by the full implementation and funding of the Rural Development Act of 1972 and by the adoption of an agricultural policy which recognizes that our capacity to produce food and fiber is one of our greatest assets.

Democratic Platform, 1976, p.932

While it is bad enough to be poor, or old, or alone in the city, it is worse in the country. We are therefore committed to overcome the problems of rural as well as urban isolation and poverty by insuring the existence of adequate health facilities, critically-needed community facilities such as water supply and sewage disposal systems, decent housing, adequate educational opportunity and needed transportation throughout rural America.

Democratic Platform, 1976, p.932

As discussed in the transportation section, we believe that transportation dollars should be available in a manner to permit their flexible use. In rural areas this means they could be used for such needs as secondary road improvement, taxi systems, buses, or other systems to overcome the problems of widely dispersed populations, to facilitate provisions of social services and to assure access of citizens to meet human needs.

Democratic Platform, 1976, p.932

Two thousand family farms are lost per week. To help assure that family farms stay in the family [p.933] where they belong, we will push increases in relevant estate tax exemptions. This increased exemption, when coupled with programs to increase generally the vitality of rural America, should mean that the demise of the family farm can be reversed.

Democratic Platform, 1976, p.933

We will seek adequate levels of insured and guaranteed loans for electrification and telephone facilities.

Democratic Platform, 1976, p.933

Only such a coordinated program can make rural America again attractive and vigorous, as it needs to be if we are to deal with the challenges facing the nation as a whole.

Administration of Federal Aid

Democratic Platform, 1976, p.933

Federal aid programs impose jurisdictional and administrative complications which substantially diminish the good accomplished by the federal expenditure of about $50 billion annually on state and local governments. An uncoordinated policy regarding eligibility requirements, audit guidelines, accounting procedures and the like comprise the over 800 categorical aid programs and threaten to bog down the more broadly conceived flexible block grant programs. The Democratic Party is committed to cutting through this chaos and simplifying the grant process for both recipient governments and program administrators.

Democratic Platform, 1976, p.933

The Democratic Party also reaffirms the role of state and general purpose local governments as the principal governments in the orderly administration of federal aid and revenue sharing programs.

V. Natural Resources and Environmental Quality

Energy

Democratic Platform, 1976, p.933

Almost three years have passed since the off embargo. Yet, by any measure, the nation's energy lifeline is in far greater peril today. America is running out of energy—natural gas, gasoline and oil.

Democratic Platform, 1976, p.933

The economy is already being stifled. The resulting threat of unemployment and diminished production is already present.

Democratic Platform, 1976, p.933

If America, as we know it, is to survive, we must move quickly to develop renewable sources of energy.

Democratic Platform, 1976, p.933

The Democratic Party will strive to replace the rapidly diminishing supply of petroleum and natural gas with solar, geothermal, wind, tide and other forms of energy, and we recommend that the federal government promptly expand whatever funds are required to develop new systems of energy.

Democratic Platform, 1976, p.933

We have grown increasingly dependent on imported oil. Domestic production, despite massive price increases, continues to decline. Energy stockpiles, while authorized, are yet to be created. We have no agreements with any producing nations for security of supply. Efforts to develop alternative energy sources have moved forward slowly. Production of our most available and plentiful alternative—coal—is not increasing. Energy conservation is still a slogan, instead of a program.

Democratic Platform, 1976, p.933

Republican energy policy has rafted because it is based on illusions; the illusion of a free market in energy that does not exist, the illusion that ever-increasing energy prices will not harm the economy, and the illusion of an energy program based on unobtainable independence.

Democratic Platform, 1976, p.933

The time has come to deal with the realities of the energy crisis, not its illusions. The realities are that rising energy prices, falling domestic supply, increasing demand, and the threat to national security of growing imports, have not been contained by the private sector.

Democratic Platform, 1976, p.933

The Democratic energy platform begins with a recognition that the federal government has an important role to play in insuring the nation's energy future, and that it must he given the tools it needs to protect the economy and the nation's consumers from arbitrary and excessive energy price increases and help the nation embark on a massive domestic energy program focusing on conservation, coal conversion, exploration and development of new technologies to insure an adequate short-term and long-term supply of energy for the nation's needs. A nation advanced enough and wealthy enough to send a man to the moon must dedicate itself to developing alternate sources of energy.

Democratic Platform, 1976, p.933

Energy pricing. Enactment of the Energy Policy and Conservation Act of 1975 established oil ceiling prices at levels sufficient to maximize domestic production but still below OPEC equivalents. The act was a direct result of the Democratic Congress' commitment to the principle that beyond certain levels, increasing energy prices simply produce high-cost energy—without producing any additional energy supplies.

Democratic Platform, 1976, p.933

This oil-pricing lesson should also be applied to natural gas. Those not pressing to turn natural [p.934] gas price regulation over to OPEC, while arguing the rhetoric of so-called deregulation, must not prevail. The pricing of new natural gas is in need of reform. We should narrow the gap between oil and natural gas prices with new natural gas ceiling prices that maximize production and investment while protecting the economy and the consumer. Any reforms in the pricing of new natural gas should not be at the cost of severe economic dislocations that would accelerate inflation and increase unemployment.

Democratic Platform, 1976, p.934

An examination must be made of advertising cost policies of utilities and the imposition of these costs on the consumer. Advertising costs used to influence public policy ought to be borne by stockholders of utility companies and not by the consumers.

Democratic Platform, 1976, p.934

Domestic supply and demand. The most promising neglected domestic option for helping balance our energy budget is energy conservation. But major investments in conservation are still not being made.

Democratic Platform, 1976, p.934

The Democratic Party will support legislation to establish national building performance standards on a regional basis designed to improve energy efficiency. We will provide new incentives for aiding individual homeowners, particularly average income families and the poor in undertaking conservation investments. We will support the reform of utility rate structures and regulatory rules to encourage conservation and ease the utility rate burden on residential users, farmers and other consumers who can least afford it; make more efficient use of electrical generating capacity; and we will aggressively pursue implementation of automobile efficiency standards and appliance labeling programs already established by Democratic initiative in the Energy Policy and Conservation Act.

Democratic Platform, 1976, p.934

Coal currently comprises 80 percent of the nation's energy resources, but produces only 16 per cent of the nation's energy. The Democratic Party believes that the United States' coal production can and must be increased without endangering the health and safety of miners, diminishing the land and water resources necessary for increased food production, and sacrificing the personal and property rights of farmers, ranchers and Indian tribes.

Democratic Platform, 1976, p.934

We must encourage the production of the highest quality coal, closest to consumer markets, in order to insure that investments in energy production reinforce the economics of energy producing and consuming regions. Improved rail transportation systems will make coal available where it is actually needed, and will insure a rail transport network required for a healthy industrial and agricultural economy.

Democratic Platform, 1976, p.934

We support an active federal role in the research and development of clean burning and commercially competitive coal burning systems and technologies, and we encourage the conversion to coal of industrial users of natural gas and imported oil. Air quality standards that make possible the burning of coal without danger to the public health or degradation of the nation's clear air must be developed and implemented.

Democratic Platform, 1976, p.934

The Democratic Party wants to put an end to the economic depression, loss of life and environmental destruction that has long accompanied irresponsible coal development in Appalachia. Strip mining legislation designed to protect and restore the environment, while ending the uncertainty over the rules governing future coal mining, must be enacted.

Democratic Platform, 1976, p.934

The huge reserves of oil, gas and coal on federal territory, including the outer continental shelf, belong to all the people. The Republicans have pursued leasing policies which give the public treasury the least benefit and the energy industry the most benefit from these public resources. Consistent with environmentally sound practices, new leasing procedures must be adopted to correct these policies, as well as insure the timely development of existing leases.

Democratic Platform, 1976, p.934

Major federal initiatives, including major governmental participation in early high-risk development projects, are required if we are to harness renewable resources like solar, wind, geothermal, the oceans, and other new technologies such as fusion, fuel cells and the conversion of solid waste and starches into energy. The Ford Administration has failed to provide those initiatives, and, in the process, has denied American workers important new opportunities for employment in the building and servicing of emerging new energy industries.

Democratic Platform, 1976, p.934

U.S. dependence on nuclear power should be kept to the minimum necessary to meet our needs. We should apply stronger safety standards as we regulate its use. And we must be honest with our people [p.935] concerning its problems and dangers as well as its benefits.

Democratic Platform, 1976, p.935

An increasing share of the nuclear research dollar must be invested in finding better solutions to the problems of nuclear waste disposal, reactor safety and nuclear safeguards—both domestically and internationally.

Democratic Platform, 1976, p.935

Competition in the domestic petroleum industry. Legislation must be enacted to insure energy administrators and legislators access to information they need for making the kind of informed decisions that future energy policy will require. We believe full disclosure of data on reserves, supplies and costs of production should be mandated by law.

Democratic Platform, 1976, p.935

It is increasingly clear that there is no free, competitive market for crude oil in the United States. Instead, through their control of the nation's oil pipelines, refineries and marketing, the major oil producers have the capability of controlling the field and often the downstream price of almost all off.

Democratic Platform, 1976, p.935

When competition inadequate to insure free markets and maximum benefit to American consumers exists, we support effective restrictions on the right of major companies to own all phases of the oil industry.

Democratic Platform, 1976, p.935

We also support the legal prohibition against corporate ownership of competing types of energy, such as oil and coal. We believe such "horizontal" concentration of economic power to be dangerous both to the national interest and to the functioning of the competitive system.

Democratic Platform, 1976, p.935

Improved energy planning. Establishment of a more orderly system for setting energy goals and developing programs for reaching those goals should be undertaken. The current proliferation of energy jurisdictions among many executive agencies underscores the need for a more coordinated system. Such a system should be undertaken, and provide for centralization of overall energy planning in a specific executive agency and an assessment of the capital needs for all priority programs to increase production and conservation of energy.

Democratic Platform, 1976, p.935

Mineral Resources. As with energy resources, many essential mineral resources may soon be inadequate to meet our growing needs unless we plan more wisely than we have with respect to energy. The Democratic Party pledges to undertake a long-range assessment of supply of our mineral reserves as well as the demand for them.

Agriculture

Democratic Platform, 1976, p.935

As a nation, we are blessed with rich resources of land, water and climate. When the supporting technology has been used to preserve and promote the family ownership and operation of farms and ranches, the people have been well served.

Democratic Platform, 1976, p.935

America's farm families have demonstrated their ability and eagerness to produce food in sufficient quantity to feed their fellow citizens and share with hungry people around the world as well. Yet this national asset has been neither prudently developed nor intelligently used.

Democratic Platform, 1976, p.935

The eight-year record of the Nixon-Ford administration is a record of lost opportunities, failure to meet the challenges of agricultural statesmanship, and favoritism to the special pleading of giant corporate agricultural interests.

Democratic Platform, 1976, p.935

Republican misrule in agriculture has caused wide fluctuations in prices to producers, inflated food prices to consumers, unconscionable profiteering on food by business, unscrupulous shipping practices by grain traders, and the mishandling of our abundance in export markets. Republican agricultural policy has spelled high food prices, unstable farm income, windfalls for commodity speculators and multinational corporations, and confrontations between farmer and consumer.

Democratic Platform, 1976, p.935

Foremost attention must be directed to the establishment of a national food and fiber policy which will be fair to both producer and consumer, and be based on the family farm agricultural system which has served the nation and the world so well for so long.

Democratic Platform, 1976, p.935

Maximum agricultural production will be the most effective means of achieving an adequate food and fiber supply and reasonable price stability to American consumers. Without parity income assurance to farmers, full production cannot be achieved in an uncertain economy. We must assure parity return to farmers based on costs of production plus a reasonable profit.

Democratic Platform, 1976, p.935

We must continue and intensify efforts to expand agriculture's long-term markets abroad, and at the same time we must prevent irresponsible and inflationary sales from the American granary to foreign purchasers. Aggressive but stable and [p.936] consistent export policy must be our goal. The production of food and fiber in America must be used as part of a constructive foreign policy based on long-term benefits at home and abroad, but not at the expense of the farmers.

Democratic Platform, 1976, p.936

Producers shall be encouraged to produce at full capacity within the limits of good conservation practices, including the use of recycled materials, if possible and desirable, to restore natural soil fertility. Any surplus production needed to protect the people of the world from famine shall be stored on the farm in such a manner as to isolate it from the market place.

Democratic Platform, 1976, p.936

Excess production beyond the needs of the people for food shall be converted to industrial purposes.

Democratic Platform, 1976, p.936

Farmers as individual producers must deal constantly with organized suppliers and marketers, and compete with non-farm conglomerates. To assist them in bargaining for the tools of production, and to strengthen the institution of the family farm, the Democratic Party will: support the Capper-Volstead Act in its present form; curb the influence of non-farm conglomerates which, through the elimination of competition in the marketplace, pose a threat to farmers; support the farmer cooperatives and bargaining associations; scrutinize and remedy any illegal concentrations and price manipulations of farm equipment and supply industries; revitalize basic credit programs for farmers; provide adequate credit tailored to the needs of young farmers; assure access for farmers and rural residents to energy, transportation, electricity and telephone services; reinstate sound, locally administered soil conservation programs; eliminate tax shelter farming; and overhaul federal estate and gift taxes to alleviate some of the legal problems faced by farm families who would otherwise be forced to liquidate their assets to pay the tax.

Democratic Platform, 1976, p.936

Long overdue are programs of assistance to farm workers in housing, employment, health, social services and education.

Democratic Platform, 1976, p.936

To protect the health of our citizens the government shall insure that all agricultural imports must meet the same quality standards as those imposed on agricultural products produced in the United States and that only quality American agricultural products be exported.

Democratic Platform, 1976, p.936

Fisheries. America's fisheries must be protected and enhanced as a renewable resource through ecologically sound conservation practices and meaningful international agreements and compacts between individual states.

Environmental Quality

Democratic Platform, 1976, p.936

The Democratic Party's strong commitment to environmental quality is based on its conviction that environmental protection is not simply an aesthetic goal, but is necessary to achieve a more just society. Cleaning up air and water supplies and controlling the proliferation of dangerous chemicals is a necessary part of a successful national health program. Protecting the worker from workplace hazards is a key element of our full employment program. Occupational disease and death must not be the price of a weekly wage.

Democratic Platform, 1976, p.936

The Democratic Party, through the Congress, has recognized the need for basic environmental scrutiny, and has authored a comprehensive program to achieve this objective. In eight years, the efforts to implement that program have been thwarted by an administration committed only to unfounded allegations that economic growth and environmental protection are incompatible.

Democratic Platform, 1976, p.936

Quite to the contrary, the Democratic Party believes that a concern for the environment need not and must not stand in the way of a much-needed policy of high economic growth.

Democratic Platform, 1976, p.936

Moreover, environmental protection creates jobs. Environmental legislation enacted since 1970 already has produced more than one million jobs, and we pledge to continue to work for additional laws to protect, restore and preserve the environment while providing still more jobs.

Democratic Platform, 1976, p.936

Today, permanently harmful chemicals are dispersed, and irrecoverable land is rendered worthless. If we are to avoid repeated environmental crises, we must now renew our efforts to restore beth environmental quality and economic growth.

Democratic Platform, 1976, p.936

Those who would use the environment must assume the burden of demonstrating that it will not be abused. For too long this burden has been on government agencies, representing the public, to assess and hopefully correct the damage that has already been done.

Democratic Platform, 1976, p.936

Our irreplaceable natural and aesthetic resources must be managed to ensure abundance for future generations. Strong land and ocean use planning is an essential element of such management. The artifacts [p.937] of the desert, the national forests, the wilderness areas, the endangered species, the coastal beaches and barrier dunes and other precious resources are in danger. They cannot be restored. They must be protected.

Democratic Platform, 1976, p.937

Economic inequities created by subsidies for virgin materials to the disadvantage of recycled materials must be eliminated. Depletion allowances and unequal freight rates serve to discourage the growing numbers of businesses engaged in recycling efforts.

Democratic Platform, 1976, p.937

Environmental research and development within the public sector should be increased substantially. For the immediate future, we must learn how to correct the damage we have already done, but more importantly, we need research on how to build a society in which renewable and nonrenewable resources are used wisely and efficiently.

Democratic Platform, 1976, p.937

Federal environmental anti-pollution requirement programs should be as uniform as possible to eliminate economic discrimination. A vigorous program with national minimum environmental standards fully implemented, recognizing basic regional differences, will ensure that states and workers are not penalized by pursuing environmental programs.

Democratic Platform, 1976, p.937

The technological community should be encouraged to produce better pollution-control equipment, and more importantly, to produce technology which produces less pollution.

VI. International Relations

Democratic Platform, 1976, p.937

The next Democratic administration must and will initiate a new American foreign policy.

Democratic Platform, 1976, p.937

Eight years of Nixon-Ford diplomacy have left our nation isolated abroad and divided at home. Policies have been developed and applied secretly and arbitrarily by the executive department from the time of secret bombing in Cambodia to recent covert assistance in Angola. They have been policies that relied on ad hoc, unilateral maneuvering, and a balance-of-power diplomacy suited better to the last century than to this one. They have disdained traditional American principles which once earned the respect of other peoples while inspiring our own. Instead of efforts to foster freedom and justice in the world, the Republican administration has built a sorry record of disregard for human rights, manipulative interference in the internal affairs of other nations,

Democratic Platform, 1976, p.937

and, frequently, a greater concern for our relations with totalitarian adversaries than with our democratic allies. And its efforts to preserve, rather than reform, the international status quo betray a self-fulfilling pessimism that contradicts a traditional American belief in the possibility of human progress.

Democratic Platform, 1976, p.937

Defense Policy and spending for military forces must be consistent with meeting the real security needs of the American people. We recognize that the security of our nation depends first and foremost on the internal strength of American society—economic, social and political. We also recognize that serious international threats to our security, such as shortages of food and raw materials, are not solely military in nature and cannot be met by military force or the threat of force. The Republican Administration has, through mismanagement and misguided Policies, undermined the security of our nation by neglecting human needs at home while, for the first time in our nation's history, increasing military spending after a war. Billions of dollars have been diverted into wasteful, extravagant and, in some instances, destabilizing military programs. Our country can—and under a Democratic administration it will—work vigorously for the adoption of policies of full employment and economic growth which will enable us to meet both the justified domestic needs of our citizens and our needs for an adequate national defense.

Democratic Platform, 1976, p.937

A Democratic administration will work to create a foreign policy that does justice to the strength and decency of the American people through adherence to these fundamental principles and priorities:

Democratic Platform, 1976, p.937

We will act on the premise that candor in policy-making, with all its liabilities, is preferable to deceit. The Congress will be involved in the major international decisions of our government, and our foreign policies will be openly and consistently presented to the American people. For even if diplomatic tactics and national security information must sometimes remain secret, there can be no excuse for formulating and executing basic policy without public understanding and support.

Democratic Platform, 1976, p.937

Our policy must be based on our nation's commitment to the ideal of individual freedom and justice. Experience has taught us not to rely solely on military strength or economic power, as necessary as they are, in pursuit of our international [p.938] objectives. We must rely too on the moral strength of our democratic values—the greatest inspiration to our friends and the attribute most feared by our enemies. We will ensure that human needs are not sacrificed to military spending, while maintaining the military forces we require for our security.

Democratic Platform, 1976, p.938

We will strengthen our ties to the other great democracies, working together to resolve common economic and social problems as well as to keep our defenses strong.

Democratic Platform, 1976, p.938

We will restore the Democratic tradition of friendship and support to Third World nations.

Democratic Platform, 1976, p.938

We must also seek areas of cooperation with our traditional adversaries. There is no other option, for human survival itself is at stake. But pursuit of detente will require maintenance of a strong American military deterrent, hard bargaining for our own interest, recognition of continuing competition, and a refusal to oversell the immediate benefits of such a policy to the American public.

Democratic Platform, 1976, p.938

We will reaffirm the fundamental American commitment to human rights across the globe. America must work for a release of all political prisoners—men and women who are in jail simply because they have opposed peacefully the policies of their governments or have aided others who have—in all countries. America must take a firm stand to support and implement existing U.S. law to bring about liberalization of emigration policy in countries which limit or prohibit free emigration. America must be resolute in its support of the right of workers to organize and of trade unions to act freely and independently, and in its support of freedom of the press. America must continue to stand as a bulwark in support of human liberty in all countries. A return to the politics of principle requires a reaffirmation of human freedom throughout the world.

The Challenge of Interdependence

Democratic Platform, 1976, p.938

The international economy. Eight years of mismanagement of the American economy have contributed to global recession and inflation. The most important contribution a Democratic administration will make to the returning health of the world economy will be to restore the health of our own economy, with all that means to international economic stability and progress.

Democratic Platform, 1976, p.938

We are committed to trade policies that can benefit a full employment economy—through creation of new jobs for American workers, new markets for American farmers and businesses, and lower prices and a wider choice of goods for American consumers. Orderly reductions in trade barriers should be negotiated on a reciprocal basis that does not allow other nations to deny us access to their markets while enjoying access to ours. These measures must be accompanied by improved programs to ease dislocations and to relieve the hardship of American workers affected by foreign competition.

Democratic Platform, 1976, p.938

The Democratic Party will also seek to promote higher labor standards in those nations where productivity far outstrips wage rates, harming American workers through unfair exploitation of foreign labor, and encouraging American capital to pursue low wage opportunities that damage our own economy and weaken the dollar.

Democratic Platform, 1976, p.938

We will exert leadership in international efforts to strengthen the world economic system. The Ford administration philosophy of reliance on the international "market economy" is insufficient in a world where some governments and multinational corporations are active in managing and influencing market forces.

Democratic Platform, 1976, p.938

We pledge constant efforts to keep world monetary systems functioning properly in order to provide a reasonably stable economic environment for business and to prevent the importation of inflation. We will support reform of the international monetary system to strengthen institutional means of coordinating national economic policies, especially with our European and Japanese allies, thus facilitating efforts by our government and others to achieve full employment.

Democratic Platform, 1976, p.938

The Democratic Party is committed to a strong and competitive merchant fleet, built in the United States and manned by American seamen, as an instrument of international relations and national security. In order to revitalize our merchant fleet, the party pledges itself to a higher level of coordination of maritime policy, reaffirmation of the objectives of the Merchant Marine Acts of 1936 and 1970, and the development of a national cargo policy which assures the U.S. fleet a fair participation in all U.S. trade.

Democratic Platform, 1976, p.938

>A Democratic administration will vigorously pursue international negotiations to insure that the multinational activities of corporations, whether American or foreign, be made more responsible to the international community. We will give priority attention to the establishment of an international [p.939] code of conduct for multinational corporations and host countries.

Democratic Platform, 1976, p.939

We will encourage multinational corporations—before they relocate production across international boundaries—to make sufficient advance arrangements for the workers whose jobs will be affected.

Democratic Platform, 1976, p.939

We will eliminate bribery and other corrupt practices.

Democratic Platform, 1976, p.939

We will prevent these corporations from interfering in the political systems of the countries in which they operate.

Democratic Platform, 1976, p.939

If such a code cannot be negotiated or proves to be unenforceable, our country should reserve the right to take unilateral action directed toward each of these problems, specifically including the outlawing of bribes and other improper payments to government officials of other nations.

Democratic Platform, 1976, p.939

In pursuit of open and fair international economic relationships, we will seek mechanisms, including legislation, to ensure that foreign governments cannot introduce third party boycotts or racial and religious discrimination into the conduct of American foreign commerce.

Democratic Platform, 1976, p.939

Energy. The United States must be a leader in promoting cooperation among the industrialized countries in developing alternative energy sources and reducing energy consumption, thus reducing our dependence on imports from the Middle East and restraining high energy prices. Under a Democratic Administration, the United States also will support international efforts to develop the vast energy potential of the developing countries.

Democratic Platform, 1976, p.939

We will also actively seek to limit the dangers inherent in the international development of atomic energy and in the proliferation of nuclear weapons. Steps to be given high priority will include: revitalization of the Nonproliferation Treaty, expansion of the International Atomic Energy Agency and other international safeguards and monitoring of national facilities, cooperation against potential terrorism involving nuclear weapons, agreement by suppliers not to transfer enrichment or reprocessing facilities, international assurance of supply of nuclear fuel only to countries cooperating with strict nonproliferation measures, subsidization of multinational nuclear facilities, and gradual conversion to international control of non-weapon fissionable material.

Democratic Platform, 1976, p.939

The developing world. We have a historic opportunity in the next decade to improve the extent and quality of cooperation between the rich and poor countries. The potential benefits to our nation of a policy of constructive cooperation with the developing world would be considerable: uninterrupted access at reasonable cost to raw materials and to basic commodities; lower rates of global inflation; improved world markets for our goods; and a more benign atmosphere for international negotiation in general. Above all, the prospects for the maintenance of peace will be vastly higher in a world in which fewer and fewer people suffer the pangs of hunger and the yoke of economic oppression.

Democratic Platform, 1976, p.939

We support efforts to stabilize and increase export earnings of developing countries through our participation in reasonable commodity arrangements. We support strengthening of global financing mechanisms and trade liberalization efforts. We will assist in promoting greater developing country, capital markets.

Democratic Platform, 1976, p.939

Because our country provides food and fiber to all the world, the American farmer is heavily dependent on world markets. These markets must be developed in a way that prevents the wild gyrations of food prices and the periodic shortages that have been common under recent Republican Administrations. We pledge significant financial support to the International Fund for Agricultural Development; more effective food aid through further revision of the U.S. Food for Peace program; significant contributions to a multination world food reserve system, with appropriate safeguards for American farmers; and continuing efforts to promote American food exports.

Democratic Platform, 1976, p.939

The proliferation in arms, both conventional and nuclear, is a principal potential source of conflict in the developing as well as the industrialized world. The United States should limit significantly conventional arms sales and reduce military aid to developing countries, should include conventional arms transfers on the arms control agenda, and should regulate country-by-country justification for U.S. arms transfers, whether by sales or aid. Such sales or aid must be justified in terms of foreign policy benefits to the United States and not simply because of their economic value to American weapons producers.

Democratic Platform, 1976, p.939

A primary, object of American aid, both military and economic, is first of all to enhance the condition of freedom in the world. The United States should not provide aid to any government—anywhere in the world—which uses secret police, detention [p.940] without charges, and torture to enforce its powers. Exceptions to this policy should be rare, and the aid provided should be limited to that which is absolutely necessary. The United States should be open and unashamed in its exercise of diplomatic efforts to encourage the observance of human rights in countries which receive American aid.

Democratic Platform, 1976, p.940

Current world population growth is a threat to the long-range well-being of mankind. We pledge to support effective voluntary family planning around the world, as well as at home, and to recognize officially the link between social and economic development and the willingness of the individual to limit family size.

Democratic Platform, 1976, p.940

To be true to the traditional concern of Americans for the disadvantaged and the oppressed, our aid programs should focus on alleviating poverty and on support of the quest for human liberty and dignity. We will work to see that the United States does its fair share in international development assistance efforts, including participation in the fifth replenishment of the World Bank's International Development Association. We will implement a foreign assistance policy which emphasizes utilization of multilateral and regional development institutions, and one that includes a review of aid programs, country by country, to reinforce those projects whose financial benefits go to the people most in need and which are consistent with overall United States foreign policy goals.

Democratic Platform, 1976, p.940

The world environment. Decay of the environment knows no national boundary. A government committed to protect our environment knows no national boundary. A government committed to protect our environment at home must also seek international cooperation in defending the global environment.

Democratic Platform, 1976, p.940

Working through and supporting such organizations as the United Nations Environmental Program, we will join other governments in more effective efforts to preserve the quality and resources of the oceans; to preserve endangered species of fish and wildlife; to reverse the encroachment of the deserts, the erosion of the world's agricultural lands, and the accelerating destruction of its forests; to limit pollution of the atmosphere; and to control alterations of the global climate.

Democratic Platform, 1976, p.940

Criminal justice rights of Americans abroad. We will protect the rights and interests of Americans charged with crimes or jailed in foreign countries by vigorously exerting all appropriate efforts to guarantee humane treatment and due process and to secure extradition to the United States where appropriate.

Democratic Platform, 1976, p.940

International drug tragic. We call for the use of diplomatic efforts to stop international production and trafficking in illicit drugs including the possible cut-off of foreign aid to noncooperating countries.

Defense Policy

Democratic Platform, 1976, p.940

The size and structure of our military forces must be carefully related to the demands of our foreign policies in this new era. These should be based on a careful assessment of what will be needed in the long-run to deter our potential adversaries; to fight successfully, if necessary, conventional wars in areas in which our national security is threatened; and to reassure our allies and friends—notably in Western Europe, Japan and the Near East. To this end, our strategic nuclear forces must provide a strong and credible deterrent to nuclear attack and nuclear blackmail. Our conventional forces must be strong enough to deter aggression in areas whose security is vital to our own. In a manner consistent with these objectives, we should seek those disarmament and arms control agreements which will contribute to mutual reductions in both nuclear and conventional arms.

Democratic Platform, 1976, p.940

The hallmarks of the Nixon-Ford administration's defense policy, however, have been stagnation and vulnerability.

Democratic Platform, 1976, p.940

By its reluctance to make changes in those features of our armed forces which were designed to deal with the problems of the past, the Administration has not only squandered defense dollars, but also neglected making improvements which are needed to increase our forces' fighting effectiveness and their capability to deter future aggression.

Democratic Platform, 1976, p.940

By its undue emphasis on the overall size of the defense budget as the primary measure of both our national resolve and the proficiency of our armed forces, the administration has forgotten that we are seeking not to outspend, but to be able to deter and, if necessary, outright our potential adversaries. While we must spend whatever is legitimately needed for defense, cutbacks on duplication and waste are both feasible and essential. Barring any major change in the international situation, with [p.941] the proper management, with the proper kind of investment of defense dollars, and with the proper choice of military programs, we believe we can reduce present defense spending by about $5 billion to $7 billion. We must be tough-minded about the development of new weapons systems which add only marginal military value. The size of our defense budget should not be dictated by bureaucratic imperatives or the needs of defense contractors but by our assessment of international realities. In order to provide for a comprehensive review of the B-1 test and evaluation program, no decision regarding B-1 production should be made prior to February 1977.

Democratic Platform, 1976, p.941

The Pentagon has one of the federal government's most overgrown bureaucracies. The Department of Defense can be operated more effectively and efficiently and its budget reduced, without in any way compromising our defense posture. Our armed forces have many more admirals and generals today than during World War II, when our fighting force was much larger than now. We can reduce the ratio of officers to men and of support forces to combat troops.

Democratic Platform, 1976, p.941

Misdirected efforts such as the construction of pork-barrel projects under the jurisdiction of the Defense Department can be terminated. Exotic arms systems which serve no defense or foreign policy purpose should not be initiated.

Democratic Platform, 1976, p.941

By ignoring opportunities to use our advanced technology innovatively to obtain maximum effectiveness in weapons and minimize complexity and cost, the Republican administration has failed to reverse the trend toward increasingly intricate and expensive weapons systems. Thus, it has helped to put our forces—particularly the Navy—on the dangerous path of becoming both smaller in numbers and more vulnerable.

Democratic Platform, 1976, p.941

A new approach is needed. Our strategic nuclear forces should be structured to ensure their ability to survive nuclear attack, thereby assuring deterrence of nuclear war. Successful nuclear deterrence is the single most important task of our armed forces. We should, however, avoid becoming diverted into making expenditures which have only symbolic or prestige value or which themselves contribute to nuclear instability.

Democratic Platform, 1976, p.941

The United States Navy must remain the foremost fleet in the world. Our naval forces should be improved to stress survivability and our modem technology should be used in new ways to keep the essential sea lanes open. Concretely, we should put more stress on new sensors and armaments, and give priority to a navy consisting of a greater number of smaller and less vulnerable vessels.

Democratic Platform, 1976, p.941

Our land forces should be structured to fight effectively in support of our political and military commitments. To this end, modern, well-equipped and highly mobile land forces are more important than large numbers of sparsely-equipped infantry divisions.

Democratic Platform, 1976, p.941

Our tactical air-forces should be designed to establish air superiority quickly in the event of hostilities, and to support our land and naval forces.

Democratic Platform, 1976, p.941

We can and will make significant economies in the overhead and support structure of our military forces.

Democratic Platform, 1976, p.941

The defense procurement system should be reformed to require, wherever possible and consistent with efforts to encourage full participation by small and minority businesses, advertised competitive bids and other improvements in procurement procedure so as to encourage full and fair competition among potential contractors and to cut the current waste in defense procurement. A more equitable formula should be considered for distribution of defense contracts and other federal procurement on a state or regional basis.

Democratic Platform, 1976, p.941

The United States and other nations share a common interest in reducing military expenditures and transferring the savings into activities which raise living standards. In order to smooth the path for such changes, the Executive Branch and the Congress should encourage long-range planning by defense-dependent communities and managements of defense firms and unions. This process should take place within the context of the Democratic Party's commitment to planned full employment.

Democratic Platform, 1976, p.941

Our civilian and military intelligence agencies should be structured to provide timely and accurate information and analysis of foreign affairs and military matters. Covert action must be used only in the most compelling cases where the national security of the U.S. is vitally involved; assassination must be prohibited. There should be full and thorough congressional oversight of our intelligence agencies. The constitutional rights of American citizens can and must be fully protected, and intelligence abuses corrected, without endangering the confidentiality of properly classified intelligence [p.942] or compromising the fundamental intelligence mission.

Democratic Platform, 1976, p.942

U.S.-U.S.S.R. relations. The United States and the Soviet Union are the only powers who, by rivalry or miscalculation, could bring general nuclear war upon our civilization. A principal goal must be the continued reduction of tension with the U.S.S.R. This can, however, only be accomplished by fidelity to our principles and interests and through business-like negotiations about specific issues, not by the bad bargains, dramatic posturing, and the stress on general declarations that have characterized the Nixon-Ford administration's detente policy.

Democratic Platform, 1976, p.942

Soviet actions continue to pose severe threats to peace and stability in many parts of the world and to undermine support in the West for fruitful negotiations toward mutually beneficial agreements. The U.S.S.R. has undertaken a major military buildup over the last several years in its navy, in its strategic forces, and in its land forces stationed in Eastern Europe and Asia. It has sought one-sided advantages in negotiations, and has exerted political and military pressure in such areas as the Near East and Africa, not hesitating to dispatch to Angola its own advisors as well as the expeditionary forces of its clients.

Democratic Platform, 1976, p.942

The continued U.S.S.R. military dominance of many Eastern European countries remains a source of oppression for the peoples of those nations, an oppression we do not accept and to which we are morally opposed. Any attempt by the Soviet Union similarly to dominate other parts of Europe—such as Yugoslavia—would be an action posing a grave threat to peace. Eastern Europe will not truly be an area of stability until these countries regain their independence and become part of a large European framework.

Democratic Platform, 1976, p.942

Our task is to establish U.S.-U.S.S.R. relations on a stable basis, avoiding excesses of both hope and fear. Patience, a clear sense of our own priorities, and a willingness to negotiate specific firm agreements in areas of mutual interest can return balance to relations between the United States and the Soviet Union.

Democratic Platform, 1976, p.942

In the field of nuclear disarmament and arms control we should work toward: limitations on the international spread of fissionable materials and nuclear weapons; specific strategic arms limitation agreements which will increase the stability of the strategic balance and reduce the risk of nuclear war, emphasizing mutual reductions and limitations on future weapons deployment which most threaten the strategic balance because their characteristics indicate a potential first-strike use; a comprehensive ban on nuclear tests; mutual reduction with the Soviet Union and others, under assured safeguards, of our nuclear arsenals, leading ultimately to the elimination of such arsenals; mutual restrictions with the Soviet Union and others on sales or other transfers of arms to developing countries; and conventional arms agreements and mutual and balanced force reductions in Europe.

Democratic Platform, 1976, p.942

However, in the area of strategic arms limitation, the U.S. should accept only such agreements that would not overall limit the U.S. to levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union.

Democratic Platform, 1976, p.942

In the long-run, further development of more extensive economic relations between the United States and the Soviet Union may bring significant benefit to both societies. The U.S.S.R. has sought, however, through unfair trade practices to dominate such strategic fields as merchant shipping. Rather than effectively resisting such efforts, the Nixon-Ford administration has looked favorably on such steps as subsidizing U.S.-U.S.S.R. trade by giving the Soviet Union concessionary credits, promoting trade increases because of a short-run hope of using trade to modify political behavior, and even placing major United States energy investment in pawn to Soviet Union policy. Where bilateral trade agreements with the U.S.S.R. are to our economic advantage, we should pursue them, but our watch-words would be tough bargaining and concrete economic, political or other benefits for the United States. We should also press the Soviet Union to take a greater share of responsibility in multilateral solutions to such problems as creating adequate world grain reserves.

Democratic Platform, 1976, p.942

Our stance on the issue of human rights and political liberties in the Soviet Union is important to American self-respect and our moral standing in the world. We should continually remind the Soviet Union, by word and conduct, of its commitments in Helsinki to the free flow of people and ideas and of how offensive we and other free people find its violations of the Universal Declaration of Human Rights. As part of our programs of official, technical, trade, cultural and other exchanges [p.943] with the U.S.S.R., we should press its leaders to open their society to a genuine interchange of people and ideas.

Democratic Platform, 1976, p.943

We must avoid assuming that the whole of American-Soviet relations is greater than the sum of its parts, that any agreement is superior to none, or that we can negotiate effectively as supplicants. We must realize that our firmness can help build respect for us and improve the long-run opportunities for mutually-beneficial concrete agreements. We must beware of the notion that Soviet-American relations are a seamless web in which concessions in one area will bring us benefits in others. By the same token, we must husband our resources to concentrate on what is most important to us. Detente must be military as well as political.

Democratic Platform, 1976, p.943

More fundamentally, we must recognize that the general character of our foreign policies will not be set by our direct relationship with the Soviet Union. Our allies and friends must come first. Nor can the pursuit of our interests elsewhere in the world be dominated by concern for Soviet views. For example, American policy toward China should continue to be based on a desire for a steady improvement and broadening of relations, whatever the tenor and direction of Chinese-Soviet relations.

Democratic Platform, 1976, p.943

Above all, we must be open, honest, mature and patient with ourselves and with our allies. We must recognize that, in the long-run, an effective policy toward the Soviet Union can only be grounded on honest discussion, and on a national and, to some extent, an international consensus. Our own institutions, especially the Congress, must be consulted and must help formulate our policy. The governments of our allies and friends must be made partners in our undertakings. Haste and secret bilateral executive arrangements in our dealings with the U.S.S.R. can only promote a mood of uncertainty and suspicion which undermines the public support essential to effective and stable international relations.

America in the World Community

Democratic Platform, 1976, p.943

Many of the critical foreign policy issues we face require global approaches, but an effective international role for the United States also demands effective working with the special interests of specific foreign nations and regions. The touchstone of our policy must be our own interests, which in turn means that we should not seek or expect to control events everywhere. Indeed, intelligent pursuit of our objectives demands a realization that even where our interests are great and our involvement essential, we do not act alone, but in a world setting where others have interests and objectives as well.

Democratic Platform, 1976, p.943

We cannot give expression to our national values without continuing to play a strong role in the affairs of the United Nations and its agencies. Firm and positive advocacy of our positions is essential.

Democratic Platform, 1976, p.943

We should make a major effort at reforming and restructuring the U.N. systems. The intensity of interrelated problems is rapidly increasing, and it is likely that in the future, the issues of war and peace will be more a function of economic and social problems than of the military security problems that have dominated international relations since 1945.

Democratic Platform, 1976, p.943

The heat of debate at the General Assembly should not obscure the value of our supporting United Nations involvement in keeping the peace and in the increasingly complex technical and social problems—such as pollution, health, economic development and population growth—that challenge the world community. But we must let the world know that anti-American polemics are no substitute for sound policy and that the United Nations is weakened by harsh rhetoric from other countries or by blasphemous resolutions such as the one equating Zionism and racism.

Democratic Platform, 1976, p.943

A Democratic Administration should seek a fair and comprehensive Law-of-the-Sea Treaty that will balance the interests of the developed and less developed countries.

Democratic Platform, 1976, p.943

Europe. The nations of Western Europe, together with Japan, are among our closest allies. Except for our closest neighbors in this hemisphere, it is in these regions where our interests are most strongly linked with those of other nations. At the same time, the growing economic and political strength of Europe and Japan creates areas of conflict and tension in a relationship both sides must keep close and healthy.

Democratic Platform, 1976, p.943

On the great economic issues—trade, energy, employment, international finance, resources—we must work with the Europeans, the Japanese and other nations to serve our long-run mutual interests in stability and growth, and in the development of poorer nations.

Democratic Platform, 1976, p.943

The military [p.944] security of Europe is fundamental to our own. To that end, NATO remains a vital commitment. We should retain in Europe a U.S. contribution to NATO forces so that they are sufficient to deter or defeat attack without premature resort to nuclear weapons. This does not exclude moderate reductions in manpower levels made possible by more efficiency, and it affirmatively requires a thorough reform and overhaul of NATO forces, plans and deployments. We encourage our European allies to increase their share of the contributions to NATO defense, both in terms of troops and hardware. By mutual agreement or through modernization, the thousands of tactical nuclear weapons in Europe should be reduced, saving money and manpower and increasing our own and international security.

Democratic Platform, 1976, p.944

Europe, like the rest of the world, faces substantial political change. We cannot control that process. However, we can publicly make known our preference for developments consistent with our interests and principles. In particular, we should encourage the most rapid possible growth of stable democratic institutions in Spain, and a continuation on the path of democracy of Portugal and Greece, opposing authoritarian takeover from either left or right. We can make clear our sense of the risks and dangers of Communist participation in Western European governments, while being equally clear that we will work on a broad range of non-military matters with any legally-constituted government that is prepared to do the same with us. We similarly must reaffirm our support for the continued growth and cohesion of the institutions of the European community.

Democratic Platform, 1976, p.944

The voice of the United States should be heard in Northern Ireland against violence and terror, against the discrimination, repression and deprivation which brought about that civil strife, and for the efforts of the parties toward a peaceful resolution of the future of Northern Ireland. Pertinent alliances such as NATO and international organizations such as the United Nations should be fully apprised of the interests of the United States with respect to the status of Ireland in the international community of nations.

Democratic Platform, 1976, p.944

We must do all that is possible, consistent with our interest in a strong NATO in Southern Europe and stability in the Eastern Mediterranean, to encourage a fair settlement of the Cyprus issue, which continues to extract human costs.

Democratic Platform, 1976, p.944

Middle East. We shall continue to seek a just and lasting peace in the Middle East. The cornerstone of our policy is a firm commitment to the independence and security of the State of Israel. This special relationship does not prejudice improved relations with other nations in the region. Real peace in the Middle East will permit Israel and her Arab neighbors to turn their energies to internal development, and will eliminate the threat of world conflict spreading from tensions there.

Democratic Platform, 1976, p.944

The Middle East conflict is complex, and a realistic, pragmatic approach is essential. Our policy must be based on firm adherence to these fundamental principles of Middle East policy:

Democratic Platform, 1976, p.944

We will continue our consistent support of Israel, including sufficient military and economic assistance to maintain Israel's deterrent strength in the region, and the maintenance of U.S. military forces in the Mediterranean adequate to deter military intervention by the Soviet Union.

Democratic Platform, 1976, p.944

We steadfastly oppose any move to isolate Israel in the international arena or suspend it from the United Nations or its constituent organizations.

Democratic Platform, 1976, p.944

We will avoid efforts to impose on the region an externally devised formula for settlement, and will provide support for initiatives toward settlement, based on direct face-to-face negotiation between the parties and normalization of relations and a full peace within secure and defensible boundaries.

Democratic Platform, 1976, p.944

We vigorously support the free passage of shipping in the Middle East—especially in the Suez Canal.

Democratic Platform, 1976, p.944

We recognize that the solution to the problems of Arab and Jewish refugees must be among the factors taken into account in the course of continued progress toward peace. Such problems cannot be solved, however, by recognition of terrorist groups which refuse to acknowledge their adversary's right to exist, or groups which have no legitimate claim to represent the people for whom they purport to be speaking.

Democratic Platform, 1976, p.944

We support initiation of government enforcement action to insure that stated U.S. policy—in opposition to boycotts against friendly countries—is fully and vigorously implemented.

Democratic Platform, 1976, p.944

We recognize and support the established status of Jerusalem as the capital of Israel, with free access to all its holy places provided to all faiths. As a symbol of this stand, the U.S. Embassy should be moved from Tel Aviv to Jerusalem.

Democratic Platform, 1976, p.944

Asia. We remain a Pacific power with important stakes and [p.945] objectives in the region, but the Vietnam War has taught us the folly of becoming militarily involved where our vital interests were not at stake.

Democratic Platform, 1976, p.945

Friendship and cooperation with Japan are the cornerstone of our Asian interests and policy. Our commitment to the security of Japan is central to our own, and it is an essential condition to a constructive, peaceful role for that nation in the future of Asia. In our economic dealings with Japan, we must make clear our insistence on mutuality of benefits and opportunities, while focusing on ways to expand our trade, avoiding economic shocks and resultant retaliation on either side. We must avoid the "shocks" to Japan which have resulted from Republican foreign policy.

Democratic Platform, 1976, p.945

We reaffirm our commitment to the security of the Republic of Korea, both in itself and as a key to the security of Japan. However, on a prudent and carefully planned basis, we can redeploy, and gradually phase out, the U.S. ground forces, and can withdraw the nuclear weapons now stationed in Korea without endangering that support, as long as our tactical air and naval forces in the region remain strong. Our continued resolve in the area should not be misunderstood. However, we deplore the denial of human rights in the Republic of Korea, just as we deplore the brutal and aggressive acts of the regime in North Korea.

Democratic Platform, 1976, p.945

We have learned, at a tragically high price, certain lessons regarding Southeast Asia. We should not seek to control the political future of that region. Rather, we should encourage and welcome peaceful relations with the nations of that area. In conjunction with the fullest possible accounting of our citizens still listed as missing in action, we should move toward normalized relations with Vietnam.

Democratic Platform, 1976, p.945

No foreign policy that reflects traditional American humanitarian concerns can be indifferent to the plight of the peoples of the Asian subcontinent.

Democratic Platform, 1976, p.945

The recent improvement in relations with China, which has received bipartisan support, is a welcome recognition that there are few areas in which our vital interests clash with those of China. Our relations with China should continue to develop on peaceful lines, including early movement toward normalizing diplomatic relations in the context of a peaceful resolution of the future of Taiwan.

Democratic Platform, 1976, p.945

The Americas. We recognize the fundamental importance of close relations and the easing of economic tension with our Canadian and Mexican neighbors.

Democratic Platform, 1976, p.945

In the last eight years, our relations with Latin America have deteriorated amid high-level indifference, increased military, domination of Latin American governments, and revelations of extensive American interference in the internal politics of Chile and other nations. The principles of the Good Neighbor Policy and the Alliance for Progress, under which we are committed to working with the nations of the Americas as equals, remain valid today but seem to have been forgotten by the present administration.

Democratic Platform, 1976, p.945

The U.S. should adopt policies on trade, aid and investment that include commodity agreements and an appropriate system of trade preferences.

Democratic Platform, 1976, p.945

We must make clear our revulsion at the systematic violations of basic human rights that have occurred under some Latin American military regimes.

Democratic Platform, 1976, p.945

We pledge support for a new Panama Canal treaty, which insures the interests of the United States in that waterway, recognizes the principles already agreed upon, takes into account the interests of the Canal work force, and which will have wide hemispheric support.

Democratic Platform, 1976, p.945

Relations with Cuba can only be normalized if Cuba refrains from interference in the internal affairs of the United States, and releases all U.S. citizens currently detained in Cuban prisons and labor camps for political reasons. We can move towards such relations if Cuba abandons its provocative international actions and policies.

Democratic Platform, 1976, p.945

Africa. Eight years of indifference, accompanied by increasing cooperation with racist regimes, have left our influence and prestige in Africa at an historical low. We must adopt policies that recognize the intrinsic importance of Africa and its development to the United States, and the inevitability of majority rule on that continent.

Democratic Platform, 1976, p.945

The first task is to formulate a rational African policy in terms of enlightened U.S.-African priorities, not as a corollary of U.S.-Soviet policy. Angola demonstrated that we must have sound relations with Black Africa and disassociate our policies from those of South Africa to achieve the desired African response to Soviet expansionism in Africa. Our policy must foster high-level U.S.-Africa communications and establish a sound basis for dealing when crises arise.

Democratic Platform, 1976, p.945

The next Democratic [p.946] administration will work aggressively to involve black Americans in foreign policy positions, at home and abroad, and in decisions affecting African interests.

Democratic Platform, 1976, p.946

To promote African economic development, the U.S. should undertake increased bilateral and multilateral assistance, continue congressional initiatives in food assistance and food production, with special aid to the Sahel and implementation of the Sahel Development Plan; and carry forward our commitment to negotiate with developing countries on key trade and economic issues such as commodity arrangements and trade preferences.

Democratic Platform, 1976, p.946

Our policy must be reformulated towards unequivocal and concrete support of majority rule in Southern Africa, recognizing that our true interests lie in peaceful progress toward a free South Africa for all South Africans, black and white. As part of our commitment to the development of a free and democratic South Africa, we should support the position of African nations in denying recognition to "homelands" given pseudo-independence by the South African government under its current policy of "separate development."

Democratic Platform, 1976, p.946

The Republican administration's relaxation of the arms embargo against South Africa must be ended, and the embargo tightened to prevent transfers of military significance, particularly of nuclear material. The U.S. government should not engage in any activity regarding Namibia that would recognize or support the illegal South African administration, including granting tax credits to U.S. companies doing business in Namibia and paying taxes to South Africa. Moreover, the U.S. government should deny tax advantages to all corporations doing business in South Africa and Rhodesia who support or participate in apartheid practices and policies.

Democratic Platform, 1976, p.946

The U.S. government should fully enforce the U.N.-ordered Rhodesia sanctions, seek universal compliance with such measures, and repeal the Byrd Amendment.

Democratic Platform, 1976, p.946

Efforts should be made to normalize relations with Angola.

Republican Platform of 1976

Title: Republican Platform of 1976

Author: Republican Party

Date: 1976

Source: 1976 Republican Party Platform Booklet

Adopted by the Republican National Convention,

August 18, 1976, at Kansas City, Mo.

Preamble

Republican Platform, 1976, p.2

To you, an American citizen:

Republican Platform, 1976, p.2

You are about to read the 1976 Republican Platform. We hope you will also find time to read the Democrats' Platform. Compare. You will see basic differences in how the two parties propose to represent you.

Republican Platform, 1976, p.2

"The Platform is the Party's contract with the people." This is what it says on the cover of the official printing of the Democrat Platform. So it should be. The Democrats' Platform repeats the same thing on every page: more government, more spending, more inflation. Compare. This Republican Platform says exactly the opposite—less government, less spending, less inflation. In other words, we want you to retain more of your own money, money that represents the worth of your labors, to use as you see fit for the necessities and conveniences of life.

Republican Platform, 1976, p.2

No matter how many statements to the contrary that Mr. Carter makes, he is firmly attached to a contract with you to increase vastly the powers of government. Is bigger government in Washington really what you want?

Republican Platform, 1976, p.2

Make no mistake: you cannot have bigger programs in Washington and less government by Washington. You must choose.

Republican Platform, 1976, p.2

What is the cost of these added or expanded programs? The Democrats' Platform is deliberately vague. When they tell you, as they do time after time, that they will "expand federal support," you are left to guess the cost. The price tag of five major Democrat Platform promises could add as much as $100 billion to the annual cost of government. But the Democrats' Platform proposes over 60 new or expanded spending programs and the expansion or creation of some 22 Washington agencies, offices or bureaus. In fact, the total of all Democrat proposals can be as high as $200 billion a year. While this must be a rough estimate, it does give you a clue to the magnitude and direction of these commitments. The Democrats' Platform can increase federal spending by 50 percent. If a Democrat Congress passes the Democrat Platform and it is signed by a Democrat President, what happens then? The Democrats could raise your taxes by 50 percent to pay for the new programs. Or the Democrats could not raise taxes and the result would be a runaway inflation. Of course, contract or no contract, the Democrats may not honor their promises. Are you prepared to risk it?

Republican Platform, 1976, p.2

In stark contrast to the Democrats' Platform, we offer you a responsive and moderate alternative based on these principles:

Republican Platform, 1976, p.2

We believe that liberty can be measured by how much freedom you have to make your own decisions—even your own mistakes. Government must step in when your liberties impinge on your neighbor's. Government must protect your constitutional rights. Government must deal with other governments and protect you from aggressors. Government must assure equal opportunity. And government must be compassionate in caring for those citizens who are unable to care for themselves.

Republican Platform, 1976, p.2

Our federal system of local-state-national government is designed to sort out on what level these actions should be taken. Those concerns of a national character—such as air and water pollution that do not respect state boundaries or the national transportation system or efforts to safeguard your civil liberties—must, of course, be handled on the national level.

Republican Platform, 1976, p.2

As a general rule, however, we believe that government action should be taken first by the government that resides as close to you as possible. Governments tend to become less responsive to your needs the farther away they are from you. Thus, we prefer local and state government to national government, and decentralized national government wherever possible.

Republican Platform, 1976, p.2

We also believe that you, often acting through voluntary organizations, should have the opportunity to solve many of the social problems of your community. This spirit of freely helping others is uniquely American and should be encouraged in every way by government.

Republican Platform, 1976, p.2

Every dollar spent by government is a dollar earned by you. Government must always ask: Are your dollars being wisely spent? Can we afford it? Is it not better for the country to leave your dollars in your pocket?

Republican Platform, 1976, p.2

Your elected officials, their appointees, and government workers are expected to perform their public acts with honesty, openness, diligence, and special integrity. At the heart of our system must be confidence that these people are always working for you.

Republican Platform, 1976, p.2

We believe that your initiative and energy create jobs, our standard of living and the underlying economic strength of the country. Government must work for the goal of justice and the elimination of unfair practices, but no government has yet designed a more productive economic system or one which benefits as many people.

Republican Platform, 1976, p.2

The beauty of our land is our legacy to our children. It must be protected by us so that they can pass it on intact to their children.

Republican Platform, 1976, p.2

The United States must always stand for peace and liberty in the world and the rights of the individual. We must form sturdy partnerships with our allies for the preservation of freedom. We must be ever willing to negotiate differences, but equally mindful that there are American ideals that cannot be compromised. Given that there are other nations with potentially hostile designs, we recognize that we can reach our goals only while maintaining a superior national defense.

Republican Platform, 1976, p.2

We support these principles because they are right, knowing full well that they will not be easy to achieve. Acting with restraint is most difficult when confronted by an opposition Congress that is determined to promise everything to everybody. And this is ppp [p.3] what the Democrat Congress has been doing. A document, such as this Platform, which refuses to knuckle under to special interest groups, will be accused of being "uncaring." Yet it is exactly because we do care about your basic freedom to manage your own life with a minimum of government interference, because we do care about encouraging permanent and meaningful jobs, because we do care about your getting paid in sound dollars, because we do care about resisting the use of your tax dollars for wasteful or unproven programs—it is for these reasons that we are proposing only actions that the nation can afford and are opposing excessive tinkering with an economic system that works better than any other in the world.

Republican Platform, 1976, p.3

Our great American Republic was founded on the principle: "one nation under God, with liberty and justice for all." This bicentennial year marks the anniversary of the greatest secular experiment in history: That of seeking to determine that a people are truly capable of self-government. It was our "Declaration" which put the world and posterity on notice "that Men are…endowed by their Creator with certain unalienable Rights" and that those rights must not be taken from those to whom God has given them.

Republican Platform, 1976, p.3

Recently, Peggy Pinder, a 23-year-old student from Grinnell, Iowa, who is a delegate to this convention, said that she joined our party "because Republicans understand the place of government in the people's lives better than the Democrats. Republicans try to find ways to take care of needs through the private sector first while it seems automatic for Democrats to take care of them through the governmental system."

Republican Platform, 1976, p.3

The perception of Peggy Pinder governs this Platform. Aren't these the principles that you want your elected representatives to have?

Jobs and Inflation

Republican Platform, 1976, p.3

We believe it is of paramount importance that the American people understand that the number one destroyer of jobs is inflation. We wish to stress that the number one cause of inflation is the government's expansion of the nation's supply of money and credit needed to pay for deficit spending. It is above all else deficit spending by the federal government which erodes the purchasing power of the dollar. Most Republicans in Congress seem to understand this fundamental cause-and-effect relationship and their support in sustaining over 40 Presidential vetoes in the past two years has prevented over $13 billion in federal spending. It is clear that most of the Democrats do not understand this vital principle, or, if they do, they simply don't care.

Republican Platform, 1976, p.3

Inflation is the direct responsibility of a spendthrift Democrat-controlled Congress that has been unwilling to discipline itself to live within our means. The temptation to spend and deficit spend for political reasons has simply been too great for most of our elected politicians to resist. Individuals, families, companies and most local and state governments must live within a budget. Why not Congress?

Republican Platform, 1976, p.3

Republicans hope every American realizes that if we are permanently to eliminate high unemployment, it is essential to protect the integrity of our money. That means putting an end to deficit spending. The danger, sooner or later, is runaway inflation.

Republican Platform, 1976, p.3

Wage and price controls are not the solution to inflation. They attempt to treat only the symptom—rising prices—not the cause. Historically, controls have always been a dismal failure, and in the end they create only shortages, black markets and higher prices. For these reasons the Republican Party strongly opposes any reimposition of such controls, on a standby basis or otherwise.

Republican Platform, 1976, p.3

Unfortunately, the Democrat-controlled Congress now persists in attempting to obtain control over our nation's money creation policies by taking away the independence of the Federal Reserve Board. The same people who have so massively expanded government spending should not be allowed politically to dominate our monetary policy. The independence of the Federal Reserve System must be preserved.

Republican Platform, 1976, p.3

Massive, federally-funded public employment programs, such as the Humphrey-Hawkins Bill currently embraced by the new National Platform of the Democrat Party will cost billions and can only be financed either through very large tax Increases or through ever increasing levels of deficit spending. Although such government "make-work" programs usually provide a temporary stimulus to the economy, "quick-fix" solutions of this sort—like all narcotics—lead to addition, larger and larger doses, and ultimately the destruction of far more jobs than they create. Sound job creation can only be accomplished in the private sector of the economy. Americans must not be fooled into accepting government as the employer of last resort.

Republican Platform, 1976, p.3

Nor should we sit idly by while 2.5 million American jobs are threatened by imports of textile products. We encourage the renewal of the GATT Multifiber Arrangement and the signing of other necessary bilateral agreements to protect our domestic textile industry.

Republican Platform, 1976, p.3

In order to be able to provide more jobs, businesses must be able to expand; yet in order to build and expand, they must be profitable and able to borrow funds (savings) that someone else has been willing to part with on a temporary basis. In the long run, inflation discourages thrift, encourages debt and destroys the incentive to save which is the mainspring of capital formation. When our government—through deficit spending and debasement of the currency—destroys the incentive to save and to invest, it destroys the very wellspring of American productivity. Obviously, when production falls, the number of jobs declines.

Republican Platform, 1976, p.4

ppp [p.4] The American people are beginning to understand that no government can ever add real wealth (purchasing power) to an economy by simply turning on the printing presses or by creating credit out of thin air. All government can do is confiscate and redistribute wealth. No nation can spend its way into prosperity; a nation can only spend its way into bankruptcy.

Taxes and Government Spending

Republican Platform, 1976, p.4

The Republican Party recognizes that tax policies and spending policies are in separable. If government spending is not controlled, taxes will inevitably rise either directly or through inflation. By failing to tie spending directly to income, the Democrat-controlled Congress has not kept faith with the American people. Every American knows he cannot continually live beyond his means.

Republican Platform, 1976, p.4

The Republican Party advocates a legislative policy to obtain a balanced federal budget and reduced tax rates. While the best tax reform is tax reduction, we recognize the need for structural tax adjustments to help the working men and women of our nation. To that end, we recommend tax credits for college tuition, postsecondary technical training and child care expenses incurred by working parents.

Republican Platform, 1976, p.4

Over the past two decades of Democrat control of the Congress, our tax laws have become a nightmare of complexity and unfair tax preferences, virtually destroying the credibility of the system. Simplification should be a major goal of tax reform.

Republican Platform, 1976, p.4

We support economic and tax policies to insure the necessary job-producing expansion of our economy. These include hastening capital recovery through new systems of accelerated depreciation, removing the tax burden on equity financing to encourage more capital investment, ending the unfair double taxation of dividends, and supporting proposals to enhance the ability of our working and other citizens to own "a piece of the action" through stock ownership. When balanced by expenditure reductions, the personal exemption should be raised to $1,000.

Agriculture and Rural Development

Republican Platform, 1976, p.4

The bounty of our farms is so plentiful that we may tend to forget what an amazing production achievement this really is. Each American farmer and rancher produces enough food to feed over 56 people—a threefold increase in productivity in 20 years.

Republican Platform, 1976, p.4

Rural America must be maintained as a rewarding place to live. To accomplish this, our rural areas are entitled to services comparable to their urban neighbors, such as water and sewer systems, improved electricity and telephone service, adequate transportation, available and adequate financial credit, and employment opportunities which will allow small farmers to supplement their incomes.

Republican Platform, 1976, p.4

Farm exports have continued to expand under the policies of this Republican Administration—from a low of $6 billion in 1968, the last Democrat year, to $22 billion in 1975. These exports are not giveaway programs; most are earning dollars from the marketplaces of the world, establishing a favorable balance of trade and a higher standard of living for all. Through our farm exports we fight the problem of world hunger, especially with the humanitarian Food for Peace Program (Public Law 480) of the Eisenhower Administration and the Republican-controlled Congress of 1954.

Republican Platform, 1976, p.4

Republican farm policy has permitted farmers to use their crop land fully. We are at last moving toward making effective use of our superb resources. Net farm income from 1972 through 1975 averaged $26 billion, more than double the average of the 1960's. Government should not dictate to the productive men and women who work the land. To assure this, we support the continuation of the central principles of the Agricultural Act of 1973, with adjustments of target prices and loan levels to reflect increased production costs.

Republican Platform, 1976, p.4

We oppose government-controlled grain reserves, just as we oppose federal regulations that are unrealistic in farm practices, such as those imposed by the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA).

Republican Platform, 1976, p.4

We urge prompt action by Congress in amending the Grain Inspection Act to strengthen the present inspection system and restore its integrity.

Republican Platform, 1976, p.4

We firmly believe that when the nation asks our farmers to go all out to produce as much as possible for world-wide markets, the government should guarantee them unfettered access to those markets. Our farmers should not be singled out by export controls. Also, when a foreign national subsidizes its farm exports, our farmers deserve protection against such unfair practices. The federal government should assure that foreign imported commodities are equal in quality to our domestic commodities. Nations from whom we buy commodities should not be allowed to circumvent import restriction laws, such as the Meat Import Quota Act of 1964.

Republican Platform, 1976, p.4

We recognize the importance of the multilateral trade negotiations now in progress and urge our representatives to obtain the most beneficial agreements for our farmers and the nation's economy.

Republican Platform, 1976, p.4

In order to assure the consumers of America an uninterrupted source of food, it is necessary to pass labor relations legislation which is responsive to the welfare of workers and to the particular needs of food production. Such legislation should recognize the need to prevent work stoppages during the critical harvest periods.

Republican Platform, 1976, p.4

We must help farmers protect themselves from drought, flood and other natural disasters through a system of all-risk crop insurance through Federal government reinsurance of private insurance companies ppp [p.5] combined with the existing disaster payment program.

Republican Platform, 1976, p.5

As in 1972, we urge prompt passage of the Republican-sponsored legislation now pending in Congress which will increase the estate tax exemption to $200,000, allow valuation of farm property on a current use basis and provide for extension of the time of payment in the case of farms and small businesses. This overdue estate and gift tax legislation must be approved this year. We favor a liberalized marital deduction and oppose capital gains tax at death.

Republican Platform, 1976, p.5

Innovations in agriculture need to be encouraged by expanding research programs including new pest and predator control measures, and utilization of crops as a new energy resource. If we expect our farmers to produce an abundant food supply, they must have all the energy they need to produce, market and process their crops and livestock.

Republican Platform, 1976, p.5

We continue to support farmer cooperatives, including rural electric and telephone cooperatives, in their efforts to improve services to their members. We support the Capper-Volstead Act.

Republican Platform, 1976, p.5

We believe that non-farm corporations and tax-loss farming should be prevented from unfairly competing against family farms, which we support as the preferred method of farm organization.

Republican Platform, 1976, p.5

Since farmers are practicing conservationists, they should not be burdened with unrealistic environmental regulations. We are concerned about regulations issued by the Army Corps of Engineers that will regulate all "routine" agricultural and forestry activities on "all" our waters and wetland, and support legislation to exempt routine farming operations from these requirements. The adjudication of water rights should be a matter of state determination.

Small Business

Republican Platform, 1976, p.5

Small business, so vital to our economic system, is free enterprise in its purest sense. It holds forth opportunity to the individual, regardless of race or sex, to fulfill the American dream. Small businesses are the base of our economy and its main source of strength. Some 9.6 million small firms generate 55 percent of our private employment—or the livelihood of over 100 million Americans. Yet while small businesses have a unique place in our society, they also have unique problems that government must address. Therefore, we recommend that the Small Business Administration (SBA):

Republican Platform, 1976, p.5

Assure adequate financing to those credit worthy firms that cannot now obtain funds through conventional channels;

Republican Platform, 1976, p.5

Include the proper mix of loan programs to meet the needs of the many different types of firms that constitute the American small business community;

Republican Platform, 1976, p.5

Serve as an aggressive advocate for small business and provide procurement, management and technological assistance.

Republican Platform, 1976, p.5

For survival, small businesses must have relief from the overwhelming burden placed on them by many regulatory bodies. Paperwork proliferation has grown out of control, and small business is not equipped to deal with this aggravation.

Republican Platform, 1976, p.5

The present tax structure does not allow small firms to generate enough capital to grow and create jobs. Estate taxes need liberalization to benefit the family business in the same manner as the family farm. Encouraging investment in small businesses through more equitable tax treatment remains the best and least expensive method of creating productive employment.

Republican Platform, 1976, p.5

The Republican Party, recognizing that small and independent business is the backbone of the American competitive system, pledges itself to strengthen this vital institution.

Antitrust

Republican Platform, 1976, p.5

The Republican Party believes in and endorses the concept that the American economy is traditionally dependent upon fair competition in the marketplace. To assure fair competition, antitrust laws must treat all segments of the economy equally.

Republican Platform, 1976, p.5

Vigorous and equitable enforcement of antitrust laws heightens competition and enables consumers to obtain the lowest possible price in the marketplace.

Bureaucratic Over-regulation

Republican Platform, 1976, p.5

We believe that the extent of federal regulation and bureaucratic interference in the lives of the American people must be reduced. The programs and activities of the federal government should be required to meet strict tests of their usefulness and effectiveness.

Republican Platform, 1976, p.5

In particular, we consider essential an analysis of the extensive growth of laws and regulations governing production processes and conditions and standards or consumer products, so as to determine whether the services and benefits the American people receive are worth the price they are paying for these services in higher taxes and consumer prices.

Republican Platform, 1976, p.5

We are intensely aware of the need to protect our environment and provide safe working conditions in American industry, while at the same time preventing the loss of jobs and the closing of small businesses through unrealistic or over-rigorous government regulations. We support a balanced approach that considers the requirements of a growing economy and provides jobs for American workers.

Republican Platform, 1976, p.5

The average businessman and employer is being overwhelmed by government-required paperwork. We support legislation to control and reduce the burden of federal paper-work, particularly that generated by the Internal Revenue Service and the Census Bureau.

Government that Works

Republican Platform, 1976, p.5

We believe that Americans are fed up with and frustrated by national government that ppp [p.6] makes great promises and fails to deliver. We are! We think that Democrat Congresses—in control for 40 out of the last 44 years—are the grand masters of this practice. We think that a national government grown so big that the left hand doesn't know what the right hand is doing has caused the condition we are in.

Republican Platform, 1976, p.6

What we now have is a government organization that doesn't make any sense. It has not developed by design. It just grew—by whim, bureaucratic fighting, and the caving in of Democrat Congresses to special interest demands. So today we find that nine federal departments and twenty independent agencies are involved in education; seven departments and eight agencies in health; federal recreation areas are administered by six agencies in three departments; and so forth.

Republican Platform, 1976, p.6

What we need is a top-to-bottom overhaul. Two high level presidential commissions under two Presidents—one a Democrat, one a Republican—have investigated and come up with the same answer: There must be functional realignment of government, instead of the current arrangement by subject areas or constituencies.

Republican Platform, 1976, p.6

We want federal domestic departments to reflect the major purposes of government, such as natural resources, human resources, community development and economic affairs. Unfortunately, the Democrat Congress has refused to address this problem. Now we insist that attention must be paid.

Republican Platform, 1976, p.6

Too often in the past, we have been content with organizational or procedural solutions to complex economic and social regulatory problems. We should no longer accept rhetoric as a substitute for concrete results. The President has proposed to Congress the Agenda for Government Reform Act, which would guarantee the systematic re-examination and reform of all federal regulatory activities within the next four years. This legislation requires Congress and the President to agree to undertake an exhaustive reassessment of the combined effects of all government regulations, and it requires them to adhere to a disciplined timetable to assure annual results. The American people deserve no less. Every agency of government must be made efficient, and every government regulation should be subjected to cost benefit analysis. The Occupational Safety and Health Administration (OSHA) is a typical example of a well-intentioned regulatory effort which has imposed large costs but has not solved our problems.

Republican Platform, 1976, p.6

The beauty of America's original concept of government was its diversity, the belief that different purposes are best served by governments at different levels. In our lifetime, however, Democrat Congresses have allowed this system to become warped and over-nationalized. As powers have flowed to Washington, the ability to attend to our problems has often dried up in our communities and states. This trend must be reversed. Local government is simply more accountable to the people, and local people are perfectly capable of making decisions.

Republican Platform, 1976, p.6

We reaffirm the long standing principle of the Republican Party that the best government is the one closest to the people. It is less costly, more accountable, and more responsive to the people's needs. Our confidence in the people of this nation was demonstrated by initiating the Revenue Sharing Program. To date, $30 billion of federal tax dollars have been returned to the states and localities. This program is administered with fewer than 100 people and a computer. Revenue Sharing is an effort to reverse the trend toward centralization. Revenue Sharing must continue without unwarranted federal strictures and regulations.

Republican Platform, 1976, p.6

As a further step in this direction, the Republicans in Congress promoted the new concept of federal block grants to localities for much greater flexibility. Under block grants, federal funds can be tailored by the states and localities to the wishes of each community. There are now two block grant programs—in community development and employment training. Block grant programs should be extended to replace many existing categorical health, education, child nutrition and social services programs. The Democrat Congress stands guilty of failing to enact these vital reforms. Our ultimate goal is to restore taxing and spending to the local level.

Republican Platform, 1976, p.6

The Republican Party has always believed that the proper role of government is to do only those things which individuals cannot do for themselves. We encourage individual initiative and oppose the trend of ever expanding government programs which is destroying the volunteer spirit in America. We firmly believe that community involvement is essential to the development of effective solutions to the problems confronting our country.

Republican Platform, 1976, p.6

While we oppose a uniform national primary, we encourage the concept of regional presidential primaries, which would group those states which voluntarily agree to have presidential primaries in a geographical area on a common date.

Republican Platform, 1976, p.6

We encourage full participation in our electoral process. We further recognize the sanctity and value of the ballot. In that regard, we oppose "federal post card registration." The possibilities of fraud are inherent in registration by mail. Such possibilities could not only cheapen our ballot, but in fact threaten the entire electoral process.

Republican Platform, 1976, p.6

Control of the United States Congress by the Democrat Party for 40 of the past 44 years has resulted in a system dominated by powerful individuals and riddled with corruption. Recent events have demonstrated an unwillingness and inability by the Democrat Party to cleanse itself. Selective morality has been the order of the day. Positive Republican initiatives have languished in Democrat-controlled Congressional Committees while business as usual has continued in ppp [p.7] Washington. The American people demand and deserve reform of the United States Congress. We offer these proposals of far-reaching reform:

Republican Platform, 1976, p.7

Repeal of legislation which permits automatic increases in the salaries of Members of Congress, congressional staffs, and official expense allowances. Public accountability demands that Members publicly vote on increases on the expenses of their office. Members' salary increases should not become effective until a new Congress is elected.

Republican Platform, 1976, p.7

Elimination of proxy voting which allows Members to record votes in Committee without being present for the actual deliberations or vote on a measure.

Republican Platform, 1976, p.7

Elimination of Democrat Caucus rules which allow a Party to bind its Members' votes on legislation. Each Member of Congress represents his constituency and must be free to vote in accordance with the dictates of his constituency and individual conscience.

Republican Platform, 1976, p.7

A complete audit by the General Accounting Office of all congressional allowances and appropriate disciplinary measures for those who have violated the public trust.

Republican Platform, 1976, p.7

Full public disclosure of financial interests by Members and divestiture of those interests which present conflicts of interest.

Republican Platform, 1976, p.7

Changes in the House rules which would allow a House majority to require the House Ethics Committee to conduct an investigation into alleged misconduct by any Member of Congress if the Committee refuses to act on its own.

Republican Platform, 1976, p.7

A complete overhaul and streamlining of the system which has permitted the proliferation of subcommittees with over-lapping responsibility, vague jurisdictional definitions and a lack of legislative production.

Republican Platform, 1976, p.7

Quarterly publication of names, titles and salaries of all Congressional employees.

Republican Platform, 1976, p.7

Improved lobby disclosure legislation so that the people will know how much money is being spent to influence public officials.

Republican Platform, 1976, p.7

Citizens are demanding the end to the rapid and wasteful increase in the size of Washington government. All steps must be taken to insure that unnecessary federal agencies and programs are eliminated and that Congress carefully scrutinize the total budget of each agency. If it is determined that sunset laws and zero-based budgeting can accomplish these ends, then they will have our support. Washington programs must be made as cost-effective as those in the states and localities. Among the many serious complaints that we wish to register on behalf of the American people is the poor operation of the United States Postal Service.

Republican Platform, 1976, p.7

We note the low respect the public has for Congress—a Democrat-controlled Institution—and wonder how the Democrats can possibly honor their pledge to reform government when they have utterly failed to reform Congress.

A Safe and Just Society

Republican Platform, 1976, p.7

Every American has a right to be protected from criminals. Violence has no place in our land. A society that excuses crime will eventually fall victim to it. The American people have been subjected to an intolerable wave of violent crime.

Republican Platform, 1976, p.7

The victim of a crime should be treated with compassion and justice. The attacker must be kept from harming others. Emphasis must be on protecting the Innocent and punishing the guilty. Prevention of crime is its best deterrent and should be stressed.

Republican Platform, 1976, p.7

Fighting crime is—and should be—primarily a local responsibility. We support the continuation of the federal help given through the Law Enforcement Assistance Administration {LEAA} to law enforcement officials in our states, counties and municipalities. Each state should have the power to decide whether it wishes to impose the death penalty for certain crimes. All localities are urged to tighten their bail practices and to review their sentencing and parole procedures.

Republican Platform, 1976, p.7

The federal criminal code should include automatic and mandatory minimum sentences for persons committing offenses under federal jurisdiction that involve the use of a dangerous weapon; that involve exceptionally serious crimes, such as trafficking in hard drugs, kidnapping and aircraft hijacking; and that involve injuries committed by repeat offenders.

Republican Platform, 1976, p.7

The work presently being done to tighten the antiobscenity provisions of the criminal code has our full support. Since the jurisdiction of the federal government in this field is limited to interstate commerce and the mails, we urge state and local governments to assume a major role in limiting the distribution and availability of obscene materials.

Republican Platform, 1976, p.7

We support the right of citizens to keep and bear arms. We oppose federal registration of firearms. Mandatory sentences for crimes committed with a lethal weapon are the only effective solution to this problem.

Republican Platform, 1976, p.7

Sure and swift justice demands additional judges, United States Attorneys and other court workers. The Democrat Congress has created no new federal judgeships since 1970; we deplore this example of playing politics with the justice system.

Republican Platform, 1976, p.7

Drug abuse is not simply a health problem, but also a very real law enforcement concern and a problem of worldwide dimension. Controlling drug abuse calls for the ratification of the existing international treaty on synthetic drugs, increased emphasis on preventing the diversion of amphetamines and barbiturates into illegal markets, and intensive efforts to keep drugs out of this country. Heroin continues to come across our borders. Drug enforcement agents and international cooperation must cut off this supply. We say: Treat the addicts, but, at ppp [p.8] the same time, remove the pushers from the street and give them mandatory sentences.

Republican Platform, 1976, p.8

Juveniles now account for almost half the arrests for serious crimes—murder, rape, robbery and aggravated assault. The cost of school violence and vandalism is estimated at $600 million annually, about what is spent on textbooks. Primary responsibility for raising our children, instilling proper values and thus preventing juvenile delinquency lies with the family, not the government. Yet when families fail, local law enforcement authorities must respond. Law enforcement block grant funds can be used by states in correcting and preventing juvenile delinquency. The LEAA should promote additional research in this area. The structure of the family must be strengthened. All enterprises have to be encouraged to find more Jobs for young people. A youth differential must be included in the minimum wage law. Citizen action should let the television industry know that we want it to curb violence in programming because of its effect on our youth.

Republican Platform, 1976, p.8

The criminal justice system must be more vigilant in preventing rape, eliminating discrimination against the victim and dealing with the offenders.

Republican Platform, 1976, p.8

States should recognize that antiquated and overcrowded prisons are not conducive to rehabilitation. A high priority of prison reform should be to help the young first-time offender. There should be adequate separation of young from adult offenders, more relevant prison industries, better counseling community-based alternatives and more help in getting a job for the offender who has served his or her time.

Republican Platform, 1976, p.8

Terrorism—both domestic and international-must be stopped. Not only must the strongest steps be taken in the United States, but collective action must come from all nations. Deterring every form of hijacking calls for sanctions against countries that aid terrorists. The world community should take appropriate action to deal with terrorist organizations. We applaud the daring rescue by Israel of innocent civilian hostages who were kidnapped by terrorists. While we regret that loss of life was involved, the courageous manner in which the hostages were freed speaks eloquently to our abhorrence of world bandits.

The Right to Privacy

Republican Platform, 1976, p.8

Liberty depends in great measure on the privacy that each American retains.

Republican Platform, 1976, p.8

We are alarmed by Washington's growing collection of information. The number of federal data banks is now estimated at between 800 and 900 and more than 50 agencies are involved. We question the need for all these computers to be storing the records of our lives. Safeguards must protect us against this information being misused or disclosed. Major changes, for example, are needed to maintain the confidentiality of tax returns and Society Security records.

Republican Platform, 1976, p.8

Recent Supreme Court decisions have held that an individual has no constitutional right to the privacy of records held in banks or other depository institutions and that they can be readily obtained by law enforcement agencies without a person's consent or knowledge. Law enforcement authorities must be able to pursue criminal violators, yet, at the same time, there should be reasonable controls imposed to protect the privacy of law-abiding citizens. We support legislation, now pending, to assure this protection.

Republican Platform, 1976, p.8

Too many government records, on the other hand, are unnecessarily classified. Congress and the Executive should devise a more reasonable system for classifying and handling government information.

Republican Platform, 1976, p.8

The President's achievements in protecting privacy are unequalled by past administrations and must be built upon in the future. We particularly note changes in federal record-keeping systems, the appointment of the Commission on the CIA, the reorganization of the intelligence community and the restriction of White House access to income tax returns.

The American Family

Republican Platform, 1976, p.8

Families must continue to be the foundation of our nation.

Republican Platform, 1976, p.8

Families—not government programs—are the best way to make sure our children are properly nurtured, our elderly are cared for, our cultural and spiritual heritages are perpetuated, our laws are observed and our values are preserved.

Republican Platform, 1976, p.8

If families fail in these vitally important tasks, there is little the government, no matter how well-intentioned, can do to remedy the results. Schools cannot educate children adequately if families are not supportive of the learning process. Law enforcement authorities are nearly helpless to curb juvenile delinquency without family cooperation in teaching young people respect for property and laws. Neither medicine nor school feeding programs can replace the family's ability to provide the basis for good health. Isolation from meaningful family contact makes it virtually impossible for the elderly to avoid loneliness or dependence. The values of hard work and responsibility start with the family.

Republican Platform, 1976, p.8

As modern life brings changes in our society, it also puts stresses on families trying to adjust to new realities while maintaining cherished values. Economic uncertainty, unemployment, housing difficulties, women's and men's concerns with their changing and often conflicting roles, high divorce rates, threatened neighborhoods and schools, and public scandal all create a hostile atmosphere that erodes family structures and family values. Thus it is imperative that our government's programs, actions, officials and social welfare institutions never be allowed to jeopardize the family. We fear the government may be powerful enough to destroy our ppp [p.9] families; we know that it is not powerful enough to replace them.

Republican Platform, 1976, p.9

Because of our concern for family values, we affirm our beliefs, stated elsewhere in this Platform, in many elements that will make our country a more hospitable environment for family life—neighborhood schools; educational systems that include and are responsive to parents' concerns; estate tax changes to establish more realistic exemptions which will minimize disruption of already bereaved families; a position on abortion that values human life; a welfare policy to encourage rather than discourage families to stay together and seek economic independence; a tax system that assists rather than penalizes families with elderly members, children in day care or children in college; economic and employment policies that stop the shrinkage of our dollars and stimulate the creation of jobs so that families can plan for their economic security.

Education

Republican Platform, 1976, p.9

Our children deserve quality education. We believe that segregated schools are morally wrong and unconstitutional. However, we oppose forced busing to achieve racial balances in our schools. We believe there are educational advantages for children in attending schools in their own neighborhoods and that the Democrat-controlled Congress has failed to enact legislation to protect this concept. The racial composition of many schools results from decisions by people about where they choose to live. If Congress continues to fail to act, we would favor consideration of an amendment to the Constitution forbidding the assignment of children to schools on the basis of race.

Republican Platform, 1976, p.9

Our approach is to work to eradicate the root causes of segregated schools, such as housing discrimination and gerrymandered school districts. We must get on with the education of all our children.

Republican Platform, 1976, p.9

Throughout our history, the education of our children has been a community responsibility. But now federal categorical grant programs pressure local school districts into substituting Washington-dictated priorities for their own. Local school administrators and school boards are being turned into bookkeepers for the federal government. Red tape and restrictive regulations stifle imagination and creativity. We are deeply concerned about the decline in the performance of our schools and the decline in public confidence in them.

Republican Platform, 1976, p.9

We favor consideration of tax credits for parents making elementary and secondary school tuition payments.

Republican Platform, 1976, p.9

Local communities wishing to conduct non-sectarian prayers in their public schools should be able to do so. We favor a constitutional amendment to achieve this end.

Republican Platform, 1976, p.9

We propose consolidating federal categorical grant programs into block grants and turning the money over to the states to use in accordance with their own needs and priorities and with minimum bureaucratic controls. A single program must preserve the funding that is directed at the needs of such special groups as the handicapped and the disadvantaged.

Republican Platform, 1976, p.9

Responsibility for education, particularly on the elementary and secondary levels, belongs to local communities and parents. Intrusion by the federal government must be avoided. Bureaucratic control of schools by Washington has the potential for destruction of our educational system by taking more and more decisions away from parents and local school authorities. Financial dependence on the federal government inevitably leads to greater centralization of authority. We believe, therefore, that a study should be authorized concerning funding of elementary and secondary education, coupled with a study regarding return to the states of equivalent revenue to compensate for any loss in present levels of federal funding.

Republican Platform, 1976, p.9

Unless steps are taken immediately, soaring prices will restrict a college education to the rich and those poor enough to qualify now for government aid. Federal higher education policy should continue to focus on financial aid for needy individuals, but because the financial ability to go to college is fast slipping out of the grasp of middle income families, more realistic eligibility guidelines for student aid are essential.

Republican Platform, 1976, p.9

Government interference in the management of colleges and universities must be stopped. Federal support to assist in meeting the grave financial problems of higher education should be forthcoming, but such funds should never be used as devices for imposing added controls.

Republican Platform, 1976, p.9

Diversity in education has great value. Public schools and non-public schools should share in education funds on a constitutionally acceptable basis. Private colleges and universities should be assisted to maintain healthy competition and to enrich diversity. The cost of expanding public campuses can be kept down if existing private institutions are helped to accommodate our student population.

Republican Platform, 1976, p.9

We favor continued special federal support for vocational education.

Health

Republican Platform, 1976, p.9

Every American should have access to quality health care at an affordable price.

Republican Platform, 1976, p.9

The possibility of an extended illness in a family is a frightening prospect, but, if it does happen, a person should at least be protected from having it wipe out lifetime savings. Catastrophic expenses incurred from major illnesses and accidents affect only a small percentage of Americans each year, but for those people, the financial burden can be devastating. We support extension of catastrophic illness protection to all who cannot obtain it. We should utilize our private health insurance system to assure adequate protection for those who do not have it. Such an approach will eliminate the red tape and high bureaucratic costs inevitable in a comprehensive national program.

Republican Platform, 1976, p.10

ppp [p.10] The Republican Party opposes compulsory national health insurance.

Republican Platform, 1976, p.10

Americans should know that the Democrat Platform, which offers a government-operated and financed "comprehensive national health insurance system with universal and mandatory coverage," will increase federal government spending by more than $70 billion in its first full year. Such a plan could require a personal income tax increase of approximately 20 percent. We oppose this huge, new health insurance tax. Moreover, we do not believe that the federal government can administer effectively the Democrats' cradle-to-grave proposal.

Republican Platform, 1976, p.10

The most effective, efficient and economical method to improve health care and extend its availability to all is to build on the present health delivery and insurance system, which covers nine out of every ten Americans.

Republican Platform, 1976, p.10

A coordinated effort should be mounted immediately to contain the rapid increase in health care costs by all available means, such as development of healthier life styles through education, improved preventive care, better distribution of medical manpower, emphasis on out-of-hospital services and elimination of wasteful duplication of medical services.

Republican Platform, 1976, p.10

We oppose excessive intrusions from Washington in the delivery of health care. We believe in preserving the privacy that should exist between a patient and a physician, particularly in regard to the confidentiality of medical records.

Republican Platform, 1976, p.10

Federal health programs should be consolidated into a single grant to each state, where possible, thereby allowing much greater flexibility in setting local priorities. Our rural areas, for example, have different health care delivery needs than our cities. Federal laws and regulations should respect these differences and make it possible to respond differently to differing needs. Fraud in Medicare and Medical programs should be exposed and eliminated.

Republican Platform, 1976, p.10

We need a comprehensive and equitable approach to the subject of mental health. Such a program should focus on the prevention, treatment and care of mental illness. It should cover all aspects of the interrelationships between emotional illness and other developmental disabilities that seek to remove us from the dark ages in these areas.

Republican Platform, 1976, p.10

Alcoholism and drug abuse, growing problems in America today, should receive the utmost attention.

Republican Platform, 1976, p.10

While we support valid medical and biological research efforts which can produce life-saving results, we oppose any research on live fetuses. We are also opposed to any legislation which sanctions ending the life of any patient.

Child Nutrition

Republican Platform, 1976, p.10

Every child should have enough to eat. Good nutrition is a prerequisite of a healthy life. We must focus our resources on feeding needy children. The present school lunch programs provide a 20 percent subsidy to underwrite the meals of children from middle- and upper-income families.

Republican Platform, 1976, p.10

The existing 15 child nutrition programs should be consolidated into one program, administered by the states, and concentrated on those children truly in need. Other federal programs should insure that low-income people will be able to purchase a nutritionally adequate food supply.

Equal Rights and Ending Discrimination

Republican Platform, 1976, p.10

Roadblocks must be removed that may prevent Americans from realizing their full potential in society. Unfair discrimination is a burden that intolerably weighs morally, economically and politically upon a free nation.

Republican Platform, 1976, p.10

While working to eradicate discriminatory practices, every citizen should be encouraged to take pride in and foster the cultural heritage that has been passed on from previous generations. Almost every American traces ancestry from another country; this cultural diversity gives strength to our national heritage.

Republican Platform, 1976, p.10

There must be vigorous enforcement of laws to assure equal treatment in job recruitment, hiring, promotion, pay, credit, mortgage access and housing. The way to end discrimination, however, is not by resurrecting the much discredited quota system and attempting to cloak it in an aura of new respectability. Rather, we must provide alternative means of assisting the victims of past discrimination to realize their full worth as American citizens.

Republican Platform, 1976, p.10

Wiping out past discrimination requires continued emphasis on providing educational opportunities for minority citizens, increasing direct and guaranteed loans to minority business enterprises, and affording qualified minority persons equal opportunities for government positions at all levels.

Women

Republican Platform, 1976, p.10

Women, who comprise a numerical majority of the population, have been denied a just portion of our nation's rights and opportunities. We reaffirm our pledge to work to eliminate discrimination in all areas for reasons of race, color, national origin, age, creed or sex and to enforce vigorously laws guaranteeing women equal rights.

Republican Platform, 1976, p.10

The Republican Party reaffirms its support for ratification of the Equal Rights Amendment. Our Party was the first national party to endorse the E.R.A. in 1940. We continue to believe its ratification is essential to insure equal rights for all Americans. In our 1972 Platform, the Republican Party recognized the great contributions women have made to society as homemakers and mothers, as contributors to the community through volunteer work, and as members of the labor force in careers. The Platform stated then, and repeats now, that the Republican Party "fully endorses the principle of equal rights, equal opportunities and equal responsibilities for women." The Equal Rights Amendment is the ppp [p.11] embodiment of this principle and therefore we support its swift ratification.

Republican Platform, 1976, p.11

The question of abortion is one of the most difficult and controversial of our time. It is undoubtedly a moral and personal issue but it also involves complex questions relating to medical science and criminal justice. There are those in our Party who favor complete support for the Supreme Court decision which permits abortion on demand. There are others who share sincere convictions that the Supreme Court's decision must be changed by a constitutional amendment prohibiting all abortions. Others have yet to take a position, or they have assumed a stance somewhere in between polar positions.

Republican Platform, 1976, p.11

We protest the Supreme Court's intrusion into the family structure through its denial of the parents' obligation and right to guide their minor children. The Republican Party favors a continuance of the public dialogue on abortion and supports the efforts of those who seek enactment of a constitutional amendment to restore protection of the right to life for unborn children.

Republican Platform, 1976, p.11

The Social Security System, our federal tax laws, and unemployment and disability programs currently discriminate against women and often work against married couples as well. These inequities must be corrected. We recognize that special support must be given to the increasing number of women who have assumed responsibility as the heads of households while also being wage earners. Programs for job training, counseling and other services should be established to help them attain their dual role in society.

Republican Platform, 1976, p.11

We reiterate the pledges elsewhere in this platform of support for child care assistance, part-time and flexible-time work that enables men and women to combine employment and family responsibilities, estate tax reform, small business assistance for women, rape prevention and elimination of discriminatory housing practices.

Ethnic Americans

Republican Platform, 1976, p.11

Ethnic Americans have enriched this nation with their hard work, self-reliance and respect for the rights and needs of others. Ethnic groups reaching our shores at various times have given our country its unique identity and strength among the nations of the world. We recognize and value the contributions of Ethnic Americans to our free and democratic society.

Hispanic-Americans

Republican Platform, 1976, p.11

When language is a cause of discrimination, there must be an intensive educational effort to enable Spanish-speaking students to become fully proficient in English while maintaining their own language and cultural heritage. Hispanic-Americans must not be treated as second-class citizens in schools, employment or any other aspect of life just because English is not their first language. Hispanic-Americans truly believe that individual integrity must be paramount; what they want most from government and politics is the opportunity to participate fully. The Republican Party has and always will offer this opportunity.

Indians and Alaska Natives

Republican Platform, 1976, p.11

We have a unique commitment to Native Americans; we pledge to continue to honor our trust relationship with them, and we reaffirm our federal Indian policy of self-determination without termination. This means moving smoothly and quickly away from federal domination to effective participation and communication by Indians in the political process and in the planning, content and administration of federal programs. We shall pursue our joint effort with Indian leaders to assist in the orderly development of Indian and native-owned resources and to continue to attack the severe health, education and unemployment problems which exist among Indians and Alaska Natives.

Puerto Rico, The District of Columbia and The Territories

Republican Platform, 1976, p.11

The principle of self-determination also governs our positions on Puerto Rico and the District of Columbia as it has in past platforms. We again support statehood for Puerto Rico, if that is the people's choice in a referendum, with full recognition within the concept of a multicultural society of the citizens' right to retain their Spanish language and traditions; and support giving the District of Columbia voting representation in the United States Senate and House of Representatives and full home rule over those matters that are purely local.

Republican Platform, 1976, p.11

We will continue to negotiate with the Congress of Micronesia on the future political status of the Trust Territories of the Pacific Islands to meet the mutual interests of both parties. We support a plebiscite by the people of American Samoa on whether they wish to elect a territorial governor. We favor whatever action is necessary to permit American citizens resident in Guam, Puerto Rico and the Virgin Islands to vote for President and Vice President in national elections. With regard to Guam and the Virgin Islands, we urge an increased degree of self-sufficiency and support maximum broadening of self-government.

Responsibilities

Republican Platform, 1976, p.11

Finally, the most basic principle of all: Achievement and preservation of human rights in our society is based on the willing acceptance by millions of Americans of their responsibilities as free citizens. Instead of viewing government programs with ever increasing expectations, we must readily assume the obligations of wage-earners, taxpayers and supporters of our government and laws. This is often forgotten, and so it is appropriate to remind ourselves in this Platform that this is why our society works.

Handicapped Citizens

Republican Platform, 1976, p.11

Handicapped persons must be admitted into the mainstream of our society.

Republican Platform, 1976, p.12

ppp [p.12] Too often the handicapped population of the nation—over 30 million men, women and children—has been denied the rights taken for granted by other citizens. Time after time, the paths are closed to the handicapped in education, employment, transportation, health care, housing, recreation, insurance, polling booths and due process of law. National involvement is necessary to correct discrimination in these areas. Individual incentive alone cannot do it.

Republican Platform, 1976, p.12

We pledge continued attention to the problems caused by barriers in architecture, communication, transportation and attitudes. In addition, we realize that to deny education and employment simply because of an existing disability runs counter to our accepted belief in the free enterprise system and forces the handicapped to be overly dependent on others. Similarly, the denial of equal access to credit and to acquisition of venture capital on the basis of a handicap or other disability conflicts with Republican philosophy. We advocate the elimination of needless barriers for all handicapped persons.

Working Americans

Republican Platform, 1976, p.12

Free collective bargaining remains the best way to insure that American workers receive a fair price for their labors.

Republican Platform, 1976, p.12

The special problems of collective bargaining in state and local government should be addressed at those levels. Washington should not impose its standards on local governments. While we oppose strikes by public employees, we recognize that states have the right to permit them if they choose.

Republican Platform, 1976, p.12

Union membership as a condition of employment has been regulated by state law under Section 14(b) of the Taft-Hartley Act. This basic right should continue to be determined by the states. We oppose strikes by federal employees, the unionization of our military forces and the legalization of common-situs picketing.

Republican Platform, 1976, p.12

Employees of the federal government should not engage in partisan politics. The Civil Service System must remain non-partisan and non-political. The Hatch Act now protects federal employees; we insist that it be uniformly administered.

Republican Platform, 1976, p.12

Among the rights that are the entitlement of every American worker is the right to join a union—large, small or independent; the right to be protected against racial discrimination and misuse of dues; the right to union elections that are fair and democratic; and the right to be assured of ultimately receiving his or her promised pension benefits.

Republican Platform, 1976, p.12

Safe and healthful working conditions are goals of utmost importance. We should expect the Occupational Safety and Health Administration to help employers, particularly in small businesses, comply with the law, and we will support legislation providing on-site consultation.

Republican Platform, 1976, p.12

There should be considerable concern over the presence of several million illegal aliens in the country who fill jobs that otherwise would be available to American workers. We support increased efforts to deal more effectively with this problem and favor legislation prohibiting employers from knowingly hiring illegal aliens. The Democrat leaders in Congress have systematically killed every attempt to debate this legislation in recent years.

Republican Platform, 1976, p.12

Increased part-time and flexible-hour work should be encouraged wherever feasible. In keeping with our belief in family life, we want to expand more opportunities for men and women to combine family responsibilities and employment.

Welfare Reform

Republican Platform, 1976, p.12

The work of all Americans contributes to the strength of our nation, and all who are able to contribute should be encouraged to do so.

Republican Platform, 1976, p.12

In every society there will be some who cannot work, often through no fault of their own. The measure of a country's compassion is how it treats the least fortunate.

Republican Platform, 1976, p.12

We appreciate the magnificent variety of private charitable institutions which have developed in the United States.

Republican Platform, 1976, p.12

The Democrat-controlled Congress has produced a jumble of degrading, dehumanizing, wasteful, overlapping and inefficient programs failing to assist the needy poor. A systematic and complete overhaul of the welfare system should be initiated immediately.

Republican Platform, 1976, p.12

The following goals should govern the reform of the welfare system: (1) Provide adequate living standards for the truly needy; (2) End welfare fraud and prevent it in the future with emphasis on removing ineligible recipients from the welfare rolls, tightening food stamp eligibility requirements, and ending aid to illegal aliens and the voluntarily unemployed; (3) Strengthen work requirements, particularly directed at the productive involvement of able-bodied persons in useful community work projects; (4) Provide educational and vocational incentives to allow recipients to become self-supporting; (5) Better coordinate federal efforts with local and state social welfare agencies and strengthen local and state administrative functions. We oppose federalizing the welfare system; local levels of government are most aware of the needs of their communities. Consideration should be given to a range of options in financing the programs to assure that state and local responsibilities are met. We also oppose the guaranteed annual income concept or any programs that reduce the incentive to work.

Republican Platform, 1976, p.12

Those features of the present law, particularly the food stamp program, that draw into assistance programs people who are capable of paying for their own needs should be corrected. The humanitarian purpose of such programs must not be corrupted by eligibility loopholes. Food stamp program reforms proposed by Republicans in Congress would accomplish the twin goals of directing resources to those most in need and streamlining administration.

Republican Platform, 1976, p.13

ppp [p.13] We must never forget that unemployment compensation is insurance, not a welfare program. It should be redesigned to assure that working is always more beneficial than collecting unemployment benefits. The benefits should help most the hard-core unemployed. Major efforts must be encouraged through the private sector to speed up the process of finding jobs for those temporarily out of work.

Older Americans

Republican Platform, 1976, p.13

Older Americans constitute one of our most valuable resources.

Republican Platform, 1976, p.13

Families should be supported in trying to take care of their elderly. Too often government laws and policies contribute to the deterioration of family life. Our tax laws, for example, permit a deduction to the taxpayer who gives a contribution to a charitable institution that might care for an elderly parent, but offer little or no incentive to provide care in the home. If an elderly parent relinquishes certain assets and enters a nursing home, the parent may qualify for full Medicaid coverage, but if parents live with their children, any Supplemental Security income benefit for which they are eligible may be reduced. Incentives must be written into law to encourage families to care for their older members.

Republican Platform, 1976, p.13

Along with loneliness and ill health, older Americans are deeply threatened by inflation. The costs of the basic necessities of life—food, shelter, clothing, health care—have risen so drastically as to reduce the ability of many older persons to subsist with any measure of dignity. In addition to our program for protecting against excessive costs of long-term illness, nothing will be as beneficial to the elderly as the effect of this Platform's proposals on curbing inflation.

Republican Platform, 1976, p.13

The Social Security benefits are of inestimable importance to the well-being and financial peace-of-mind of most older Americans. We will not let the Social Security system fail. We will work to make the Social Security system actuarily sound. The Social Security program must not be turned into a welfare system, based on need rather than contributions. The cost to employers for Social Security contributions must not be raised to the point where they will be unable to afford contributions to employees' private pension programs. We will work for an increase in the earned income ceiling or its elimination so that, as people live longer, there will not be the present penalty on work. We will also seek to correct these provisions of the system that now discriminate against women and married couples.

Republican Platform, 1976, p.13

Such programs as Foster Grandparents and Senior Companions, which provide income exempt from Social Security limitations, should be continued and extended to encourage senior citizens to continue to be active and involved in society. Appropriate domiciliary care programs should be developed to enable senior citizens to receive such care without losing other benefits to which they may be entitled.

Republican Platform, 1976, p.13

We favor the abolition of arbitrary age levels for mandatory retirement.

Republican Platform, 1976, p.13

The Medicare program must be improved to help control inflation in health care costs triggered by present regulations.

Republican Platform, 1976, p.13

Other areas of concern to the elderly that need increased attention are home and out-patient care, adequate transportation, nutrition, day care and homemaker care as an alternative to costly institutional treatment.

Republican Platform, 1976, p.13

A nation should be judged by its ability to help make all the years of life as productive and gainful as possible. This nation still has a job to do.

Veterans

Republican Platform, 1976, p.13

The nation must never forget its appreciation and obligation to those who have served in the armed forces.

Republican Platform, 1976, p.13

Because they bear the heaviest burdens of war, we owe special honor and compensation to disabled veterans and survivors of the war dead.

Republican Platform, 1976, p.13

We are firmly committed to maintaining and improving our Veterans Administration hospital system.

Republican Platform, 1976, p.13

Younger veterans, especially those who served in the Vietnam conflict, deserve education, job and housing loan benefits equivalent to those of World War II and the Korean conflict. Because of our deep and continuing concern for those still listed as Prisoners of War or Missing in Action in Vietnam, the Foreign Policy section of this Republican Platform calls for top priority actions.

Republican Platform, 1976, p.13

And we must continue to provide for our veterans at their death a final resting place for their remains in a national cemetery and the costs of transportation thereto.

A National Urban Strategy

Republican Platform, 1976, p.13

The decay and decline of communities in this country is not just a physical and economic crisis, but is traceable to the decline of a real "sense of community" in our society. Community development cannot be achieved merely by throwing dollars and mortar at our community problems; what must be developed is a new sense of mutual concern and responsibility among all members of a community for its improvement.

Republican Platform, 1976, p.13

We recognize the family, the neighborhood and the private volunteer sector to be the most basic and vital units within our communities and we recognize their central role in revitalizing our communities. We propose a strategy for urban revitalization that both treats our urban areas as social organisms and recognizes that the family is the basic building block in these organisms.

Republican Platform, 1976, p.13

Effectively helping our cities now requires a coordinated National Urban Policy. The cornerstone of this policy must be to curb inflation. This policy must be based on the principle that the levels of government closest to the cities' problems are best able ppp [p.14] to respond. Thus federal and state assistance to cities and counties should give the greatest flexibility to those directly on the scene, the local elected officials. Such a policy should replace the welter of confusing and often conflicting federal categorical grant programs—the approach of the Democrat Congress—with block grant programs that allow cities and counties to set their own priorities.

Republican Platform, 1976, p.14

Without an urban policy, the Democrat-controlled Congress has created a hodge-podge of programs which have all but destroyed our once vital cities. At the same time, urban crime rates have skyrocketed and the quality and promise of metropolitan education systems have plummeted. All this has happened during the years that the number of federal urban programs has increased almost tenfold: from 45 in 1946 to 435 in 1968; and expenditures have increased 3000 percent; from $1 billion to $30 billion.

Republican Platform, 1976, p.14

The Republican programs of revenue sharing and block grants for community development and manpower have already helped our cities and counties immensely. We favor extension of revenue sharing and the orderly conversion of categorical grants into block grants. When federal assistance programs for general purpose local governments are administered through the states, there should be direct pass-through and effective role for cities and counties in the planning, allocation and use of the funds.

Republican Platform, 1976, p.14

Federal, state and local government resources combined are not enough to solve our urban problems. The private sector must be the major participant. Economic development is the best way to involve business and industry government support should emphasize capital formation and technical assistance for small and minority businesses.

Republican Platform, 1976, p.14

We can bring about a new birth of freedom by following the example of those individuals, organizations and community leaders who have successfully solved specific undesirable conditions and problems through private efforts. Government officials should be aware of these successes in developing new approaches to public problems.

Republican Platform, 1976, p.14

Financial institutions should be encouraged to participate in the financial requirements of urban development. Each institution should recognize its responsibility in promoting and maintaining economic growth and stability in the central cities.

Republican Platform, 1976, p.14

Our urban policies should encourage families and businesses to improve their neighborhoods by means of participation in neighborhood self-help groups, improving and rehabilitating their homes and businesses, and investing in and managing local businesses. We support the revision of federal business assistance programs to encourage joint efforts by local merchants' associations.

Republican Platform, 1976, p.14

We need a comprehensive approach to plan, develop and implement a variety of programs which take into account the many diverse needs of each neighborhood. The establishment of a National Neighborhood Policy will signal a commitment to the improvement of the quality of our life in our neighborhoods.

Republican Platform, 1976, p.14

We call for an expansion of the President's Committee on Urban Development and Neighborhood Revitalization to include representatives of elected state and local officials and the private sector.

Republican Platform, 1976, p.14

Taken together, the thrust of the proposals in this section and in such related areas as housing, transportation, safety and taxes should contribute significantly to making our cities again pleasant places to live. The Republican National Urban Strategy has been formed in the realization that when the bell tolls for the cities it tolls for all of America.

Housing

Republican Platform, 1976, p.14

In the United States today we are the best housed nation in the history of world civilization. This accomplishment was achieved by a private enterprise system using free market concepts.

Republican Platform, 1976, p.14

All of our citizens should be given the opportunity to live in decent, affordable housing.

Republican Platform, 1976, p.14

We believe that we should continue to pursue the primary goal of expanding housing opportunities for all Americans and we should pursue the companion goal of reducing the degree of direct federal involvement in housing.

Republican Platform, 1976, p.14

To most Americans the American dream is a home of their own. The time has come to face some hard realities, primarily that the greatest impediment to decent and affordable housing is inflation. It logically follows that one effective housing program would be simply to elect a Republican Congress which would balance the federal budget.

Republican Platform, 1976, p.14

To meet the housing needs of this country there must be a continuous, stable and adequate flow of funds for the purpose of real estate mortgages at realistic interest rates.

Republican Platform, 1976, p.14

To continue to encourage home ownership, which now encompasses 64 percent of our families, we support the deductibility of interest on home mortgages and property taxes.

Republican Platform, 1976, p.14

We favor the concept of federal revenue sharing and block grants to reduce the excessive burden of the property tax in financing local government.

Republican Platform, 1976, p.14

We are concerned with the excessive reliance of financing welfare and public school costs primarily by the property tax.

Republican Platform, 1976, p.14

We support inflation-impact studies on governmental regulations, which are inflating housing costs.

Republican Platform, 1976, p.14

Current economic problems and environmental concerns must be balanced in each community by a policy of "Sensible Growth."

Republican Platform, 1976, p.14

We oppose discrimination in housing, whether by individuals or by institutional financing polices.

Republican Platform, 1976, p.14

We urge continued incentives to support the development of low and moderate income housing in order to assure the availability of adequate shelter for the less fortunate.

Republican Platform, 1976, p.15

ppp [p.15] Rehabilitation and preservation of existing housing stock should be given high priority in federal housing policy.

Republican Platform, 1976, p.15

We urge the continuation of the self-help restoration of housing, such as urban home-steading, which is providing housing for low-income families.

Transportation

Republican Platform, 1976, p.15

The federal government has a special responsibility to foster those elements of our national transportation system that are essential to foreign and interstate commerce and national defense. In other transportation systems that primarily support local needs, the federal government's responsibility is to encourage the greatest possible decision-making and flexibility on the part of state and local governments to spend funds in ways that make the best sense for each community. Thus all levels of government have an important role in providing a balanced and coordinated transportation network.

Republican Platform, 1976, p.15

In keeping with national transportation goals, the Railroad Revitalization and Regulatory Reform Act of 1976 has begun the task of removing regulatory constraints of the Interstate Commerce Commission on America's ailing railroads. Now we should carefully assess the need to remove many of the regulatory constraints imposed on the nation's airlines and motor carriers. Consumers pay too high a price for the artificial fare and rate structures imposed by federal regulations.

Republican Platform, 1976, p.15

The great Interstate Highway System, initiated by President Eisenhower, has brought new freedom of travel to every American and must be completed and maintained. Our road network should always stress safety through better design as well as bridge maintenance and replacement.

Republican Platform, 1976, p.15

We must also have a safe and efficient aviation system capable of responding to the air transportation needs of the future and of reducing exposure to aircraft noise. This includes airport development, navigational and safety facilities, and the design and adequate staffing of advanced air traffic control systems. In airplane use as in other modes of transportation, the impact on the physical environment must always be a basic consideration in federal decisions and such decisions should also include appraisals of impact on the economy. We deplore unfair treatment of United States airlines under foreign landing regulations.

Republican Platform, 1976, p.15

Research must be continued to find safe, more fuel-efficient automobile engines and airplanes; safer, faster rail service; and more convenient, less expensive urban transportation. Tax policies should be considered which would stimulate the development and installation of new energy sources in transportation, such as railroad electrification.

Republican Platform, 1976, p.15

The disorganization of a Democratic-controlled Congress frustrates the coordination of transportation policy. Currently there are more than 50 congressional subcommittees with independent jurisdiction in the transportation field. This hopelessly disjointed and disorganized approach must be reformed.

Republican Platform, 1976, p.15

In keeping with the local goal setting in transportation, the Republican Party applauds the system under which state and local governments can divert funds from interstate highway mileage not essential to interstate commerce or national defense to other, more pressing community needs, such as urban mass transit.

Republican Platform, 1976, p.15

We support the concept of a surface transportation block grant which would include the various highway and mass transit programs now in existence. This will provide local elected officials maximum flexibility in selecting and implementing the balanced transportation systems best suited to each locality. It will encompass both capital and operating subsidies for urban mass transit. It will eliminate red tape and over-regulation. We regret that the Democrat-controlled Congress has not adopted such reform.

Energy

Republican Platform, 1976, p.15

In 1973, Americans were shocked to discover that a plentiful supply of energy could no longer be assumed. Unfortunately, the Democrat majority in Congress still has not responded to this clear and urgent warning. The United States is now consuming more imported oil than it was three years ago and our dependence on foreign sources has continued to increase to the point where we now import more than 40% of our oil.

Republican Platform, 1976, p.15

One fact should now be clear: we must reduce sharply our dependence on other nations for energy and strive to achieve energy independence at the earliest possible date. We cannot allow the economic destiny and international policy of the United States to be dictated by the sovereign powers that control major portions of the world's petroleum supplies.

Republican Platform, 1976, p.15

Our approach toward energy self-sufficiency must involve both expansion of energy supply and improvement of energy efficiency. It must include elements that insure increased conservation at all levels of our society. It must also provide incentive for the exploration and development of domestic gas, oil, coal and uranium, and for expanded research and development in the use of solar, geothermal, co-generation, solid waste, wind, water, and other sources of energy.

Republican Platform, 1976, p.15

We must use our non-renewable resources wisely while we develop alternative supplies for the future. Our standard of living is directly tied to a continued supply of energy resources. Without an adequate supply of energy, our entire economy will crumble.

Republican Platform, 1976, p.15

Unwise government intervention in the marketplace has caused shortage of supply, unrealistic prices and increased dependence on foreign sources. We must immediately eliminate price controls on oil and newly-discovered natural gas in order to increase ppp [p.16] supply, and to provide the capital that is needed to finance further exploration and development of domestic hydrocarbon reserves.

Republican Platform, 1976, p.16

Fair and realistic market prices will encourage sensible conservation efforts and establish priorities in the use of our resources, which over the long run will provide a secure supply at reasonable prices for all.

Republican Platform, 1976, p.16

The nation's clear and present need is for vast amounts of new capital to finance exploration, discovery, refining, and delivery of currently usable forms of energy, including the use of coal as well as discovery and development of new sources. At this critical time, the Democrats have characteristically resorted to political demagoguery seeking short-term political gain at the expense of the long-term national interest. They object to the petroleum industry making any profit. The petroleum industry is an important segment of our economy and is entitled to reasonable profits to permit further exploration and development.

Republican Platform, 1976, p.16

At the height of the energy crisis, the Republican Administration proposed a strong, balanced energy package directed at both expansion of supply and conservation of energy. The response from the Democrats in Congress was to inhibit expanded production through artificially set price and allocation controls, thereby preventing market forces from working to make energy expansion economically feasible.

Republican Platform, 1976, p.16

Now, the Democrats proposed to dismember the American oil industry. We vigorously oppose such divestiture of oil companies—a move which would surely result in higher energy costs, inefficiency and undercapitalization of the industry.

Republican Platform, 1976, p.16

Democrats have also proposed that the federal government compete with industry in energy development by creating a national oil company. We totally oppose this expensive, inefficient and wasteful intrusion into an area which is best handled by private enterprise.

Republican Platform, 1976, p.16

The Democrats are playing politics with energy. If they are permitted to continue, we will pay a heavy price in lost energy and lost jobs during the decades ahead.

Republican Platform, 1976, p.16

Immediate removal of counter-productive bureaucratic red tape will eliminate hindrances to the exploration and development of hydrocarbons and other energy resources. We will accelerate development of oil shale reserves, Alaskan petroleum and the leasing of the Outer Continental Shelf, always within the context of preserving the fullest possible protection for the environment. We will reduce complexity and delays involved in siting, licensing and the regulatory procedures affecting power generation facilities and refineries.

Republican Platform, 1976, p.16

Coal, America's most abundant energy resource, is of inestimable value to the American people. It can provide the energy needed to bridge the gap between oil and gas and nuclear and other sources of energy. The uncertainties of governmental regulation regarding the mining, transportation and use of coal must be removed and a policy established which will assure that governmental restraints, other than proper environmental controls, do not prevent the use of coal. Mined lands must be returned to beneficial use.

Republican Platform, 1976, p.16

Uranium offers the best intermediate solution to America's energy crisis. We support accelerated use of nuclear energy through processes that have been proven safe. Government research on the use of nuclear energy will be expanded to include perfecting a long-term solution to the problems of nuclear waste.

Republican Platform, 1976, p.16

Among alternative future energy sources, fusion, with its unique potential for supplying unlimited clean energy and the promise of new methods of natural resource recovery, warrants continued emphasis in our national energy research program, and we support measures to assure adequate capital investment in the development of new energy sources.

Environment and Natural Resources

Republican Platform, 1976, p.16

A clean and healthy natural environment is the rightful heritage of every American. In order to preserve this heritage, we will provide for proper development of resources, safeguards for clean air and water, and protection and enhancement of our recreation and scenic areas.

Republican Platform, 1976, p.16

As our environmental sophistication grows, we must more clearly define the role of the federal government in environmental protection.

Republican Platform, 1976, p.16

We believe that it is a national responsibility to support scientific and technological research and development to identify environmental problems and arrive at solutions.

Republican Platform, 1976, p.16

We are in complete accord with the recent Supreme Court decision on air pollution that allows the level of government closest to the problem and the solution to establish and apply appropriate air quality standards.

Republican Platform, 1976, p.16

We are proud of the progress that the current Republican Administration has made toward bringing pollution of water, land and air under control. We will meet the challenges that remain by stepping up efforts to perfect our understanding of pollutants and the means for reducing their effects. Moreover, as the nation develops new energy sources and technologies, we must insure that they meet safe environmental standards.

Republican Platform, 1976, p.16

We renew our commitments to the development of additional water supplies by desalinization, and to the more efficient use and re-use of waters currently available.

Republican Platform, 1976, p.16

We are determined to preserve land use planning as a unique responsibility of state and local government.

Republican Platform, 1976, p.16

We take particular pride in the expanded use of the National Park system in recent years, and will provide for continued ppp [p.17] improvement of the national parks and historic sites.

Republican Platform, 1976, p.17

We support establishment of a presidential panel, including representatives of environmental groups, industry, the scientific community and the public to assist in the development of national priorities on environmental and energy issues. This panel will hear and consider alternative policy recommendations set forth by all of the interested groups, and then develop solutions that represent the overall public interest on environmental and energy matters.

Republican Platform, 1976, p.17

One of this nation's greatest assets has been our abundant natural resources which have made possible our strong economic and strategic role in the world. We still have a wealth of resources, but they are not of infinite quantity. We must recognize that our material blessings stem from what we grow in the soil, take from the sea, or extract from the ground. We have a responsibility to future generations to conserve our non-renew-able natural resources. Consistent with our needs, conservation should remain our national policy.

Republican Platform, 1976, p.17

The vast land holdings of the federal government—approximately one—third of our nation's area—are the lands from which much of our future production of minerals must come. Public lands must be maintained for multiple use management where such uses are compatible. Public land areas should not be closed to exploration for minerals or for mining without an overriding national interest.

Republican Platform, 1976, p.17

We believe Americans want their resources developed properly, their environment kept clean and their recreational and scenic areas kept intact. We support appropriate measures to achieve these goals.

Republican Platform, 1976, p.17

We also believe that Americans are realistic and recognize that the emphasis on environmental concerns must be brought into balance with the needs for industrial and economic growth so that we can continue to provide jobs for an ever-growing work force.

Republican Platform, 1976, p.17

The United States possesses the most productive softwood forests in the world, as well as extensive hardwood forests. Demands for housing, fuel, paper, chemicals and a multitude of other such needs require that these renewable resources be managed wisely on both public and private forest lands—not only to meet these needs, but also to provide for soil conservation, wildlife habitats and recreation.

Republican Platform, 1976, p.17

Recognizing that timber is a uniquely renewable resource, we will use all scientifically sound means to maximize sustained yield, including clear-cutting and replanting where appropriate. We urge the Congress to strengthen the National Forest Service so that it can realize its potential in becoming an effective participant in the reforestation program.

Republican Platform, 1976, p.17

We will support broader use of resource recovery and recycling processes through removal of economic disincentives caused by unnecessary government regulation.

Republican Platform, 1976, p.17

One of the important issues at stake in the United Nations Law of the Sea Conference is access to the mineral resources in and beneath the sea. Technology, developed by United States industry, is at hand which can unlock resources of petroleum, manganese, nickel, cobalt, copper and other minerals. We will safeguard the national interest in development and use of these resources.

Science and Technology

Republican Platform, 1976, p.17

Every aspect of our domestic economy and well-being, our international competitive position, and national security is related to our past and present leadership in basic and applied research and the development of our technology. But there can be no complacency about our continued commitment to maintain this leadership position.

Republican Platform, 1976, p.17

In the past, most of these accomplishments have been achieved through a unique partnership between government and industry. This must continue and be expanded in the future.

Republican Platform, 1976, p.17

Because our society is so dependent upon the advancement of science and the development of technology, it is one of the areas where there must be a central federal policy. We support a national science policy that will foster the public-private partnership to insure that we maintain our leadership role.

Republican Platform, 1976, p.17

The national space program plays a pioneer role in exploring the mysteries of our universe and we support its expansion.

Republican Platform, 1976, p.17

We recognize that only when our technology is fully distributed can it be assimilated and used to increase our productivity and our standard of living. We will continue to encourage young Americans to study science and engineering.

Republican Platform, 1976, p.17

Finally, we support new initiatives to utilize better the recoverable commodities from solid waste materials. We can no longer afford the luxury of a throw-away world. Recycling offers environmental benefits, economic expansion, resource conservation and energy savings. We support a policy which will reward recycling and economic incentives which will encourage its expansion.

Arts and Humanities

Republican Platform, 1976, p.17

The arts and humanities offer an opportunity for every American to become a participant in activities that add fullness, expression, challenge and joy to our daily lives. We Republicans consider the preservation of the rich cultural heritages of our various ethnic groups as a priority goal.

Republican Platform, 1976, p.17

During our bicentennial year we have celebrated our anniversary with cultural activities as varied and colorful as our cultural heritage. The Republican Party is proud of its record of support to the arts and humanities during the last eight years. We are committed to steadily increase our support through the National Endowments for the nation's museums, theaters, orchestras, dance, opera and film centers as well as for individual artists and writers.

Republican Platform, 1976, p.18

ppp [p.18] This upward trend in funding for the National Arts and Humanities Endowments deserves to continue. But Washington's presence should never dominate; It must remain limited to supporting and stimulating the artistic and cultural lives of each community.

Republican Platform, 1976, p.18

We favor continued federal assistance to public broadcasting which provides us with creative educational and cultural alternatives. We recognize that public broadcasting is supported mainly through private sector contributions and commend this policy as the best insurance against political interference.

Republican Platform, 1976, p.18

In 1976, we have seen vivid evidence that America's history lives throughout the nation. We support the continued commemoration throughout the bicentennial era by all Americans of those significant events between 1776 and 1789 which contributed to the creation of this nation. We support the efforts of both the public and private sectors, working in partnership, for the historic preservation of unique and irreplaceable historic sites and buildings.

Republican Platform, 1976, p.18

We propose safeguarding the rights of performing artists in the copyright laws, providing tax roller to artists who contribute their own talents and art works for public enjoyment, and encouraging the use of one percent of the cost of government buildings for art works.

Republican Platform, 1976, p.18

Much of the support of the arts and humanities comes from private philanthropy. This generosity should be encouraged by government policies that facilitate charitable donations.

Fiscal Responsibility

Republican Platform, 1976, p.18

As Republicans, we are proud that in this Platform we have urged tax reductions rather than increased government spending. With firm restraint on federal spending this Platform pledges that its proposals for tax changes—reductions, structural adjustments, differentials, simplifications and job-producing incentives—can all be achieved within the balanced federal budgets we also demand as vital to the interests of all Americans. Without such spending restraint, we cannot responsibly cut back taxes. We reaffirm our determination that any net reduction of revenues must be offset by reduced government spending.

Foreign Policy, National Defense and International Economic Policy

Prologue

Republican Platform, 1976, p.18

The foreign policy of the United States defines the relationships we seek with the world as a whole, with friends and with adversaries. Our policy must be firmly rooted in principle and must clearly express our goals. Our principles cannot be subject to passing whim; they must be true, strong, consistent and enduring.

Republican Platform, 1976, p.18

We pledge a realistic and principled foreign policy designed to meet the needs of the nation in the years ahead. The policies we pursue will require an informed consensus; the basis of that consensus will be the American people, whose most cherished desire is to live in freedom and peace, secure from war or threat of war.

Republican Platform, 1976, p.18

The United States is a world power with worldwide interests and responsibilities. We pledge the continuation of efforts to revitalize our traditional alliances and to maintain close consultation with our friends. International cooperation and collaboration is required because we can achieve neither our most important objectives nor even our own security in the type of "splendid isolation" which is urged upon us by so many strident voices. The regrettable emergence of neo-isolationism often expressed in Congress and elsewhere is detrimental, we believe, to a sound foreign policy.

Republican Platform, 1976, p.18

The branches of government can and should work together as the necessary prerequisite for a sound foreign policy. We lament the reckless intrusion of one branch into the clear constitutional prerogative of another. Confronted by so many challenges and so many crises, the United States must again speak with one voice, united in spirit and in fact. We reject partisan and ideological quarrels across party lines and urge Democrats to join with us to lay the foundations of a true bipartisan spirit. Let us speak for this country with one voice, so that our policies will not be misunderstood by our allies or our potential adversaries.

Republican Platform, 1976, p.18

Effective policy must rest on premises which are understood and shared, and must be defined in terms of priorities. As the world has changed in a dynamic fashion, so too have our priorities and goals, and so too have the methods and debating and discussing our objectives. When we assumed Executive office eight years ago, we found the national security and foreign policy machinery in shambles. Last-minute reactions to crises were the practice. The National Security Council, so effective under President Eisenhower, had fallen into disuse. As an important first step, the National Security Council machinery was streamlined to cope with the problems of the moment and long-range planning. This restored process allows once again the exhaustive consideration of all the options from which a President must choose. Far from stifling internal debate and dissent as had been the practice in the past, Republican leadership now invites and stimulates evaluation of complex issues in an orderly decision-making process.

Republican Platform, 1976, p.18

Republican leadership has also taken steps to report comprehensively its foreign policy and national security objectives. An annual "State of the world" message, designed to increase communication with the people and with Congress, has become a permanent part of Presidential practice.

Republican Platform, 1976, p.18

A strong and effective program of global public diplomacy is a vital component of United States foreign policy. In an era of instant communications, the world is ppp [p.19] infinitely and forever smaller, and we must have the capacity to communicate to the world—to inform, to explain and to guard against accidental or willful distortion of United States policies.

Republican Platform, 1976, p.19

Interdependence has become a fact of international life, linking our actions and policies with those of the world at large. The United States should reach out to other nations to enrich that interdependence. Republican leadership has demonstrated that recognition of the ties that bind us to our friends will serve our mutual interests in a creative fashion and will enhance the chances for world peace.

Morality in foreign policy

Republican Platform, 1976, p.19

The goal of Republican foreign policy is the achievement of liberty under law and a just and lasting peace in the world. The principles by which we act to achieve peace and to protect the interests of the United States must merit the restored confidence of our people.

Republican Platform, 1976, p.19

We recognize and commend that great beacon of human courage and morality, Alexander Solzhenitsyn, for his compelling message that we must face the world with no illusions about the nature of tyranny. Ours will be a foreign policy that keeps this ever in mind.

Republican Platform, 1976, p.19

Ours will be a foreign policy which recognizes that in international negotiations we must make no undue concessions; that in pursuing detente we must not grant unilateral favors with only the hope of getting future favors in return.

Republican Platform, 1976, p.19

Agreements that are negotiated, such as the one signed tn Helsinki, must not take from those who do not have freedom the hope of one day gaining it.

Republican Platform, 1976, p.19

Finally, we are firmly committed to a foreign policy in which secret agreements, hidden from our people, will have no part.

Republican Platform, 1976, p.19

Honestly, openly, and with firm conviction, we shall go forward as a united people to forge a lasting peace in the world based upon our deep belief in the rights of man, the rule of law and guidance by the hand of God.

National defense

Republican Platform, 1976, p.19

A superior national defense is the fundamental condition for a secure America and for peace and freedom for the world. Military strength is the path to peace. A sound foreign policy must be rooted in a superior defense capability, and both must be perceived as a deterrent to aggression and supportive of our national interests.

Republican Platform, 1976, p.19

The American people expect that their leaders will assure a national defense posture second to none. They know that planning for our national security must be a joint effort by the President and Congress. It cannot be the subject of partisan disputes. It should not be held hostage to domestic political adventurism.

Republican Platform, 1976, p.19

A minimum guarantee to preserve freedom and insure against blackmail and threats, and in the face of growing Soviet military power, requires a period of sustained growth in our defense effort. In constant dollars, the present defense budget will no more than match the defense budget of 1964, the year before a Democrat Administration involved America so deeply in the Vietnam war. In 1975 Soviet defense programs exceeded ours in investment by 85 percent, and exceeded ours in operating costs by 25 percent, and exceeded ours in research and development by 66 percent. The issue is whether our forces will be adequate to future challenges. We say they must be.

Republican Platform, 1976, p.19

We must always achieve maximum value for each defense dollar spent. Along with the elimination of the draft and the creation, under a Republican President, of all-volunteer armed services, we have reduced the personnel requirements for support functions without affecting our basic posture. Today there are fewer Americans in the uniformed services than at any time since the fall of 1950. Substantial economies have been made in weapons procurement and we will continue to act in a prudent manner with our defense appropriations.

Republican Platform, 1976, p.19

Our national defense effort will include the continuation of the major modernization program for our strategic missile and bomber forces, the development of a new intercontinental ballistic missile, a new missile launching submarine force and a modern bomber—the B-1—capable of penetrating the most sophisticated air defenses of the 1980's. These elements will comprise a deterrent of the first order.

Republican Platform, 1976, p.19

We will increase our army to 16 divisions, reinforce our program of producing new tanks and other armored vehicles, and support the development of new, highly accurate precision weapons.

Republican Platform, 1976, p.19

Our Navy, the guarantor of freedom of the seas, must have a major shipbuilding program, with an adequate balance between nuclear and non-nuclear ships. The composition of the fleet must be based on a realistic assessment of the threat we face, and must assure that no adversary will gain naval superiority.

Republican Platform, 1976, p.19

An important modernization program for our tactical air forces is under way. We will require new fighters and interceptor aircraft for the Air Force, Navy and Marines. As a necessary component of our long-range strategy, we will produce and deploy the B-1 bomber in a timely manner, allowing us to retain air superiority.

Republican Platform, 1976, p.19

Consistent with our total force policy, we will maintain strong reserve components.

Republican Platform, 1976, p.19

Our investments in military research and development are of great importance to our future defense capabilities. We must not lose the vital momentum.

Republican Platform, 1976, p.19

With increasing complexity of weapons, lead times for weapons systems are often as long as a decade, requiring careful planning and prudent financial decisions. An outstanding example of this process is the development and deployment of the cruise ppp [p.20] missile, which incorporates pinpoint precision by means of sophisticated guidance systems and is an exceptionally economical weapon to produce.

Republican Platform, 1976, p.20

Security assistance programs are important to our allies and we will continue to strengthen their efforts at self-defense. The improvement of their capabilities can help to ensure that the world balance is not tipped against us and can also serve to lessen chances for direct U.S. involvement in remote conflicts.

Republican Platform, 1976, p.20

As a vital component of our over-all national security posture, the United States must have the best intelligence system in the world. The effectiveness of the intelligence community must be restored, consonant with the reforms instituted by President Ford. We favor the creation of an independent oversight function by Congress and we will withstand partisan efforts to turn any part of our intelligence system into a political football. We will take every precaution to prevent the breakdown of security controls on sensitive intelligence information, endangering the lives of United States officials abroad, or affecting the ability of the President to act expeditiously whenever legitimate foreign policy and defense needs require it.

NATO and Europe

Republican Platform, 1976, p.20

Fundamental to a stable, secure world is the continuation of our traditional alliances. The North Atlantic Treaty Organization (NATO) now approaching the end of its third decade, remains healthy and vigorous.

Republican Platform, 1976, p.20

The threat to our mutual security by a totalitarian power bent on expansion brought 15 nations together. The expression of our collective will to resist resulted in the creation and maintenance of a military deterrent which, while not without occasional strains, has served our vital interests well. Today that threat continues.

Republican Platform, 1976, p.20

We have succeeded in extending our cooperation within NATO and have taken bold new steps in economic cooperation with our partners. Faced with a serious crisis in the energy field following the imposition of the oil boycott, we demonstrated that it was possible to coordinate our joint activities with the other NATO nations.

Republican Platform, 1976, p.20

The economic strength of western Europe has increased to the point where our NATO partners can now assume a larger share of the common defense; in response to our urging, our allies are demonstrating a greater willingness to do so. This is not the time to recommend a unilateral reduction of American military forces in Europe. We will, however, pursue the balanced reduction of forces in both Western and Eastern Europe, based on agreements which do not jeopardize the security of the Alliance. With our Alliance partners, we affirm that a strong NATO defense, based on a United States military presence, is vital to the defense of western Europe.

Republican Platform, 1976, p.20

Some of our NATO allies have experienced rapid and dynamic changes. We are encouraged by developments in the Iberian peninsula, where both Portugal and Spain now face more promising futures. Early consideration should be given to Spain's accession to NATO.

Republican Platform, 1976, p.20

At the same time we would view with concern any political developments elsewhere in Europe which are destabilizing to NATO interests. We support the right of all nations to choose their leaders. Democracy and freedom are best served by ensuring that those fundamental rights are preserved and extended for future generations to choose in freedom.

Republican Platform, 1976, p.20

The difficult problem of Cyprus, which separates our friends in Greece and Turkey, should be addressed and resolved by those two countries. The eastern flank of NATO requires restored cooperation there and, eventually, friendly relations between the two countries.

Republican Platform, 1976, p.20

Republican leadership has strengthened this nation's good relations with the European Economic Community (EEC) in an age of increasing competition and potential irritations. We will maintain and strengthen the excellent relations we have achieved with the EEC.

Republican Platform, 1976, p.20

In the final analysis, the NATO Alliance will be as effective as our will and determination, as well as that of our allies, to support it. The function of collective security is to deter wars and, if necessary, to fight and win those wars not successfully deterred. Our vigilance is especially required during periods of prolonged relaxation of tensions with our adversaries because we cannot permit ourselves to accept words and promises as a substitute for deeds. We are determined that the NATO Alliance shall not be lulled into a false sense of security. It can and must respond vigorously when called upon to act.

Asia and the Pacific

Republican Platform, 1976, p.20

The United States has vital interests in the entire Pacific Basin and those interests lie foremost in Asian tranquility and stability.

Republican Platform, 1976, p.20

The experience of ending direct American involvement in a difficult and costly war initiated during Democrat Administrations has taught us a great deal about how we ought to define our interests in this part of the world. The United States is indisputably a Pacific power. We have sought to express our interests in the area through strengthening existing friendly ties and creating new ones.

Republican Platform, 1976, p.20

Japan will remain the main pillar of our Asian policy. We have helped to provide the framework, over the course of thirty years, for the development of the Japanese economy, which has risen to second place among free world nations. This nation, without natural resources, has maximized its greatest resource, the Japanese people, to achieve one of the world's most significant economic advances. We will continue our policy of close ppp [p.21] consultation and cooperation with this valued friend. We have succeeded in establishing an exceptional relationship with Japan. Our long-range goals of stability and economic cooperation are identical, forming the essential strength of a relationship which both countries seek actively to deepen.

Republican Platform, 1976, p.21

With respect to the Republic of Korea, a nation with which we have had traditionally close ties and whose economy has grown rapidly in recent years, we shall continue our policy of military and economic assistance. United States troops will be maintained in Korea so long as there exists the possibility of renewed aggression from North Korea. Time has not dimmed our memories of the sudden assault against South Korea. We reaffirm the commitment of the United States to the territorial integrity and the sovereignty of the Republic of Korea. Simultaneously we encourage the Governments of South Korea and North Korea to institute domestic policy initiatives leading to the extension of basic human rights.

Republican Platform, 1976, p.21

When Republicans assumed executive office in 1969, we were confronted with a war in Vietnam involving more than 500,000 United States troops, and to which we had committed billions of dollars and our national honor and prestige. It was in the spirit of bipartisan support for Presidential foreign policy initiatives, inaugurated in the postwar era by Senator Arthur Vandenberg, that most Republicans supported the United States commitment to assist South Vietnam resist Communist-sponsored aggression. The human cost to us was great; more than 55,000 Americans died in that conflict, and more than 300,000 were wounded.

Republican Platform, 1976, p.21

A policy of patient, persistent and principled negotiations extricated the United States from that ill-fated war with the expectation that peace would prevail. The refusal of the Democrat-controlled Congress to give support to Presidential requests for military aid to the beleaguered nations of South Vietnam, Cambodia and Laos, coupled with sustained military assaults by the Communists in gross violation of the Paris Peace Accords, brought about the collapse of those nations and the subjugation of their people to totalitarian rule.

Republican Platform, 1976, p.21

We recognize that there is a wide divergence of opinion concerning Vietnam, but we pledge that American troops will never again be committed for the purpose of our own defense, or the defense of those to whom we are committed by treaty or other solemn agreements, without the clear purpose of achieving our stated diplomatic and military objectives.

Republican Platform, 1976, p.21

We must achieve the return of all Americans who may be held in Southeast Asia, and a full accounting for those listed as Missing in Action. We strongly urge continued consultation between the President and the National League of Families of American Prisoners and Missing in Southeast Asia. This country owes at least this much to all of these courageous people who have anguished so long over this matter. To this end, and to underscore our top priority commitment to the families of these POWs and MIAs, we recommend, among other actions, the establishment of a presidential task force headed by a special presidential representative.

Republican Platform, 1976, p.21

We condemn the inhumane and criminal retributions which have taken place in Cambodia, where mass executions and forced re-settlements have been imposed on innocent civilians.

Republican Platform, 1976, p.21

The important economic developments taking place in Singapore, Indonesia, Malaysia, the Philippines and other Asian countries, will lead to much improved living standards for the people there. We reaffirm our friendship with these nations. Equally, our relationships with Australia and New Zealand are historic and important to us; they have never been better and provide a firm base on which to build.

United States-Chinese relations

Republican Platform, 1976, p.21

A development of significance for the future of Asia and for the world came to fruition in 1972 as our communications were restored with the People's Republic of China. This event has allowed us to initiate dialogue with the leaders of a quarter of the earth's population, and trade channels with the People's Republic have been opened, leading to benefits for each side.

Republican Platform, 1976, p.21

The People's Republic of China can and will play an increasingly important role in world affairs. We shall seek to engage the People's Republic of China in an expanded network of contacts and trade. Such a process cannot realistically proceed at a forced or incautious pace; the measured but steady growth of our relations best serves our interests. We do not ignore the profound differences in our respective philosophies, governmental institutions, policies and views on individual liberty, and we are hopeful that basic human rights will be extended to the Chinese people. What is truly fundamental is that we have established regular working channels with the People's Republic of China and that this process can form an important contribution to world peace.

Republican Platform, 1976, p.21

Our friendly relations with one great power should not be construed as a challenge to any other nation, large or small. The United States government, while engaged in a normalization of relations with the People's Republic of China, will continue to support the freedom and independence of our friend and ally, the Republic of China, and its 16 million people. The United States will fulfill and keep its commitments, such as the mutual defense treaty, with the Republic of China.

The Americas

Republican Platform, 1976, p.21

The relations of the United States with the Americas are of vital and immediate importance. How we conduct our affairs with our neighbors to the North and South will continue to be a priority.

Republican Platform, 1976, p.22

ppp [p.22] In the recent past our attention has at times been diverted to more distant parts of the world. There can be no sensible alternative to close relationships and understanding among the nations of the hemisphere.

Republican Platform, 1976, p.22

It is true for a series of new departures in our relations with Canada. Canada is our most important trading partner, and we are hers. We, as Americans, feel a deep affinity for our Canadian friends, and we have much at stake in the development of closer relationships based on mutual understanding and complete equality.

Republican Platform, 1976, p.22

To our neighbors in Mexico, Central America and South America, we also say that we wish the opportunity to expand our dialogue. The needs of our friends are great, but this must not serve as an obstacle for a concerted effort to work together more closely. The United States has taken steps to adjust tariffs so as to maximize access to our markets. We recognize that our neighbors place no value on complex and cumbersome aid schemes; they see self-help modernization, and expanded trade as the main sources of economic progress. We will work with them to define specific steps that we can take to help them achieve greater economic strength, and to advance our mutual interests.

Republican Platform, 1976, p.22

By continuing its policies of exporting subversion and violence, Cuba remains outside the Inter-American family of nations. We condemn attempts by the Cuban dictatorship to intervene in the affairs of other nations; and, as long as such conduct continues, it shall remain ineligible for admission to the Organization of American States.

Republican Platform, 1976, p.22

We shall continue to share the aspirations of the Cuban people to regain their liberty. We insist that decent and humane conditions be maintained in the treatment of political prisoners in the Cuban jails, and we will seek arrangements to allow international entities, such as the International Red Cross, to investigate and monitor the conditions in those jails.

Republican Platform, 1976, p.22

The present Panama Canal Treaty provides that the United States has jurisdictional rights in the Canal Zone as "if it were the sovereign." The United States intends that the Panama Canal be preserved as an international waterway for the ships of all nations. This secure access is enhanced by a relationship which commands the respect of Americans and Panamanians and benefits the people of both countries. In any talks with Panama, however, the United States negotiators should in no way cede, dilute, forfeit, negotiate or transfer any rights, power, authority, jurisdiction, territory or property that are necessary for the protection and security of the United States and the entire Western Hemisphere.

Republican Platform, 1976, p.22

We reaffirm our faith in the ability of the Organization of American States, which remains a valuable means of inter-American consultation.

The Middle East

Republican Platform, 1976, p.22

The preservation of peace and stability in the Middle East is a paramount concern. The efforts of two Republican Administrations, summoning diplomatic and political skills, have been directed toward reduction of tensions and toward avoiding flashpoints which could serve as an excuse for yet another round of conflict between Israel and the Arab countries.

Republican Platform, 1976, p.22

Our commitment to Israel is fundamental and enduring. We have honored and will continue to honor that commitment in every way—politically, economically and by providing the military aid that Israel requires to remain strong enough to deter any potential aggression. Forty percent of all United State's aid that Israel has received since its creation in 1948 has come in the last two fiscal years, as a result of Republican initiatives. Our policy must remain one of decisive support for the security and integrity of Israel.

Republican Platform, 1976, p.22

An equally important component of our commitment to Israel lies in continuing our efforts to secure a just and durable peace for all nations in that complex region. Our efforts have succeeded, for the first time since the creation of the state of Israel, in moving toward a negotiated peace settlement which would serve the interests and the security of all nations in the Middle East. Peace in the Middle East now requires face-to-face, direct negotiations between the states involved with the recognition of safe, secure and defensible borders for Israel.

Republican Platform, 1976, p.22

At the same time, Republic Administrations have succeeded in reestablishing communication with the Arab countries, and have made extensive progress in our diplomatic and commercial relations with the more moderate Arab nations.

Republican Platform, 1976, p.22

As a consequence of the Middle East conflict of 1973, the petroleum producing states imposed an embargo on the export of oil to most of the advanced industrial countries. We have succeeded in creating numerous cooperative mechanisms to protect ourselves, working in concert with our allies, against any future embargoes. The United States would view any attempt to reimpose an embargo as an essentially hostile act. We will oppose discriminatory practices, including boycotts of any type.

Republican Platform, 1976, p.22

Because we have such fundamental interests in the Middle East, it will be our policy to continue our efforts to maintain the balance of power in the Mediterranean region. Our adversaries must recognize that we will not permit a weakening of our defenses or any attempt to disturb valued Alliance relationships in the Eastern Mediterranean.

Republican Platform, 1976, p.22

We shall continue to support peace initiatives in the civil war in Lebanon; United States envoys engaged in precisely such an initiative were murdered, and we express our sorrow for their untimely deaths and for all other dedicated government employees who ppp [p.23] have been slain elsewhere while in service to their country. In Lebanon, we stand ready to provide food, medical and other humanitarian assistance.

Africa

Republican Platform, 1976, p.23

The United States has always supported the process of self-determination in Africa. Our friendship for the African countries is expressed in support for continued peaceful economic development, expansion of trade, humanitarian relief efforts and our belief that the entire continent should be free from outside military intervention. Millions of Americans recognize their historical and cultural ties with Africa and express their desire that United States policy toward Africa is a matter of great importance.

Republican Platform, 1976, p.23

We support all forces which promote negotiated settlements and racial peace. We shall continue to deplore all violence and terrorism and to urge all concerned that the rights of tribal, ethnic and racial minorities be guaranteed through workable safeguards. Our Policy is to strengthen the forces of moderation recognizing that solutions to African problems will not come quickly. The peoples of Africa can coexist in security, work together in freedom and harmony, and strive together to secure their prosperity. We hope that the Organization of African Unity will be able to achieve mature and stable relationships within Africa and abroad.

Republican Platform, 1976, p.23

The interests of peace and security in Africa are best served by the absence of arms and greater concentration on peaceful development. We reserve the right to maintain the balance by extending our support to nations facing a threat from Soviet-supplied states and from Soviet weapons.

United States-Soviet relations

Republican Platform, 1976, p.23

American foreign policy must be based upon a realistic assessment of the Communist challenge in the world. It is clear that the perimeters of freedom continue to shrink throughout the world in the face of the Communist challenge. Since 1917, totalitarian Communism has managed through brute force, not through the free electoral process, to bring an increasingly substantial portion of the world's land area and peoples under its domination. To illustrate, most recently South Vietnam, Cambodia, and Laos have fallen under the control of Communist dictatorships, and in that part of the world the Communist pressure mounts against Thailand, the Republic of China, and Republic of Korea. In Africa, Communist Cuban forces, brazenly assisted by the Soviet Union, have recently imposed a Communist dictatorship upon the people of Angola. Other countries in Africa and throughout the world generally await similar fates. These are the realities of world power in our time. The United States is thoroughly justified in having based its foreign policy upon these realities.

Republican Platform, 1976, p.23

Thirty years ago relations between United States and the Soviet Union were in a phase of great difficulty, leading to the tensions of the Cold war era. Although there have been changes in this crucial superpower relationship, there remain fundamental and profound differences between us. Republican Presidents, while acknowledging the depth of the gulf which separates our free society from Soviet society, have sought methodically to isolate and develop those areas of our relations which would serve to lessen tension and reduce the chance of unwanted conflict.

Republican Platform, 1976, p.23

In a world beset by countless opportunities for discord and armed conflict, the relationship between the United States and the Soviet Union is critically important; on it rests the hopes of the world for peace. We offer a policy that maintains our fundamental strength and demonstrates our steadfast determination to prevent aggressive use of Soviet power.

Republican Platform, 1976, p.23

The role of a responsible, participating Congress in maintaining this diplomatic and military posture is critical to success. The United States must remain a loyal and dependable ally, and must be prepared to carry out commitments and to demonstrate a willingness to act. Resistance to open aggression, such as the Soviet-sponsored Cuban intervention in Angola, must not be allowed to become the subject of a partisan debate, nor can it be allowed to become an unchallenged and established pattern of international behavior, lest our credibility and deterrent strength be greatly diminished.

Republican Platform, 1976, p.23

Soviet military power has grown rapidly in recent years, and while we shall prevent a military imbalance or a sudden shift in the global balance of power, we shall also diligently explore with the Soviet Union new ways to reduce tensions and to arrive at mutually beneficial and self-enforcing agreements in all fields of international activity. Important steps have been taken to limit strategic nuclear arms. The Vladivostok Agreement of November 1974 placed a ceiling on the strategic forces of both the United States and the Soviet Union. Further negotiations in arms control are continuing. We shall not agree for the sake of agreement; on the contrary, we will make sure that any agreements yield fundamental benefits to our national security.

Republican Platform, 1976, p.23

As an example of hard-headed bargaining, our success in concluding agreements limiting the size of peaceful nuclear explosions and nuclear weapons tests will, for the first time, permit the United States to conduct on-site inspections in the Soviet Union itself. This important step can now be measured in practical terms. All such agreements must stand the test of verification. An agreement that does not provide this safeguard is worse than no agreement at all.

Republican Platform, 1976, p.23

We support the consolidation of joint efforts with our allies to verify that our policies regarding the transfer of technology to the Soviet Union and its allies are in concert and that consultation will be designed to ppp [p.24] preclude the sale of those technology-intensive products to the Soviet Union by the United States and our allies which will directly or indirectly jeopardize our national security.

Republican Platform, 1976, p.24

Our trade in non-strategic areas creates jobs here at home, substantially improves our balance-of-payments position, and can contribute to an improved political climate in the world. The overseas sale of our agricultural products benefits American farmers and consumers. To guard against any sudden shift in domestic prices as the consequence of unannounced purchases, we have instituted strict reporting procedures and other treaty safeguards. We shall not permit concessional sales of agricultural products to the Soviet Union, nor shall we permit the Soviet Union or others to determine our agricultural export policies by irregular and unpredictable purchases.

Republican Platform, 1976, p.24

The United States and the Soviet Union remain ideological competitors. We do not shrink from such a challenge; rather, we welcome the opportunity to demonstrate that our way of life is inherently preferable to regimentation and government-enforced orthodoxy. We shall expect the Soviet Union to implement the United Nations Declaration on Human Rights and the Helsinki Agreements, which guarantee the conditions for the free interchange of information and the right to emigrate, including emigration of Soviet Jews, Christians, Moslems and others who wish to join relatives abroad. In this spirit we shall expect the immediate end of all forms of harassment, including imprisonment and military service, aimed at preventing such emigration. America must take a firm stand to bring about liberalization of emigration policy in countries which limit or prohibit free emigration. Governments which enjoy the confidence of their people need have no fear of cultural, intellectual or press freedom.

Republican Platform, 1976, p.24

Our support for the people of Central and Eastern Europe to achieve self-determination will continue. Their ability to choose their future is of great importance to peace and stability. We favor increasing contacts between Eastern and western Europe and support the increasing economic ties of all the countries of Europe. We strongly support the continuation of the Voice of America, Radio Free Europe and Radio Liberty with adequate appropriations. Strict reciprocity must govern our diplomatic relations with the Soviet Union. We express our concern for the safety of our diplomatic representatives in the Soviet Union, and we insist that practices such as microwave transmissions directed at the United States Embassy be terminated immediately.

Republican Platform, 1976, p.24

Thus our relations with the Soviet Union will be guided by solid principles. We will maintain our strategic and conventional forces; we will oppose the deployment of Soviet power for unilateral advantages or political and territorial expansion; we will never tolerate a shift against us in the strategic balance; and we will remain firm in the face of pressure, while at the same time expressing our willingness to work on the basis of strict reciprocity toward new agreements which will help achieve peace and stability.

International cooperation

Republican Platform, 1976, p.24

Strong support for international cooperation in all fields has been a hallmark of United States international policy for many decades. Two Republican Administrations have strengthened agencies of international cooperation not only because of our humanitarian concern for others, but also because it serves United States interests to be a conscientious member of the world community.

Republican Platform, 1976, p.24

The political character of the United Nations has become complex. With 144 sovereign members, the U.N. experiences problems associated with a large, sometimes cumbersome and diverse body. We seek to accommodate to these changes in the spirit of friendly concern, but when the United Nations becomes arrayed against the vital interest of any of its member states on ideological or other narrow grounds, the very principles of the organization are threatened. The United States does not wish to dictate to the U.N., yet we do have every right to expect and insist that scrupulous care be given to the rights of all members. Steamroller techniques for advancing discriminatory actions will be opposed. Actions such as the malicious attempt to depict Zionism as a form of racism are inconsistent with the objectives of the United Nations and are repugnant to the United States. The United States will continue to be a firm supporter and defender of any nation subjected to such outrageous assaults. We will not accept ideological abuses of the United States.

Republican Platform, 1976, p.24

In the many areas of International cooperation which benefit the average American—elimination of terrorism, peacekeeping, non-proliferation of nuclear weapons, termination of the international drug trade, and orderly use of ocean resources—we pledge to build new international structures of cooperation. At the same time, we shall seek to insure that the cost of such new structures, as well as the cost of existing structures, are more equitably shared among participating nations. In the continued tradition of American concern for the quality of human life everywhere, we shall give vigorous support to the non-political work of the specialized agencies of the United Nations which deal with such areas as nutrition and disaster relief for the world's poor and disadvantaged.

Republican Platform, 1976, p.24

The United States should withdraw promptly from the International Labor Organization if that body fails to stop its increasing politicization.

Republican Platform, 1976, p.24

Eight years ago we pledged to eliminate waste and to make more business-like the administration of United States foreign aid programs. We have endeavored to fulfill these pledges. Our foreign economic assistance programs are now being operated efficiently with emphasis on helping others to ppp [p.25] help themselves, on food production and rural development, on health programs and sound population planning assistance, and on development of human resources.

Republican Platform, 1976, p.25

We have sought to encourage others, including the oil producing countries, to assume a larger share of the burden of assistance. We shall continue our efforts to secure adequate sources of financing for economic projects in emerging countries.

Republican Platform, 1976, p.25

The world's oceans, with their vast resources, must become areas of extended cooperation. We favor a successful conclusion to the Law of the Sea Conference provided it will suitably protect legitimate national interests, freedom of the seas and responsible use of the seas. We are determined to maintain the right of free and unmolested passage for ships of all nations on the high seas and in international waterways.

Republican Platform, 1976, p.25

We favor an extension of the territorial sea from three to twelve miles, and we favor in principle the creation of a 200-mile economic zone in which coastal states would have exclusive rights to explore and develop natural resources.

Republican Platform, 1976, p.25

We strongly condemn illegal corporate payments made at home and abroad. To eliminate illegal payments to foreign officials by American corporations, we support passage of President Ford's proposed legislation and the OECD Declaration on Investment setting forth reasonable guidelines for business conduct.

Republican Platform, 1976, p.25

The growth of civilian nuclear technology, and the rising demand for nuclear power as an alternative to increasingly costly fossil fuel resources, combine to require our recognition of the potential dangers associated with such developments. All nations must work to assure that agreements and treaties currently governing nuclear technology and nuclear exports are carefully monitored. We shall work to devise new multilateral policies governing the export of sensitive nuclear technologies.

International economic policy

Republican Platform, 1976, p.25

The tumultuous events of the past several years in the world economy were an enormous challenge to our creativity and to our capacity for leadership. We have emerged from this difficult period in a new position in the world, and we have directed and guided a sound recovery.

Republican Platform, 1976, p.25

To assure the permanence of our own prosperity, we must work with others, demonstrating our leadership and the vitality of our economy. Together with the industrial democracies, we must ensure steady, non-inflationary growth, based on expanded international cooperation.

Republican Platform, 1976, p.25

The Republican Administration will cooperate fully in strengthening the international trade and monetary system, which provides the foundation for our prosperity and that of all nations. We shall bargain hard to remove barriers to an open economic system, and we shall oppose new restrictions to trade. We shall continue to represent vigorously our nation's economic interests in the trade negotiations taking place in Geneva, guard against protectionism, and insist that the principles of fair trade be scrupulously observed. When industries and jobs are adversely affected by foreign competition, adjustment assistance under the Trade Act of 1974 is made available. This Act must be under continuous review to ascertain that it reflects changing circumstances.

Republican Platform, 1976, p.25

The Republican Party believes that cooperation in the energy field is indispensable to international stability. Most of the industrial democracies and the less developed countries are increasingly dependent on imported oil, which causes them to be politically, economically and strategically vulnerable. Through the establishment of the International Energy Agency, steps have been taken to expand consumer cooperation. We shall also continue the dialogue with the oil producing countries.

Republican Platform, 1976, p.25

We shall continue to work closely with the less-developed countries to promote their economic growth. Those countries will be encouraged to enter into mutually beneficial trade relationships with us that contribute to world peace. To achieve this, we must strengthen the confidence of the major industrial countries as they take part in discussions with less-developed countries. There is no reason for us to be defensive; our combined assets can be used in a coordinated strategy to make our influence effective. We will not yield to threats or confrontational politics.

Republican Platform, 1976, p.25

While we shall support a global increase of investment in natural resources of all types, we shall also oppose the replacement of the free market mechanism by cartels, price-fixing arrangements or commodity agreements. We shall continue policies designed to assure free market consumers abroad that the United States will remain a dependable supplier of agricultural commodities.

Conclusion

Republican Platform, 1976, p.25

The American people can be proud of our nation's achievements in foreign policy over the past eight years.

Republican Platform, 1976, p.25

We are at peace.

Republican Platform, 1976, p.25

We are strong.

Republican Platform, 1976, p.25

We re-emphasize the importance of our ties with the nations of the Americas.

Republican Platform, 1976, p.25

Our relations with allies in the Atlantic community and with japan have never been closer.

Republican Platform, 1976, p.25

Significant progress has been made toward a just and durable settlement in the Middle East.

Republican Platform, 1976, p.25

We have sought negotiation rather than confrontation with our adversaries, while maintaining our strategic deterrent.

Republican Platform, 1976, p.25

The world economic recovery, led by the United States, is producing sustainable growth.

Republican Platform, 1976, p.25

In this year of our nation's bicentennial, the American people have confidence in ppp [p.26] themselves and are optimistic about the future.

Republican Platform, 1976, p.26

We, the Republican Party, proudly submit our record and our Platform to you.

Jimmy Carter's Inaugural Address, 1977

Title: Jimmy Carter's Inaugural Address

Author: Jimmy Carter

Date: January 20, 1977

Source: Public Papers of the Presidents, Jimmy Carter, pp.1-4

Public Papers of Carter, 1977, p.1

For myself and for our Nation, I want to thank my predecessor for all he has done to heal our land.

Public Papers of Carter, 1977, p.1

In this outward and physical ceremony, we attest once again to the inner and spiritual strength of our Nation. As my high school teacher, Miss Julia Coleman, used to say, "We must adjust to changing times and still hold to unchanging principles."

Public Papers of Carter, 1977, p.1

Here before me is the Bible used in the inauguration of our first President, in 1789, and I have just taken the oath of office on the Bible my mother gave me just a few years ago, opened to a timeless admonition from the ancient prophet Micah: "He hath showed thee, O man, what is good; and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God."

Public Papers of Carter, 1977, p.1

This inauguration ceremony marks a new beginning, a new dedication within our Government, and a new spirit among us all. A President may sense and proclaim that new spirit, but only a people can provide it.

Public Papers of Carter, 1977, p.1

Two centuries ago, our Nation's birth was a milestone in the long quest for freedom. But the bold and brilliant dream which excited the founders of this Nation still awaits its consummation. I have no new dream to set forth today, but rather urge a fresh faith in the old dream.

Public Papers of Carter, 1977, p.1–p.2

Ours was the first society openly to define itself in terms of both spirituality and human liberty. It is that unique self-definition which has given us an exceptional appeal, but it also imposes on us a special obligation [p.2] to take on those moral duties which, when assumed, seem invariably to be in our own best interests.

Public Papers of Carter, 1977, p.2

You have given me a great responsibility—to stay close to you, to be worthy of you, and to exemplify what you are. Let us create together a new national spirit of unity and trust. Your strength can compensate for my weakness, and your wisdom can help to minimize my mistakes.

Public Papers of Carter, 1977, p.2

Let us learn together and laugh together and work together and pray together, confident that in the end we will triumph together in the right.

Public Papers of Carter, 1977, p.2

The American dream endures. We must once again have full faith in our country—and in one another. I believe America can be better. We can be even stronger than before.

Public Papers of Carter, 1977, p.2

Let our recent mistakes bring a resurgent commitment to the basic principles of our Nation, for we know that if we despise our own government, we have no future. We recall in special times when we have stood briefly, but magnificently, united. In those times no prize was beyond our grasp.

Public Papers of Carter, 1977, p.2

But we cannot dwell upon remembered glory. We cannot afford to drift. We reject the prospect of failure or mediocrity or an inferior quality of life for any person. Our Government must at the same time be both competent and compassionate.

Public Papers of Carter, 1977, p.2

We have already found a high degree of personal liberty, and we are now struggling to enhance equality of opportunity. Our commitment to human rights must be absolute, our laws fair, our national beauty preserved; the powerful must not persecute the weak, and human dignity must be enhanced.

Public Papers of Carter, 1977, p.2

We have learned that more is not necessarily better, that even our great Nation has its recognized limits, and that we can neither answer all questions nor solve all problems. We cannot afford to do everything, nor can we afford to lack boldness as we meet the future. So, together, in a spirit of individual sacrifice for the common good, we must simply do our best.

Public Papers of Carter, 1977, p.2

Our Nation can be strong abroad only if it is strong at home. And we know that the best way to enhance freedom in other lands is to demonstrate here that our democratic system is worthy of emulation.

Public Papers of Carter, 1977, p.2

To be true to ourselves, we must be true to others. We will not behave in foreign places so as to violate our rules and standards here at home, for we know that the trust which our Nation earns is essential to our strength.

Public Papers of Carter, 1977, p.2–p.3

The world itself is now dominated by a new spirit. Peoples more numerous and more politically aware are craving, and now demanding, [p.3] their place in the sun—not just for the benefit of their own physical condition, but for basic human rights.

Public Papers of Carter, 1977, p.3

The passion for freedom is on the rise. Tapping this new spirit, there can be no nobler nor more ambitious task for America to undertake on this day of a new beginning than to help shape a just and peaceful world that is truly humane.

Public Papers of Carter, 1977, p.3

We are a strong nation, and we will maintain strength so sufficient that it need not be proven in combat—a quiet strength based not merely on the size of an arsenal but on the nobility of ideas.

Public Papers of Carter, 1977, p.3

We will be ever vigilant and never vulnerable, and we will fight our wars against poverty, ignorance, and injustice, for those are the enemies against which our forces can be honorably marshaled.

We are a proudly idealistic nation, but let no one confuse our idealism with weakness.

Public Papers of Carter, 1977, p.3

Because we are free, we can never be indifferent to the fate of freedom elsewhere. Our moral sense dictates a clear-cut preference for those societies which share with us an abiding respect for individual human rights. We do not seek to intimidate, but it is clear that a world which others can dominate with impunity would be inhospitable to decency and a threat to the well-being of all people.

Public Papers of Carter, 1977, p.3

The world is still engaged in a massive armaments race designed to ensure continuing equivalent strength among potential adversaries. We pledge perseverance and wisdom in our efforts to limit the world's armaments to those necessary for each nation's own domestic safety. And we will move this year a step toward our ultimate goal—the elimination of all nuclear weapons from this Earth. We urge all other people to join us, for success can mean life instead of death.

Public Papers of Carter, 1977, p.3

Within us, the people of the United States, there is evident a serious and purposeful rekindling of confidence. And I join in the hope that when my time as your President has ended, people might say this about our Nation:

—that we had remembered the words of Micah and renewed oursearch for humility, mercy, and justice;

—that we had torn down the barriers that separated those of different race and region and religion, and where there had been mistrust, built unity, with a respect for diversity;

—that we had found productive work for those able to perform it;

—that we had strengthened the American family, which is the basis of our society;

—that we had ensured respect for the law and equal treatment under the law, for the weak and the powerful, for the rich and the poor; and

—that we had enabled our people to be proud of their own Government once again.

Public Papers of Carter, 1977, p.4

I would hope that the nations of the world might say that we had built a lasting peace, based not on weapons of war but on international policies which reflect our own most precious values.

Public Papers of Carter, 1977, p.4

These are not just my goals—and they will not be my accomplishments—but the affirmation of our Nation's continuing moral strength and our belief in an undiminished, ever-expanding American dream.

Thank you very much.

Public Papers of Carter, 1977, p.4

NOTE: President Carter spoke at 12:05 p.m. from a platform erected at the East Front of the Capitol. Immediately before the address, Chief Justice of the United States Warren E. Burger administered the oath of office.

Presidential Proclamation of Pardon 4483, 1977

Title: Presidential Proclamation of Pardon 4483

Author: Jimmy Carter

Date: January 21, 1977

Source: Public Papers of the Presidents, Jimmy Carter, 1977, p.5

GRANTING PARDON FOR VIOLATIONS OF

THE SELECTIVE SERVICE ACT,

AUGUST 4, 1964 TO MARCH 28, 1973

By the President of the United States

of America

A Proclamation

Public Papers of Carter, 1977, p.5

Acting pursuant to the grant of authority in Article II, Section 2, of the Constitution of the United States, I, Jimmy Carter, President of the United States, do hereby grant a full, complete and unconditional pardon to: (1) all persons who may have committed any offense between August 4, 1964 and March 28, 1973 in violation of the Military Selective Service Act or any rule or regulation promulgated thereunder; and (2) all persons heretofore convicted, irrespective of the date of conviction, of any offense committed between August 4, 1964 and March 28, 1973 in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, restoring to them full political, civil and other rights.

Public Papers of Carter, 1977, p.5

This pardon does not apply to the following who are specifically excluded therefrom:

(1) All persons convicted of or who may have committed any offense in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, involving force or violence; and

Public Papers of Carter, 1977, p.5

(2) All persons convicted of or who may have committed any offense in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, in connection with duties or responsibilities arising out of employment as agents, officers or employees of the Military Selective Service system.

Public Papers of Carter, 1977, p.5

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of January, in the year of our Lord nineteen hundred and seventy-seven, and of the Independence of the United States of America the two hundred and first.

JIMMY CARTER

[Filed with the Office of the Federal Register, 1:04 p.m., January 21, 1977]

President Carter's Remarks on Signing the Department of Energy Organization Act and Bill Amending the Small Business Administration Act, 1977

Title: President Carter's Remarks on Signing the Department of Energy Organization Act and Bill Amending the Small Business Administration Act

Author: Jimmy Carter

Date: August 4, 1977

Source: Public Papers of the Presidents, Carter, 1977, pp.1410-1412

Public Papers of Carter, 1977, p.1410

THE PRESIDENT. I have two legislative acts that have now been passed by the Congress, which I intend to sign this morning. One is a bill that has been very important to me. It's concerning changes in the Small Business Administration to make it more feasible for myself, as President, and for the executive branch of Government to deal with victims of catastrophe such as floods, tornadoes.

Public Papers of Carter, 1977, p.1410

And this legislation has been sponsored by the Senators from West Virginia and others. It makes it possible for lower interest loans for people whose homes have been destroyed, whose businesses have been destroyed, and more direct and instant assistance.

Public Papers of Carter, 1977, p.1410

I'm particularly grateful that the majority leader, Senator Byrd, and Senator Jennings Randolph and the congressional delegation from West Virginia took the leadership in this legislation.

Public Papers of Carter, 1977, p.1410–p.1411

This is House of Representatives act 692, and it is with a great deal of pleasure that I sign this bill. [p.1411] [At this point, the President signed H.R. 692 into law.]

Public Papers of Carter, 1977, p.1411

I might point out that because of the great influence of these two gentlemen that I've just recognized, in the Senate the bill passed with a voice vote; in the House the vote was unanimous, 392 to 0.

Public Papers of Carter, 1977, p.1411

For the first time in 11 years, a Cabinet level department is now being created. The impending crisis of energy shortages has brought about an unprecedented quick action by the Congress in establishing the new Department of Energy.

Public Papers of Carter, 1977, p.1411

This in some ways has been controversial legislation because many agencies of Government are now being brought together under one roof, about 50 different agencies. And in the future, the head of this Department will be a person working directly under the President, who can be identified for those who want to work together in our Nation to at least alleviate the consequences of inevitable shortages of oil and gas and other energy supplies.

Public Papers of Carter, 1977, p.1411

Senator Ribicoff in the Senate, Congressman Jack Brooks in the House, and others who have worked closely with them—Senator Jackson, Senator Percy, Congressman Horton, and others that I could name—have done extraordinarily good work in bringing this legislation to completion. In only about 5 months this extremely complicated effort has been realized.

Public Papers of Carter, 1977, p.1411

I want to point out that the Department can now, I think, begin to deal in a much more aggressive and effective way not only with the needs of suppliers to increase the production of oil, gas, coal, solar, nuclear powers, but also to make sure that consumers of our country are treated fairly, that prices are adequate and not excessive.

Public Papers of Carter, 1977, p.1411

It can also work with the State Department and others in relationships with foreign countries. I'm very proud of this accomplishment by the Congress, and I'd like now to sign into law the Senate bill 826, which establishes the new Department of Energy.

[At this point, the President signed S. 826 into law.]

Public Papers of Carter, 1977, p.1411

Of course, the next problem that we face is the selection of a person to head up the new Department of Energy. This has been a matter that's been of great concern to me for the last few months. I've decided to establish a search committee [laughter] to choose a Secretary, and I have asked Dr. James Schlesinger to head up the search committee. And at his request, the membership of the committee will be limited to one person. [Laughter]

Public Papers of Carter, 1977, p.1411

I think that everyone who serves in the executive or legislative branches of our Government knows that because of his preeminent knowledge and stature and his sound judgment and, I think, political awareness and the trust of the American people in him, that he is a natural leader for this tremendous undertaking. And without waiting for his recommendation, I would like to ask if he would serve as the Secretary of the Department of Energy, and I would like to sign now a nomination request to the Senate of the United States, nominating James R. Schlesinger of Virginia to be Secretary of Energy, which is a new position in our Government.

Public Papers of Carter, 1977, p.1411

Jim, would you like to say a word?

Public Papers of Carter, 1977, p.1411–p.1412

MR. SCHLESINGER. I'd just say that I'm delighted to be here and want to congratulate you on the Department of Energy that the House and Senate worked together to achieve, with the help of your [p.1412] own administration. And I hope that it will light the way to a better energy solution for this Nation.

Public Papers of Carter, 1977, p.1412

REPRESENTATIVE BROOKS. Mr. President, organization is really policy. You have a great energy program, but it is absolutely essential that you have in place an organization that can make it work.

Public Papers of Carter, 1977, p.1412

Under your leadership and that of Dr. Schlesinger, I am confident that we will start on the solution of all our energy problems.

Public Papers of Carter, 1977, p.1412

THE PRESIDENT. We've got a long way to go on the energy policy, but I want to express my thanks at this moment to the House and Senate for the superb work they are already doing in this difficult area.

Public Papers of Carter, 1977, p.1412

I believe that before the Congress adjourns, hopefully in October, that we will have an energy policy to make our Nation proud. And I want to express my thanks to you, Senator Byrd, and to others.

Public Papers of Carter, 1977, p.1412

NOTE: The President spoke at 9: 24 a.m. at the signing ceremony in the Rose Garden at the White House. As enacted, H.R. 692 is Public Law 95-89, and S. 826 is Public Law 95-91, both approved August 4.

President Carter's State of the Union Address, 1978

Title: President Carter's State of the Union Address

Author: Jimmy Carter

Date: January 19, 1978

Source: Public Papers of the Presidents, Carter, 1978, pp.90-98

Public Papers of Carter, 1978, p.90

Mr. President, Mr. Speaker, Members of the 95th Congress, ladies and gentlemen:

Public Papers of Carter, 1978, p.90

Two years ago today we had the first caucus in Iowa, and one year ago tomorrow, I walked from here to the White House to take up the duties of President of the United States. I didn't know it then when I walked, but I've been trying to save energy ever since. [Laughter]

Public Papers of Carter, 1978, p.90

I return tonight to fulfill one of those duties of the Constitution: to give to the Congress—and to the Nation—information on the state of the Union.

Public Papers of Carter, 1978, p.90

Militarily, politically, economically, and in spirit, the state of our Union is sound.

Public Papers of Carter, 1978, p.90

We are a great country, a strong country, a vital and a dynamic country—and so we will remain.

Public Papers of Carter, 1978, p.90

We are a confident people and a hardworking people, a decent and a compassionate people—and so we will remain.

Public Papers of Carter, 1978, p.90

I want to speak to you tonight about where we are and where we must go, about what we have done and what we must do. And I want to pledge to you my best efforts and ask you to pledge yours.

Public Papers of Carter, 1978, p.90

Each generation of Americans has to face circumstances not of its own choosing, but by which its character is measured and its spirit is tested.

Public Papers of Carter, 1978, p.90

There are times of emergency, when a nation and its leaders must bring their energies to bear on a single urgent task. That was the duty Abraham Lincoln faced when our land was torn apart by conflict in the War Between the States. That was the duty faced by Franklin Roosevelt when he led America out of an economic depression and again when he led America to victory in war.

Public Papers of Carter, 1978, p.90

There are other times when there is no single overwhelming crisis, yet profound national interests are at stake.

Public Papers of Carter, 1978, p.90

At such times the risk of inaction can be equally great. It becomes the task of leaders to call forth the vast and restless energies of our people to build for the future.

Public Papers of Carter, 1978, p.90

That is what Harry Truman did in the years after the Second World War, when we helped Europe and Japan rebuild themselves and secured an international order that has protected freedom from aggression.

Public Papers of Carter, 1978, p.90

We live in such times now, and we face such duties.

Public Papers of Carter, 1978, p.90

We've come through a long period of turmoil and doubt, but we've once again found our moral course, and with a new spirit, we are striving to express our best instincts to the rest of the world.

Public Papers of Carter, 1978, p.90

There is all across our land a growing sense of peace and a sense of common purpose. This sense of unity cannot be expressed in programs or in legislation or in dollars. It's an achievement that belongs to every individual American. This unity ties together, and it towers over all our efforts here in Washington, and it serves as an inspiring beacon for all of us who are elected to serve.

Public Papers of Carter, 1978, p.90–p.91

This new atmosphere demands a new spirit, a partnership between those of us who lead and those who elect. The foundations of this partnership are truth, the courage to face hard decisions, concern for one another and the common good over special interests, and a basic faith and [p.91] trust in the wisdom and strength and judgment of the American people.

Public Papers of Carter, 1978, p.91

For the first time in a generation, we are not haunted by a major international crisis or by domestic turmoil, and we now have a rare and a priceless opportunity to address persistent problems and burdens which come to us as a nation-quietly and steadily getting worse over the years.

Public Papers of Carter, 1978, p.91

As President, I've had to ask you, the Members of Congress, and you, the American people, to come to grips with some of the most difficult and hard questions facing our society.

Public Papers of Carter, 1978, p.91

We must make a maximum effort, because if we do not aim for the best, we are very likely to achieve little. I see no benefit to the country if we delay, because the problems will only get worse.

Public Papers of Carter, 1978, p.91

We need patience and good will, but we really need to realize that there is a limit to the role and the function of government. Government cannot solve our problems, it can't set our goals, it cannot define our vision. Government cannot eliminate poverty or provide a bountiful economy or reduce inflation or save our cities or cure illiteracy or provide energy. And government cannot mandate goodness. Only a true partnership between government and the people can ever hope to reach these goals.

Public Papers of Carter, 1978, p.91

Those of us who govern can sometimes inspire, and we can identify needs and marshal resources, but we simply cannot be the managers of everything and everybody.

Public Papers of Carter, 1978, p.91

We here in Washington must move away from crisis management, and we must establish clear goals for the future-immediate and the distant future—which will let us work together and not in conflict. Never again should we neglect a growing crisis like the shortage of energy, where further delay will only lead to more harsh and painful solutions.

Public Papers of Carter, 1978, p.91

Every day we spend more than $120 million for foreign oil. This slows our economic growth, it lowers the value of the dollar overseas, and it aggravates unemployment and inflation here at home.

Public Papers of Carter, 1978, p.91

Now we know what we must do—increase production. We must cut down on waste. And we must use more of those fuels which are plentiful and more permanent. We must be fair to people, and we must not disrupt our Nation's economy and our budget.

Public Papers of Carter, 1978, p.91

Now, that sounds simple. But I recognize the difficulties involved. I know that it is not easy for the Congress to act. But the fact remains that on the energy legislation, we have failed the American people. Almost 5 years after the oil embargo dramatized the problem for us all, we still do not have a national energy program. Not much longer can we tolerate this stalemate. It undermines our national interest both at home and abroad. We must succeed, and I believe we will.

Public Papers of Carter, 1978, p.91

Our main task at home this year, with energy a central element, is the Nation's economy. We must continue the recovery and further cut unemployment and inflation.

Public Papers of Carter, 1978, p.91

Last year was a good one for the United States. We reached all of our major economic goals for 1977. Four million new jobs were created—an all time record and the number of unemployed dropped by more than a million. Unemployment right now is the lowest it has been since 1974, and not since World War II has such a high percentage of American people been employed.

Public Papers of Carter, 1978, p.91–p.92

The rate of inflation went down. There was a good growth in business profits and investments, the source of more jobs for our workers, and a higher standard of living for all our people. After taxes and inflation, [p.92] there was a healthy increase in workers' wages.

Public Papers of Carter, 1978, p.92

And this year, our country will have the first $2 trillion economy in the history of the world.

Public Papers of Carter, 1978, p.92

Now, we are proud of this progress the first year, but we must do even better in the future.

Public Papers of Carter, 1978, p.92

We still have serious problems on which all of us must work together. Our trade deficit is too large. Inflation is still too high, and too many Americans still do not have a job.

Public Papers of Carter, 1978, p.92

Now, I didn't have any simple answers for all these problems. But we have developed an economic policy that is working, because it's simple, balanced, and fair. It's based on four principles:

Public Papers of Carter, 1978, p.92

First, the economy must keep on expanding to produce new jobs and better income, which our people need. The fruits of growth must be widely shared. More jobs must be made available to those who have been bypassed until now. And the tax system must be made fairer and simpler.

Public Papers of Carter, 1978, p.92

Secondly, private business and not the Government must lead the expansion in the future.

Public Papers of Carter, 1978, p.92

Third, we must lower the rate of inflation and keep it down. Inflation slows down economic growth, and it's the most cruel to the poor and also to the elderly and others who live on fixed incomes.

Public Papers of Carter, 1978, p.92

And fourth, we must contribute to the strength of the world economy.

Public Papers of Carter, 1978, p.92

I will announce detailed proposals for improving our tax system later this week. We can make our tax laws fairer, we can make them simpler and easier to understand, and at the same time, we can—and we will—reduce the tax burden on American citizens by $25 billion.

Public Papers of Carter, 1978, p.92

The tax reforms and the tax reductions go together. Only with the long overdue reforms will the full tax cut be advisable.

Public Papers of Carter, 1978, p.92

Almost $17 billion in income tax cuts will go to individuals. Ninety-six percent of all American taxpayers will see their taxes go down. For a typical family of four, this means an annual saving of more than $250 a year, or a tax reduction of about 20 percent. A further $2 billion cut in excise taxes will give more relief and also contribute directly to lowering the rate of inflation.

Public Papers of Carter, 1978, p.92

And we will also provide strong additional incentives for business investment and growth through substantial cuts in the corporate tax rates and improvement in the investment tax credit.

Public Papers of Carter, 1978, p.92

Now, these tax proposals will increase opportunity everywhere in the Nation. But additional jobs for the disadvantaged deserve special attention.

Public Papers of Carter, 1978, p.92

We've already passed laws to assure equal access to the voting booth and to restaurants and to schools, to housing, and laws to permit access to jobs. But job opportunity-the chance to earn a decent living—is also a basic human right, which we cannot and will not ignore.

Public Papers of Carter, 1978, p.92

A major priority for our Nation is the final elimination of the barriers that restrict the opportunities available to women and also to black people and Hispanics and other minorities. We've come a long way toward that goal. But there is still much to do. What we inherited from the past must not be permitted to shackle us in the future.

Public Papers of Carter, 1978, p.92

I'll be asking you for a substantial increase in funds for public jobs for our young people, and I also am recommending that the Congress continue the public service employment programs at more than twice the level of a year ago. When welfare reform is completed, we will have more than a million additional jobs so that those on welfare who are able to work can work.

Public Papers of Carter, 1978, p.93

However, again, we know that in our free society, private business is still the best source of new jobs. Therefore, I will propose a new program to encourage businesses to hire young and disadvantaged Americans. These young people only need skills and a chance in order to take their place in our economic system. Let's give them the chance they need. A major step in the right direction would be the early passage of a greatly improved Humphrey-Hawkins bill.

Public Papers of Carter, 1978, p.93

My budget for 1979 addresses these national needs, but it is lean and tight. I have cut waste wherever possible.

Public Papers of Carter, 1978, p.93

I am proposing an increase of less than 2 percent after adjusting for inflation-the smallest increase in the Federal budget in 4 years.

Public Papers of Carter, 1978, p.93

Lately, Federal spending has taken a steadily increasing portion of what Americans produce. Our new budget reverses that trend, and later I hope to bring the Government's toll down even further. And with your help, we'll do that.

Public Papers of Carter, 1978, p.93

In time of high employment and a strong economy, deficit spending should not be a feature of our budget. As the economy continues to gain strength and as our unemployment rates continue to fall, revenues will grow. With careful planning, efficient management, and proper restraint on spending, we can move rapidly toward a balanced budget—and we will.

Public Papers of Carter, 1978, p.93

Next year the budget deficit will be only slightly less than this year. But one-third of the deficit is due to the necessary tax cuts that I've proposed. This year the right choice is to reduce the burden on taxpayers and provide more jobs for our people.

Public Papers of Carter, 1978, p.93

The third element in our program is a renewed attack on inflation. We've learned the hard way that high unemployment will not prevent or cure inflation. Government can help us by stimulating private investment and by maintaining a responsible economic policy. Through a new top-level review process, we will do a better job of reducing Government regulation that drives up costs and drives up prices.

Public Papers of Carter, 1978, p.93

But again, Government alone cannot bring down the rate of inflation. When a level of high inflation is expected to continue, then companies raise prices to protect their profit margins against prospective increases in wages and other costs, while workers demand higher wages as protection against expected price increases. It's like an escalation in the arms race, and understandably, no one wants to disarm alone.

Public Papers of Carter, 1978, p.93

Now, no one firm or a group of workers can halt this process. It's an effort that we must all make together. I'm therefore asking government, business, labor, and other groups to join in a voluntary program to moderate inflation by holding wage and price increases in each sector of the economy during 1978 below the average increases of the last 2 years.

Public Papers of Carter, 1978, p.93

I do not believe in wage and price controls. A sincere commitment to voluntary constraint provides a way—perhaps the only way—to fight inflation without Government interference.

Public Papers of Carter, 1978, p.93

As I came into the Capitol tonight, I saw the farmers, my fellow farmers, standing out in the snow. I'm familiar with their problem, and I know from Congress action that you are too. When I was running Carters Warehouse, we had spread on our own farms 5-10-15 fertilizer for about $40 a ton. The last time I was home, the price was about $100 a ton. The cost of nitrogen has gone up 150 percent, and the price of products that farmers sell has either stayed the same or gone down a little.

Public Papers of Carter, 1978, p.94

Now, this past year in 1977, you, the Congress, and I together passed a new agricultural act. It went into effect October 1. It'll have its first impact on the 1978 crops. It will help a great deal. It'll add $6 1/2 billion or more to help the farmers with their price supports and target prices.

Public Papers of Carter, 1978, p.94

Last year we had the highest level of exports of farm products in the history of our country—$24 billion. We expect to have more this year. We'll be working together. But I think it's incumbent on us to monitor very carefully the farm situation and continue to work harmoniously with the farmers of our country. What's best for the farmers, the farm families, in the long run is also best for the consumers of our country.

Public Papers of Carter, 1978, p.94

Economic success at home is also the key to success in our international economic policy. An effective energy program, strong investment and productivity, and controlled inflation will provide [improve] our trade balance and balance it, and it will help to protect the integrity of the dollar overseas.

Public Papers of Carter, 1978, p.94

By working closely with our friends abroad, we can promote the economic health of the whole world, with fair and balanced agreements lowering the barriers to trade.

Public Papers of Carter, 1978, p.94

Despite the inevitable pressures that build up when the world economy suffers from high unemployment, we must firmly resist the demands for self-defeating protectionism. But free trade must also be fair trade. And I am determined to protect American industry and American workers against foreign trade practices which are unfair or illegal.

Public Papers of Carter, 1978, p.94

In a separate written message to Congress, I've outlined other domestic initiatives, such as welfare reform, consumer protection, basic education skills, urban policy, reform of our labor laws, and national health care later on this year. I will not repeat these tonight. But there are several other points that I would like to make directly to you.

Public Papers of Carter, 1978, p.94

During these past years, Americans have seen our Government grow far from us.

Public Papers of Carter, 1978, p.94

For some citizens, the Government has almost become like a foreign country, so strange and distant that we've often had to deal with it through trained ambassadors who have sometimes become too powerful and too influential—lawyers, accountants, and lobbyists. This cannot go on.

Public Papers of Carter, 1978, p.94

We must have what Abraham Lincoln wanted—a government for the people.

Public Papers of Carter, 1978, p.94

We've made progress toward that kind of government. You've given me the authority I requested to reorganize the Federal bureaucracy. And I am using that authority.

Public Papers of Carter, 1978, p.94

We've already begun a series of reorganization plans which will be completed over a period of 3 years. We have also proposed abolishing almost 500 Federal advisory and other commissions and boards. But I know that the American people are still sick and tired of Federal paperwork and redtape. Bit by bit we are chopping down the thicket of unnecessary Federal regulations by which Government too often interferes in our personal lives and our personal business. We've cut the public's Federal paperwork load by more than 12 percent in less than a year. And we are not through cutting.

Public Papers of Carter, 1978, p.94

We've made a good start on turning the gobbledygook of Federal regulations into plain English that people can understand. But we know that we still have a long way to go.

Public Papers of Carter, 1978, p.94–p.95

We've brought together parts of 11 Government agencies to create a new Department of Energy. And now it's time [p.95] to take another major step by creating a separate Department of Education.

Public Papers of Carter, 1978, p.95

But even the best organized Government will only be as effective as the people who carry out its policies. For this reason, I consider civil service reform to be absolutely vital. Worked out with the civil servants themselves, this reorganization plan will restore the merit principle to a system which has grown into a bureaucratic maze. It will provide greater management flexibility and better rewards for better performance without compromising job security.

Public Papers of Carter, 1978, p.95

Then and only then can we have a government that is efficient, open, and truly worthy of our people's understanding and respect. I have promised that we will have such a government, and I intend to keep that promise.

Public Papers of Carter, 1978, p.95

In our foreign policy, the separation of people from government has been in the past a source of weakness and error. In a democratic system like ours, foreign policy decisions must be able to stand the test of public examination and public debate. If we make a mistake in this administration, it will be on the side of frankness and openness with the American people.

Public Papers of Carter, 1978, p.95

In our modern world, when the deaths of literally millions of people can result from a few terrifying seconds of destruction, the path of national strength and security is identical to the path of peace.

Public Papers of Carter, 1978, p.95

Tonight, I am happy to report that because we are strong, our Nation is at peace with the world.

Public Papers of Carter, 1978, p.95

We are a confident nation. We've restored a moral basis for our foreign policy. .The very heart of our identity as a nation is our firm commitment to human rights.

Public Papers of Carter, 1978, p.95

We stand for human rights because we believe that government has as a purpose to promote the well-being of its citizens. This is true in our domestic policy; it's also true in our foreign policy. The world must know that in support of human rights, the United States will stand firm.

Public Papers of Carter, 1978, p.95

We expect no quick or easy results, but there has been significant movement toward greater freedom and humanity in several parts of the world.

Public Papers of Carter, 1978, p.95

Thousands of political prisoners have been freed. The leaders of the world-even our ideological adversaries—now see that their attitude toward fundamental human rights affects their standing in the international community, and it affects their relations with the United States.

Public Papers of Carter, 1978, p.95

To serve the interests of every American, our foreign policy has three major goals.

Public Papers of Carter, 1978, p.95

The first and prime concern is and will remain the security of our country.

Public Papers of Carter, 1978, p.95

Security is based on our national will, and security is based on the strength of our Armed Forces. We have the will, and militarily we are very strong.

Public Papers of Carter, 1978, p.95

Security also comes through the strength of our alliances. We have reconfirmed our commitment to the defense of Europe, and this year we will demonstrate that commitment by further modernizing and strengthening our military capabilities there.

Public Papers of Carter, 1978, p.95

Security can also be enhanced by agreements with potential adversaries which reduce the threat of nuclear disaster while maintaining our own relative strategic capability.

Public Papers of Carter, 1978, p.95

In areas of peaceful competition with the Soviet Union, we will continue to more than hold our own.

Public Papers of Carter, 1978, p.95

At the same time, we are negotiating with quiet confidence, without haste, with careful determination, to ease the tensions between us and to ensure greater stability and security.

Public Papers of Carter, 1978, p.95–p.96

The strategic arms limitation talks have been long and difficult. We want a mutual [p.96] limit on both the quality and the quantity of the giant nuclear arsenals of both nations, and then we want actual reductions in strategic arms as a major step toward the ultimate elimination of nuclear weapons from the face of the Earth.

Public Papers of Carter, 1978, p.96

If these talks result in an agreement this year—and I trust they will—I pledge to you that the agreement will maintain and enhance the stability of the world's strategic balance and the security of the United States.

Public Papers of Carter, 1978, p.96

For 30 years, concerted but unsuccessful efforts have been made to ban the testing of atomic explosives—both military weapons and peaceful nuclear devices.

Public Papers of Carter, 1978, p.96

We are hard at work with Great Britain and the Soviet Union on an agreement which will stop testing and will protect our national security and provide for adequate verification of compliance. We are now making, I believe, good progress toward this comprehensive ban on nuclear explosions.

Public Papers of Carter, 1978, p.96

We are also working vigorously to halt the proliferation of nuclear weapons among the nations of the world which do not now have them and to reduce the deadly global traffic in conventional arms sales. Our stand for peace is suspect if we are also the principal arms merchant of the world. so, we've decided to cut down our arms transfers abroad on a year-by-year basis and to work with other major arms exporters to encourage their similar constraint.

Public Papers of Carter, 1978, p.96

Every American has a stake in our second major goal—a world at peace. In a nuclear age, each of us is threatened when peace is not secured everywhere. We are trying to promote harmony in those parts of the world where major differences exist among other nations and threaten international peace.

Public Papers of Carter, 1978, p.96

In the Middle East, we are contributing our good offices to maintain the momentum of the current negotiations and to keep open the lines of communication among the Middle Eastern leaders. The whole world has a great stake in the success of these efforts. This is a precious opportunity for a historic settlement of a longstanding conflict—an opportunity which may never come again in our lifetime.

Public Papers of Carter, 1978, p.96

Our role has been difficult and sometimes thankless and controversial. But it has been constructive and it has been necessary, and it will continue.

Public Papers of Carter, 1978, p.96

Our third major foreign policy goal is one that touches the life of every American citizen every day—world economic growth and stability.

Public Papers of Carter, 1978, p.96

This requires strong economic performance by the industrialized democracies like ourselves and progress in resolving the global energy crisis. Last fall, with the help of others, we succeeded in our vigorous efforts to maintain the stability of the price of oil. But as many foreign leaders have emphasized to me personally and, I am sure, to you, the greatest future contribution that America can make to the world economy would be an effective energy conservation program here at home. We will not hesitate to take the actions needed to protect the integrity of the American dollar.

Public Papers of Carter, 1978, p.96

We are trying to develop a more just international system. And in this spirit, we are supporting the struggle for human development in Africa, in Asia, and in Latin America.

Public Papers of Carter, 1978, p.96

Finally, the world is watching to see how we act on one of our most important and controversial items of business—approval of the Panama Canal treaties. The treaties now before the Senate are the result of the work of four administrations-two Democratic, two Republican.

Public Papers of Carter, 1978, p.97

They guarantee that the canal will be open always for unrestricted use by the ships of the world. Our ships have the right to go to the head of the line for priority of passage in times of emergency or need. We retain the permanent right to defend the canal with our own military forces, if necessary, to guarantee its openness and its neutrality.

Public Papers of Carter, 1978, p.97

The treaties are to the clear advantage of ourselves, the Panamanians, and the other users of the canal. Ratifying the Panama Canal treaties will demonstrate our good faith to the world, discourage the spread of hostile ideologies in this hemisphere, and directly contribute to the economic well-being and the security of the United States.

Public Papers of Carter, 1978, p.97

I have to say that that's very welcome applause. [Laughter]

Public Papers of Carter, 1978, p.97

There were two moments on my recent journey which, for me, confirmed the final aims of our foreign policy and what it always must be.

Public Papers of Carter, 1978, p.97

One was in a little village in India, where I met a people as passionately attached to their rights and liberties as we are, but whose children have a far smaller chance for good health or food or education or human fulfillment than a child born in this country.

Public Papers of Carter, 1978, p.97

The other moment was in Warsaw, capital of a nation twice devastated by war in this century. There, people have rebuilt the city which war's destruction took from them. But what was new only emphasized clearly what was lost.

Public Papers of Carter, 1978, p.97

What I saw in those two places crystalized for me the purposes of our own Nation's policy: to ensure economic justice, to advance human rights, to resolve conflicts without violence, and to proclaim in our great democracy our constant faith in the liberty and dignity of human beings everywhere.

Public Papers of Carter, 1978, p.97

We Americans have a great deal of work to do together. In the end, how well we do that work will depend on the spirit in which we approach it. We must seek fresh answers, unhindered by the stale prescriptions of the past.

Public Papers of Carter, 1978, p.97

It has been said that our best years are behind us. But I say again that America's best is still ahead. We have emerged from bitter experiences chastened but proud, confident once again, ready to face challenges once again, and united once again.

Public Papers of Carter, 1978, p.97

We come together tonight at a solemn time. Last week the Senate lost a good and honest man—Lee Metcalf of Montana.

Public Papers of Carter, 1978, p.97

And today, the flag of the United States flew at half-mast from this Capitol and from American installations and ships all over the world, in mourning for Senator Hubert Humphrey.

Public Papers of Carter, 1978, p.97

Because he exemplified so well the joy and the zest of living, his death reminds us not so much of our own mortality, but of the possibilities offered to us by life. He always looked to the future with a special American kind of confidence, of hope and enthusiasm. And the best way that we can honor him is by following his example.

Public Papers of Carter, 1978, p.97

Our task—to use the words of Senator Humphrey—is "reconciliation, rebuilding, and rebirth."

Public Papers of Carter, 1978, p.97

Reconciliation of private needs and interests into a higher purpose.

Public Papers of Carter, 1978, p.97

Rebuilding the old dreams of justice and liberty, and country and community.

Public Papers of Carter, 1978, p.97

Rebirth of our faith in the common good.

Public Papers of Carter, 1978, p.97–p.98

Each of us here tonight—and all who are listening in your homes—must rededicate ourselves to serving the common good. We are a community, a beloved community, all of us. Our individual fates are linked, our futures intertwined. And if we act in that knowledge and in that [p.98] spirit, together, as the Bible says, we can move mountains.

Public Papers of Carter, 1978, p.98

Thank you very much.

Public Papers of Carter, 1978, p.98

NOTE: The President spoke at 9 p.m. in the House Chamber at the Capitol. He was introduced by Thomas P. O'Neill, Jr., Speaker of the House of Representatives. The address was broadcast live on radio and television.

President Carter's Remarks on Senate Ratification of the Panama Canal Treaty, 1978

Title: President Carter's Remarks on Senate Ratification of the Panama Canal Treaty

Author: Jimmy Carter

Date: April 18, 1978

Source: Public Papers of the Presidents, Carter, 1978, pp.758-759

Public Papers of Carter, 1978, p.758

THE PRESIDENT. This is a day of which Americans can always feel proud, for now we have reminded the world and ourselves of the things that we stand for as a nation. The negotiations that led to these treaties began 14 years ago, and they continued under four administrations, four Presidents. I'm proud that they reached their conclusion while I was President. But I'm far prouder that we, as a people, have shown that in a full and open debate about difficult foreign policy objectives, that we will reach the decisions that are in the best interest of our Nation.

Public Papers of Carter, 1978, p.758

The debate has been long and hard. But in the end, it's given our decision a firm base in the will of the American people. Over the last 8 months, millions of Americans have studied the treaties, have registered their views and, in some cases, have changed their minds. No matter which side they took in this debate, most Americans have acted out of sincere concern about our Nation's interest.

Public Papers of Carter, 1978, p.758

I would like to express my thanks to a few for the job they've done. Under the leadership of Senators Byrd and Baker and Sparkman and others, the Senate has carried out its responsibility of advice and consent with great care. All of us owe them our thanks. I feel a special gratitude and admiration for those Senators who have done what was right, because it was right, despite tremendous pressure and, in some cases, political threats.

Public Papers of Carter, 1978, p.758

The loyal employees of the Panama Canal Zone and the Canal Zone Government also deserve our gratitude and our admiration for their performance during these months of great uncertainty.

Public Papers of Carter, 1978, p.758

And General Torrijos and the people of Panama, who have followed this debate closely and through every stage, have been willing partners and cooperative and patient friends. There is no better indication of the prospect for friendly relations between us in the future than their conduct during the last few months.

Public Papers of Carter, 1978, p.758

We now have a partnership with Panama to maintain and to operate and to defend the canal. We have the clear right to take whatever action is necessary to defend the canal and to keep it open and neutral and accessible. We do not have the right to interfere in Panama's internal affairs. That is a right we neither possess nor desire.

Public Papers of Carter, 1978, p.759

These treaties can mark the beginning of a new era in our relations not only with Panama but with all the rest of the world. They symbolize our determination to deal with the developing nations of the world, the small nations of the world, on the basis of mutual respect and partnership. But the treaties also reaffirm a spirit that is very strong, constant, and old in the American character.

Public Papers of Carter, 1978, p.759

Sixty-four years ago, when the first ship traveled through the canal, our people took legitimate pride in what our ingenuity, our perseverance, and our vision had brought about. We were a nation of builders, and the canal was one of our greatest glories.

Public Papers of Carter, 1978, p.759

And today we have shown that we remain true to that determination, that ingenuity, and most of all, that vision. Today we've proven that what is best and noblest in our national spirit will prevail. Today we've shown that we are still builders, with our face still turned confidently to the future. That is why I believe all Americans should share the pride I feel in the accomplishments which we registered today.

Public Papers of Carter, 1978, p.759

When I was coming in to make this announcement, the Ambassador of Panama, Gabriel Lewis, informed me that General Torrijos has accepted the terms of the treaty that passed the Senate this afternoon. And I want to reaffirm my thanks and my commitment to a true partnership with General Torrijos and the people of a great nation, Panama. Thank you.

Public Papers of Carter, 1978, p.759

REPORTER. Mr. President, are you going down to Panama now?

Public Papers of Carter, 1978, p.759

THE PRESIDENT. Now?

Public Papers of Carter, 1978, p.759

Q. With these treaties in a few weeks, for formal ceremonies?

Public Papers of Carter, 1978, p.759

THE PRESIDENT. I have been invited by General Torrijos to come to Panama. I would like very much to accept his invitation.

Public Papers of Carter, 1978, p.759

Q. Thank you.

Public Papers of Carter, 1978, p.759

THE PRESIDENT. Thank you.

Public Papers of Carter, 1978, p.759

NOTE: The President spoke at 7:07 p.m. to reporters assembled in the Briefing Room at the White House. His remarks were broadcast live on radio and television.

Earlier, the Senate had voted 68-32 to ratify the treaty.

Regents of University of California v. Bakke, 1978

Title: Regents of the University of California v. Bakke

Author: U.S. Supreme Court

Date: June 28, 1978

Source: 438 U.S. 265

This case was argued October 12, 1977, and was decided June 28, 1978.

CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

Syllabus

1978, Regents of Univ. of California v. Bakke, 438 U.S. 265

The Medical School of the University of California at Davis (hereinafter Davis) had two admissions programs for the entering class of 100 students—the regular admissions program and the special admissions program. Under the regular procedure, candidates whose overall undergraduate grade point averages fell below 2.5 on a scale of 4.0 were summarily rejected. About one out of six applicants was then given an interview, following which he was rated on a scale of 1 to 100 by each of the committee members (five in 1973 and six in 1974), his rating being based on the interviewers' summaries, his overall grade point average, his science courses grade point average, his Medical College Admissions Test (MCAT) scores, letters of recommendation, extracurricular activities, and other biographical data, all of which resulted in a total "benchmark score." The full admissions committee then made offers of admission on the basis of their review of the applicant's file and his score, considering and acting upon applications as they were received. The committee chairman was responsible for placing names on the waiting list and had discretion to include persons with "special skills." A separate committee, a majority of whom were members of minority groups, operated the special admissions program. The 1973 and 1974 application forms, respectively, asked candidates whether they wished to be considered as "economically and/or educationally disadvantaged" applicants and members of a "minority group" (blacks, Chicanos, Asians, American Indians). If an applicant of a minority group was found to be "disadvantaged," he would be rated in a manner similar to the one employed by the general admissions committee. Special candidates, however, did not have to meet the 2.5 grade point cutoff and were not ranked against candidates in the general admissions process. About one-fifth of the special applicants were invited for interviews in 1973 and 1974, following which they were given benchmark scores, and the top choices were then given to the general admissions committee, which could reject special candidates for failure to meet course requirements or other specific deficiencies. The special committee continued to recommend candidates until 16 special admission selections had been made. During a four-year period, 63 minority [438 U.S. 266] students were admitted to Davis under the special program and 44 under the general program. No disadvantaged whites were admitted under the special program, though many applied. Respondent, a white male, applied to Davis in 1973 and 1974, in both years being considered only under the general admissions program. Though he had a 468 out of 500 score in 1973, he was rejected, since no general applicants with scores less than 470 were being accepted after respondent's application, which was filed late in the year, had been processed and completed. At that time, four special admission slots were still unfilled. In 1974 respondent applied early, and though he had a total score of 549 out of 600, he was again rejected. In neither year was his name placed on the discretionary waiting list. In both years, special applicants were admitted with significantly lower scores than respondent's. After his second rejection, respondent filed this action in state court for mandatory, injunctive, and declaratory relief to compel his admission to Davis, alleging that the special admissions program operated to exclude him on the basis of his race in violation of the Equal Protection Clause of the Fourteenth Amendment, a provision of the California Constitution, and § 601 of Title VI of the Civil Rights Act of 1964, which provides, inter alia, that no person shall on the ground of race or color be excluded from participating in any program receiving federal financial assistance. Petitioner cross-claimed for a declaration that its special admissions program was lawful. The trial court found that the special program operated as a racial quota, because minority applicants in that program were rated only against one another, and 16 places in the class of 100 were reserved for them. Declaring that petitioner could not take race into account in making admissions decisions, the program was held to violate the Federal and State Constitutions and Title VI. Respondent's admission was not ordered, however, for lack of proof that he would have been admitted but for the special program. The California Supreme Court, applying a strict scrutiny standard, concluded that the special admissions program was not the least intrusive means of achieving the goals of the admittedly compelling state interests of integrating the medical profession and increasing the number of doctors willing to serve minority patients. Without passing on the state constitutional or federal statutory grounds, the court held that petitioner's special admissions program violated the Equal Protection Clause. Since petitioner could not satisfy its burden of demonstrating that respondent, absent the special program, would not have been admitted, the court ordered his admission to Davis.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 266

Held: The judgment below is affirmed insofar as it orders respondent's admission to Davis and invalidates petitioner's special admissions program, [438 U.S. 267] but is reversed insofar as it prohibits petitioner from taking race into account as a factor in its future admissions decisions.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 267

18 Cal.3d 34, 553 P.2d 1152, affirmed in part and reversed in part.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 267

MR. JUSTICE POWELL concluded:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 267

1. Title VI proscribes only those racial classifications that would violate the Equal Protection Clause if employed by a State or its agencies. Pp. 281-287.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 267

2. Racial and ethnic classifications of any sort are inherently suspect and call for the most exacting judicial scrutiny. While the goal of achieving a diverse student body is sufficiently compelling to justify consideration of race in admissions decisions under some circumstances, petitioner's special admissions program, which forecloses consideration to persons like respondent, is unnecessary to the achievement of this compelling goal, and therefore invalid under the Equal Protection Clause. Pp. 287-320.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 267

3. Since petitioner could not satisfy its burden of proving that respondent would not have been admitted even if there had been no special admissions program, he must be admitted. P. 320.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 267

MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN concluded:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 267

1. Title VI proscribes only those racial classifications that would violate the Equal Protection Clause if employed by a State or its agencies. Pp. 328-355.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 267

2. Racial classifications call for strict judicial scrutiny. Nonetheless, the purpose of overcoming substantial, chronic minority underrepresentation in the medical profession is sufficiently important to justify petitioner's remedial use of race. Thus, the judgment below must be reversed in that it prohibits race from being used as a factor in university admissions. Pp. 355-379.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 267

MR. JUSTICE STEVENS, joined by THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST, being of the view that whether race can ever be a factor in an admissions policy is not an issue here; that Title VI applies; and that respondent was excluded from Davis in violation of Title VI, concurs in the Court's judgment insofar as it affirms the judgment of the court below ordering respondent admitted to Davis. Pp. 408-421.

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POWELL, J., announced the Court's judgment and filed an opinion expressing his views of the case, in Parts I, III-A, and V-C of which WHITE, J., joined; and in Parts I and V-C of which BRENNAN, MARSHALL, and BLACKMUN, JJ., joined. BRENNAN, WHITE, MARSHALL, and BLACKMUN, [438 U.S. 268] JJ., filed an opinion concurring in the judgment in part and dissenting in part, post, p. 324. WHITE, J., post, p. 379, MARSHALL, J., post, p. 387, and BLACKMUN, J., post, p. 402, filed separate opinions. STEVENS, J., filed an opinion concurring in the judgment in part and dissenting in part, in which BURGER, C.J., and STEWART and REHNQUIST, JJ., joined, post, p. 408. [438 U.S. 269]

POWELL, J., lead opinion

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MR. JUSTICE POWELL announced the judgment of the Court.

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This case presents a challenge to the special admissions program of the petitioner, the Medical School of the University of California at Davis, which is designed to assure the admission [438 U.S. 270] of a specified number of students from certain minority groups. The Superior Court of California sustained respondent's challenge, holding that petitioner's program violated the California Constitution, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., and the Equal Protection Clause of the Fourteenth Amendment. The court enjoined petitioner from considering respondent's race or the race of any other applicant in making admissions decisions. It refused, however, to order respondent's admission to the Medical School, holding that he had not carried his burden of proving that he would have been admitted but for the constitutional and statutory violations. The Supreme Court of California affirmed those portions of the trial court's judgment declaring the special admissions program unlawful and enjoining petitioner from considering the race of any applicant.\* [438 U.S. 271] It modified that portion of the judgment denying respondent's requested injunction and directed the trial court to order his admission.

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For the reasons stated in the following opinion, I believe that so much of the judgment of the California court as holds petitioner's special admissions program unlawful and directs that respondent be admitted to the Medical School must be affirmed. For the reasons expressed in a separate opinion, my Brothers THE CHIEF JUSTICE, MR. JUSTICE STEWART, MR. JUSTICE REHNQUIST, and MR. JUSTICE STEVENS concur in this judgment. [438 U.S. 272]

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I also conclude, for the reasons stated in the following opinion, that the portion of the court's judgment enjoining petitioner from according any consideration to race in its admissions process must be reversed. For reasons expressed in separate opinions, my Brothers MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN concur in this judgment.

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Affirmed in part and reversed in part.

I\*\*

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The Medical School of the University of California at Davis opened in 1968 with an entering class of 50 students. In 1971, the size of the entering class was increased to 100 students, a level at which it remains. No admissions program for disadvantaged or minority students existed when the school opened, and the first class contained three Asians but no blacks, no Mexican-Americans, and no American Indians. Over the next two years, the faculty devised a special admissions program to increase the representation of "disadvantaged" students in each Medical School class. 1 The special program consisted of [438 U.S. 273] a separate admissions system operating in coordination with the regular admissions process.

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Under the regular admissions procedure, a candidate could submit his application to the Medical School beginning in July of the year preceding the academic year for which admission was sought. Record 149. Because of the large number of applications, 2 the admissions committee screened each one to select candidates for further consideration. Candidates whose overall undergraduate grade point averages fell below 2.5 on a scale of 4.0 were summarily rejected. Id. at 63. About [438 U.S. 274] one out of six applicants was invited for a personal interview. Ibid. Following the interviews, each candidate was rated on a scale of 1 to 100 by his interviewers and four other members of the admissions committee. The rating embraced the interviewers' summaries, the candidate's overall grade point average, grade point average in science courses, scores on the Medical College Admissions Test (MCAT), letters of recommendation, extracurricular activities, and other biographical data. Id. at 62. The ratings were added together to arrive at each candidate's "benchmark" score. Since five committee members rated each candidate in 1973, a perfect score was 500; in 1974, six members rated each candidate, so that a perfect score was 600. The full committee then reviewed the file and scores of each applicant and made offers of admission on a "rolling" basis. 3 The chairman was responsible for placing names on the waiting list. They were not placed in strict numerical order; instead, the chairman had discretion to include persons with "special skills." Id. at 63-64.

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The special admissions program operated with a separate committee, a majority of whom were members of minority groups. Id. at 163. On the 1973 application form, candidates were asked to indicate whether they wished to be considered as "economically and/or educationally disadvantaged" applicants; on the 1974 form the question was whether they wished to be considered as members of a "minority group," which the Medical School apparently viewed as "Blacks," "Chicanos," "Asians," and "American Indians." Id. at 65-66, 146, 197, 203-205, 216-218. If these questions were answered affirmatively, the application was forwarded to the special admissions committee. No formal definition of "disadvantaged" [438 U.S. 275] was ever produced, id. at 163-164, but the chairman of the special committee screened each application to see whether it reflected economic or educational deprivation. 4 Having passed this initial hurdle, the applications then were rated by the special committee in a fashion similar to that used by the general admissions committee, except that special candidates did not have to meet the 2.5 grade point average cutoff applied to regular applicants. About one-fifth of the total number of special applicants were invited for interviews in 1973 and 1974. 5 Following each interview, the special committee assigned each special applicant a benchmark score. The special committee then presented its top choices to the general admissions committee. The latter did not rate or compare the special candidates against the general applicants, id. at 388, but could reject recommended special candidates for failure to meet course requirements or other specific deficiencies. Id. at 171-172. The special committee continued to recommend special applicants until a number prescribed by faculty vote were admitted. While the overall class size was still 50, the prescribed number was 8; in 1973 and 1974, when the class size had doubled to 100, the prescribed number of special admissions also doubled, to 16. Id. at 164, 166.

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From the year of the increase in class size—1971—through 1974, the special program resulted in the admission of 21 black students, 30 Mexican-Americans, and 12 Asians, for a total of 63 minority students. Over the same period, the regular admissions program produced 1 black, 6 Mexican-Americans, [438 U.S. 276] and 37 Asians, for a total of 44 minority students. 6 Although disadvantaged whites applied to the special program in large numbers, see n. 5, supra, none received an offer of admission through that process. Indeed, in 1974, at least, the special committee explicitly considered only "disadvantaged" special applicants who were members of one of the designated minority groups. Record 171.

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Allan Bakke is a white male who applied to the Davis Medical School in both 1973 and 1974. In both years, Bakke's application was considered under the general admissions program, and he received an interview. His 1973 interview was with Dr. Theodore C. West, who considered Bakke "a very desirable applicant to [the] medical school." Id. at 225. Despite a strong benchmark score of 468 out of 500, Bakke was rejected. His application had come late in the year, and no applicants in the general admissions process with scores below 470 were accepted after Bakke's application was completed. Id. at 69. There were four special admissions slots unfilled at that time, however, for which Bakke was not considered. Id. at 70. After his 1973 rejection, Bakke wrote to Dr. George H. Lowrey, Associate Dean and Chairman of the Admissions Committee, protesting that the special admissions program operated as a racial and ethnic quota. Id. at 259. [438 U.S. 277]

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Bakke's 1974 application was completed early in the year. Id. at 70. His student interviewer gave him an overall rating of 94, finding him "friendly, well tempered, conscientious and delightful to speak with." Id. at 229. His faculty interviewer was, by coincidence, the same Dr. Lowrey to whom he had written in protest of the special admissions program. Dr. Lowrey found Bakke "rather limited in his approach" to the problems of the medical profession, and found disturbing Bakke's "very definite opinions which were based more on his personal viewpoints than upon a study of the total problem." Id. at 226. Dr. Lowrey gave Bakke the lowest of his six ratings, an 86; his total was 549 out of 600. Id. at 230. Again, Bakke's application was rejected. In neither year did the chairman of the admissions committee, Dr. Lowrey, exercise his discretion to place Bakke on the waiting list. Id. at 64. In both years, applicants were admitted under the special program with grade point averages, MCT scores, and benchmark scores significantly lower than Bakke's. 7

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After the second rejection, Bakke filed the instant suit in the Superior Court of California. 8 He sought mandatory, injunctive, and declaratory relief compelling his admission to the Medical School. He alleged that the Medical School's special admissions program operated to exclude him from the [438 U.S. 278] school on the basis of his race, in violation of his rights under the Equal Protection Clause of the Fourteenth Amendment, 9 Art. I, § 21, of the California Constitution, 10 and § 601 of Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. § 2000d. 11 The University cross-complained for a declaration that its special admissions program was lawful. The trial [438 U.S. 279] court found that the special program operated as a racial quota because minority applicants in the special program were rated only against one another, Record 388, and 16 places in the class of 100 were reserved for them. Id. at 295-296. Declaring that the University could not take race into account in making admissions decisions, the trial court held the challenged program violative of the Federal Constitution, the State Constitution, and Title VI. The court refused to order Bakke's admission, however, holding that he had failed to carry his burden of proving that he would have been admitted but for the existence of the special program.

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Bakke appealed from the portion of the trial court judgment denying him admission, and the University appealed from the decision that its special admissions program was unlawful and the order enjoining it from considering race in the processing of applications. The Supreme Court of California transferred the case directly from the trial court, "because of the importance of the issues involved." 18 Cal.3d 34, 39, 553 P.2d 1152, 1156 (1976). The California court accepted the findings of the trial court with respect to the University's program. 12 Because the special admissions program involved a racial classification, the Supreme Court held itself bound to apply strict scrutiny. Id. at 49, 553 P.2d at 1162-1163. It then turned to the goals of the University presented as justifying the special program. Although the court agreed that the goals of integrating the medical profession and increasing the number of physicians willing to serve members of minority groups were compelling state interests, id. at 53, 553 P.2d at 1165, it concluded that the special admissions program was not the least intrusive means of achieving those goals. Without passing on the state constitutional or federal statutory grounds cited in the trial court's judgment, the California court held [438 U.S. 280] that the Equal Protection Clause of the Fourteenth Amendment required that

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no applicant may be rejected because of his race, in favor of another who is less qualified, as measured by standards applied without regard to race.

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Id. at 55, 553 P.2d at 1166.

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Turning to Bakke's appeal, the court ruled that, since Bakke had established that the University had discriminated against him on the basis of his race, the burden of proof shifted to the University to demonstrate that he would not have been admitted even in the absence of the special admissions program. 13 Id. at 63-64, 553 P.2d at 1172. The court analogized Bakke's situation to that of a plaintiff under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-17 (1970 ed., Supp. V), see, e.g., Franks v. Bowman Transportation Co., 424 U.S. 747, 772 (176). 18 Cal.3d at 64, 553 P.2d at 1172. On this basis, the court initially ordered a remand for the purpose of determining whether, under the newly allocated burden of proof, Bakke would have been admitted to either the 1973 or the 1974 entering class in the absence of the special admissions program. App. A to Application for Stay 4. In its petition for rehearing below, however, the University conceded its inability to carry that burden. App. B to Application for Stay A19-A20. 14 The [438 U.S. 281] California court thereupon amended its opinion to direct that the trial court enter judgment ordering Bakke's admission to the Medical School. 18 Cal.3d at 64, 553. P.2d at 1172. That order was stayed pending review in this Court. 429 U.S. 953 (1976). We granted certiorari to consider the important constitutional issue. 429 U.S. 1090 (1977).

II

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In this Court, the parties neither briefed nor argued the applicability of Title VI of the Civil Rights Act of 1964. Rather, as had the California court, they focused exclusively upon the validity of the special admissions program under the Equal Protection Clause. Because it was possible, however, that a decision on Title VI might obviate resort to constitutional interpretation, see Ashwander v. TVA, 297 U.S. 288, 346-348 (1936) (concurring opinion), we requested supplementary briefing on the statutory issue. 434 U.S. 900 (1977).

A

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At the outset, we face the question whether a right of action for private parties exists under Title VI. Respondent argues that there is a private right of action, invoking the test set forth in Cort v. Ash, 422 U.S. 66, 78 (1975). He contends [438 U.S. 282] that the statute creates a federal right in his favor, that legislative history reveals an intent to permit private actions, 15 that such actions would further the remedial purposes of the statute, and that enforcement of federal rights under the Civil Rights Act generally is not relegated to the States. In addition, he cites several lower court decisions which have recognized or assumed the existence of a private right of action. 16 Petitioner denies the existence of a private right of action, arguing that the sole function of § 601, see n. 11, supra, was to establish a predicate for administrative action under § 602, 78 Stat. 252, 42 U.S.C. § 2000d-1. 17 In its view, administrative curtailment of federal funds under that section was the only sanction to be imposed upon recipients that [438 U.S. 283] violated § 601. Petitioner also points out that Title VI contains no explicit grant of a private right of action, in contrast to Titles II, III, IV, and VII, of the same statute, 42 U.S.C. §§ 2000a-3(a), 2000b-2, 2000c-8, and 2000e-5 =(f) (1970 ed. and Supp. V). 18

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We find it unnecessary to resolve this question in the instant case. The question of respondent's right to bring an action under Title VI was neither argued nor decided in either of the courts below, and this Court has been hesitant to review questions not addressed below. McGoldrick v. Companie Generale Transatlantique, 309 U.S. 430, 434-435 (1940). See also Massachusetts v. Westcott, 431 U.S. 322 (1977); Cardinale v. Louisiana, 394 U.S. 437, 439 (1969). Cf. Singleton v. Wulff, 428 U.S. 106, 121 (1976). We therefore do not address this difficult issue. Similarly, we need not pass [438 U.S. 284] upon petitioner's claim that private plaintiffs under Title VI must exhaust administrative remedies. We assume, only for the purposes of this case, that respondent has a right of action under Title VI. See Lau v. Nichols, 414 U.S. 563, 571 n. 2 (1974) (STEWART, J., concurring in result).

B

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The language of § 601, 78 Stat. 252, like that of the Equal Protection Clause, is majestic in its sweep:

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No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

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The concept of "discrimination," like the phrase "equal protection of the laws," is susceptible of varying interpretations, for, as Mr. Justice Holmes declared,

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[a] word is not a crystal, transparent and unchanged, it is the skin of a living thought, and may vary greatly in color and content according to the circumstances and the time in which it is used.

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Towne v. Eisner, 245 U.S. 418, 425 (1918). We must, therefore, seek whatever aid is available in determining the precise meaning of the statute before us. Train v. Colorado Public Interest Research Group, 426 U.S. 1, 10 (1976), quoting United States v. American Trucking Assns., 310 U.S. 534, 543-544 (1940). Examination of the voluminous legislative history of Title VI reveals a congressional intent to halt federal funding of entities that violate a prohibition of racial discrimination similar to that of the Constitution. Although isolated statements of various legislators, taken out of context, can be marshaled in support of the proposition that § 601 enacted a purely color-blind scheme, 19 without regard to the reach of the Equal Protection [438 U.S. 285] Clause, these comments must be read against the background of both the problem that Congress was addressing and the broader view of the statute that emerges from a full examination of the legislative debates.

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The problem confronting Congress was discrimination against Negro citizens at the hands of recipients of federal moneys. Indeed, the color blindness pronouncements cited in the margin at n. 19 generally occur in the midst of extended remarks dealing with the evils of segregation in federally funded programs. Over and over again, proponents of the bill detailed the plight of Negroes seeking equal treatment in such programs. 20 There simply was no reason for Congress to consider the validity of hypothetical preferences that might be accorded minority citizens; the legislators were dealing with the real and pressing problem of how to guarantee those citizens equal treatment.

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In addressing that problem, supporters of Title VI repeatedly declared that the bill enacted constitutional principles. For example, Representative Celler, the Chairman of the House Judiciary Committee and floor manager of the legislation in the House, emphasized this in introducing the bill:

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The bill would offer assurance that hospitals financed by Federal money would not deny adequate care to Negroes. It would prevent abuse of food distribution programs whereby Negroes have been known to be denied food [438 U.S. 286] surplus supplies when white persons were given such food. It would assure Negroes the benefits now accorded only white students in programs of high[er] education financed by Federal funds. It would, in short, assure the existing right to equal treatment in the enjoyment of Federal funds. It would not destroy any rights of private property or freedom of association.

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110 Cong.Rec. 1519 (1964) (emphasis added). Other sponsors shared Representative Celler's view that Title VI embodied constitutional principles. 21

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In the Senate, Senator Humphrey declared that the purpose of Title VI was "to insure that Federal funds are spent in accordance with the Constitution and the moral sense of the Nation." Id. at 6544. Senator Ribicoff agreed that Title VI embraced the constitutional standard:

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Basically, there is a constitutional restriction against discrimination in the use of federal funds; and title VI simply spells out the procedure to be used in enforcing that restriction.

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Id. at 13333. Other Senators expressed similar views. 22

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Further evidence of the incorporation of a constitutional standard into Title VI appears in the repeated refusals of the legislation's supporters precisely to define the term "discrimination." Opponents sharply criticized this failure, 23 but proponents of the bill merely replied that the meaning of [438 U.S. 287] "discrimination" would be made clear by reference to the Constitution or other existing law. For example, Senator Humphrey noted the relevance of the Constitution:

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As I have said, the bill has a simple purpose. That purpose is to give fellow citizens—Negroes—the same rights and opportunities that white people take for granted. This is no more than what was preached by the prophets, and by Christ Himself. It is no more than what our Constitution guarantees.

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Id. at 6553. 24

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In view of the clear legislative intent, Title VI must be held to proscribe only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment.

III

A

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Petitioner does not deny that decisions based on race or ethnic origin by faculties and administrations of state universities are reviewable under the Fourteenth Amendment. See, e.g., Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938); Sipuel v. Board of Regents, 332 U.S. 631 (1948); Sweatt v. Painter, 339 U.S. 629 (1950); McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950). For his part, respondent does not argue that all racial or ethnic classifications are per se invalid. See, e.g., Hirabayashi v. United States, 320 U.S. 81 (1943); Korematsu v. United States, 323 U.S. 214 (1944); Lee v. Washington, 390 U.S. 333, 334 (1968) (Black, Harlan, and STEWART, JJ., concurring); United Jewish Organizations v. Carey, 430 U.S. 144 (1977). The parties do disagree as to the level of judicial scrutiny to be applied to the special admissions program. Petitioner argues that the court below erred in applying strict scrutiny, as this inexact term has been [438 U.S. 288] applied in our cases. That level of review, petitioner asserts, should be reserved for classifications that disadvantage "discrete and insular minorities." See United States v. Carolene Products Co., 304 U.S. 144, 152 n. 4 (1938). Respondent, on the other hand, contends that the California court correctly rejected the notion that the degree of Judicial scrutiny accorded a particular racial or ethnic classification hinges upon membership in a discrete and insular minority and duly recognized that the "lights established [by the Fourteenth Amendment] are personal rights." Shelley v. Kraemer, 334 U.S. 1, 22 (1948).

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En route to this crucial battle over the scope of judicial review, 25 the parties fight a sharp preliminary action over the proper characterization of the special admissions program. Petitioner prefers to view it as establishing a "goal" of minority representation in the Medical School. Respondent, echoing the courts below, labels it a racial quota. 26 [438 U.S. 289]

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This semantic distinction is beside the point: the special admissions program is undeniably a classification based on race and ethnic background. To the extent that there existed a pool of at least minimally qualified minority applicants to fill the 16 special admissions seats, white applicants could compete only for 84 seats in the entering class, rather than the 100 open to minority applicants. Whether this limitation is described as a quota or a goal, it is a line drawn on the basis of race and ethnic status. 27

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The guarantees of the Fourteenth Amendment extend to all persons. Its language is explicit: "No State shall…deny to any person within its jurisdiction the equal protection of the laws." It is settled beyond question that the

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rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights,

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Shelley v. Kraemer, supra at 22. Accord, Missouri ex rel. Gaines v. Canada, supra at 351; McCabe v. Atchison, T. & S.F. R. Co., 235 U.S. 151, 161-162 (1914). The guarantee of equal protection cannot mean one thing when applied to one individual and something else when [438 U.S. 290] applied to a person of another color. If both are not accorded the same protection, then it is not equal.

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Nevertheless, petitioner argues that the court below erred in applying strict scrutiny to the special admissions program because white males, such as respondent, are not a "discrete and insular minority" requiring extraordinary protection from the majoritarian political process. Carolene Products Co., supra at 152-153, n. 4. This rationale, however, has never been invoked in our decisions as a prerequisite to subjecting racial or ethnic distinctions to strict scrutiny. Nor has this Court held that discreteness and insularity constitute necessary preconditions to a holding that a particular classification is invidious. 28 See, e.g., Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 541 (1942); Carrington v. Rash, 380 U.S. 89, 96-97 (1965). These characteristics may be relevant in deciding whether or not to add new types of classifications to the list of "suspect" categories or whether a particular classification survives close examination. See, e.g., Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 313 (1976) (age); San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 28 (1973) (wealth); Graham v. Richardson, 403 U.S. 365, 372 (1971) (aliens). Racial and ethnic classifications, however, are subject to stringent examination without regard to these additional characteristics. We declared as much in the first cases explicitly to recognize racial distinctions as suspect:

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Distinctions between citizens solely because of their ancestry are, by their very nature, odious to a free people [438 U.S. 291] whose institutions are founded upon the doctrine of equality.

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Hirabayashi, 320 U.S. at 100.

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[A]ll legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny.

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Korematsu, 323 U.S. at 216. The Court has never questioned the validity of those pronouncements. Racial and ethnic distinctions of any sort are inherently suspect, and thus call for the most exacting judicial examination.

B

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This perception of racial and ethnic distinctions is rooted in our Nation's constitutional and demographic history. The Court's initial view of the Fourteenth Amendment was that its "one pervading purpose" was

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the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised dominion over him.

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Slaughter-House Cases, 16 Wall. 36, 71 (1873). The Equal Protection Clause, however, was "[v]irtually strangled in infancy by post-civil-war judicial reactionism." 29 It was relegated to decades of relative desuetude while the Due Process Clause of the Fourteenth Amendment, after a short germinal period, flourished as a cornerstone in the Court's defense of property and liberty of contract. See, e.g., Mugler v. Kansas, 123 U.S. 623, 661 (1887); Allgeyer v. Louisiana, 165 U.S. 578 (1897); Lochner v. New York, 198 U.S. 45 (1905). In that cause, the Fourteenth Amendment's "one pervading purpose" was displaced. See, e.g., Plessy v. Ferguson, 163 U.S. 537 (1896). It was only as the era of substantive due process came to a close, see, e.g., Nebbia v. New [438 U.S. 292] York, 291 U.S. 502 (1934); West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937), that the Equal Protection Clause began to attain a genuine measure of vitality, see, e.g., United States v. Carolene Products, 304 U.S. 144 (1938); Skinner v. Oklahoma ex rel. Williamson, supra.

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By that time ,it was no longer possible to peg the guarantees of the Fourteenth Amendment to the struggle for equality of one racial minority. During the dormancy of the Equal Protection Clause, the United States had become a Nation of minorities. 30 Each had to struggle 31—and, to some extent, struggles still 32—to overcome the prejudices not of a monolithic majority, but of a "majority" composed of various minority groups of whom it was said—perhaps unfairly, in many cases—that a shared characteristic was a willingness to disadvantage other groups. 33 As the Nation filled with the stock of many lands, the reach of the Clause was gradually extended to all ethnic groups seeking protection from official discrimination. See Strauder v. West Virginia, 100 U.S. 303, 308 (1880) (Celtic Irishmen) (dictum); Yick Wo v. Hopkins, 118 U.S. 356 (1886) (Chinese); Truax v. Raich, 239 U.S. 33, 41 (1915) (Austrian resident aliens); Korematsu, supra, (Japanese); Hernandez v. Texas, 347 U.S. 475 (1954) (Mexican-Americans). The guarantees of equal protection, said the Court in [438 U.S. 293] Yick Wo,

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are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws.

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118 U.S. at 369.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 293

Although many of the Framers of the Fourteenth Amendment conceived of its primary function as bridging the vast distance between members of the Negro race and the white "majority," Slaughter-House Cases, supra, the Amendment itself was framed in universal terms, without reference to color, ethnic origin, or condition of prior servitude. As this Court recently remarked in interpreting the 1866 Civil Rights Act to extend to claims of racial discrimination against white persons,

1978, Regents of Univ. of California v. Bakke, 438 U.S. 293

the 39th Congress was intent upon establishing in the federal law a broader principle than would have been necessary simply to meet the particular and immediate plight of the newly freed Negro slaves.

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McDonald v. Santa Fe Trail Transportation Co., 427 U.S. 273, 296 (1976). And that legislation was specifically broadened in 1870 to ensure that "all persons," not merely "citizens," would enjoy equal rights under the law. See Runyon v. McCrary, 427 U.S. 160, 192-202 (1976) (WHITE, J., dissenting). Indeed, it is not unlikely that, among the Framers, were many who would have applauded a reading of the Equal Protection Clause that states a principle of universal application and is responsive to the racial, ethnic, and cultural diversity of the Nation. See, e.g., Cong.Globe, 39th Cong., 1st Sess., 1056 (1866) (remarks of Rep. Niblack); id. at 2891-2892 (remarks of Sen. Conness); id. 40th Cong., 2d Sess., 883 (1868) (remarks of Sen. Howe) (Fourteenth Amendment "protect[s] classes from class legislation"). See also Bickel, The Original Understanding and the Segregation Decision, 69 Harv.L.Rev. 1, 60-63 (1955).

1978, Regents of Univ. of California v. Bakke, 438 U.S. 293

Over the past 30 years, this Court has embarked upon the crucial mission of interpreting the Equal Protection Clause with the view of assuring to all persons "the protection of [438 U.S. 294] equal laws," Yick Wo, supra at 369, in a Nation confronting a legacy of slavery and racial discrimination. See, e.g., Shelley v. Kraemer, 334 U.S. 1 (1948); Brown v. Bard of Education, 347 U.S. 483 (1954); Hills v. Gautreaux, 425 U.S. 284 (1976). Because the landmark decisions in this area arose in response to the continued exclusion of Negroes from the mainstream of American society, they could be characterized as involving discrimination by the "majority" white race against the Negro minority. But they need not be read as depending upon that characterization for their results. It suffices to say that,

1978, Regents of Univ. of California v. Bakke, 438 U.S. 294

[o]ver the years, this Court has consistently repudiated "[d]istinctions between citizens solely because of their ancestry" as being "odious to a free people whose institutions are founded upon the doctrine of equality."

1978, Regents of Univ. of California v. Bakke, 438 U.S. 294

Loving v. Virginia, 388 U.S. 1, 11 (1967), quoting Hirabayashi, 320 U.S. at 100.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 294

Petitioner urges us to adopt for the first time a more restrictive view of the Equal Protection Clause, and hold that discrimination against members of the white "majority" cannot be suspect if its purpose can be characterized as "benign." 34 [438 U.S. 295] The clock of our liberties, however, cannot be turned back to 1868. Brown v. Board of Education, supra at 492; accord, Loving v. Virginia supra at 9. It is far too late to argue that the guarantee of equal protection to all persons permits the recognition of special wards entitled to a degree of protection greater than that accorded others. 35

1978, Regents of Univ. of California v. Bakke, 438 U.S. 295

The Fourteenth Amendment is not directed solely against discrimination due to a "two-class theory"—that is, bad upon differences between "white" and Negro.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 295

Hernandez, 347 U.S. at 478.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 295

Once the artificial line of a "two-class theory" of the Fourteenth Amendment is put aside, the difficulties entailed in varying the level of judicial review according to a perceived "preferred" status of a particular racial or ethnic minority are intractable. The concepts of "majority" and "minority" necessarily reflect temporary arrangements and political judgments. As observed above, the white "majority" itself is composed of various minority groups, most of which can lay claim to a history of prior discrimination at the hands of the State and private individuals. Not all of these groups can receive preferential treatment and corresponding judicial tolerance [438 U.S. 296] of distinctions drawn in terms of race and nationality, for then the only "majority" left would be a new minority of white Anglo-Saxon Protestants. There is no principled basis for deciding which groups would merit "heightened judicial solicitude" and which would not. 36 Courts would be asked to evaluate the extent of the prejudice and consequent [438 U.S. 297] harm suffered by various minority groups. Those whose societal injury is thought to exceed some arbitrary level of tolerability then would be entitled to preferential classifications at the expense of individuals belonging to other groups. Those classifications would be free from exacting judicial scrutiny. As these preferences began to have their desired effect, and the consequences of past discrimination were undone, new judicial rankings would be necessary. The kind of variable sociological and political analysis necessary to produce such rankings simply does not lie within the judicial competence—even if they otherwise were politically feasible and socially desirable. 37 [438 U.S. 298]

1978, Regents of Univ. of California v. Bakke, 438 U.S. 298

Moreover, there are serious problems of justice connected with the idea of preference itself. First, it may not always be clear that a so-called preference is, in fact, benign. Courts may be asked to validate burdens imposed upon individual members of a particular group in order to advance the group's general interest. See United Jewish Organizations v. Carey, 430 U.S. at 172-173 (BRENNAN, J., concurring in part). Nothing in the Constitution supports the notion that individuals may be asked to suffer otherwise impermissible burdens in order to enhance the societal standing of their ethnic groups. Second, preferential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without special protection based on a factor having no relationship to individual worth. See DeFunis v. Odegaard, 416 U.S. 312, 343 (1974) (Douglas, J., dissenting). Third, there is a measure of inequity in forcing innocent persons in respondent's position to bear the burdens of redressing grievances not of their making.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 298

By hitching the meaning of the Equal Protection Clause to these transitory considerations, we would be holding, as a constitutional principle, that judicial scrutiny of classifications touching on racial and ethnic background may vary with the ebb and flow of political forces. Disparate constitutional tolerance of such classifications well may serve to exacerbate [438 U.S. 299] racial and ethnic antagonisms, rather than alleviate them. United Jewish Organizations, supra at 173-174 (BRENNAN, J., concurring in part). Also, the mutability of a constitutional principle, based upon shifting political and social judgments, undermines the chances for consistent application of the Constitution from one generation to the next, a critical feature of its coherent interpretation. Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 650-651 (1895) (White, J., dissenting). In expounding the Constitution, the Court's role is to discern

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principles sufficiently absolute to give them roots throughout the community and continuity over significant periods of time, and to lift them above the level of the pragmatic political judgments of a particular time and place.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 299

A. Cox, The Role of the Supreme Court in American Government 114 (1976).

1978, Regents of Univ. of California v. Bakke, 438 U.S. 299

If it is the individual who is entitled to judicial protection against classifications based upon his racial or ethnic background because such distinctions impinge upon personal rights, rather than the individual only because of his membership in a particular group, then constitutional standards may be applied consistently. Political judgments regarding the necessity for the particular classification may be weighed in the constitutional balance, Korematsu v. United States, 323 U.S. 214 (1944), but the standard of justification will remain constant. This is as it should be, since those political judgments are the product of rough compromise struck by contending groups within the democratic process. 38 When they touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest. The Constitution guarantees that right to every person regardless of his background. Shelley v. Kraemer, 334 U.S. at 22; Missouri ex rel. Gaines v. Canada, 305 U.S. at 351. [438 U.S. 300]

C

1978, Regents of Univ. of California v. Bakke, 438 U.S. 300

Petitioner contends that, on several occasions, this Court has approved preferential classifications without applying the most exacting scrutiny. Most of the cases upon which petitioner relies are drawn from three areas: school desegregation, employment discrimination, and sex discrimination. Each of the cases cited presented a situation materially different from the facts of this case.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 300

The school desegregation cases are inapposite. Each involved remedies for clearly determined constitutional violations. E.g., Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971); McDaniel v. Barresi, 402 U.S. 39 (1971); Green v. County School Board, 391 U.S. 430 (1968). Racial classifications thus were designed as remedies for the vindication of constitutional entitlement. 39 Moreover, the scope of the remedies was not permitted to exceed the extent of the [438 U.S. 301] violations. E.g., Dayton Board of Education v. Brinkman, 433 U.S. 406 (1977); Milliken v. Bradley, 418 U.S. 717 (1974); see Pasadena City Board of Education v. Spangler, 427 U.S. 424 (1976). See also Austin Independent School Dist. v. United States, 429 U.S. 990, 991-995 (1976) (POWELL, J., concurring). Here, there was no judicial determination of constitutional violation as a predicate for the formulation of a remedial classification.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 301

The employment discrimination cases also do not advance petitioner's cause. For example, in Franks v. Bowman Transportation Co., 424 U.S. 747 (1976), we approved a retroactive award of seniority to a class of Negro truckdrivers who had been the victims of discrimination—not just by society at large, but by the respondent in that case. While this relief imposed some burdens on other employees, it was held necessary "`to make [the victims] whole for injuries suffered on account of unlawful employment discrimination.'" Id. at 763, quoting Albemarle Paper Co. v. Moody, 422 U.S. 405, 418 (1975). The Courts of Appeals have fashioned various types of racial preferences as remedies for constitutional or statutory violations resulting in identified, race-based injuries to individuals held entitled to the preference. E.g., Bridgeport Guardians, Inc. v. Bridgeport Civil Service Commission, 482 F.2d 1333 (CA2 1973); Carter v. Gallagher, 452 F.2d 315 (CA8 1972), modified on rehearing en banc, id. at 327. Such preferences also have been upheld where a legislative or administrative body charged with the responsibility made determinations of past discrimination by the industries affected, and fashioned remedies deemed appropriate to rectify the discrimination. E.g., Contractors Association of Eastern Pennsylvania v. Secretary of Labor, 442 F.2d 159 (CA3), cert. denied, 404 U.S. 854 (1971); 40 Associated General [438 U.S. 302] Contractors of Massachusetts, Inc. v. Altshuler, 490 F.2d 9 (CA1 1973), cert. denied, 416 U.S. 957 (1974); cf. Katzenbach v. Morgan, 384 U.S. 641 (1966). But we have never approved preferential classifications in the absence of proved constitutional or statutory violations. 41

1978, Regents of Univ. of California v. Bakke, 438 U.S. 302

Nor is petitioner's view as to the applicable standard supported by the fact that gender-based classifications are not subjected to this level of scrutiny. E g., Califano v. Webster, 430 U.S. 313, 316-317 (1977); Craig v. Boren, 429 U.S. 190, 211 n. (1976) (POWELL, J., concurring). Gender-based distinctions are less likely to create the analytical and practical [438 U.S. 303] problems present in preferential programs premised on racial or ethnic criteria. With respect to gender, there are only two possible classifications. The incidence of the burdens imposed by preferential classifications is clear. There are no rival groups which can claim that they, too, are entitled to preferential treatment. Classwide questions as to the group suffering previous injury and groups which fairly can be burdened are relatively manageable for reviewing courts. See, e.g., Califano v. Goldfarb, 430 U.S. 199, 212-217 (1977); Weinberger v. Wiesenfeld, 420 U.S. 636, 645 (1975). The resolution of these same questions in the context of racial and ethnic preferences presents far more complex and intractable problems than gender-based classifications. More importantly, the perception of racial classifications as inherently odious stems from a lengthy and tragic history that gender-based classifications do not share. In sum, the Court has never viewed such classification as inherently suspect or as comparable to racial or ethnic classifications for the purpose of equal protection analysis.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 303

Petitioner also cites Lau v. Nichols, 414 U.S. 563 (1974), in support of the proposition that discrimination favoring racial or ethnic minorities has received judicial approval without the exacting inquiry ordinarily accorded "suspect" classifications. In Lau, we held that the failure of the San Francisco school system to provide remedial English instruction for some 1,800 students of oriental ancestry who spoke no English amounted to a violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the regulations promulgated thereunder. Those regulations required remedial instruction where inability to understand English excluded children of foreign ancestry from participation in educational programs. 414 U.S. at 568. Because we found that the students in Lau were denied "a meaningful opportunity to participate in the educational program," ibid., we remanded for the fashioning of a remedial order. [438 U.S. 304]

1978, Regents of Univ. of California v. Bakke, 438 U.S. 304

Lau provides little support for petitioner's argument. The decision rested solely on the statute, which had been construed by the responsible administrative agency to each educational practices "which have the effect of subjecting individuals to discrimination," ibid. We stated:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 304

Under these state-imposed standards, there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum, for students who do not understand English are effectively foreclosed from any meaningful education.

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Id. at 566. Moreover, the "preference" approved did not result in the denial of the relevant benefit—"meaningful opportunity to participate in the educational program"—to anyone else. No other student was deprived by that preference of the ability to participate in San Francisco's school system, and the applicable regulations required similar assistance for all students who suffered similar linguistic deficiencies. Id. at 570-571 (STEWART, J., concurring in result).

1978, Regents of Univ. of California v. Bakke, 438 U.S. 304

In a similar vein, 42 petitioner contends that our recent decision in United Jewish Organization v. Carey, 430 U.S. 144 (1977), indicates a willingness to approve racial classifications designed to benefit certain minorities, without denominating the classifications as "suspect." The State of New York had redrawn its reapportionment plan to meet objections of the Department of Justice under § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (1970 ed., Supp. V). Specifically, voting districts were redrawn to enhance the electoral power [438 U.S. 305] of certain "nonwhite" voters found to have been the victims of unlawful "dilution" under the original reapportionment plan. United Jewish Organizations, like Lau, properly is viewed as a case in which the remedy for an administrative finding of discrimination encompassed measures to improve the previously disadvantaged group's ability to participate, without excluding individuals belonging to any other group from enjoyment of the relevant opportunity—meaningful participation in the electoral process.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 305

In this case, unlike Lau and United Jewish Organizations, there has been no determination by the legislature or a responsible administrative agency that the University engaged in a discriminatory practice requiring remedial efforts. Moreover, the operation of petitioner's special admissions program is quite different from the remedial measures approved in those cases. It prefers the designated minority groups at the expense of other individuals who are totally foreclosed from competition for the 16 special admissions seats in every Medical School class. Because of that foreclosure, some individuals are excluded from enjoyment of a state-provided benefit—admission to the Medical School—they otherwise would receive. When a classification denies an individual opportunities or benefits enjoyed by others solely because of his race or ethnic background, it must be regarded as suspect. E.g., McLaurin v. Oklahoma State Regents, 339 U.S. at 641-642.

IV

1978, Regents of Univ. of California v. Bakke, 438 U.S. 305

We have held that, in

1978, Regents of Univ. of California v. Bakke, 438 U.S. 305

order to justify the use of a suspect classification, a State must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is "necessary…to the accomplishment" of its purpose or the safeguarding of its interest.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 305

In re Griffiths, 413 U.S. 717, 721-722 (1973) (footnotes omitted); Loving v. Virginia, 388 U.S. at 11; McLaughlin v. Florida, 379 U.S. 184, 196 (1964). The special admissions [438 U.S. 306] program purports to serve the purposes of: (i) "reducing the historic deficit of traditionally disfavored minorities in medical schools and in the medical profession," Brief for Petitioner 32; (ii) countering the effects of societal discrimination; 43 (iii) increasing the number of physicians who will practice in communities currently underserved; and (iv) obtaining the educational benefits that flow from an ethnically diverse student body. It is necessary to decide which, if any, of these purposes is substantial enough to support the use of a suspect classification. [438 U.S. 307]

A

1978, Regents of Univ. of California v. Bakke, 438 U.S. 307

If petitioner's purpose is to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin, such a preferential purpose must be rejected not as insubstantial, but as facially invalid. Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids. E.g., Loving v. Virginia, supra at 11; McLaughlin v. Florida, supra at 198; Brown v. Board of Education, 347 U.S. 483 (1954).

B

1978, Regents of Univ. of California v. Bakke, 438 U.S. 307

The State certainly has a legitimate and substantial interest in ameliorating, or eliminating where feasible, the disabling effects of identified discrimination. The line of school desegregation cases, commencing with Brown, attests to the importance of this state goal and the commitment of the judiciary to affirm all lawful means toward its attainment. In the school cases, the States were required by court order to redress the wrongs worked by specific instances of racial discrimination. That goal was far more focused than the remedying of the effects of "societal discrimination," an amorphous concept of injury that may be ageless in its reach into the past.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 307

We have never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals in the absence of judicial, legislative, or administrative findings of constitutional or statutory violations. See, e.g., Teamsters v. United States, 431 U.S. 324, 367-376 (1977); United Jewish Organizations, 430 U.S. at 155-156; South Carolina v. Katzenbach, 383 U.S. 301, 308 (1966). After such findings have been made, the governmental interest in preferring members of the injured groups at the expense of others is substantial, since the legal rights of the victims must be vindicated. In such a case, the [438 U.S. 308] extent of the injury and the consequent remedy will have been judicially, legislatively, or administratively defined. Also, the remedial action usually remains subject to continuing oversight to assure that it will work the least harm possible to other innocent persons competing for the benefit. Without such findings of constitutional or statutory violations, 44 it cannot be [438 U.S. 309] said that the government has any greater interest in helping one individual than in refraining from harming another. Thus, the government has no compelling justification for inflicting such harm.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 309

Petitioner does not purport to have made, and is in no position to make, such findings. Its broad mission is education, not the formulation of any legislative policy or the adjudication of particular claims of illegality. For reasons similar to those stated in Part III of this opinion, isolated segments of our vast governmental structures are not competent to make those decisions, at least in the absence of legislative mandates and legislatively determined criteria. 45 Cf. Hampton v. Mow Sun Wong, 426 U.S. 88 (1976); n. 41, supra. Before relying upon these sorts of findings in establishing a racial classification, a governmental body must have the authority and capability to establish, in the record, that the classification is responsive to identified discrimination. See, e.g., Califano v. Webster, 430 U.S. at 316-321; Califano [438 U.S. 310] v. Goldfarb, 430 U.S. at 212-217. Lacking this capability, petitioner has not carried its burden of justification on this issue.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 310

Hence, the purpose of helping certain groups whom the faculty of the Davis Medical School perceived as victims of "societal discrimination" does not justify a classification that imposes disadvantages upon persons like respondent, who bear no responsibility for whatever harm the beneficiaries of the special admissions program are thought to have suffered. To hold otherwise would be to convert a remedy heretofore reserved for violations of legal rights into a privilege that all institutions throughout the Nation could grant at their pleasure to whatever groups are perceived as victims of societal discrimination. That is a step we have never approved. Cf. Pasadena Cty Board of Education v. Spangler, 427 U.S. 424 (1976).

C

1978, Regents of Univ. of California v. Bakke, 438 U.S. 310

Petitioner identifies, as another purpose of its program, improving the delivery of health care services to communities currently underserved. It may be assumed that, in some situations, a State's interest in facilitating the health care of its citizens is sufficiently compelling to support the use of a suspect classification. But there is virtually no evidence in the record indicating that petitioner's special admissions program is either needed or geared to promote that goal. 46 The court below addressed this failure of proof:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 310

The University concedes it cannot assure that minority doctors who entered under the program, all of whom expressed an "interest" in practicing in a disadvantaged community, will actually do so. It may be correct to assume that some of them will carry out this intention, and that it is more likely they will practice in minority [438 U.S. 311] communities than the average white doctor. (See Sandalow, Racial Preferences in Higher Education: Political Responsibility and the Judicial Role (1975) 42 U.Chi.L.Rev. 653, 688.) Nevertheless, there are more precise and reliable ways to identify applicants who are genuinely interested in the medical problems of minorities than by race. An applicant of whatever race who has demonstrated his concern for disadvantaged minorities in the past and who declares that practice in such a community is his primary professional goal would be more likely to contribute to alleviation of the medical shortage than one who is chosen entirely on the basis of race and disadvantage. In short, there is no empirical data to demonstrate that any one race is more selflessly socially oriented or by contrast that another is more selfishly acquisitive.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 311

18 Cal.3d at 56, 553 P.2d at 1167.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 311

Petitioner simply has not carried its burden of demonstrating that it must prefer members of particular ethnic groups over all other individuals in order to promote better health care delivery to deprived citizens. Indeed, petitioner has not shown that its preferential classification is likely to have any significant effect on the problem. 47

D

1978, Regents of Univ. of California v. Bakke, 438 U.S. 311

The fourth goal asserted by petitioner is the attainment of a diverse student body. This clearly is a constitutionally permissible [438 U.S. 312] goal for an institution of higher education. Academic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment. The freedom of a university to make its own judgments as to education includes the selection of its student body. Mr. Justice Frankfurter summarized the "four essential freedoms" that constitute academic freedom:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 312

"It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail "the four essential freedoms" of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study."

1978, Regents of Univ. of California v. Bakke, 438 U.S. 312

Sweezy v. New Hampshire, 354 U.S. 234, 263 (1957) (concurring in result).

1978, Regents of Univ. of California v. Bakke, 438 U.S. 312

Our national commitment to the safeguarding of these freedoms within university communities was emphasized in Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967):

1978, Regents of Univ. of California v. Bakke, 438 U.S. 312

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us, and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment…. The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues, [rather] than through any kind of authoritative selection." United States v. Associated Press, 52 F.Supp. 362, 372.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 312

The atmosphere of "speculation, experiment and creation"—so essential to the quality of higher education—is widely believed to be promoted by a diverse student body. 48 As the Court [438 U.S. 313] noted in Keyishian, it is not too much to say that the "nation's future depends upon leaders trained through wide exposure" to the ideas and mores of students as diverse as this Nation of many peoples.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 313

Thus, in arguing that its universities must be accorded the right to select those students who will contribute the most to the "robust exchange of ideas," petitioner invokes a countervailing constitutional interest, that of the First Amendment. In this light, petitioner must be viewed as seeking to achieve a goal that is of paramount importance in the fulfillment of its mission.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 313

It may be argued that there is greater force to these views at the undergraduate level than in a medical school, where the training is centered primarily on professional competency. But even at the graduate level, our tradition and experience lend support to the view that the contribution of diversity is substantial. In Sweatt v. Painter, 339 U.S. at 634, the [438 U.S. 314] Court made a similar point with specific reference to legal education:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 314

The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students, and no one who has practiced law, would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 314

Physicians serve a heterogeneous population. An otherwise qualified medical student with a particular background—whether it be ethnic, geographic, culturally advantaged or disadvantaged—may bring to a professional school of medicine experiences, outlooks, and ideas that enrich the training of its student body and better equip its graduates to render with understanding their vital service to humanity. 49

1978, Regents of Univ. of California v. Bakke, 438 U.S. 314

Ethnic diversity, however, is only one element in a range of factors a university properly may consider in attaining the goal of a heterogeneous student body. Although a university must have wide discretion in making the sensitive judgments as to who should be admitted, constitutional limitations protecting individual rights may not be disregarded. Respondent urges—and the courts below have held—that petitioner's dual admissions program is a racial classification that impermissibly infringes his rights under the Fourteenth Amendment. As the interest of diversity is compelling in the context of a university's admissions program, the question remains whether the [438 U.S. 315] program's racial classification is necessary to promote this interest. In re Griffiths, 413 U.S. at 721-722.

V

A

1978, Regents of Univ. of California v. Bakke, 438 U.S. 315

It may be assumed that the reservation of a specified number of seats in each class for individuals from the preferred ethnic groups would contribute to the attainment of considerable ethnic diversity in the student body. But petitioner's argument that this is the only effective means of serving the interest of diversity is seriously flawed. In a most fundamental sense, the argument misconceives the nature of the state interest that would justify consideration of race or ethnic background. It is not an interest in simple ethnic diversity, in which a specified percentage of the student body is in effect guaranteed to be members of selected ethnic groups, with the remaining percentage an undifferentiated aggregation of students. The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics, of which racial or ethnic origin is but a single, though important, element. Petitioner's special admissions program, focused solely on ethnic diversity, would hinder, rather than further, attainment of genuine diversity. 50

1978, Regents of Univ. of California v. Bakke, 438 U.S. 315

Nor would the state interest in genuine diversity be served by expanding petitioner's two-track system into a multi-track program with a prescribed number of seats set aside for each identifiable category of applicants. Indeed, it is inconceivable that a university would thus pursue the logic of petitioner's two-track program to the illogical end of insulating each category of applicants with certain desired qualifications from competition with all other applicants. [438 U.S. 316]

1978, Regents of Univ. of California v. Bakke, 438 U.S. 316

The experience of other university admissions programs, which take race into account in achieving the educational diversity valued by the First Amendment, demonstrates that the assignment of a fixed number of places to a minority group is not a necessary means toward that end. An illuminating example is found in the Harvard College program:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 316

In recent years, Harvard College has expanded the concept of diversity to include students from disadvantaged economic, racial and ethnic groups. Harvard College now recruits not only Californians or Louisianans but also blacks and Chicanos and other minority students….

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In practice, this new definition of diversity has meant that race has been a factor in some admission decisions. When the Committee on Admissions reviews the large middle group of applicants who are "admissible" and deemed capable of doing good work in their courses, the race of an applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates' cases. A farm boy from Idaho can bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something that a white person cannot offer…. [See Appendix hereto.]

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In Harvard College admissions, the Committee has not set target quotas for the number of blacks, or of musicians, football players, physicists or Californians to be admitted in a given year…. But that awareness [of the necessity of including more than a token number of black students] does not mean that the Committee sets a minimum number of blacks or of people from west of the Mississippi who are to be admitted. It means only that, in choosing among thousands of applicants who are not only "admissible" academically but have other strong qualities, the Committee, with a number of criteria in mind, pays some attention to distribution among many [438 U.S. 317] types and categories of students.

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App. to Brief for Columbia University, Harvard University, Stanford University, and the University of Pennsylvania, as Amici Curiae 2-3.

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In such an admissions program, 51 race or ethnic background may be deemed a "plus" in a particular applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats. The file of a particular black applicant may be examined for his potential contribution to diversity without the factor of race being decisive when compared, for example, with that of an applicant identified as an Italian-American if the latter is thought to exhibit qualities more likely to promote beneficial educational pluralism. Such qualities could include exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, a history of overcoming disadvantage, ability to communicate with the poor, or other qualifications deemed important. In short, an admissions program operated in this way is flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight. Indeed, the weight attributed to a [438 U.S. 318] particular quality may vary from year to year depending upon the "mix" both of the student body and the applicants for the incoming class.

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This kind of program treats each applicant as an individual in the admissions process. The applicant who loses out on the last available seat to another candidate receiving a "plus" on the basis of ethnic background will not have been foreclosed from all consideration for that seat simply because he was not the right color or had the wrong surname. It would mean only that his combined qualifications, which may have included similar nonobjective factors, did not outweigh those of the other applicant. His qualifications would have been weighed fairly and competitively, and he would have no basis to complain of unequal treatment under the Fourteenth Amendment. 52

1978, Regents of Univ. of California v. Bakke, 438 U.S. 318

It has been suggested that an admissions program which considers race only as one factor is simply a subtle and more sophisticated—but no less effective—means of according racial preference than the Davis program. A facial intent to discriminate, however, is evident in petitioner's preference program, and not denied in this case. No such facial infirmity exists in an admissions program where race or ethnic background is simply one element—to be weighed fairly against other elements—in the selection process. "A boundary line," as Mr. Justice Frankfurter remarked in another connection, "is none the worse for being narrow." McLeod v. Dilworth, 322 U.S. 327, 329 (1944). And a court would not assume that a university, professing to employ a facially nondiscriminatory admissions policy, would operate it as a cover for the functional equivalent of a quota system. In short, good faith [438 U.S. 319] would be presumed in the absence of a showing to the contrary in the manner permitted by our cases. See, e.g., Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252 (1977); Washington v. Davis, 426 U.S. 229 (1976); Swain v. Alabama, 380 U.S. 202 (165). 53

B

1978, Regents of Univ. of California v. Bakke, 438 U.S. 319

In summary, it is evident that the Davis special admissions program involves the use of an explicit racial classification never before countenanced by this Court. It tells applicants who are not Negro, Asian, or Chicano that they are totally excluded from a specific percentage of the seats in an entering class. No matter how strong their qualifications, quantitative and extracurricular, including their own potential for contribution to educational diversity, they are never afforded the chance to compete with applicants from the preferred groups for the special admissions seats. At the same time, the preferred [438 U.S. 320] applicants have the opportunity to compete for every seat in the class.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 320

The fatal flaw in petitioner's preferential program is its disregard of individual rights as guaranteed by the Fourteenth Amendment. Shelley v. Kraemer, 334 U.S. at 22. Such rights are not absolute. But when a State's distribution of benefits or imposition of burdens hinges on ancestry or the color of a person's skin, that individual is entitled to a demonstration that the challenged classification is necessary to promote a substantial state interest. Petitioner has failed to carry this burden. For this reason, that portion of the California court's judgment holding petitioner's special admissions program invalid under the Fourteenth Amendment must be affirmed.

C

1978, Regents of Univ. of California v. Bakke, 438 U.S. 320

In enjoining petitioner from ever considering the race of any applicant, however, the courts below failed to recognize that the State has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin. For this reason, so much of the California court's judgment as enjoins petitioner from any consideration of the race of any applicant must be reversed.

VI

1978, Regents of Univ. of California v. Bakke, 438 U.S. 320

With respect to respondent's entitlement to an injunction directing his admission to the Medical School, petitioner has conceded that it could not carry its burden of proving that, but for the existence of its unlawful special admissions program, respondent still would not have been admitted. Hence, respondent is entitled to the injunction, and that portion of the judgment must be affirmed. 54 [438 U.S. 321]

APPENDIX TO OPINION OF POWELL, J.

Harvard College Admissions Program 55

1978, Regents of Univ. of California v. Bakke, 438 U.S. 321

For the past 30 years, Harvard College has received each year applications for admission that greatly exceed the number of places in the freshman class. The number of applicants who are deemed to be not "qualified" is comparatively small. The vast majority of applicants demonstrate through test scores, high school records and teachers' recommendations that they have the academic ability to do adequate work at Harvard, and perhaps to do it with distinction. Faced with the dilemma of choosing among a large number of "qualified" candidates, the Committee on Admissions could use the single criterion of scholarly excellence and attempt to determine who among the candidates were likely to perform best academically. But for the past 30 years, the Committee on Admissions has never adopted this approach. The belief has been that, if scholarly excellence were the sole or even predominant criterion, Harvard College would lose a great deal of its vitality and intellectual excellence, and that the quality of the educational [438 U.S. 322] experience offered to all students would suffer. Final Report of W. J. Bender, Chairman of the Admission and Scholarship Committee and Dean of Admissions and Financial Aid, pp. 20 et seq. (Cambridge, 1960). Consequently, after selecting those students whose intellectual potential will seem extraordinary to the faculty—perhaps 150 or so out of an entering class of over 1,100—the Committee seeks—

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variety in making its choices. This has seemed important…in part because it adds a critical ingredient to the effectiveness of the educational experience [in Harvard College]…. The effectiveness of our students' educational experience has seemed to the Committee to be affected as importantly by a wide variety of interests, talents, backgrounds and career goals as it is by a fine faculty and our libraries, laboratories and housing arrangements.

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Dean of Admissions Fred L. Glimp, Final Report to the Faculty of Arts and Sciences, 65 Official Register of Harvard University No. 25, 93, 10105 (1968) (emphasis supplied).

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The belief that diversity adds an essential ingredient to the educational process has long been a tenet of Harvard College admissions. Fifteen or twenty years ago, however, diversity meant students from California, New York, and Massachusetts; city dwellers and farm boys; violinists, painters and football players; biologists, historians and classicists; potential stockbrokers, academics and politicians. The result was that very few ethnic or racial minorities attended Harvard College. In recent years, Harvard College has expanded the concept of diversity to include students from disadvantaged economic, racial and ethnic groups. Harvard College now recruits not only Californians or Louisianans, but also blacks and Chicanos and other minority students. Contemporary conditions in the United States mean that, if Harvard College is to continue to offer a first-rate education to its students, [438 U.S. 323] minority representation in the undergraduate body cannot be ignored by the Committee on Admissions.

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In practice, this new definition of diversity has meant that race has been a factor in some admission decisions. When the Committee on Admissions reviews the large middle group of applicants who are "admissible" and deemed capable of doing good work in their courses, the race of an applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates' cases. A farm boy from Idaho can bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something that a white person cannot offer. The quality of the educational experience of all the students in Harvard College depends in part on these differences in the background and outlook that students bring with them.

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In Harvard College admissions, the Committee has not set target quotas for the number of blacks, or of musicians, football players, physicists or Californians to be admitted in a given year. At the same time the Committee is aware that, if Harvard College is to provide a truly heterogen[e]ous environment that reflects the rich diversity of the United States, it cannot be provided without some attention to numbers. It would not make sense, for example, to have 10 or 20 students out of 1, 100 whose homes are west of the Mississippi. Comparably, 10 or 20 black students could not begin to bring to their classmates and to each other the variety of points of view, backgrounds and experiences of blacks in the United States. Their small numbers might also create a sense of isolation among the black students themselves, and thus make it more difficult for them to develop and achieve their potential. Consequently, when making its decisions, the Committee on Admissions is aware that there is some relationship between numbers and achieving the benefits to be derived from a diverse student body, and between numbers and providing a reasonable environment for those students admitted. But [438 U.S. 324] that awareness does not mean that the Committee sets a minimum number of blacks or of people from west of the Mississippi who are to be admitted. It means only that, in choosing among thousands of applicants who are not only "admissible" academically but have other strong qualities, the Committee, with a number of criteria in mind, pays some attention to distribution among many types and categories of students.

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The further refinements sometimes required help to illustrate the kind of significance attached to race. The Admissions Committee, with only a few places left to fill, might find itself forced to choose between A, the child of a successful black physician in an academic community with promise of superior academic performance, and B, a black who grew up in an inner-city ghetto of semi-literate parents whose academic achievement was lower, but who had demonstrated energy and leadership, as well as an apparently abiding interest in black power. If a good number of black students much like A, but few like B, had already been admitted, the Committee might prefer B, and vice versa. If C, a white student with extraordinary artistic talent, were also seeking one of the remaining places, his unique quality might give him an edge over both A and B. Thus, the critical criteria are often individual qualities or experience not dependent upon race but sometimes associated with it.

BRENNAN, J., concurring and dissenting

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Opinion of MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, MR. JUSTICE MARSHALL, and MR, JUSTICE BLACKMUN, concurring in the judgment in part and dissenting in part.

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The Court today, in reversing in part the judgment of the Supreme Court of California, affirms the constitutional power of Federal and State Governments to act affirmatively to achieve equal opportunity for all. The difficulty of the issue presented—whether government may use race-conscious programs to redress the continuing effects of past discrimination—[438 U.S. 325] and the mature consideration which each of our Brethren has brought to it have resulted in many opinions, no single one speaking for the Court. But this should not and must not mask the central meaning of today's opinions: Government may take race into account when it acts not to demean or insult any racial group, but to remedy disadvantages cast on minorities by past racial prejudice, at least when appropriate findings have been made by judicial, legislative, or administrative bodies with competence to act in this area.

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THE CHIEF JUSTICE and our Brothers STEWART, REHNQUIST, and STEVENS, have concluded that Title VI of the Civil Rights Act of 1964, 78 Stat. 252, as amended, 42 U.S.C. § 2000d et seq., prohibits programs such as that at the Davis Medical School. On this statutory theory alone, they would hold that respondent Allan Bakke's rights have been violated, and that he must, therefore, be admitted to the Medical School. Our Brother POWELL, reaching the Constitution, concludes that, although race may be taken into account in university admissions, the particular special admissions program used by petitioner, which resulted in the exclusion of respondent Bakke, was not shown to be necessary to achieve petitioner's stated goals. Accordingly, these Members of the Court form a majority of five affirming the judgment of the Supreme Court of California insofar as it holds that respondent Bakke "is entitled to an order that he be admitted to the University." 18 Cal.3d 34, 64, 553 P.2d 1152, 1172 (1976).

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We agree with MR. JUSTICE POWELL that, as applied to the case before us, Title VI goes no further in prohibiting the use of race than the Equal Protection Clause of the Fourteenth Amendment itself. We also agree that the effect of the California Supreme Court's affirmance of the judgment of the Superior Court of California would be to prohibit the University from establishing in the future affirmative action programs that take race into account. See ante at 271 n. Since we conclude that the affirmative admissions program at the Davis [438 U.S. 326] Medical School is constitutional, we would reverse the judgment below in all respects. MR. JUSTICE POWELL agrees that some uses of race in university admissions are permissible and, therefore, he joins with us to make five votes reversing the judgment below insofar as it prohibits the University from establishing race-conscious programs in the future. 1

I

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Our Nation was founded on the principle that "all Men are created equal." Yet candor requires acknowledgment that the Framers of our Constitution, to forge the 13 Colonies into one Nation, openly compromised this principle of equality with its antithesis: slavery. The consequences of this compromise are well known, and have aptly been called our "American Dilemma." Still, it is well to recount how recent the time has ben, if it has yet come, when the promise of our principles has flowered into the actuality of equal opportunity for all regardless of race or color.

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The Fourteenth Amendment, the embodiment in the Constitution of our abiding belief in human equality, has been the law of our land for only slightly more than half its 200 years. And for half of that half, the Equal Protection Clause of the Amendment was largely moribund, so that, as late as 1927, Mr. Justice Holmes could sum up the importance of that Clause by remarking that it was the "last resort of constitutional arguments." Buck v. Bell, 274 U.S. 200, 208 (1927). Worse than desuetude, the Clause was early turned against those whom it was intended to set free, condemning them to a "separate but equal" 2 status before the law, a status [438 U.S. 327] always separate but seldom equal. Not until 1954—only 24 years ago—was this odious doctrine interred by our decision in Brown v. Board of Education, 347 U.S. 483 (Brown I), and its progeny, 3 which proclaimed that separate schools and public facilities of all sorts were inherently unequal and forbidden under our Constitution. Even then, inequality was not eliminated with "all deliberate speed." Brown v. Board of Education, 349 U.S. 294, 301 (1955). In 1968 4 and again in 1971, 5 for example, we were forced to remind school boards of their obligation to eliminate racial discrimination root and branch. And a glance at our docket 6 and at dockets of lower courts will show that, even today, officially sanctioned discrimination is not a thing of the past.

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Against this background, claims that law must be "colorblind" or that the datum of race is no longer relevant to public policy must be seen as aspiration, rather than as description of reality. This is not to denigrate aspiration; for reality rebukes us that race has too often been used by those who would stigmatize and oppress minorities. Yet we cannot—and, as we shall demonstrate, need not under our Constitution or Title VI, which merely extends the constraints of the Fourteenth Amendment to private parties who receive federal funds—let color blindness become myopia which masks the reality that many "created equal" have been treated within our lifetimes as inferior both by the law and by their fellow citizens. [438 U.S. 328]

II

1978, Regents of Univ. of California v. Bakke, 438 U.S. 328

The threshold question we must decide is whether Title VI of the Civil Rights Act of 1964 bars recipients of federal funds from giving preferential consideration to disadvantaged members of racial minorities as part of a program designed to enable such individuals to surmount the obstacles imposed by racial discrimination. 7 We join Parts I and V-C of our Brother POWELL's opinion, and three of us agree with his conclusion in Part II that this case does not require us to resolve the question whether there is a private right of action under Title VI. 8

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In our view, Title VI prohibits only those uses of racial criteria that would violate the Fourteenth Amendment if employed by a State or its agencies; it does not bar the preferential treatment of racial minorities as a means of remedying past societal discrimination to the extent that such action is consistent with the Fourteenth Amendment. The legislative history of Title VI, administrative regulations interpreting the statute, subsequent congressional and executive action, and the prior decisions of this Court compel this conclusion. None of these sources lends support to the proposition that Congress intended to bar all race-conscious efforts to extend the benefits of federally financed programs to minorities who have been historically excluded from the full benefits of American life.

A

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The history of Title VI—from President Kennedy's request that Congress grant executive departments and agencies authority [438 U.S. 329] to cut off federal funds to programs that discriminate against Negroes through final enactment of legislation incorporating his proposals—reveals one fixed purpose: to give the Executive Branch of Government clear authority to terminate federal funding of private programs that use race as a means of disadvantaging minorities in a manner that would be prohibited by the Constitution if engaged in by government.

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This purpose was first expressed in President Kennedy's June 19, 1963, message to Congress proposing the legislation that subsequently became the Civil Rights Act of 1964. 9 [438 U.S. 330] Representative Celler, the Chairman of the House Judiciary Committee, and the floor manager of the legislation in the House, introduced Title VI in words unequivocally expressing the intent to provide the Federal Government with the means of assuring that its funds were not used to subsidize racial discrimination inconsistent with the standards imposed by the Fourteenth and Fifth Amendments upon state and federal action.

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The bill would offer assurance that hospitals financed by Federal money would not deny adequate care to Negroes. It would prevent abuse of food distribution programs whereby Negroes have been known to be denied food surplus supplies when white persons were given such food. It would assure Negroes the benefits now accorded only white students in programs of high[er] education financed by Federal funds. It would, in short, assure the existing right to equal treatment in the enjoyment of Federal funds. It would not destroy any rights of private property or freedom of association.

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110 Cong.Rec. 1519 (1964). It was clear to Representative Celler that Title VI, apart from the fact that it reached all federally funded activities even in the absence of sufficient state or federal control to invoke the Fourteenth or Fifth Amendments, was not placing new substantive limitations upon the use of racial criteria, but rather was designed to extend to such activities "the existing right to equal treatment" enjoyed by Negroes under those Amendments, and he later specifically defined the purpose of Title VI in this way:

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In general, it seems rather anomalous that the Federal Government should aid and abet discrimination on the basis of race, color, or national origin by granting money [438 U.S. 331] and other kinds of financial aid. It seems rather shocking, moreover, that, while we have on the one hand the 14th Amendment, which is supposed to do away with discrimination, since it provides for equal protection of the laws, on the other hand, we have the Federal Government aiding and abetting those who persist in practicing racial discrimination.

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It is for these reasons that we bring forth title VI. The enactment of title VI will serve to override specific provisions of law which contemplate Federal assistance to racially segregated institutions.

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Id. at 2467. Representative Celler also filed a memorandum setting forth the legal basis for the enactment of Title VI which reiterated the theme of his oral remarks:

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In exercising its authority to fix the terms on which Federal funds will be disbursed…. Congress clearly has power to legislate so as to insure that the Federal Government does not become involved in a violation of the Constitution.

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Id. at 1528.

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Other sponsors of the legislation agreed with Representative Celler that the function of Title VI was to end the Federal Government's complicity in conduct, particularly the segregation or exclusion of Negroes, inconsistent with the standards to be found in the antidiscrimination provisions of the Constitution. Representative Lindsay, also a member of the Judiciary Committee, candidly acknowledged, in the course of explaining why Title VI was necessary, that it did not create any new standard of equal treatment beyond that contained in the Constitution:

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Both the Federal Government and the States are under constitutional mandates not to discriminate. Many have raised the question as to whether legislation is required at all. Does not the Executive already have the power in the distribution of Federal funds to apply those conditions which will enable the Federal Government itself to live up to the mandate of the Constitution and to require [438 U.S. 332] States and local government entities to live up to the Constitution, most especially the 5th and 14th amendments?

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Id. at 2467. He then explained that legislation was needed to authorize the termination of funding by the Executive Branch because existing legislation seemed to contemplate the expenditure of funds to support racially segregated institutions. Ibid. The views of Representatives Celler and Lindsay concerning the purpose and function of Title VI were shared by other sponsors and proponents of the legislation in the House. 10 Nowhere is there any suggestion that Title VI was intended to terminate federal funding for any reason other than consideration of race or national origin by the recipient institution in a manner inconsistent with the standards incorporated in the Constitution.

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The Senate's consideration of Title VI reveals an identical understanding concerning the purpose and scope of the legislation. Senator Humphrey, the Senate floor manager, opened the Senate debate with a section-by-section analysis of the Civil Rights Act in which he succinctly stated the purpose of Title VI:

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The purpose of title VI is to make sure that funds of the United States are not used to support racial discrimination. In many instances, the practices of segregation or discrimination, which title VI seeks to end, are unconstitutional. This is clearly so wherever Federal funds go to a State agency which engages in racial discrimination. It may also be so where Federal funds go to support private, segregated institutions, under the decision in Simkins v. Moses H. Cone Memorial Hospital, 323 F.2d 959 (C.A. 4, 1963), [cert. denied, 376 U.S. 938 (1964)]. In all cases, such discrimination is contrary to national policy, and to the moral sense of the Nation. Thus, title VI is simply [438 U.S. 333] designed to insure that Federal funds are spent in accordance with the Constitution and the moral sense of the Nation.

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Id. at 6544. Senator Humphrey, in words echoing statements in the House, explained that legislation was needed to accomplish this objective because it was necessary to eliminate uncertainty concerning the power of federal agencies to terminate financial assistance to programs engaging in racial discrimination in the face of various federal statutes which appeared to authorize grants to racially segregated institutions. Ibid. Although Senator Humphrey realized that Title VI reached conduct which, because of insufficient governmental action, might be beyond the reach of the Constitution, it was clear to him that the substantive standard imposed by the statute was that of the Fifth and Fourteenth Amendments. Senate supporters of Title VI repeatedly expressed agreement with Senator Humphrey's description of the legislation as providing the explicit authority and obligation to apply the standards of the Constitution to all recipients of federal funds. Senator Ribicoff described the limited function of Title VI:

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Basically, there is a constitutional restriction against discrimination in the use of Federal funds; and title VI simply spells out the procedure to be used in enforcing that restriction.

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Id. at 13333. Other strong proponents of the legislation in the Senate repeatedly expressed their intent to assure that federal funds would only be spent in accordance with constitutional standards. See remarks of Senator Pastore, id. at 7057, 7062; Senator Clark, id. at 5243; Senator Allott, id. at 12675, 12677. 11 [438 U.S. 334]

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Respondent's contention that Congress intended Title VI to bar affirmative action programs designed to enable minorities disadvantaged by the effects of discrimination to participate in federally financed programs is also refuted by an examination of the type of conduct which Congress thought it was prohibiting by means of Title VI. The debates reveal that the legislation was motivated primarily by a desire to eradicate a very specific evil: federal financial support of programs which disadvantaged Negroes by excluding them from participation or providing them with separate facilities. Again and again supporters of Title VI emphasized that the purpose of the statute was to end segregation in federally funded activities and to end other discriminatory uses of race disadvantaging Negroes. Senator Humphrey set the theme in his speech presenting Title VI to the Senate:

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Large sums of money are contributed by the United States each year for the construction, operation, and maintenance of segregated schools.

\* \* \* \*

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Similarly, under the Hill-Burton Act, Federal grants are made to hospitals which admit whites only or Negroes only….

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In higher education also, a substantial part of the Federal grants to colleges, medical schools and so forth, in the South is still going to segregated institutions. [438 U.S. 335]

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Nor is this all. In several States, agricultural extension services, supported by Federal funds, maintain racially segregated offices for Negroes and whites….

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…Vocational training courses, supported with Federal funds, are given in segregated schools and institutions and often limit Negroes to training in less skilled occupations. In particular localities it is reported that Negroes have been cut off from relief rolls, or denied surplus agricultural commodities, or otherwise deprived of the benefit of federally assisted programs, in retaliation for their participation in voter registration drives, sit-in demonstrations and the like.

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Id. at 6543-6544. See also the remarks of Senator Pastore (id. at 7054-7055); Senator Ribicoff (id. at 7064-7065); Senator Clark (id. at 5243, 9086); Senator Javits (id. at 6050, 7102). 12

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The conclusion to be drawn from the foregoing is clear. Congress recognized that Negroes, in some cases with congressional acquiescence, were being discriminated against in the administration of programs and denied the full benefits of activities receiving federal financial support. It was aware that there were many federally funded programs and institutions which discriminated against minorities in a manner inconsistent with the standards of the Fifth and Fourteenth Amendments, but whose activities might not involve sufficient state or federal action so as to be in violation of these Amendments. Moreover, Congress believed that it was questionable whether the Executive Branch possessed legal authority to terminate the funding of activities on the ground that they discriminated racially against Negroes in a manner violative of the standards contained in the Fourteenth and Fifth [438 U.S. 336] Amendments. Congress' solution was to end the Government's complicity in constitutionally forbidden racial discrimination by providing the Executive Branch with the authority and the obligation to terminate its financial support of any activity which employed racial criteria in a manner condemned by the Constitution.

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Of course, it might be argued that the Congress which enacted Title VI understood the Constitution to require strict racial neutrality or color blindness, and then enshrined that concept as a rule of statutory law. Later interpretation and clarification of the Constitution to permit remedial use of race would then not dislodge Title VI's prohibition of race-conscious action. But there are three compelling reasons to reject such a hypothesis.

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First, no decision of this Court has ever adopted the proposition that the Constitution must be colorblind. See infra at 355-356.

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Second, even if it could be argued in 1964 that the Constitution might conceivably require color blindness, Congress surely would not have chosen to codify such a view unless the Constitution clearly required it. The legislative history of Title VI, as well as the statute itself, reveals a desire to induce voluntary compliance with the requirement of nondiscriminatory treatment. 13 See § 602 of the Act, 42 U.S.C. § 2000d-1 (no funds shall be terminated unless and until it has been "determined that compliance cannot be secured by voluntary means"); H.R.Rep. No. 914, 88th Cong., 1st Sess., pt. 1, p. 25 (1963); 110 Cong Rec. 13700 (1964) (Sen. Pastore); id. at 6546 (Sen. Humphrey). It is inconceivable that Congress intended to encourage voluntary efforts to eliminate the evil of racial discrimination while at the same time forbidding the voluntary use of race-conscious remedies to cure acknowledged or obvious statutory violations. Yet a reading of Title VI as prohibiting all action predicated upon race which adversely [438 U.S. 337] affects any individual would require recipients guilty of discrimination to await the imposition of such remedies by the Executive Branch. Indeed, such an interpretation of Title VI would prevent recipients of federal funds from taking race into account even when necessary to bring their programs into compliance with federal constitutional requirements. This would be a remarkable reading of a statute designed to eliminate constitutional violations, especially in light of judicial decisions holding that, under certain circumstances, the remedial use of racial criteria is not only permissible, but is constitutionally required to eradicate constitutional violations. For example, in Board of Education v. Swann, 402 U.S. 43 (1971), the Court held that a statute forbidding the assignment of students on the basis of race was unconstitutional because it would hinder the implementation of remedies necessary to accomplish the desegregation of a school system:

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Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy.

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Id. at 46. Surely Congress did not intend to prohibit the use of racial criteria when constitutionally required or to terminate the funding of any entity which implemented such a remedy. It clearly desired to encourage all remedies, including the use of race, necessary to eliminate racial discrimination in violation of the Constitution, rather than requiring the recipient to await a judicial adjudication of unconstitutionality and the judicial imposition of a racially oriented remedy.

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Third, the legislative history shows that Congress specifically eschewed any static definition of discrimination in favor of broad language that could be shaped by experience, administrative necessity, and evolving judicial doctrine. Although it is clear from the debates that the supporters of Title VI intended to ban uses of race prohibited by the Constitution and, more specifically, the maintenance of segregated [438 U.S. 338] facilities, they never precisely defined the term "discrimination," or what constituted an exclusion from participation or a denial of benefits on the ground of race. This failure was not lost upon its opponents. Senator Ervin complained:

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The word "discrimination," as used in this reference, has no contextual explanation whatever, other than the provision that the discrimination "is to be against" individuals participating in or benefiting from federally assisted programs and activities on the ground specified. With this context, the discrimination condemned by this reference occurs only when an individual is treated unequally or unfairly because of his race, color, religion, or national origin. What constitutes unequal or unfair treatment? Section 601 and section 602 of title VI do not say. They leave the determination of that question to the executive department or agencies administering each program, without any guideline whatever to point out what is the congressional intent.

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110 Cong.Rec. 5612 (1964). See also remarks of Representative Abernethy (id. at 1619); Representative Dowdy (id. at 1632); Senator Talmadge (id. at 5251); Senator Sparkman (id. at 6052). Despite these criticisms, the legislation's supporters refused to include in the statute or even provide in debate a more explicit definition of what Title VI prohibited.

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The explanation for this failure is clear. Specific definitions were undesirable, in the views of the legislation's principal backers, because Title VI's standard was that of the Constitution, and one that could and should be administratively and judicially applied. See remarks of Senator Humphrey (id. at 5253, 6553); Senator Ribicoff (id. at 7057, 13333); Senator Pastore (id. at 7057); Senator Javits (id. at 5606-5607, 6050). 14 Indeed, there was a strong emphasis throughout [438 U.S. 339] Congress' consideration of Title VI on providing the Executive Branch with considerable flexibility in interpreting and applying the prohibition against racial discrimination. Attorney General Robert Kennedy testified that regulations had not been written into the legislation itself because the rules and regulations defining discrimination might differ from one program to another, so that the term would assume different meanings in different contexts. 15 This determination to preserve flexibility in the administration of Title VI was shared by the legislation's supporters. When Senator Johnston offered an amendment that would have expressly authorized federal grantees to take race into account in placing children in adoptive and foster homes, Senator Pastore opposed the amendment, which was ultimately defeated by a 56-29 vote, on the ground that federal administrators could be trusted to act reasonably, and that there was no danger that they would prohibit the use of racial criteria under such circumstances. Id. at 13695.

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Congress' resolve not to incorporate a static definition of discrimination into Title VI is not surprising. In 1963 and 1964, when Title VI was drafted and debated, the courts had only recently applied the Equal Protection Clause to strike down public racial discrimination in America, and the scope of that Clause's nondiscrimination principle was in a state of flux and rapid evolution. Many questions, such as whether the Fourteenth Amendment barred only de jure discrimination or, in at least some circumstances, reached de facto discrimination, had not yet received an authoritative judicial resolution. The congressional debate reflects an awareness of the evolutionary [438 U.S. 340] change that constitutional law in the area of racial discrimination was undergoing in 1964. 16

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In sum, Congress' equating of Title VI's prohibition with the commands of the Fifth and Fourteenth Amendments, its refusal precisely to define that racial discrimination which it intended to prohibit, and its expectation that the statute would be administered in a flexible manner, compel the conclusion that Congress intended the meaning of the statute's prohibition to evolve with the interpretation of the commands of the Constitution. Thus, any claim that the use of racial criteria is barred by the plain language of the statute must fail in light of the remedial purpose of Title VI and its legislative history. The cryptic nature of the language employed in Title VI merely reflects Congress' concern with the then-prevalent use of racial standards as a means of excluding or disadvantaging Negroes and its determination to prohibit absolutely such discrimination. We have recently held that,

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"[w]hen aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no `rule of law' which forbids its use, however clear the words may appear on `superficial examination.'"

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Train v. Colorado Public Interest Research Group, 426 U.S. 1, 10 (1976), quoting United States v. American Trucking Assns., 310 U.S. 534, 544-544 (1940). This is especially so when, as is the case here, the literal application of what is believed to be the plain language of the statute, assuming that it is so plain, would lead to results in direct conflict with Congress' unequivocally expressed legislative purpose. 17 [438 U.S. 341]

B

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Section 602 of Title VI, 42 U.S.C. § 2000d-1, instructs federal agencies to promulgate regulations interpreting Title [438 U.S. 342] VI. These regulations, which, under the terms of the statute, require Presidential approval, are entitled to considerable deference in construing Title VI. See, e.g., Lau v. Nichols, [438 U.S. 343] 414 U.S. 563 (1974); Mourning v. Family Publications Service, Inc., 411 U.S. 356, 369 (1973); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 381 (1969). Consequently, it is most significant that the Department of Health, Education, and Welfare (HEW), which provides much of the federal assistance to institutions of higher education, has adopted regulations requiring affirmative measures designed to enable racial minorities which have been previously discriminated against by a federally funded institution or program to overcome the effects of such actions and authorizing the voluntary undertaking of affirmative action programs by federally funded institutions that have not been guilty of prior discrimination in order to overcome the effects of conditions which have adversely affected the degree of participation by persons of a particular race.

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Title 45 FR § 80.3(b)(6)(i) (1977) provides:

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In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

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Title 45 CFR § 80.5(i) (1977) elaborates upon this requirement:

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In some situations, even though past discriminatory practices attributable to a recipient or applicant have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 80.6(d), to provide information as to the availability of the program or activity and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary under the requirement stated in (i) of § 80.3(b)(6) for such applicant or recipient to take additional steps to make the benefits [438 U.S. 344] fully available to racial and nationality groups previously subject to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

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These regulations clearly establish that, where there is a need to overcome the effects of past racially discriminatory or exclusionary practices engaged in by a federally funded institution, race-conscious action is not only permitted, but required, to accomplish the remedial objectives of Title VI. 18 Of course, there is no evidence that the Medical School has been guilty of past discrimination, and consequently these regulations would not compel it to employ a program of preferential admissions in behalf of racial minorities. It would be difficult to explain from the language of Title I, however, much less from its legislative history, why the statute compels race-conscious remedies where a recipient institution has engaged in past discrimination, but prohibits such remedial action where racial minorities, as a result of the effects of past discrimination imposed by entities other than the recipient, are excluded from the benefits of federally funded programs. HEW was fully aware of the incongruous nature of such an interpretation of Title VI.

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Title 45 CFR § 80.3(b)(6)(ii) (1977) provides:

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Even in the absence of such prior discrimination, a recipient, in administering a program, may take affirmative action to overcome the effects of conditions which resulted [438 U.S. 345] in limiting participation by persons of a particular race, color, or national origin.

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An explanatory regulation explicitly states that the affirmative action which § 80.3(b)(6)(ii) contemplates includes the use of racial preferences:

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Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not, in fact, be equally available to some racial or nationality groups. I n such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

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45 CFR § 80.5(j) (1977) This interpretation of Title VI is fully consistent with the statute's emphasis upon voluntary remedial action and reflects the views of an agency 19 responsible for achieving its objectives. 20 [438 U.S. 346]

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The Court has recognized that the construction of a statute by those charged with its execution is particularly deserving of respect where Congress has directed its attention to the administrative construction and left it unaltered. Cf. Red Lion Broadcasting Co. v. FCC, 395 U.S. at 381; Zemel v. Rusk, 381 U.S. 1, 11-12 (1965). Congress recently took just this kind of action when it considered an amendment to the Departments of Labor and Health, Education, and Welfare appropriation bill for 1978, which would have restricted significantly the remedial use of race in programs funded by the appropriation. The amendment, as originally submitted by Representative Ashbrook, provided that

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[n]one of the funds appropriated in this Act may be used to initiate, carry out or enforce any program of affirmative action or any other system of quotas or goals in regard to admission policies or employment practices which encourage or require any discrimination on the basis of race, creed, religion, sex or age.

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123 Cong.Rec. [438 U.S. 347] 19715 (1977). In support of the measure, Representative Ashbrook argued that the 1964 Civil Rights Act never authorized the imposition of affirmative action, and that this was a creation of the bureaucracy. Id. at 19722. He explicitly stated, however, that he favored permitting universities to adopt affirmative action programs giving consideration to racial identity, but opposed the imposition of such programs by the Government. Id. at 19715. His amendment was itself amended to reflect this position by only barring the imposition of race-conscious remedies by HEW:

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None of the funds appropriated in this Act may be obligated or expended in connection with the issuance, implementation, or enforcement of any rule, regulation, standard, guideline, recommendation, or order issued by the Secretary of Health, Education, and Welfare which for purposes of compliance with any ratio, quota, or other numerical requirement related to race, creed, color, national origin, or sex requires any individual or entity to take any action with respect to (1) the hiring or promotion policies or practices of such individual or entity, or (2) the admissions policies or practices of such individual or entity.

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Id. at 19722. This amendment was adopted by the House. Ibid. The Senate bill, however, contained no such restriction upon HEW's authority to impose race-conscious remedies, and the Conference Committee, upon the urging of the Secretary of HEW, deleted the House provision from the bill. 21 More significant for present purposes, however, is the fact that even the proponents of imposing limitations upon HEW's implementation of Title VI did not challenge the right of federally funded educational institutions voluntarily to extend preferences to racial minorities. [438 U.S. 348]

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Finally, congressional action subsequent to the passage of Title VI eliminates any possible doubt about Congress' views concerning the permissibility of racial preferences for the purpose of assisting disadvantaged racial minorities. It confirms that Congress did not intend to prohibit, and does not now believe that Title VI prohibits, the consideration of race as part of a remedy for societal discrimination even where there is no showing that the institution extending the preference has been guilty of past discrimination nor any judicial finding that the particular beneficiaries of the racial preference have been adversely affected by societal discrimination.

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Just last year, Congress enacted legislation 22 explicitly requiring that no grants shall be made

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for any local public works project unless the applicant gives satisfactory assurance to the Secretary [of Commerce] that at least 10 per centum of the amount of each grant shall be expended for minority business enterprises.

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The statute defines the term "minority business enterprise" as

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a business, at least 50 per centum of which is owned by minority group members or, in case of a publicly owned business, at least 51 per centum of the stock of which is owned by minority group members.

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The term "minority group members" is defined in explicitly racial terms: "citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts." Although the statute contains an exemption from this requirement "to the extent that the Secretary determines otherwise," this escape clause was provided only to deal with the possibility that certain areas of the country might not contain sufficient qualified "minority business enterprises" to permit compliance with the quota provisions of the legislation. 23

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The legislative history of this race-conscious legislation reveals that it represents a deliberate attempt to deal with [438 U.S. 349] the excessive rate of unemployment among minority citizens and to encourage the development of viable minority controlled enterprises. 24 It was believed that such a "set-aside" was required in order to enable minorities, still "new on the scene" and "relatively small," to compete with larger and more established companies which would always be successful in underbidding minority enterprises. 123 Cong.Rec. 5327 (1977) (Rep. Mitchell). What is most significant about the congressional consideration of the measure is that, although the use of a racial quota or "set-aside" by a recipient of federal funds would constitute a direct violation of Title VI if that statute were read to prohibit race-conscious action, no mention was made during the debates in either the House or the Senate of even the possibility that the quota provisions for minority contractors might in any way conflict with or modify Title VI. It is inconceivable that such a purported conflict would have escaped congressional attention through an inadvertent failure to recognize the relevance of Title VI. Indeed, the Act of which this affirmative action provision is a part also contains a provision barring discrimination on the basis of sex which states that this prohibition

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will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination under Title VI of the Civil Rights Act of 1964.

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42 U.S.C. § 6709 (1976 ed.). Thus Congress, was fully aware of the applicability of Title VI to the funding of public works projects. Under these circumstances, the enactment of the 10% "set-aside" for minority enterprises reflects a congressional judgment that the remedial use of race is permissible under Title VI. We have repeatedly recognized that subsequent legislation reflecting an interpretation of an earlier Act is entitled to great weight in determining the meaning of the earlier statute. Red Lion Broadcasting Co. v. FCC, 395 U.S. at 380-381; [438 U.S. 350] Erlenbaugh v. United States, 409 U.S. 239, 243-244 (1972). See also United States v. Stewart, 311 U.S. 60, 64-65 (1940). 25

C

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Prior decisions of this Court also strongly suggest that Title VI does not prohibit the remedial use of race where such action is constitutionally permissible. In Lau v. Nichols, 414 U.S. 563 (1974), the Court held that the failure of the San [438 U.S. 351] Francisco school system to provide English language instruction to students of Chinese ancestry who do not speak English, or to provide them with instruction in Chinese, constituted a violation of Title VI. The Court relied upon an HEW regulation which stipulates that a recipient of federal funds "may not…utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination" or have

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the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

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45 CFR § 80.3(b)(2) (1977). It interpreted this regulation as requiring San Francisco to extend the same educational benefits to Chinese-speaking students as to English-speaking students, even though there was no finding or allegation that the city's failure to do so was a result of a purposeful design to discriminate on the basis of race.

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Lau is significant in two related respects. First, it indicates that, in at least some circumstances, agencies responsible for the administration of Title VI may require recipients who have not been guilty of any constitutional violations to depart from a policy of color blindness and to be cognizant of the impact of their actions upon racial minorities. Secondly, Lau clearly requires that institutions receiving federal funds be accorded considerable latitude in voluntarily undertaking race-conscious action designed to remedy the exclusion of significant numbers of [438 U.S. 352] minorities from the benefits of federally funded programs. Although this Court has not yet considered the question, presumably, by analogy to our decisions construing Title VII, a medical school would not be in violation of Title VI under Lau because of the serious underrepresentation of racial minorities in its student body as long as it could demonstrate that its entrance requirements correlated sufficiently with the performance of minority students in medical school and the medical profession. 26 It would be inconsistent with Lau and the emphasis of Title VI and the HEW regulations on voluntary action, however, to require that an institution wait to be adjudicated to be in violation of the law before being permitted to voluntarily undertake corrective action based upon a good faith and reasonable belief that the failure of certain racial minorities to satisfy entrance requirements is not a measure of their ultimate performance as doctors, but a result of the lingering effects of past societal discrimination.

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We recognize that Lau, especially when read in light of our subsequent decision in Washington v. Davis, 46 U.S. 229 (1976), which rejected the general proposition that governmental action is unconstitutional solely because it has a racially disproportionate impact, may be read as being predicated upon the view that, at least under some circumstances, Title VI proscribes conduct which might not be prohibited by the Constitution. Since we are now of the opinion, for the reasons set forth above, that Title VI's standard, applicable alike to public and private recipients of federal funds, is no broader than the Constitution's, we have serious doubts concerning the correctness of what appears to be the premise of that decision. However, even accepting Lau's implication that impact alone is, in some contexts, sufficient to establish a prima facie violation of Title VI, contrary to our view that Title VI's definition of racial discrimination is absolutely coextensive with the Constitution's, this would not assist the respondent [438 U.S. 353] in the least. First, for the reasons discussed supra at 336-350, regardless of whether Title VI's prohibitions extend beyond the Constitution's, the evidence fails to establish, and, indeed, compels the rejection of, the proposition that Congress intended to prohibit recipients of federal funds from voluntarily employing race-conscious measures to eliminate the effects of past societal discrimination against racial minorities such as Negroes. Secondly, Lau itself, for the reasons set forth in the immediately preceding paragraph, strongly supports the view that voluntary race-conscious remedial action is permissible under Title VI. If discriminatory racial impact alone is enough to demonstrate at least a prima facie Title VI violation, it is difficult to believe that the Title would forbid the Medical School from attempting to correct the racially exclusionary effects of its initial admissions policy during the first two years of the School's operation.

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The Court has also declined to adopt a "colorblind" interpretation of other statutes containing nondiscrimination provisions similar to that contained in Title VI. We have held under Title VII that, where employment requirements have a disproportionate impact upon racial minorities, they constitute a statutory violation, even in the absence of discriminatory intent, unless the employer is able to demonstrate that the requirements are sufficiently related to the needs of the job. 27 More significantly, the Court has required that preferences be given by employers to members of racial minorities as a remedy for past violations of Title VII, even where there has been no finding that the employer has acted with a discriminatory intent. 28 Finally, we have construed the Voting [438 U.S. 354] Rights Act of 1965, 42 U.S.C. § 1973 et seq. (1970 ed. and Supp. V), which contains a provision barring any voting procedure or qualification that denies or abridges "the right of [438 U.S. 355] any citizen of the United States to vote on account of race or color," as permitting States to voluntarily take race into account in a way that fairly represents the voting strengths of different racial groups in order to comply with the commands of the statute, even where the result is a gain for one racial group at the expense of others. 29

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These prior decisions are indicative of the Court's unwillingness to construe remedial statutes designed to eliminate discrimination against racial minorities in a manner which would impede efforts to attain this objective. There is no justification for departing from this course in the case of Title VI and frustrating the clear judgment of Congress that race-conscious remedial action is permissible.

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We turn, therefore, to our analysis of the Equal Protection Clause of the Fourteenth Amendment.

III

A

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The assertion of human equality is closely associated with the proposition that differences in color or creed, birth or status, are neither significant nor relevant to the way in which persons should be treated. Nonetheless, the position that such factors must be "constitutionally an irrelevance," Edwards v. California, 314 U.S. 160, 185 (1941) (Jackson, J., concurring), summed up by the shorthand phrase " [o]ur Constitution is color-blind," Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting), has never been adopted by this Court as the proper meaning of the Equal Protection Clause. Indeed, [438 U.S. 356] we have expressly rejected this proposition on a number of occasions.

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Our cases have always implied that an "overriding statutory purpose," McLaughlin v. Florida, 379 U.S. 184, 192 (1984), could be found that would justify racial classifications. See, e.g., ibid.; Loving v. Virginia, 388 U.S. 1, 11 (1967); Korematsu v. United States, 323 U.S. 214, 216 (1944); Hirabayashi v. United States, 320 U.S. 81, 100-101 (1943). More recently, in McDaniel v. Barresi, 402 U.S. 39 (1971) this Court unanimously reversed the Georgia Supreme Court which had held that a desegregation plan voluntarily adopted by a local school board, which assigned students on the basis of race, was per se invalid because it was not colorblind. And in North Carolina Board of Education v. Swann, we held, again unanimously, that a statute mandating colorblind school assignment plans could not stand "against the background of segregation," since such a limit on remedies would "render illusory the promise of Brown [I]." 402 U.S. at 45-46.

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We conclude, therefore, that racial classifications are not per se invalid under the Fourteenth Amendment. Accordingly, we turn to the problem of articulating what our role should be in reviewing state action that expressly classifies by race.

B

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Respondent argues that racial classifications are always suspect, and, consequently, that this Court should weigh the importance of the objectives served by Davis' special admissions program to see if they are compelling. In addition, he asserts that this Court must inquire whether, in its judgment, there are alternatives to racial classifications which would suit Davis' purposes. Petitioner, on the other hand, states that our proper role is simply to accept petitioner's determination that the racial classifications used by its program are reasonably related to what it tells us are its benign [438 U.S. 357] purposes. We reject petitioner's view, but, because our prior cases are in many respects inapposite to that before us now, we find it necessary to define with precision the meaning of that inexact term, "strict scrutiny."

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Unquestionably we have held that a government practice or statute which restricts "fundamental rights" or which contains "suspect classifications" is to be subjected to "strict scrutiny," and can be justified only if it furthers a compelling government purpose and, even then, only if no less restrictive alternative is available. 30 See, e.g., San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 16-17 (1973); Dunn v. Blumstein, 405 U.S. 330 (1972). But no fundamental right is involved here. See San Antonio, supra at 29-36. Nor do whites, as a class, have any of the

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traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.

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Id. at 28; see United States v. Carolene Products Co., 304 U.S. 144, 152 n. 4 (1938). 31

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Moreover, if the University's representations are credited, this is not a case where racial classifications are "irrelevant, and therefore prohibited." Hirabayashi, supra at 100. Nor has anyone suggested that the University's purposes contravene the cardinal principle that racial classifications that stigmatize—because they are drawn on the presumption that one race is inferior to another or because they put the weight of government [438 U.S. 358] behind racial hatred and separatism—are invalid without more. See Yick Wo v. Hopkins, 118 U.S. 356, 374 (1886); 32 accord, Strauder v. West Virginia, 100 U.S. 303, 308 (1880); Korematsu v. United States, supra at 223; Oyama v. California, 332 U.S. 633, 663 (1948) (Murphy, J., concurring); Brown I, 347 U.S. 483 (1954); McLaughlin v. Florida, supra, at 191-192; Loving v. Virginia, supra, at 11-12; Reitman v. Mulkey, 387 U.S. 369, 375-376 (1967); United Jewish Organizations v. Carey, 430 U.S. 144, 165 (1977) (UJO) (opinion of WHITE, J., joined by REHNQUIST and STEVENS, JJ.); id. at 169 (opinion concurring in part). 33

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On the other hand, the fact that this case does not fit neatly into our prior analytic framework for race cases does not mean that it should be analyzed by applying the very loose rational basis standard of review that is the very least that is always applied in equal protection cases. 34

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"[T]he mere recitation of a benign, compensatory purpose is not an automatic shield [438 U.S. 359] which protects against any inquiry into the actual purpose underlying a statutory scheme."

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Califano v. Webster, 430 U.S. 313, 317 (1977), quoting Weinberger v. Wiesenfeld, 420 U.S. 636, 648 (1975). Instead, a number of considerations—developed in gender discrimination cases but which carry even more force when applied to racial classifications—lead us to conclude that racial classifications designed to further remedial purposes "`must serve important governmental objectives, and must be substantially related to achievement of those objectives.'" Califano v. Webster, supra at 317, quoting Craig v. Boren, 429 U.S. 190, 197 (1976). 35 [438 U.S. 360]

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First, race, like, "gender-based classifications, too often [has] been inexcusably utilized to stereotype and stigmatize politically powerless segments of society." Kahn v. Shevin, 416 U.S. 351, 357 (1974) (dissenting opinion). While a carefully tailored statute designed to remedy past discrimination could avoid these vices, see Califano v. Webster, supra; Schlesinger v. Ballard, 419 U.S. 498 (1975); Kahn v. Shevin, supra, we nonetheless have recognized that the line between honest and thoughtful appraisal of the effects of past discrimination and paternalistic stereotyping is not so clear, and that a statute based on the latter is patently capable of stigmatizing all women with a badge of inferiority. Cf. Schlesinger v. Ballard, supra at 508; UJO, supra at 174, and n. 3 (opinion concurring in part); Califano v. Goldfarb, 430 U.S. 199, 223 (1977) (STEVENS, J., concurring in judgment). See also Stanton v. Stanton, 421 U.S. 7, 14-15 (1975). State programs designed ostensibly to ameliorate the effects of past racial discrimination obviously create the same hazard of stigma, since they may promote racial separatism and reinforce the views of those who believe that members of racial minorities are inherently incapable of succeeding on their own. See UJO, supra at 172 (opinion concurring in part); ante at 298 (opinion of POWELL, J.).

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Second, race, like gender and illegitimacy, see Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972), is an immutable characteristic which its possessors are powerless to escape or set aside. While a classification is not per se invalid because it divides classes on the basis of an immutable characteristic, see supra at 355-356, it is nevertheless true that such divisions are contrary to our deep belief that "legal burdens should bear some relationship to individual responsibility or [438 U.S. 361] wrongdoing," Weber, supra at 175; Frontiero v. Richardson, 411 U.S. 677, 686 (1973) (opinion of BRENNAN, WHITE, and MARSHALL, JJ.), and that advancement sanctioned, sponsored, or approved by the State should ideally be based on individual merit or achievement, or at the least on factors within the control of an individual. See UJO, 430 U.S. at 173 (opinion concurring in part); Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552, 566 (1947) (Rutledge, J., dissenting).

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Because this principle is so deeply rooted, it might be supposed that it would be considered in the legislative process and weighed against the benefits of programs preferring individuals because of their race. But this is not necessarily so: the

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natural consequence of our governing processes [may well be] that the most "discrete and insular" of whites…will be called upon to bear the immediate, direct costs of benign discrimination.

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UJO, supra at 174 (opinion concurring in part). Moreover, it is clear from our cases that there are limits beyond which majorities may not go when they classify on the basis of immutable characteristics. See, e.g., Weber, supra. Thus, even if the concern for individualism is weighed by the political process, that weighing cannot waive the personal rights of individuals under the Fourteenth Amendment. See Lucas v. Colorado General Assembly, 377 U.S. 713, 736 (1964).

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In sum, because of the significant risk that racial classifications established for ostensibly benign purposes can be misused, causing effects not unlike those created by invidious classifications, it is inappropriate to inquire only whether there is any conceivable basis that might sustain such a classification. Instead, to justify such a classification, an important and articulated purpose for its use must be shown. In addition, any statute must be stricken that stigmatizes any group or that singles out those least well represented in the political process to bear the brunt of a benign program. Thus, our review under the Fourteenth Amendment should be [438 U.S. 362] strict—not "`strict' in theory and fatal in fact," 36 because it is stigma that causes fatality—but strict and searching nonetheless.

IV

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Davis' articulated purpose of remedying the effects of past societal discrimination is, under our cases, sufficiently important to justify the use of race-conscious admissions programs where there is a sound basis for concluding that minority underrepresentation is substantial and chronic, and that the handicap of past discrimination is impeding access of minorities to the Medical School.

A

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At least since Green v. County School Board, 391 U.S. 430 (1968), it has been clear that a public body which has itself been adjudged to have engaged in racial discrimination cannot bring itself into compliance with the Equal Protection Clause simply by ending its unlawful acts and adopting a neutral stance. Three years later, Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), and its companion cases, Davis v. School Comm'rs of Mobile County, 402 U.S. 33 (1971); McDaniel v. Barresi, 402 U.S. 39 (1971); and North Carolina Board of Education v. Swann, 402 U.S. 43 (1971), reiterated that racially neutral remedies for past discrimination were inadequate where consequences of past discriminatory acts influence or control present decisions. See, e.g., Charlotte-Mecklenburg, supra at 28. And the Court further held both that courts could enter desegregation orders which assigned students and faculty by reference to race, Charlotte-Mecklenburg, supra; Davis, supra; United States v. Montgomery County Board of Ed., 395 U.S. 225 (1969), and that local school boards could voluntarily adopt desegregation [438 U.S. 363] plans which made express reference to race if this was necessary to remedy the effects of past discrimination. McDaniel v. Barresi, supra. Moreover, we stated that school boards, even in the absence of a judicial finding of past discrimination, could voluntarily adopt plans which assigned students with the end of creating racial pluralism by establishing fixed ratios of black and white students in each school. Charlotte-Mecklenburg, supra at 16. In each instance, the creation of unitary school systems, in which the effects of past discrimination had been "eliminated root and branch," Green, supra at 438, was recognized as a compelling social goal justifying the overt use of race.

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Finally, the conclusion that state educational institutions may constitutionally adopt admissions programs designed to avoid exclusion of historically disadvantaged minorities, even when such programs explicitly take race into account, finds direct support in our cases construing congressional legislation designed to overcome the present effects of past discrimination. Congress can and has outlawed actions which have a disproportionately adverse and unjustified impact upon members of racial minorities and has required or authorized race-conscious action to put individuals disadvantaged by such impact in the position they otherwise might have enjoyed. See Franks v. Bowman Transportation Co., 424 U.S. 747 (1976); Teamsters v. United States, 431 U.S. 324 (1977). Such relief does not require as a predicate proof that recipients of preferential advancement have been individually discriminated against; it is enough that each recipient is within a general class of persons likely to have been the victims of discrimination. See id. at 357-362. Nor is it an objection to such relief that preference for minorities will upset the settled expectations of nonminorities. See Franks, supra. In addition, we have held that Congress, to remove barriers to equal opportunity, can and has required employers to use test criteria that fairly reflect the qualifications of minority applicants [438 U.S. 364] vis-a-vis nonminority applicants, even if this means interpreting the qualifications of an applicant in light of his race. See Albemarle Paper Co. v. Moody, 422 U.S. 405, 435 (1975). 37

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These cases cannot be distinguished simply by the presence of judicial findings of discrimination, for race-conscious remedies have been approved where such findings have not been made. McDaniel v. Barresi, supra; UJO; see Califano v. Webster, 430 U.S. 313 (1977); Schlesinger v. Ballard, 419 U.S. 498 (1975); Kahn v. Shevin, 416 U.S. 351 (1974). See also Katzenbach v. Morgan, 384 U.S. 641 (1966). Indeed, the requirement of a judicial determination of a constitutional or statutory violation as a predicate for race-conscious remedial actions would be self-defeating. Such a requirement would severely undermine efforts to achieve voluntary compliance with the requirements of law. And our society and jurisprudence have always stressed the value of voluntary efforts to further the objectives of the law. Judicial intervention is a last resort to achieve cessation of illegal conduct or the remedying of its effects, rather than a prerequisite to action. 38 [438 U.S. 365]

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Nor can our cases be distinguished on the ground that the entity using explicit racial classifications itself had violated § 1 of the Fourteenth Amendment or an antidiscrimination regulation, for again race-conscious remedies have been approved where this is not the case. See UJO, 430 U.S. at 157 (opinion of WHITE, J., joined by BRENNAN, BLACKMUN, and STEVENS, JJ.); 39 id. at 167 (opinion of WHITE, J., joined by REHNQUIST and STEVENS, JJ.); 40 cf. Califano v. Webster, supra, at 317; Kahn v. Shevin, supra. Moreover, the presence or absence of past discrimination by universities or employers is largely irrelevant to resolving respondent's constitutional claims. The claims of those burdened by the race-conscious actions of a university or employer who has never been adjudged in violation of an antidiscrimination law are not any more or less entitled to deference than the claims of the burdened nonminority workers in Franks v. Bowman Transportation Co., supra, in which the employer had violated Title VII, for, in each case, the employees are innocent of past discrimination. And, although it might be argued that, where an employer has violated an antidiscrimination law, the expectations of nonminority workers are themselves products of discrimination and hence "tainted," see Franks, supra at 776, and therefore more easily upset, the same argument can be made with respect to respondent. If it was reasonable to conclude—as we hold that it was—that the failure of minorities to qualify for admission at Davis under regular procedures was due principally to the effects of past discrimination, than there is a reasonable likelihood that, but for pervasive racial discrimination, [438 U.S. 366] respondent would have failed to qualify for admission even in the absence of Davis' special admissions program. 41

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Thus, our cases under Title VII of the Civil Rights Act have held that, in order to achieve minority participation in previously segregated areas of public life, Congress may require or authorize preferential treatment for those likely disadvantaged by societal racial discrimination. Such legislation has been sustained even without a requirement of findings of intentional racial discrimination by those required or authorized to accord preferential treatment, or a case-by-case determination that those to be benefited suffered from racial discrimination. These decisions compel the conclusion that States also may adopt race-conscious programs designed to overcome substantial, chronic minority underrepresentation where there is reason to believe that the evil addressed is a product of past racial discrimination. 42 [438 U.S. 367]

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Title VII was enacted pursuant to Congress' power under the Commerce Clause and § 5 of the Fourteenth Amendment. To he extent that Congress acted under the Commerce Clause power, it was restricted in the use of race in governmental decisionmaking by the equal protection component of the Due Process Clause of the Fifth Amendment precisely to the same extent as are the States by § 1 of the Fourteenth Amendment. 43 Therefore, to the extent that Title VII rests on the Commerce Clause power, our decisions such a Franks and [438 U.S. 368] Teamsters v. United States, 431 U.S. 324 (1977), implicitly recognize that the affirmative use of race is consistent with the equal protection component of the Fifth Amendment, and therefore with the Fourteenth Amendment. To the extent that Congress acted pursuant to § 5 of the Fourteenth Amendment, those cases impliedly recognize that Congress was empowered under that provision to accord preferential treatment to victims of past discrimination in order to overcome the effects of segregation, and we see no reason to conclude that the States cannot voluntarily accomplish under § 1 of the Fourteenth Amendment what Congress under § 5 of the Fourteenth Amendment validly may authorize or compel either the States or private persons to do. A contrary position would conflict with the traditional understanding recognizing the competence of the States to initiate measures consistent with federal policy in the absence of congressional preemption of the subject matter. Nothing whatever in the legislative history of either the Fourteenth Amendment or the Civil Rights Acts even remotely suggests that the States are foreclosed from furthering the fundamental purpose of equal opportunity to which the Amendment and these Acts are addressed. Indeed, voluntary initiatives by the States to achieve the national goal of equal opportunity have been recognized to be essential to its attainment. "To use the Fourteenth Amendment as a sword against such State power would stultify that Amendment." Railway Mail Assn. v. Corsi, 326 U.S. 88, 98 (1945) (Frankfurter, J., concurring). 44 We therefore [438 U.S. 369] conclude that Davis' goal of admitting minority students disadvantaged by the effects of past discrimination is sufficiently important to justify use of race-conscious admissions criteria.

B

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Properly construed, therefore, our prior cases unequivocally show that a state government may adopt race-conscious programs if the purpose of such programs is to remove the disparate racial impact its actions might otherwise have, and if there is reason to believe that the disparate impact is itself the product of past discrimination, whether its own or that of society at large. There is no question that Davis' program is valid under this test.

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Certainly, on the basis of the undisputed factual submissions before this Court, Davis had a sound basis for believing that the problem of underrepresentation of minorities was substantial and chronic, and that the problem was attributable to handicaps imposed on minority applicants by past and present racial discrimination. Until at least 1973, the practice of medicine in this country was, in fact, if not in law, largely the prerogative of whites. 45 In 1950, for example, while Negroes [438 U.S. 370] constituted 10% of the total population, Negro physicians constituted only 2.2% of the total number of physicians. 46 The overwhelming majority of these, moreover, were educated in two predominantly Negro medical schools, Howard and Meharry. 47 By 1970, the gap between the proportion of Negroes in medicine and their proportion in the population had widened: the number of Negroes employed in medicine remained frozen at 2.2% 48 while the Negro population had increased to 11.1%. 49 The number of Negro admittees to predominantly white medical schools, moreover, had declined in absolute numbers during the years 1955 to 1964. Odegaard 19.

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Moreover, Davis had very good reason to believe that the national pattern of underrepresentation of minorities in medicine would be perpetuated if it retained a single admissions standard. For example, the entering classes in 1968 and 1969, the years in which such a standard was used, included only 1 Chicano and 2 Negroes out of the 50 admittees for each year. Nor is there any relief from this pattern of underrepresentation in the statistics for the regular admissions program in later years. 50

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Davis clearly could conclude that the serious and persistent underrepresentation of minorities in medicine depicted by these statistics is the result of handicaps under which minority applicants labor as a consequence of a background of deliberate, purposeful discrimination against minorities in education [438 U.S. 371] and in society generally, as well as in the medical profession. From the inception of our national life, Negroes have been subjected to unique legal disabilities impairing access to equal educational opportunity. Under slavery, penal sanctions were imposed upon anyone attempting to educate Negroes. 51 After enactment of the Fourteenth Amendment the States continued to deny Negroes equal educational opportunity, enforcing a strict policy of segregation that itself stamped Negroes as inferior, Brown I, 347 U.S. 483 (1954), that relegated minorities to inferior educational institutions, 52 and that denied them intercourse in the mainstream of professional life necessary to advancement. See Sweatt v. Painter, 339 U.S. 629 (1950). Segregation was not limited to public facilities, moreover, but was enforced by criminal penalties against private action as well. Thus, as late as 1908, this Court enforced a state criminal conviction against a private college for teaching Negroes together with whites. Berea College v. Kentucky, 211 U.S. 45. See also Plessy v. Ferguson, 163 U.S. 537 (1896).

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Green v. County School Board, 391 U.S. 430 (1968), gave explicit recognition to the fact that the habit of discrimination and the cultural tradition of race prejudice cultivated by centuries of legal slavery and segregation were not immediately dissipated when Brown I, supra, announced the constitutional principle that equal educational opportunity and participation in all aspects of American life could not be denied on the basis of race. Rather, massive official and private resistance prevented, and to a lesser extent still prevents, attainment of equal opportunity in education at all levels and in the professions. The generation of minority students applying to Davis Medical School since it opened in 1968—most of whom [438 U.S. 372] were born before or about the time Brown I was decided—clearly have been victims of this discrimination. Judicial decrees recognizing discrimination in public education in California testify to the fact of widespread discrimination suffered by California-born minority applicants; 53 many minority group members living in California, moreover, were born and reared in school districts in Southern States segregated by law. 54 Since separation of schoolchildren by race

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generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone,

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Brown I, supra at 494, the conclusion is inescapable that applicants to medical school must be few indeed who endured the effects of de jure segregation, the resistance to Brown I, or the equally debilitating pervasive private discrimination fostered by our long history of official discrimination, cf. Reitman v. Mulkey, 387 U.S. 369 (1967), and yet come to the starting line with an education equal to whites. 55

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Moreover, we need not rest solely on our own conclusion that Davis had sound reason to believe that the effects of past discrimination were handicapping minority applicants to the Medical School, because the Department of Health, Education, and Welfare, the expert agency charged by Congress with promulgating regulations enforcing Title VI of the Civil Rights Act of 1964, see supra at 341-343, has also reached the conclusion that race may be taken into account in situations [438 U.S. 373] where a failure to do so would limit participation by minorities in federally funded programs, and regulations promulgated by the Department expressly contemplate that appropriate race-conscious programs may be adopted by universities to remedy unequal access to university programs caused by their own or by past societal discrimination. See supra at 344-345, discussing 45 CFR §§ 80.3(b)(6)(ii) and 80.5(j) (1977). It cannot be questioned that, in the absence of the special admissions program, access of minority students to the Medical School would be severely limited and, accordingly, race-conscious admissions would be deemed an appropriate response under these federal regulations. Moreover, the Department's regulatory policy is not one that has gone unnoticed by Congress. See supra at 346-347. Indeed, although an amendment to an appropriations bill was introduced just last year that would have prevented the Secretary of Health, Education, and Welfare from mandating race-conscious programs in university admissions, proponents of this measure, significantly, did not question the validity of voluntary implementation of race-conscious admissions criteria. See ibid. In these circumstances, the conclusion implicit in the regulations—that the lingering effects of past discrimination continue to make race-conscious remedial programs appropriate means for ensuring equal educational opportunity in universities—deserves considerable judicial deference. See, e.g., Katzenbach v. Morgan, 384 U.S. 641 (1966); UJO, 430 U.S. at 175-178 (opinion concurring in part). 56

C

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The second prong of our test—whether the Davis program stigmatizes any discrete group or individual and whether race [438 U.S. 374] is reasonably used in light of the program's objectives—is clearly satisfied by the Davis program.

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It is not even claimed that Davis' program in any way operates to stigmatize or single out any discrete and insular, or even any identifiable, nonminority group. Nor will harm comparable to that imposed upon racial minorities by exclusion or separation on grounds of race be the likely result of the program. It does not, for example, establish an exclusive preserve for minority students apart from and exclusive of whites. Rather, its purpose is to overcome the effects of segregation by bringing the races together. True, whites are excluded from participation in the special admissions program, but this fact only operates to reduce the number of whites to be admitted in the regular admissions program in order to permit admission of a reasonable percentage—less than their proportion of the California population 57—of otherwise underrepresented qualified minority applicants. 58 [438 U.S. 375]

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Nor was Bakke in any sense stamped as inferior by the Medical School's rejection of him. Indeed, it is conceded by all that he satisfied those criteria regarded by the school as generally relevant to academic performance better than most of the minority members who were admitted. Moreover, there is absolutely no basis for concluding that Bakke's rejection as a result of Davis' use of racial preference will affect him throughout his life in the same way as the segregation of the Negro schoolchildren in Brown I would have affected them. Unlike discrimination against racial minorities, the use of racial preferences for remedial purposes does not inflict a pervasive injury upon individual whites in the sense that, wherever they go or whatever they do, there is a significant likelihood that they will be treated as second-class citizens because of their color. This distinction does not mean that the exclusion of a white resulting from the preferential use of race is not sufficiently serious to require justification; but it does mean that the injury inflicted by such a policy is not distinguishable from disadvantages caused by a wide range of government actions, none of which has ever been thought impermissible for that reason alone.

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In addition, there is simply no evidence that the Davis program discriminates intentionally or unintentionally against any minority group which it purports to benefit. The program does not establish a quota in the invidious sense of a ceiling on the number of minority applicants to be admitted. Nor can the program reasonably be regarded as stigmatizing the program's beneficiaries or their race as inferior. The Davis program does not simply advance less qualified applicants; rather, it compensates applicants, who it is uncontested are fully qualified to study medicine, for educational disadvantages which it was reasonable to conclude were a product of [438 U.S. 376] state-fostered discrimination. Once admitted, these students must satisfy the same degree requirements as regularly admitted students; they are taught by the same faculty in the same classes; and their performance is evaluated by the same standards by which regularly admitted students are judged. Under these circumstances, their performance and degrees must be regarded equally with the regularly admitted students with whom they compete for standing. Since minority graduates cannot justifiably be regarded as less well qualified than nonminority graduates by virtue of the special admissions program, there is no reasonable basis to conclude that minority graduates at schools using such programs would be stigmatized as inferior by the existence of such programs.

D

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We disagree with the lower courts' conclusion that the Davis program's use of race was unreasonable in light of its objectives. First, as petitioner argues, there are no practical means by which it could achieve its ends in the foreseeable future without the use of race-conscious measures. With respect to any factor (such as poverty or family educational background) that may be used as a substitute for race as an indicator of past discrimination, whites greatly outnumber racial minorities simply because whites make up a far larger percentage of the total population, and therefore far outnumber minorities in absolute terms at every socioeconomic level. 59 For example, of a class of recent medical school applicants from families with less than $10,000 income, at least 71% were white. 60 Of all 1970 families headed by a [438 U.S. 377] person not a highschool graduate which included related children under 18, 80% were white and 20% were racial minorities. 61 Moreover, while race is positively correlated with differences in GPA and MCAT scores, economic disadvantage is not. Thus, it appears that economically disadvantaged whites do not score less well than economically advantaged whites, while economically advantaged blacks score less well than do disadvantaged whites. 62 These statistics graphically illustrate that the University's purpose to integrate its classes by compensating for past discrimination could not be achieved by a general preference for the economically disadvantaged or the children of parents of limited education unless such groups were to make up the entire class.

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Second, the Davis admissions program does not simply equate minority status with disadvantage. Rather, Davis considers on an individual basis each applicant's personal history to determine whether he or she has likely been disadvantaged by racial discrimination. The record makes clear that only minority applicants likely to have been isolated from the mainstream of American life are considered in the special program; other minority applicants are eligible only through the regular admissions program. True, the procedure by which disadvantage is detected is informal, but we have never insisted that educators conduct their affairs through adjudicatory proceedings, and such insistence here is misplaced. A case-by-case inquiry into the extent to which each individual applicant has been affected, either directly or indirectly, by racial discrimination, would seem to be, as a practical matter, virtually impossible, despite the fact that there are excellent reasons for concluding that such effects generally exist. When individual measurement is impossible or extremely impractical, there is nothing to prevent a State [438 U.S. 378] from using categorical means to achieve its ends, at least where the category is closely related to the goal. Cf. Gaston County v. United States, 395 U.S. 285, 25-296 (1969); Katzenbach v. Morgan, 384 U.S. 641 (1966). And it is clear from our cases that specific proof that a person has been victimized by discrimination is not a necessary predicate to offering him relief where the probability of victimization is great. See Teamsters v. United States, 431 U.S. 324 (1977).

E

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Finally, Davis' special admissions program cannot be said to violate the Constitution simply because it has set aside a predetermined number of places for qualified minority applicants, rather than using minority status as a positive factor to be considered in evaluating the applications of disadvantaged minority applicants. For purposes of constitutional adjudication, there is no difference between the two approaches. In any admissions program which accords special consideration to disadvantaged racial minorities, a determination of the degree of preference to be given is unavoidable, and any given preference that results in the exclusion of a white candidate is no more or less constitutionally acceptable than a program such as that at Davis. Furthermore, the extent of the preference inevitably depends on how many minority applicants the particular school is seeking to admit in any particular year, so long as the number of qualified minority applicants exceeds that number. There is no sensible, and certainly no constitutional, distinction between, for example, adding a set number of points to the admissions rating of disadvantaged minority applicants as an expression of the preference with the expectation that this will result in the admission of an approximately determined number of qualified minority applicants and setting a fixed number of places for such applicants, as was done here. 63 [438 U.S. 379]

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The "Harvard" program, see ante at 316-318, as those employing it readily concede, openly and successfully employs a racial criterion for the purpose of ensuring that some of the scarce places in institutions of higher education are allocated to disadvantaged minority students. That the Harvard approach does not also make public the extent of the preference and the precise workings of the system, while the Davis program employs a specific, openly stated number, does not condemn the latter plan for purposes of Fourteenth Amendment adjudication. It may be that the Harvard plan is more acceptable to the public than is the Davis "quota." If it is, any State, including California, is free to adopt it in preference to a less acceptable alternative, just as it is generally free, as far as the Constitution is concerned, to abjure granting any racial preferences in its admissions program. But there is no basis for preferring a particular preference program simply because, in achieving the same goals that the Davis Medical School is pursuing, it proceeds in a manner that is not immediately apparent to the public.

V

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Accordingly, we would reverse the judgment of the Supreme Court of California holding the Medical School's special admissions program unconstitutional and directing respondent's admission, as well as that portion of the judgment enjoining the Medical School from according any consideration to race in the admissions process.

WHITE, J., separate opinion

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MR. JUSTICE WHITE.

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I write separately concerning the question of whether Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., provides for a private cause of action. Four Justices are apparently of the view that such a private cause of action [438 U.S. 380] exists, and four Justices assume it for purposes of this case. I am unwilling merely to assume an affirmative answer. If, in fact, no private cause of action exists, this Court and the lower courts as well are without jurisdiction to consider respondent's Title VI claim. As I see it, if we are not obliged to do so, it is at least advisable to address this threshold jurisdictional issue. See United States v. Griffin, 303 U.S. 226, 229 (1938). 1 Furthermore, just as it is inappropriate to address constitutional issues without determining whether statutory grounds urged before us are dispositive, it is at least questionable practice to adjudicate a novel and difficult statutory issue without first considering whether we have jurisdiction to decide it. Consequently, I address the question of whether respondent may bring suit under Title VI.

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A private cause of action under Title VI, in terms both of [438 U.S. 381] the Civil Rights Act as a whole and that Title, would not be "consistent with the underlying purposes of the legislative scheme," and would be contrary to the legislative intent. Cort v. Ash, 422 U.S. 66, 78 (1975). Title II, 42 U.S.C. § 2000a et seq., dealing with public accommodations, and Title VII, 42 U.S.C. § 2000e et seq. (1970 ed. and Supp. V), dealing with employment, proscribe private discriminatory conduct that, as of 1964, neither the Constitution nor other federal statutes had been construed to forbid. Both Titles carefully provided for private actions as well as for official participation in enforcement. Title III, 42 U.S.C. § 2000b et seq., and Title IV, 42 U.S.C. § 2000c et seq. (1970 ed and Supp. V), dealing with public facilities and public education, respectively, authorize suits by the Attorney General to eliminate racial discrimination in these areas. Because suits to end discrimination in public facilities and public education were already available under 42 U.S.C. § 1983, it was, of course, unnecessary to provide for private actions under Titles III and IV. But each Title carefully provided that its provisions for public actions would not adversely affect preexisting private remedies. § § 2000b-2 and 2000c-8.

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The role of Title VI was to terminate federal financial support for public and private institutions or programs that discriminated on the basis of race. Section 601, 42 U.S.C. § 2000d, imposed the proscription that no person, on the grounds of race, color, or national origin, was to be excluded from or discriminated against under any program or activity receiving federal financial assistance. But there is no express provision for private actions to enforce Title VI, and it would be quite incredible if Congress, after so carefully attending to the matter of private actions in other Titles of the Act, intended silently to create a private cause of action to enforce Title VI.

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It is also evident from the face of § 602, 42 U.S.C. § 2000d-1, that Congress intended the departments and agencies [438 U.S. 382] to define and to refine, by rule or regulation, the general proscription of § 601, subject only to judicial review of agency action in accordance with established procedures. Section 602 provides for enforcement: every federal department or agency furnishing financial support is to implement the proscription by appropriate rule or regulation, each of which requires approval by the President. Termination of funding as a sanction for noncompliance is authorized, but only after a hearing and after the failure of voluntary means to secure compliance. Moreover, termination may not take place until the department or agency involved files with the appropriate committees of the House and Senate a full written report of the circumstances and the grounds for such action and 30 days have elapsed thereafter. Judicial review was provided, at least for actions terminating financial assistance.

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Termination of funding was regarded by Congress as a serious enforcement step, and the legislative history is replete with assurances that it would not occur until every possibility for conciliation had been exhausted. 2 To allow a private [438 U.S. 383] individual to sue to cut off funds under Title VI would compromise these assurances and short-circuit the procedural preconditions provided in Title VI. If the Federal Government may not cut off funds except pursuant to an agency rule, approved by the President, and presented to the appropriate committee of Congress for a layover period, and after voluntary means to achieve compliance have failed, it is inconceivable that Congress intended to permit individuals to circumvent these administrative prerequisites themselves.

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Furthermore, although Congress intended Title VI to end federal financial support for racially discriminatory policies of not only public but also private institutions and programs, it is extremely unlikely that Congress, without a word indicating that it intended to do so, contemplated creating an independent, private statutory cause of action against all private, as well as public, agencies that might be in violation of the section. There is no doubt that Congress regarded private litigation as an important tool to attack discriminatory practices. It does not at all follow, however, that Congress anticipated new private actions under Title VI itself. Wherever a discriminatory program was a public undertaking, such as a public school, private remedies were already available under other statutes, and a private remedy under Title VI was [438 U.S. 384] unnecessary. Congress was well aware of this fact. Significantly, there was frequent reference to Simkins v. Moses H. Cone Memorial Hospital, 323 F.2d 059 (CA4 1963), cert. denied, 376 U.S. 938 (1964), throughout the congressional deliberations. See, e.g., 110 Cong.Rec. 654 (1964) (Sen. Humphrey). Simkins held that, under appropriate circumstances, the operation of a private hospital with "massive use of public funds and extensive state-federal sharing in the common plan" constituted "state action" for the purposes of the Fourteenth Amendment. 323 F.2d at 967. It was unnecessary, of course, to create a Title VI private action against private discriminators where they were already within the reach of existing private remedies. But when they were not—and Simkins carefully disclaimed holding that "every subvention by the federal or state government automatically involves the beneficiary in `state action,'" ibid. 3—it is difficult [438 U.S. 385] to believe that Congress silently created a private remedy to terminate conduct that previously had been entirely beyond the reach of federal law.

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For those who believe, contrary to my views, that Title VI was intended to create a stricter standard of colorblindness than the Constitution itself requires, the result of no private cause of action follows even more readily. In that case, Congress must be seen to have banned degrees of discrimination, as well as types of discriminators, not previously reached by law. A Congress careful enough to provide that existing private causes of action would be preserved (in Titles III and IV) would not leave for inference a vast new extension of private enforcement power. And a Congress so exceptionally concerned with the satisfaction of procedural preliminaries before confronting fund recipients with the choice of a cutoff or of stopping discriminating would not permit private parties to pose precisely that same dilemma in a greatly widened category of cases with no procedural requirements whatsoever.

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Significantly, in at least three instances, legislators who played a major role in the passage of Title VI explicitly stated that a private right of action under Title VI does not exist. 4 [438 U.S. 386] As an "indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one," Cort v. Ash, 422 U.S. at 78, clearer statements cannot be imagined, and under Cort, "an explicit purpose to deny such cause of action [is] controlling." Id. at 82. Senator Keating, for example, proposed a private "right to sue" for the "person suffering from discrimination"; but the Department of Justice refused to include it, and the Senator acquiesced. 5 These are not neutral, ambiguous statements. They indicate the absence of a legislative intent to create a private remedy. Nor do any of these statements make nice distinctions between a private cause of action to enjoin discrimination and one to cut off funds, as MR. JUSTICE STEVENS and the three Justices who join his opinion apparently would. See post at 419-420, n. 26. Indeed, it would be odd if they did, since the practical effect of either type of private cause of action would be identical. If private suits to enjoin conduct allegedly violative of § 601 were permitted, recipients of federal funds would be presented with the choice of either ending what the court, rather than the agency, determined to be a discriminatory practice within the meaning of Title VI or refusing federal funds, and thereby escaping from the statute's jurisdictional predicate. 6 This is precisely the same choice as would confront recipients if suit were brought to cut off funds. Both types of actions would equally jeopardize the administrative processes so carefully structured into the law. [438 U.S. 387]

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This Court has always required

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that the inference of such a private cause of action not otherwise authorized by the statute must be consistent with the evident legislative intent and, of course, with the effectuation of the purposes intended to be served by the Act.

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National Railroad Passenger Corp. v. National Association of Railroad Passengers, 414 U.S. 453, 458 (1974). See also Securities Investor Protection Corp. v. Barbour, 421 U.S. 412, 418 420 (1975). A private cause of action under Title VI is unable to satisfy either prong of this test.

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Because each of my colleagues either has a different view or assumes a private cause of action, however, the merits of the Title VI issue must be addressed. My views in that regard, as well as my views with respect to the equal protection issue, are included in the joint opinion that my Brothers BRENNAN, MARSHALL, and BLACKMUN and I have filed. 7

MARSHALL, J., separate opinion

1978, Regents of Univ. of California v. Bakke, 438 U.S. 387

MR. JUSTICE MARSHALL.

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I agree with the judgment of the Court only insofar as it permits a university to consider the race of an applicant in making admissions decisions. I do not agree that petitioner's admissions program violates the Constitution. For it must be remembered that, during most of the past 200 years, the Constitution, as interpreted by this Court, did not prohibit the most ingenious and pervasive forms of discrimination against the Negro. Now, when a State acts to remedy the effects of that legacy of discrimination, I cannot believe that this same Constitution stands as a barrier.

I

A

1978, Regents of Univ. of California v. Bakke, 438 U.S. 387

Three hundred and fifty years ago, the Negro was dragged to this country in chains to be sold into slavery. Uprooted from his homeland and thrust into bondage for forced labor, [438 U.S. 388] the slave was deprived of all legal rights. It was unlawful to teach him to read; he could be sold away from his family and friends at the whim of his master; and killing or maiming him was not a crime. The system of slavery brutalized and dehumanized both master and slave. 1

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The denial of human rights was etched into the American Colonies' first attempts at establishing self-government. When the colonists determined to seek their independence from England, they drafted a unique document cataloguing their grievances against the King and proclaiming as "self-evident" that "all men are created equal" and are endowed "with certain unalienable Rights," including those to "Life, Liberty and the pursuit of Happiness." The self-evident truths and the unalienable rights were intended, however, to apply only to white men. An earlier draft of the Declaration of Independence, submitted by Thomas Jefferson to the Continental Congress, had included among the charges against the King that

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[h]e has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither.

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Franklin 88. The Southern delegation insisted that the charge be deleted; the colonists themselves were implicated in the slave trade, and inclusion of this claim might have made it more difficult to justify the continuation of slavery once the ties to England were severed. Thus, even as the colonists embarked on a [438 U.S. 389] course to secure their own freedom and equality, they ensured perpetuation of the system that deprived a whole race of those rights.

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The implicit protection of slavery embodied in the Declaration of Independence was made explicit in the Constitution, which treated a slave as being equivalent to three-fifths of a person for purposes of apportioning representatives and taxes among the States. Art. I, § 2. The Constitution also contained a clause ensuring that the "Migration or Importation" of slaves into the existing States would be legal until at least 1808, Art. I, § 9, and a fugitive slave clause requiring that, when a slave escaped to another State, he must be returned on the claim of the master, Art. IV, § 2. In their declaration of the principles that were to provide the cornerstone of the new Nation, therefore, the Framers made it plain that "we the people," for whose protection the Constitution was designed, did not include those whose skins were the wrong color. As Professor John Hope Franklin has observed, Americans

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proudly accepted the challenge and responsibility of their new political freedom by establishing the machinery and safeguards that insured the continued enslavement of blacks.

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Franklin 100.

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The individual States likewise established the machinery to protect the system of slavery through the promulgation of the Slave Codes, which were designed primarily to defend the property interest of the owner in his slave. The position of the Negro slave as mere property was confirmed by this Court in Dred Scott v. Sandford, 19 How. 393 (1857), holding that the Missouri Compromise—which prohibited slavery in the portion of the Louisiana Purchase Territory north of Missouri—was unconstitutional because it deprived slave owners of their property without due process. The Court declared that, under the Constitution, a slave was property, and "[t]he right to traffic in it, like an ordinary article of merchandise and property, was guarantied to the citizens of the United [438 U.S. 390] States…. " Id. at 451. The Court further concluded that Negroes were not intended to be included as citizens under the Constitution, but were

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regarded as beings of an inferior order…altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect….

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Id. at 407.

B

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The status of the Negro as property was officially erased by his emancipation at the end of the Civil War. But the long-awaited emancipation, while freeing the Negro from slavery, did not bring him citizenship or equality in any meaningful way. Slavery was replaced by a system of

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laws which imposed upon the colored race onerous disabilities and burdens, and curtailed their rights in the pursuit of life, liberty, and property to such an extent that their freedom was of little value.

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Slaughter-House Cases, 16 Wall. 36, 70 (1873). Despite the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments, the Negro was systematically denied the rights those Amendments were supposed to secure. The combined actions and inactions of the State and Federal Governments maintained Negroes in a position of legal inferiority for another century after the Civil War.

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The Southern States took the first steps to reenslave the Negroes. Immediately following the end of the Civil War, many of the provisional legislatures passed Black Codes, similar to the Slave Codes, which, among other things, limited the rights of Negroes to own or rent property and permitted imprisonment for breach of employment contracts. Over the next several decades, the South managed to disenfranchise the Negroes in spite of the Fifteenth Amendment by various techniques, including poll taxes, deliberately complicated balloting processes, property and literacy qualifications, and, finally, the white primary.

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Congress responded to the legal disabilities being imposed [438 U.S. 391] in the Southern States by passing the Reconstruction Acts and the Civil Rights Acts. Congress also responded to the needs of the Negroes at the end of the Civil War by establishing the Bureau of Refugees, Freedmen, and Abandoned Lands, better known as the Freedmen's Bureau, to supply food, hospitals, land, and education to the newly freed slaves. Thus, for a time, it seemed as if the Negro might be protected from the continued denial of his civil rights, and might be relieved of the disabilities that prevented him from taking his place as a free and equal citizen.

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That time, however, was short-lived. Reconstruction came to a close, and, with the assistance of this Court, the Negro was rapidly stripped of his new civil rights. In the words of C. Vann Woodward:

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By narrow and ingenious interpretation [the Supreme Court's] decisions over a period of years had whittled away a great part of the authority presumably given the government for protection of civil rights.

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Woodward 139.

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The Court began by interpreting the Civil War Amendments in a manner that sharply curtailed their substantive protections. See, e.g., Slaughter-House Cases, supra; United States v. Reese, 92 U.S. 214 (1876); United States v. Cruikshank, 92 U.S. 542 (1876). Then, in the notorious Civil Rights Cases, 109 U.S. 3 (1883), the Court strangled Congress' efforts to use its power to promote racial equality. In those cases, the Court invalidated sections of the Civil Rights Act of 1875 that made it a crime to deny equal access to "inns, public conveyances, theatres and other places of public amusement." Id. at 10. According to the Court, the Fourteenth Amendment gave Congress the power to proscribe only discriminatory action by the State. The Court ruled that the Negroes who were excluded from public places suffered only an invasion of their social rights at the hands of private individuals, and Congress had no power to remedy that. Id. at 24-25.

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When a man has emerged from slavery, and, by the aid of beneficent legislation, has shaken off the inseparable concomitants of that [438 U.S. 392] state,

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the Court concluded,

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there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws….

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Id. at 25. As Mr. Justice Harlan noted in dissent, however, the Civil War Amendments and Civil Rights Acts did not make the Negroes the "special favorite" of the laws, but instead

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sought to accomplish in reference to that race…—what had already been done in every State of the Union for the white race—to secure and protect rights belonging to them as freemen and citizens; nothing more.

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Id. at 61.

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The Court's ultimate blow to the Civil War Amendments and to the equality of Negroes came in Plessy v. Ferguson, 163 U.S. 537 (1896). In upholding a Louisiana law that required railway companies to provide "equal but separate" accommodations for whites and Negroes, the Court held that the Fourteenth Amendment was not intended

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to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either.

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Id. at 544. Ignoring totally the realities of the positions of the two races, the Court remarked:

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We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.

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Id. at 551.

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Mr. Justice Harlan's dissenting opinion recognized the bankruptcy of the Court's reasoning. He noted that the "real meaning" of the legislation was "that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens." Id. at 560. He expressed his fear that, if like laws were enacted in other [438 U.S. 393] States, "the effect would be in the highest degree mischievous." Id. at 563. Although slavery would have disappeared, the States would retain the power

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to interfere with the full enjoyment of the blessings of freedom; to regulate civil rights, common to all citizens, upon the basis of race; and to place in a condition of legal inferiority a large body of American citizens….

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Ibid.

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The fears of Mr. Justice Harlan were soon to be realized. In the wake of Plessy, many States expanded their Jim Crow laws, which had, up until that time, been limited primarily to passenger trains and schools. The segregation of the races was extended to residential areas, parks, hospitals, theaters, waiting rooms, and bathrooms. There were even statutes and ordinances which authorized separate phone booths for Negroes and whites, which required that textbooks used by children of one race be kept separate from those used by the other, and which required that Negro and white prostitutes be kept in separate districts. In 1898, after Plessy, the Charlestown News and Courier printed a parody of Jim Crow laws:

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"If there must be Jim Crow cars on the railroads, there should be Jim Crow cars on the street railways. Also on all passenger boats…. If there are to be Jim Crow cars, moreover, there should be Jim Crow waiting saloons at all stations, and Jim Crow eating houses…. There should be Jim Crow sections of the jury box, and a separate Jim Crow dock and witness stand in every court—and a Jim Crow Bible for colored witnesses to kiss."

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Woodward 68. The irony is that, before many years had passed, with the exception of the Jim Crow witness stand,

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all the improbable applications of the principle suggested by the editor in derision had been put into practice—down to and including the Jim Crow Bible.

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Id. at 69.

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Nor were the laws restricting the rights of Negroes limited [438 U.S. 394] solely to the Southern States. In many of the Northern States, the Negro was denied the right to vote, prevented from serving on juries, and excluded from theaters, restaurants, hotels, and inns. Under President Wilson, the Federal Government began to require segregation in Government buildings; desks of Negro employees were curtained off; separate bathrooms and separate tables in the cafeterias were provided; and even the galleries of the Congress were segregated. When his segregationist policies were attacked, President Wilson responded that segregation was "`not humiliating, but a benefit,'" and that he was "`rendering [the Negroes] more safe in their possession of office, and less likely to be discriminated against.'" Kluger 91.

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The enforced segregation of the races continued into the middle of the 20th century. In both World Wars, Negroes were, for the most part, confined to separate military units; it was not until 1948 that an end to segregation in the military was ordered by President Truman. And the history of the exclusion of Negro children from white public schools is too well known and recent to require repeating here. That Negroes were deliberately excluded from public graduate and professional schools—and thereby denied the opportunity to become doctors, lawyers, engineers, and the like is also well established. It is, of course, true that some of the Jim Crow laws (which the decisions of this Court had helped to foster) were struck down by this Court in a series of decisions leading up to Brown v. Board of Education, 347 U.S. 483 (1954). See, e.g., Morgan v. Virginia, 328 U.S. 373 (1946); Sweatt v. Painter, 339 U.S. 629 (1950); McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950). Those decisions, however, did not automatically end segregation, nor did they move Negroes from a position of legal inferiority to one of equality. The legacy of years of slavery and of years of second-class citizenship in the wake of emancipation could not be so easily eliminated. [438 U.S. 395]

II

1978, Regents of Univ. of California v. Bakke, 438 U.S. 395

The position of the Negro today in America is the tragic but inevitable consequence of centuries of unequal treatment. Measured by any benchmark of comfort or achievement, meaningful equality remains a distant dream for the Negro.

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A Negro child today has a life expectancy which is shorter by more than five years than that of a white child. 2 The Negro child's mother is over three times more likely to die of complications in childbirth, 3 and the infant mortality rate for Negroes is nearly twice that for whites. 4 The median income of the Negro family is only 60% that of the median of a white family, 5 and the percentage of Negroes who live in families with incomes below the poverty line is nearly four times greater than that of whites. 6

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When the Negro child reaches working age, he finds that America offers him significantly less than it offers his white counterpart. For Negro adults, the unemployment rate is twice that of whites, 7 and the unemployment rate for Negro teenagers is nearly three times that of white teenagers. 8 A Negro male who completes four years of college can expect a median annual income of merely $110 more than a white male who has only a high school diploma. 9 Although Negroes [438 U.S. 396] represent 11.5% of the population, 10 they are only 1.2% of the lawyers and judges, 2% of the physicians, 2.3% of the dentists, 1.1% of the engineers and 2.6% of the college and university professors. 11

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The relationship between those figures and the history of unequal treatment afforded to the Negro cannot be denied. At every point from birth to death, the impact of the past is reflected in the still disfavored position of the Negro.

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In light of the sorry history of discrimination and its devastating impact on the lives of Negroes, bringing the Negro into the mainstream of American life should be a state interest of the highest order. To fail to do so is to ensure that America will forever remain a divided society.

III

1978, Regents of Univ. of California v. Bakke, 438 U.S. 396

I do not believe that the Fourteenth Amendment requires us to accept that fate. Neither its history nor our past cases lend any support to the conclusion that a university may not remedy the cumulative effects of society's discrimination by giving consideration to race in an effort to increase the number and percentage of Negro doctors.

A

1978, Regents of Univ. of California v. Bakke, 438 U.S. 396

This Court long ago remarked that

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in any fair and just construction of any section or phrase of these [Civil War] amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy….

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Slaughter-House Cases, 16 Wall. at 72. It is plain that the Fourteenth Amendment was not intended to prohibit measures designed to remedy the effects of the [438 U.S. 397] Nation's past treatment of Negroes. The Congress that passed the Fourteenth Amendment is the same Congress that passed the 1866 Freedmen's Bureau Act, an Act that provided many of its benefits only to Negroes. Act of July 16, 1866, ch. 200, 14 Stat. 173; see supra at 391. Although the Freedmen's Bureau legislation provided aid for refugees, thereby including white persons within some of the relief measures, 14 Stat. 174; see also Act of Mar. 3, 1865, ch. 90, 13 Stat. 507, the bill was regarded, to the dismay of many Congressmen, as "solely and entirely for the freedmen, and to the exclusion of all other persons…. " Cong.Globe, 39th Cong., 1st Sess., 544 (1866) (remarks of Rep. Taylor). See also id. at 634-635 (remarks of Rep. Ritter); id. at App. 78, 80-81 (remarks of Rep. Chandler). Indeed, the bill was bitterly opposed on the ground that it "undertakes to make the negro in some respects…superior…, and gives them favors that the poor white boy in the North cannot get." Id. at 401 (remarks of Sen. McDougall). See also id. at 319 (remarks of Sen. Hendricks); id. at 362 (remarks of Sen. Saulsbury); id. at 397 (remarks of Sen. Willey); id. at 544 (remarks of Rep. Taylor). The bill's supporters defended it not by rebutting the claim of special treatment, but by pointing to the need for such treatment:

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The very discrimination it makes between "destitute and suffering" negroes and destitute and suffering white paupers proceeds upon the distinction that, in the omitted case, civil rights and immunities are already sufficiently protected by the possession of political power, the absence of which in the case provided for necessitates governmental protection.

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Id. at App. 75 (remarks of Rep. Phelps) .

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Despite the objection to the special treatment the bill would provide for Negroes, it was passed by Congress. Id. at 421, 688. President Johnson vetoed this bill, and also a subsequent bill that contained some modifications; one of his principal [438 U.S. 398] objections to both bills was that they gave special benefits to Negroes. 8 Messages and Papers of the Presidents 3596, 3599, 3620, 3623 (1897). Rejecting the concerns of the President and the bill's opponents, Congress overrode the President's second veto. Cong.Globe, 39th Cong., 1st Sess., 3842, 3850 (1866).

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Since the Congress that considered and rejected the objections to the 1866 Freedmen's Bureau Act concerning special relief to Negroes also proposed the Fourteenth Amendment, it is inconceivable that the Fourteenth Amendment was intended to prohibit all race-conscious relief measures. It

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would be a distortion of the policy manifested in that amendment, which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color,

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Railway Mail Assn. v. Corsi, 326 U.S. 88, 94 (1945), to hold that it barred state action to remedy the effects of that discrimination. Such a result would pervert the intent of the Framers by substituting abstract equality for the genuine equality the Amendment was intended to achieve.

B

1978, Regents of Univ. of California v. Bakke, 438 U.S. 398

As has been demonstrated in our joint opinion, this Court's past cases establish the constitutionality of race-conscious remedial measures. Beginning with the school desegregation cases, we recognized that, even absent a judicial or legislative finding of constitutional violation, a school board constitutionally could consider the race of students in making school assignment decisions. See Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 16 (1971); McDaniel v. Barresi, 402 U.S. 39, 41 (1971). We noted, moreover, that a

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flat prohibition against assignment of students for the purpose of creating a racial balance must inevitably conflict with the duty of school authorities to disestablish dual school systems. As we have held in Swann, the Constitution does not compel any particular degree of [438 U.S. 399] racial balance or mixing, but when past and continuing constitutional violations are found, some ratios are likely to be useful as starting points in shaping a remedy. An absolute prohibition against use of such a device—even as a starting point—contravenes the implicit command of Green v. County School Board, 391 U.S. 430 (1968), that all reasonable methods be available to formulate an effective remedy.

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Board of Education v. Swann, 402 U.S. 43, 46 (1971). As we have observed, "[a]ny other approach would freeze the status quo that is the very target of all desegregation processes." McDaniel v. Barresi, supra at 41.

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Only last Term, in United Jewish Organizations v. Carey, 430 U.S. 144 (1977), we upheld a New York reapportionment plan that was deliberately drawn on the basis of race to enhance the electoral power of Negroes and Puerto Ricans; the plan had the effect of diluting the electoral strength of the Hasidic Jewish community. We were willing in UJO to sanction the remedial use of a racial classification even though it disadvantaged otherwise "innocent" individuals. In another case last Term, Califano v. Webster, 430 U.S. 313 (1977), the Court upheld a provision in the Social Security laws that discriminated against men because its purpose was "`the permissible one of redressing our society's longstanding disparate treatment of women.'" Id. at 317, quoting Califano v. Goldfarb, 430 U.S. 199, 209 n. 8 (1977) (plurality opinion). We thus recognized the permissibility of remedying past societal discrimination through the use of otherwise disfavored classifications.

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Nothing in those cases suggests that a university cannot similarly act to remedy past discrimination. 12 It is true that, [438 U.S. 400] in both UJO and Webster, the use of the disfavored classification was predicated on legislative or administrative action, but in neither case had those bodies made findings that there had been constitutional violations or that the specific individuals to be benefited had actually been the victims of discrimination. Rather, the classification in each of those cases was based on a determination that the group was in need of the remedy because of some type of past discrimination. There is thus ample support for the conclusion that a university can employ race-conscious measures to remedy past societal discrimination without the need for a finding that those benefited were actually victims of that discrimination.

IV

1978, Regents of Univ. of California v. Bakke, 438 U.S. 400

While I applaud the judgment of the Court that a university may consider race in its admissions process, it is more than a little ironic that, after several hundred years of class-based discrimination against Negroes, the Court is unwilling to hold that a class-based remedy for that discrimination is permissible. In declining to so hold, today's judgment ignores the fact that. for several hundred years, Negroes have been discriminated against not as individuals, but rather solely because of the color of their skins. It is unnecessary in 20th-century America to have individual Negroes demonstrate that they have been victims of racial discrimination; the racism of our society has been so pervasive that none, regardless of wealth or position, has managed to escape its impact. The experience of Negroes in America has been different in kind, not just in degree, from that of other ethnic groups. It is not merely the history of slavery alone, but also that a whole people were marked as inferior by the law. And that mark has endured. The dream of America as the great melting pot has [438 U.S. 401] not been realized for the Negro; because of his skin color, he never even made it into the pot.

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These differences in the experience of the Negro make it difficult for me to accept that Negroes cannot be afforded greater protection under the Fourteenth Amendment where it is necessary to remedy the effects of past discrimination. In the Civil Rights Cases, supra, the Court wrote that the Negro emerging from slavery must cease "to be the special favorite of the laws." 109 U.S. at 25; see supra at 392. We cannot, in light of the history of the last century, yield to that view. Had the Court, in that decision and others, been willing to

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do for human liberty and the fundamental rights of American citizenship what it did…for the protection of slavery and the rights of the masters of fugitive slaves,

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109 U.S. at 53 (Harlan, J., dissenting), we would not need now to permit the recognition of any "special wards."

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Most importantly, had the Court been willing in 1896, in Plessy v. Ferguson, to hold that the Equal Protection Clause forbids differences in treatment based on race, we would not be faced with this dilemma in 1978. We must remember, however, that the principle that the "Constitution is colorblind" appeared only in the opinion of the lone dissenter. 163 U.S. at 559. The majority of the Court rejected the principle of color blindness, and for the next 60 years, from Plessy to Brown v. Board of Education, ours was a Nation where, by law, an individual could be given "special" treatment based on the color of his skin.

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It is because of a legacy of unequal treatment that we now must permit the institutions of this society to give consideration to race in making decisions about who will hold the positions of influence, affluence, and prestige in America. For far too long, the doors to those positions have been shut to Negroes. If we are ever to become a fully integrated society, one in which the color of a person's skin will not determine the opportunities available to him or her, we must be willing [438 U.S. 402] to take steps to open those doors. I do not believe that anyone can truly look into America's past and still find that a remedy for the effects of that past is impermissible.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 402

It has been said that this case involves only the individual, Bakke, and this University. I doubt, however, that there is a computer capable of determining the number of persons and institutions that may be affected by the decision in this case. For example, we are told by the Attorney General of the United States that at least 27 federal agencies have adopted regulations requiring recipients of federal funds to take

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"affirmative action to overcome the effects of conditions which resulted in limiting participation…by persons of a particular race, color, or national origin."

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Supplemental Brief for United States as Amicus Curiae 16 (emphasis added). I cannot even guess the number of state and local governments that have set up affirmative action programs, which may be affected by today's decision.

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I fear that we have come full circle. After the Civil War, our Government started several "affirmative action" programs. This Court, in the Civil Rights Cases and Plessy v. Ferguson, destroyed the movement toward complete equality. For almost a century, no action was taken, and this nonaction was with the tacit approval of the courts. Then we had Brown v. Board of Education and the Civil Rights Acts of Congress, followed by numerous affirmative action programs. Now, we have this Court again stepping in, this time to stop affirmative action programs of the type used by the University of California.

BLACKMUN, J., separate opinion

1978, Regents of Univ. of California v. Bakke, 438 U.S. 402

MR. JUSTICE BLACKMUN.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 402

I participate fully, of course, in the opinion, ante p. 324, that bears the names of my Brothers BRENNAN, WHITE, MARSHALL, and myself. I add only some general observations that hold particular significance for me, and then a few comments on equal protection. [438 U.S. 403]

I

1978, Regents of Univ. of California v. Bakke, 438 U.S. 403

At least until the early 1970's, apparently only a very small number, less than 2%, of the physicians, attorneys, and medical and law students in the United States were members of what we now refer to as minority groups. In addition, approximately three-fourths of our Negro physicians were trained at only two medical schools. If ways are not found to remedy that situation, the country can never achieve its professed goal of a society that is not race-conscious.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 403

I yield to no one in my earnest hope that the time will come when an "affirmative action" program is unnecessary and is, in truth, only a relic of the past. I would hope that we could reach this stage within a decade, at the most. But the story of Brown v. Board of Education, 347 U.S. 483 (1954), decided almost a quarter of a century ago, suggests that that hope is a slim one. At some time, however, beyond any period of what some would claim is only transitional inequality, the United States must and will reach a stage of maturity where action along this line is no longer necessary. Then persons will be regarded as persons, and discrimination of the type we address today will be an ugly feature of history that is instructive, but that is behind us.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 403

The number of qualified, indeed highly qualified, applicants for admission to existing medical schools in the United States far exceeds the number of places available. Wholly apart from racial and ethnic considerations, therefore, the selection process inevitably results in the denial of admission to many qualified persons, indeed, to far more than the number of those who are granted admission. Obviously, it is a denial to the deserving. This inescapable fact is brought into sharp focus here because Allan Bakke is not himself charged with discrimination, and yet is the one who is disadvantaged, and because the Medical School of the University of California at Davis itself is not charged with historical discrimination.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 403

One theoretical solution to the need for more minority [438 U.S. 404] members in higher education would be to enlarge our graduate schools. Then all who desired and were qualified could enter, and talk of discrimination would vanish. Unfortunately, this is neither feasible nor realistic. The vast resources that apparently would be required simply are not available. And the need for more professional graduates, in the strict numerical sense, perhaps has not been demonstrated at all.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 404

There is no particular or real significance in the 84-16 division at Davis. The same theoretical, philosophical, social, legal, and constitutional considerations would necessarily apply to the case if Davis' special admissions program had focused on any lesser number, that is, on 12 or 8 or 4 places or, indeed, on only 1.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 404

It is somewhat ironic to have us so deeply disturbed over a program where race is an element of consciousness, and yet to be aware of the fact, as we are, that institutions of higher learning, albeit more on the undergraduate than the graduate level, have given conceded preferences up to a point to those possessed of athletic skills, to the children of alumni, to the affluent who may bestow their largess on the institutions, and to those having connections with celebrities, the famous, and the powerful.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 404

Programs of admission to institutions of higher learning are basically a responsibility for academicians and for administrators and the specialists they employ. The judiciary, in contrast, is ill-equipped and poorly trained for this. The administration and management of educational institutions are beyond the competence of judges and are within the special competence of educators, provided always that the educators perform within legal and constitutional bounds. For me, therefore, interference by the judiciary must be the rare exception, and not the rule.

II

1978, Regents of Univ. of California v. Bakke, 438 U.S. 404

I, of course, accept the propositions that (a) Fourteenth Amendment rights are personal; (b) racial and ethnic distinctions, [438 U.S. 405] where they are stereotypes, are inherently suspect and call for exacting judicial scrutiny; (c) academic freedom is a special concern of the First Amendment; and (d) the Fourteenth Amendment has expanded beyond its original 1868 concept, and now is recognized to have reached a point where, as MR. JUSTICE POWELL states, ante at 293, quoting from the Court's opinion in McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 296 (1976), it embraces a "broader principle."

1978, Regents of Univ. of California v. Bakke, 438 U.S. 405

This enlargement does not mean for me, however, that the Fourteenth Amendment has broken away from its moorings and its original intended purposes. Those original aims persist. And that, in a distinct sense, is what "affirmative action," in the face of proper facts, is all about. If this conflicts with idealistic equality, that tension is original Fourteenth Amendment tension, constitutionally conceived and constitutionally imposed, and it is part of the Amendment's very nature until complete equality is achieved in the area. In this sense, constitutional equal protection is a shield.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 405

I emphasize in particular that the decided cases are not easily to be brushed aside. Many, of course, are not precisely on point, but neither are they off point. Racial factors have been given consideration in the school desegregation cases, in the employment cases, in Lau v. Nichols, 414 U.S. 563 (1974), and in United Jewish Organizations v. Carey, 430 U.S. 144 (1977). To be sure, some of these may be "distinguished" on the ground that victimization was directly present. But who is to say that victimization is not present for some members of today's minority groups, although it is of a lesser and perhaps different degree. The petitioners in United Jewish Organizations certainly complained bitterly of their reapportionment treatment, and I rather doubt that they regard the "remedy" there imposed as one that was "to improve" the group's ability to participate, as MR. JUSTICE POWELL describes it, ante at 305. And surely. in Lau v. Nichols, we looked to ethnicity. [438 U.S. 406]

1978, Regents of Univ. of California v. Bakke, 438 U.S. 406

I am not convinced, as MR. JUSTICE POWELL seems to be, that the difference between the Davis program and the one employed by Harvard is very profound, or constitutionally significant. The line between the two is a thin and indistinct one. In each, subjective application is at work. Because of my conviction that admission programs are primarily for the educators, I am willing to accept the representation that the Harvard program is one where good faith in its administration is practiced, as well as professed. I agree that such a program, where race or ethnic background is only one of many factors, is a program better formulated than Davis' two-track system. The cynical, of course, may say that, under a program such as Harvard's, one may accomplish covertly what Davis concedes it does openly. I need not go that far, for, despite its two-track aspect, the Davis program, for me, is within constitutional bounds, though perhaps barely so. It is surely free of stigma, and, as in United Jewish Organizations, I am not willing to infer a constitutional violation.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 406

It is worth noting, perhaps, that governmental preference has not been a stranger to our legal life. We see it in veterans' preferences. We see it in the aid-to-the-handicapped programs. We see it in the progressive income tax. We see it in the Indian programs. We may excuse some of these on the ground that they have specific constitutional protection or, as with Indians, that those benefited are wards of the Government. Nevertheless, these preferences exist, and may not be ignored. And in the admissions field, as I have indicated, educational institutions have always used geography, athletic ability, anticipated financial largess, alumni pressure, and other factors of that kind.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 406

I add these only as additional components on the edges of the central question as to which I join my Brothers BRENNAN, WHITE, and MARSHALL in our more general approach. It is gratifying to know that the Court at least finds it constitutional for an academic institution to take race and ethnic background into consideration as one factor, among many, in [438 U.S. 407] the administration of its admissions program. I presume that that factor always has been there, though perhaps not conceded or even admitted. It is a fact of life, however, and a part of the real world of which we are all a part. The sooner we get down the road toward accepting and being a part of the real world, and not shutting it out and away from us, the sooner will these difficulties vanish from the scene.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 407

I suspect that it would be impossible to arrange an affirmative action program in a racially neutral way and have it successful. To ask that this be so is to demand the impossible. In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. We cannot—we dare not—let the Equal Protection Clause perpetuate racial supremacy.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 407

So the ultimate question, as it was at the beginning of this litigation, is: among the qualified, how does one choose?

1978, Regents of Univ. of California v. Bakke, 438 U.S. 407

A long time ago, as time is measured for this Nation, a Chief Justice, both wise and far-sighted, said:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 407

In considering this question, then, we must never forget, that it is a constitution we are expounding.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 407

McCulloch v. Maryland, 4 Wheat. 316, 407 (1819) (emphasis in original). In the same opinion, the Great Chief Justice further observed:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 407

Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 407

Id. at 421. More recently, one destined to become a Justice of this Court observed:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 407

The great generalities of the constitution have a content and a significance that vary from age to age.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 407

B. Cardozo, The Nature of the Judicial Process 17 (1921). [438 U.S. 408] And an educator who became a President of the United States said:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 408

But the Constitution of the United States is not a mere lawyers' document: it is a vehicle of life, and its spirit is always the spirit of the age.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 408

W. Wilson, Constitutional Government in the United States 69 (1911).

1978, Regents of Univ. of California v. Bakke, 438 U.S. 408

These precepts of breadth and flexibility and ever-present modernity are basic to our constitutional law. Today, again, we are expounding a Constitution. The same principles that governed McCulloch's case in 1819 govern Bakke's case in 1978. There can be no other answer.

STEVENS, J., concurring and dissenting

1978, Regents of Univ. of California v. Bakke, 438 U.S. 408

MR. JUSTICE STEVENS, with whom THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST join, concurring in the judgment in part and dissenting in part.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 408

It is always important at the outset to focus precisely on the controversy before the Court. 1 It is particularly important to do so in this case, because correct identification of the issues will determine whether it is necessary or appropriate to express any opinion about the legal status of any admissions program other than petitioner's.

I

1978, Regents of Univ. of California v. Bakke, 438 U.S. 408

This is not a class action. The controversy is between two specific litigants. Allan Bakke challenged petitioner's special admissions program, claiming that it denied him a place in medical school because of his race in violation of the Federal and California Constitutions and of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. The California Supreme Court upheld his challenge and ordered him admitted. If the [438 U.S. 409] state court was correct in its view that the University's special program was illegal, and that Bakke was therefore unlawfully excluded from the Medical School because of his race, we should affirm its judgment, regardless of our views about the legality of admissions programs that are not now before the Court.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 409

The judgment as originally entered by the trial court contained four separate paragraphs, two of which are of critical importance. 2 Paragraph 3 declared that the University's special admissions program violated the Fourteenth Amendment, the State Constitution, and Title VI. The trial court did not order the University to admit Bakke, because it concluded that Bakke had not shown that he would have been admitted if there had been no special program. Instead, in paragraph 2 of its judgment, it ordered the University to consider Bakke's application for admission without regard to his race or the race of any other applicant. The order did not include any broad [438 U.S. 410] prohibition against any use of race in the admissions process; its terms were clearly limited to the University's consideration of Bakke's application. 3 Because the University has since been ordered to admit Bakke, paragraph 2 of the trial court's order no longer has any significance.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 410

The California Supreme Court, in a holding that is not challenged, ruled that the trial court incorrectly placed the burden on Bakke of showing that he would have been admitted in the absence of discrimination. The University then conceded "that it [could] not meet the burden of proving that the special admissions program did not result in Mr. Bakke's failure to be admitted." 4 Accordingly, the California Supreme Court directed the trial court to enter judgment ordering Bakke's admission. 5 Since that order superseded paragraph [438 U.S. 411] 2 of the trial court's judgment, there is no outstanding injunction forbidding any consideration of racial criteria in processing applications.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 411

It is therefore perfectly clear that the question whether race can ever be used as a factor in an admissions decision is not an issue in this case, and that discussion of that issue is inappropriate. 6

II

1978, Regents of Univ. of California v. Bakke, 438 U.S. 411

Both petitioner and respondent have asked us to determine the legality of the University's special admissions program by reference to the Constitution. Our settled practice, however, is to avoid the decision of a constitutional issue if a case can be fairly decided on a statutory ground.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 411

If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality…unless such adjudication is unavoidable.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 411

Spector Motor Co. v. McLaughlin, 323 U.S. 101, 105. 7 The more important the issue, the more force [438 U.S. 412] there is to this doctrine. 8 In this case, we are presented with a constitutional question of undoubted and unusual importance. Since, however, a dispositive statutory claim was raised at the very inception of this case, and squarely decided in the portion of the trial court judgment affirmed by the California Supreme Court, it is our plain duty to confront it. Only if petitioner should prevail on the statutory issue would it be necessary to decide whether the University's admissions program violated the Equal Protection Clause of the Fourteenth Amendment.

III

1978, Regents of Univ. of California v. Bakke, 438 U.S. 412

Section 601 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. § 2000d, provides:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 412

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 412

The University, through its special admissions policy, excluded Bakke from participation in its program of medical education because of his race. The University also acknowledges that it was, and still is, receiving federal financial assistance. 9 The plain language of the statute therefore requires affirmance of the judgment below. A different result [438 U.S. 413] cannot be justified unless that language misstates the actual intent of the Congress that enacted the statute or the statute is not enforceable in a private action. Neither conclusion is warranted.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 413

Title VI is an integral part of the far-reaching Civil Rights Act of 1964. No doubt, when this legislation was being debated, Congress was not directly concerned with the legality of "reverse discrimination" or "affirmative action" programs. Its attention was focused on the problem at hand, the "glaring…discrimination against Negroes which exists throughout our Nation," 10 and, with respect to Title VI, the federal funding of segregated facilities. 11 The genesis of the legislation, however, did not limit the breadth of the solution adopted. Just as Congress responded to the problem of employment discrimination by enacting a provision that protects all races, see McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 279, 12 so, too, its answer to the problem of federal funding of segregated facilities stands as a broad prohibition against the exclusion of any individual from a federally funded program "on the ground of race." In the words of the House Report, Title VI stands for

1978, Regents of Univ. of California v. Bakke, 438 U.S. 413

the general principle that no person…be excluded from participation…on the ground of race, color, or national origin under any program or activity receiving Federal financial assistance.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 413

H.R.Rep. No. 914, 88th [438 U.S. 414] Cong., 1st Sess, pt. l, p. 25 (1963) (emphasis added). This same broad view of Title VI and § 601 was echoed throughout the congressional debate and was stressed by every one of the major spokesmen for the Act. 13

1978, Regents of Univ. of California v. Bakke, 438 U.S. 414

Petitioner contends, however, that exclusion of applicants on the basis of race does not violate Title VI if the exclusion carries with it no racial stigma. No such qualification or limitation of § 601's categorical prohibition of "exclusion" is justified by the statute or its history. The language of the entire section is perfectly clear; the words that follow "excluded from" do not modify or qualify the explicit outlawing of any exclusion on the stated grounds.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 414

The legislative history reinforces this reading. The only suggestion that § 601 would allow exclusion of nonminority applicants came from opponents of the legislation, and then only by way of a discussion of the meaning of the word "discrimination." 14 The opponents feared that the term "discrimination" [438 U.S. 415] would be read as mandating racial quotas and "racially balanced" colleges and universities, and they pressed for a specific definition of the term in order to avoid this possibility. 15 In response, the proponents of the legislation gave repeated assurances that the Act would be "colorblind" in its application. 16 Senator Humphrey, the Senate floor manager for the Act, expressed this position as follows:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 415

[T]he word "discrimination" has been used in many a court case. What it really means in the bill is a distinction in treatment…given to different individuals because of their different race, religion or national origin….

1978, Regents of Univ. of California v. Bakke, 438 U.S. 415

The answer to this question [what was meant by "discrimination"] is that if race is not a factor, we do not have to worry about discrimination because of race…. The Internal Revenue Code does not provide that colored people do not have to pay taxes, or that they can pay their taxes 6 months later than everyone else.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 415

110 Cong.Rec. 5864 (1964).

1978, Regents of Univ. of California v. Bakke, 438 U.S. 415

[I]f we started to treat Americans as Americans, not as fat ones, thin ones, short ones, tall ones, brown ones, green ones, yellow ones, or white ones, but as Americans. If we did that, we would not need to worry about discrimination.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 415

Id. at 5866. [438 U.S. 416]

1978, Regents of Univ. of California v. Bakke, 438 U.S. 416

In giving answers such as these, it seems clear that the proponents of Title VI assumed that the Constitution itself required a colorblind standard on the part of government, 17 but that does not mean that the legislation only codifies an existing constitutional prohibition. The statutory prohibition against discrimination in federally funded projects contained in § 601 is more than a simple paraphrasing of what the Fifth or Fourteenth Amendment would require. The Act's proponents plainly considered Title VI consistent with their view of the Constitution, and they sought to provide an effective weapon to implement that view. 18 As a distillation of what the supporters of the Act believed the Constitution demanded of State and Federal Governments, § 601 has independent force, with language and emphasis in addition to that found in the Constitution. 19 [438 U.S. 417]

1978, Regents of Univ. of California v. Bakke, 438 U.S. 417

As with other provisions of the Civil Rights Act, Congress' expression of it policy to end racial discrimination may independently proscribe conduct that the Constitution does not. 20 However, we need not decide the congruence—or lack of congruence—of the controlling statute and the Constitution [438 U.S. 418] since the meaning of the Title VI ban on exclusion is crystal clear: race cannot be the basis of excluding anyone from participation in a federally funded program.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 418

In short, nothing in the legislative history justifies the conclusion that the broad language of § 601 should not be given its natural meaning. We are dealing with a distinct statutory prohibition, enacted at a particular time with particular concerns in mind; neither its language nor any prior interpretation suggests that its place in the Civil Rights Act, won after long debate, is simply that of a constitutional appendage. 21 In unmistakable terms, the Act prohibits the exclusion of individuals from federally funded programs because of their race. 22 As succinctly phrased during the Senate debate, under Title VI, it is not "permissible to say `yes' to one person, but to say `no' to another person, only because of the color of his skin." 23

1978, Regents of Univ. of California v. Bakke, 438 U.S. 418

Belatedly, however, petitioner argues that Title VI cannot be enforced by a private litigant. The claim is unpersuasive in the context of this case. Bakke requested injunctive and declaratory relief under Title VI; petitioner itself then joined [438 U.S. 419] issue on the question of the legality of its program under Title VI by asking for a declaratory judgment that it was in compliance with the statute. 24 Its view during state court litigation was that a private cause of action does exist under Title VI. Because petitioner questions the availability of a private cause of action for the first time in this Court, the question is not properly before us. See McGoldrick v. Companie Generale Transatlantique, 309 U.S. 430, 434. Even if it were, petitioner's original assumption is in accord with the federal courts' consistent interpretation of the Act. To date, the courts, including this Court, have unanimously concluded or assumed that a private action may be maintained under Title VI. 25 The United States has taken the same position; in its amicus curiae brief directed to this specific issue, it concluded that such a remedy is clearly available, 26 [438 U.S. 420] and Congress has repeatedly enacted legislation predicated on the assumption that Title VI may be enforced in a private action. 27 The conclusion that an individual may maintain a private cause of action is amply supported in the legislative history of Title VI itself. 28 In short, a fair consideration of [438 U.S. 421] petitioner's tardy attack on the propriety of Bakke's suit under Title VI requires that it be rejected.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

The University's special admissions program violated Title VI of the Civil Rights Act of 1964 by excluding Bakke from the Medical School because of his race. It is therefore our duty to affirm the judgment ordering Bakke admitted to the University.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

Accordingly, I concur in the Court's judgment insofar as it affirms the judgment of the Supreme Court of California. To the extent that it purports to do anything else, I respectfully dissent.

Footnotes

POWELL, J., lead opinion (Footnotes)

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

\* MR. JUSTICE STEVENS views the judgment of the California court as limited to prohibiting the consideration of race only in passing upon Bakke's application. Post at 408-411. It must be remembered, however, that petitioner here cross-complained in the trial court for a declaratory judgment that its special program was constitutional, and it lost. The trial court's judgment that the special program was unlawful was affirmed by the California Supreme Court in an opinion which left no doubt that the reason for its holding was petitioner's use of race in consideration of ay candidate's application. Moreover, in explaining the scope of its holding, the court quite clearly stated that petitioner was prohibited from taking race into account in any way in making admissions decisions:

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In addition, the University may properly as it in fact does, consider other factors in evaluating an applicant, such as the personal interview, recommendations, character, and matters relating to the needs of the profession and society, such as an applicant's professional goals. In short, the standards for admission employed by the University are not constitutionally infirm except to the extent that they are utilized in a racially discriminatory manner. Disadvantaged applicants of all races must be eligible for sympathetic consideration, and no applicant may be rejected because of his race in favor of another who is less qualified, as measured by standards applied without regard to race. We reiterate, in view of the dissent's misinterpretation, that we do not compel the University to utilize only "the highest objective academic credentials" as the criterion for admission.

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18 Cal.3d 34, 54-55, 553 P.2d 1152, 1166 (1976) (footnote omitted). This explicit statement makes it unreasonable to assume that the reach of the California court's judgment can be limited in the manner suggested by MR. JUSTICE STEVENS.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

\*\* MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN join Parts I and V-C of this opinion. MR. JUSTICE WHITE also joins Part III-A of this opinion.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

1. Material distributed to applicants for the class entering in 1973 described the special admissions program as follows:

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A special subcommittee of the Admissions Committee, made up of faculty and medical students from minority groups, evaluates applications from economically and/or educationally disadvantaged backgrounds. The applicant may designate on the application form that he or she requests such an evaluation. Ethnic minorities are not categorically considered under the Task Force Program unless they are from disadvantaged backgrounds. Our goals are: 1) A short-range goal in the identification and recruitment of potential candidates for admission to medical school in the near future, and 2) Our long-range goal is to stimulate career interest in health professions among junior high and high school students.

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After receiving all pertinent information selected applicants will receive a letter inviting them to our School of Medicine in Davis for an interview. The interviews are conducted by at least one faculty member and one student member of the Task Force Committee. Recommendations are then made to the Admissions Committee of the medical school. Some of the Task Force Faculty are also members of the Admissions Committee.

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Long-range goals will be approached by meeting with counselors and students of schools with large minority populations, as well as with local youth and adult community groups.

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Applications for financial aid are available only after the applicant has been accepted, and can only be awarded after registration. Financial aid is available to students in the form of scholarships and loans. In addition to the Regents' Scholarships and President's Scholarship programs, the medical school participates in the Health Professions Scholarship Program, which makes funds available to students who otherwise might not be able to pursue a medical education. Other scholarships and awards are available to students who meet special eligibility qualifications. Medical students are also eligible to participate in the Federally Insured Student Loan Program and the American Medical Association Education and Research Foundation Loan Program.

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Applications for Admission are available from:

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Admissions Office

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

School of Medicine

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

University of California

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

Davis, California 95616

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Record 195. The letter distributed the following year was virtually identical, except that the third paragraph was omitted.

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2. For the 1973 entering class of 100 seats, the Davis Medical School received 2,464 applications. Id. at 117. For the 1974 entering class, 3,737 applications were submitted. Id. at 289.

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3. That is, applications were considered and acted upon as they were received, so that the process of filling the class took place over a period of months, with later applications being considered against those still on file from earlier in the year. Id. at 64.

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4. The chairman normally checked to see if, among other things, the applicant had been granted a waiver of the school's application fee, which required a means test; whether the applicant had worked during college or interrupted his education to support himself or his family; and whether the applicant was a member of a minority group. Id. at 666.

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5. For the class entering in 1973, the total number of special applicants was 297, of whom 73 were white. In 1974, 628 persons applied to the special committee, of whom 172 were white. Id. at 133-134.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

6. The following table provides a year-by-year comparison of minority admissions at the Davis Medical School:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

Special Admissions Program General Admissions Total

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

————————————————————————— ——

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

Blacks Chicanos Asians Total Blacks Chicanos Asians Total

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

1970…. 5 3 0 8 0 0 4 4 12

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

1971…. 4 9 2 15 1 0 8 9 24

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

1972…. 5 6 5 16 0 0 11 11 27

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

1973…. 6 8 2 16 0 2 13 15 31

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

1974…. 6 7 3 16 0 4 5 9 25

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Id. at 216-218. Sixteen persons were admitted under the special program in 1974, ibid., but one Asian withdrew before the start of classes, and the vacancy was filled by a candidate from the general admissions waiting list. Brief for Petitioner 4 n. 5.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

7. The following table compares Bakke's science grade point average, overall grade point average, and MCAT scores with the average scores of regular admittees and of special admittees in both 1973 and 1974. Record 210, 223, 231, 234:

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

Class Entering in 1973

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

MCAT (Percentiles)

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

Quanti- Gen.

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SGPA OGPA Verbal tative Science Infor.

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Bakke. . . . . . . 3.44 3.46 96 94 97 72

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

Average of regular

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

admittees. . . . . 3.51 3.49 81 76 83 69

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Average of special

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

admittees. . . . . 2.62 2.88 46 24 35 33

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Class Entering in 1974

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MCAT (Percentiles)

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Quanti- Gen.

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SGPA OGPA Verbal tative Science Infor.

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

Bakke. . . . . . . . 3.44 3.46 96 94 97 72

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

Average of regular

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

admittees. . . . . . 3.36 3.29 69 67 82 72

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Average of special

1978, Regents of Univ. of California v. Bakke, 438 U.S. 421

admittees. . . . . . 2.42 2.62 34 30 37 18

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Applicants admitted under the special program also had benchmark scores significantly lower than many students, including Bakke, rejected under the general admissions program, even though the special rating system apparently gave credit for overcoming "disadvantage." Id. at 181, 388.

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8. Prior to the actual filing of the suit, Bakke discussed his intentions with Peter C. Storandt, Assistant to the Dean of Admissions at the Davis Medical School. Id. at 259-269. Storandt expressed sympathy for Bakke's position and offered advice on litigation strategy. Several amici imply that these discussions render Bakke's suit "collusive." There is no indication, however, that Storandt's views were those of the Medical School, or that anyone else at the school even was aware of Storandt's correspondence and conversations with Bakke. Storandt is no longer with the University.

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9. "[N]or shall any State…deny to any person within its jurisdiction the equal protection of the laws."

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10.

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No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

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This section was recently repealed, and its provisions added to Art. I, § 7, of the State Constitution.

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11. Section 601 of Title VI, 78 Stat. 252, provides as follows:

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No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

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12. Indeed, the University did not challenge the finding that applicants who were not members of a minority group were excluded from consideration in the special admissions process. 18 Cal.3d at 44, 553 P.2d at 1159.

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13. Petitioner has not challenged this aspect of the decision. The issue of the proper placement of the burden of proof, then, is not before us.

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14. Several amici suggest that Bakke lacks standing, arguing that he never showed that his injury—exclusion from the Medical School—will be redressed by a favorable decision, and that the petitioner "fabricated" jurisdiction by conceding its inability to meet its burden of proof. Petitioner does not object to Bakke's standing, but inasmuch as this charge concerns our jurisdiction under Art. III, it must be considered and rejected. First, there appears to be no reason to question the petitioner's concession. It was not an attempt to stipulate to a conclusion of law or to disguise actual facts of record. Cf. Swift & Co. v. Hocking Valley R. Co., 243 U.S. 281 (1917).

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Second, even if Bakke had been unable to prove that he would have been admitted in the absence of the special program, it would not follow that he lacked standing. The constitutional element of standing is plaintiff's demonstration of any injury to himself that is likely to be redressed by favorable decision of his claim. Warth v. Seldin, 422 U.S. 490, 498 (1975). The trial court found such an injury, apart from failure to be admitted, in the University's decision not to permit Bakke to compete for all 100 places in the class, simply because of his race. Record 323. Hence, the constitutional requirements of Art. III were met. The question of Bakke's admission vel non is merely one of relief.

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Nor is it fatal to Bakke's standing that he was not a "disadvantaged" applicant. Despite the program's purported emphasis on disadvantage, it was a minority enrollment program with a secondary disadvantage element. White disadvantaged students were never considered under the special program, and the University acknowledges that its goal in devising the program was to increase minority enrollment.

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15. See, e.g., 110 Cong.Rec. 5255 (1964) (remarks of Sen. Case).

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16. E.g., Bossier Parish School Board v. Lemon, 370 F.2d 847, 851-852 (CA5), cert. denied, 388 U.S. 911 (1967); Natonbah v. Board of Education, 355 F.Supp. 716, 724 (NM 1973); cf. Lloyd v. Regional Transportation Authority, 548 F.2d 1277, 1284-1287 (CA7 1977) (Title V of Rehabilitation Act of 1973, 29 U.S.C. § 790 et seq. (1976 ed.)); Piascik v. Cleveland Museum of Art, 426 F.Supp. 779, 780 n. 1 (ND Ohio 1976) (Title IX of Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (1976 ed.)).

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17. Section 602, as set forth in 42 U.S.C. § 2000d-1, reads as follows:

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Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be ¥limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or(2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

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18. Several comments in the debates cast doubt on the existence of any intent to create a private right of action. For example, Representative Gill stated that no private right of action was contemplated:

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Nowhere in this section do you find a comparable right of legal action for a person who feels he has been denied his rights to participate in the benefits of Federal funds. Nowhere. Only those who have been cut off can go to court and present their claim.

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110 Cong.Rec. 2467 (1964). Accord, id. at 7065 (remarks of Sen. Keating); 6562 (remarks of Sen. Kuchel).

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19. For example, Senator Humphrey stated as follows:

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Racial discrimination or segregation in the administration of disaster relief is particularly shocking; and offensive to our sense of justice and fair play. Human suffering draws no color lines, and the administration of help to the sufferers should not.

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Id. at 6547. See also id. at 12675 (remarks of Sen. Allott); 6561 (remarks of Sen. Kuchel); 2494, 6047 (remarks of Sen. Pastore). But see id. at 15893 (remarks of Rep. MacGregor); 13821 (remarks of Sen. Saltonstall); 10920 (remarks of Sen. Javits); 5266, 5807 (remarks of Sen. Keating).

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20. See, e.g., id. at 7064-7065 (remarks of Sen. Ribicoff); 7054-7055 (remarks of Sen. Pastore); 6543-6544 (remarks of Sen. Humphrey); 2595 (remarks of Rep. Donohue); 2467-2468 (remarks of Rep. Celler); 1643, 2481-2482 (remarks of Rep. Ryan); H.R.Rep. No. 914, 88th Cong., 1st Sess., pt. 2, pp. 24-25 (1963).

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21. See, e.g., 110 Cong.Rec. 2467 (1964) (remarks of Rep. Lindsay). See also id. at 2766 (remarks of Rep. Matsunaga); 2731-2732 (remarks of Rep. Dawson); 2595 (remarks of Rep. Donohue); 1527-1528 (remarks of Rep. Celler).

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22. See, e.g., id. at 12675, 12677 (remarks of Sen. Allott); 7064 (remarks of Sen. Pell); 7057, 7062-7064 (remarks of Sen. Pastore); 5243 (remarks of Sen. Clark).

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23. See, e.g., id. at 6052 (remarks of Sen. Johnston); 5863 (remarks of Sen. Eastland); 5612 (remarks of Sen. Ervin); 5251 (remarks of Sen. Talmadge); 1632 (remarks of Rep. Dowdy); 1619 (remarks of Rep. Abernethy).

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24. See also id. at 7057, 13333 (remarks of Sen. Ribicoff); 7057 (remarks of Sen. Pastore); 5606-5607 (remarks of Sen. Javits); 5253, 5863-5864, 13442 (remarks of Sen. Humphrey).

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25. That issue has generated a considerable amount of scholarly controversy. See, e.g., Ely, The Constitutionality of Reverse Racial Discrimination, 41 U.Chi.L.Rev. 723 (1974); Greenawalt, Judicial Scrutiny of "Benign" Racial Preference in Law School Admissions, 75 Colum.L.Rev. 559 (1975); Kaplan, Equal Justice in an Unequal World: Equality for the Negro, 61 Nw.U.L.Rev. 363 (1966); Karst & Horowitz, Affirmative Action and Equal Protection, 60 Va.L.Rev. 955 (1974); O'Neil, Racial Preference and Higher Education: The Larger Context, 60 Va.L.Rev. 925 (1974); Posner, The DeFunis Case and the Constitutionality of Preferential Treatment of Racial Minorities, 1974 Sup.Ct.Rev. 1; Redish, Preferential Law School Admissions and the Equal Protection Clause: An Analysis of the Competing Arguments, 22 UCLA L.Rev. 343 (1974); Sandalow, Racial Preferences in Higher Education: Political Responsibility and the Judicial Role, 42 U.Chi.L.Rev. 653 (1975); Sedler, Racial Preference, Reality and the Constitution: Bakke v. Regents of the University of California, 17 Santa Clara L.Rev. 329 (1977); Seeburger, A Heuristic Argument Against Preferential Admissions, 39 U.Pitt.L.Rev. 285 (1977).

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26. Petitioner defines "quota" as a requirement which must be met, but can never be exceeded, regardless of the quality of the minority applicants. Petitioner declares that there is no "floor" under the total number of minority students admitted; completely unqualified students will not be admitted simply to meet a "quota." Neither is there a "ceiling," since an unlimited number could be admitted through the general admissions process. On this basis, the special admissions program does not meet petitioner's definition of a quota.

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The court below found—and petitioner does not deny—that white applicants could not compete for the 16 places reserved solely for the special admissions program. 18 Cal.3d at 44, 553 P.2d at 1159. Both courts below characterized this as a "quota" system.

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27. Moreover, the University's special admissions program involves a purposeful, acknowledged use of racial criteria. This is not a situation in which the classification on its face is racially neutral, but has a disproportionate racial impact. In that situation, plaintiff must establish an intent to discriminate. Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 264-265 (1977); Washington v. Davis, 426 U.S. 229, 242 (1976); see Yick Wo v. Hopkins, 118 U.S. 356 (1886).

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28. After Carolene Products, the first specific reference in our decisions to the elements of "discreteness and insularity" appears in Minersville School District v. Gobitis, 310 U.S. 586, 606 (1940) (Stone, J., dissenting). The next does not appear until 1970. Oregon v. Mitchell, 400 U.S. 112, 295 n. 14 (STEWART, J., concurring in part and dissenting in part). These elements have been relied upon in recognizing a suspect class in only one group of cases, those involving aliens. E.g., Graham v. Richardson, 403 U.S. 365, 372 (1971).

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29. Tussman & tenBroek, The Equal Protection of the Law, 37 Calif.L.Rev. 341, 381 (1949).

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30. M. Jones, American Immigration 177-246 (1960).

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31. J. Higham, Strangers in the Land (1955); G. Abbott, The Immigrant and the Community (1917); P. Roberts, The New Immigration 66-73, 86-91, 248-261 (1912). See also E. Fenton, Immigrants and Unions: A Case Study 561-562 (1975).

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32.

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Members of various religious and ethnic groups, primarily but not exclusively of Eastern, Middle, and Southern European ancestry, such as Jews, Catholics, Italians, Greeks, and Slavic groups, continue to be excluded from executive, middle-management, and other job levels because of discrimination based upon their religion and/or national origin.

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41 CFR § 60-50.1(b) (1977).

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33. E.g., P. Roberts, supra, n. 31, at 75; G. Abbott, supra, n. 31, at 270-271. See generally n. 31, supra.

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34. In the view of MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN, the pliable notion of "stigma" is the crucial element in analyzing racial classifications, see, e.g., post at 361, 362. The Equal Protection Clause is not framed in terms of "stigma." Certainly the word has no clearly defined constitutional meaning. It reflects a subjective judgment that is standardless. All state-imposed classifications that rearrange burdens and benefits on the basis of race are likely to be viewed with deep resentment by the individuals burdened. The denial to innocent persons of equal rights and opportunities may outrage those so deprived, and therefore may be perceived as invidious. These individuals are likely to find little comfort in the notion that the deprivation they are asked to endure is merely the price of membership in the dominant majority, and that its imposition is inspired by the supposedly benign purpose of aiding others. One should not lightly dismiss the inherent unfairness of, and the perception of mistreatment that accompanies, a system of allocating benefits and privileges on the basis of skin color and ethnic origin. Moreover, MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN offer no principle for deciding whether preferential classifications reflect a benign remedial purpose or a malevolent stigmatic classification, since they are willing in this case to accept mere post hoc declarations by an isolated state entity—a medical school faculty—unadorned by particularized findings of past discrimination, to establish such a remedial purpose.

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35. Professor Bickel noted the self-contradiction of that view:

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The lesson of the great decisions of the Supreme Court and the lesson of contemporary history have been the same for at least a generation—discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society. Now this is to be unlearned, and we are told that this is not a matter of fundamental principle, but only a matter of whose ox is gored. Those for whom racial equality was demanded are to be more equal than others. Having found support in the Constitution for equality, they now claim support for inequality under the same Constitution.

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A. Bickel, The Morality of Consent 133 (1975).

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36. As I am in agreement with the view that race may be taken into account as a factor in an admissions program, I agree with my Brothers BRENNAN, WHITE, MARSHALL, and BLACKMUN that the portion of the judgment that would proscribe all consideration of race must be reversed. See Part V, infra. But I disagree with much that is said in their opinion.

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They would require, as a justification for a program such as petitioner's, only two findings: (i) that there has been some form of discrimination against the preferred minority groups by "society at large," post at 369 (it being conceded that petitioner had no history of discrimination), and (ii) that "there is reason to believe" that the disparate impact sought to be rectified by the program is the "product" of such discrimination:

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If it was reasonable to conclude—as we hold that it was—that the failure of minorities to qualify for admission at Davis under regular procedures was due principally to the effects of past discrimination, then there is a reasonable likelihood that, but for pervasive racial discrimination, respondent would have failed to qualify for admission even in the absence of Davis' special admissions program.

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Post at 365-366.

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The breadth of this hypothesis is unprecedented in our constitutional system. The first step is easily taken. No one denies the regrettable fact that there has been societal discrimination in this country against various racial and ethnic groups. The second step, however, involves a speculative leap: but for this discrimination by society at large, Bakke "would have failed to qualify for admission" because Negro applicants—nothing is said about Asians, cf., e.g., post at 374 n. 57—would have made better scores. Not one word in the record supports this conclusion, and the authors of the opinion offer no standard for courts to use in applying such a presumption of causation to other racial or ethnic classifications. This failure is a grave one, since, if it may be concluded on this record that each of the minority groups preferred by the petitioner's special program is entitled to the benefit of the presumption, it would seem difficult to determine that any of the dozens of minority groups that have suffered "societal discrimination" cannot also claim it in any area of social intercourse. See Part IV-B, infra.

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37. Mr. Justice Douglas has noted the problems associated with such inquiries:

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The reservation of a proportion of the law school class for members of selected minority groups is fraught with…dangers, for one must immediately determine which groups are to receive such favored treatment and which are to be excluded, the proportions of the class that are to be allocated to each, and even the criteria by which to determine whether an individual is a member of a favored group. [Cf. Plessy v. Ferguson, 163 U.S. 537, 549, 552 (1896).] There is no assurance that a common agreement can be reached, and first the schools, and then the courts, will be buffeted with the competing claims. The University of Washington included Filipinos, but excluded Chinese and Japanese; another school may limit its program to blacks, or to blacks and Chicanos. Once the Court sanctioned racial preferences such as these, it could not then wash its hands of the matter, leaving it entirely in the discretion of the school, for then we would have effectively overruled Sweatt v. Painter, 339 U.S. 629, and allowed imposition of a "zero" allocation. But what standard is the Court to apply when a rejected applicant of Japanese ancestry brings suit to require the University of Washington to extend the same privileges to his group? The Committee might conclude that the population of Washington is now 2% Japanese, and that Japanese also constitute 2% of the Bar, but that, had they not been handicapped by a history of discrimination, Japanese would now constitute 5% of the Bar, or 20%. Or, alternatively, the Court could attempt to assess how grievously each group has suffered from discrimination, and allocate proportions accordingly; if that were the standard, the current University of Washington policy would almost surely fall, for there is no Western State which can claim that it has always treated Japanese and Chinese in a fair and evenhanded manner. See, e.g., Yick Wo v. Hopkins, 118 U.S. 356; Terrace v. Thompson, 263 U.S. 197; Oyama v. California, 332 U.S. 633. This Court has not sustained a racial classification since the wartime cases of Korematsu v. United States, 323 U.S. 214, and Hirabayashi v. United States, 320 U.S. 81, involving curfews and relocations imposed upon Japanese-Americans.

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Nor, obviously, will the problem be solved if, next year, the Law School included only Japanese and Chinese, for then Norwegians and Swedes, Poles and Italians, Puerto Ricans and Hungarians, and all other groups which form this diverse Nation would have just complaints.

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DeFunis v. Odegaard, 416 U.S. 312, 337-340 (1974) (dissenting opinion) (footnotes omitted) .

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38. R. Dahl, A Preface to Democratic Theory (1956); Posner, supra, n. 25, at 27.

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39. Petitioner cites three lower court decisions allegedly deviating from this general rule in school desegregation cases: Offermann v. Nitkowski, 378 F.2d 22 (CA2 1967); Wanner v. County School Board, 357 F.2d 452 (CA4 1966); Springfield School Committee v. Barksdale, 348 F.2d 261 (CA1 1965). Of these, Wanner involved a school system held to have been de jure segregated and enjoined from maintaining segregation; racial districting was deemed necessary. 357 F.2d at 454. Cf. United Jewish Organizations v. Carey, 430 U.S. 144 (1977). In Barksdale and Offermann, courts did approve voluntary districting designed to eliminate discriminatory attendance patterns. In neither, however, was there any showing that the school board planned extensive pupil transportation that might threaten liberty or privacy interests. See Keyes v. School District No. 1, 413 U.S. 189, 240-250 (1973) (POWELL, J., concurring in part and dissenting in part). Nor were white students deprived of an equal opportunity for education.

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Respondent's position is wholly dissimilar to that of a pupil bused from his neighborhood school to a comparable school in another neighborhood in compliance with a desegregation decree. Petitioner did not arrange for respondent to attend a different medical school in order to desegregate Davis Medical School; instead, it denied him admission, and may have deprived him altogether of a medical education.

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40. Every decision upholding the requirement of preferential hiring under the authority of Exec.Order No. 11246, 3 CFR 339 (1964-1965 Comp.), has emphasized the existence of previous discrimination as a predicate for the imposition of a preferential remedy. Contractors Association of Eastern Pennsylvania; Southern Illinois Builders Assn. v. Ogilvie, 471 F.2d 680 (CA7 1972); Joyce v. McCrane, 320 F.Supp. 1284 (NJ 1970); Weiner v. Cuyahoga Community College District, 19 Ohio St.2d 35, 249 N.E.2d 907, cert. denied, 396 U.S. 1004 (1970). See also Rosetti Contracting Co. v. Brennan, 508 F.2d 1039, 1041 (CA7 1975); Associated General Contractors of Massachusetts, Inc. v. Altshuler, 490 F.2d 9 (CA1 1973), cert. denied, 416 U.S. 957 (1974); Northeast Constr. Co. v. Romney, 157 U.S.App.D.C. 381, 383, 390, 485 F.2d 752, 754, 761 (1973).

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41. This case does not call into question congressionally authorized administrative actions, such as consent decrees under Title VII or approval of reapportionment plans under § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (1970 ed., Supp. V). In such cases, there has been detailed legislative consideration of the various indicia of previous constitutional or statutory violations, e.g., South Carolina v. Katzenbach, 383 U.S. 301, 308-310 (1966) (§ 5), and particular administrative bodies have been charged with monitoring various activities in order to detect such violations and formulate appropriate remedies. See Hampton v. Mow Sun Wong, 426 U.S. 88, 103 (1976).

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Furthermore, we are not here presented with an occasion to review legislation by Congress pursuant to its powers under § 2 of the Thirteenth Amendment and § 5 of the Fourteenth Amendment to remedy the effects of prior discrimination. Katzenbach v. Morgan, 384 U.S. 641 (1966); Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968). We have previously recognized the special competence of Congress to make findings with respect to the effects of identified past discrimination and its discretionary authority to take appropriate remedial measures.

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42. Petitioner also cites our decision in Morton v. Mancari, 417 U.S. 535 (1974), for the proposition that the State may prefer members of traditionally disadvantaged groups. In Mancari, we approved a hiring preference for qualified Indians in the Bureau of Indian Affairs of the Department of the Interior (BIA). We observed in that case, however, that the legal status of the BIA is sui generis. Id. at 554. Indeed, we found that the preference was not racial at all, but

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an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to…groups…whose lives and activities are governed by the BIA in a unique fashion.

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Ibid.

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43. A number of distinct subgoals have been advanced as falling under the rubric of "compensation for past discrimination." For example, it is said that preferences for Negro applicants may compensate for harm done them personally, or serve to place them at economic levels they might have attained but for discrimination against their forebears. Greenawalt, supra, n. 25, at 581-586. Another view of the "compensation" goal is that it serves as a form of reparation by the "majority" to a victimized group as a whole. B. Bittker, The Case for Black Reparations (1973). That justification for racial or ethnic preference has been subjected to much criticism. E. Greenawalt, supra, n. 25, at 581; Posner, supra, n. 25, at 16-17, and n. 33. Finally, it has been argued that ethnic preferences "compensate" the group by providing examples of success whom other members of the group will emulate, thereby advancing the group's interest and society's interest in encouraging new generations to overcome the barriers and frustrations of the past. Redish, supra, n. 25, at 391. For purposes of analysis these subgoals need not be considered separately.

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Racial classifications in admissions conceivably could serve a fifth purpose, one which petitioner does not articulate: fair appraisal of each individual's academic promise in the light of some cultural bias in grading or testing procedures. To the extent that race and ethnic background were considered only to the extent of curing established inaccuracies in predicting academic performance, it might be argued that there is no "preference" at all. Nothing in this record, however, suggests either that any of the quantitative factors considered by the Medical School were culturally biased, or that petitioner's special admissions program was formulated to correct for any such biases. Furthermore, if race or ethnic background were used solely to arrive at an unbiased prediction of academic success, the reservation of fixed numbers of seats would be inexplicable.

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44. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN misconceive the scope of this Court's holdings under Title VII when they suggest that "disparate impact" alone is sufficient to establish a violation of that statute and, by analogy, other civil rights measures. See post at 363-366, and n. 42. That this was not the meaning of Title VII was made quite clear in the seminal decision in this area, Griggs v. Duke Power Co., 401 U.S. 424 (1971):

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Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.

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Id. at 431 (emphasis added). Thus, disparate impact is a basis for relief under Title VII only if the practice in question is not founded on "business necessity," ibid., or lacks "a manifest relationship to the employment in question," id. at 432. See also McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-803, 805-806 (1973). Nothing in this record—as opposed to some of the general literature cited by MR. JUSTICE BRENNAN, MR JUSTICE WHITE, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN—even remotely suggests that the disparate impact of the general admissions program at Davis Medical School, resulting primarily from the sort of disparate test scores and grades set forth in n. 7, supra, is without educational justification.

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Moreover, the presumption in Griggs—that disparate impact without any showing of business justification established the existence of discrimination in violation of the statute—was based on legislative determinations, wholly absent here, that past discrimination had handicapped various minority groups to such an extent that disparate impact could be traced to identifiable instances of past discrimination:

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[Congress sought] to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practices.

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Griggs, supra at 429-430. See, e.g., H.R.Rep. No. 914, 88th Cong., 1st Sess., pt. 2, p. 26 (1963) ("Testimony supporting the fact of discrimination in employment is overwhelming"). See generally Vaas, Title VII: The Legislative History, 7 B. C. Ind. & Com.L.Rev. 431 (1966). The Court emphasized that

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the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group.

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401 U.S. at 430-431. Indeed, § 703(j) of the Act makes it clear that preferential treatment for an individual or minority group to correct an existing "imbalance" may not be required under Title VII. 42 U.S.C. § 2000e-2(j). Thus, Title VII principles support the proposition that findings of identified discrimination must precede the fashioning of remedial measures embodying racial classifications.

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45. For example, the University is unable to explain its selection of only the four favored groups—Negroes, Mexican-Americans, American Indians, and Asians—for preferential treatment. The inclusion of the last group is especially curious in light of the substantial numbers of Asians admitted through the regular admissions process. See also n. 37, supra.

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46. The only evidence in the record with respect to such underservice is a newspaper article. Record 473.

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47. It is not clear that petitioner's two-track system, even if adopted throughout the country, would substantially increase representation of blacks in the medical profession. That is the finding of a recent study by Sleeth & Mishell, Black Under-Representation in United States Medical Schools, 297 New England J. of Med. 1146 (1977). Those authors maintain that the cause of black underrepresentation lies in the small size of the national pool of qualified black applicants. In their view, this problem is traceable to the poor premedical experiences of black undergraduates, and can be remedied effectively only by developing remedial programs for black students before they enter college.

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48. The president of Princeton University has described some of the benefits derived from a diverse student body:

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[A] great deal of learning occurs informally. It occurs through interactions among students of both sexes; of different races, religions, and backgrounds; who come from cities and rural areas, from various states and countries; who have a wide variety of interests, talents, and perspectives; and who are able, directly or indirectly, to learn from their differences and to stimulate one another to reexamine even their most deeply held assumptions about themselves and their world. As a wise graduate of ours observed in commenting on this aspect of the educational process, "People do not learn very much when they are surrounded only by the likes of themselves."

\* \* \* \*

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In the nature of things, it is hard to know how, and when, and even if, this informal "learning through diversity" actually occurs. It does not occur for everyone. For many, however, the unplanned, casual encounters with roommates, fellow sufferers in an organic chemistry class, student workers in the library, teammates on a basketball squad, or other participants in class affairs or student government can be subtle and yet powerful sources of improved understanding and personal growth.

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Bowen, Admissions and the Relevance of Race, Princeton Alumni Weekly 7, 9 (Sept. 26, 1977).

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49. Graduate admissions decisions, like those at the undergraduate level, are concerned with

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assessing the potential contributions to the society of each individual candidate following his or her graduation—contributions defined in the broadest way to include the doctor and the poet, the most active participant in business or government affairs and the keenest critic of all things organized, the solitary scholar and the concerned parent.

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Id. at 10.

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50. See Manning, The Pursuit of Fairness in Admissions to Higher Education, in Carnegie Council on Policy Studies in Higher Education, Selective Admission in Higher Education 19, 57-59 (1977).

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51. The admissions program at Princeton has been described in similar terms:

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While race is not, in and of itself, a consideration in determining basic qualifications, and while there are obviously significant differences in background and experience among applicants of every race, in some situations, race can be helpful information in enabling the admission officer to understand more fully what a particular candidate has accomplished—and against what odds. Similarly, such factors as family circumstances and previous educational opportunities may be relevant, either in conjunction with race or ethnic background (with which they may be associated) or on their own.

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Bowen, supra, n. 48, at 8-9.

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For an illuminating discussion of such flexible admissions systems, see Manning, supra, n. 50, at 57-59.

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52. The denial to respondent of this right to individualized consideration without regard to his race is the principal evil of petitioner' special admissions program. Nowhere in the opinion of MR. JUSTICE BRENNAN, MR JUSTICE WHITE, MR. JUSTICE MARSHALL, and MR JUSTICE BLACKMUN is this denial even addressed.

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53. Universities, like the prosecutor in Swain, may make individualized decisions, in which ethnic background plays a part, under a presumption of legality and legitimate educational purpose. So long as the university proceeds on an individualized, case-by-case basis, there is no warrant for judicial interference in the academic process. If an applicant can establish that the institution does not adhere to a policy of individual comparisons, or can show that a systematic exclusion of certain groups results, the presumption of legality might be overcome, creating the necessity of proving legitimate educational purpose.

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There also are strong policy reasons that correspond to the constitutional distinction between petitioner's preference program and one that assures a measure of competition among all applicants. Petitioner's program will be viewed as inherently unfair by the public generally, as well as by applicants for admission to state universities. Fairness in individual competition for opportunities, especially those provided by the State, is a widely cherished American ethic. Indeed, in a broader sense, an underlying assumption of the rule of law is the worthiness of a system of justice based on fairness to the individual. As Mr. Justice Frankfurter declared in another connection, "[j]ustice must satisfy the appearance of justice." Offutt v. United States, 348 U.S. 11, 14 (1954).

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54. There is no occasion for remanding the case to permit petitioner to reconstruct what might have happened if it had been operating the type of program described as legitimate in Part V, supra. Cf. Mt. Healthy City Board of Ed. v. Doyle, 429 U.S. 274, 284-287 (1977). In Mt. Healthy, there was considerable doubt whether protected First Amendment activity had been the "but for" cause of Doyle's protested discharge. Here, in contrast, there is no question as to the sole reason for respondent's rejection—purposeful racial discrimination in the form of the special admissions program. Having injured respondent solely on the basis of an unlawful classification, petitioner cannot now hypothesize that it might have employed lawful means of achieving the same result. See Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. at 265-266. No one can say how—or even if—petitioner would have operated its admissions process if it had known that legitimate alternatives were available. Nor is there a record revealing that legitimate alternative grounds for the decision existed, as there was in Mt. Healthy. In sum, a remand would result in fictitious recasting of past conduct.

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55. This statement appears in the Appendix to the Brief for Columbia University, Harvard University, Stanford University, and the University of Pennsylvania, as Amici Curiae.

BRENNAN, J., concurring and dissenting (Footnotes)

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1. We also agree with MR. JUSTICE POWELL that a plan like the "Harvard" plan, see ante at 316-318, is constitutional under our approach, at least so long as the use of race to achieve an integrated student body is necessitated by the lingering effects of past discrimination.

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2. See Plessy v. Ferguson, 163 U.S. 537 (1896).

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3. New Orleans City Park Improvement Assn. v. Detiege, 358 U.S. 54 (1958); Muir v. Louisville Park Theatrical Assn., 347 U.S. 971 (1954); Mayor of Baltimore v. Dawson, 350 U.S. 877 (1955); Holmes v. Atlanta, 350 U.S. 879 (1955); Gayle v. Browder, 352 U.S. 903 (1956).

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4. See Green v. County School Board, 391 U.S. 430 (1968).

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5. See Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971); Davis v. School Comm'rs of Mobile County, 402 U.S. 33 (1971); North Carolina Board of Education v. Swann, 402 U.S. 43 (1971).

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6. See, e.g., cases collected in Monell v. New York City Dept. of Social Services, 436 U.S. 658, 663 n. 5 (1978).

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7. Section 601 of Title VI provides:

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No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

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42 U.S.C. § 2000d.

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8. MR. JUSTICE WHITE believes we should address the "private right of action" issue. Accordingly, he has filed a separate opinion stating his view that there is no private right of action under Title VI. See post, p. 379.

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9.

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Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination. Direct discrimination by Federal, State or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation. Congress and the Executive have their responsibilities to uphold the Constitution also….

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Many statutes providing Federal financial assistance, however, define with such precision both the Administrator's role and the conditions upon which specified amounts shall be given to designated recipients that the amount of administrative discretion remaining—which might be used to withhold funds if discrimination were not ended—is, at best, questionable. No administrator has the unlimited authority to invoke the Constitution in opposition to the mandate of the Congress. Nor would it always be helpful to require unconditionally—as is often proposed—the withdrawal of all Federal funds from programs urgently needed by Negroes as well as whites, for this may only penalize those who least deserve it without ending discrimination.

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Instead of permitting this issue to become a political device often exploited by those opposed to social or economic progress, it would be better at this time to pass a single comprehensive provision making it clear that the Federal Government is not required, under any statute, to furnish any kind of financial assistance—by way of grant, loan, contract, guaranty, insurance, or otherwise—to any program or activity in which racial discrimination occurs. This would not permit the Federal Government to cut off all Federal aid of all kinds as a means of punishing an area for the discrimination occurring therein—but it would clarify the authority of any administrator with respect to Federal funds or financial assistance and discriminatory practices.

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109 Cong.Rec. 11161 (1963).

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10. See, e.g., 110 Cong.Rec. 2732 (1964) (Rep. Dawson); id. at 2481-2482 (Rep. Ryan); id. at 2766 (Rep. Matzunaga); id. at 2595 (Rep. Donahue) .

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11. There is also language in 42 U.S.C. § 2000d-5, enacted in 1966, which supports the conclusion that Title VI's standard is that of the Constitution. Section 2000d-5 provides that,

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for the purpose of determining whether a local educational agency is in compliance with [Title VI], compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with [Title VI], insofar as the matters covered in the order or judgment are concerned.

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This provision was clearly intended to avoid subjecting local educational agencies simultaneously to the jurisdiction of the federal courts and the federal administrative agencies in connection with the imposition of remedial measures designed to end school segregation. Its inclusion reflects the congressional judgment that the requirements imposed by Title VI are identical to those imposed by the Constitution as interpreted by the federal courts.

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12. As has already been seen, the proponents of Title VI in the House were motivated by the identical concern. See remarks of Representative Celler (110 Cong.Rec. 2467 (1964)); Representative Ryan (id. at 1643, 2481-2482); H.R.Rep. No. 914, 88th Cong., 1st Sess., pt. 2, Additional Views of Seven Representatives 2425 (1963).

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13. See separate opinion of MR. JUSTICE WHITE, post at 382-383, n. 2.

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14. These remarks also reflect the expectations of Title VI's proponents that the application of the Constitution to the conduct at the core of their concern—the segregation of Negroes in federally funded programs and their exclusion from the full benefits of such programs—was clear. See supra at 333-336; infra at 340-342, n. 17.

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15. Testimony of Attorney General Kennedy in Hearings before the Senate Committee on the Judiciary on S. 1731 and S. 1750, 88th Cong., 1st Sess., 398-399 (1963).

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16. See, e.g., 110 Cong.Rec. 6544, 13820 (1964) (Sen. Humphrey); id. at 6050 (Sen. Javits); id. at 12677 (Sen. Allott).

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17. Our Brother STEVENS finds support for a colorblind theory of Title VI in its legislative history, but his interpretation gives undue weight to a few isolated passages from among the thousands of pages of the legislative history of Title VI. See id. at 6547 (Sen. Humphrey); id. at 6047, 7055 (Sen. Pastore); id. at 12675 (Sen. Allott); id. at 6561 (Sen. Kuchel). These fragmentary comments fall far short of supporting a congressional intent to prohibit a racially conscious admissions program designed to assist those who are likely to have suffered injuries from the effects of past discrimination. In the first place, these statements must be read in the context in which they were made. The concern of the speakers was far removed from the incidental injuries which may be inflicted upon nonminorities by the use of racial preferences. It was rather with the evil of the segregation of Negroes in federally financed programs and, in some cases, their arbitrary exclusion on account of race from the benefits of such programs. Indeed, in this context, there can be no doubt that the Fourteenth Amendment does command color blindness, and forbids the use of racial criteria. No consideration was given by these legislators, however, to the permissibility of racial preference designed to redress the effects of injuries suffered as a result of one's color. Significantly, one of the legislators, Senator Pastore, and perhaps also Senator Kuchel, who described Title VI as proscribing decisionmaking based upon skin color, also made it clear that Title VI does not outlaw the use of racial criteria in all circumstances. See supra at 339-340; 110 Cong.Rec. 6562 (1964). See also id. at 2494 (Rep. Celler). Moreover, there are many statements in the legislative history explicitly indicating that Congress intended neither to require nor to prohibit the remedial use of racial preferences where not otherwise required or prohibited by the Constitution. Representative MacGregor addressed directly the problem of preferential treatment:

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Your mail and mine, your contacts and mine with our constituents, indicates a great degree of misunderstanding about this bill. People complain about racial "balancing" in the public schools, about open occupancy in housing, about preferential treatment or quotas in employment. There is a mistaken belief that Congress is legislating in these areas in this bill. When we drafted this bill, we excluded these issues largely because the problems raised by these controversial questions are more properly handled at a governmental level close to the American people and by communities and individuals themselves. The Senate has spelled out our intentions more specifically.

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Id. at 15893. Other legislators explained that the achievement of racial balance in elementary and secondary schools where there had been no segregation by law was not compelled by Title VI, but was rather left to the judgment of state and local communities. See, e.g., id. at 10920 (Sen. Javits); id. at 5807, 5266 (Sen. Keating); id. at 13821 (Sens. Humphrey and Saltonstall). See also id. at 6562 (Sen. Kuchel); id. at 13695 (Sen. Pastore).

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Much the same can be said of the scattered remarks to be found in the legislative history of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1970 ed. and Supp. V), which prohibits employment discrimination on the basis of race in terms somewhat similar to those contained in Title VI, see 42 U.S.C. § 2000e-2(a)(1) (unlawful "to fail or refuse to hire" any applicant "because of such individual's race, color, religion, sex, or national origin…. "), to the effect that any deliberate attempt by an employer to maintain a racial balance is not required by the statute, and might in fact violate it. See, e.g., 110 Cong.Rec. 7214 (1964) (Sens. Clark and Case); id. at 6549 (Sen. Humphrey); id. at 2560 (Rep. Goodell). Once again, there is no indication that Congress intended to bar the voluntary use of racial preferences to assist minorities to surmount the obstacles imposed by the remnants of past discrimination. Even assuming that Title VII prohibits employers from deliberately maintaining a particular racial composition in their workforce as an end in itself, this does not imply, in the absence of any consideration of the question, that Congress intended to bar the use of racial preferences as a tool for achieving the objective of remedying past discrimination or other compelling ends. The former may well be contrary to the requirements of the Fourteenth Amendment (where state action is involved), while the latter presents very different constitutional considerations. Indeed, as discussed infra at 353, this Court has construed Title VII as requiring the use of racial preferences for the purpose of hiring and advancing those who have been adversely affected by past discriminatory employment practices, even at the expense of other employees innocent of discrimination. Franks v. Bowman Transportation Co., 424 U.S. 747, 767-768 (1976). Although Title VII clearly does not require employers to take action to remedy the disadvantages imposed upon racial minorities by hands other than their own, such an objective is perfectly consistent with the remedial goals of the statute. See id. at 762-770; Albemarle Paper Co. v. Moody, 422 U.S. 405, 418 (1975). There is no more indication in the legislative history of Title VII than in that of Title VI that Congress desired to prohibit such affirmative action to the extent that it is permitted by the Constitution, yet judicial decisions as well as subsequent executive and congressional action clearly establish that Title VII does not forbid race-conscious remedial action. See infra at 353-355, and n. 28.

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18. HEW has stated that the purpose of these regulations is

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to specify that affirmative steps to make services more equitably available are not prohibited and that such steps are required when necessary to overcome the consequences of prior discrimination.

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36 Fed.Reg. 23494 (1971). Other federal agencies which provide financial assistance pursuant to Title VI have adopted similar regulations. See Supplemental Brief for United States as Amicus Curiae 16 n. 14.

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19. Moreover, the President has delegated to the Attorney General responsibility for coordinating the enforcement of Title VI by federal departments and agencies, and has directed him to "assist the departments and agencies in accomplishing effective implementation." Exec.Order No. 11764, 3 CFR 849 (1971-1975 Comp.). Accordingly, the views of the Solicitor General, as well as those of HEW, that the use of racial preferences for remedial purposes is consistent with Title VI are entitled to considerable respect.

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20. HEW administers at least two explicitly race-conscious programs. Details concerning them may be found in the Office of Management and Budget, 1977 Catalogue of Federal Domestic Assistance 205-206, 401-402. The first program, No. 13.375, "Minority Biomedical Support," has as its objectives:

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To increase the number of ethnic minority faculty, students, and investigators engaged in biomedical research. To broaden the opportunities for participation in biomedical research of ethnic minority faculty, students, and investigators by providing support for biomedical research programs at eligible institutions.

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Eligibility for grants under this program is limited to (1) four-year colleges, universities, and health professional schools with over 50% minority enrollments; (2) four-year institutions with significant but not necessarily over 50% minority enrollment provided they have a history of encouragement and assistance to minorities; (3) two-year colleges with 50% minority enrollment; and (4) American Indian Tribal Councils. Grants made pursuant to this program are estimated to total $9,711,000 for 1977.

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The second program, No. 13.880, entitled "Minority Access To Research Careers," has as its objective to "assist minority institutions to train greater numbers of scientists and teachers in health related fields." Grants under this program are made directly to individuals and to institutions for the purpose of enabling them to make grants to individuals.

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21. H.R.Conf.Rep. No. 9538, p. 22 (1977); 123 Cong.Rec. 26188 (1977). See H.J.Res. 662, 95th Cong., 1st Sess. (1977); Pub.L. 95-205, 91 Stat. 1460.

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22. 91 Stat. 117, 42 U.S.C. § 6705(f)(2) (1976 ed.).

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23. 123 Cong.Rec.7156 (1977); id. at 5327-5330.

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24. See id. at 7156 (Sen. Brooke).

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25. In addition to the enactment of the 10% quota provision discussed supra, Congress has also passed other Acts mandating race-conscious measures to overcome disadvantages experienced by racial minorities. Although these statutes have less direct bearing upon the meaning of Title VI, they do demonstrate that Congress believes race-conscious remedial measures to be both permissible and desirable under at least some circumstances. This, in turn, undercuts the likelihood that Congress intended to limit voluntary efforts to implement similar measures. For example, § 7(a) of the National Science Foundation Authorization Act, 1977, provides:

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The Director of the National Science Foundation shall initiate an intensive search for qualified women, members of minority groups, and handicapped individuals to fill executive level positions in the National Science Foundation. In carrying out the requirement of this subsection, the Director shall work closely with organizations which have been active in seeking greater recognition and utilization of the scientific and technical capabilities of minorities, women, and handicapped individuals. The Director shall improve the representation of minorities, women, and handicapped individuals on advisory committees,, review panels, and all other mechanisms by which the scientific community provides assistance to the Foundation.

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90 Stat. 2056, note following 42 U.S.C. 1873 (1976 ed.). Perhaps more importantly, the Act also authorizes the funding of Minority Centers for Graduate Education. Section 7(C)(2) of the Act, 90 Stat. 2056, requires that these Centers:

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(A) have substantial minority student enrollment;

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(B) are geographically located near minority population centers;

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(C) demonstrate a commitment to encouraging and assisting minority students, researchers, and faculty;

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(F) will serve as a regional resource in science and engineering for the minority community which the Center is designed to serve; and

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(G) will develop joint educational programs with nearby undergraduate institutions of higher education which have a substantial minority student enrollment.

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Once again, there is no indication in the legislative history of this Act or elsewhere that Congress saw any inconsistency between the race-conscious nature of such legislation and the meaning of Title VI. And, once again, it is unlikely in the extreme that a Congress which believed that it had commanded recipients of federal funds to be absolutely colorblind would itself expend federal funds in such a race-conscious manner. See also the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. § 801 et seq. (1976 ed.), 49 U.S.C. § 1657a et seq. (1976 ed.); the Emergency School Aid Act, 20 U.S.C. § 1601 et seq. (1976 ed.).

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26. Cf. Griggs v. Duke Power Co., 401 U.S. 424 (1971).

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27. Ibid.; Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975).

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28. Franks v. Bowman Transportation Co., 424 U.S. 747 (1976); Teamsters v. United States, 431 U.S. 324 (1977). Executive, judicial, and congressional action subsequent to the passage of Title VII conclusively established that the Title did not bar the remedial use of race. Prior to the 1972 amendments to Title VII (Equal Employment Opportunity Act of 1972, 86 Stat. 103), a number of Courts of Appeals approved race-conscious action to remedy the effects of employment discrimination. See, e.g., Heat & Frost Insulators & Asbestos Workers v. Voler, 407 F.2d 1047 (CA5 1969); United States v. Electrical Workers, 428 F.2d 144, 149-150 (CA6), cert. denied, 400 U.S. 943 (1970); United States v. Sheetmetal Workers, 416 F.2d 123 (CA8 1969). In 1965, the President issued Exec.Order No. 11246, 3 CFR 339 (1964-1965 Comp.), which, as amended by Exec.Order No. 11375, 3 CFR 684 (1966-1970 Comp.), required federal contractors to take affirmative action to remedy the disproportionately low employment of racial minorities in the construction industry. The Attorney General issued an opinion concluding that the race consciousness required by Exec Order No 11246 did not conflict with Title VII:

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It is not correct to say that Title VII prohibits employers from making race or national origin a factor for consideration at any stage in the process of obtaining employees. The legal definition of discrimination is an evolving one, but it is now well recognized in judicial opinions that the obligation of nondiscrimination, whether imposed by statute or by the Constitution, does not require and, in some circumstances, may not permit, obliviousness or indifference to the racial consequences of alternative courses of action which involve the application of outwardly neutral criteria.

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42 Op.Atty.Gen. 405, 411 (1969). The federal courts agreed. See, e.g., Contractors Assn. of Eastern Pa. v. Secretary of Labor, 442 F.2d 159 (CA3), cert. denied, 404 U.S. 854 (1971) (which also held, 442 F.2d at 173, that race-conscious affirmative action was permissible under Title VI); Southern Illinois Builders Assn. v. Ogilvie, 471 F.2d 680 (CA7 1972). Moreover, Congress, in enacting the 1972 amendments to Title VII, explicitly considered and rejected proposals to alter Exec.Order No. 11246 and the prevailing judicial interpretations of Title VII as permitting, and in some circumstances requiring, race-conscious action. See Comment, The Philadelphia Plan: A Study in the Dynamics of Executive Power, 39 U.Chi.L.Rev. 723, 747-757 (1972). The section-by-section analysis of the 1972 amendments to Title VII undertaken by the Conference Committee Report on H.R. 1746 reveals a resolve to accept the then (as now) prevailing judicial interpretations of the scope of Title VII:

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In any area where the new law does not address itself, or in any areas where a specific contrary intent is not indicated, it was assumed that the present case law as developed by the courts would continue to govern the applicability and construction of Title VII.

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Legislative History of the Equal Employment Opportunity Act of 1972, p. 1844 (Comm.Print 1972).

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29. United Jewish Organizations v. Carey, 430 U.S. 144 (1977). See also id. at 167-168 (opinion of WHITE, J.).

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30. We do not pause to debate whether our cases establish a "two-tier" analysis, a "sliding scale" analysis, or something else altogether. It is enough for present purposes that strict scrutiny is applied at least in some cases.

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31. Of course, the fact that whites constitute a political majority in our Nation does not necessarily mean that active judicial scrutiny of racial classifications that disadvantage whites is inappropriate. Cf. Castaneda v. Partida, 430 U.S. 482, 499-500 (1977); id. at 501 (MARSHALL, J., concurring) .

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32.

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[T]he conclusion cannot be resisted, that no reason for [the refusal to issue permits to Chinese] exists except hostility to the race and nationality to which the petitioners belong…. The discrimination is, therefore, illegal….

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33. Indeed, even in Plessy v. Ferguson, the Court recognized that a classification by race that presumed one race to be inferior to another would have to be condemned. See 163 U.S. at 544-551.

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34. Paradoxically, petitioner's argument is supported by the cases generally thought to establish the "strict scrutiny" standard in race cases, Hirabayashi v. United States, 320 U.S. 81 (1943), and Korematsu v. United States, 323 U.S. 214 (1944). In Hirabayashi, for example, the Court, responding to a claim that a racial classification was rational, sustained a racial classification solely on the basis of a conclusion in the double negative that it could not say that facts which might have been available "could afford no ground for differentiating citizens of Japanese ancestry from other groups in the United States." 320 U.S. at 101. A similar mode of analysis was followed in Korematsu, see 323 U.S. at 224, even though the Court stated there that racial classifications were "immediately suspect," and should be subject to "the most rigid scrutiny." Id. at 216.

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35. We disagree with our Brother POWELL's suggestion, ante at 303, that the presence of "rival groups which can claim that they, too, are entitled to preferential treatment" distinguishes the gender cases or is relevant to the question of scope of judicial review of race classifications. We are not asked to determine whether groups other than those favored by the Davis program should similarly be favored. All we are asked to do is to pronounce the constitutionality of what Davis has done.

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But, were we asked to decide whether any given rival group—German-Americans for example—must constitutionally be accorded preferential treatment, we do have a "principled basis," ante at 296, for deciding this question, one that is well established in our cases: the Davis program expressly sets out four classes which receive preferred status. Ante at 274. The program clearly distinguishes whites, but one cannot reason from this a conclusion that German-Americans, as a national group, are singled out for invidious treatment. And even if the Davis program had a differential impact on German-Americans, they would have no constitutional claim unless they could prove that Davis intended invidiously to discriminate against German-Americans. See Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 264-265 (1977); Washington v. Davis, 426 U.S. 229, 238-241 (1976). If this could not be shown, then "the principle that calls for the closest scrutiny of distinctions in laws denying fundamental rights…is inapplicable," Katzenbach v. Morgan, 384 U.S. 641, 657 (1966), and the only question is whether it was rational for Davis to conclude that the groups it preferred had a greater claim to compensation than the groups it excluded. See ibid.; San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 38-39 (1973) (applying Katzenbach test to state action intended to remove discrimination in educational opportunity). Thus, claims of rival groups, although they may create thorny political problems, create relatively simple problems for the courts.

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36. Gunther, The Supreme Court, 1971 Term—Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 Harv.L.Rev. 1, 8 (1972).

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37. In Albemarle, we approved "differential validation" of employment tests. See 422 U.S. at 435. That procedure requires that an employer must ensure that a test score of, for example, 50 for a minority job applicant means the same thing as a score of 50 for a nonminority applicant. By implication, were it determined that a test score of 50 for a minority corresponded in "potential for employment" to a 60 for whites, the test could not be used consistently with Title VII unless the employer hired minorities with scores of 50 even though he might not hire nonminority applicants with scores above 50 but below 60. Thus, it is clear that employers, to ensure equal opportunity, may have to adopt race-conscious hiring practices.

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38. Indeed, Titles VI and VII of the Civil Rights Act of 1964 put great emphasis on voluntarism in remedial action. See supra at 336-338. And, significantly, the Equal Employment Opportunity Commission has recently proposed guidelines authorizing employers to adopt racial preferences as a remedial measure where they have a reasonable basis for believing that they might otherwise be held in violation of Title VII. See 42 Fed.Reg. 64826 (1977).

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39. "[T]he [Voting Rights] Act's prohibition…is not dependent upon proving past unconstitutional apportionments…. "

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40. "[T]he State is [not] powerless to minimize the consequences of racial discrimination by voters when it is regularly practiced at the polls."

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41. Our cases cannot be distinguished by suggesting, as our Brother POWELL does, that in none of them was anyone deprived of "the relevant benefit." Ante at 304. Our school cases have deprived whites of the neighborhood school of their choice; our Title VII cases have deprived nondiscriminating employees of their settled seniority expectations; and UJO deprived the Hassidim of bloc-voting strength. Each of these injuries was constitutionally cognizable as is respondent's here.

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42. We do not understand MR. JUSTICE POWELL to disagree that providing a remedy for past racial prejudice can constitute a compelling purpose sufficient to meet strict scrutiny. See ante at 305. Yet, because petitioner is a corporation administering a university, he would not allow it to exercise such power in the absence of "judicial, legislative, or administrative findings of constitutional or statutory violations." Ante at 307. While we agree that reversal in this case would follow a fortiori had Davis been guilty of invidious racial discrimination or if a federal statute mandated that universities refrain from applying any admissions policy that had a disparate and unjustified racial impact, see, e.g., McDaniel v. Barresi, 402 U.S. 39 (1971); Franks v. Bowman Transportation Co., 424 U.S. 747 (1976), we do not think it of constitutional significance that Davis has not been so adjudged.

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Generally, the manner in which a State chooses to delegate governmental functions is for it to decide. Cf. Sweezy v. New Hampshire, 354 U.S. 234, 256 (1957) (Frankfurter, J., concurring in result). California, by constitutional provision, has chosen to place authority over the operation of the University of California in the Board of Regents. See Cal.Const., Art. 9, § 9(a). Control over the University is to be found not in the legislature, but rather in the Regents who have been vested with full legislative (including policymaking), administrative, and adjudicative powers by the citizens of California. See ibid.; Ishimatsu v. Regents, 266 Cal.App.2d 854, 863-864, 72 Cal.Rptr. 756, 762-763 (1968); Goldberg v. Regents, 248 Cal.App.2d 867, 874, 57 Cal.Rptr. 463, 468 (1967); 30 Op.Cal.Atty. Gen. 162, 166 (1957) ("The Regents, not the legislature, have the general rulemaking or policymaking power in regard to the University"). This is certainly a permissible choice, see Sweezy, supra, and we, unlike our Brother POWELL, find nothing in the Equal Protection Clause that requires us to depart from established principle by limiting the scope of power the Regents may exercise more narrowly than the powers that may constitutionally be wielded by the Assembly.

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Because the Regents can exercise plenary legislative and administrative power, it elevates form over substance to insist that Davis could not use race-conscious remedial programs until it had been adjudged in violation of the Constitution or an antidiscrimination statute. For, if the Equal Protection Clause required such a violation as a predicate, the Regents could simply have promulgated a regulation prohibiting disparate treatment not justified by the need to admit only qualified students, and could have declared Davis to have been in violation of such a regulation on the basis of the exclusionary effect of the admissions policy applied during the first two years of its operation. See infra at 370.

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43. "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." Buckley v. Valeo, 424 U.S. 1, 93 (1976) (per curiam), citing Weinberger v. Wiesenfeld, 420 U.S. 636, 638 n. 2 (1975).

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44. Railway Mail Assn. held that a state statute forbidding racial discrimination by certain labor organizations did not abridge the Association's due process rights secured by the Fourteenth Amendment, because that result

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would be a distortion of the policy manifested in that amendment, which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color.

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326 U.S. at 94. That case thus established the principle that a State voluntarily could go beyond what the Fourteenth Amendment required in eliminating private racial discrimination.

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45. According to 89 schools responding to a questionnaire sent to 112 medical schools (all of the then-accredited medical schools in the United States except Howard and Meharry), substantial efforts to admit minority students did not begin until 1968. That year was the earliest year of involvement for 34% of the schools; an additional 66% became involved during the years 1969 to 1973. See C. Odegaard, Minorities in Medicine: From Receptive Passivity to Positive Action, 1966-1976, p. 19 (1977) (hereinafter Odegaard). These efforts were reflected in a significant increase in the percentage of minority M.D. graduates. The number of American Negro graduates increased from 2.2% in 1970 to 3.3% in 1973 and 5.0% in 1975. Significant percentage increases in the number of Mexican-American, American Indian, and mainland Puerto Rican graduates were also recorded during those years. Id. at 40.

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The statistical information cited in this and the following notes was compiled by Government officials or medical educators, and has been brought to our attention in many of the briefs. Neither the parties nor the amici challenge the validity of the statistics alluded to in our discussion.

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46. D. Reitzes, Negroes and Medicine, pp. xxvii, 3 (1958).

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47. Between 1955 and 1964, for example, the percentage of Negro physicians graduated in the United States who were trained at these schools ranged from 69.0% to 75.8%. See Odegaard 19.

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48. U.S. Dept. of Health, Education, and Welfare, Minorities and Women in the Health Fields 7 (Pub. No. (HRA) 75-22, May, 1974).

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49. U.S. Dept. of Commerce, Bureau of the Census, 1970 Census, vol. 1, pt. 1, Table 60 (1973).

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50. See ante at 276 n. 6 (opinion of POWELL, J.).

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51. See, e.g., R. Wade, Slavery in the Cities: The South 1820-1860, pp. 991 (1964).

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52. For an example of unequal facilities in California schools, see Sona v. Oxnard School Dist. Board, 386 F.Supp. 539, 542 (CD Cal.1974). See also R. Kluger, Simple Justice (1976).

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53. See, e.g., Crawford v. Board of Education, 17 Cal.3d 280, 551 P.2d 28 (1976); Soria v. Oxnard School Dist. Board, supra; Spangler v. Pasadena City Board of Education, 311 F.Supp. 501 (CD Cal.1970); C. Wollenberg, All Deliberate Speed: Segregation and Exclusion in California Schools, 1855-1975, pp. 136-177 (1976).

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54. For example, over 40% of American-born Negro males aged 20 to 24 residing in California in 1970 were born in the South, and the statistic for females was over 48%. These statistics were computed from data contained in Census, supra, n. 49, pt. 6, California, Tables 139, 140.

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55. See, e.g., O'Neil, Preferential Admissions: Equalizing the Access of Minority Groups to Higher Education, 80 Yale L.J. 699, 729-731 (1971).

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56. Congress and the Executive have also adopted a series of race-conscious programs, each predicated on an understanding that equal opportunity cannot be achieved by neutrality, because of the effects of past and present discrimination. See supra at 348-349.

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57. Negroes and Chicanos alone constitute approximately 22% of California's population. This percentage was computed from data contained in Census, supra, n. 49, pt. 6, California, sec. 1,6-4, and Table 139.

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58. The constitutionality of the special admissions program is buttressed by its restriction to only 16% of the positions in the Medical School, a percentage less than that of the minority population in California, see ibid., and to those minority applicants deemed qualified for admission and deemed likely to contribute to the Medical School and the medical profession. Record 67. This is consistent with the goal of putting minority applicants in the position they would have ben in if not for the evil of racial discrimination. Accordingly, this case does not raise the question whether even a remedial use of race would be unconstitutional if it admitted unqualified minority applicants in preference to qualified applicants or admitted, as a result of preferential consideration, racial minorities in numbers significantly in excess of their proportional representation in the relevant population. Such programs might well be inadequately justified by the legitimate remedial objectives. Our allusion to the proportional percentage of minorities in the population of the State administering the program is not intended to establish either that figure or that population universe as a constitutional benchmark. In this case, even respondent, as we understand him, does not argue that, if the special admissions program is otherwise constitutional, the allotment of 16 places in each entering class for special admittees is unconstitutionally high.

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59. See Census, supra, n. 49, Sources and Structure of Family Income, pp. 1-12.

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60. This percentage was computed from data presented in B. Waldman, Economic and Racial Disadvantage as Reflected in Traditional Medical School Selection Factors: A Study of 1976 Applicants to U.S. Medical Schools 34 (Table A-15), 42 (Table A-23) (Association of American Medical Colleges 1977).

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61. This figure was computed from data contained in Census, supra, n. 49, pt. 1, United States Summary, Table 209.

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62. See Waldman, supra, n. 60, at 10-14 (Figures 1-5).

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63. The excluded white applicant, despite MR. JUSTICE POWELL's contention to the contrary, ante at 318 n. 52, receives no more or less "individualized consideration" under our approach than under his.

WHITE, J., separate opinion (Footnotes)

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1. It is also clear from Griffin that "lack of jurisdiction…touching the subject matter of the litigation cannot be waived by the parties…. " 303 U.S. at 229. See also Mount Healthy City Bd. of Ed. v. Doyle, 429 U.S. 274, 278 (1977); Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149, 152 (1908); Mansfield, C. & L. M. R. Co. v. Swan, 111 U.S. 379, 382 (1884).

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In Lau v. Nichols, 414 U.S. 563 (1974), we did adjudicate a Title VI claim brought by a class of individuals. But the existence of a private cause of action was not at issue. In addition, the understanding of MR. JUSTICE STEWART's concurring opinion, which observed that standing was not being contested, was that the standing alleged by petitioners was as third-party beneficiaries of the funding contract between the Department of Health, Education, and Welfare and the San Francisco United School District, a theory not alleged by the present respondent. Id. at 571 n. 2. Furthermore, the plaintiffs in Lau alleged jurisdiction under 42 U.S.C. § 1983, rather than directly under the provisions of Title VI, as does the plaintiff in this case. Although the Court undoubtedly had an obligation to consider the jurisdictional question, this is surely not the first instance in which the Court has bypassed a jurisdictional problem not presented by the parties. Certainly the Court's silence on the jurisdictional question, when considered in the context of the indifference of the litigants to it and the fact that jurisdiction was alleged under § 1983, does not foreclose a reasoned conclusion that Title VI affords no private cause of action.

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2.

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Yet, before that principle [that "Federal funds are not to be used to support racial discrimination"] is implemented to the detriment of any person, agency, or State, regulations giving notice of what conduct is required must be drawn up by the agency administering the program…. Before such regulations become effective, they must be submitted to and approved by the President.

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Once having become effective, there is still a long road to travel before any sanction whatsoever is imposed. Formal action to compel compliance can only take place after the following has occurred: first, there must be an unsuccessful attempt to obtain voluntary compliance; second, there must be an administrative hearing; third, a written report of the circumstances and the grounds for such action must be filed with the appropriate committees of the House and Senate; and fourth, 30 days must have elapsed between such filing and the action denying benefits under a Federal program. Finally, even that action is by no means final, because it is subject to judicial review, and can be further postponed by judicial action granting temporary relief pending review in order to avoid irreparable injury. It would be difficult indeed to concoct any additional safeguards to incorporate in such a procedure.

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110 Cong.Rec. 6749 (1964) (Sen. Moss).

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[T]he authority to cut off funds is hedged about with a number of procedural restrictions…. [There follow details of the preliminary steps.]

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In short, title VI is a reasonable, moderate, cautious, carefully worked out solution to a situation that clearly calls for legislative action.

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Id. at 6544 (Sen. Humphrey).

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Actually, no action whatsoever can be taken against anyone until the Federal agency involved has advised the appropriate person of his failure to comply with nondiscrimination requirements and until voluntary efforts to secure compliance have failed.

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Id. at 1519 (Rep. Celler) (emphasis added). See also remarks of Sen. Ribicoff (id. at 7066-7067); Sen. Proxmire (id. at 8345); en. Kuchel (id. at 6562). These safeguards were incorporated into 42 U.S.C. § 2000d-1.

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3. This Court has never held that the mere receipt of federal or state funds is sufficient to make the recipient a federal or state actor. In Norwood v. Harrison, 413 U.S. 455 (1973), private schools that received state aid were held subject to the Fourteenth Amendment's ban on discrimination, but the Court's test required "tangible financial aid" with a "significant tendency to facilitate, reinforce, and support private discrimination." Id. at 466. The mandate of Burton v. Wilmington Parking Authority, 365 U.S. 715, 722 (1961), to sift facts and weigh circumstances of governmental support in each case to determine whether private or state action was involved, has not been abandoned for an automatic rule based on receipt of funds.

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Contemporaneous with the congressional debates on the Civil Rights Act was this Court's decision in Griffin v. School Board, 377 U.S. 218 (1964). Tuition grants and tax concessions were provided for parents of students in private schools which discriminated racially. The Court found sufficient state action, but carefully limited its holding to the circumstances presented:

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[C]losing the Prince Edward schools and meanwhile contributing to the support of the private segregated white schools that took their place denied petitioners the equal protection of the laws.

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Id. at 232.

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Hence, neither at the time of the enactment of Title VI nor at the present time, to the extent this Court has spoken, has mere receipt of state funds created state action. Moreover, Simkins has not met with universal approval among the United States Courts of Appeals. See cases cited in Greco v. Orange Memorial Hospital Corp., 423 U.S. 1000, 1004 (1975) (WHITE, J., dissenting from denial of certiorari).

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4.

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Nowhere in this section do you find a comparable right of legal action for a person who feels he has been denied his rights to participate in the benefits of Federal funds. Nowhere. Only those who have been cut off can go to court and present their claim.

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110 Cong.Rec. 2467 (1964) (Rep. Gill).

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[A] good case could be made that a remedy is provided for the State or local official who is practicing discrimination, but none is provided for the victim of the discrimination.

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Id. at 6562 (Sen. Kuchel).

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Parenthetically, while we favored the inclusion of the right to sue on the part of the agency, the State, or the facility which was deprived of Federal funds, we also favored the inclusion of a provision granting the right to sue to the person suffering from discrimination. This was not included in the bill. However, both the Senator from Connecticut and I are grateful that our other suggestions were adopted by the Justice Department.

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Id. at 7065 (Sen. Keating).

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5. Ibid.

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6. As Senator Ribicoff stated:

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Sometimes those eligible for Federal assistance may elect to reject such aid, unwilling to agree to a nondiscrimination requirement. If they choose that course, the responsibility is theirs.

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Id. at 7067.

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7. I also join Parts I, III-A, and V-C of MR. JUSTICE POWELL's opinion.

MARSHALL, J., separate opinion (Footnotes)

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1. The history recounted here is perhaps too well known to require documentation. But I must acknowledge the authorities on which I rely in retelling it. J. Franklin, From Slavery to Freedom (4th ed.1974) (hereinafter Franklin); R. Kluger, Simple Justice (1975) (hereinafter Kluger); C. Woodward, The Strange Career of Jim Crow (3d ed.1974) (hereinafter Woodward).

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2. U.S. Dept. of Commerce, Bureau of the Census, Statistical Abstract of the United States 65 (1977) (Table 94).

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3. Id. at 70 (Table 102) .

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4. Ibid.

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5. U.S. Dept. of Commerce, Bureau of the Census, Current Population Reports, Series P-60, No. 107, p. 7 (1977) (Table 1).

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6. Id. at 20 (Table 14).

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7. U.S. Dept. of Labor, Bureau of Labor Statistics, Employment and Earnings, January, 1978, p. 170 (Table 44).

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8. Ibid.

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9. U.S. Dept. of Commerce, Bureau of the Census, Current Population Reports, Series P-60, No. 105, p. 198 (1977) (Table 47).

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10. U.S. Dept. of Commerce, Bureau of the Census, Statistical Abstract, supra, at 25 (Table 24).

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11. Id. at 407-408 (Table 662) (based on 1970 census).

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12. Indeed, the action of the University finds support in the regulations promulgated under Title VI by the Department of Health, Education, and Welfare and approved by the President, which authorize a federally funded institution to take affirmative steps to overcome past discrimination against groups even where the institution was not guilty of prior discrimination. 45 CFR § 80.3(b)(6)(ii) (1977).

STEVENS, J., concurring and dissenting (Footnotes)

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1. Four Members of the Court have undertaken to announce the legal and constitutional effect of this Court's judgment. See opinion of JUSTICES BRENNAN, WHITE, MARSHALL, and BLACKMUN, ante at 324-325. It is hardly necessary to state that only a majority can speak for the Court or determine what is the "central meaning" of any judgment of the Court.

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2. The judgment first entered by the trial court read, in its entirety, as follows:

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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1. Defendant, the Regents of the University of California, have judgment against plaintiff, Allan Bakke, denying the mandatory injunction requested by plaintiff ordering his admission to the University of California at Davis Medical School;

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2. That plaintiff is entitled to have his application for admission to the medical school considered without regard to his race or the race of any other applicant, and defendants are hereby restrained and enjoined from considering plaintiff's race or the race of any other applicant in passing upon his application for admission;

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3. Cross-defendant Allan Bakke have judgment against cross-complaint, the Regents of the University of California, declaring that the special admissions program at the University of California at Davis Medical School violates the Fourteenth Amendment to the United States Constitution, Article 1, Section 21 of the California Constitution, and the Federal Civil Rights Act [42 U.S.C. § 2000d];

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4. That plaintiff have and recover his court costs incurred herein in the sum of $217.35.

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3. In paragraph 2, the trial court ordered that

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plaintiff [Bakke] is entitled to have his application for admission to the medical school considered without regard to his race or the race of any other applicant, and defendants are hereby restrained and enjoined from considering plaintiff's race or the race of any other applicant in passing upon his application for admission.

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See n. 2, supra, (emphasis added). The only way in which this order can be broadly read as prohibiting any use of race in the admissions process, apart from Bakke's application, is if the final "his" refers to "any other applicant." But the consistent use of the pronoun throughout the paragraph to refer to Bakke makes such a reading entirely unpersuasive, as does the failure of the trial court to suggest that it was issuing relief to applicants who were not parties to the suit.

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4. Appendix B to Application for Stay A19-A20.

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5. 18 Cal.3d 34, 64, 553 P.2d 1152, 1172 (1976). The judgment of the Supreme Court of the State of California affirms only paragraph 3 of the trial court's judgment. The Supreme Court's judgment reads as follows:

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IT IS ORDERED, ADJUDGED, AND DECREED by the Court that the judgment of the Superior Court[,] County of Yolo[,] in the above-entitled cause, is hereby affirmed insofar as it determines that the special admission program is invalid; the judgment is reversed insofar as it denies Bakke an injunction ordering that he be admitted to the University, and the trial court is directed to enter judgment ordering Bakke to be admitted. "Bakke shall recover his costs on these appeals."

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6. "This Court…reviews judgments, not statements in opinions." Black v. Cutter Laboratories, 351 U.S. 292, 297.

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7.

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From Hayburn's Case, 2 Dall. 409, to Alma Motor Co. v. Timken-Detroit Axle Co. [, 329 U.S. 129,] and the Hatch Act case [United Public Workers v. Mitchell, 330 U.S. 75,] decided this term, this Court has followed a policy of strict necessity in disposing of constitutional issues. The earliest exemplifications, too well known for repeating the history here, arose in the Court's refusal to render advisory opinions and in applications of the related jurisdictional policy drawn from the case and controversy limitation. U.S.Const., Art. III….

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The policy, however, has not been limited to jurisdictional determinations. For, in addition,

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the Court [has] developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision.

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Thus, as those rules were listed in support of the statement quoted, constitutional issues affecting legislation will not be determined in friendly, nonadversary proceedings; in advance of the necessity of deciding them; in broader terms than are required by the precise facts to which the ruling is to be applied; if the record presents some other ground upon which the case may be disposed of; at the instance of one who fails to show that he is injured by the statute's operation, or who has availed himself of its benefits; or if a construction of the statute is fairly possible by which the question may be avoided.

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Rescue Army v. Municipal Court, 331 U.S. 549, 568-569 (footnotes omitted). See also Ashwander v. TVA, 297 U.S. 288, 346-348 (Brandeis, J., concurring).

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8. The doctrine reflects both our respect for the Constitution as an enduring set of principles and the deference we owe to the Legislative and Executive Branches of Government in developing solutions to complex social problems. See A. Bickel, The Least Dangerous Branch 131 (1962).

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9. Record 29.

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10. H.R.Rep. No. 914, 88th Cong., 1st Sess., pt. 1, p. 18 (1963).

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11. It is apparent from the legislative history that the immediate object of Title VI was to prevent federal funding of segregated facilities. See, e.g., 110 Cong.Rec. 1521 (1964) (remarks of Rep. Celler); id. at 6544 (remarks of Sen. Humphrey).

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12. In McDonald v. Santa Fe Trail Transp. Co., the Court held that "Title VII prohibits racial discrimination against…white petitioners…upon the same standards as would be applicable were they Negroes…. " 427 U.S. at 280. Quoting from our earlier decision in Griggs v Duke Power Co., 401 U.S. 424, 431, the Court reaffirmed the principle that the statute "prohibit[s] `[d]iscriminatory preference for any [racial] group, minority or majority.'" 427 U.S. at 279 (emphasis in original).

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13. See, e.g., 110 Cong.Rec. 1520 (1964) (remarks of Rep. Celler); id. at 5864 (remarks of Sen. Humphrey); id. at 6561 (remarks of Sen. Kuchel); id. at 7055 (remarks of Sen. Pastore). (Representative Celler and Senators Humphrey and Kuchel were the House and Senate floor managers for the entire Civil Rights Act, and Senator Pastore was the majority Senate floor manager for Title VI.)

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14. Representative Abernethy's comments were typical:

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Title VI has been aptly described as the most harsh and unprecedented proposal contained in the bill….

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It is aimed toward eliminating discrimination in federally assisted programs. It contains no guideposts and no yardsticks as to what might constitute discrimination in carrying out federally aided programs and projects….

\* \* \* \*

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Presumably, the college would have to have a "racially balanced" staff from the dean's office to the cafeteria….

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The effect of this title, if enacted into law, will interject race as a factor in every decision involving the selection of an individual…. The concept of "racial imbalance" would hover like a black cloud over every transaction….

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Id. at 1619. See also, e.g., id. at 5611-5613 (remarks of Sen. Ervin); id. at 9083 (remarks of Sen. Gore).

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15. E.g., id. at 5863, 5874 (remarks of Sen. Eastland).

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16. See, e.g., id. at 8364 (remarks off Sen. Proxmire) ("Taxes are collected from whites and Negroes, and they should be expended without discrimination"); id. at 7055 (remarks of Sen. Pastore) ("[Title VI] will guarantee that the money collected by colorblind tax collectors will be distributed Federal and State administrators who are equally colorblind"); and id. at 6543 (remarks of Sen. Humphrey) ("`Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination'") (quoting from President Kennedy's Message to Congress, June 19, 1963).

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17. See, e.g., 110 Cong.Rec. 5253 (1964) (remarks of Sen. Humphrey); and id. at 7102 (remarks of Sen. Javits). The parallel between the prohibitions of Title VI and those of the Constitution was clearest with respect to the immediate goal of the Act—an end to federal funding of "separate but equal" facilities.

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18.

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As in Monroe [v. Pape, 365 U.S. 167], we have no occasion here to

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reach the constitutional question whether Congress has the power to make municipalities liable for acts of its officers that violate the civil rights of individuals.

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365 U.S. at 191. For in interpreting the statute, it is not our task to consider whether Congress was mistaken in 1871 in its view of the limit of its power over municipalities; rather, we must construe the statute in light of the impressions under which Congress did, in fact, act, see Ries v. Lynskey, 452 F.2d at 175.

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Moor v. County of Alameda, 411 U.S. 693, 709.

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19. Both Title VI and Title VII express Congress' belief that, in the long struggle to eliminate social prejudice and the effects of prejudice, the principle of individual equality, without regard to race or religion, was one on which there could be a "meeting of the minds" among all races and a common national purpose. See Los Angeles Dept. of Water & Power v. Manhart, 435 U.S. 702, 709 ("[T]he basic policy of the statute [Title VII] requires that we focus on fairness to individuals, rather than fairness to classes"). This same principle of individual fairness is embodied in Title VI.

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The basic fairness of title VI is so clear that I find it difficult to understand why it should create any opposition….

\* \* \* \*

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Private prejudices, to be sure, cannot be eliminated overnight. However, there is one area where no room at all exists for private prejudices. That is the area of governmental conduct. As the first Mr. Justice Harlan said in his prophetic dissenting opinion in Plessy v. Ferguson, 163 U.S. 537, 559:

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Our Constitution is color-blind.

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So—I say to Senators—must be our Government….

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Title VI closes the gap between our purposes as a democracy and our prejudices as individuals. The cuts of prejudice need healing. The costs of prejudice need understanding. We cannot have hostility between two great parts of our people without tragic loss in our human values….

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Title VI offers a place for the meeting of our minds as to Federal money.

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110 Cong.Rec. 7063-7064 (1964) (remarks of Sen. Pastore). Of course, one of the reasons marshaled in support of the conclusion that Title VI was "noncontroversial" was that its prohibition was already reflected in the law. See ibid. (remarks of Sen. Pell and Sen. Pastore).

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20. For example, private employers now under duties imposed by Title VII were wholly free from the restraints imposed by the Fifth and Fourteenth Amendments which are directed only to governmental action.

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In Lau v. Nichols, 414 U.S. 563, the Government's brief stressed that

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the applicability of Title VI…does not depend upon the outcome of the equal protection analysis…. [T]he statute independently proscribes the conduct challenged by petitioners, and provides a discrete basis for injunctive relief.

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Brief for United States as Amicus Curiae, O.T. 1973, No. 72-6520, p. 15. The Court, in turn, rested its decision on Title VI. MR. JUSTICE POWELL takes pains to distinguish Lau from the case at hand because the Lau decision "rested solely on the statute." Ante at 304. See also Washington v. Davis, 426 U.S. 229, 238-239; Allen v. State Board of Elections, 393 U.S. 544, 588 (Harlan, J., concurring and dissenting).

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21. As explained by Senator Humphrey, § 601 expresses a principle imbedded in the constitutional and moral understanding of the times.

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The purpose of title VI is to make sure that funds of the United States are not used to support racial discrimination. In many instances, the practices of segregation or discrimination, which title VI seeks to end, are unconstitutional…. In all cases, such discrimination is contrary to national policy, and to the moral sense of the Nation. Thus, title VI is simply designed to insure that Federal funds are spent in accordance with the Constitution and the moral sense of the Nation.

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110 Cong.Rec. 6544 (1964) (emphasis added).

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22. Petitioner's attempt to rely on regulations issued by HEW for a contrary reading of the statute is unpersuasive. Where no discriminatory policy was in effect., HEW's example of permissible "affirmative action" refers to "special recruitment policies." 45 CFR § 80.5(j) (1977). This regulation, which was adopted in 1973, sheds no light on the legality of the admissions program that excluded Bakke in this case.

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23. 110 Cong.Rec. 6047 (1964) (remarks of Sen. Pastore).

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24. Record 30-31.

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25. See, e.g., Lau v. Nichols, supra; Bossier Parish School Board v. Lemon, 370 F.2d 847 (CA5 1967), cert. denied, 388 U.S. 911; Uzzell v. Friday, 547 F.2d 801 (CA4 1977), opinion on rehearing en banc, 558 F.2d 727, cert. pending, No. 77-635; Serna v. Portales, 499 F.2d 1147 (CA10 1974); cf. Chambers v. Omaha Public School District, 536 F.2d 222, 225 n. 2 (CA8 1976) (indicating doubt over whether a money judgment can be obtained under Title VI). Indeed, the Government's brief in Lau v. Nichols, supra, succinctly expressed this common assumption: "It is settled that petitioners…have standing to enforce Section 601…. " Brief for United States as Amicus Curiae in Lau v. Nichols, O.T. 1973, No. 72-6520, p. 13 n. 5.

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26. Supplemental Brief for United States as Amicus Curiae 24-34. The Government's supplemental brief also suggests that there may be a difference between a private cause of action brought to end a particular discriminatory practice and such an action brought to cut off federal funds. Id. at 28-30. Section 601 is specifically addressed to personal rights, while § 602—the fund cutoff provision—establishes "an elaborate mechanism for governmental enforcement by federal agencies." Supplemental Brief, supra at 28 (emphasis added). Arguably, private enforcement of this "elaborate mechanism" would not fit within the congressional scheme, see separate opinion of MR. JUSTICE WHITE, ante at 380-383. But Bakke did not seek to cut off the University's federal funding; he sought admission to medical school. The difference between these two courses of action is clear and significant. As the Government itself states:

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[T]he grant of an injunction or a declaratory judgment in a private action would not be inconsistent with the administrative program established by Section 602…. A declaratory judgment or injunction against future discrimination would not raise the possibility that funds would be terminated, and it would not involve bringing the forces of the Executive Branch to bear on state programs; it therefore would not implicate the concern that led to the limitations contained in Section 602.

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Supplemental Brief, supra at 30 n. 25.

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The notion that a private action seeking injunctive or declaratory judgment relief is inconsistent with a federal statute that authorizes termination of funds has clearly been rejected by this Court in prior cases. See Rosado v. Wyman, 397 U.S. 397, 420.

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27. See 29 U.S.C. § 794 (1976 ed.) (the Rehabilitation Act of 1973) (in particular, the legislative history discussed in Lloyd v. Regional Transportation Authority, 548 F.2d 1277, 1285-1286 (CA7 1977)); 20 U.S.C. § 1617 (1976 ed.) (attorney fees under the Emergency School Aid Act); and 31 U.S.C. § 1244 (1976 ed.) (private action under the Financial Assistance Act). Of course, none of these subsequent legislative enactments is necessarily reliable evidence of Congress' intent in 1964 in enacting Title VI, and the legislation was not intended to change the existing status of Title VI.

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28. Framing the analysis in terms of the four-part Cort v. Ash test, see 422 U.S. 66, 78, it is clear that all four parts of the test are satisfied. (1) Bakke's status as a potential beneficiary of a federally funded program definitely brings him within the "`class for whose especial benefit the statute was enacted,'" ibid. (emphasis in original). (2) A cause of action based on race discrimination has not been "traditionally relegated to state law." Ibid. (3) While a few excerpts from the voluminous legislative history suggest that Congress did not intend to create a private cause of action, see opinion of MR. JUSTICE POWELL, ante at 283 n. 18, an examination of the entire legislative history makes it clear that Congress had no intention to foreclose a private right of action. (4) There is ample evidence that Congress considered private causes of action to be consistent with, if not essential to, the legislative scheme. See, e.g., remarks of Senator Ribicoff:

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We come then to the crux of the dispute—how this right [to participate in federally funded programs without discrimination] should be protected. And even this issue becomes clear upon the most elementary analysis. If Federal funds are to be dispensed on a nondiscriminatory basis, the only possible remedies must fall into one of two categories: first, action to end discrimination; or second, action to end the payment of funds. Obviously action to end discrimination is preferable, since that reaches the objective of extending the funds on a nondiscriminatory basis. But if the discrimination persists and cannot be effectively terminated, how else can the principle of nondiscrimination be vindicated except by nonpayment of funds?

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110 Cong.Rec. 7065 (1964). See also id. at 5090, 6543, 6544 (remarks of Sen. Humphrey); id. at 7103, 12719 (remarks of Sen. Javits); id. at 7062, 7063 (remarks of Sen. Pastore).

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The congressional debates thus show a clear understanding that the principle embodied in § 601 involves personal federal rights that administrative procedures would not, for the most part, be able to protect. The analogy to the Voting Rights Act of 1965, 42 U.S.C. § 1973 et seq. (1970 ed. and Supp. V), is clear. Both that Act and Title VI are broadly phrased in terms of personal rights ("no person shall be denied…"); both Acts were drafted with broad remedial purposes in mind; and the effectiveness of both Acts would be "severely hampered" without the existence of a private remedy to supplement administrative procedures. See Allen v. State Bd. of Elections, 393 U.S. 544, 556. In Allen, of course, this Court found a private right of action under the Voting Rights Act.

President Carter's Address on the Camp David Meeting on the Middle East, 1978

Title: President Carter's Address on the Camp David Meeting on the Middle East

Author: Jimmy Carter

Date: September 18, 1978

Source: Public Papers of the Presidents, Jimmy Carter, 1978, pp.1533-1537

[Delivered in person before a joint session of the Congress.]

Public Papers of Carter, 1978, p.1533

Vice President Mondale, Speaker O'Neill, distinguished Members of the United States Congress, Justices of the Supreme Court, other leaders of our great Nation, ladies and gentlemen:

Public Papers of Carter, 1978, p.1533

It's been more than 2,000 years since there was peace between Egypt and a free Jewish nation. If our present expectations are realized, this year we shall see such peace again.

Public Papers of Carter, 1978, p.1533

The first thing I would like to do is to give tribute to the two men who made this impossible dream now become a real possibility, the two great leaders with whom I have met for the last 2 weeks at Camp David: first, President Anwar Sadat of Egypt, and the other, of course, is Prime Minister Menahem Begin of the nation of Israel.

Public Papers of Carter, 1978, p.1533

I know that all of you would agree that these are two men of great personal courage, representing nations of peoples who are deeply grateful to them for the achievement which they have realized. And I am personally grateful to them for what they have done.

Public Papers of Carter, 1978, p.1533

At Camp David, we sought a peace that is not only of vital importance to their own two nations but to all the people of the Middle East, to all the people of the United States, and, indeed, to all the world as well.

Public Papers of Carter, 1978, p.1533

The world prayed for the success of our efforts, and I am glad to announce to you that these prayers have been answered.

Public Papers of Carter, 1978, p.1533

I've come to discuss with you tonight what these two leaders have accomplished and what this means to all of us.

Public Papers of Carter, 1978, p.1533–p.1534

The United States has had no choice but to be deeply concerned about the Middle East and to try to use our influence and our efforts to advance the cause of peace. For the last 30 years, through four wars, the people of this troubled region have paid a terrible price in suffering and division and hatred and bloodshed. No two nations have suffered more than Egypt and Israel. But the dangers and the costs of conflicts in this region for our own Nation have been great as well. We have longstanding friendships among the nations there and the peoples [p.1534] of the region, and we have profound moral commitments which are deeply rooted in our values as a people.

Public Papers of Carter, 1978, p.1534

The strategic location of these countries and the resources that they possess mean that events in the Middle East directly affect people everywhere. We and our friends could not be indifferent if a hostile power were to establish domination there. In few areas of the world is there a greater risk that a local conflict could spread among other nations adjacent to them and then, perhaps, erupt into a tragic confrontation between us super powers ourselves.

Public Papers of Carter, 1978, p.1534

Our people have come to understand that unfamiliar names like Sinai, Aqaba, Sharm el Sheikh, Ras en Naqb, Gaza, the West Bank of Jordan, can have a direct and immediate bearing on our own wellbeing as a nation and our hope for a peaceful world. That is why we in the United States cannot afford to be idle bystanders and why we have been full partners in the search for peace and why it is so vital to our Nation that these meetings at Camp David have been a success.

Public Papers of Carter, 1978, p.1534

Through the long years of conflict, four main issues have divided the parties involved. One is the nature of peace-whether peace will simply mean that the guns are silenced, that the bombs no longer fall, that the tanks cease to roll, or whether it will mean that the nations of the Middle East can deal with each other as neighbors and as equals and as friends, with a full range of diplomatic and cultural and economic and human relations between them. That's been the basic question. The Camp David agreement has defined such relationships, I'm glad to announce to you, between Israel and Egypt.

Public Papers of Carter, 1978, p.1534

The second main issue is providing for the security of all parties involved, including, of course, our friends, the Israelis, so that none of them need fear attack or military threats from one another. When implemented, the Camp David agreement, I'm glad to announce to you, will provide for such mutual security.

Public Papers of Carter, 1978, p.1534

Third is the question of agreement on secure and recognized boundaries, the end of military occupation, and the granting of self-government or else the return to other nations of territories which have been occupied by Israel since the 1967 conflict. The Camp David agreement, I'm glad to announce to you, provides for the realization of all these goals.

Public Papers of Carter, 1978, p.1534

And finally, there is the painful human question of the fate of the Palestinians who live or who have lived in these disputed regions. The Camp David agreement guarantees that the Palestinian people may participate in the resolution of the Palestinian problem in all its aspects, a commitment that Israel has made in writing and which is supported and appreciated, I'm sure, by all the world.

Public Papers of Carter, 1978, p.1534

Over the last 18 months, there has been, of course, some progress on these issues. Egypt and Israel came close to agreeing about the first issue, the nature of peace. They then saw that the second and third issues, that is, withdrawal and security, were intimately connected, closely entwined. But fundamental divisions still remained in other areas—about the fate of the Palestinians, the future of the West Bank and Gaza, and the future of Israeli settlements in occupied Arab territories.

Public Papers of Carter, 1978, p.1534–p.1535

We all remember the hopes for peace that were inspired by President Sadat's initiative, that great and historic visit to Jerusalem last November that thrilled the world, and by the warm and genuine personal response of Prime Minister Begin and the Israeli people, and by the mutual promise between them, publicly made, that there would be no more war. These hopes were sustained when Prime Minister Begin reciprocated by visiting Ismailia [p.1535] on Christmas Day. That progress continued, but at a slower and slower pace through the early part of the year. And by early summer, the negotiations had come to a standstill once again.

Public Papers of Carter, 1978, p.1535

It was this stalemate and the prospect for an even worse future that prompted me to invite both President Sadat and Prime Minister Begin to join me at Camp David. They accepted, as you know, instantly, without delay, without preconditions, without consultation even between them.

Public Papers of Carter, 1978, p.1535

It's impossible to overstate the courage of these two men or the foresight they have shown. Only through high ideals, through compromises of words and not principle, and through a willingness to look deep into the human heart and to understand the problems and hopes and dreams of one another can progress in a difficult situation like this ever be made. That's what these men and their wise and diligent advisers who are here with us tonight have done during the last 13 days.

Public Papers of Carter, 1978, p.1535

When this conference began, I said that the prospects for success were remote. Enormous barriers of ancient history and nationalism and suspicion would have to be overcome if we were to meet our objectives. But President Sadat and Prime Minister Begin have overcome these barriers, exceeded our fondest expectations, and have signed two agreements that hold out the possibility of resolving issues that history had taught us could not be resolved.

Public Papers of Carter, 1978, p.1535

The first of these documents is entitled, "A Framework for Peace in the Middle East Agreed at Camp David." It deals with a comprehensive settlement, comprehensive agreement, between Israel and all her neighbors, as well as the difficult question of the Palestinian people and the future of the West Bank and the Gaza area.

Public Papers of Carter, 1978, p.1535

The agreement provides a basis for the resolution of issues involving the West Bank and Gaza during the next 5 years. It outlines a process of change which is in keeping with Arab hopes, while also carefully respecting Israel's vital security.

Public Papers of Carter, 1978, p.1535

The Israeli military government over these areas will be withdrawn and will be replaced with a self-government of the Palestinians who live there. And Israel has committed that this government will have full autonomy. Prime Minister Begin said to me several times, not partial autonomy, but full autonomy.

Public Papers of Carter, 1978, p.1535

Israeli forces will be withdrawn and redeployed into specified locations to protect Israel's security. The Palestinians will further participate in determining their own future through talks in which their own elected representatives, the inhabitants of the West Bank and Gaza, will negotiate with Egypt and Israel and Jordan to determine the final status of the West Bank and Gaza.

Public Papers of Carter, 1978, p.1535

Israel has agreed, has committed themselves, that the legitimate rights of the Palestinian people will be recognized. After the signing of this framework last night, and during the negotiations concerning the establishment of the Palestinian self-government, no new Israeli settlements will be established in this area. The future settlements issue will be decided among the negotiating parties.

Public Papers of Carter, 1978, p.1535

The final status of the West Bank and Gaza will be decided before the end of the 5-year transitional period during which the Palestinian Arabs will have their own government, as part of a negotiation which will produce a peace treaty between Israel and Jordan specifying borders, withdrawal, all those very crucial issues.

Public Papers of Carter, 1978, p.1535–p.1536

These negotiations will be based on all the provisions and the principles of Security Council Resolution 242, with which you all are so familiar. The agreement on [p.1536] the final status of these areas will then be submitted to a vote by the representatives of the inhabitants of the West Bank and Gaza, and they will have the right for the first time in their history, the Palestinian people, to decide how they will govern themselves permanently.

Public Papers of Carter, 1978, p.1536

We also believe, of course, all of us, that there should be a just settlement of the problems of displaced persons and refugees, which takes into account appropriate United Nations resolutions.

Public Papers of Carter, 1978, p.1536

Finally, this document also outlines a variety of security arrangements to reinforce peace between Israel and her neighbors. This is, indeed, a comprehensive and fair framework for peace in the Middle East, and I'm glad to report this to you.

Public Papers of Carter, 1978, p.1536

The second agreement is entitled, "A Framework for the Conclusion of a Peace Treaty Between Egypt and Israel." It returns to Egypt its full exercise of sovereignty over the Sinai Peninsula and establishes several security zones, recognizing carefully that sovereignty right for the protection of all parties. It also provides that Egypt will extend full diplomatic recognition to Israel at the time the Israelis complete an interim withdrawal from most of the Sinai, which will take place between 3 months and 9 months after the conclusion of the peace treaty. And the peace treaty is to be fully negotiated and signed no later than 3 months from last night.

Public Papers of Carter, 1978, p.1536

I think I should also report that Prime Minister Begin and President Sadat have already challenged each other to conclude the treaty even earlier. And I hope they [applause]. This final conclusion of a peace treaty will be completed late in December, and it would be a wonderful Christmas present for the world.

Public Papers of Carter, 1978, p.1536

Final and complete withdrawal of all Israeli forces will take place between 2 and 3 years following the conclusion of the peace treaty.

Public Papers of Carter, 1978, p.1536

While both parties are in total agreement on all the goals that I have just described to you, there is one issue on which agreement has not yet been reached. Egypt states that agreement to remove the Israeli settlements from Egyptian territory is a prerequisite to a peace treaty. Israel says that the issue of the Israeli settlements should be resolved during the peace negotiations themselves.

Public Papers of Carter, 1978, p.1536

Now, within 2 weeks, with each member of the Knesset or the Israeli Parliament acting as individuals, not constrained by party loyalty, the Knesset will decide on the issue of the settlements. Our own Government's position, my own personal position is well known on this issue and has been consistent. It is my strong hope, my prayer, that the question of Israeli settlements on Egyptian territory will not be the final obstacle to peace.

Public Papers of Carter, 1978, p.1536

None of us should underestimate the historic importance of what has already been done. This is the first time that an Arab and an Israeli leader have signed a comprehensive framework for peace. It contains the seeds of a time when the Middle East, with all its vast potential, may be a land of human richness and fulfillment, rather than a land of bitterness and continued conflict. No region in the world has greater natural and human resources than this one, and nowhere have they been more heavily weighed down by intense hatred and frequent war. These agreements hold out the real possibility that this burden might finally be lifted.

Public Papers of Carter, 1978, p.1536–p.1537

But we must also not forget the magnitude of the obstacles that still remain. The summit exceeded our highest expectations, but we know that it left many difficult issues which are still to be resolved. These [p.1537] issues will require careful negotiation in the months to come. The Egyptian and Israeli people must recognize the tangible benefits that peace will bring and support the decisions their leaders have made, so that a secure and a peaceful future can be achieved for them. The American public, you and I, must also offer our full support to those who have made decisions that are difficult and those who have very difficult decisions still to make.

Public Papers of Carter, 1978, p.1537

What lies ahead for all of us is to recognize the statesmanship that President Sadat and Prime Minister Begin have shown and to invite others in that region to follow their example. I have already, last night, invited the other leaders of the Arab world to help sustain progress toward a comprehensive peace.

Public Papers of Carter, 1978, p.1537

We must also join in an effort to bring an end to the conflict and the terrible suffering in Lebanon. This is a subject that President Sadat discussed with me many times while I was in Camp David with him. And the first time that the three of us met together, this was a subject of heated discussion. On the way to Washington last night in the helicopter, we mutually committed ourselves to join with other nations, with the Lebanese people themselves, all factions, with President Sarkis, with Syria and Saudi Arabia, perhaps the European countries like France, to try to move toward a solution of the problem in Lebanon, which is so vital to us and to the poor people in Lebanon, who have suffered so much.

Public Papers of Carter, 1978, p.1537

We will want to consult on this matter and on these documents and their meaning with all of the leaders, particularly the Arab leaders. And I'm pleased to say to you tonight that just a few minutes ago, King Hussein of Jordan and King Khalid of Saudi Arabia, perhaps other leaders later, but these two have already agreed to receive Secretary Vance, who will be leaving tomorrow to explain to them the terms of the Camp David agreement. And we hope to secure their support for the realization of the new hopes and dreams of the people of the Middle East.

Public Papers of Carter, 1978, p.1537

This is an important mission, and this responsibility, I can tell you, based on my last 2 weeks with him, could not possibly rest on the shoulders of a more able and dedicated and competent man than Secretary Cyrus Vance.

Public Papers of Carter, 1978, p.1537

Finally, let me say that for many years the Middle East has been a textbook for pessimism, a demonstration that diplomatic ingenuity was no match for intractable human conflicts. Today we are privileged to see the chance for one of the sometimes rare, bright moments in human history—a chance that may offer the way to peace. We have a chance for peace, because these two brave leaders found within themselves the willingness to work together to seek these lasting prospects for peace, which we all want so badly. And for that, I hope that you will share my prayer of thanks and my hope that the promise of this moment shall be fully realized.

Public Papers of Carter, 1978, p.1537

The prayers at Camp David were the same as those of the shepherd King David, who prayed in the 85th Psalm, "Wilt thou not revive us again: that thy people may rejoice in thee?…I will hear what God the Lord will speak: for he will speak peace unto his people, and unto his saints: but let them not return again unto folly."

Public Papers of Carter, 1978, p.1537

And I would like to say, as a Christian, to these two friends of mine, the words of Jesus, "Blessed are the peacemakers, for they shall be the children of God."

Public Papers of Carter, 1978, p.1537

NOTE: The President spoke at 8:06 p.m. in the House Chamber at the Capitol. President Sadat and Prime Minister Begin were present for the address, which was broadcast live on radio and television.

President Carter's Remarks on Signing the Full Employment and Comprehensive Employment and Training Act Bills, 1978

Title: President Carter's Remarks on Signing the Full Employment and Comprehensive Employment and Training Act Bills

Author: Jimmy Carter

Date: October 27, 1978

Source: Public Papers of the Presidents, Carter, 1978, pp.1871-1875

Public Papers of Carter, 1978, p.1871

THE PRESIDENT. I see a lot of smiling faces. [Laughter]

Public Papers of Carter, 1978, p.1871

With the signing of this Full Employment and Balanced Growth Act of 1978, this Nation is putting its long-term economic goal of full employment with stable prices into law. This act requires that the Congress and the President and the Federal Reserve Board cooperate in probably an unprecedented way in indicating each year the policies that will be followed to achieve these goals.

Public Papers of Carter, 1978, p.1871

This was the last major piece of legislation among many important acts that bore the name of a great and compassionate American, Hubert Humphrey.

Public Papers of Carter, 1978, p.1871

I think everyone agrees that he's with us in spirit. He knew how destructive unemployment was to our Nation and to individual American citizens who could not find a way to utilize the talent that God had given them. He knew how important it was to the social and economic fabric of our Nation to have people employed. He dreamed of the day when everyone who wanted a job could find a job.

Public Papers of Carter, 1978, p.1871

Congressman Gus Hawkins, who coauthored this legislation, from its very inception continued in an effective and a yeoman's way to guide the leadership in the House to pass this legislation. And then, of course, he was joined with a very effective ally in the Senate, Muriel Humphrey. And we derived success because of their great work.

Public Papers of Carter, 1978, p.1871

I want to express my thanks to the Full Employment Action Council, which was ably chaired by Coretta King, and also to the Congressional Black Caucus, under the leadership of Parren Mitchell, to House Speaker Tip O'Neill, and to Senate Majority Leader Bob Byrd, whose unflagging support and hard work in the final few hours of the legislative session translated these two legislative proposals into the bills which I am about to sign. And I would also like to thank Leon Keyserling, whose work in drafting this legislation and his persistence in seeing it through to a successful conclusion helped to make this fine day possible—[applause]—go ahead and applaud for them all.

Public Papers of Carter, 1978, p.1871

The unemployment rate in our country was 8 percent on Election Day in 1976. And one of my first actions as President, working with Senator Humphrey and others, was to propose legislation to put Americans back to work.

Public Papers of Carter, 1978, p.1871

A part of that legislation created the largest public service jobs program and the largest training program, combined, in the history of our country since the New Deal days of the Great Depression. The results have been dramatic. Unemployment has been reduced 25 percent, more than 6 1/2 million new jobs have been created, a record not matched in so short a period of time in the 200-year history of our country, even during wartime. Over 1 1/2 million Americans have been taken off the unemployment rolls.

Public Papers of Carter, 1978, p.1871

I'm also signing today the Comprehensive Employment and Training Act Amendments of 1978, because the programs in it provide major tools in our effort to reach the unemployment goals of the Humphrey-Hawkins bill by 1983.

Public Papers of Carter, 1978, p.1871

I'm pleased that the Congress has passed our recommendations to extend CETA and more sharply to target its programs to those who are most in need of help.

Public Papers of Carter, 1978, p.1872

The Congress also gave the Secretary of Labor, Ray Marshall, the authority that we requested to investigate and to deal effectively with some examples of fraud and abuse which have in the past occurred in the public jobs programs. These few unscrupulous people who would use these programs as political plums or for personal gain deserve condemnation and punishment. They are a threat to the opportunities of people who have been unable fully to participate in our economy. We intend to see that such abuses are ended.

Public Papers of Carter, 1978, p.1872

My administration is committed to attacking the specter of youth unemployment, which threatens to sap the will and waste the potential of a sizable portion of an entire generation of Americans. Extending the youth employment and demonstration projects act is critical to the success of this effort.

Public Papers of Carter, 1978, p.1872

Our targeted tax credit proposal, approved as part of the tax bill, would also help millions of young people find employment in the private sector of our economy. I'm particularly proud that Congress approved this and the Private Sector Initiative program. We will establish now private industry councils throughout our Nation, letting labor, business, community leaders, government leaders at all levels form a full partnership to make our CETA program more effective even than it has been in the past.

Public Papers of Carter, 1978, p.1872

Hubert Humphrey said, and I'd like to quote him, "A Humphrey-Hawkins bill is a first step, but an indispensable one, toward an era of full employment, steady economic growth, and reasonable price stability. It is no panacea. It is no miracle cure, but with it, national economic policy will be required to be directed toward achieving specific, measurable economic goals."

Public Papers of Carter, 1978, p.1872

Although attaining the unemployment and the inflation goals of this bill will be very difficult, we will do our best to reach them. The CETA legislation, with its attack on structural unemployment, is a key to that effort. But I must warn you that our fight against inflation must succeed if we are to maintain the steady economic growth necessary to avoid an increase in unemployment and to achieve the goals in the Humphrey-Hawkins bill.

Public Papers of Carter, 1978, p.1872

Success in fighting inflation is critical to success in fighting unemployment. In the future, we can see from this bill that all Americans, not any particular kind of American, will be benefited. There will be required 2-year programs and 5-year programs expressing from the point of view of myself, my entire administration, the Congress, the Federal Reserve, and the private sector, specific goals to achieve in employment, inflation, unemployment, production, real income of Americans, productivity, how much each American worker can produce, price levels, balanced growth, a downward trend in the Federal share of the GNP spent, improving our trade balance, and working toward a balanced budget.

Public Papers of Carter, 1978, p.1872

Those are the requirements in this bill, the elements that any President would want to assess and in which a President and the Congress needs the utmost cooperation from every other element of American society.

Public Papers of Carter, 1978, p.1872

The Federal Reserve Board will have to make now semiannual written reports to the Congress specifying its own contribution-for controlling inflation, yes, but to meeting the other goals as well.

Public Papers of Carter, 1978, p.1872–p.1873

I'm very grateful that those assembled behind me on this stage and in front of me in this audience have been so successful in bringing to a conclusion this long struggle to provide for our Nation an inspiration, a motivation, and a mechanism by [p.1873] which we can have in the future both full employment and balanced growth for our great country.

Public Papers of Carter, 1978, p.1873

It's with a great pleasure now that I sign both these bills into law, and then I would like to call on a few carefully selected people to make brief remarks. [Laughter]

Public Papers of Carter, 1978, p.1873

[At this point, the President signed the bills.]

Public Papers of Carter, 1978, p.1873

I would like to ask Muriel Humphrey to say a word, if she would.

Public Papers of Carter, 1978, p.1873

SENATOR HUMPHREY. Well, I have a very full heart today, and it's a lot of emotion for me—a little difficult for me to speak. I see many friends, wonderful people in the audience here, on stage as well as in the audience, who have given hours, years of work towards attaining this bill. I'm very, very proud to have been a part of the success that we have obtained for this bill.

Public Papers of Carter, 1978, p.1873

Hubert, I think, over the years, felt it was a very, very great way, it was an ideal and a goal that he hoped could be accomplished. And I think now we're seeing the result of it. Hubert Humphrey had a good many times been involved in different bills that we know about—the equal rights bills and some very important ones—but most of the time, he gave over the honor to someone else to have his name on those bills. I think that the Humphrey-Hawkins bill is the only bill that has the distinction of having his name, and I must say I thank everyone. I see so many different ones that I want to say thank you to, I don't dare to mention the names—[laughter]—especially the President.

Public Papers of Carter, 1978, p.1873

THE PRESIDENT. Thank you very much.

Public Papers of Carter, 1978, p.1873

Now I'd like to call on Gus Hawkins.

Public Papers of Carter, 1978, p.1873

REPRESENTATIVE HAWKINS. Mr. President, and friends—[applause]—the same to you, thanks.

Public Papers of Carter, 1978, p.1873

I'm sure that Hubert Humphrey would have enjoyed the exuberance of this occasion, would have had a very wonderful speech to say. It's been such a long struggle that some of us have given out, I think, in talking. [Laughter]

Public Papers of Carter, 1978, p.1873

THE PRESIDENT. He would not have been one of those. [Laughter]

Public Papers of Carter, 1978, p.1873

REPRESENTATIVE HAWKINS. I'm quite sure that as I supported your energy program and also looked at the economies in the White House, I was a little afraid today that you had extended this economy to these pens. I'm very pleased to know that you have not done that. [Laughter]

Public Papers of Carter, 1978, p.1873

I'm quite sure that when time is settled and individuals have had an opportunity to read the Full Employment and Balanced Growth Act, even our critics, they will begin to agree with some of us that it really is a modern-day Magna Carta of economic rights, not between the people and an unwise ruler, but a contract between the people and a magnificent President who gave us the assistance needed to get the bill through.

Public Papers of Carter, 1978, p.1873–p.1874

And I'm quite sure that none of us is so naive as to believe that this is the end. It is only a beginning. The bill must be implemented. It is significant today, Mr. President, that you're signing also the CETA bill, which begins the implementation of the full employment act. Those who have said that the full employment bill is only a symbol, that it has no program, no money, or practically nothing else in it, I think will be delighted to know, if not excited, that at least in the beginning of the implementation of the full employment act, this, the first bill-the first step, as Hubert Humphrey would have said—has certainly a program. It provides, directly, jobs, more than 600,000 directly, and that it has more than $11 billion in it. Now, if that isn't money, then I'm quite sure it may disturb even you [p.1874] and your economy program, Mr. President.

Public Papers of Carter, 1978, p.1874

So, I think we're on the way. Those that also would say we are raising the expectation of people, well, I can only say that I hope that we are. I hope that we are keeping alive the hopes of millions of Americans who believe that in a meaningful job at decent wages, that that is something which America can afford to give to them. And I hope that we forever keep that hope alive, that expectation. To me, that is not asking for too much.

Public Papers of Carter, 1978, p.1874

THE PRESIDENT. Congressman Hawkins just told me that he and Senator Humphrey began work on this bill in 1971. And it's been a long and difficult struggle, and the bill is filled with great and important substance. If it wasn't, the struggle would not have been so great, and so many people would not have been sweating, now that they've read what's in the bill. [Laughter]

Public Papers of Carter, 1978, p.1874

It's going to put a great responsibility on me as President, on every member of my Cabinet, on the Federal Reserve Board, on. every Member of the Congress, on labor, business, to carry out the mandates of this legislation.

Public Papers of Carter, 1978, p.1874

It is very important and, I think, will transform not only the employment opportunities and growth but the basic planning mechanism by which the economic future of our Nation can be assessed, goals can be set, and mechanisms to reach those goals can be made possible.

Public Papers of Carter, 1978, p.1874

It's very important legislation, and I thank Gus Hawkins and Senator Humphrey, both Senators Humphrey, for this work.

Public Papers of Carter, 1978, p.1874

I'd like to call now on Coretta King, who was the first one to talk to me about this legislation when I was still Governor of Georgia. [Laughter]

Public Papers of Carter, 1978, p.1874

MRS. KING. This is indeed a great historical occasion, perhaps as significant as the signing of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Perhaps in the future, history will record that it may be even more significant, Mr. President, because I think it deals with an issue on a basic human right that's the most basic of all human rights, the right to a job. And that is a central priority now of our economic policy with the signing of this act into law today.

Public Papers of Carter, 1978, p.1874

I want to express my appreciation to all of those persons in the Full Employment Action Council, Full Employment Committee, the National Committee for Full Employment, as started 4 years ago in a coalition effort working for a full-employment economy. Gus Hawkins was there that day, Leon Keyserling was there that day, and a number of other people who are in this audience.

Public Papers of Carter, 1978, p.1874

I am representing my cochairperson, Murray Finley of Amalgamated Clothing and Textile Workers, who could not be here. And with me, Irving Bluestone of the United Auto Workers and Jay Clayman of IDUD. In the audience are other members of our coalition representing the Urban League, the NAACP—Mr. Hooks was supposed to have been up on the platform, I believe—who are all members of the 84 organizations in the coalition, including Dr. Howard Spragg of the National Council of Churches.

Public Papers of Carter, 1978, p.1874

As President Carter said in 1974, I called him and he was still Governor, and asked him if he would join our committee. And he asked if I would send the material, and later on, he signed his card as a member of the National Committee for Full Employment. Now, we'd selected only one Governor, and we very carefully selected him. [Laughter] I don't know; maybe we were prophetic, because here he is today as the President who signs this legislation and makes it a law.

Public Papers of Carter, 1978, p.1874–p.1875

I want to express my appreciation on behalf of the coalition to both authors of the bill. I think of Senator Muriel along [p.1875] with Senator Hubert Humphrey—who could not be here today, but is with us in spirit—and Muriel has worked untiringly. And Gus Hawkins, who has worked very closely with us, the Congressional Black Caucus, and the majority leader in the Senate and in the House, and all of the persons who have worked untiringly-this is a unique coalition, and, Mr. President, we are going to stay in business to help with the implementation of this thing.

Public Papers of Carter, 1978, p.1875

And also, I would like to say that this bill is a tribute, or this law now, this act, is a tribute to the dedication of Senator Humphrey and Gus Hawkins and both Senators, but it's also a tribute to Martin Luther King, Jr., because in 1968, he started a crusade calling for a job and income for all people who needed a job. He did not live to carry out that campaign, and so in 1974, we felt that we had an obligation, a mandate, to pick it up and to carry it forward. And now today, I am sure Martin Luther King, Jr., is with us in spirit, because his concern was that all people in our society would be able to share equally in the fruits of this great Nation.

Public Papers of Carter, 1978, p.1875

Thank you.

Public Papers of Carter, 1978, p.1875

THE PRESIDENT. All the members of my Cabinet, of course, will join in the carrying out of the mandates of this bill, but I'd like to call on Ray Marshall, Secretary of Labor, to represent the Cabinet and to say just a closing word.

Public Papers of Carter, 1978, p.1875

SECRETARY MARSHALL. Mr. President, this act represents a real victory, I think, for the American people. It would be very difficult to think of a problem that this country has that would not be materially improved by full employment. And I think that either in material terms, in terms of the lost output that the country suffers as a result of unemployment, or in terms of the human suffering that goes with unemployment, no other problem could parallel it. We've done a lot of talking about full employment for the last 30 years, and now we have committed ourselves to achieving it.

Public Papers of Carter, 1978, p.1875

So, I think it's a great day. I think that—I heard that this was the largest signing of any bill that we had had in the White House, and I think that indicates the feeling that people have. But it also indicates the number of people who were involved in making this program successful. I'm proud to have had a part in it and to be Secretary of Labor at the time that it gets signed. Thank you.

Public Papers of Carter, 1978, p.1875

THE PRESIDENT. Thank all of you.

Public Papers of Carter, 1978, p.1875

NOTE: The President spoke at 2:03 p.m. at the ceremony in the East Room at the White House.

Public Papers of Carter, 1978, p.1875

As enacted, H.R. 50, the Full Employment and Balanced Growth Act of 1978, is Public Law 95-523, and S. 2570, the Comprehensive Employment and Training Act Amendments of 1978, is Public Law 95-524, both approved October 27.

President Carter's Establishment of the Commission on the Accident at Three Mile Island, 1979

Title: President Carter's Establishment of the Commission on the Accident at Three Mile Island

Author: Jimmy Carter

Date: April 11, 1979

Source: Public Papers of the Presidents, Jimmy Carter, 1979, pp.657-658

Public Papers of Carter, 1979, p.657

THE PRESIDENT. In my address to the Nation last week, I announced that I would appoint a Presidential commission to investigate the nuclear accident at Three Mile Island. It's essential that we learn the causes of this accident and make sure that the safety of our own citizens is never again endangered in this way.

Public Papers of Carter, 1979, p.657

I'm pleased to announce today that I have signed the Executive order creating the Presidential commission, and I have appointed 11 distinguished Americans to serve on it.

Public Papers of Carter, 1979, p.657

I have just met with the Commission's Chairman, Dr. John Kemeny, who is president of Dartmouth College and who possesses one of the most brilliant and incisive minds in this country. He has devoted his life to analyzing and to solving some of the most difficult, technical problems of our generation.

Public Papers of Carter, 1979, p.657

His skills and his background, widely recognized, ideally qualify him for the complicated task of determining the truth behind the accident at Three Mile Island. I have no doubt that Dr. Kemeny will succeed completely in this effort.

Public Papers of Carter, 1979, p.658

The other 10 members of the Commission who have been chosen are also very talented and highly qualified. They provide the Commission with the knowledge and the diverse experience needed to complete its task successfully.

Public Papers of Carter, 1979, p.658

That task will be one of the most important ever undertaken by a Presidential commission. The Commission will find out what happened at Three Mile Island. It will assess how the accident could have been prevented. It will review how the Government and others responded, and it will make recommendations to enable us to prevent any future nuclear accidents.

Public Papers of Carter, 1979, p.658

There can be no doubt that the eyes of the Nation and, indeed, of the entire world will be on this Commission. Its judgments will have enormous impact. I am confident that during its 6 months of operation, this Commission will make the right judgments, and the Nation will long be in its debt.

Public Papers of Carter, 1979, p.658

I would now like to introduce to you Dr. John Kemeny.

Public Papers of Carter, 1979, p.658

DR. KEMENY. Thank you.

Public Papers of Carter, 1979, p.658

Mr. President, this is an awesome responsibility. Frankly, I have tried to think of every reason why I should not accept. But when the President of the United States asks one to perform a major service for the Nation, the only possible answer is yes.

Public Papers of Carter, 1979, p.658

I think the public should know something about me—that I hope to spend the rest of my life at Dartmouth College. There is no personal ambition served by accepting this assignment. I represent no special interest. My total commitment as Chairman of the Commission will be the discovery of truth and the formulation of recommendations in the national interest.

Public Papers of Carter, 1979, p.658

The Commission will make a full-scale investigation of the causes of and the responses to the accident at Three Mile Island. We will examine the actions of State and Federal Government agencies and of private industry as they reacted to the accident. We will be looking at questions of public access to information, as well as questions of technology. We will report what we find honestly, as required by the gravity of the event.

Public Papers of Carter, 1979, p.658

Mr. President, for this effort I pledge to you and to the citizens of our country the very best of which I am capable.

Public Papers of Carter, 1979, p.658

THE PRESIDENT. Good luck. I'm here to help you.

Public Papers of Carter, 1979, p.658

REPORTER. Dr. Kemeny, can we ask you a question? I just wondered if you had spoken out previously on nuclear power and, if so, what your views as expressed in the past have been on this subject.

Public Papers of Carter, 1979, p.658

MR. POWELL. I don't think we want to get into a Q&A at this point. Thank you.

Public Papers of Carter, 1979, p.658

Q. Just to see if you had a previous.

Public Papers of Carter, 1979, p.658

DR. KEMENY. Those are my instructions. You will find I've not spoken out widely on this issue.

Public Papers of Carter, 1979, p.658

Q. When do you start? When does this Commission start?

Public Papers of Carter, 1979, p.658

DR. KEMENY. As soon as possible.

Public Papers of Carter, 1979, p.658

Q. So, you haven't prejudged nuclear power per se?

Public Papers of Carter, 1979, p.658

DR. KEMENY. No, I think I can assure you I've not prejudged it.

Public Papers of Carter, 1979, p.658

MR. POWELL. Jack will be available to answer the questions on how the thing is going to get started, and so forth.

Public Papers of Carter, 1979, p.658

NOTE: The President spoke at 4:30 p.m. to reporters assembled in the Briefing Room at the White House. Following Dr. Kemeny's remarks, Press Secretary Jody Powell and Jack H. Watson, Jr., Assistant to the President for Intergovernmental Affairs, answered reporters' questions concerning the Commission.

President Carter's Address to the Nation on Energy and National Goals

Title: President Carter's Address to the Nation on Energy and National Goals

Author: Jimmy Carter

Date: July 15, 1979

Source: Public Papers of the Presidents, Jimmy Carter, 1979, pp.1235-1241

Public Papers of Carter, 1979, p.1235

Good evening.

Public Papers of Carter, 1979, p.1235

This is a special night for me. Exactly 3 years ago, on July 15, 1976, I accepted the nomination of my party to run for President of the United States. I promised you a President who is not isolated from the people, who feels your pain, and who shares your dreams and who draws his strength and his wisdom from you.

Public Papers of Carter, 1979, p.1235

During the past 3 years I've spoken to you on many occasions about national concerns, the energy crisis, reorganizing the Government, our Nation's economy, and issues of war and especially peace. But over those years the subjects of the speeches, the talks, and the press conferences have become increasingly narrow, focused more and more on what the isolated world of Washington thinks is important. Gradually, you've heard more and more about what the Government thinks or what the Government should be doing and less and less about our Nation's hopes, our dreams, and our vision of the future.

Public Papers of Carter, 1979, p.1235

Ten days ago I had planned to speak to you again about a very important subject-energy. For the fifth time I would have described the urgency of the problem and laid out a series of legislative recommendations to the Congress. But as I was preparing to speak, I began to ask myself the same question that I now know has been troubling many of you. Why have we not been able to get together as a nation to resolve our serious energy problem?

Public Papers of Carter, 1979, p.1235

It's clear that the true problems of our Nation are much deeper—deeper than gasoline lines or energy shortages, deeper even than inflation or recession. And I realize more than ever that as President I need your help. So, I decided to reach out and listen to the voices of America.

Public Papers of Carter, 1979, p.1235

I invited to Camp David people from almost every segment of our society-business and labor, teachers and preachers, Governors, mayors, and private citizens. And then I left Camp David to listen to other Americans, men and women like you. It has been an extraordinary 10 days, and I want to share with you what I've heard.

Public Papers of Carter, 1979, p.1235

First of all, I got a lot of personal advice. Let me quote a few of the typical comments that I wrote down.

Public Papers of Carter, 1979, p.1235–p.1236

This from a southern Governor: "Mr. President, you are not leading this Nation—[p.1236] you're just managing the Government."

Public Papers of Carter, 1979, p.1236

"You don't see the people enough any more."

Public Papers of Carter, 1979, p.1236

"Some of your Cabinet members don't seem loyal. There is not enough discipline among your disciples."

Public Papers of Carter, 1979, p.1236

"Don't talk to us about politics or the mechanics of government, but about an understanding of our common good."

Public Papers of Carter, 1979, p.1236

"Mr. President, we're in trouble. Talk to us about blood and sweat and tears."

Public Papers of Carter, 1979, p.1236

"If you lead, Mr. President, we will follow."

Public Papers of Carter, 1979, p.1236

Many people talked about themselves and about the condition of our Nation. This from a young woman in Pennsylvania: "I feel so far from government. I feel like ordinary people are excluded from political power."

Public Papers of Carter, 1979, p.1236

And this from a young Chicano: "Some of us have suffered from recession all our lives."

Public Papers of Carter, 1979, p.1236

"Some people have wasted energy, but others haven't had anything to waste."

Public Papers of Carter, 1979, p.1236

And this from a religious leader: "No material shortage can touch the important things like God's love for us or our love for one another."

Public Papers of Carter, 1979, p.1236

And I like this one particularly from a black woman who happens to be the mayor of a small Mississippi town: "The big-shots are not the only ones who are important. Remember, you can't sell anything on Wall Street unless someone digs it up somewhere else first."

Public Papers of Carter, 1979, p.1236

This kind of summarized a lot of other statements: "Mr. President, we are confronted with a moral and a spiritual crisis."

Public Papers of Carter, 1979, p.1236

Several of our discussions were on energy, and I have a notebook full of comments and advice. I'll read just a few.

Public Papers of Carter, 1979, p.1236

"We can't go on consuming 40 percent more energy than we produce. When we import oil we are also importing inflation plus unemployment."

Public Papers of Carter, 1979, p.1236

"We've got to use what we have. The Middle East has only 5 percent of the world's energy, but the United States has 24 percent."

Public Papers of Carter, 1979, p.1236

And this is one of the most vivid statements: "Our neck is stretched over the fence and OPEC has a knife."

Public Papers of Carter, 1979, p.1236

"There will be other cartels and other shortages. American wisdom and courage right now can set a path to follow in the future."

Public Papers of Carter, 1979, p.1236

This was a good one: "Be bold, Mr. President. We may make mistakes, but we are ready to experiment."

Public Papers of Carter, 1979, p.1236

And this one from a labor leader got to the heart of it: "The real issue is freedom. We must deal with the energy problem on a war footing."

Public Papers of Carter, 1979, p.1236

And the last that I'll read: "When we enter the moral equivalent of war, Mr. President, don't issue us BB guns."

Public Papers of Carter, 1979, p.1236

These 10 days confirmed my belief in the decency and the strength and the wisdom of the American people, but it also bore out some of my longstanding concerns about our Nation's underlying problems.

Public Papers of Carter, 1979, p.1236

I know, of course, being President, that government actions and legislation can be very important. That's why I've worked hard to put my campaign promises into law—and I have to admit, with just mixed success. But after listening to the American people I have been reminded again that all the legislation in the world can't fix what's wrong with America. So, I want to speak to you first tonight about a subject even more serious than energy or inflation. I want to talk to you right now about a fundamental threat to American democracy.

Public Papers of Carter, 1979, p.1236–p.1237

I do not mean our political and civil liberties. They will endure. And I do not refer to the outward strength of America, [p.1237] a nation that is at peace tonight everywhere in the world, with unmatched economic power and military might.

Public Papers of Carter, 1979, p.1237

The threat is nearly invisible in ordinary ways. It is a crisis of confidence. It is a crisis that strikes at the very heart and soul and spirit of our national will. We can see this crisis in the growing doubt about the meaning of our own lives and in the loss of a unity of purpose for our Nation.

Public Papers of Carter, 1979, p.1237

The erosion of our confidence in the future is threatening to destroy the social and the political fabric of America.

Public Papers of Carter, 1979, p.1237

The confidence that we have always had as a people is not simply some romantic dream or a proverb in a dusty book that we read just on the Fourth of July. It is the idea which founded our Nation and has guided our development as a people. Confidence in the future has supported everything else—public institutions and private enterprise, our own families, and the very Constitution of the United States. Confidence has defined our course and has served as a link between generations. We've always believed in something called progress. We've always had a faith that the days of our children would be better than our own.

Public Papers of Carter, 1979, p.1237

Our people are losing that faith, not only in government itself but in the ability as citizens to serve as the ultimate rulers and shapers of our democracy. As a people we know our past and we are proud of it. Our progress has been part of the living history of America, even the world. We always believed that we were part of a great movement of humanity itself called democracy, involved in the search for freedom, and that belief has always strengthened us in our purpose. But just as we are losing our confidence in the future, we are also beginning to close the door on our past.

Public Papers of Carter, 1979, p.1237

In a nation that was proud of hard work, strong families, close-knit communities, and our faith in God, too many of us now tend to worship self-indulgence and consumption. Human identity is no longer defined by what one does, but by what one owns. But we've discovered that owning things and consuming things does not satisfy our longing for meaning. We've learned that piling up material goods cannot fill the emptiness of lives which have no confidence or purpose.

Public Papers of Carter, 1979, p.1237

The symptoms of this crisis of the American spirit are all around us. For the first time in the history of our country a majority of our people believe that the next 5 years will be worse than the past 5 years. Two-thirds of our people do not even vote. The productivity of American workers is actually dropping, and the willingness of Americans to save for the future has fallen below that of all other people in the Western world.

Public Papers of Carter, 1979, p.1237

As you know, there is a growing disrespect for government and for churches and for schools, the news media, and other institutions. This is not a message of happiness or reassurance, but it is the truth and it is a warning.

Public Papers of Carter, 1979, p.1237

These changes did not happen overnight. They've come upon us gradually over the last generation, years that were filled with shocks and tragedy.

Public Papers of Carter, 1979, p.1237

We were sure that ours was a nation of the ballot, not the bullet, until the murders of John Kennedy and Robert Kennedy and Martin Luther King, Jr. We were taught that our armies were always invincible and our causes were always just, only to suffer the agony of Vietnam. We respected the Presidency as a place of honor until the shock of Watergate.

Public Papers of Carter, 1979, p.1237–p.1238

We remember when the phrase "sound as a dollar" was an expression of absolute dependability, until 10 years of inflation began to shrink our dollar and our savings. We believed that our Nation's resources [p.1238] were limitless until 1973, when we had to face a growing dependence on foreign oil.

Public Papers of Carter, 1979, p.1238

These wounds are still very deep. They have never been healed.

Public Papers of Carter, 1979, p.1238

Looking for a way out of this crisis, our people have turned to the Federal Government and found it isolated from the mainstream of our Nation's life. Washington, D.C., has become an island. The gap between our citizens and our Government has never been so wide. The people are looking for honest answers, not easy answers; clear leadership, not false claims and evasiveness and politics as usual.

Public Papers of Carter, 1979, p.1238

What you see too often in Washington and elsewhere around the country is a system of government that seems incapable of action. You see a Congress twisted and pulled in every direction by hundreds of well-financed and powerful special interests. You see every extreme position defended to the last vote, almost to the last breath by one unyielding group or another. You often see a balanced and a fair approach that demands sacrifice, a little sacrifice from everyone, abandoned like an orphan without support and without friends.

Public Papers of Carter, 1979, p.1238

Often you see paralysis and stagnation and drift. You don't like it, and neither do I. What can we do?

Public Papers of Carter, 1979, p.1238

First of all, we must face the truth, and then we can change our course. We simply must have faith in each other, faith in our ability to govern ourselves, and faith in the future of this Nation. Restoring that faith and that confidence to America is now the most important task We face. It is a true challenge of this generation of Americans.

Public Papers of Carter, 1979, p.1238

One of the visitors to Camp David last week put it this way: "We've got to stop crying and start sweating, stop talking and start walking, stop cursing and start praying. The strength we need will not come from the White House, but from every house in America."

Public Papers of Carter, 1979, p.1238

We know the strength of America. We are strong. We can regain our unity. We can regain our confidence. We are the heirs of generations who survived threats much more powerful and awesome than those that challenge us now. Our fathers and mothers were strong men and women who shaped a new society during the Great Depression, who fought world wars, and who carved out a new charter of peace for the world.

Public Papers of Carter, 1979, p.1238

We ourselves are the same Americans who just 10 years ago put a man on the Moon. We are the generation that dedicated our society to the pursuit of human rights and equality. And we are the generation that will win the war on the energy problem and in that process rebuild the unity and confidence of America.

Public Papers of Carter, 1979, p.1238

We are at a turning point in our history. There are two paths to choose. One is a path I've warned about tonight, the path that leads to fragmentation and self-interest. Down that road lies a mistaken idea of freedom, the right to grasp for ourselves some advantage over others. That path would be one of constant conflict between narrow interests ending in chaos and immobility. It is a certain route to failure.

Public Papers of Carter, 1979, p.1238

All the traditions of our past, all the lessons of our heritage, all the promises of our future point to another path, the path of common purpose and the restoration of American values. That path leads to true freedom for our Nation and ourselves. We can take the first steps down that path as we begin to solve our energy problem.

Public Papers of Carter, 1979, p.1238–p.1239

Energy will be the immediate test of our ability to unite this Nation, and it can also be the standard around which we rally. [p.1239] On the battlefield of energy we can win for our Nation a new confidence, and we can seize control again of our common destiny.

Public Papers of Carter, 1979, p.1239

In little more than two decades we've gone from a position of energy independence to one in which almost half the oil we use comes from foreign countries, at prices that are going through the roof. Our excessive dependence on OPEC has already taken a tremendous toll on our economy and our people. This is the direct cause of the long lines which have made millions of you spend aggravating hours waiting for gasoline. It's a cause of the increased inflation and unemployment that we now face. This intolerable dependence on foreign oil threatens our economic independence and the very security of our Nation.

Public Papers of Carter, 1979, p.1239

The energy crisis is real. It is worldwide. It is a clear and present danger to our Nation. These are facts and we simply must face them:

Public Papers of Carter, 1979, p.1239

What I have to say to you now about energy is simple and vitally important.

Public Papers of Carter, 1979, p.1239

Point one: I am tonight setting a clear goal for the energy policy of the United States. Beginning this moment, this Nation will never use more foreign oil than we did in 1977—never. From now on, every new addition to our demand for energy will be met from our own production and our own conservation. The generation-long growth in our dependence on foreign oil will be stopped dead in its tracks right now and then reversed as we move through the 1980's, for I am tonight setting the further goal of cutting our dependence on foreign oil by one-half by the end of the next decade—a saving of over 4 1/2 million barrels of imported oil per day.

Public Papers of Carter, 1979, p.1239

Point two: To ensure that we meet these targets, I will use my Presidential authority to set import quotas. I'm announcing tonight that for 1979 and 1980, I will forbid the entry into this country of one drop of foreign oil more than these goals allow. These quotas will ensure a reduction in imports even below the ambitious levels we set at the recent Tokyo summit.

Public Papers of Carter, 1979, p.1239

Point three: To give us energy security, I am asking for the most massive peacetime commitment of funds and resources in our Nation's history to develop America's own alternative sources of fuel-from coal, from oil shale, from plant products for gasohol, from unconventional gas, from the Sun.

Public Papers of Carter, 1979, p.1239

I propose the creation of an energy security corporation to lead this effort to replace 2 1/2 million barrels of imported oil per day by 1990. The corporation will issue up to $5 billion in energy bonds, and I especially want them to be in small denominations so that average Americans can invest directly in America's energy security.

Public Papers of Carter, 1979, p.1239

Just as a similar synthetic rubber corporation helped us win World War II, so will we mobilize American determination and ability to win the energy war. Moreover, I will soon submit legislation to Congress calling for the creation of this Nation's first solar bank, which will help us achieve the crucial goal of 20 percent of our energy coming from solar power by the year 2000.

Public Papers of Carter, 1979, p.1239

These efforts will cost money, a lot of money, and that is why Congress must enact the windfall profits tax without delay. It will be money well spent. Unlike the billions of dollars that we ship to foreign countries to pay for foreign oil, these funds will be paid by Americans to Americans. These funds will go to fight, not to increase, inflation and unemployment.

Public Papers of Carter, 1979, p.1239–p.1240

Point four: I'm asking Congress to mandate, to require as a matter of law, that our Nation's utility companies cut [p.1240] their massive use of oil by 50 percent within the next decade and switch to other fuels, especially coal, our most abundant energy source.

Public Papers of Carter, 1979, p.1240

Point five: To make absolutely certain that nothing stands in the way of achieving these goals, I will urge Congress to create an energy mobilization board which, like the War Production Board in World War II, will have the responsibility and authority to cut through the redtape, the delays, and the endless roadblocks to completing key energy projects.

Public Papers of Carter, 1979, p.1240

We will protect our environment. But when this Nation critically needs a refinery or a pipeline, we will build it.

Public Papers of Carter, 1979, p.1240

Point six: I'm proposing a bold conservation program to involve every State, county, and city and every average American in our energy battle. This effort will permit you to build conservation into your homes and your lives at a cost you can afford.

Public Papers of Carter, 1979, p.1240

I ask Congress to give me authority for mandatory conservation and for standby gasoline rationing. To further conserve energy, I'm proposing tonight an extra $10 billion over the next decade to strengthen our public transportation systems. And I'm asking you for your good and for your Nation's security to take no unnecessary trips, to use carpools or public transportation whenever you can, to park your car one extra day per week, to obey the speed limit, and to set your thermostats to save fuel. Every act of energy conservation like this is more than just common sense—I tell you it is an act of patriotism.

Public Papers of Carter, 1979, p.1240

Our Nation must be fair to the poorest among us, so we will increase aid to needy Americans to cope with rising energy prices. We often think of conservation only in terms of sacrifice. In fact, it is the most painless and immediate way of rebuilding our Nation's strength. Every gallon of oil each one of us saves is a new form of production. It gives us more freedom, more confidence, that much more control over our own lives.

Public Papers of Carter, 1979, p.1240

So, the solution of our energy crisis can also help us to conquer the crisis of the spirit in our country. It can rekindle our sense of unity, our confidence in the future, and give our Nation and all of us individually a new sense of purpose.

Public Papers of Carter, 1979, p.1240

You know we can do it. We have the natural resources. We have more oil in our shale alone than several Saudi Arabias. We have more coal than any nation on Earth. We have the world's highest level of technology. We have the most skilled work force, with innovative genius, and I firmly believe that we have the national will to win this war.

Public Papers of Carter, 1979, p.1240

I do not promise you that this struggle for freedom will be easy. I do not promise a quick way out of our Nation's problems, when the truth is that the only way out is an all-out effort. What I do promise you is that I will lead our fight, and I will enforce fairness in our struggle, and I will ensure honesty. And above all, I will act.

Public Papers of Carter, 1979, p.1240

We can manage the short-term shortages more effectively and we will, but there are no short-term solutions to our long-range problems. There is simply no way to avoid sacrifice.

Public Papers of Carter, 1979, p.1240

Twelve hours from now I will speak again in Kansas City, to expand and to explain further our energy program. Just as the search for solutions to our energy shortages has now led us to a new awareness of our Nation's deeper problems, so our willingness to work for those solutions in energy can strengthen us to attack those deeper problems.

Public Papers of Carter, 1979, p.1240–p.1241

I will continue to travel this country, to hear the people of America. You can help me to develop a national agenda for the 1980's. I will listen and I will act. We [p.1241] will act together. These were the promises I made 3 years ago, and I intend to keep them.

Public Papers of Carter, 1979, p.1241

Little by little we can and we must rebuild our confidence. We can spend until we empty our treasuries, and we may summon all the wonders of science. But we can succeed only if we tap our greatest resources—America's people, America's values, and America's confidence.

Public Papers of Carter, 1979, p.1241

I have seen the strength of America in the inexhaustible resources of our people. In the days to come, let us renew that strength in the struggle for an energy secure nation.

Public Papers of Carter, 1979, p.1241

In closing, let me say this: I will do my best, but I will not do it alone. Let your voice be heard. Whenever you have a chance, say something good about our country. With God's help and for the sake of our Nation, it is time for us to join hands in America. Let us commit ourselves together to a rebirth of the American spirit. Working together with our common faith we cannot fail.

Thank you and good night.

Public Papers of Carter, 1979, p.1241

NOTE: The President spoke at 10 p.m. from the Oval Office at the White House. His remarks were broadcast live on radio and television.

White House Statement on the American Hostages in Iran, 1979

Title: White House Statement on the American Hostages in Iran

Author: Carter Administration

Date: November 9, 1979

Source: Public Papers of the Presidents, Carter, 1979, pp.2102-2103

Public Papers of Carter, 1979, p.2102

The seizure of more than 60 Americans in our Embassy in Tehran has provoked strong feelings here at home. There is outrage. There is frustration. And there is deep anger.

Public Papers of Carter, 1979, p.2103

There is also pride in the courage of those who are in danger and sympathy for them and for their families. But the most important concern for all Americans at this moment is safety of our fellow citizens held in Tehran.

Public Papers of Carter, 1979, p.2103

The President shares these feelings. He is pursuing every possible avenue in a situation that is extremely volatile and difficult. His efforts involve many countries and individuals. Many of these efforts must of necessity be conducted without publicity, and all require the calmest possible atmosphere.

Public Papers of Carter, 1979, p.2103

The President knows that no matter how deeply we may feel, none of us would want to do anything that would worsen the danger in which our fellow Americans have been placed.

Public Papers of Carter, 1979, p.2103

He calls on all Americans, public officials and private citizens alike, to exercise restraint, and to keep the safety of their countrymen uppermost in their minds and hearts. Members of the families of the American hostages with whom the President met this morning have asked to join with him in this appeal. The President expects every American to refrain from any action that might increase the danger to the American hostages in Tehran.

Public Papers of Carter, 1979, p.2103

NOTE: Press Secretary Jody Powell read the statement to reporters assembled in the Briefing Room at the White House.

Public Papers of Carter, 1979, p.2103

The President had met with the members of the families at the State Department.

President Carter's Address to the Nation on the Soviet Invasion of Afghanistan, 1980

Title: President Carter's Address to the Nation on the Soviet Invasion of Afghanistan

Author: Jimmy Carter

Date: January 4, 1980

Source: Public Papers of the Presidents, Jimmy Carter, 1980, pp.21-24

Public Papers of Carter, 1980, p.21

I come to you this evening to discuss the extremely important and rapidly changing circumstances in Southwest Asia.

Public Papers of Carter, 1980, p.21–p.22

I continue to share with all of you the sense of outrage and impatience because [p.22] of the kidnaping of innocent American hostages and the holding of them by militant terrorists with the support and the approval of Iranian officials. Our purposes continue to be the protection of the longrange interests of our Nation and the safety of the American hostages.

Public Papers of Carter, 1980, p.22

We are attempting to secure the release of the Americans through the International Court of Justice, through the United Nations, and through public and private diplomatic efforts. We are determined to achieve this goal. We hope to do so without bloodshed and without any further danger to the lives of our 50 fellow Americans. In these efforts, we continue to have the strong support of the world community. The unity and the common sense of the American people under such trying circumstances are essential to the success of our efforts.

Public Papers of Carter, 1980, p.22

Recently, there has been another very serious development which threatens the maintenance of the peace in Southwest Asia. Massive Soviet military forces have invaded the small, nonaligned, sovereign nation of Afghanistan, which had hitherto not been an occupied satellite of the Soviet Union.

Public Papers of Carter, 1980, p.22

Fifty thousand heavily armed Soviet troops have crossed the border and are now dispersed throughout Afghanistan, attempting to conquer the fiercely independent Muslim people of that country.

Public Papers of Carter, 1980, p.22

The Soviets claim, falsely, that they were invited into Afghanistan to help protect that country from some unnamed outside threat. But the President, who had been the leader of Afghanistan before the Soviet invasion, was assassinated—along with several members of his family—after the Soviets gained control of the capital city of Kabul. Only several days later was the new puppet leader even brought into Afghanistan by the Soviets.

Public Papers of Carter, 1980, p.22

This invasion is an extremely serious threat to peace because of the threat of further Soviet expansion into neighboring countries in Southwest Asia and also because such an aggressive military policy is unsettling to other peoples throughout the world.

Public Papers of Carter, 1980, p.22

This is a callous violation of international law and the United Nations Charter. It is a deliberate effort of a powerful atheistic government to subjugate an independent Islamic people.

Public Papers of Carter, 1980, p.22

We must recognize the strategic importance of Afghanistan to stability and peace. A Soviet-occupied Afghanistan threatens both Iran and Pakistan and is a steppingstone to possible control over much of the world's oil supplies.

Public Papers of Carter, 1980, p.22

The United States wants all nations in the region to be free and to be independent. If the Soviets are encouraged in this invasion by eventual success, and if they maintain their dominance over Afghanistan and then extend their control to adjacent countries, the stable, strategic, and peaceful balance of the entire world will be changed. This would threaten the security of all nations including, of course, the United States, our allies, and our friends.

Public Papers of Carter, 1980, p.22

Therefore, the world simply cannot stand by and permit the Soviet Union to commit this act with impunity. Fifty nations have petitioned the United Nations Security Council to condemn the Soviet Union and to demand the immediate withdrawal of all Soviet troops from Afghanistan. We realize that under the United Nations Charter the Soviet Union and other permanent members may veto action of the Security Council. If the will of the Security Council should be thwarted in this manner, then immediate action would be appropriate in the General Assembly of the United Nations, where no Soviet veto exists.

Public Papers of Carter, 1980, p.23

In the meantime, neither the United States nor any other nation which is committed to world peace and stability can continue to do business as usual with the Soviet Union.

Public Papers of Carter, 1980, p.23

I have already recalled the United States Ambassador from Moscow back to Washington. He's working with me and with my other senior advisers in an immediate and comprehensive evaluation of the whole range of our relations with the Soviet Union.

Public Papers of Carter, 1980, p.23

The successful negotiation of the SALT II treaty has been a major goal and a major achievement of this administration, and we Americans, the people of the Soviet Union, and indeed the entire world will benefit from the successful control of strategic nuclear weapons through the implementation of this carefully negotiated treaty.

Public Papers of Carter, 1980, p.23

However, because of the Soviet aggression, I have asked the United States Senate to defer further consideration of the SALT II treaty so that the Congress and I can assess Soviet actions and intentions and devote our primary attention to the legislative and other measures required to respond to this crisis. As circumstances change in the future, we will, of course, keep the ratification of SALT II under active review in consultation with the leaders of the Senate.

Public Papers of Carter, 1980, p.23

The Soviets must understand our deep concern. We will delay opening of any new American or Soviet consular facilities, and most of the cultural and economic exchanges currently under consideration will be deferred. Trade with the Soviet Union will be severely restricted.

Public Papers of Carter, 1980, p.23

I have decided to halt or to reduce exports to the Soviet Union in three areas that are particularly important to them. These new policies are being and will be coordinated with those of our allies.

Public Papers of Carter, 1980, p.23

I've directed that no high technology or other strategic items will be licensed for sale to the Soviet Union until further notice, while we revise our licensing policy.

Public Papers of Carter, 1980, p.23

Fishing privileges for the Soviet Union in United States waters will be severely curtailed.

Public Papers of Carter, 1980, p.23

The 17 million tons of grain ordered by the Soviet Union in excess of that amount which we are committed to sell will not be delivered. This grain was not intended for human consumption but was to be used for building up Soviet livestock herds.

Public Papers of Carter, 1980, p.23

I am determined to minimize any adverse impact on the American farmer from this action. The undelivered grain will be removed from the market through storage and price support programs and through purchases at market prices. We will also increase amounts of grain devoted to the alleviation of hunger in poor countries, and we'll have a massive increase of the use of grain for gasohol production here at home.

Public Papers of Carter, 1980, p.23

After consultation with other principal grain-exporting nations, I am confident that they will not replace these quantities of grain by additional shipments on their part to the Soviet Union.

Public Papers of Carter, 1980, p.23

These actions will require some sacrifice on the part of all Americans, but there is absolutely no doubt that these actions are in the interest of world peace and in the interest of the security of our own Nation, and they are also compatible with actions being taken by our own major trading partners and others who share our deep concern about this new Soviet threat to world stability.

Public Papers of Carter, 1980, p.23–p.24

Although the United States would prefer not to withdraw from the Olympic games scheduled in Moscow this summer, the Soviet Union must realize that its continued aggressive actions will endanger both the participation of athletes and the [p.24] travel to Moscow by spectators who would normally wish to attend the Olympic games.

Public Papers of Carter, 1980, p.24

Along with other countries, we will provide military equipment, food, and other assistance to help Pakistan defend its independence and its national security against the seriously increased threat it now faces from the north. The United States also stands ready to help other nations in the region in similar ways.

Public Papers of Carter, 1980, p.24

Neither our allies nor our potential adversaries should have the slightest doubt about our willingness, our determination, and our capacity to take the measures I have outlined tonight. I have consulted with leaders of the Congress, and I am confident they will support legislation that may be required to carry out these measures.

Public Papers of Carter, 1980, p.24

History teaches, perhaps, very few clear lessons. But surely one such lesson learned by the world at great cost is that aggression, unopposed, becomes a contagious disease.

Public Papers of Carter, 1980, p.24

The response of the international community to the Soviet attempt to crush Afghanistan must match the gravity of the Soviet action.

Public Papers of Carter, 1980, p.24

With the support of the American people and working with other nations, we will deter aggression, we will protect our Nation's security, and we will preserve the peace. The United States will meet its responsibilities.

Public Papers of Carter, 1980, p.24

Thank you very much.

Public Papers of Carter, 1980, p.24

NOTE: The President spoke at 9 p.m. from the Oval Office at the White House. His remarks were broadcast live on radio and television.

President Carter's Letter Reporting on the Rescue Attempt for American Hostages in Iran, 1980

Title: President Carter's Letter Reporting on the Rescue Attempt for American Hostages in Iran

Author: Jimmy Carter

Date: April 26, 1980

Source: Public Papers of the Presidents, Jimmy Carter, 1980, pp.777-779

[The letter was addressed to the Speaker of the House

and the President Pro Tempore of the Senate.]

Public Papers of Carter, 1980, p.777

Dear Mr. Speaker: (Dear Mr. President:)

Public Papers of Carter, 1980, p.777

Because of my desire that Congress be informed on this matter and consistent with the reporting provisions of the War Powers Resolution of 1973 (Public Law 93-148), I submit this report.

Public Papers of Carter, 1980, p.777

On April 24, 1980, elements of the United States Armed Forces under my direction commenced the positioning stage of a rescue operation which was designed, if the subsequent stages had been executed, to effect the rescue of the American hostages who have been held captive in Iran since November 4, 1979, in clear violation of international law and the norms of civilized conduct among nations. The subsequent phases of the operation were not executed. Instead, for the reasons described below, all these elements were withdrawn from Iran and no hostilities occurred.

Public Papers of Carter, 1980, p.778

The Sole objective of the operation that actually occurred was to position the rescue team for the subsequent effort to withdraw the American hostages. The rescue team was under my overall command and control and required my approval before executing the subsequent phases of the operation designed to effect the rescue itself. No such approval was requested or given because, as described below, the mission was aborted.

Public Papers of Carter, 1980, p.777

Beginning approximately 10:30 AM EST on April 24, six U.S. C-130 transport aircraft and eight RH-53 helicopters entered Iran airspace. Their crews were not equipped for combat. Some of the C-130 aircraft carried a force of approximately 90 members of the rescue team equipped for combat, plus various support personnel.

Public Papers of Carter, 1980, p.778

From approximately 2 to 4 PM EST the six transports and six of the eight helicopters landed at a remote desert site in Iran approximately 200 miles from Tehran where they disembarked the rescue team, commenced refueling operations and began to prepare for the subsequent phases.

Public Papers of Carter, 1980, p.778

During the flight to the remote desert site, two of the eight helicopters developed operating difficulties. One was forced to return to the carrier Nimitz; the second was forced to land in the desert, but its crew was taken aboard another of the helicopters and proceeded on to the landing site. Of the six helicopters which landed at the remote desert site, one developed a serious hydraulic problem and was unable to continue with the mission. The operational plans called for a minimum of six helicopters in good operational condition able to proceed from the desert site. Eight helicopters had been included in the force to provide sufficient redundancy without imposing excessive strains on the refueling and exit requirements of the operation. When the number of helicopters available to continue dropped to five, it was determined that the operation could not proceed as planned. Therefore, on the recommendation of the force commander and my military advisers, I decided to cancel the mission and ordered the United States Armed Forces involved to return from Iran.

Public Papers of Carter, 1980, p.778

During the process of withdrawal, one of the helicopters accidentally collided with one of the C-130 aircraft, which was preparing to take off, resulting in the death of eight personnel and the injury of several others. At this point, the decision was made to load all surviving personnel aboard the remaining C-130 aircraft and to abandon the remaining helicopters at the landing site. Altogether, the United States Armed Forces remained on the ground for a total of approximately three hours. The five remaining aircraft took off about 5:45 PM EST and departed from Iran airspace without further incident at about 8:00 PM EST on April 24. No United States Armed Forces remain in Iran.

Public Papers of Carter, 1980, p.778

The remote desert area was selected to conceal this phase of the mission from discovery. At no time during the temporary presence of United States Armed Forces in Iran did they encounter Iranian forces of any type. We believe, in fact, that no Iranian military forces were in the desert area, and that the Iranian forces were unaware of the presence of United States Armed Forces until after their departure from Iran. As planned, no hostilities occurred during this phase of the mission—the only phase that was executed.

Public Papers of Carter, 1980, p.778–p.779

At one point during the period in which United States Armed Forces elements were on the ground at the desert landing site a bus containing forty-four Iranian civilians happened to pass along a [p.779] nearby road. The bus was stopped and then disabled. Its occupants were detained by United States Armed Forces until their departure, and then released unharmed. One truck closely followed by a second vehicle also passed by while United States Armed Forces elements were on the ground. These elements stopped the truck by a shot into its headlights. The driver ran to the second vehicle which then escaped across the desert. Neither of these incidents affected the subsequent decision to terminate the mission.

Public Papers of Carter, 1980, p.779

Our rescue team knew, and I knew, that the operation was certain to be dangerous. We were all convinced that if and when the rescue phase of the operation had been commenced, it had an excellent chance of success. They were all volunteers; they were all highly trained. I met with their leaders before they went on this operation. They knew then what hopes of mine and of all Americans they carried with them. I share with the nation the highest respect and appreciation for the ability and bravery of all who participated in the mission.

Public Papers of Carter, 1980, p.779

To the families of those who died and who were injured, I have expressed the admiration I feel for the courage of their loved ones and the sorrow that I feel personally for their sacrifice.

Public Papers of Carter, 1980, p.779

The mission on which they were embarked was a humanitarian mission. It was not directed against Iran. It was not directed against the people of Iran. It caused no Iranian casualties.

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This operation was ordered and conducted pursuant to the President's powers under the Constitution as Chief Executive and as Commander-in-Chief of the United States Armed Forces, expressly recognized in Section 8(d) ( 1 ) of the War Powers Resolution. In carrying out this operation, the United States was acting wholly within its right, in accordance with Article 51 of the United Nations Charter, to protect and rescue its citizens where the government of the territory in which they are located is unable or unwilling to protect them.

Sincerely,

JIMMY CARTER

Public Papers of Carter, 1980, p.779

NOTE: This is the text of identical letters addressed to Thomas P. O'Neill, Jr., Speaker of the House of Representatives, and Warren G. Magnuson, President pro tempore of the Senate.

The text of the letters was released on April 27.

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