Supreme Court of the United States.

Memorandum.

2/28, 1947

A suggestion for a possible solution.

REED

SUPREME COURT OF THE UNITED STATES

Nos. 759, etc. -- October Term, 1946.

PER CURIAM: These writs of certiorari bring issues before this Court that are of importance. These arise in a suit filed by the United States in the District Court for the District of Columbia against the United Mine Workers of America and John L. Lewis, individually and as President of the Union. At the time the action was instituted, the United States was in possession of a large part of the nation's bituminous coal mines. The mines had been taken over by the President on May 21, 1946, by Executive Order under the authority of the Constitution, as President of the United States and Commander-in-Chief of the Army and Navy, as well as by the authority conferred upon him by the War Labor Disputes Act. So far as conditions of employment of labor were concerned, the operations were based upon an agreement entered into May 29, 1946, between the Secretary of the Interior, as Coal Mines Administrator, and John L. Lewis, as President of the United Mine Workers of America. Differences over the meaning of the contract having arisen and the Mine Workers having served notice on the Coal Mines Administrator of a termination of the aforementioned agreement as of 12 o'clock midnight, Wednesday, November 20, 1946, the Government filed this suit under the declaratory judgment act for a decree that the defendants, the Mine Workers, and their President had no power by their sole action to terminate the agreement. A temporary restraining order was sought and granted by the District Court on November 18, 1946, that enjoined these defendants "from permitting to continue in effect the notice" for termination of the agreement.

On an allegation that the defendants had violated the restraining order, a rule to show cause why the defendants should not be punished for contempt was sought by the United States and granted by the court on November 21, 1946. The court found the defendants guilty of contempt on

December 4, 1946, and punished Mr. Lewis with a fine of $10,000 and the Mine Workers with a fine of $3,500,000. The court issued a temporary injunction in substantially the form of the restraining order. The ultimate question before us on these writs is the validity of the imposition of these fines for the violation of the restraining order.

To reach a conclusion it has been necessary for this Court to consider the application of the Norris-LaGuardia Act and the War Labor Disputes Act to this situation. Questions are here as to the constitutionality of the imposition of punishment for criminal contempt without an indictment and without a trial by jury. We have been asked to say whether the fines imposed were excessive under the Eighth Amendment to the Constitution. If all of these problems are resolved in favor of the Government, this Court must determine whether the discretion of the trial court was wisely exercised as to the amount of and the method by which these fines were imposed. It must further adjudge whether it has the power to remold the judgments entered below and if it determines that it is authorized to do so, what form should be given here to the decree.

The Court finds it is unable to adopt by a majority vote an opinion which discusses and decides the necessary issues for the determination of these cases. Opinions by different Justices stating their views on what seem to them the important issues of the cases have been prepared for filing with the Clerk. Those opinions discuss in detail the facts and the rules of law which are involved in the judgment to be entered. It is sufficient here to state the following conclusions.

First. A majority of the Court is of the opinion that the Clayton Act, the Norris-LaGuardia Act and the War Labor Disputes Act do not apply to the declaratory relief sought in these proceedings.

Second. A majority agrees that a decree may be entered by this Court that modifies or reforms the judgments entered by the trial court.

Third. A majority agree that the judgments assessing fines against John L. Lewis and the United Mine Workers should be modified. They further agree that the modification should provide substantially as follows:

A fine of $10,000 against John L. Lewis and a fine of $1,000,000 against the defendant Union payable separately unless they respectively purge themselves of their contumacy within a reasonable time. The defendants are given five days after the issuance of the mandate herein to show to the District Court that they have fully and unequivocally complied with the temporary restraining order issued November 18, 1946, and the preliminary injunction issued December 4, 1946. The defendants can effect full compliance by withdrawing unconditionally the notice given, signed John L. Lewis, President, on November 15, 1946, to J. A. Krug, Secretary of the Interior, terminating the Krug-Lewis agreement as of twelve o'clock midnight, Wednesday, November 20, 1946, and by notifying, at the same time, its members of such withdrawal in substantially the same manner as the members of the defendant Union were notified of the notice to the Secretary of the Interior above-mentioned; and by withdrawing and similarly instructing the members of the defendant Union of the withdrawal of any other notice that may have been given to the effect that the Krug-Lewis agreement is not in full force and effect until the final determination in the suit pending in the District Court of the basic issues arising under the said agreement.

The mandate herein shall issue on Monday, March 10, 1947.

Note.

The footnotes have not been finished except for No. 4. It is at the end of the opinion.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 and 811.—October Term, 1946.

The United States of America, Petitioner, v. United Mine Workers of America, an Unincorporated Association.	759
The United States of America, Petitioner, v. John L. Lewis, Individually and as President of the United Mine Workers of America.	760
United Mine Workers of America, an Unincorporated Association, Petitioner, v. The United States of America.	781
John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, v. The United States of America.	782
United Mine Workers of America, an Unincorporated Association, and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioners, v. The United States of America.	811

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[March —, 1947.]

Mr. Justice Reed, reversing in part and affirming in part.

For the reasons stated in the opinion of The Chief Justice, I agree that the Clayton Act, the Norris-La-

Guardia Act and the War Labor Disputes Act do not apply to the final relief of injunction sought in these proceedings. It follows from that position that the restraining order to preserve the contractual relations of the United States and the United Mine Workers of America, pending a determination of the Mine Workers' asserted right to terminate the contract, is a valid restraining order.

Our nation's experience has proven that a people may rely upon the orderly processes of government to redress the maladjustments or wrongs that develop in a society ordained and conducted to give the greatest opportunity and the most satisfactory life to the greatest number. An important element in those orderly processes is the judicial system. It acts to adjust conflicting interests. It can only so act when allowed to maintain an existing situation until final judgment is rendered. This was the purpose of the restraining order. The violation of that order calls for punishment to vindicate the authority of courts to function in preserving order and adjudicating differences. A punishment for contempt imposed by a court is unusual because it is rare that our citizens disregard the accepted judicial solutions for internal controversies. When judicial orders are disregarded, the power to punish for contempt must be recognized to preserve the independence of the courts and to enable them to operate for the public welfare. There is no doubt that Mr. Lewis and the Union disobeyed the restraining order.

Neither is there any doubt in my mind that the district court punished for both a civil and a criminal contempt. These orders so show. They find both as to Mr. Lewis and the Mine Workers that each has committed a criminal contempt and a civil contempt beyond a reasonable doubt. Distinctions between a contempt which is civil and a contempt which is criminal are narrow. It is easy to say that the criminal contempt order is punitive, that

it is entered to vindicate the authority of the court; that a civil contempt is remedial and for the benefit of the complainant. Actually the two are intermingled. When punishment is inflicted for a civil contempt, it has a coercive effect upon the contemner. When it is inflicted for a criminal contempt, it often has a remedial effect upon the relief sought by the complainant.[1] Where the contempt continues, the contemner knows he is liable to further punishment. The difficulties of distinction are magnified in the present cases because the United States is both the complainant for ultimate civil relief by injunction and the actor in bringing the contempt charges.

In this proceeding, however, it seems quite clear to me that the fines imposed are predominantly to vindicate the authority of the court to maintain the existing relationships between the United States and the defendants below during the court's consideration of the Government's petition for relief.[2] It was said by counsel for the Government at the hearing on the rule to show cause that the question of any contempt by these defendants in the future might be delayed until the court could consider what, if any, further action would be appropriate. The rule issued by the trial court requires the defendants to show "why they should not be punished as and for a contempt of this court." The petition for the rule is couched in language that seems to charge a willful disobedience of the restraining order rather than a complaint for damages or a request for remedial action.[3] When we

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[1] *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441–43; *Ex parte Grossman*, 267 U. S. 87, 111.

[2] See *United States* v. *Goldman*, 277 U. S. 229; *Michaelson* v. *United States ex rel. another*, 266 U. S. 42; *Ex parte Grossman*, 267 U. S. 87; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418.

[3] We said in *Union Tool Co.* v. *Wilson*, 259 U. S. 107, 110:

"Where a fine is imposed partly as compensation to the complainant and partly as punishment, the criminal feature of the order is dominant and fixes its character for purposes of review."

look at the evidence for the Government, we find little to indicate the Government was undertaking to show damages to it. There is a scintilla in the testimony as to the effect of a strike on national income. Any evidence of the injury to the Government in its sovereign capacity would be highly speculative. Were it not for the explicit statement by the court in its orders that both civil and criminal contempts had been committed, I would conclude that the fines assessed were solely for criminal contempt. Therefore, while I accept the declaration of the trial court that both civil and criminal contempts have been committed by both defendants, I am proceeding upon the supposition that none of the fines were imposed as compensation to the United States for any damages it may have suffered to its own property or revenues by the contempt. There is no finding of such damages and I do not think there can properly be any unless the issue as to the right of the Mine Workers to terminate the Krug-Lewis contract is settled ultimately in favor of the Government.[4] So far as the fines are civil, in my view they must have been imposed as remedial fines to coerce compliance with the interlocutory orders.

For the reasons given in the opinion of the CHIEF JUSTICE, I agree that any procedural errors committed by the Government in giving notice or otherwise as to its charge of criminal contempt are harmless. The contemners knew that they were being tried for criminal contempt. Probably the contemners waived a jury. If they did not waive it, they certainly did not demand it. Even had they demanded a jury, they would not have been entitled to it. A jury in criminal contempt is essential only when the act of Congress so provides. Rule 42 (b), Rules of Criminal

[4] It may be that the United States could claim compensation for losses to it because of the violation of the restraining order.

Procedure. In the absence of such a statutory requirement, a jury is not necessary.[5]

The fact that the district court entered an order on both civil and criminal contempts does not affect the power of this Court in this record to now determine what orders should be entered. Statements have been made that only the court before which the contempt was committed could punish.[6] Generally speaking, this is desirable. No decision known to me in this Court holds that it is an inflexible rule. This was in essence an equitable proceeding, which proceedings do not have the limitations on our power to enter definitive decrees such as are found in common law or criminal appeals. It is most desirable, from my point of view, that we should enter here appropriate fines for the contumacy of these defendants. Since agreement has not been reached by a majority of this Court as to the proper amount of fines that should be imposed on Mr. Lewis and the Union, it seems to me more consonant with justice to reverse the order of the district court rather than to approve fines that seem to me excessive. The trial court will then have the benefit of this Court's views as to the law of this case and expressions of appropriate, although necessarily imprecise, standards for judgment.

The problem confronting us in determining the amount of fines to be assessed is no less difficult than when it confronted the district court. We must take into considera-

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[5] *Myers* v. *United States*, 264 U. S. 95, 104; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 450; *Gompers* v. *United States*, 233 U. S. 604, 610.

This accords with the historical development of trial for contempt. 1 Stat. 83; 4 Stat. 487; Rev. Stat. § 725; 36 Stat. 1163; Judicial Code § 268.

[6] See *Wilson* v. *United States*, 26 F. 2d 215, 216, 218; *Ex parte Bradley*, 7 Wall. 366, 372; *Ex parte Tillinghast*, 4 Pet. 108; *Bessette* v. *W. B. Conkey Co.* Rapalje, Contempt, §§ 141, 150, 151; 43 Col. L. Rev., Contempt of Injunctions, 780, 820.

tion the fact that the issue as to the interpretation of the Krug-Lewis contract has not been determined. The notice to Mr. Krug of the termination of the contract has not been withdrawn. The opinions in this case show that the problem of the power of the district court to enter a restraining order required close reasoning. See *Ex parte Young*, 209 U. S. 123, 142, 143, a decision handed down after *United States* v. *Shipp*, 203 U. S. 563. The defendants below acted upon the advice of counsel. A few acted as authorized representatives of Mine Workers, with its hundreds of thousands of union members. These members followed their union leadership with confidence. That leadership had proved itself capable and efficient over the years in handling the responsibilities of leadership. Its position on the contract and upon the applicability of the Norris-LaGuardia and the War Labor Acts was not captious or without reasonable basis. All of these factors have weight in determining the proper amount of fine to be imposed because of the violation of the restraining order.

We have some analogies as to the attitude of Congress on the proper punishment for willful disobedience of lawful orders of courts of the United States. In the Clayton Act, § 22, 38 Stat. 739, the punitive fine was limited in the case of a natural person to $1,000 and six months imprisonment. In the War Labor Disputes Act, § 6 (b), 57 Stat. 165, punishment for interference with Government operation of plants by strikes or their interruption was limited to a fine of $5,000 or to imprisonment for not more than one year or both. A union cannot be imprisoned. The record shows the financial capacity of Mr. Lewis and something as to the resources of the Mine Workers.

The threat to the national economy by the work stoppage of the miners was formidable. Experienced men such as these, who undertake by a legally recognized use of economic power to redress assumed interferences with

their rights, realize the consequences to themselves and to the nation. I cannot say, however, that these men acted in this instance otherwise than in accordance with their conception of their legal rights. After this adjudication, they will be finally advised insofar as courts can adjudge. In the future comparable action would place the case in an entirely different posture.

Upon this record and in the circumstances presented by it, I feel that the fine entered by the district court against the United Mine Workers was excessive in both the discretionary and constitutional sense. It is to be remembered that the violation of the restraining order had continued for about wo weeks. It was and is vital for orderly adjustments of disputes that the interlocutory injunctions should be obeyed. It is also most important that miners who share with all citizens the difficulties and advantages and risks of American democracy should receive equal justice and punishments commensurable with those inflicted upon other violators of court orders. The fine assessed below, as I see it, does not meet this test.

A fine of $10,000 upon Mr. Lewis and $250,000 against the Mine Workers would punish them fairly for their disobedience of this restraining order during the fourteen or fifteen days it was in effect prior to their trial. The possibility of further fines for further disobedience would make such orders remedial as well as punitive. With the clarification of the law by this Court and the entry of such a judgment, the court's order, I have no doubt, would be obeyed promptly by defendants. If their contumacy continued, courts have been granted adequate powers to coerce compliance.

While these contempt orders are incidental to the issue over the contract, it is important for the administration of justice that they should be passed upon. The conclusion of the Court that the Government has the right to preserve order, through its courts, pending determination of the declaratory judgment litigation, is for me the essential element of these certiorari.

In order to permit a judgment here, I therefore agree that the District Court judgments in contempt be set aside. Every need of order will be served by a judgment which enters fines for contempt committed prior to December 4, 1946, to be remitted in toto on a complete purge of the contempt. I agree that those fines should be $10,000 for John L. Lewis and $1,000,000 for the United Mine Workers.

The Chief Justice
from
Recd. J.
31.147

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February 25, 1947

MEMORANDUM for The Chief Justice, Mr. Justice Frankfurter,
Mr. Justice Jackson and Mr. Justice Burton.

RE: Nos. 759, etc., United States v. United Mine Workers.

Would it be agreeable to insert as a new paragraph or as a continuation of the former paragraph in the Chief Justice's last circulation, on p. 3, after note 81, something like the following:

> "Well informed men may disagree upon the basic controversy. There are expressions in our cases that did leave room for differences of opinion as to the effect of interlocutory injunctions from a court that finally may be determined to be without power to adjudge the controversy presented. Ex parte Young, 209 U. S. 123, 142, 145. The opinions in this case show that the defendant's position as to the Norris-LaGuardia Act had support in reason. While the violations were willful, they did not have the element of malicious disregard of national welfare that calls for the most severe punishment.

STANLEY REED

February 20, 1947.

MEMORANDUM TO THE CONFERENCE

Nos. 759, etc., United Mine Workers.

To make clear my suggestion in my memorandum to the Conference of February 15, I suggest that it would be appropriate to add to the judgments and sentences of the District Court appearing at R. 101-2, the following proviso:

> "; provided there is reserved, with or without further hearing, the power to reduce separately the fines assessed, if either or both contemners purge themselves of contempt prior to March 31, 1947, by withdrawing the notice heretofore given by United Mine Workers of America by John L. Lewis, President, on November 15, 1946, to J. A. Krug, Secretary of the Interior, terminating the Krug-Lewis Agreement as of 12 o'clock, midnight, Wednesday, November 20, 1946, and by notifying at the same time the members of the United Mine Workers of America of such withdrawal in substantially the same manner as the said members were notified of the letter to the Secretary of the Interior above mentioned."

The District Court is directed in case the United Mine Workers purge themselves of contempt, as above indicated, to radically reduce the fine imposed upon that organization.

STANLEY REED

February 20, 1947.

MEMORANDUM TO THE CONFERENCE

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The District Court is directed in case the United Mine Workers purge themselves of contempt, as above indicated, to radically reduce the fine imposed upon that organization.

STANLEY REED

Supreme Court of the United States.

Memorandum.

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RECIRCULATION OF JUSTICE BLACK'S OPINION IN THE LEWIS CASE

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner,
759 *v.*
United Mine Workers of America, an Unincorporated Association.

The United States of America, Petitioner,
760 *v.*
John L. Lewis, Individually and as President of the United Mine Workers of America.

United Mine Workers of America, an Unincorporated Association, Petitioner,
781 *v.*
The United States of America.

John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
782 *v.*
The United States of America.

United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
811 *v.*
The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[March —, 1947.]

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS, concurring in part and dissenting in part.

For the reasons given in the Court's opinion, we agree that neither the Norris-LaGuardia Act nor the War

Labor Disputes Act barred the Government from obtaining the injunction it sought in these proceedings. The "labor disputes" with which Congress was concerned in the Norris-LaGuardia Act were those between private employers and their employees. As to all such "labor disputes," the Act drastically limited the jurisdiction of federal courts; it barred relief by injunction except under very narrow circumstances, whether injunction be sought by private employers, the Government, or anyone else. But the attention of Congress was neither focused upon, nor did it purport to affect, "labor disputes", if such they can be called, between the Government and its own employees. There was never an intimation in the progress of the Act's passage that a labor dispute within the Act's meaning would arise because of claims against the Government asserted collectively by employees of the Interior, State, Justice, or any other Government department. Congress had never in its history provided a program for fixing wages, hours, and working conditions of its employees by collective bargaining. Working conditions of Government employees had not been the subject of collective bargaining, nor been settled as a result of labor disputes. It would require specific congressional language to persuade us that Congress intended to embark upon such a novel program or to treat the Government employer-employee relationship as giving rise to a "labor dispute" in the industrial sense.

We have no doubt that the miners became Government employees when the Government took over the mines. It assumed complete control over the mines and their operation. The fact that it utilized the managerial forces of the private owners does not detract from the Government's complete authority. For whatever control Government agents delegated to the private managers, those agents had full power to take away and exercise themselves. If we thought, as is here contended, that the

Government's possession and operation of the mines were not genuine, but merely pretended, we should then say that the Norris-LaGuardia Act barred these proceedings. For anything less than full and complete Government operation would make this proceeding the equivalent of the Government's seeking an injunction for the benefit of the private employers. We think the Norris-LaGuardia Act prohibits that. But as we read the War Labor Disputes Act and the President's order taking over the mines against the background of circumstances which prompted both, we think that the Government operates these mines; and those who work in them, during the period of complete Government control, are employees of the Government.

Since the Norris-LaGuardia Act is inapplicable, we agree that the District Court had power in these proceedings to enter orders necessary to protect the Government against an invasion of the rights it asserted, pending adjudication of the controversy its complaint presented to the Court. It is therefore unnecessary for us to reach the question of whether the District Court also had power to enter these orders under the doctrine of *United States* v. *Shipp*, 203 U. S. 263. We agree that the court had power summarily to coerce obedience to those orders and to subject defendants to such conditional sanctions as were necessary to compel obedience. And we agree that in such civil contempt proceedings to compel obedience, it was not necessary for the court to abide by all the procedural safeguards which surround trials for crime. Without such coercive powers, courts could not settle the cases and controversies before them. Courts could not administer justice if persons were left free pending adjudication to engage in conduct which would either immediately interrupt the judicial proceedings or so change the *status quo* of the subject matter of a controversy that no effective judgment could be rendered. Disorder in the courtroom, or so near to it as to interrupt a trial, and disobedience

of an affirmative court order, are typical examples of offenses which must necessarily be dealt with summarily. To remove such imminent interference with orderly judicial proceedings, courts must have power to act immediately. In recognition of this fact, the contempt power came into existence.[1] This power is of ancient lineage,[2] has always been exercised by our courts, and has the express recognition of Congress under the name of contempt. Rev. Stat. § 725, 28 U. S. C. § 385. Where the court exercises such coercive power, however, for the purpose of compelling future obedience, those imprisoned "carry the keys of their prison in their own pockets," *In re Nevitt,* 117 F. 448, 461; by obedience to the court's valid order, they can end their confinement; and the court's coercive power in such a "civil contempt" proceeding ends when

[1] See *e. g., Cooke* v. *United States,* 267 U. S. 517, 534–537; Fox, Contempt of Court (1927) B; Beale, *Contempt of Court,* 21 Harv. L. Rev. (1908) 161, 169–170.

[2] "As early as the time of Richard III it was said that the chancellor of England compels a party against whom an order is issued by imprisonment; [2 R. III, 9, pl. 22] and a little later it was said in the chancery that 'a decree does not bind the right, but only binds the person to obedience, so that if the party will not obey, then the chancellor may commit him to prison till he obey, and that it is all the chancellor can do.' [27 H. VIII, 15.] This imprisonment was by no means a punishment, but was merely to secure obedience to the writ of the king. Down to within a century it was very doubtful if the chancellor could under any circumstances inflict punishment for disobedience of a decree. If the decree commanded the defendant to transfer property, the chancellor acquired power as early as the sixteenth century to sequester the property as security for performance; but if the decree were for the doing of any other act, or were a decree for an injunction, the chancellor was helpless if he could not compel obedience by imprisonment. . . . In any case the contempt of a defendant who had violated a decree in chancery could be purged by doing the act commanded and paying costs; or, if his disobedience had been the violation of a negative injunction, he could purge himself of contempt by undoing what he had done and paying costs." Beale, *supra.*

its order has been obeyed. *Gompers* v. *Buck Stove and Range Co.*, 221 U. S. 417, 441, 445. See also *Doyle* v. *London Guaranty Co.*, 204 U. S. 599, 607. The District Court did not enter a conditional decree here. But this Court has modified the District Court's decree to provide as part of the judgment such a coercive sanction in the form of a conditional fine. We agree with the Court's decision in this respect.[3]

The *Gompers* decision and many others have pointed out that the object of such comprehensive contempt proceedings is not to punish for an offense against the public, but to compel obedience to valid court orders. Yet the decision of this Court also approves unconditional fines as criminal punishment for past disobedience. We cannot agree to this aspect of the Court's judgment. At a very early date this Court declared, and recently it has reiterated, that in contempt proceedings courts should never exercise more than "the least possible power adequate to the end proposed." *Anderson* v. *Dunn*, 6 Wheat. 204, 231; *In re Michael*, 326 U. S. 224, 227.

It may be that in certain circumstances criminal contempt culminating in unconditional punishment for past

[3] "In the case of contempt in violating an order or decree of a court of equity, we have an entirely different problem. . . . If the court limits itself to its proper action in such cases, namely, process of imprisonment merely to prevent the violation of the decree, and if the imprisonment is to cease as soon as the danger of disobedience has ceased, the jury, which is thought necessary to pass upon the desert of a defendant to suffer punishment, is not required. . . . So far, therefore, as popular clamor demands a trial by jury in such case, it seems to go beyond the requirements of justice; and the statutes which commit the trial of questions of fact in such process to a jury are not likely permanently to prove satisfactory. This statement, however, is to be limited to cases of merely preventive imprisonment. Where the court inflicts a definite term of imprisonment by way of punishment for the violation of its orders, the case does not differ, it would seem, from the case of criminal contempt out of court, and regular process and trial by jury should be required." *Id.* 173–174.

disobedience might constitute an exercise of "the least possible power adequate to the end proposed." Without considering the constitutional requisites of such criminal punishment, we believe the application of it inappropriate and improper here. The imposition of criminal punishment here was an exercise of far more than "the least possible power adequate to the end proposed." For here the great and legitimate "end proposed" was affirmative action by the defendants to prevent interruption of coal production pending final adjudication of the controversy. Coercive sanctions sufficient to accomplish this end were justified. From the record we have no doubt but that a conditional civil sanction would bring about at least as prompt and unequivocal obedience to the court's order as would criminal punishment for past disobedience. And this would accomplish a vindication of the District Court's authority against a continuing defiance. Consequently, we do not believe that the accomplishment of the justifiable "end proposed" called for summary criminal punishment designed to deter others from disobedience to court orders, or to avenge a public wrong as distinguished from coercive sanction.

In determining whether criminal punishment or coercive sanction should be employed in these proceedings, the question of intent—the motivation of the contumacy—becomes relevant. Difficult questions of law were presented by this case. It is plain that the defendants acted willfully for they knew that they were disobeying the court's order. But they appear to have believed in good faith, though erroneously, that they were acting within their legal rights. Many lawyers would have so advised them. This does not excuse their conduct; the whole situation emphasized the duty of testing the restraining order by orderly appeal instead of disobedience and open defiance. However, as this Court said in *Cooke* v. *United States,* 267 U. S. 517, 538, "the intention with which acts of

contempt have been committed must necessarily and properly have an important bearing on the degree of guilt and the penalty which should be imposed.

We think it significant that the conduct which was prohibited by the restraining order for violation of which these defendants have been punished for contempt is also punishable under the War Labor Disputes Act. That Act provides a maximum punishment of $5,000 fine and one year imprisonment for those who interfere with the operation of mines taken over by the United States. Had the defendants been tried under that statute, their punishment would have been limited thereby and in their trial they would have enjoyed all the constitutional safeguards of the Bill of Rights. Whatever constitutional safeguards are required in a summary contempt proceeding, whether it be for criminal punishment, or for the imposition of coercive sanction, we must be ever mindful of the danger of permitting punishment by contempt to be imposed for conduct which is identical with an offense defined and made punishable by statute. *In re Michael,* 326 U. S. 224, 226.[4]

The situation of grave emergency facing the country when the District Court acted called for the strongest measures—measures designed to produce quick and unqualified obedience of the court's order. If the $10,000 fine on defendant Lewis and the $3,500,000 fine on the

[4] See also *In re Debs,* 158 U. S. 564; *Gompers* v. *Buck Stove & Range Co.,* 221 U. S. 418; *Michaelson* v. *United States,* 266 U. S. 42; *Gompers* v. *United States,* 233 U. S. 604, 610, 611; *Ex parte Grossman,* 267 U. S. 87; *Ex parte Hudgings,* 249 U. S. 378, 383; *Blackmer* v. *United States,* 284 U. S. 421, 440; *Nye* v. *United States,* 313 U. S. 33; *Bridges* v. *California,* 314 U. S. 252, 264; *Pendergast* v. *United States,* 317 U. S. 412; *In re Bradley,* 318 U. S. 50. Frankfurter and Landis, *Power of Congress Over Procedure in Criminal Contempts in Inferior Federal Courts,* 37 Harv. L. Rev. 1010, 1043–1045 (1924) and authorities there collected; Nelles and King, *Contempt by Publications in the United States,* 28 Col. L. Rev. 401 (1928).

defendant union be treated as coercive fines, they would not necessarily be excessive. For they would then be payable only if the defendants continued to disobey the court's order. Defendants could then avoid payment by purging themselves. The price of continued disobedience would be the amount of the fines. See *Doyle* v. *London Guaranty Co., supra,* 602. The fines would be fixed so as to produce the greatest likelihood that they would compel obedience.

We should modify the District Court's decrees by making the entire amount of the fines payable conditionally. On December 7, 1946, Mr. Lewis directed the mine workers to return to work until midnight, March 31, 1947. But, so far as we are aware, the notice which purported to terminate the contract has not been withdrawn. Thus, there has been, at most, only a partial compliance with the temporary injunction.

Hence our judgment should provide that the defendants pay not merely a part of their respective fines as the Court provides, but the entire amount in the event that full and unconditional obedience to the temporary injunction, including withdrawal of the notice which purported to terminate the contract, is not had on or before March 31, 1947.

No. 759, etc.

To: The Chief Justice

From: Black, J.

Circulated: .....

Recirculated: .....

4th Recirc. 3/4/47

Changes mkd. pp. 3, 6.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner, 759 *v.* United Mine Workers of America, an Unincorporated Association.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.
The United States of America, Petitioner, 760 *v.* John L. Lewis, Individually and as President of the United Mine Workers of America.	
United Mine Workers of America, an Unincorporated Association, Petitioner, 781 *v.* The United States of America.	
John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 782 *v.* The United States of America.	
United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 811 *v.* The United States of America.	

[March —, 1947.]

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS agrees, concurring in part and dissenting in part.

For the reasons given in the Court's opinion, we agree that neither the Norris-LaGuardia Act nor the War

Labor Disputes Act barred the Government from obtaining the injunction it sought in these proceedings. The "labor disputes" with which Congress was concerned in the Norris-LaGuardia Act were those between private employers and their employees. As to all such "labor disputes," the Act drastically limited the jurisdiction of federal courts; it barred relief by injunction except under very narrow circumstances, whether injunction be sought by private employers, the Government, or anyone else. But the attention of Congress was neither focused upon, nor did it purport to affect, "labor disputes" if such they can be called, between the Government and its own employees. There was never an intimation in the progress of the Act's passage that a labor dispute within the Act's meaning would arise because of claims against the Government asserted collectively by employees of the Interior, State, Justice, or any other Government department. Congress had never in its history provided a program for fixing wages, hours, and working conditions of its employees by collective bargaining. Working conditions of Government employees had not been the subject of collective bargaining, nor been settled as a result of labor disputes. It would require specific congressional language to persuade us that Congress intended to embark upon such a novel program or to treat the Government employer-employee relationship as giving rise to a "labor dispute" in the industrial sense.

We have no doubt that the miners became Government employees when the Government took over the mines. It assumed complete control over the mines and their operation. The fact that it utilized the managerial force of the companies does not detract from the Government's complete authority. For whatever control Government agents delegated to the private managers, those agents had full power to take away and exercise themselves. If we thought, as is here contended, that the

Government's possession and operation of the mines were not genuine, but merely pretended, I should then say that the Norris-LaGuardia Act barred these proceedings. For anything less than full and complete Government operation would make this proceeding the equivalent of the Government's seeking an injunction for the benefit of the private employers. We think the Norris-LaGuardia Act prohibits that. But as we read the War Labor Disputes Act and the President's order taking over the mines against the background of circumstances which prompted both, we think that the Government operates these mines; and those who work in them, during the period of complete Government control, are employees of the Government.

Since the Norris-LaGuardia Act is inapplicable, we agree that the District Court had power in these proceedings to enter orders necessary to protect the Government against an invasion of the rights it asserted, pending adjudication of the controversy its complaint presented to the Court. We agree that the court had power summarily to coerce obedience to those orders and to subject defendants to such conditional sanctions as were necessary to compel obedience. And we agree that in such civil contempt proceedings to compel obedience, it was not necessary for the court to abide by all the procedural safeguards which surround trials for crime. Without such coercive powers, courts could not settle the cases and controversies before them. Courts could not administer justice if persons were left free pending adjudication to engage in conduct which would either immediately interrupt the judicial proceedings or so change the *status quo* of the subject matter of a controversy that no effective judgment could be rendered. Disorder in the courtroom, or so near to it as to interrupt a trial, and disobedience of an affirmative court order, are typical examples of offenses which must necessarily be dealt with summarily. To remove such immediate obstacles to orderly judicial

proceedings, courts must have power to act immediately. In recognition of this fact, the contempt power came into existence.[1] This power is of ancient lineage,[2] has always been exercised by our courts, and has the express recognition of Congress under the name of contempt. Rev. Stat. § 725, 28 U. S. C. § 385. Where the court exercises such coercive power, however, for the purpose of compelling future obedience, those imprisoned "carry the keys of their prison in their own pockets," *In re Nevitt,* 117 F. 448, 461; by obedience to the court's valid order, they can end their confinement; and the court's comprehensive power under such a "civil contempt" proceeding ends when its order has been obeyed. *Gompers* v. *Buck Stove and Range Co.,* 221 U. S. 417, 441, 445. See also *Doyle*

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[1] See *e. g., Cooke* v. *United States,* 267 U. S. 517, 534–537; Fox, Contempt of Court (1927) B; Beale, *Contempt of Court,* 21 Harv. L. Rev. (1908) 161, 169–170.

[2] "As early as the time of Richard III it was said that the chancellor of England compels a party against whom an order is issued by imprisonment; [2 R. III, 9, pl. 22] and a little later it was said in the chancery that 'a decree does not bind the right, but only binds the person to obedience, so that if the party will not obey, then the chancellor may commit him to prison till he obey, and that it is all the chancellor can do.' [27 H. VIII, 15.] This imprisonment was by no means a punishment, but was merely to secure obedience to the writ of the king. Down to within a century it was very doubtful if the chancellor could under any circumstances inflict punishment for disobedience of a decree. If the decree commanded the defendant to transfer property, the chancellor acquired power as early as the sixteenth century to sequester the property as security for performance; but if the decree were for the doing of any other act, or were a decree for an injunction, the chancellor was helpless if he could not compel obedience by imprisonment. . . . In any case the contempt of a defendant who had violated a decree in chancery could be purged by doing the act commanded and paying costs; or, if his disobedience had been the violation of a negative injunction, he could purge himself of contempt by undoing what he had done and paying costs." Beale, *Contempt of Court,* 21 Harvard Law Rev. (1908) 161, 169–170.

v. *London Guaranty Co.*, 204 U. S. 599, 607. The District Court did not enter such an order here. But this Court has modified the District Court decree to provide as part of the judgment such a conditional sanction in the form of a conditional fine. We agree with the Court's decision in this respect.[3]

The *Gompers* decision and many others have pointed out that the object of such comprehensive contempt proceedings is not to punish for an offense against the public, but to compel obedience to valid court orders. Yet the decision of this Court also approves unconditional fines as criminal punishment for past disobedience. We cannot agree to this aspect of the Court's judgment. At a very early date this Court declared, and recently it has reiterated, that in contempt proceedings courts should never exercise more than "the least possible power adequate to the end proposed." *Anderson* v. *Dunn*, 6 Wheat. 204, 231; *In re Michael*, 326 U. S. 224, 227.

It may be that in certain circumstances criminal contempt culminating in unconditional punishment for past disobedience might constitute an exercise of "the least possible power adequate to the end proposed." Without

[3] "In the case of contempt in violating an order of decree of a court of equity, we have an entirely different problem. . . . If the court limits itself to its proper action in such cases, namely, process of imprisonment merely to prevent the violation of the decree, and if the imprisonment is to cease as soon as the danger of disobedience has ceased, the jury, which is thought necessary to pass upon the desert of a defendant to suffer punishment, is not required. . . . So far, therefore, as popular clamor demands a trial by jury in such case, it seems to go beyond the requirements of justice; and the statutes which commit the trial of questions of fact in such process to a jury are not likely to prove satisfactory. This statement, however, is to be limited to cases of merely preventive imprisonment. Where the court inflicts a definite term of imprisonment by way of punishment for the violation of its orders, the case does not differ, it would seem, from the case of ciminal contempt out of court, and regular process and trial by jury should be required." *Id.* 174–175.

considering the constitutional requisites of such criminal punishment, we believe the application of it improper here. The imposition of criminal punishment here was an exercise of far more than "the least possible power adequate to the end proposed." For here the great and legitimate "end proposed" was affirmative action by the defendants to prevent interruption of coal production pending final adjudication of the controversy. Coercive sanctions sufficient to accomplish this end were justified. From the record we have no doubt but that a condiitonal civil sanction would bring about at least as prompt and unequivocal obedience to the court's order as would criminal punishment for past disobedience. And this would accomplish a vindication of the District Court's authority against a continuing defiance. Consequently, we do not believe that the accomplishment of the justifiable "end proposed" called for summary criminal punishment designed to deter others from disobedience to court orders, to avenge a public wrong, or to compensate the Government for the damages that it suffered.

In determining whether criminal punishment or coercive sanction should be employed in these proceedings, the question of intent—the motivation of the ~~controversy~~ contumacy—becomes relevant. Difficult questions of law were presented by this case. It is plain that the defendants acted willfully for they knew that they were disobeying the court's order. But they appear to have believed in good faith, though erroneously that they were acting within their legal rights. Many lawyers would have so advised them. This does not excuse their conduct; the whole situation emphasized the duty of testing the restraining order by orderly appeal instead of disobedience and open defiance. However, As this Court said in *Cooke* v. *United States*, 267 U. S. 517, 538, "the intention with which acts of contempt have been committed must necessarily and properly have an important bearing on the degree of guilt and the penalty which should be imposed."

We think it significant that the conduct which was prohibited by the restraining order for violation of which these defendants have been punished for contempt is also punishable by the War Labor Disputes Act. That Act provides a maximum punishment of $5,000 fine and one year imprisonment for those who interfere with the operation of mines taken over by the United States. Had the defendants been tried under that statute, their punishment would have been limited thereby and in their trial they would have enjoyed all the constitutional safeguards of the Bill of Rights. Whatever constitutional safeguards are required in a summary contempt proceeding, whether it be for criminal punishment, or for the imposition of coercive sanction, we must be ever mindful of the danger of permitting punishment by contempt to be imposed for conduct which is identical with an offense defined and made punishable by statute. *In re Michael,* 326 U. S. 224, 226.[4]

The situation of grave emergency facing the country when the District Court acted called for the strongest measures—measures designed to produce quick and unqualified obedience of the court's order. If the $10,000 fine on defendant Lewis and the $3,500,000 fine on the defendant union be treated as coercive fines, they would not necessarily be excessive. For they would then be payable only if the defendants continued to disobey the court's order. Defendants could then avoid payment by

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[4] See also *In re Debs,* 158 U. S. 564; *Gompers* v. *Buck Stove & Range Co.,* 221 U. S. 418; *Michaelson* v. *United States,* 266 U. S. 42; *Gompers* v. *United States,* 233 U. S. 604, 610, 611; *Ex parte Grossman,* 267 U. S. 87; *Ex parte Hudgings,* 249 U. S. 378, 383; *Blackmer* v. *United States,* 284 U. S. 421, 440; *Nye* v. *United States,* 313 U. S. 33; *Bridges* v. *California,* 314 U. S. 252, 264; *Pendergast* v. *United States,* 317 U. S. 412; *In re Bradley,* 318 U. S. 50. Frankfurter and Landis, *Power of Congress Over Procedure in Criminal Contempts in Inferior Federal Courts,* 37 Harv. L. Rev. 1010, 1043–1045 (1924) and authorities there collected; Nelles and King, *Contempt by Publications in the United States,* 28 Col. L. Rev. 401 (1928).

purging themselves. The price of continued disobedience would be the amount of the fines. The fines would be fixed so as to produce the greatest likelihood that they would compel obedience.

We should modify those judgments by making the entire amount of the fines payable conditionally. On December 7, 1946, Mr. Lewis directed the mine workers to return to work until midnight, March 31, 1947. But, so far as we are aware, the notice which purported to terminate the contract has not been withdrawn. Thus there has been, at most, only a partial compliance with the temporary injunction.

Hence our judgment should provide that the defendants pay not merely a part of their respective fines as the Court provides, but the entire amount in the event that full and unconditional obedience to the temporary injunction, including withdrawal of the notice which purported to terminate the contract, is not had on or before March 31, 1947.

To: The C. Chief Justice

From: Black, J.

Circulated: .....

Recirculated: .....

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner,
759 *v.*
United Mine Workers of America, an Unincorporated Association.

The United States of America, Petitioner,
760 *v.*
John L. Lewis, Individually and as President of the United Mine Workers of America.

United Mine Workers of America, an Unincorporated Association, Petitioner,
781 *v.*
The United States of America.

John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
782 *v.*
The United States of America.

United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
811 *v.*
The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 6, 1947.]

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS, concurring in part and dissenting in part.

For the reasons given in the Court's opinion, we agree that neither the Norris-LaGuardia Act nor the War

Labor Disputes Act barred the Government from obtaining the injunction it sought in these proceedings. The "labor disputes" with which Congress was concerned in the Norris-LaGuardia Act were those between private employers and their employees. As to all such "labor disputes," the Act drastically limited the jurisdiction of federal courts; it barred relief by injunction except under very narrow circumstances, whether injunction be sought by private employers, the Government, or anyone else. But the attention of Congress was neither focused upon, nor did it purport to affect, "labor disputes", if such they can be called, between the Government and its own employees. There was never an intimation in the progress of the Act's passage that a labor dispute within the Act's meaning would arise because of claims against the Government asserted collectively by employees of the Interior, State, Justice, or any other Government department. Congress had never in its history provided a program for fixing wages, hours, and working conditions of its employees by collective bargaining. Working conditions of Government employees had not been the subject of collective bargaining, nor been settled as a result of labor disputes. It would require specific congressional language to persuade us that Congress intended to embark upon such a novel program or to treat the Government employer-employee relationship as giving rise to a "labor dispute" in the industrial sense.

We have no doubt that the miners became Government employees when the Government took over the mines. It assumed complete control over the mines and their operation. The fact that it utilized the managerial forces of the private owners does not detract from the Government's complete authority. For whatever control Government agents delegated to the private managers, those agents had full power to take away and exercise themselves. If we thought, as is here contended, that the

Government's possession and operation of the mines were not genuine, but merely pretended, we should then say that the Norris-LaGuardia Act barred these proceedings. For anything less than full and complete Government operation for its own account [1] would make this proceeding the equivalent of the Government's seeking an injunction for the benefit of the private employers. We think the Norris-LaGuardia Act prohibits that. But as we read the War Labor Disputes Act and the President's order taking over the mines against the background of circumstances which prompted both, we think, apparently contrary to the implications of the regulations, that the Government operates these mines for its own account as a matter of law; [2] and those who work in them, during the period of complete Government control, are employees of the Government.

Since the Norris-LaGuardia Act is inapplicable, we agree that the District Court had power in these proceed-

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[1] An analogy is a taking by the Government of a leasehold interest in property in whole or in part. See *United States* v. *Petty Motor Co.*, 327 U. S. 372.

[2] Section 9 of the Selective Service Act, 54 Stat. 892, 50 U. S. C. App. § 309, granted power "to take immediate possession of any . . . plant . . . and through the appropriate branch, bureau, or department of the Army or Navy to manufacture therein such product . . . as may be required. . . ." And it provides for payment: "The compensation to be paid . . . as rental for use of any manufacturing plant while used by the United States, shall be fair and just. . . ." Section 3 of the War Labor Disputes Act, 57 Stat. 164, 50 U. S. C. App. Supp. V § 309, extended this authority to include power to take immediate possession of any "mine . . . equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort . . . whenever the President finds . . . and proclaims that there is an interruption of the operation of such . . . mine . . . as a result of a strike or other labor disturbance . . . and that the exercise of such power and authority is necessary to insure the operation of such . . . mine . . . in the interest of the war effort."

ings to enter orders necessary to protect the Government against an invasion of the rights it asserted, pending adjudication of the controversy its complaint presented to the court. It is therefore unnecessary for us to reach the question of whether the District Court also had power to enter these orders under the doctrine of *United States* v. *Shipp*, 203 U. S. 263. We agree that the court had power summarily to coerce obedience to those orders and to subject defendants to such conditional sanctions as were necessary to compel obedience. And we agree that in such civil contempt proceedings to compel obedience, it was not necessary for the court to abide by all the procedural safeguards which surround trials for crime. Without such coercive powers, courts could not settle the cases and controversies before them. Courts could not administer justice if persons were left free pending adjudication to engage in conduct which would either immediately interrupt the judicial proceedings or so change the *status quo* of the subject matter of a controversy that no effective judgment could be rendered. Disorder in the courtroom, or so near to it as to interrupt a trial, and disobedience of an affirmative court order, are typical examples of offenses which must necessarily be dealt with summarily. To remove such imminent interference with orderly judicial proceedings, courts must have power to act immediately. In recognition of this fact, the contempt power came into existence.[3] This power is of ancient lineage,[4]

[3] See *e. g.*, *Cooke* v. *United States*, 267 U. S. 517, 534–537; Fox, Contempt of Court (1927) B; Beale, *Contempt of Court*, 21 Harv. L. Rev. (1908) 161, 169–170.

[4] "As early as the time of Richard III it was said that the chancellor of England compels a party against whom an order is issued by imprisonment; [2 R. III, 9, pl. 22] and a little later it was said in the chancery that 'a decree does not bind the right, but only binds the person to obedience, so that if the party will not obey, then the chancellor may commit him to prison till he obey, and that it is all the chancellor can do.' [27 H. VIII, 15.] This imprisonment was

has always been exercised by our courts, and has the express recognition of Congress under the name of contempt. Rev. Stat. § 725, 28 U. S. C. § 385. Where the court exercises such coercive power, however, for the purpose of compelling future obedience, those imprisoned "carry the keys of their prison in their own pockets," *In re Nevitt,* 117 F. 448, 461; by obedience to the court's valid order, they can end their confinement; and the court's coercive power in such a "civil contempt" proceeding ends when its order has been obeyed. *Gompers* v. *Buck Stove and Range Co.,* 221 U. S. 417, 441, 445. See also *Doyle* v. *London Guaranty Co.,* 204 U. S. 599, 607. The District Court did not enter a conditional decree here. But this Court has modified the District Court's decree to provide as part of the judgment such a coercive sanction in the form of a conditional fine. We agree with the Court's decision in this respect.[5]

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by no means a punishment, but was merely to secure obedience to the writ of the king. Down to within a century it was very doubtful if the chancellor could under any circumstances inflict punishment for disobedience of a decree. If the decree commanded the defendant to transfer property, the chancellor acquired power as early as the sixteenth century to sequester the property as security for performance; but if the decree were for the doing of any other act, or were a decree for an injunction, the chancellor was helpless if he could not compel obedience by imprisonment. . . . In any case the contempt of a defendant who had violated a decree in chancery could be purged by doing the act commanded and paying costs; or, if his disobedience had been the violation of a negative injunction, he could purge himself of contempt by undoing what he had done and paying costs." Beale, *supra.*

[5] "In the case of contempt in violating an order or decree of a court of equity, we have an entirely different problem. . . . If the court limits itself to its proper action in such cases, namely, process of imprisonment merely to prevent the violation of the decree, and if the imprisonment is to cease as soon as the danger of disobedience has ceased, the jury, which is thought necessary to pass upon the desert of a defendant to suffer punishment, is not required. . . . So far,

The *Gompers* decision and many others have pointed out that the object of such coercive contempt proceedings is not to punish for an offense against the public, but to compel obedience to valid court orders. Yet the decision of this Court also approves unconditional fines as criminal punishment for past disobedience. We cannot agree to this aspect of the Court's judgment. At a very early date this Court declared, and recently it has reiterated, that in contempt proceedings courts should never exercise more than "the least possible power adequate to the end proposed." *Anderson* v. *Dunn,* 6 Wheat. 204, 231; *In re Michael,* 326 U. S. 224, 227.

In certain circumstances criminal contempt culminating in unconditional punishment for past disobedience may well constitute an exercise of "the least possible power adequate to the end proposed." Thus in situations which would warrant only a use of coercive sanctions in the first instance, criminal punishment might be appropriate at a later stage if the defendant should persist in disobeying the order of the court. Without considering the constitutional requisites of such criminal punishment, we believe the application of it inappropriate and improper here. The imposition of criminal punishment here was an exercise of far more than "the least possible power adequate to the end proposed." For here the great and legitimate "end proposed" was affirmative action by the defendants to prevent interruption of coal production pending final adjudication of the controversy. Coercive sanctions suffi-

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therefore, as popular clamor demands a trial by jury in such case, it seems to go beyond the requirements of justice; and the statutes which commit the trial of questions of fact in such process to a jury are not likely permanently to prove satisfactory. This statement, however, is to be limited to cases of merely preventive imprisonment. Where the court inflicts a definite term of imprisonment by way of punishment for the violation of its orders, the case does not differ, it would seem, from the case of criminal contempt out of court, and regular process and trial by jury should be required." *Id.* 173–174.

cient to accomplish this end were justified. From the record we have no doubt but that a conditional civil sanction would bring about at least as prompt and unequivocal obedience to the court's order as would criminal punishment for past disobedience. And this would accomplish a vindication of the District Court's authority against a continuing defiance. Consequently, we do not believe that the accomplishment of the justifiable "end proposed" called for summary criminal punishment designed to deter others from disobedience to court orders, or to avenge a public wrong, as distinguished from coercive sanction. And for the reasons stated by MR. JUSTICE RUTLEDGE, we think that the flat $700,000 criminal fine against the defendant union is excessive by constitutional and statutory standards.

In determining whether criminal punishment or coercive sanction should be employed in these proceedings, the question of intent—the motivation of the contumacy—becomes relevant. Difficult questions of law were presented by this case. It is plain that the defendants acted willfully for they knew that they were disobeying the court's order. But they appear to have believed in good faith, though erroneously, that they were acting within their legal rights. Many lawyers would have so advised them. This does not excuse their conduct; the whole situation emphasized the duty of testing the restraining order by orderly appeal instead of disobedience and open defiance. However, as this Court said in *Cooke* v. *United States*, 267 U. S. 517, 538, "the intention with which acts of contempt have been committed must necessarily and properly have an important bearing on the degree of guilt and the penalty which should be imposed."

We think it significant that the conduct which was prohibited by the restraining order for violation of which these defendants have been punished for contempt is also punishable under the War Labor Disputes Act. That Act

provides a maximum punishment of $5,000 fine and one year imprisonment for those who interfere with the operation of mines taken over by the United States. Had the defendants been tried under that statute, their punishment would have been limited thereby and in their trial they would have enjoyed all the constitutional safeguards of the Bill of Rights. Whatever constitutional safeguards are required in a summary contempt proceeding, whether it be for criminal punishment, or for the imposition of coercive sanction, we must be ever mindful of the danger of permitting punishment by contempt to be imposed for conduct which is identical with an offense defined and made punishable by statute. *In re Michael,* 326 U. S. 224, 226.[6]

The situation of grave emergency facing the country when the District Court acted called for the strongest measures—measures designed to produce quick and unqualified obedience of the court's order. If the $10,000 fine on defendant Lewis and the $3,500,000 fine on the defendant union be treated as coercive fines, they would not necessarily be excessive. For they would then be payable only if the defendants continued to disobey the court's order. Defendants could then avoid payment by purging themselves. The price of continued disobedience would be the amount of the fines. See *Doyle* v. *London Guaranty Co., supra,* 602. The fines would be fixed so as

[6] See also *In re Debs,* 158 U. S. 564; *Gompers* v. *Buck Stove & Range Co.,* 221 U. S. 418; *Michaelson* v. *United States,* 266 U. S. 42; *Gompers* v. *United States,* 233 U. S. 604, 610, 611; *Ex parte Grossman,* 267 U. S. 87; *Ex parte Hudgings,* 249 U. S. 378, 383; *Blackmer* v. *United States,* 284 U. S. 421, 440; *Nye* v. *United States,* 313 U. S. 33; *Bridges* v. *California,* 314 U. S. 252, 264; *Pendergast* v. *United States,* 317 U. S. 412; *In re Bradley,* 318 U. S. 50. Frankfurter and Landis, *Power of Congress Over Procedure in Criminal Contempts in Inferior Federal Courts,* 37 Harv. L. Rev. 1010, 1043–1045 (1924) and authorities there collected; Nelles and King, *Contempt by Publications in the United States,* 28 Col. L. Rev. 401 (1928).

to produce the greatest likelihood that they would compel obedience.

We should modify the District Court's decrees by making the entire amount of the fines payable conditionally. On December 7, 1946, Mr. Lewis directed the mine workers to return to work until midnight, March 31, 1947. But, so far as we are aware, the notice which purported to terminate the contract has not been withdrawn. Thus, there has been, at most, only a partial compliance with the temporary injunction.

Hence our judgment should provide that the defendants pay their respective fines only in the event that full and unconditional obedience to the temporary injunction, including withdrawal of the notice which purported to terminate the contract, is not had on or before a day certain.

March 5, 1947

MEMORANDUM FOR THE CONFERENCE

In re No. 759, etc.

We are changing the last three sentences of the paragraph ending on page 3 of our opinion to read as follows:

> For anything less than full and complete Government operation for its own account 1/ would make this proceeding the equivalent of the Government's seeking an injunction for the benefit of the private employers. We think the Norris-LaGuardia Act prohibits that. But as we read the War Labor Disputes Act and the President's order taking over the mines against the background of circumstances which prompted both, we think, apparently contrary to the implications of the regulations, that the Government operates these mines for its own account as a matter of law; 2/ and those who work in them, during the period of complete Government control, are employees of the Government.

Then the new footnote 2 will read:

> 2/ Section 9 of the Selective Service Act, 54 Stat. 892, 50 U.S.C. App. §309, granted power "to take immediate possession of any...plant...and through the appropriate branch, bureau, or department of the Army or Navy to manufacture therein such product ...as may be required...." And it provides for payment: "The compensation to be paid...as rental for use of any manufacturing plant while used by the United States shall be fair and just...." Section 3 of the War Labor Disputes Act, 57 Stat. 164, 50 U.S.C. App. Supp. V §309, extended this authority to include power to take immediate possession of "any mine...equipped for the manufacture, production or mining of any article or materials which may be required for the war effort...whenever the President finds...and proclaims that there is an interruption in the operation of such...mine...as a result of a strike or other labor disturbance...and that the exercise of such power and authority is necessary to insure the operation of such...mine...in the interest of the war effort.

On page 6, following the quoted matter in the second line, we are inserting the following sentence:

> Thus in situations which would warrant only a use of coercive sanctions in the first instance, criminal punishment might be appropriate at a later stage if the defendant should persist in disobeying the order of the court.

H.L.B. & W.O.D.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner, 759 *v.* United Mine Workers of America, an Unincorporated Association.	
The United States of America, Petitioner, 760 *v.* John L. Lewis, Individually and as President of the United Mine Workers of America.	
United Mine Workers of America, an Unincorporated Association, Petitioner, 781 *v.* The United States of America.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.
John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 782 *v.* The United States of America.	
United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 811 *v.* The United States of America.	

[March —, 1947.]

MR. JUSTICE BLACK concurring in part and dissenting in part.

For the reasons given in the Court's opinion, I agree that neither the Norris-LaGuardia Act nor the War

Labor Disputes Act barred the Government from obtaining the injunction it sought in these proceedings. The "labor disputes" with which Congress was concerned in the Norris-LaGuardia Act were those between private employers and their employees. As to all such "labor disputes," the Act drastically limited the jurisdiction of federal courts; it barred relief by injunction except under very narrow circumstances, whether injunction be sought by private employers, the Government, or anyone else. But the attention of Congress was neither focused upon, nor did it purport to affect "labor disputes," if such they can be called, between the Government and its own employees. There was never an intimation in the progress of the Act's passage that a labor dispute within the Act's meaning would arise because of claims against the Government asserted collectively by employees of the Interior, State, Justice, or any other Government department. Congress had never in its history provided a program for fixing wages, hours, and working conditions of its employees by collective bargaining. Working conditions of Government employees had not been the subject of collective bargaining, nor been settled as a result of labor disputes. It would require specific congressional language to persuade me that Congress intended to embark upon such a novel program or to treat the Government employer-employee relationship as giving rise to a "labor dispute" in the industrial sense.

I have no doubt that the miners became Government employees when the Government took over the mines. It assumed complete control over the mines and their operation. The fact that it utilized the managerial force of the companies does not detract from the Government's complete authority. For whatever control Government agents delegated to the private managers, those agents had full power to take away and exercise themselves. If I thought, as is here contended, that the

Government's possession and operation of the mines were not genuine, but merely pretended, I should then say that the Norris-LaGuardia Act barred these proceedings. For anything less than full and complete Government operation would make this proceeding the equivalent of the Government's seeking an injunction for the benefit of the private employers. I think the Norris-LaGuardia Act prohibits that. But as I read the War Labor Disputes Act and the President's order taking over the mines, the Government operates these mines, and those who work in them during the period of complete Government control are employees of the Government.

I further agree with the Court that the District Court had power in these proceedings to enter orders necessary to protect the Government against an invasion of the rights it asserted pending adjudication of the controversy its complaint presented to the Court. I agree that the Court had power to coerce obedience to those orders, so long as it proceeded in accordance with its statutory and constitutional authority in this respect. To this end, it had power summarily to enter decrees against those who defied its valid orders and to subject them to such conditional sanctions as were necessary to compel obedience to those orders. This power of courts is of ancient lineage,[1]

[1] "As early as the time of Richard III it was said that the chancellor of England compels a party against whom an order is issued by imprisonment; [2 R. III, 9, pl. 22] and a little later it was said in the chancery that 'a decree does not bind the right, but only binds the person to obedience, so that if the party will not obey, then the chancellor may commit him to prison till he obey, and that it is all the chancellor can do.' [27 H. VIII, 15.] This imprisonment was by no means a punishment, but was merely to secure obedience to the writ of the king. Down to within a century it was very doubtful if the chancellor could under any circumstances inflict punishment for disobedience of a decree. If the decree commanded the defendant to transfer property, the chancellor acquired power as early as the sixteenth century to sequester the property as security for performance;

has always been exercised by our courts, and has the express recognition of Congress under the name of contempt. 35 Stat. 1088, 1113; 18 U. S. C. 241. Where such a coercive order is entered, a person imprisoned "carries the keys of his prison in his own pocket"; by obedience to the court's valid order he can end his confinement; and the court's coercive power under such a "civil contempt" proceeding ends when its order has been obeyed. *Gompers* v. *Buck Stove & Range Co.*, 221 U. S. 417, 441–445. If the court's decree had been framed in these terms, I should sustain it.[2]

But as the *Gompers* decision and many others have pointed out, the object of such a coercive contempt proceeding is not to punish for an offense against the public,

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but if the decree were for the doing of any other act, or were a decree for an injunction, the chancellor was helpless if he could not compel obedience by imprisonment. . . . In any case the contempt of a defendant who had violated a decree in chancery could be purged by doing the act commanded and paying costs; or, if his disobedience had been the violation of a negative injunction, he could purge himself of contempt by undoing what he had done and paying costs." Beale, *Contempt of Court*, 21 Harvard Law Rev. (1908) 161, 169–170.

[2] "In the case of contempt in violating an order or decree of a court of equity, we have an entirely different problem. . . . If the court limits itself to its proper action in such cases, namely, process of imprisonment merely to prevent the violation of the decree, and if the imprisonment is to cease as soon as the danger of disobedience has ceased, the jury, which is thought necessary to pass upon the desert of a defendant to suffer punishment, is not required. . . . So far, therefore, as popular clamor demands a trial by jury in such case, it seems to go beyond the requirements of justice; and the statutes which commit the trial of questions of fact in such process to a jury are not likely to prove satisfactory. This statement, however, is to be limited to cases of merely preventive imprisonment. Where the court inflicts a definite term of imprisonment by way of punishment for the violation of its orders, the case does not differ, it would seem, from the case of ciminal contempt out of court, and regular process and trial by jury should be required." *Id.* 174–175.

but to compel obedience to valid court orders. Without such coercive powers, courts could not perform their high governmental function, which is to settle cases and controversies before them in accordance with the rules of law. Courts could not administer justice, if persons were left free pending adjudication to engage in conduct which would either immediately interrupt the judicial proceedings or so change the *status quo* of the subject matter of a controversy that no effective judgment could be rendered. To remove such immediate obstacles to orderly judicial proceedings, courts must have power to act immediately. In recognition of this fact, the contempt power came into existence.[3] Disorders in the courtroom, or so near to it as to interrupt a trial, and disobedience to an affirmative court order, are typical examples of things that must necessarily be dealt with summarily. But this summary coercive power, under which a court may, to prevent an immediately threatened evil, send a person to jail without observance of the procedural safeguards of the Bill of Rights, is exceedingly narrow. At a very early date this Court declared, and recently it has reiterated, that it is "the least possible power adequate to the end proposed." *Anderson* v. *Dunn*, 6 Wheat. 204, 231; *In re Michael*, 326 U. S. 224, 227. And that end in this case, so far as the court's coercive power is the basis of the challenged decree, is obedience to the court's order. It is neither to deter others from disobedience to court orders, to avenge a public wrong, nor to compensate the Government for the damages it has suffered.

It may be that the defendants' violation of the court's order constituted an offense for which they should be criminally punished. If so, they can be indicted and tried for it in a proceeding in which they are afforded all the safeguards of the Bill of Rights. For the Government's

[3] See *e. g.*, *Cooke* v. *United States*, 267 U. S. 517, 534–537; Fox, Contempt of Court (1927) B.

desire to punish these defendants criminally for a past offense was not the type of emergency which warranted immediate and summary contempt proceedings. But the urgent necessity for obedience to the court's order was an emergency which warranted summary coercive proceedings. With the specific reservation that I think such proceedings may be employed solely to enforce obedience, and not to impose unconditional criminal punishment, I agree with the following statement of Mr. Justice Holmes concerning a court's contempt powers: "I would go as far as any man in favor of the sharpest and most summary enforcement of order in Court and obedience to decrees, but when there is no need for immediate action, contempts are like any other breach of law and should be dealt with as the law deals with other illegal acts. Action like the present in my opinion is wholly unwarranted by even color of law." See dissenting opinion, Holmes, J., *Toledo Newspaper Publishing Co.*, 247 U. S. 402, 425.

There was here an undoubted power in the District Court to render the strongest kind of coercive conditional decree necessary to enforce obedience to its order. For there was a grave and imminent emergency which disobedience to the court's order would aggravate. But the District Court focused its attention, not on enforcing obedience to its order, but on summarily imposing criminal punishment and awarding civil damages to the Government.[4] Defendants objected to the absence of Consti-

omission

[4] The District Court included in the fines imposed upon defendants an award of compensatory civil damages. Although the Court does not specifically reverse the judgment for this reason, it apparently does not consider the modified decree which it approves to include these elements. Nor do I think a judgment including compensatory damages could be affirmed in this case for two reasons: (1) If the Government was injured by defendants' allegedly illegal conduct, it could have pursued its remedy at law to recover damages without interfering with the Court's enforcement of its decree coercing obedience to its order. To collect compensatory damages in this summary

tutional safeguards in the criminal proceedings from the time of their filing their motion to discharge the rule to show cause and throughout the proceeding. On their first appearance in response to the rule to show cause they stated one ground of their motion to discharge the rule to be that "since the action was one for criminal contempt . . . the observance of all rules of criminal procedure is required." In support of this motion they cited decisions of this Court which held that criminal contempt proceedings must be surrounded by protections afforded by the Bill of Rights. *Gompers* v. *Buck Stove & Range Co.*, 221 U. S. 418; *Michaelson* v. *United States*, 266 U. S. 42. This ground of the motion to discharge the rule was argued to the court. Defendants insisted that no lawful conviction

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proceeding would violate statutory and procedural requirements governing civil trials, including the Seventh Amendment's guarantee of a jury trial in civil actions. We have declared and many times reaffirmed "that whenever a court of law is competent to take cognizance of a right, and has power to proceed to a judgment which affords a plain, adequate, and complete remedy, without the aid of a court of equity, the plaintiff must proceed at law, because the defendant has a constitutional right to a trial by jury." *Hipp* v. *Babin*, 19 How. 271, 278. See also *Cates* v. *Allen*, 149 U. S. 451, 459; *Lewis* v. *Cocks*, 23 Wall. 436, 470; *Killian* v. *Ebbingham*, 110 U. S. 568, 573; *Whitehead* v. *Shattuck*, 138 U. S. 146, 151; *Guaranty Trust Co.* v. *York*, 326 U. S. 99, 105. Even in those cases where courts of equity have been permitted to award compensatory damages for alleged wrongful conduct which those courts have restrained, award of damages should not be made until a determination has been had that the conduct restrained is wrongful. *Cf. Leman* v. *Kentler-Arnold Hinge Last Co.*, 284 U. S. 448, 455–456; *Gompers* v. *Buck Stove & Range Co.*, 221 U. S. 417, 443–444; *Worden* v. *Searls*, 121 U. S. 14; *Parker* v. *United States*, 126 F. 2d 370, 380; *Judelsohn* v. *Black*, 64 F. 2d 116; *Norstrom* v. *Wohl*, 41 F. 2d 910, 914. See also *Public Service Commission* v. *Brashear Freight Lines*, 312 U. S. 621, 629. In this case there has as yet been no final or even preliminary determination, here or in the District Court, ~~prior to the citation for contempt~~ that the defendants' conduct calling the strike was wrongful.

could be had unless they were allowed to plead to a proper charge. And still insisting that they had a right to plead and be tried as in a criminal case, after their motion was denied, they pleaded not guilty. ~~When~~ the Government's first witness testified, and after the Government had rested its case, defendants repeated this contention. It is also significant that in the first few minutes of the hearing on the rule to show cause, defendants declined to waive a jury trial. They never did waive it. The Government's answer to these contentions was that no indictment was required and that the privilege of trial by jury was limited to an "advisory jury." The defendants therefore objected throughout to being tried for crime in a summary proceeding. And in their petition for certiorari they specifically asked this Court to determine whether it was "mandatory in these cases to have a trial by jury."

I believe that the defendants were unlawfully deprived of statutory and constitutional safeguards in this summary imposition of unconditional criminal punishment. It is highly significant that the War Labor Disputes Act, 57 Stat. 16, 50 U. S. C. § 1506, 1508c, prohibited the same conduct of defendants which the order of the District Court restrained. And that Act made such conduct a crime punishable by a maximum fine of $5,000 and/or imprisonment for one year. In *In re Michael*, 326 U. S. 224, 227, we pointed out the danger of permitting punishment by contempt to be imposed for conduct which is identical with an offense defined and made punishable by statute. And we said that § 268 of the Judicial Code, 28 U. S. C. § 385, under which these defendants were cited for contempt, was not intended to grant such power to the courts. For we feared that the exercise of such power would make "too great inroads on the procedural safeguards of the Bill of Rights." *Id.* at 227. I do not think, for reasons already stated, that the War Labor Disputes Act restricted the District Court's power

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to enjoin defendants' conduct and coerce obedience to its order. When Congress makes the very same conduct which the court's order sought to prohibit punishable by $5,000 fine and/or one year imprisonment, I can see no reason why the same conduct should have been visited with greater criminal penalties than those Congress prescribed.

The statutes do not fix a punishment for the criminal contempt charged against these defendants. The Government's contention is that the amount of punishment can be fixed by the judge at his discretion although it concedes that this discretion may be limited by the Eighth Amendment's prohibition against cruel and unusual punishment. Congress has declared that "All offenses which may be punished by death or imprisonment for a term exceeding one year shall be deemed felonies." 18 U. S. C. § 541. The criminal contempt here charged is a felony within this definition. And it is no less a crime because it is designated as contempt, *Gompers* v. *United States*, 233 U. S. 604, 610, 611; *Michaelson* v. *United States*, 266 U. S. 42, 66–67; *Pendergast* v. *United States*, 317 U. S. 412, 417–418,[5] although decisions of this Court have, at times, indicated the contrary.[6] The Constitution provides that

[5] "Contempt of court is a specific criminal offense. The imposition of the fine was a judgment in a criminal case." *New Orleans* v. *The Steamship Co.*, 20 Wall. 387, —.

[6] *Myers* v. *United States*, 264 U. S. 95, 103, is said to have decided that contempt is not a criminal offense. But *Pendergast* v. *United States*, 317 U. S. 412, decided long after the *Myers* case, repeated the holding in the *Gompers* case that a criminal contempt is a crime. Moreover, the *Myers* statement which implied the contrary referred to the "power in all courts to enforce obedience, something they must possess in order properly to perform their functions." This type of contempt proceeding, intended only to coerce obedience, and not to vindicate the public justice, is not criminal. The definition of the type of contempt to which the court referred in the *Myers* case, therefore, makes its statement consistent with the *Gompers* and *Pendergast* cases. If the *Myers* holding was that a criminal contempt is not a

"The Trial of all Crimes . . . shall be by Jury", Article III, par. 2. The Sixth Amendment re-emphasized this guaranty by declaring that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . ." And the Fifth Amendment provides that "No persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." Unless these defendants are denied the benefit of this provision of the Fifth Amendment because the crime with which they were charged has been designated "contempt," they could not have been tried consistently with these constitutional requirements, without an indictment and without a jury. For I assume that a defendant charged with an infamous crime cannot waive an indictment, and that a crime is "infamous" if punishable by the undefined term of imprisonment which may follow conviction for criminal contempt. *Ex parte Nelson,* 114 U. S. 417; *United States* v. *Moreland,* 258 U. S. 433.

There is no longer any doubt that persons charged with criminal contempt for conduct not in the presence of the Court are within the protection of most of the procedural safeguards provided in the Bill of Rights. They must be clearly informed of the charge against them; they must have the assistance of counsel; they must be confronted with the prosecution witnesses; they must have the right to call witnesses in their own behalf and to cross-examine the witnesses against them; their guilt must be proved beyond a reasonable doubt; they cannot be punished twice for the same contempt offense; they cannot be compelled to be witnesses against themselves; and they are entitled

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crime even though punishable by a long term of imprisonment, it is wholly inconsistent not only with the *Gompers* and *Pendergast* cases, but also with the universal common understanding that people in the United States cannot be unconditionally sentenced to long terms in prison except as punishment for crime.

to be tried in accordance with due process of law; *Gompers* v. *Buck Stove & Range Co.*, 221 U. S. 418, 444; *Michaelson* v. *United States*, 266 U. S. 42, 66–67; *Cooke* v. *United States*, 267 U. S. 517, 534; *In re Bradley*, 318 U. S. 50; see also *McGovern* v. *United States*, 280 F. 73. These cases indicate this Court's increasing interest and solicitude in surrounding contempt proceedings involving out-of-court conduct with constitutional safeguards. See also *Ex parte Grossman*, 267 U. S. 87.

In the foregoing decisions this Court has strongly indicated that all the constitutional safeguards must be observed in out-of-court contempt charges, unless it be the provisions for indictment and trial by jury. As to indictment and jury trial, there are a number of decisions which have said that neither is required in contempt proceedings.[7] Yet none of these decisions satisfactorily explain why, out of all the guarantees of the Bill of Rights, these two important constitutional safeguards should be denied persons tried for criminal contempt. Study of these decisions, which are cited in the Court's opinion, shows that the statements were usually made in generalized discussions. Those decisions, which directly meet the question of the right to jury trial in criminal contempt proceedings, base the power of a court to punish for contempt as a crime upon the unquestioned authority of the Court to preserve decorum in its presence and to coerce obedience to its orders.[8] There is ample support in reason and history for holding that a court must have summary powers to accomplish these highly important but limited purposes of decorum and obedience. But there is no such unbroken

[7] See *In re Debs*, 158 U. S. 564, 594; *Eilenberger* v. *Plymouth County*, 134 U. S. 31, 36; *Ex parte Grossman*, 267 U. S. 87, —; *Michaelson* v. *United States*, 266 U. S. 42, 67; *Myers* v. *United States*, 264 U. S. 95, 104–105; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 450.

[8] *In re Debs, supra; Eilenberger* v. *Plymouth County, supra.*

historical support or rational necessity for empowering a court summarily to punish people criminally for offenses outside its presence, except to impose whatever conditional sanction is necessary to coerce prompt compliance with its command.

In fact, the first court that ever generally exercised this broad power in the English-speaking world was the notorious Court of Star Chamber.[9] One of the well known purposes of our Bill of Rights was to strip federal judges of Star Chamber powers, and to guarantee that we have in this country a government of laws and not of men—even though those men were judges.[10] It would be strange indeed if that great charter left a loophole for summary exercise of the very judicial powers it was designed specifically to deny. The argument that such a loophole was left runs this way: Courts' valid orders must be obeyed; consequently, they have inherent power summarily to enforce obedience to them; from the power to enforce obedience, it is asserted, flows the further power summarily to impose unlimited punishment upon any person who violates those orders. To this latter assertion, I am unable to agree. The idea of judges having such unrestricted power to by-pass the Bill of Rights in relation to criminal punishments is an illegitimate offspring of the historic power of coercive contempt, or contempt to enforce order and decorum in the courtroom. It has rightfully been said that such a "summary process of the Star Chamber slipped into the com-

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[9] Frankfurter and Landis, Power of Congress Over Procedure in Criminal Contempts in "Inferior" Federal Courts, 37 Harv. L. Rev. 1010, 1043–1045 (1924) and authorities there collected. See also *Nye* v. *United States,* 313 U. S. 33, —; *Bridges* v. *California,* 314 U. S. 252, 264.

[10] See dissenting opinion, *Galloway* v. *United States,* 319 U. S. 372, 396, 405–406.

mon law courts" and that the alleged ancient history to support its existence is "fiction." [11]

Nothing that this Court has ever said compels us to hold that a judge can summarily try, convict, and order imprisonment of a person for a long term of years in a manner specifically prohibited by the Bill of Rights. It is time to sweep away the legalistic cobwebs that have been spun around the doctrine of contempt, and declare that procedural safeguards of the Bill of Rights cannot be circumvented by judges who would summarily punish people for crimes under the pseudonym of contempt. Of course, the criminal laws must be enforced to preserve order in our society. Yet trials for murder, robbery, treason, disobedience of court orders, and other public wrongs should be governed by the same statutory and constitutional safeguards. I can see no reason why long, severe and unconditional punishment should be summarily visited upon violators of court orders which punishment can only be imposed upon other serious offenders against the law after trial in accordance with the Bill of Rights.

These defendants have been tried and convicted for crime without the procedural protections and safeguards guaranteed by our statutes, Constitution, and Bill of Rights. These procedural protections and safeguards are not mere technicalities; they are the essence of due process. And we have said that "as assurance against ancient evils, our country, in order to preserve 'the blessings of liberty,' wrote into its basic law the requirement, among others, that the forfeiture of the lives, liberties or property of people accused of crime can only follow if procedural

[11] Frankfurter and Landis, *supra*, 1047; see also Nelles and King, Contempt by Publications in the United States, 28 Col. L. Rev. 401 (1928); *Fox, supra, passim.*

safeguards of due process have been obeyed." *Chambers* v. *Florida*, 309 U. S. 227, 237. Hard cases do not justify disregard of constitutional commands. The Bill of Rights is too essential to our kind of Government for us to blink at its violation in any kind or type of case. See *Feldman* v. *United States*, 322 U. S. 487.

Nos. 459-60, 781-2, 811 - Conn. v. Die.

To: The Chief Justice

From: Black, J.

Circulated: .....

Recirculated: .....

2/28/47

Changes mkd. pp. 3, 5, 6, 7, 8, 9, 11, 12, 13, 14

February 20, 1947

Memorandum for the Conference

I am adding the following on page 13 of my opinion in the mine workers' case:

It is true that prior decisions of this Court would have justified the District Court in an assessment against the defendants for the reasonable expenses incurred by the Government in prosecuting its right to have the Court's temporary restraining order enforced. Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399, 426; Union Tool Co. v. Wilson, 259 U.S. 107, 109, 111-112; see also Ex parte Morris and Johnson, 9 Wall. 605. These prior decisions fall far short of holding that a summary contempt proceeding can be used as a vehicle for awarding a judgment for additional damages said to flow from the alleged wrongful conduct which the Court has temporarily restrained. Nor is such a summary contempt power sustained by any of the cases cited by the Court,*/ which held that an equity court has power to assess damages as part of a contempt proceeding for violation of a permanent injunction against infringement of particular patents. In the first place the injunctions in all those cases had been issued after a trial and judgment on the merits. The patents had been held valid. Consequently damages were only assessed for infringement of patents that had already been held to be valid in regularly conducted as distinguished from summary proceedings. No one of those cases held that damages for infringement would have been allowed in a summary contempt proceeding for violation of a mere temporary restraining order issued before the patent's validity had been determined. Such a rule of law might frequently result in requiring payment of damages for an invalid patent carrying windfalls into the pockets of owners of illegally granted patents. This differentiation in the Court's summary power as between temporary and permanent injunctions was clearly pointed out in one of the cases cited by the Court, Parker v. United States, 125 F.2d 370, 381-382, and the differentiation was properly rested on this Court's holding in Worden v. Searls, 121 U.S. 14.

In this case neither the District Court nor this Court has finally decided that, absent the temporary restraining order, the defendants were without a legal right to do that which the temporary order prohibited. Until that question is decided it cannot be known whether the Government is entitled to civil damages on account of the prohibited conduct. For if the defendants had a legal right to do that which the temporary order prohibited, the exercise of that legal right would not of itself give rise to a civil action by the Goverrment for damages. In that event, its right to recover would be limited to such damages as directly flowed from the defendants' only wrongful conduct, that is, disobedience to the temporary order. Furthermore, if on final hearing it should be held that the temporary restraining order was wrongful, the defendants could themselves seek damages suffered on account of improvident issuance. Public Service Commission v. Brashear Freight Lines, 312 U.S. 621, 629. The foregoing considerations alone, supported by the very patent cases cited by the Court, are sufficient to invalidate the District Court's order insofar as it rests on any award of damages to the Government beyond its necessary expenses incurred in prosecuting the disobedience.

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*/ Leman v. Kentler-Arnold Hinge Last Co., 284 U.S. 448, 455-456 (1932); Gompers v. Bucks Stove & Range Co., supra, at 443-444; Norstrom v. Wahl, 41 F.(2d) 910, 914 (1930); Judelsohn v. Black, 64 F. (2d) 116 (1933); Parker v. United States, 126 F.(2d) 370, 380 (1942).

But even if the restraining order had been permanent, I do not think that the District Court would have had power to try the Government's civil action for damages as a part of a summary contempt proceeding. The power of courts to award damages for infringement of patents as an incident to the exercise of well-established equitable remedies, is rooted in a long line of decisions. Cf. Root v. Railway Co., 105 U.S. 189, with Lehman v. Kreutler-Arnold Co., 284 U.S. 448. In the last cited case this Court held that damages for infringement could be awarded as a part of a contempt proceeding. But as that case shows, the exercise of the power to award such damages was found in the long-existing power of equity to award infringement damages. Nothing said there or elsewhere by this Court justifies a hasty transplanting of that patent infringement jurisdictional doctrine into new civil damage fields. Certainly, one whose contract is alleged to have been breached, as is here alleged, cannot ordinarily bring a suit to recover damages as in a chancery proceeding. For it cannot be denied that the Government could here file its suit for damages in accord with common law practices. Its common law remedy would be adequate to determine the civil damage liability. Under such circumstances it has been declared and many times reaffirmed "that whenever a court of law is competent to take cognizance of a right, and has power to proceed to a judgment which affords a plain, adequate and complete remedy, without the aid of a court of equity, the plaintiff must proceed at law, because the defendant has a constitutional right to a trial by jury." Hipp v. Babin, 19 How. 271, 278.*/

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*/ Cates v. Allen, 149 U.S. 451, 459; Lewis v. Cocks, 23 Wall. 436, 470; Killian v. Ebbingham, 110 U.S. 568, 573; Whitehead v. Shattuck, 138 U.S. 146, 151; Guaranty Trust Co. v. York, 326 U.S. 99, 105.

I shall also add at the end of my opinion the following:

We have power to modify the decree in this case. I would not modify the amount of the penalty because I believe that the Court has full authority to impose whatever conditional penalty it might deem necessary to enforce its order. But I would modify the decree so as to require payment of the penalty only upon failure fully and unconditionally to obey the restraining order pending final determination of the merits of the controversy.

SUPREME COURT OF THE UNITED STATES

Nos. 759,760, 781, 782, 811 - October Term, 1946

United States of America, Petitioner,

759, 760 v.

United Mine Workers of America, an unincorporated association, and John L. Lewis, Individually and as President of the United Mine Workers of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia

United Mine Workers of America, an Unincorporated Association, Petitioner,

781 v.

United States of America.

John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner

782 v.

United States of America.

United Mine Workers of America, an Unincorporated Association, and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioners,

811 v.

United States of America.

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Mr. Justice BLACK concurring in part and dissenting in part.

For the reasons given in the Court's opinion, I agree that neither the Norris-LaGuardia Act nor the Smith-Connally Act barred the Government from obtaining the injunction it sought in these proceedings. The "labor disputes" with which Congress was concerned in the Norris-LaGuardia Act were those between private employers and their employees. As to all such "labor disputes" the Act drastically limited the jurisdiction of federal courts; it barred relief by injunction except under very narrow circumstances whether injunction be sought by private employers, the Government, or anyone else. But the attention of Congress was neither focused upon nor did it purport to affect "labor disputes,"

if such they can be called, between the Government and its own employees. There was never an intimation in the progress of the Act's passage that a labor dispute within the Act's meaning would arise because of claims against the Government asserted collectively by employees of the Interior, State, Justice, or any other Government department. Congress had never in its history provided a program for fixing wages, hours, and working conditions of its employees by collective bargaining. Working conditions of Government employees had not been the subject of collective bargaining, nor been settled as a result of labor disputes. It would require specific congressional language to persuade me that Congress intended to embark upon such a novel program or to treat the Government employer-employee relationship as giving rise to a "labor dispute" in the industrial sense.

I have no doubt but that the miners became Government employees when the Government took over the mines. It assumed complete control over the mines and their operation. The fact that it utilized the managerial force of the companies does not detract from the Government's complete authority. If I thought, as is here contended, that the Government's possession and operation of the mines was not genuine, but merely pretended, I should then say that the Norris-LaGuardia Act barred these proceedings. For anything less than full and complete Government operation would be the equivalent of the Government's seeking an injunction for the benefit of the private employers, and that I think the Norris-LaGuardia Act prohibits. But as I read the Smith-Connally Act and the President's order taking over the mines, the operation of these mines is by the Government and those who work in them during the period of complete Government control are employees of the Government.

I further agree with the Court that the District Court had power in these proceedings to enter orders necessary to protect the Government against an invasion of the rights it asserted pending adjudication of the controversy its complaint presented to the Court. I agree that the Court had power to coerce obedience to those orders, so long as it proceeded in accordance with its statutory and constitutional authority in this respect. To this end, it had power summarily to enter decrees against those who defied its valid orders and to subject them to punishment conditioned upon obedience

to the order. This power of courts is of ancient lineage,[1] has always been exercised by our courts, and has the express recognition of Congress under the name of contempt. 35 Stat. 1088, 1113; 18 U.S.C. 241. Where such coercive orders are entered a person imprisoned "carries the keys of his prison in his own pocket"; by obedience to the court's valid order he can end his punishment; and the court's coercive power under such a "civil contempt" proceeding ends when its order has been obeyed. Gompers v. Buck's Stove & R. Co., 221 U.S. 417, 441-445. If the court's decree had been framed in these terms, I should sustain it.

But As the Gompers decision, and many others have pointed out, the object of such a contempt proceeding is not to punish for an offense against the public, but to compel obedience to valid court orders. Without such coercive powers courts could not perform their high governmental function, which is to settle cases and controversies before them in accordance with the rules of law. Courts could not administer justice, if persons were left free pending adjudication to engage in conduct which either immediately interrupts the judicial proceedings or so changes the status quo of the subject of controversy that no effective judgment can be rendered. To remove such immediate obstacles to orderly judicial proceedings, courts must have power to act immediately. In recognition of this fact the contempt power came into existence.[2] Disorders in the courtroom or so near to it as to interrupt a trial, and disobedience to an affirmative court order, are typical examples of things that must necessarily be dealt with summarily. But the exercise of this summary coercive power, under which a court may, to prevent an immediately threatened evil, send a person to jail without observance of the procedural safeguards of the Bill of Rights, is within an exceedingly narrow range. At a very early date this Court declared, and recently it has reiterated, that range to be "the least possible power adequate to the end proposed." Anderson v. Dunn, 6 Wheat. 204, 231; In re Michael, 326 U.S. 224, 227. And that end in this case, so far as the court's coercive power is the basis of the challenged decree, is obedience to the court's order. It is neither to deter others from disobedience to court orders, to avenge a public wrong, nor to compensate the Government for the damages it has suffered.

It may be that the Government is entitled to recover damages from these defendants. But the need of the Government for damages for its alleged injury, as distinguished from the necessity of the court to enforce immediate

obedience to its orders, is not of such emergency nature as to justify exercise of the court's summary contempt process to enforce their payment. The Government, like any other litigant, can pursue its claim for damages in a civil action. But in such an action the defendants would be entitled to a proper complaint, legal notice required for civil suits, and a trial before a jury as required by statute, 18 U.S.C. 770, and by the unequivocal language of the Seventh Amendment. 3/ It may also be that the defendants' violation of the court's order constituted an offense for which they should be criminally punished. If so, they can be indicted and tried for it in a trial in which they are afforded the procedural safeguards of the Bill of Rights. Thus neither the Government's desire to recover damages nor its desire to punish these defendants criminally for a past offense is the type of emergency which warrants an immediate and summary contempt proceeding. But the urgent necessity for obedience to the court's order did warrant such proceedings. With the specific reservation that I think that such proceedings must be to enforce obedience, and not to impose unconditional criminal punishment, I agree with the following statement of Mr. Justice Holmes concerning a court's contempt powers:

"I would go as far as any man in favor of the sharpest and most summary enforcement of order in Court and obedience to decrees, but when there is no need for immediate action, contempts are like any other breach of law and should be dealt with as the law deals with other illegal acts. Action like the present in my opinion is wholly unwarranted by even color of law." See dissenting opinion, Holmes, J., Toledo Newspaper Publishing Co., 247 U.S. 402, 425. There was here an undoubted power in the District Court to render the strongest kind of coercive conditional decree necessary to enforce obedience to its order. For there was a grave and imminent emergency which disobedience to the court's order would aggravate. But the District Court focused its attention, not on enforcing obedience to its order but on summarily imposing criminal punishment and awarding civil damages to the Government. Nor did the court purport to assess against defendant the reasonable expenses incurred by the Government in prosecuting its rights to have the court's order enforced, as it was authorized to do by the prior decisions of this Court. See e. g., Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399, 426; Union Tool Co. v. Wilson, 259 U.S. 107, 109, 111-112; see also Ex Parte Morris and Johnson, 9 Wall. 605. Moreover, instead of pursuing its lawful purpose of enforcing obedience to its order, it mingled [illegible] an action

for civil contempt, for criminal contempt, and a suit for damages in a single procedure, which to say the very least, is so confusing in its nature, so difficult intelligently to defend, that it is doubtful that it could constitute a fair trial. See Moskovitz, Contempt of Injunctions, Civil and Criminal, 43 Col. L. Rev., p. 78; 18 U.S.C. §557. I believe that these defendants were unlawfully deprived of statutory and constitutional safeguards in this summary imposition of unconditional punishment and award of civil damages.

It is highly significant that the War Labor Disputes Act, 57 Stat. 16, 50 U.S.C. p1506, 1508c prohibited the conduct of defendants which the order of the District Court restrained. And that Act made such conduct a crime punishable by a maximum fine of $5,000 and/or imprisonment for one year. It also authorized recovery of damages resulting from such illegal conduct. 50 U.S.C. §506, 1508c. In In re Michael, 326 U.S. 224, 227, we pointed out the danger of permitting punishment by contempt to be imposed for conduct which is identical with an offense defined and made punishable by statute. And we said that §268 of the Judicial Code, 18 U.S.C. §241, under which these defendants were cited for contempt, was not intended to grant such power to the courts. For we feared that the exercise of such power would make "too great inroads on the procedural safeguards of the Bill of Rights." Id at 227. I do not think, for reasons already stated, that the War Labor Disputes Act restricted the District Court's power to coerce obedience to its order. But I am persuaded that the existence of this Act should be held to foreclose whatever power the court might otherwise conceivably have had summarily to punish or to award damages on account of the same conduct for which that Act prescribes what Congress deemed to be adequate sanctions. When Congress makes the very same conduct which the court's order sought to prohibit punishable by $5,000 fine and/or one year imprisonment and provided tort liability for it, I can see no reason why the same conduct should have been visited with greater penalties than that Congress prescribed.

The statutes do not fix a punishment for the criminal contempt charges against these defendants. The Government's contention is that the amount of punishment can be fixed by the judge at his discretion, although it concedes that this discretion may be limited by the Eighth Amendment's prohibition against cruel and unusual punishment. Congress has declared that "All offenses which may be punished by death or imprisonment for a term exceeding one year shall be deemed felonious." 18 U.S.C. §571. The criminal contempt here charged is a felony within this definition. And it now established that the fact that the charge is designated as one for contempt makes it no less a crime, Gompers v. United States, 233 U . S. 604, 610, 611; Michelson v. United States, 266 U.S. 42, 66-67; Pendergast v. United States, 317 U.S. 412, 417-418, although decisions of this Court have, at times, indicated the contrary.[4/] The Constitution provides that "The Trial of all

Crimes . . . shall be by Jury;" Article III, par. 2. The Sixth Amendment reemphasized this guaranty by declaring that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . ." And the Fifth Amendment provides that "No persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." Unless these defendants are denied the benefit of this provision of the Fifth Amendment because the crime with which they were charged has been designated "contempt," they could not consistently with these constitutional requirements have been tried without an indictment and without a jury. I assume that a defendant charged with an infamous crime cannot waive an indictment, and a crime is "infamous" if punishable by the undefined term of imprisonment which may follow conviction for criminal contempt. Ex Parte Nelson, 114 U.S. 417; United States v. Moreland, 258 U.S. 433.

There is no longer any doubt but that persons charged with criminal contempt for conduct not in the presence of the Court, are within the protection of many of the procedural safeguards provided in the Bill of Rights. They must be clearly informed of the charge against them; they must have the assistance of counsel; they must be confronted with the witnesses against them; they must have the right to call witnesses in their own behalf and to cross-examine the witnesses against them; their guilt must be proved beyond a reasonable doubt; they cannot be punished twice for the same offense; they cannot be compelled to be witnesses against themselves; and they are entitled to be tried in accordance with due process of law; Gompers v. Buck Stove & Range Co., 221 U.S. 418, 444; Michaelson v. United States, 266 U.S. 42, 66-67; Cooke v. United States, 267 U.S. 517, 534; In re Bradley, 318 U.S. 50; see also McGovern v. United States, 280 F. 73. These cases indicate this Court's increasing interest and solicitude in surrounding contempt proceedings involving out-of-court conduct with the constitutional safeguard. See Ex Parte Grossman, 267 U.S. 87.

Thus this Court has already declared that all the constitutional safeguards must be observed in out-of-court contempt charges, unless it be the provisions for indictment and trial by jury. As to indictment and jury trial, there are a number of decisions which have said that neither is required in contempt proceedings. Yet none of these decisions satisfactorily explains

out of all the guarantees of the Bill of Rights why these two important constitutional safeguards should be denied persons tried for criminal contempt. Study of these decisions which are cited in the Court's opinion, however, shows that the statements were usually made in discussions, or that they primarily related to disorderly and disruptive conduct committed in the immediate presence of the Court or to coercive orders intended to require immediate obedience to another order. There is ample continuous historical support for holding that to accomplish these limited objectives the Court can exercise summary powers. There is no such unbroken historical support for the idea that courts can summarily punish people criminally for offenses outside its presence.

In fact, about the only court that ever generally exercised this broad power in the English-speaking world was the notorious Court of Star Chamber. 5/ One of the well known purposes of our Bill of Rights was to strip federal judges of Star Chamber powers. It is strange indeed, if that great charter left a loophole for summary exercise of the very judicial powers it was designed specifically to deny. The argument that such a loophole was left runs this way. Courts' valid orders must be obeyed; consequently they have inherent power summarily to enforce obedience to them; from the power to enforce obedience flows the further power summarily to impose unlimited punishment upon any person who violates those orders. To this latter assertion, I am unable to agree. The idea of judges having such unrestricted power to by-pass the Bill of Rights in relation to criminal punishments is an illegitimate offspring of the historic power of coercive contempt, or contempt to enforce order and decorum in the courtroom. It has rightfully been said that such a "summary process of the Star Chamber slipped into the common law courts" and that the alleged ancient history to support its existence is "fiction." 6/

Nothing that this Court has ever said compels us to hold that a man can be charged with doing something for which he can be imprisoned for a long term of years, and tried by a judge in a way which the Bill of Rights specifically prohibits. It is time to sweep away the legalistic cobwebs that have been spun around the doctrine of contempt, recognize the obvious truth that the procedural safeguards of the Bill of Rights should not be ignored by judges who would punish people for crimes under the pseudonym of contempt.

I believe no person should be put on trial unprotected by the Bill or Rights in a proceeding where unlimited punishment can be imposed upon him.

The Bill of Rights also provides protection in civil litigation. Of course the Government has a right to sue for damages it suffers by the wrongful conduct of any person, particularly here where the Labor Disputes Act authorizes it to sue. If that wrongful conduct occurs as a result of disobedience of a lawful court order, the Government, like any other person can seek recovery in a court. But a suit for damages for wrongful conduct is no less a suit for damages because the wrong involves a disobedience to a court order. The claim of the Government for damages here raised the very kind of fact questions which our system of jurisprudence entrusts to juries. The causal connection between the defendant's conduct and the damages claimed and the measure of those damages were involved. It was to decide such fact questions that the Seventh Amendment gave parties to civil suits a right to trial by jury. See concurring opinion, United Gas Public Service Co. v. Texas, 303 U.S. 123, 146, 151-153.

This judgment for damages and conviction for crime have not been rendered after the kind of trial guaranteed by our statutes, Constitution and Bill of Rights. Hard cases give no justification whatever for a disregard of constitutional commands. The Bill of Rights is too essential to our kind of Government for us to blink at its violation in any kind or type of case. See Chambers v. United States, ; Feldman v. United States.

To: .....

From: Black, J.

Circulated: .....

Recirculated: .....

NOTES

4/ Myers v. United States, 264 U.S. 95, 103, is said to have decided that contempt is not a criminal offense. But Pendergast v. United States, 317 U.S. 412, decided long after the Myers case, repeated the holding in the Gompers case that a criminal contempt is a crime. Moreover, the Myers statement which implied the contrary referred to the "power in all courts to enforce obedience, something they must possess in order properly to perform their functions." This type of contempt proceeding, intended only to coerce obedience, and not to vindicate the public justice, is not a crime. The definition of the type of contempt to which the court referred in the Myers case, therefore, makes its statement consistent with the Gompers and Pendergast cases. If the Myers holding was that a criminal contempt is not a crime even though punishable by a long term of imprisonment, it is wholly inconsistent not only with the Gompers and Pendergast cases, but also with the universal common understanding that people in the United States cannot be unconditionally sentenced to long terms in prison except as punishment for crime.

The Chief Justice
2/14/47
fm. Black, J.

Chief – For your information.
I have not printed or circulated.
You will get it all by reading
page 6 –

J R

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 and 811.--October Term, 1946.

The United States of America,
Petitioner,

759 v.

United Mine Workers of America,
an Unincorporated Association.

The United States of America,
Petitioner,

760 v.

John L. Lewis, Individually and as
President of the United Mine
Workers of America.

United Mine Workers of America,
An unincorporated Association,
Petitioner,

781 v.

The United States of America.

John L. Lewis, Individually and as
President of the United Mine
Workers of America, Petitioner,

782 v.

The United States of America.

United Mine Workers of America,
an Unincorporated Association,
and John L. Lewis, Individually
and as President of the United
Mine Workers of America,
Petitioners,

811 v.

The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[ ]

Mr. Justice REED, for reversal.

For the reasons stated in the opinion of the Chief Justice, I agree that the Clayton Act, the Norris-LaGuardia Act and the War Labor Disputes Act do not apply to the final relief of injunction sought in these proceedings. It follows from that position that the restraining order to preserve the contractual relations of the United States and the

United Mine Workers of America, pending a determination of the Mine Workers' asserted right to terminate the contract, is a valid restraining order.

Our nation's experience has proven that a people may rely upon the orderly processes of government to redress the maladjustments or wrongs that develop in a society ordained and conducted to give the greatest opportunity and the most satisfactory life to the preatest number. An important element in those orderly processes is the judicial system. It acts to adjust conflicting interests. It can only so act when allowed to maintain an existing situation until final judgment is rendered. This was the purpose of the restraining order. The violation of that order calls for punishment to vindicate the authority of courts to function in preserving order and adjudicating differences. A punishment for contempt imposed by a court is unusual because it is rare that our citizens disregard the accepted judicial solutions for internal controversies. When judicial orders are disregarded, the power to punish for contempt must be recognized to preserve the independence of the courts and to enable them to operate for the public welfare. There is no doubt that Mr. Lewis and the Union disobeyed the restraining order.

Neither is there any doubt in my mind that the district court punished for both a civil and a criminal contempt. These orders so show. They find both as to Mr. Lewis and the Mine Workers that each has committed a criminal contempt and a civil contempt beyond a reasonable doubt. Distinctions between a contempt which is civil and a contempt which is criminal are narrow. It is easy to say that the criminal contempt order is punitive, that it is entered to vindicate the authority of the court; that a civil contempt is remedial and for the benefit of the complainant. Actually the two are intermingled. When punishment is inflicted for a civil contempt, it has a coercive effect upon the contemner. When it is inflicted for a ciminal contempt, it often has a remedial effect upon the relief sought by the complainant.[1/] Where the contempt continues, the

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1 Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 441-43; Ex parte Grossman, 267 U. S. 87, 111.

contemner knows he is liable to further punishment. The difficulties of distinction are magnified in the present cases because the United States is both the complainant for ultimate civil relief by injunction and the actor in bringing the contempt charges.

In this proceeding, however, it seems quite clear to me that the fines imposed are predominantly to vindicate the authority of the court to maintain the existing relationships between the United States and the defendants below during the court's consideration of the Government's petition for relief.[2] It was said by counsel for the Government at the hearing on the rule to show cause that the question of any contempt by these defendants in the future might be delayed until the court could consider what, if any, further action would be appropriate. The rule issued by the trial court requires the defendants to show "why they should not be punished as and for a contempt of this court." The petition for the rule is couched in language that seems to charge a willful disobedience of the restraining order rather than a complaint for damages or a request for remedial action.[3] When we look at the evidence for the Government, we find little to indicate the Government was undertaking to show damages to it. There is a scintilla in the testimony as to the effect of a strike on national income. Any evidence of the injury to the Government in its sovereign capacity would be highly speculative. Were it not for the explicit statement by the court in its orders that both civil and criminal contempts had been committed, I would conclude that the fines assessed were solely for criminal contempt. Therefore, while I accept the declaration of the trial court that both civil and criminal contempts have been committed by both defendants, I am proceeding upon the supposition that none of the fines were imposed as compensation to the United States for any damages it may have suffered to its own property or revenues by the contempt. There is no finding of such damages and I do not think there can properly be any unless the issue as to the right of the Mine Workers to terminate the Krug-Lewis contract is settled ultimately in favor of the

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2 See United States v. Goldman, 277 U. S. 229; Michaelson v. United States ex rel. another, 266 U. S. 42; Ex parte Grossman, 267 U. S. 87; Gompers v. Bucks Stove & Range Co., 221 U.S. 418.

3 We said in Union Tool Co. v. Wilson, 259 U.S. 107, 110:

"Where a fine is imposed partly as compensation to the complainant and partly as punishment, the criminal feature of the order is dominant and fixes its character for purposes of review."

Government.[4] So far as the fines are civil, in my view they must have been imposed as remedial fines to coerce compliance with the interlocutory orders.

For the reasons given in the opinion of the Chief Justice, I agree that any procedural errors committed by the Government in giving notice or otherwise as to its charge of criminal contempt are harmless. The contemners knew that they were being tried for criminal contempt. Probably the contemners waived a jury. If they did not waive it, they certainly did not demand it. Even had they demanded a jury, they would not have been entitled to it. A jury in criminal contempt is essential only when the act of Congress so provides. Rule 42(b), Rules of Criminal Procedure. In the absence of such a statutory requirement, a jury is not necessary.[5]

The fact that the district court entered an order on both civil and criminal contempts does not affect the power of this Court in this record to now determine what orders should be entered. Statements have been made that only the court before which the contempt was committed could punish.[6] Generally speaking, this is desirable. No decision known to me in this Court holds that it is an inflexible rule. This was in essence an equitable proceeding, which proceedings do not have the limitations on our power to enter definitive decrees such as are found in common law or criminal appeals. It is most desirable, from my point of view, that we should enter here appropriate fines for the contumacy of these defendants. Since agreement has not been reached by a majority of this Court as to the proper amount of fines that should be imposed on Mr. Lewis and the Union, it seems to me more consonant

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4 It may be that the United States could claim compensation for losses to it because of the violation of the restraining order.

5 Myers v. United States, 264 U. S. 95, 104; Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 450; Gompers v. United States, 233 U. S. 604, 610. This accords with the historical development of trial for contempt. 1 Stat. 83; 4 Stat. 487; Rev. Stat. §725; 36 Stat. 1163; Judicial Code §268.

6 See Wilson v. United States, 26 F. 2d 215, 216, 218; Ex parte Bradley, 7 Wall. 366, 372; Ex parte Tillinghast, 4 Pet. 108; Bessette v. W. B. Conkey Co. Rapalje, Contempt, §§141,150,151; 43 Col. L. Rev., Contempt of Injunctions, 780, 820.

with justice to reverse the order of the district court rather than to approve fines that seem to me excessive. The trial court will then have the benefit of this Court's views as to the law of this case and expressions of appropriate, although necessarily vague, standards for judgment.

The problem confronting us in determining the amount of fines to be assessed is no less difficult than when it confronted the district court. We must take into consideration the fact that the issue as to the interpretation of the Krug-Lewis contract has not been determined. The notice to Mr. Krug of the termination of the contract has not been withdrawn. The opinions in this case show that the problem of the power of the district court to enter a restraining order required close reasoning. The defendants below acted upon the advice of counsel. A few acted as authorized representatives of Mine Workers, with its hundreds of thousands of union members. These members followed their union leadership with confidence. That leadership had proved itself capable and efficient over the years in handling the responsibilities of leadership. Its position on the contract and upon the applicability of the Norris-LaGuardia and the War Labor Acts was not captious or without reasonable basis. All of these factors have weight in determining the proper amount of fine to be imposed because of the violation of the restraining order.

We have some analogies as to the attitude of Congress on the proper punishment for willful disobedience of lawful orders of courts of the United States. In the Clayton Act, §22, 38 Stat. 739, the punitive fine was limited in the case of a natural person to $1,000 and six months imprisonment. In the War Labor Disputes Act, §6(b), 57 Stat. 165, punishment for interference with Government operation of plants by strikes or their interruption was limited to a fine of $5,000 or to imprisonment for not more than one year or both. A union cannot be imprisoned. See also Ex parte Young, 209 U. S. 123, 142, 143, a decision handed down after United States v. Shipp. The record shows the financial capacity of Mr. Lewis and something as to the resources of the Mine Workers.

The threat to the national economy bhe work stoppage of the miners was formidable. Experienced men such as these, who undertake by a legally recognized use of economic power to redress assumed interferences with their rights, realize the consequences to themselves and to the nation. I cannot say, however, that these men acted in this instance otherwise than in accordance with their conception of their legal rights. After this adjudication, they will be finally advised in so far as courts can adjudge. In the future comparable action would place the case in an entirely different posture.

Upon this record and in the circumstances presented by it, I feel that the fines entered by the district court were excessive in both the discretionary and constitutional sense. It is to be remembered that the violation of the restraining order had continued for about two weeks. It was and is vital for orderly adjustments of disputes that the interlocutory injunctions should be obeyed. It is also most importnat that miners who share with all citizens the difficulties and advantages and risks of American democracy should receive equal justice and punishments commensurable with those inflicted upon other violators of court orders. The fines assessed below, in my judgment, do not meet this test.

In my judgment, the trial court can be properly vindicated for the violations prior to December 4, 1946, of its orders by the imposition of fines of $2,500 upon Mr. Lewis and $250,000 against the Mine Workers. As others do not agree to my disposition, I join with them in reversing the fines imposed and in remanding to the District Court in the hope that an equitable solution may be obtained.

Dear Chief —

Of course you understand I do not intend to hand down what I have written. It is a suggestion for your opinion

S R

February 15, 1947.

MEMORANDUM TO THE CONFERENCE.

Adjustment of Penalty.

For the last four paragraphs of my memorandum, I suggest the substitution of the following:

> The problem confronting us in determining the amount of fines to be assessed is no less difficult than when it confronted the district court. We must take into consideration the fact that the issue as to the interpretation of the Krug-Lewis contract has not been determined. The opinions in this case show that the problem of the power of the district court to enter a restraining order required close reasoning. The defendants below acted upon the advice of counsel. A few acted as authorized representatives of the Mine Workers, with its hundreds of thousands of union members. These members followed their union leadership with confidence. That leadership had proved itself capable and efficient over the years in handling the responsibilities of leadership. Its position on the contract and upon the applicability of the Norris-LaGuardia and the War Labor Acts was not captious or without reasonable basis. All of these factors have weight in determining the proper amount of fine to be imposed because of the violation of the restraining order.
>
> We have some analogies as to the attitude of Congress on the proper punishment for willful disobedience of lawful orders of courts of the United States. In the Clayton Act, §22, 38 Stat. 739, the punitive fine was limited in the case of a natural person to $1,000 and six months imprisonment. In the War Labor Disputes Act, §6(b), 57 Stat. 165, punishment for interference with Government operation of plants by strikes or their interruption was limited to a fine of $5,000 or to imprisonment for not more than one year or both. The record shows the financial capacity of Mr. Lewis and something as to the resources of the Mine Workers.
>
> The threat to the national economy by the work stoppage of the miners was formidable. Experienced men such as these, who undertake by a legally recognized use of economic power methods to redress assumed interferences with their rights, realize the consequences to themselves and to the nation. I cannot say, however, that these men acted in this instance otherwise than in accordance with their conception of their legal rights. After this adjudication, they will be finally advised in so far as courts can adjudge. In future comparable action would place the case in an entirely different posture.
>
> Upon this record and in the circumstances presented by it, I feel that the fines entered by the District Court were excessive in both the discretionary and constitutional sense. At the most, and giving full effect to the propriety of upholding the action of the District Court in vindicating the authority of law, I can acquiesce in fixing the fines at $10,000 for Mr. Lewis and $500,000 for the Mine Workers with the following proviso.
>
> Such punishment is extreme from my point of view in the circumstances of this case. We are dealing with a continuing equitable litigation over the contract. The later developments may convince the trial judge that the penalties now imposed by us are excessive. Therefore our judgment should reserve to him the power to reduce the fines with or without further hearing on the rule to show cause to such amounts as in his sound judgment are appropriate.

STANLEY REED

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 and 811.--October Term, 1946.

The United States of America,
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759 v.

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John L. Lewis, Individually and as
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781 v.

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President of the United Mine
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782 v.

The United States of America.

United Mine Workers of America,
an Unincorporated Association,
and John L. Lewis, Individually
and as President of the United
Mine Workers of America,
Petitioners,

811 v.

The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[ ]

Mr. Justice REED, modifying the judgment and orders of the Court and as modified, affirming.

For the reasons stated in the opinion of the Court, I agree that the Clayton Act, the Norris-Laguardia Act and the War Labor Disputes Act do not apply to the final relief of injunction sought in these proceedings. It follows from that position that the restraining order to preserve the contractual relations of the United States and the United

Mine Workers of America, pending a determination of the Mine Workers' asserted right to terminate the contract, is a valid restraining order.

Our nation's experience has proven that a people may rely upon the orderly processes of government to redress the maladjustments or wrongs that develop in a society ordained and conducted to give the greatest opportunity and the most satisfactory life to the greatest number. An important element in those orderly processes is the judicial system. It acts to adjust conflicting interests. It can only so act when allowed to maintain an existing situation until final judgment is rendered. This was the purpose of the restraining order. The violation of that order calls for punishment to vindicate the authority of courts to function in preserving order and adjudicating differences. A punishment for contempt imposed by a court is unusual because it is rare that our citizens disregard the accepted judicial solutions for internal controversies. When judicial orders are flouted, the power to punish for contempt must be recognized to preserve the independence of the courts and to enable them to function in the public welfare. There is no doubt that Mr. Lewis and the Union disobeyed the restraining order.

Neither is there any doubt in my mind that the district court punished for both a civil and a criminal contempt. These orders so show. They find both as to Mr. Lewis and the Mine Workers that each has committed a criminal contempt and a civil contempt beyond a reasonable doubt. Distinctions between a contempt which is civil and a contempt which is criminal are narrow. It is easy to say that the criminal contempt is punative, that it is taken to vindicate the authority of the court; that a civil contempt is remedial and for the benefit of the complainant. When punishment is inflicted for a civil contempt, it has a coercive effect upon the contemner. When it is inflicted for a criminal contempt, it often has a remedial effect upon the relief sought by the complainant. 1/

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1 Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 441-43; Ex parte Grossman, 267 U. S. 87, 111.

The difficulties of distinction are magnified in the present cases because the United States is both the complainant for ultimate civil relief by injunction and the actor in bringing the contempt charges. In this situation, however, it seems quite clear to me that the fines imposed are predominantly to vindicate the authority of the court to maintain the existing relationships between the United States and the defendants below during the court's consideration of the Government's petition for relief.[2] It was said by counsel for the Government at the hearing on the rule to show cause that the question of any contempt by these defendants in the future might be delayed until the court could consider what, if any, further action would be appropriate. (R. 323) The rule does require the defendants to show "why they should not be punished as and for a contempt of this court." The petition for the rule is couched in language that seems to charge a willful disobedience of the restraining order rather than recovering for damages or a request for remedial action.[3] When we look at the evidence for the Government, we find little to indicate the Government was undertaking to show damages to it. There is a scintilla in the testimony as to the effect of a strike on national income. (R. 297) Any evidence of the injury to the Government in its sovereign capacity would be highly speculative. Were it not for the explicit statement by the court in its orders, I would conclude that the fines assessed were solely for criminal contempt.

For the reasons given in the Court's opinion, I agree that any procedural errors committed by the Government in giving notice or otherwise as to its charge of criminal contempt are harmless. The contemners knew that they were being tried for criminal contempt. Probably the contemners waived a jury. If they did not waive it, they certainly did not demand it. Even had they demanded a jury, they would not have been

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2 See United States v. Goldman, 277 U. S. 229; Michaelson v. United States ex rel. another, 266 U. S. 42; Ex parte Grossman, 267 U. S. 87; Gompers v. Bucks Stove & Range Co., 221 U. S. 418.

3 We said in Union Tool Co. v. Wilson, 259 U. S. 107, 110:

"Where a fine is imposed partly as compensation to the complainant and partly as punishment, the criminal feature of the order is dominant and fixes its character for purposes of review."

entitled to it. A jury in criminal contempt is essential only when the act of Congress so provides. Rule 42(b), Rules of Criminal Procedure. In the absence of such a statutory requirement, a jury is not necessary.[4] The fact that the district court entered an order on both civil and criminal contempts does not affect the power of this Court in this record to now determine what orders should be entered. Statements have been made that only the court before which the contempt was committed could punish.[5] Generally speaking, this is desirable. No decision known to me in this Court holds that it is an inflexible rule. This was in essence an equitable proceeding, which proceedings do not have the limitations on our power to modify a decree such as is found in common law or criminal reviews. Since the United States has not seen fit to elaborate its evidence as to any compensable damages it may have suffered during the period between the entry of the restraining order and the order on the rule to show cause, I would now enter a final order here disposing of these proceedings on the records presented.

The difficulties confronting us in determining the amount of fines to be assessed are no less baffling than those that confronted the district court. We must take into consideration the fact that the issue as to the interpretation of the Krug-Lewis contract has not been determined. The opinions in this case show that the problem of the power of the district court to enter a restraining order required close reasoning. The defendants below acted upon the advice of counsel. That situation has weight with me.

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4 Myers v. United States, 264 U. S. 95, 104; Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 450; Gompers v. United States, 233 U. S. 604, 610. This accords with the historical development of trial for contempt. 1 Stat. 83; 4 Stat. 487; Rev. Stat. §725; 36 Stat. 1163; Judicial Code §268.

5 See Wilson v. United States, 26 F. 2d 215, 216, 218; Ex parte Bradley, 7 Wall. 366, 372; Ex parte Tillinghast, 4 Pet. 108. Rapalje, Contempt, §§141, 150, 151; 43 Col. L. Rev., Contempt of Injunctions, 780, 820.

We have some analogies as to the attitude of Congress on the proper punishment for willful disobedience of lawful orders of courts of the United States. In the Clayton Act, §22, 38 Stat. 739, the punitive fine was limited in the case of a natural person to $1,000 and six months imprisonment. In the War Labor Disputes Act, §6(b), 57 Stat. 165, punishment for interference with Government operation of plants by strikes or their interruption was limited to a fine of $5,000 or to imprisonment for not more than one year or both. The record shows the financial capacity of Mr. Lewis and something of the assets of the Mine Workers.

The threat to the national economy by the work stoppage of the miners was formidable. Men who undertake such means to redress assumed interferences with their rights realize the consequences to themselves and to the nation. I cannot say, however, that these men acted in this instance otherwise than in accordance with their conception of their legal rights. After this adjudication, they will be finally advised in so far as courts can adjudge. In future comparable action would place them in a very diffent posture.

Upon this record and in the circumstances presented by it, I do not feel that the punishment for the fourteen-day violation of the restraining order should exceed in the case of Mr. Lewis $_____ and in the case of the Mine Workers $_____.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

759 — The United States of America, Petitioner, v. United Mine Workers of America, an Unincorporated Association.

760 — The United States of America, Petitioner, v. John L. Lewis, Individually and as President of the United Mine Workers of America.

781 — United Mine Workers of America, an Unincorporated Association, Petitioner, v. The United States of America.

782 — John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, v. The United States of America.

811 — United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, v. The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[March —, 1947.]

MR. JUSTICE FRANKFURTER, concurring in part.

The historic phrase "a government of laws and not of men" epitomizes the distinguishing character of our political society. When John Adams put that phrase into

the Massachusetts Declaration of Rights he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. "A government of laws and not of men" was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. Even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout our history. Or, what this Court has deemed its duty to decide may be changed by legislation, as it often has been, and, on occasion, by constitutional amendment.

But from their own experience and their deep reading in history, the Founders knew that Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised. "Civilization involves subjection of force to reason, and the agency of this subjection is law."[1] The conception of a government by laws dominated the thoughts of those who founded this Nation and designed its Constitution, although they knew as well as the belittlers of the conception that laws have to be made, interpreted and enforced by men. To that end, they set apart a body of men, who were to be the depositories of law, who by their disciplined training and character and by withdrawal from the usual temptations of private interest may reasonably be expected to be "as free, impartial, and independent as the lot of humanity will admit". So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial office with extraordinary safeguards and prestige. No one,

[1] Pound, *The Future of Law* (1937) 47 Yale L. J. 1, 13.

no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That is what courts are for. And no type of controversy is more peculiarly fit for judicial determination than a controversy that calls into question the power of a court to decide. Controversies over "jurisdiction" are apt to raise difficult technical problems. They usually involve judicial presuppositions, textual doubts, confused legislative history and like factors hardly fit for final determination by the self-interest of a party.

Even when a statute deals with a relatively uncomplicated matter, and the "words in their natural sense as they would be read by the common man" would appear to give an obvious meaning, considerations underlying the statute have led this Court to conclude that "the words cannot be taken quite so simply." See *Millburn Co.* v. *Davis Co.*, 270 U. S. 390, 400. How much more true this is of legislation like the Norris-LaGuardia Act. This Act altered a long process of judicial history, but altered it by a scheme of complicated definitions and limitations.

The Government here invoked the aid of a court of equity in circumstances which certainly were not covered by the Act with inescapable clarity. Colloquially speaking, the Government was "running" the mines. But it was "running" them not as an employer, in the sense that the owners of the coal mines were the employers of the men the day before the Government seized the mines. Nor yet was the relation between the Government and the men like the relation of the Government to the civil service employees in the Department of the Interior. It would be naive or wilful to assert that the scope of the Norris-La Guardia Act in a situation like that presented by this bill raised a question so frivolous that any judge should have summarily thrown the Government out of court without day. Only when a court is so obviously traveling outside its orbit as to be merely usurping

judicial forms and facilities, may an order issued by a court be disobeyed and treated as though it were a letter to a newspaper. Short of an indisputable want of authority on the part of a court, the very existence of a court presupposes its power to entertain a controversy, if only to decide, after deliberation, that it has no power over the particular controversy. Whether a defendant may be brought to the bar of justice is not for the defendant himself to decide.

To be sure, an obvious limitation upon a court cannot be circumvented by a frivolous inquiry into the existence of a power that has unquestionably been withheld. Thus, the explicit withdrawal from federal district courts of the power to issue injunctions in an ordinary labor dispute between a private employer and his employees cannot be defeated, and an existing right to strike thereby impaired, by pretending to entertain a suit for such an injunction in order to decide whether the court has jurisdiction. In such a case, a judge would not be acting as a court. He would be a pretender to, not a wielder of, judicial power.

That is not this case. It required extended arguments, lengthy briefs, study and reflection preliminary to adequate discussion in conference, before final conclusions could be reached regarding the proper interpretation of the legislation controlling this case. A majority of my brethren find that neither the Norris-LaGuardia Act nor the War Labor Disputes Act limited the power of the district court to issue the orders under review. I have come to the contrary view. But to suggest that the right to determine so complicated and novel an issue could not be brought within the cognizance of the district court, and eventually of this Court, is to deny the place of the judiciary in our scheme of government. And if the district court had power to decide whether this case was properly before it, it could make appropriate orders so as to afford

the necessary time for fair consideration and decision while existing conditions were preserved. To say that the authority of the court may be flouted during the time necessary to decide is to reject the requirements of the judicial process.

It does not mitigate such defiance of law to urge that hard-won liberties of collective action by workers were at stake. The most prized liberties themselves presuppose an independent judiciary through which these liberties may be, as they often have been, vindicated. When in a real controversy, such as is now here, an appeal is made to law, the issue must be left to the judgment of courts and not the personal judgment of one of the parties. This principle is a postulate of our democracy.

And so I join the opinion of the court insofar as it sustains the judgment for criminal contempt upon the broad ground of vindicating the process of law.[2] The records of this Court are full of cases, both civil and criminal, involving life or land or small sums of money, in which the Court proceeded to consider a federal claim that was not obviously frivolous. It retained such cases under its power until final judgment, though the claim eventually turned out to be unfounded and the judgment was one denying the jurisdiction either of this Court or of the court from which the case came. In the case before us, the District Court had power "to preserve the existing conditions" in the discharge of "its duty to permit argument and to take the time required for such consideration as it might need" to decide whether the controversy involved a labor dispute to which the Norris-LaGuardia Act applied. See *United States* v. *Shipp*, 203 U. S. 563, 573.

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[2] Since, in my view, this was not a conviction for contempt in a case "arising under this Act" the jury provisions of § 11 of the Norris-LaGuardia Act do not apply. For obvious reasons, the petitioners do not claim that the Constitution of the United States affords them a right to trial by jury.

In our country law is not a body of technicalities in the keeping of specialists or in the service of any special interest. There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny. Legal process is an essential part of the democratic process. For legal process is subject to democratic control by defined, orderly ways which themselves are part of law. In a democracy, power implies responsibility. The greater the power that defies law the less tolerant can this Court be of defiance. As the Nation's ultimate judicial tribunal, this Court, beyond any other organ of society, is the trustee of law and charged with the duty of securing obedience to it.

It only remains to state the basis of my disagreement with the Court's views on the bearing of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. § 101, and the War Labor Disputes Act, 57 Stat. 163, 50 U. S. C. App. § 1501. As to the former, the Court relies essentially on a general doctrine excluding the Government from the operation of a statute in which it is not named, and on the legislative history of the Act. I find the countervailing considerations weightier. The Norris-LaGuardia Act deprived the federal courts of jurisdiction to issue injunctions in labor disputes except under conditions not here relevant. The question before a court of equity therefore is whether a case presents a labor dispute as defined by the Act. Section 13 (c) defines "labor disputes":

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee."

That the controversy before the district court comes within this definition does not need to be labored. The controversy arising under the Lewis-Krug contract con-

cerned "terms or conditions of employment" and was therefore a "labor dispute", whatever further radiations the dispute may have had. The Court deems it appropriate to interpolate an exception regarding labor disputes to which the Government is a party. It invokes a canon of construction according to which the Government is excluded from the operation of general statutes unless it is included by explicit language.

The Norris-LaGuardia Act has specific origins and definite purposes and should not be confined by an artificial canon of construction. The title of the Act gives its scope and purpose, and the terms of the Act justify its title. It is an Act "to define and limit the jurisdiction of courts sitting in equity". It does not deal with the rights of parties but with the power of the courts. Again and again the statute says "no court shall have jurisdiction", on an equivalent phrase. Congress was concerned with the withdrawal of power from the federal courts to issue injunctions in a defined class of cases. Nothing in the Act remotely hints that the withdrawal of this power turns on the character of the parties. The only reference to parties underscores their irrelevance to the issue of jurisdiction, for the power of the courts is withdrawn in a labor dispute "regardless of whether or not the disputants stand in the proximate relation of employer and employee". That apart, the limitation on the jurisdiction of the Court depends entirely on the subject matter of the controversy. Section 13 (a) defines it:

> "A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; . . ."

Neither the context nor the content of the Act qualifies the terms of that section. Did not the suit brought by the

Government against Lewis and the United Mine Workers "grow out of a labor dispute" within the terms of § 13 (a)?

As already indicated, the Court now finds an exception to the limitation which the Norris-LaGuardia Act placed upon the equity jurisdiction of the district court, not in the Act but outside it. It invokes cases involving other statutes which apply a canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless named in it. As many cases can be found in this Court in which the rule did not prevail as cases in which it was found helpful. The fact is that in the cases in which it carried weight it was merely one of an ensemble of factors leading to a particular result. This canon, like other generalities about statutory construction, is not a rule of law. Whatever persuasiveness it may have in the construction of a particular statute derives from the meaning conveyed by the terms of the statute in its total environment. "This rule has its historical basis in the English doctrine that the Crown is unaffected by acts of Parliament not specifically directed against it. . . . The presumption is an aid to consistent construction of statutes of the acting sovereign, when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated." So wrote the late Chief Justice for the whole Court in *United States* v. *California*, 297 U. S. 175, 186, and this point of view was very recently applied in *United States* v. *Rice*, 327 U. S. 742, 749. The text, context, content and historical setting of the Norris-LaGuardia Act all converge to indicate the unrestricted withdrawal by Congress from the federal district courts of the power to issue injunctions in labor disputes, excepting only under circumstances explicitly defined and not here present. The meaning which a reading of the text conveys and which is confirmed by the history which led Congress to free the

federal courts from entanglements in these industrial controversies through use of the injunction, ought not to be subordinated to an abstract canon of construction that carries the residual flavor of the days when a personal sovereign was the law-maker.

Moreover, the rule proves too much. If the United States must explicitly be named to be affected, the limitations imposed by the Norris-LaGuardia Act upon the district court's jurisdiction could not deprive the United States of the remedies it theretofore had. Accordingly, the courts would not be limited in their jurisdiction when the United States is a party and the Act would not apply in any proceeding in which the United States is complainant. It would mean that, in order to protect the public interest, which may be jeopardized just as much whether an essential industry continued under private control or has been temporarily seized by the Government, a court could, at the behest of the Attorney General of the United States, issue an injunction as courts did when they issued the *Debs*, the *Hayes* and the *Railway Shopmen's* injunctions.[3] But it was these very injunctions, secured by the Attorney General of the United States under claim of compelling public emergency, that gave the most powerful momentum to the enactment of the Norris-LaGuardia Act. This history is too familiar to be rehearsed. It is surely surprising to conclude that when a long and persistent effort to take the federal courts out of the industrial conflict, insofar as the labor injunction put them into it, found its way to the statute books, the Act failed to meet the grievances that were most dramatic and deepest in the memory of those most concerned with the legislation.

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[3] *United States* v. *Debs*, 64 Fed. 724, 158 U. S. 564; *United States* v. *Hayes*, unreported, D. Ind. 1919; *United States* v. *Railway Employees' Dept. A. F. L.*, 283 Fed. 479, 286 Fed. 228, 290 Fed. 978.

It is urged, however, that legislative history cuts down what might otherwise be the scope of the Act. Reliance is placed on statements by two Representatives during the House debates on the Bill, calculated to show that Congress purposed to exclude from the limitation of the jurisdiction of the district courts labor disputes involving "employees" of the Government, at least where injunctions are sought by the Attorney General. Since both statements came from spokesmen for the Bill, they carry weight. The setting of these remarks, the circumstances under which they were delivered as well as their nature define their meaning and the significance to be given them as a gloss upon the Act.

There was before the House an Amendment by Representative Blanton which would have made the Act applicable "except where the United States Government is the petitioner." (75 Cong. Rec. 5503.) Representative LaGuardia opposed the Amendment, remarking "I do not see how in any possible way the United States can be brought in under the provisions of this Bill." If this is to be read apart from the meaning afforded by the context of the debates and the whole course of the legislation, it would mean that the jurisdiction to grant a *Debs* injunction continued unaffected. No one would have been more startled by such a conclusion than Mr. LaGuardia. The fact is that a situation like the present, where the Government for a time has some relation to a labor dispute in an essentially private industry, was not in the thought of Mr. LaGuardia or of anybody else in the Congress. Mr. LaGuardia's statement regarding the position of the United States under the Act followed his reading of § 13 (b) under which a person is to be deemed interested in a labor dispute only if "engaged in the same industry, trade, craft, or occupation in which such dispute occurs." His brief, elliptical remark plainly conveyed that the business of the Government of the United States is not an "indus-

try, trade, craft, or occupation." This is made unequivocally clear by the colloquy that followed. Mr. Blanton inquired whether Mr. LaGuardia was willing "for the Army and the Navy to form a labor union and affiliate themselves with the American Federation of Labor and not permit the Government of the United States to preserve its rights?" The short answer for Mr. LaGuardia to have made was "The United States is not subject to the provisions of the Act, because by employer we mean a private employer." Instead of that, Mr. LaGuardia replied, "Oh, the Army and the Navy are not in a trade, craft, or occupation." In short, the scope of the limitation upon the jurisdiction of the courts depended not on party, but on subject matter. Representative Blanton's amendment was rejected by 125 to 21.

The second Representative upon whom the Court relies is Mr. Michener. He said, "Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government." (75 Cong. Rec. 5464.) Later he added ". . . This deals with labor disputes between individuals, not where the Government is involved. It is my notion that under this bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see this clarified, but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevented from applying for an injunction, if one is necessary in order that the Government may function." (*Id.* at 5509.) What Mr. Michener gave as *his* interpretation of what survived the Norris-LaGuardia Act, was precisely the claim of the Government in asking for the *Debs* injunction. That

injunction was sought and granted in order that the Government might function. Insofar, then, as Mr. Michener's statements imply that the United States could again get a *Debs* injunction, his understanding is belied by the whole history of the legislation, as reflected in its terms.[4] These statements can only mean, then, that if, say, employees in the Treasury Department had to be enjoined so that government could go on, it was Representative Michener's view that an injunction could issue. No attempt was made to make this view explicit in the Act. It was not discussed, and only one statement appears to share it.[5] In any event, it does not imply a broader exemption than that of which Representative LaGuardia spoke.

It is to be noted that the discussion in the House followed passage in the Senate of that which subsequently became the Act. It is a matter of history that the Senate Judiciary Committee was the drafting and driving force behind the Bill. The Bill had extended consideration by a subcommittee of the Senate Judiciary Committee followed by weighty reports and full discussion on the Senate floor. We are not pointed to a suggestion or a hint in the Senate proceedings that the withdrawal of jurisdiction to issue injunctions in labor disputes was subject to a latent exception as to injunctions sought by the Government. The whole contemporaneous history is against it. The experience which gave rise to the Norris-LaGuardia Act only

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[4] Compare Representative LaGuardia's reply to a proposed amendment by Representative Beck which would have exempted from the operation of the Act disputes "where the welfare, health, or lives of a public are concerned who are not parties to such labor dispute, or where a labor dispute involves the obstruction of any instrumentality of interstate or foreign commerce". LaGuardia claimed that the amendment was out of order because not germane to the purposes of the legislation. "The present bill refers only to disputes between employees and employer . . . The public is fully protected by penal and other statutes . . ." 75 Cong. Rec. 5503.

[5] See statement of Representative Schneider, 75 Cong. Rec. 5514.

underscores the unrestricted limitation upon the jurisdiction of the courts, except in the narrowly defined situations of which this is not one. To find implications in the fact that in the course of the debates it was not explicitly asserted that the district courts could not issue an injunction in a labor controversy even at the behest of the Government is to find the silence of Congress more revealing than the natural meaning of legislation and the history which begot it. The remarks of Mr. LaGuardia and Mr. Michener ought not to be made the equivalent of writing an amendment into the Act. It is one thing to draw on all relevant aids for shedding light on the dark places of a statute. But to allow inexplicit remarks in the give-and-take of debate to contradict the very terms of legislation and the history behind it is to put out the controlling light on meaning shed by the explicit provisions of an Act in its setting.

But even if we assume that the Act was not intended to apply to labor disputes involving "employees" of the United States, are the miners in the case before us "employees" of the United States within the meaning of this interpolated exception? It can hardly be denied that the relation of the miners to the United States is a hybrid one. Clearly, they have a relation to the Government other than that of employees of plants not under Government operaiton. Equally clearly, they have a relation and a status different from the relation and status of the clerks at the Treasury Department. Never in the country's history have the terms of employment of the millions in Government service been established by collective bargaining. But the conditions of employment—hours, wages, holidays, vacations, Health and Welfare Program, etc.—were so fixed for the miners during the period of Government seizure. The proper interpretation of this collective agreement between the Government and the United Mine Workers is precisely what is at the bottom of this contro-

versy. Neither a spontaneous nor a sophisticated characterization would resort to the phrase "Government employees" without more, in speaking of the miners during the operation of the mines by the Government. The only concrete characterization of the status of employees in seized plants was expressed by Under Secretary Patterson at a hearing on the predecessor bill to that which became the law under which this seizure was made. He spoke of the role of the Government as that of "A receiver that would be charged with the continuity of operation of the plant".[6] Nothing in the Acts authorizing seizure of private plants indicates that the employees of these plants were to be considered employees of the United States in the usual and natural meaning of the term.

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[6] Hearings on S. 2054 before a Subcommittee of the Committee on the Judiciary, Senate, 77th Cong., 1st Sess., p. 14. The characterization was accepted by members of the Committee which approved the Bill. *Id.* at pp. 16, 18, 130. When Senator Connally referred to the United States as an employer (*id.* at 120), he did so in a special context for the purposes of a discussion about collective bargaining with reference to wages. As to wages, of course, the Government would stand *in loco* "employer" during its operation of the plant. At other places, he refers to the private employer who "will continue to operate it under the supervision of the Government". *Id.* at 55. See also p. 57.

The analogy of equity receivership is not too remote. In a limited sense, employees of plants in receivership in a federal court may be considered employees of the United States, since the operation of the plant is under the jurisdiction and control of a United States officer. But no one aware of the background of mischief which the Act was intended to remedy could find an intention in Congress to allow injunctions in labor disputes involving plants in receivership. Compare *Trainmen* v. *Toledo P. & W. R. Co.*, 321 U. S. 50, 55, 58–61. No series of cases contributed more to the feeling that the district courts abused their equity jurisdiction than those involving employees of railroads in equity receivership in the federal courts. See *e. g.*, 1 Gresham, Life of Walter Quintin Gresham, cc. XXIII to XXV; Gregory, Labor and the Law, 95–97; Nelles, *A Strike and Its Legal Consequences—An Examination of the Receivership Precedent for the Labor injunction* (1931) 40 Yale L. J. 507, *passim*. If injunctions

It may fairly be said that such has been the common understanding of the Norris-LaGuardia Act. In the full debates on bills providing for Government seizure of plants, Congressional leaders clearly indicated their understanding that as the law then stood there could be no injunctions in labor disputes in seized plants.[7]

But not only was such the understanding when the legal question emerged in the course of considering the need of war legislation. Recent legislation and its history are relevant not merely because they show later understanding of the terms of an older statute. The War Labor Disputes Act of 1943 is directly and primarily involved in our case. The whole controversy arises under the authority to seize mines given by the War Labor Disputes Act. The real question before us is whether in authorizing such

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will not issue in disputes involving employees of railroads or other industries in receivership under operation by the federal courts, nothing relevant to the construction of the statute warrants the inference that Congress allowed the injunction to continue in disputes involving employees of plants in "receivership" under operation of the Secretary of the Interior.

[7] See especially the debates on a proposed amendment to the Smith-Connally Bill whereby Senator Connally sought to add the injunction as a remedy against violation of the Act.

"MR. CONNALLY. The provision is limited to plants which the Government takes over. It would not change the Norris-LaGuardia Act in any respect, *except in the one particular case.*

* * *

"MR. LANGER. Mr. President, is it not true that unless section 5 is stricken from the bill that a portion of the Norris-LaGuardia Act will be repealed?

"MR. DANAHER. It would certainly be overridden; . . ." (Emphasis supplied.) 89 Cong. Rec., 3988–89.

See also the statements of Senators Taft, Vandenberg, and Wagner, and compare those of Senators Revercomb and Barkley; and see the colloquy between Senators Connally and Vandenberg, *id.* at 3906, quoted *infra* note 10.

seizure and operation Congress also gave to the United States the right to prevent interference with its statutory operation through the equitable remedies here invoked.

By that Act Congress created a new relationship among the Government, the plant owners, the employees. The rights, duties, remedies incident to that relation are those given by the Act. Congress naturally addressed itself to possible interferences with the Government's operation of seized plants. It dealt specifically with this subject. It gave the Government specific remedies which it might invoke against such interference.[8] Remedy by injunction was not given. It was not merely omitted. A fair reading of the legislative history shows that it was expressly and definitively denied. As reported out of the Senate Committee, S. 796 provided for plant seizure. It did not include the injunction among the remedies for interference with government operation.[9] But when the Bill reached the floor of the Senate, Senator Connally, sponsor of the Bill, offered and urged an amendment giving the district courts jurisdiction to restrain violations of the measure.[10] He accepted, somewhat reluctantly, the amendment of Senator Wagner to limit the proposed

[8] 57 Stat. 163, 16, 50 U. S. C. § 1506 (b).

[9] S. Rep. No. 147, 78th Cong., 1st Sess.

[10] 89 Cong. Rec. 3809. And see p. 3906:

"MR. VANDENBERG. . . .

"I am very anxious that there shall be additional statutory protection to the uninterrupted production of war necessities, but I am wondering whether in order to achieve that purpose it is necessary for me to impinge upon a very profound hostility I have always had to the use of injunctions in labor disputes. I voted for the original Norris-LaGuardia Act, and I have always felt that one of the most useful things we ever did, not only as a matter of fair play, but in respect to the status of the courts was substantially to separate from court jurisdiction the responsibility of, in effect, umpiring labor disputes.

"What I wish to ask the able Senator from Texas, if I may, is that: In his proposal, on page 4, it is provided that any person who will-

amendment to an injunction at the behest of the Attorney General, precisely as was here sought and granted.[11] On motion of Senator Danaher, this proposal was rejected by the Senate after full debate,[12] participated in by Senators especially conversant with the history and scope of the

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fully violates any provision of the act is guilty of a felony, and subject to a fine or imprisonment. Is not that a conclusive penalty? Is it necessary in addition to go back into all the old injunctive process in connection with labor disputes?

"MR. CONNALLY. That is not a legal inquiry really. Of course, it might be that we could get along without the provision. Like the Senator, I voted for the Norris-LaGuardia Act, and I favored the policy embodied therein. This provision, however, applies only to plants taken over by the Government. It seems to me that if the Government is to operate a plant, it should have the widest and the fullest authority to operate it as it wants to do and to prevent interruption. Therefore, because of the attitude of some who were interested in the bill, I inserted section 5. I do not think the bill would be very seriously crippled if it were eliminated, but I think it is improved by its remaining in. I do not think it would be fatal to strike out that provision, but I hope that will not be done.

"MR. VANDENBERG. I thank the Senator for his frank statement. When the Government has taken over the operation of a plant and it becomes in essence a Government operation, it is rather difficult to resist the argument that the Government should not be deprived of any instrumentality in the enforcement, virtually of its sovereignty.

"MR. CONNALLY. That is true.

"MR. VANDENBERG. Nevertheless, I apprehend that the very fact that the injunctive process is restored in the Senator's bill is the reason why it appears in the additional amendment offered by the able Senator from Ohio, where, it seems to me, it becomes decidedly more offensive, using that word in the sense in which I have used it."

The reference is to an amendment proposed by Senator Taft authorizing injunctions in any circuit court of appeals at the request of the Attorney General in case of failure to obey orders of the War Labor Board, or whenever "operations are hindered or reduced by lockout, strike, or otherwise". This applied apparently to plants in private operation. 89 Cong. Rec. 3897–98. Compare the Bill passed by the House, note 14.

[11] 89 Cong. Rec. 3907, 3988–89.

[12] *Id.* at 3809.

existing remedies available to the Government. With this remedy denied to the Government, the Bill was passed and sent to the House.[13] The House did not like the Bill. Its version did not see fit specifically to add to the limited seizure provisions of the Selective Service Act of 1940, although apparently it assumed that there could be seizure under existing law in the case of failure by defense plants to produce as a result of labor troubles. Instead the House version provided stringent anti-strike and anti-lockout provisions as to plants in private operation, and by specific amendment to the Norris-LaGuardia Act the district courts were authorized to restrain violations of those provisions. But this *pro tanto* repeal of the Norris-LaGuardia Act was not made available to the United States as a remedy against interference with operation of plants seized under the earlier, 1940 Act.[14]

The bill then went to conference. What came out was, so far as here material, the bill that had passed the Senate. The United States was granted power to seize and operate defense plants whose production was hampered by labor disputes. Specific remedies were formulated by Congress against interference with the Government's operation. The injunction was not included.[15] In neither House was further attempt made to reintroduce the Connally proposal giving the Government relief by injunction. Nor did any Congressman suggest that the Government had that redress anyhow. On the floor of the Senate, Senator Thomas of Utah, Chairman of the Committee on Education and Labor, said:

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[13] *Id.* at 3993.

[14] Compare § 4 (b) and (c) with § 12 (a) and b, 89 Cong. Rec. 5382–83. For the earlier seizure provisions see 54 Stat. 885, 892, 50 U. S. C. App. § 309.

[15] See Conference Report on S. 796, H. R. No. 531, 78th Cong., 1st Sess.

"Mr. President, I ask the Senator from New Mexico [Mr. Hatch], the Senator from Connecticut [Mr. Danaher], and the Senator from Texas [Mr. Connally], the sponsor of the bill, whether there is a unanimous opinion on the part of those three great lawyers that there will not be a reopening of the district courts to industry-labor disputes? . . . I should like that point to be made so firmly and so strongly that no lawyer in the land who would like to take advantage of the situation created by the mere mention of the words 'district court' will resort to the court in order to confuse our industry-labor relations."

Mr. Connally answered:

"Mr. President, . . . I think I speak for the Senator from Vermont and the Senator from New Mexico and the Senator from Connecticut and also the Senator from Indiana [Mr. Van Nuys], although he is not present, when I say that there is no jurisdiction whatever conferred by this bill providing for resort to the United States district court, except the one mentioned by the Senator from Connecticut, which is merely the right to go there for a civil action for damages, and no jurisdiction whatever is given over labor disputes. Does that answer the Senator?"

"Mr. Thomas of Utah. I thank the Senator for making that statement and I hope it will satisfy the lawyers of the country.

"Mr. Connally. I am sure it will." [16]

Under these circumstances the Bill became law, and the seizure of the mines in our case was made under that law. The separate items of this legislative history cannot be judged in isolation. They must be considered together, and as part of the course of legislation dealing with injunctions in labor disputes. To find that the Government has the right which Senator Connally's amendment sought to confer but which the Congress withheld is in effect to say that when the amendment was voted down it was the same as though the amendment had been voted up.

[16] 89 Cong. Rec. 5754. The Senators mentioned by Mr. Connally were the managers on the part of the Senate of the bill in conference.

Events since the passage of the Act underscore what would appear to be the controlling legislative history of the War Labor Disputes Act, and prove that Congress saw fit not to authorize district courts to issue an injunction in cases like this. In May, 1946, the country faced a crisis growing out of a labor dispute as acute as that leading to the controversy in the court below. To meet the railroad crisis in May of last year, Congress, upon the recommendation of the President and the Attorney General, deemed additional legislation necessary for dealing with labor disputes. The proposals in each House carried a provision which authorized an injunction to issue for violation of the War Labor Disputes Act.[17] In the Senate Senator Meade proposed an amendment to delete the provisions for injunctions.[18] In the debates that followed no one suggested that the new proposal was unnecessary, that the jurisdiction already existed, or that if granted, as requested by the Attorney General, it would not, as Senator Meade claimed, repeal *pro tanto* the Norris-LaGuardia Act. The debates show clearly that what was contemplated was a change in the War Labor Disputes Act whereby a new and an additional remedy would be authorized.[19] The Bill never became law.

As is well known, as the debates clearly show, as Senator Connally admitted, the War Labor Disputes Act was directed primarily against stoppage in the coal mines.[20] The

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[17] H. R. 6578, 79th Cong., 2d Sess.

[18] Cong. Rec. 6166.

[19] See particularly the statements of Senator Meade (P. 6171), Senator Morse (p. 6169), Senator Pepper (pp. 6169, 6170), Senator Wagner (p. 6170), Senator Wheeler (p. 6172), Senator Barkley (p. 6175), Senator Fullbright (p. 6171).

[20] Senator Connally said: "Mr. Lewis appeared before the Truman Committee 3 or 4 weeks ago. I happen to be a member of that Committee, and when he said he did not regard his no-strike agreement as binding . . . I determined then that if I could get this bill before the Senate, I was going to bring it up and press it in order

situation that Congress feared was exactly that which has occurred to form the controversy before us. To handle that situation, Congress gave to the United States the power to seize the mines. To vindicate this power the Government was given authority to invoke criminal penalties for interferences with the operation of the mines. Senator Connally sought more. He wanted Congress to empower the district courts to enjoin interference. The Senate did not want an injunction to issue and voted the proposal down. The Senate's position was adopted by the Conference Committee. The House of Representatives yielded its view and approved the Conference report. The whole course of legislation indicates that Congress withheld the remedy of injunction. This Court now holds that Congress authorized the injunction.

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that if he did disregard the agreement, the President or the Government of the United States would have a weapon with which to meet the threat and the danger." 89 Cong. Rec. 3886. See also H. Rep. No. 440, 78th Cong., 1st Sess., p. 6. The references to the coal situation in the debates are innumerable. See, *e. g.*, 89 Cong. Rec. 3767, 3886, 3888, 3889, 3900–01.

You may not care
for the result, but
I am obliged to
You for making
me reconsider
two phases of the
legislative
materials I used.
What I have
done is to subordi-
nate the "receivership"
argument, and
put legislative
considerations
in appropriate
perspective -
as I see it.

pp. 14-15,
19

V.T.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner, 759 *v.* United Mine Workers of America, an Unincorporated Association. John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 760 *v.* The United States of America. United Mine Workers of America, an Unincorporated Association, Petitioner. 781 *v.* The United States of America. The United States of America, Petitioner, 782 *v.* John L. Lewis, Individually and as President of the United Mine Workers of America. United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 811 *v.* The United States of America.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[February —, 1947.]

MR. JUSTICE FRANKFURTER, concurring in part.

The historic phrase "a government of laws and not of men" epitomizes the distinguishing character of our

political society. When John Adams put that phrase into the Massachusetts Bill of Rights, he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. "A government of laws and not of men" was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. But even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout our history. Or, what this Court has deemed its duty to decide may be changed by legislation, as it often has been, and, on occasion, by constitutional amendment.

But from their own experience and their deep reading in history, the Founders knew that Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised. And this conception of a government by laws dominated the thoughts of those who founded this Nation and designed its Constitution, although they knew as well as the belittlers of the conception that laws have to be made, interpreted and enforced through men. To that end, they set apart a body of men, who were to be the depositories of law, who by their disciplined training and character and by withdrawal from the usual temptations of private interest may reasonably be expected to be "as free, impartial and independent as the lot of humanity will admit". So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial office with extraordinary safeguards and prestige. No one, no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That

is what courts are for. And no type of controversy is more peculiarly fit for judicial determination than a controversy that calls into question the power of a court to decide. Controversies over "jurisdiction" are apt to raise difficult professional problems. They usually involve judicial presuppositions, textual doubts, confused legislative history, and like factors hardly fit for final determination by the self-interest of a party.

Even when a statute deals with a relatively uncomplicated matter and the "words in their natural sense as they would be read by the common man" would appear to give an obvious meaning, considerations underlying the statute have led this Court to conclude that "the words cannot be taken quite so simply." See *Millburn Co.* v. *Davis,* 270 U. S. 390, 400. How much truer is this of legislation like the Norris-LaGuardia Act. This Act altered a long process of judicial history, but altered it by a scheme of complicated definitions and limitations. The Government here invoked the aid of a court of equity in circumstances which certainly were not commonplace nor dealt with by the Act with inescapable clarity. Colloquially speaking, the Government was "running" the mines. But it was "running" them not as an employer, in the sense that the owners of the coal mines were the employers of the men the day before the Government seized the mines. Nor yet was the relation between the Government and the men like the relation of the Government to the civil service employees in the Department of the Interior. It would be naive to assert that the scope of the Norris-LaGuardia Act in a situation like that presented by this bill raised a question so frivolous that any judge should have summarily thrown the Government out of court without delay. Only when a court is so obviously traveling outside its orbit as to be merely usurping judicial forms and facilities, may an order issued by a court be disobeyed and treated as though it were a letter

to a newspaper. But short of a patent want of authority on the part of a court to entertain an appeal to its authority, the very existence of a court presupposes its power to entertain a controversy. Whether a defendant may be brought to the bar of justice is not for a defendant himself to decide. To be sure, an unquestionable limitation upon a court cannot be circumvented by pretending to inquire into the existence of a power that has obviously been withheld. Thus, the explicit denial to federal district courts of the power to issue injunctions in an ordinary labor dispute between a conventional employer and his employees cannot be defeated, and an existing right to strike impaired, by pretending to entertain a suit for such an injunction in order to decide whether the court has jurisdiction. In such a case, a judge would not be acting as a court. He would be a pretender, not a wielder, of judicial power.

But that is not this case. It required extended arguments, lengthy briefs, study and reflection preliminary to adequate discussion in conference, before final conclusions could be reached regarding the proper interpretation of the legislation controlling this case. A majority of my brethren find that neither the Norris-LaGuardia Act nor the War Labor Disputes Act limited the power of the district court to issue the orders under review. I have reached the contrary conclusion. But to suggest that the right to determine so complicated and novel an issue could not be brought within the cognizance of the district court, and eventually of this Court, is to deny the place of the judiciary in our scheme of government. And if the district court had power to decide whether this case was properly before it, it could make appropriate orders so as to afford the necessary time for fair consideration and decision while existing conditions were preserved. To say that the authority of the court may be flouted during the time necessary to decide is to reject the requirements of the judicial

process. It does not mitigate such defiance of law to urge that hard-won liberties of collective action by workers were at stake. The most prized liberties themselves presuppose an independent judiciary through which these liberties may be, as they so often have been, vindicated. When, in a real controversy such as is now here, an appeal is made to law, the issue must be left to the judgment of courts and not the personal judgment of one of the parties. This principle is a postulate of our democracy. And so I join the opinion of the court insofar as it sustains the judgment for contempt upon the broad ground of vindicating the process of law.

It only remains to state the basis of my disagreement with the Court's views on the bearing of the Norris-LaGuardia Act and the War Labor Disputes Act. As to the former, the Court relies essentially on a general doctrine excluding the Government from the operation of a statute in which it is not named and on the legislative history of the Act. I find the countervailing considerations weightier. The Norris-LaGuardia Act deprived the federal courts of jurisdiction to issue injunctions in labor disputes except under conditions not here relevant. The question before a court of equity therefore is whether a case presents a labor dispute as defined by the Act. Section 13 (c) defines "labor disputes":

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in approximate relation of employer and employee."

That the controversy before the district court comes within this definition does not need to be labored. The controversy arising under the Lewis-Krug contract concerned "terms or conditions of employment" and was therefore a "labor dispute", whatever further radiations the dispute may have had. The Court deems it appropriate to interpolate an exception regarding labor disputes

to which the Government is a party. It invokes a canon of construction according to which the Government is excluded from the operation of general statute unless explicit language covers the Government.

The Norris-LaGuardia Act has specific origins and definite purposes and should not be fitted into an artificial canon of construction. The title of the Act gives its scope and purpose and the terms of the Act justify its title. It is an Act "to define and limit the jurisdiction of courts sitting in equity". It does not deal with the rights of parties but with the power of the courts. Again and again, the statute says "no court shall have jurisdiction", etc. Congress was concerned with the withdrawal of power from the federal courts to issue injunctions in a defined class of cases. Nothing in the Act remotely hints that the withdrawal of this power turns on the character of the parties. The only reference to parties is that the power is withdrawn in a labor dispute "regardless of whether or not the disputants stand in the proximate relation of employer and employee". That apart, the limitation on the jurisdiction of the Court depends entirely on the subject matter of the controversy. Section 13 (a) defines it:

> "A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interest therein; or who are employees of the same employer or who are members of the same or an affiliated organization of employers or employees."

Did not the suit brought by the Government against Lewis and the United Mine Workers "grow out of a labor dispute" within the terms of § 13 (a)? Neither the context nor the content of the Act qualifies the terms of that section.

As already indicated the Court now finds an exception to the limitation which the Norris-LaGuardia Act placed

upon the equity jurisdiction of the district court not in the Act but outside it. It invokes cases involving other statutes which apply a canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless named in it. As many cases can be found in this Court in which the rule did not prevail as cases in which it was found helpful. The fact is that in the cases in which it was deemed an aid to interpretation it was merely one in an ensemble of factors leading to a particular result. This canon, like other generalities about statutory construction, is not a rule of law. Whatever persuasiveness it may have in relation to a particular statute derives from the meaning conveyed by the terms of a statute in its total environment. "This rule has its historical basis in the English doctrine that the Crown is unaffected by acts of Parliament not specifically directed against it. . . . The presumption is an aid to consistent construction of statutes of the acting sovereign, when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated." So wrote the late Chief Justice for the whole Court in *United States* v. *California,* 297 U. S. 175, 186, and this point of view was very recently applied in *United States* v. *Rice,* 327 U. S. 742, 749. The text, context, content and historical setting of the Norris-La-Guardia Act all converge to indicate the unrestricted withdrawal by Congress from the federal district courts of the power to issue injunctions in labor disputes, excepting only under circumstances explicitly defined and not here present. The meaning which a reading of the text conveys and which is confirmed by the history which led Congress to free the federal courts from entanglements in these industrial controversies through use of the injunction, ought not to be subordinated to an abstract canon of construction that carries the residual flavor of the days when a personal sovereign was the law-maker.

Moreover, the rule proves too much. If, because the United States is not named, the Courts are not limited in their jurisdiction when the United States is a party, the Act would apply to any proceeding by the United States as complainant. Accordingly, the limitations imposed by the Norris-LaGuardia Act upon the district court's jurisdiction could not deprive the United States of the remedies it theretofore had. It would mean that, in order to protect the public interest which may be jeopardized just as much whether an essential industry continued under private control or has been temporarily seized by the Government, a court could, at the behest of the Attorney General of the United States, issue an injunction as courts did when they issued the *Debs*, the *Hayes* and the *Railway Shopmen's* injunctions.[1] But it was these very injunctions, secured by the Attorney General of the United States under claim of compelling public emergency, that gave the most powerful momentum to the enactment of the Norris-LaGuardia Act. This history is too familiar to be rehearsed. It is surely surprising to conclude that when a long and persistent effort to take the federal courts out of the industrial conflict, insofar as the labor injunction put them into it, found its way to the statute books, the Act failed to meet the grievances that were most dramatic and deepest in the memory of those most concerned with the legislation.

It is urged, however, that legislative history cuts down what might otherwise be the scope of the Act. Reliance is placed on statements by two Representatives during the House debates on the Bill, calculated to show that Congress purposed to exclude from the limitation of the jurisdiction of the district courts labor disputes involving "employees" of the Government, at least where injunctions are

[1] *United States* v. *Debs*, 64 Fed. 724, 158 U. S. 564; *United States* v. *Hayes*, unreported, D. Ind. 1919; *United States* v. *Railway Employees' Dept., A. F. L.*, 283 Fed. 479, 286 Fed. 228, 290 Fed. 978.

sought by the Attorney General. Since both statements came from spokesmen for the Bill, they carry weight. The setting of these remarks, the circumstances under which they were delivered as well as their nature define their meaning and the significance to be given them as a gloss upon the Act.

There was before the House an Amendment by Representative Blanton which would have made the Act applicable "except where the United States Government is the petitioner." (75 Cong. Rec. 5503.) Representative LaGuardia opposed the Amendment remarking "I do not see how in any possible way the United States can be brought in under the provisions of this Bill." If this is to be read apart from the meaning afforded by the context of the debates and the whole course of the legislation, it would mean that the jurisdiction to grant a *Debs* injunction continued unaffected. No one would have been more startled by such a conclusion than Mr. LaGuardia. The fact is that a situation like the present, where the Government for a time has some relation to a labor dispute in an essentially private industry, was not in the thought of Mr. LaGuardia or of anybody else in the Congress. Mr. Guardia's statement regarding the position of the United States under the Act followed his reading of § 13 (b) under which a person is to be deemed interested in a labor dispute only if "engaged in the same industry, trade, craft or occupation in which such dispute occurs." His brief, elliptical remark plainly conveyed that the business of the Government of the United States is not an "industry, trade, craft or occupation." This is made unequivocally clear by the colloquy that followed. Mr. Blanton inquired whether Mr. LaGuardia was prepared to have "the Army and the Navy form a labor union and affiliate themselves with the American Federation of Labor and not permit the Government of the United States to preserve its rights?" The short answer for Mr. LaGuardia to have

made was "The United States is not subject to the provisions of the Act, because by employer we mean a private employer." Instead of that, Mr. LaGuardia replied, "Oh the Army and Navy are not a trade, craft or occupation." In short, the scope of the limitation upon the jurisdiction of the courts was not who was the party, but what was the subject matter. Representative Blanton's amendment was rejected by 125 to 21.

The second Representative upon whom the Court relies is Mr. Michener. He said, "Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government." (75 Cong. Rec. 5464.) Later he added ". . . This deals with labor disputes between individuals, not where the Government is involved. It is my notion that under this bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see this clarified, but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevented from applying for an injunction, if one is necessary in order that the Government may function." The claim of the Government in asking for the *Debs* injunction was precisely what Mr. Michener gave as *his* interpretation of what survived the Norris-LaGuardia Act. That injunction was sought and granted in order that the Government might function. Insofar, then, as Mr. Michener's statements imply that the United States could again get a *Debs* injunction, his understanding is belied by the whole history of the legislation, as reflected in its terms.[2] These statements can

[2] Compare Representative LaGuardia's reply to a proposed amendment by Representative Beck which would have exempted from the

only mean then that if, say, employees in the Treasury Department had to be enjoined so that government could go on, it was Representative Michener's view that an injunction could issue. No attempt was made to make this view explicit in the Act. It was not discussed, and only one statement appears to share it.[3] In any event, it does not imply a broader exemption than that of which Representative LaGuardia spoke.

It is to be noted that the discussion in the House followed passage in the Senate of what subsequently became the Act. It is a matter of history that the Senate Judiciary Committee was the drafting and driving force behind the Bill. The Bill had extended consideration by a subcommittee of the Senate Judiciary Committee followed by weighty reports and full discussion on the Senate floor. Not a suggestion, not a hint can be found in the Senate proceedings that the withdrawal of jurisdiction to issue injunctions in labor disputes was subject to a latent exception as to injunctions sought by the Government. The whole contemporaneous history is against it. The remarks of Mr. LaGuardia and Mr. Michener ought not to be made the equivalent of writing an amendment into the Act. It is one thing to draw on all relevant aids for shedding light on the dark places of a statute. But to allow inexplicit remarks in the give-and-take of debate to contradict the very terms of legislation and the history behind it is to put out the controlling light on meaning shed by the explicit provisions of an Act in its setting.

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operation of the Act disputes "where the welfare, health, or lives of a public are concerned who are not parties to such labor dispute, or where a labor dispute involves the obstruction of any instrumentality of interstate or foreign commerce". LaGuardia claimed that the amendment was out of order because not germane to the purposes of the legislation. "The present bill refers only to disputes between employees and employer . . . The public is fully protected by penal and other statutes . . ." 75 Cong. Rec. 5503.

[3] See Statement of Representative Schneider, 75 Cong. Rec. 5514.

But even if we assume that the Act was not intended to apply to labor disputes involving "employees" of the United States, are the miners in the case before us "employees" of the United States within the meaning of this interpolated exception? It can hardly be denied that the relation of the miners to the United States is a hybrid one. Clearly, they have a relation to the Government not true of employees of plants not under Government operation. Equally clearly, they have a relation and a status different from the relation and status of the clerks at the Treasury Department. Nothing in the Acts authorizing seizure of private plants indicates that the employees of these plants were to be considered employees of the United States in the usual and natural meaning of the term. The only precise characterization of the status of employees in seized plants was expressed by Under Secretary Patterson at a hearing on the predecessor bill to that which became the law under which this seizure was made. He spoke of the role of the Government as that of "a receiver that would be charged with the continuity of operation of the plant."[4] The characterization was accepted by members of the Committee which approved the Bill.[5] In a limited sense, employees of plants in receivership in a federal court may be considered employees of the United States, since the operation of the plant is under the jurisdiction and control of a United States officer. But no one aware

[4] Hearings on S. 2054 before a Subcommittee of the Committee on the Judiciary, Senate, 77th Cong., 1st Sess., p. 14.

[5] *Id.* at pp. 16, 18, 130. See the statement of Senator Burton: "I have been impressed with your emphasis of the need of a receivership, that is, an operating receivership instead of a liquidating receivership. "*Id.* at 16. When Senator Connally referred to the United States as an Employer (*id.* at 120), he did so in a special context for the purposes of a discussion about collective bargaining with reference to wages. As to wages, of course the Government would stand *in loco* "employer" during its operation of the plant. At other places, he refers to the private employer "who will continue to operate it under the supervision of the Government". *Id.* at 55. See also p. 57.

of the background of mischief which the Act was intended to remedy could find an intention in Congress to allow injunctions in labor disputes involving plants in receivership. No series of cases contributed more to the feeling that the district courts abused their equity jurisdiction than those involving injunctions against employees of railroads in equity receivership in the federal courts.[6] If injunctions will not issue in disputes involving employees of plants in receivership under operation by the federal courts, nothing relevant to the construction of the statute warrants the court in inferring an intention by Congress to allow injunctions in disputes involving employees of plants in "receivership" under operation of the Secretary of the Interior.

It may fairly be said that such has been the common understanding of the Norris-LaGuardia Act. In the full debates on bills providing for seizure, Congressional leaders clearly indicated their understanding that as the law then stood there could be no injunctions in labor disputes in seized plants.[7]

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[6] Compare, *e. g.*, 1 Gresham, Life of Walter Quintin Gresham, cc. XXIII to XXV.

[7] See especially the debates on a proposed amendment to the Smith-Connally Bill whereby Senator Connally sought to add the injunction as a remedy against violation of the Act.

"Mr. CONNALLY. The provision is limited to plants which the Government takes over. It would not change the Norris-LaGuardia Act in any respect, *except in the one particular case.*

* * *

"Mr. LANGER. Mr. President, is it not true that unless section 5 is stricken from the bill that a portion of the Norris-LaGuardia Act will be repealed?

"Mr. DANAHER. It would certainly be overridden; . . ." (Emphasis supplied.) 89 Cong. Rec., 3988–89.

See also the statements of Senators Taft, Vandenberg, and Wagner, and compare those of Senators Rivercomb and Barkley; and see the colloquy between Senators Connally and Vandenberg, *id.* at 3906, quoted *infra* note —.

But not only was such the understanding when the legal question emerged in the course of considering the need of war legislation. Recent Acts and their legislative history show more than merely later understanding of the terms of an older statute. The War Labor Disputes Act of 1943 and its history are directly and primarily relevant. The whole controversy arises under the authority to seize mines given by the War Labor Disputes Act. The real question before us is whether in authorizing such seizure and operation Congress also gave to the United States the right to prevent interference with its statutory operation through the equitable remedies here invoked.

By that Act Congress created a new relationship among the Government, the plant owners, the employees. The rights, duties, remedies incident to that relation are those given by the Act. Congress naturally addressed itself to possible interferences with the Government's operation of seized plants. It dealt specifically with this subject. It gave the Government specific remedies which it might invoke against such interference.[8] Remedy by injunction was not given. It was not merely withheld. It was expressly and definitively denied. As reported out of the Senate Committee, S. 796, provided for plant seizure. It did not include the injunction among the remedies for interference with government operation.[9] But when the Bill reached the floor of the Senate, Senator Connally, sponsor of the Bill, offered and urged an amendment giving the district courts jurisdiction to restrain violations of the measure.[10] He accepted, somewhat reluctantly, the amendment of Senator Wagner to limit the proposed amendment to an injunction at the behest of the Attorney General, precisely as was here sought and granted.[11] On

[8] 57 Stat. 163, 16, 50 U. S. C. § 1506 (b).
[9] S. Rep. No. 147, 78th Cong., 1st Sess.
[10] 89 Cong. Rec. 3809.
[11] *Id.* at 3907, 3988–89.

motion of Senator Danaher, this proposal was rejected by the Senate after full debate,[12] participated in by senators especially conversant with the history and scope of the existing remedies available to the Government. With this remedy denied to the Government, the Bill was passed and sent to the House.[13] The House did not like the Bill. Its version did not see fit specifically to add to the limited seizure provisions of the Selective Service Act of 1940, although apparently it assumed that there could be seizure under existing law in the case of failure by defense plants to produce as a result of labor troubles. Instead the House version provided stringent anti-strike and anti-lockout provisions as to plants in private operation, and by specific amendment to the Norris-LaGuardia Act the district courts were authorized to restrain violations of those provisions. But this *pro tanto* repeal of the Norris-LaGuardia Act was not made available to the United States as a remedy against interference with operation of plants seized under the earlier, 1940 Act.[14]

The bill then went to conference. What came out was, so far as here material, the bill that had passed the Senate. The United States was granted power to seize and operate defense plants whose production was hampered by labor disputes. Specific remedies were formulated by Congress against interference with the Government's operation. The injunction was not included.[15] In neither House was further attempt made to reintroduce the Connally proposal giving the Government relief by injunction. Nor did any Congressman suggest that the Government

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[12] *Id.* at 3809.

[13] *Id.* at 3993.

[14] Compare § 4 (b) and (c) with § 12 (a) and b, 98 Cong. Rec. 5382–83. For the earlier seizure provisions see 54 Stat. 892, 50 U. S. C. App. § 309.

[15] See Conference Report on S. 796, H. R. No. 531, 78th Cong., 1st Sess.

had that redress anyhow. On the floor of the Senate, Senator Thomas of Utah said:

> "Mr. President, I ask the Senator from New Mexico [Mr. Hatch], the Senator from Connecticut [Mr. Danaher], and the Senator from Texas [Mr. Connally], the sponsor of the Bill, whether there is a unanimous opinion on the part of those three great lawyers that there will not be a reopening of the district courts to industry—labor disputes? . . . I should like that point to be made so firmly and so strongly that no lawyer in the land who would like to take advantage of the situation created by the mere mention of the words 'district court' will resort to the court in order to confuse our industry-labor relations."

Mr. Connally answered,

> "Mr. President, . . . I think I speak for the Senator from Vermont and the Senator from New Mexico and the Senator from Connecticut and also the Senator from Indiana [Mr. Van Nuys], although he is not present, when I say that there is no jurisdiction whatever conferred by this Bill providing for resort to the United States district court, except the one mentioned by the Senator from Connecticut, which is merely the right to go there for a civil action for damages, and no jurisdiction whatever is given over labor disputes. Does that answer the Senator?"
>
> MR. THOMAS of Utah. I thank the Senator for making that statement and I hope it will satisfy the lawyers of the country.
>
> "MR. CONNALLY. I am sure it will."

The Bill became law under these circumstances and the seizure of the mines was made under that law. To find that the Government has the right which Senator Connally's amendment sought to confer but which the Congress withheld is in effect to say that when the amendment was voted down it was the same as though the amendment had been voted up.

Events since the passage of the Act underscore what would appear to be the controlling legislative history of

the War Labor Disputes Act, and prove that Congress saw fit not to authorize district courts to issue an injunction in cases like this. In May, 1946, the country faced a crisis growing out of a labor dispute as acute as that leading to the controversy in the court below. To meet the railroad crisis in May of last year Congress, upon the recommendation of the President and the Attorney General, deemed additional legislation necessary for dealing with labor disputes. The proposals in each House carried a provision which authorized an injunction to issue for violation of the War Labor Disputes Act.[16] In the Senate Senator Meade proposed an amendment to delete the provisions for injunction.[17] In the debates that followed no one suggested that the new proposal was unnecessary, that the jurisdiction already existed, or that if granted as requested by the Attorney General as to seized plants, it would not repeal *pro tanto* the Norris-LaGuardia Act, as Senator Meade claimed. The debates show clearly that what was contemplated was a change in the War Labor Disputes Act whereby a new and an additional remedy would be authorized.[18] The Bill never became law.

As is well known, as the debates clearly show, as Senator Connally admitted, the War Labor Disputes Act was directed primarily against stoppage in the coal mines.[19] The

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[16] H. R. 6578, 79th Cong., 2d Sess.

[17] Cong. Rec. 6166.

[18] See particularly the statements of Senator Meade (P. 6171), Senator Morse (p. 6169), Senator Pepper (pp. 6169, 6170), Senator Wagner (p. 6170), Senator Wheeler (p. 6172), Senator Barkley (p. 6175), Senator Fullbright (p. 6171).

[19] Senator Connally said: "Mr. Lewis appeared before the Truman Committee 3 or 4 weeks ago. I happen to be a member of that Committee, and when he said he did not regard his no-strike agreement as binding . . . I determined then that if I could get this bill before the Senate, I was going to bring it up and press it in order that if he did disregard the agreement, the President or the Govern-

situation that Congress feared was exactly that which has occurred to form the controversy before us. To handle that situation, Congress gave to the United States the power to seize the mines. To vindicate this power the Government was given authority to invoke criminal penalties for interferences with the operation of the mines. Senator Connally sought more. He wanted Congress to empower the district courts to enjoin interference. The Senate did not want an injunction to issue and voted the proposal down. The conference committee decided that an injunction should not issue. The House of Representatives agreed that the injunction before us should not issue. This Court now says that Congress authorized the injunction.

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ment of the United States would have a weapon with which to meet the threat and the danger." 89 Cong. Rec. 3886. See also H. Rep. No. 440, 78th Cong., 1st Sess., p. 6. The references to the coal situation in the debates are innumerable. See, *e. g.*, 89 Cong. Rec. 3767, 3886, 3888, 3889, 3900–01.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner, 759 *v.* United Mine Workers of America, an Unincorporated Association.	
The United States of America, Petitioner, 760 *v.* John L. Lewis, Individually and as President of the United Mine Workers of America.	
United Mine Workers of America, an Unincorporated Association, Petitioner, 781 *v.* The United States of America.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.
John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 782 *v.* The United States of America.	
United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 811 *v.* The United States of America.	

[March —, 1947.]

MR. JUSTICE FRANKFURTER, concurring in part.

The historic phrase "a government of laws and not of men" epitomizes the distinguishing character of our political society. When John Adams put that phrase into

the Massachusetts Declaration of Rights he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. "A government of laws and not of men" was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. Even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout our history. Or, what this Court has deemed its duty to decide may be changed by legislation, as it often has been, and, on occasion, by constitutional amendment.

But from their own experience and their deep reading in history, the Founders knew that Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised. "Civilization involves subjection of force to reason, and the agency of this subjection is law." [1] The conception of a government by laws dominated the thoughts of those who founded this Nation and designed its Constitution, although they knew as well as the belittlers of the conception that laws have to be made, interpreted and enforced by men. To that end, they set apart a body of men, who were to be the depositories of law, who by their disciplined training and character and by withdrawal from the usual temptations of private interest may reasonably be expected to be "as free, impartial, and independent as the lot of humanity will admit". So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial office with extraordinary safeguards and prestige. No one,

[1] Pound, *The Future of Law* (1937) 47 Yale L. J. 1, 13.

no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That is what courts are for. And no type of controversy is more peculiarly fit for judicial determination than a controversy that calls into question the power of a court to decide. Controversies over "jurisdiction" are apt to raise difficult technical problems. They usually involve judicial presuppositions, textual doubts, confused legislative history and like factors hardly fit for final determination by the self-interest of a party.

Even when a statute deals with a relatively uncomplicated matter, and the "words in their natural sense as they would be read by the common man" would appear to give an obvious meaning, considerations underlying the statute have led this Court to conclude that "the words cannot be taken quite so simply." See *Millburn Co.* v. *Davis Co.*, 270 U. S. 390, 400. How much more true this is of legislation like the Norris-LaGuardia Act. This Act altered a long process of judicial history, but altered it by a scheme of complicated definitions and limitations.

The Government here invoked the aid of a court of equity in circumstances which certainly were not covered by the Act with inescapable clarity. Colloquially speaking, the Government was "running" the mines. But it was "running" them not as an employer, in the sense that the owners of the coal mines were the employers of the men the day before the Government seized the mines. Nor yet was the relation between the Government and the men like the relation of the Government to the civil service employees in the Department of the Interior. It would be naive or wilful to assert that the scope of the Norris-La Guardia Act in a situation like that presented by this bill raised a question so frivolous that any judge should have summarily thrown the Government out of court without day. Only when a court is so obviously traveling outside its orbit as to be merely usurping

judicial forms and facilities, may an order issued by a court be disobeyed and treated as though it were a letter to a newspaper. Short of an indisputable want of authority on the part of a court, the very existence of a court presupposes its power to entertain a controversy, if only to decide, after deliberation, that it has no power over the particular controversy. Whether a defendant may be brought to the bar of justice is not for the defendant himself to decide.

To be sure, an obvious limitation upon a court cannot be circumvented by a frivolous inquiry into the existence of a power that has unquestionably been withheld. Thus, the explicit withdrawal from federal district courts of the power to issue injunctions in an ordinary labor dispute between a private employer and his employees cannot be defeated, and an existing right to strike thereby impaired, by pretending to entertain a suit for such an injunction in order to decide whether the court has jurisdiction. In such a case, a judge would not be acting as a court. He would be a pretender to, not a wielder of, judicial power.

That is not this case. It required extended arguments, lengthy briefs, study and reflection preliminary to adequate discussion in conference, before final conclusions could be reached regarding the proper interpretation of the legislation controlling this case. A majority of my brethren find that neither the Norris-LaGuardia Act nor the War Labor Disputes Act limited the power of the district court to issue the orders under review. I have come to the contrary view. But to suggest that the right to determine so complicated and novel an issue could not be brought within the cognizance of the district court, and eventually of this Court, is to deny the place of the judiciary in our scheme of government. And if the district court had power to decide whether this case was properly before it, it could make appropriate orders so as to afford

the necessary time for fair consideration and decision while existing conditions were preserved. To say that the authority of the court may be flouted during the time necessary to decide is to reject the requirements of the judicial process.

It does not mitigate such defiance of law to urge that hard-won liberties of collective action by workers were at stake. The most prized liberties themselves presuppose an independent judiciary through which these liberties may be, as they often have been, vindicated. When in a real controversy, such as is now here, an appeal is made to law, the issue must be left to the judgment of courts and not the personal judgment of one of the parties. This principle is a postulate of our democracy.

And so I join the opinion of the court insofar as it sustains the judgment for criminal contempt upon the broad ground of vindicating the process of law.[2] The records of this Court are full of cases, both civil and criminal, involving life or land or small sums of money, in which the Court proceeded to consider a federal claim that was not obviously frivolous. It retained such cases under its power until final judgment, though the claim eventually turned out to be unfounded and the judgment was one denying the jurisdiction either of this Court or of the court from which the case came. In the case before us, the District Court had power "to preserve the existing conditions" in the discharge of "its duty to permit argument and to take the time required for such consideration as it might need" to decide whether the controversy involved a labor dispute to which the Norris-LaGuardia Act applied. See *United States* v. *Shipp*, 203 U. S. 563, 573.

[2] Since, in my view, this was not a conviction for contempt in a case "arising under this Act" the jury provisions of § 11 of the Norris-LaGuardia Act do not apply. For obvious reasons, the petitioners do not claim that the Constitution of the United States affords them a right to trial by jury.

In our country law is not a body of technicalities in the keeping of specialists or in the service of any special interest. There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny. Legal process is an essential part of the democratic process. For legal process is subject to democratic control by defined, orderly ways which themselves are part of law. In a democracy, power implies responsibility. The greater the power that defies law the less tolerant can this Court be of defiance. As the Nation's ultimate judicial tribunal, this Court, beyond any other organ of society, is the trustee of law and charged with the duty of securing obedience to it.

It only remains to state the basis of my disagreement with the Court's views on the bearing of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. § 101, and the War Labor Disputes Act, 57 Stat. 163, 50 U. S. C. App. § 1501. As to the former, the Court relies essentially on a general doctrine excluding the Government from the operation of a statute in which it is not named, and on the legislative history of the Act. I find the countervailing considerations weightier. The Norris-LaGuardia Act deprived the federal courts of jurisdiction to issue injunctions in labor disputes except under conditions not here relevant. The question before a court of equity therefore is whether a case presents a labor dispute as defined by the Act. Section 13 (c) defines "labor disputes":

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee."

That the controversy before the district court comes within this definition does not need to be labored. The controversy arising under the Lewis-Krug contract con-

cerned "terms or conditions of employment" and was therefore a "labor dispute", whatever further radiations the dispute may have had. The Court deems it appropriate to interpolate an exception regarding labor disputes to which the Government is a party. It invokes a canon of construction according to which the Government is excluded from the operation of general statutes unless it is included by explicit language.

The Norris-LaGuardia Act has specific origins and definite purposes and should not be confined by an artificial canon of construction. The title of the Act gives its scope and purpose, and the terms of the Act justify its title. It is an Act "to define and limit the jurisdiction of courts sitting in equity". It does not deal with the rights of parties but with the power of the courts. Again and again the statute says "no court shall have jurisdiction", on an equivalent phrase. Congress was concerned with the withdrawal of power from the federal courts to issue injunctions in a defined class of cases. Nothing in the Act remotely hints that the withdrawal of this power turns on the character of the parties. The only reference to parties underscores their irrelevance to the issue of jurisdiction, for the power of the courts is withdrawn in a labor dispute "regardless of whether or not the disputants stand in the proximate relation of employer and employee". That apart, the limitation on the jurisdiction of the Court depends entirely on the subject matter of the controversy. Section 13 (a) defines it:

> "A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; . . ."

Neither the context nor the content of the Act qualifies the terms of that section. Did not the suit brought by the

Government against Lewis and the United Mine Workers "grow out of a labor dispute" within the terms of § 13 (a)?

As already indicated, the Court now finds an exception to the limitation which the Norris-LaGuardia Act placed upon the equity jurisdiction of the district court, not in the Act but outside it. It invokes cases involving other statutes which apply a canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless named in it. As many cases can be found in this Court in which the rule did not prevail as cases in which it was found helpful. The fact is that in the cases in which it carried weight it was merely one of an ensemble of factors leading to a particular result. This canon, like other generalities about statutory construction, is not a rule of law. Whatever persuasiveness it may have in the construction of a particular statute derives from the meaning conveyed by the terms of the statute in its total environment. "This rule has its historical basis in the English doctrine that the Crown is unaffected by acts of Parliament not specifically directed against it. . . . The presumption is an aid to consistent construction of statutes of the acting sovereign, when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated." So wrote the late Chief Justice for the whole Court in *United States* v. *California*, 297 U. S. 175, 186, and this point of view was very recently applied in *United States* v. *Rice*, 327 U. S. 742, 749. The text, context, content and historical setting of the Norris-LaGuardia Act all converge to indicate the unrestricted withdrawal by Congress from the federal district courts of the power to issue injunctions in labor disputes, excepting only under circumstances explicitly defined and not here present. The meaning which a reading of the text conveys and which is confirmed by the history which led Congress to free the

federal courts from entanglements in these industrial controversies through use of the injunction, ought not to be subordinated to an abstract canon of construction that carries the residual flavor of the days when a personal sovereign was the law-maker.

Moreover, the rule proves too much. If the United States must explicitly be named to be affected, the limitations imposed by the Norris-LaGuardia Act upon the district court's jurisdiction could not deprive the United States of the remedies it theretofore had. Accordingly, the courts would not be limited in their jurisdiction when the United States is a party and the Act would not apply in any proceeding in which the United States is complainant. It would mean that, in order to protect the public interest, which may be jeopardized just as much whether an essential industry continued under private control or has been temporarily seized by the Government, a court could, at the behest of the Attorney General of the United States, issue an injunction as courts did when they issued the *Debs*, the *Hayes* and the *Railway Shopmen's* injunctions.[3] But it was these very injunctions, secured by the Attorney General of the United States under claim of compelling public emergency, that gave the most powerful momentum to the enactment of the Norris-LaGuardia Act. This history is too familiar to be rehearsed. It is surely surprising to conclude that when a long and persistent effort to take the federal courts out of the industrial conflict, insofar as the labor injunction put them into it, found its way to the statute books, the Act failed to meet the grievances that were most dramatic and deepest in the memory of those most concerned with the legislation.

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[3] *United States* v. *Debs*, 64 Fed. 724, 158 U. S. 564; *United States* v. *Hayes*, unreported, D. Ind. 1919; *United States* v. *Railway Employees' Dept. A. F. L.*, 283 Fed. 479, 286 Fed. 228, 290 Fed. 978.

It is urged, however, that legislative history cuts down what might otherwise be the scope of the Act. Reliance is placed on statements by two Representatives during the House debates on the Bill, calculated to show that Congress purposed to exclude from the limitation of the jurisdiction of the district courts labor disputes involving "employees" of the Government, at least where injunctions are sought by the Attorney General. Since both statements came from spokesmen for the Bill, they carry weight. The setting of these remarks, the circumstances under which they were delivered as well as their nature define their meaning and the significance to be given them as a gloss upon the Act.

There was before the House an Amendment by Representative Blanton which would have made the Act applicable "except where the United States Government is the petitioner." (75 Cong. Rec. 5503.) Representative LaGuardia opposed the Amendment, remarking "I do not see how in any possible way the United States can be brought in under the provisions of this Bill." If this is to be read apart from the meaning afforded by the context of the debates and the whole course of the legislation, it would mean that the jurisdiction to grant a *Debs* injunction continued unaffected. No one would have been more startled by such a conclusion than Mr. LaGuardia. The fact is that a situation like the present, where the Government for a time has some relation to a labor dispute in an essentially private industry, was not in the thought of Mr. LaGuardia or of anybody else in the Congress. Mr. LaGuardia's statement regarding the position of the United States under the Act followed his reading of § 13 (b) under which a person is to be deemed interested in a labor dispute only if "engaged in the same industry, trade, craft, or occupation in which such dispute occurs." His brief, elliptical remark plainly conveyed that the business of the Government of the United States is not an "indus-

try, trade, craft, or occupation." This is made unequivocally clear by the colloquy that followed. Mr. Blanton inquired whether Mr. LaGuardia was willing "for the Army and the Navy to form a labor union and affiliate themselves with the American Federation of Labor and not permit the Government of the United States to preserve its rights?" The short answer for Mr. LaGuardia to have made was "The United States is not subject to the provisions of the Act, because by employer we mean a private employer." Instead of that, Mr. LaGuardia replied, "Oh, the Army and the Navy are not in a trade, craft, or occupation." In short, the scope of the limitation upon the jurisdiction of the courts depended not on party, but on subject matter. Representative Blanton's amendment was rejected by 125 to 21.

The second Representative upon whom the Court relies is Mr. Michener. He said, "Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government." (75 Cong. Rec. 5464.) Later he added ". . . This deals with labor disputes between individuals, not where the Government is involved. It is my notion that under this bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see this clarified, but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevented from applying for an injunction, if one is necessary in order that the Government may function." (*Id.* at 5509.) What Mr. Michener gave *his* interpretation of what survived the Norris-LaGuardia Act, was precisely the claim of the Government in asking for the *Debs* injunction. That

injunction was sought and granted in order that the Government might function. Insofar, then, as Mr. Michener's statements imply that the United States could again get a *Debs* injunction, his understanding is belied by the whole history of the legislation, as reflected in its terms.[4] These statements can only mean, then, that if, say, employees in the Treasury Department had to be enjoined so that government could go on, it was Representative Michener's view that an injunction could issue. No attempt was made to make this view explicit in the Act. It was not discussed, and only one statement appears to share it.[5] In any event, it does not imply a broader exemption than that of which Representative LaGuardia spoke.

It is to be noted that the discussion in the House followed passage in the Senate of that which subsequently became the Act. It is a matter of history that the Senate Judiciary Committee was the drafting and driving force behind the Bill. The Bill had extended consideration by a subcommittee of the Senate Judiciary Committee followed by weighty reports and full discussion on the Senate floor. Not a suggestion, not a hint can be found in the Senate proceedings that the withdrawal of jurisdiction to issue injunctions in labor disputes was subject to a latent exception as to injunctions sought by the Government. The whole contemporaneous history is against it. The experience which gave rise to the Norris-LaGuardia Act only

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[4] Compare Representative LaGuardia's reply to a proposed amendment by Representative Beck which would have exempted from the operation of the Act disputes "where the welfare, health, or lives of a public are concerned who are not parties to such labor dispute, or where a labor dispute involves the obstruction of any instrumentality of interstate or foreign commerce". LaGuardia claimed that the amendment was out of order because not germane to the purposes of the legislation. "The present bill refers only to disputes between employees and employer . . . The public is fully protected by penal and other statutes . . ." 75 Cong. Rec. 5503.

[5] See statement of Representative Schneider, 75 Cong. Rec. 5514.

underscores the unrestricted limitation upon the jurisdiction of the courts, except in the narrowly defined situations of which this is not one. To find implications in the fact that in the course of the debates it was not explicitly asserted that the district courts could not issue an injunction in a labor controversy even at the behest of the Government is to find the silence of Congress more revealing than the natural meaning of legislation and the history which begot it. The remarks of Mr. LaGuardia and Mr. Michener ought not to be made the equivalent of writing an amendment into the Act. It is one thing to draw on all relevant aids for shedding light on the dark places of a statute. But to allow inexplicit remarks in the give-and-take of debate to contradict the very terms of legislation and the history behind it is to put out the controlling light on meaning shed by the explicit provisions of an Act in its setting.

But even if we assume that the Act was not intended to apply to labor disputes involving "employees" of the United States, are the miners in the case before us "employees" of the United States within the meaning of this interpolated exception? It can hardly be denied that the relation of the miners to the United States is a hybrid one. Clearly, they have a relation to the Government other than that of employees of plants not under Government operaiton. Equally clearly, they have a relation and a status different from the relation and status of the clerks at the Treasury Department. Never in the country's history have the terms of employment of the millions in Government service been established by collective bargaining. But the conditions of employment—hours, wages, holidays, vacations, Health and Welfare Program, etc.—were so fixed for the miners during the period of Government seizure. The proper interpretation of this collective agreement between the Government and the United Mine Workers is precisely what is at the bottom of this contro-

versy. Neither a spontaneous nor a sophisticated characterization would resort to the phrase "Government employees" without more, in speaking of the miners during the operation of the mines by the Government.

Nothing in the Acts authorizing seizure of private plants indicates that the employees of these plants were to be considered employees of the United States in the usual and natural meaning of the term. The only precise characterization of the status of employees in seized plants was expressed by Under Secretary Patterson at a hearing on the predecessor bill to that which became the law under which this seizure was made. He spoke of the role of the Government as that of "A receiver that would be charged with the continuity of operation of the plant".[6] The characterization was accepted by members of the Committee which approved the Bill.[7] In a limited sense, employees of plants in receivership in a federal court may be considered employees of the United States, since the operation of the plant is under the jurisdiction and control of a United States officer. But no one aware of the background of mischief which the Act was intended to remedy could find an intention in Congress to allow injunctions in labor disputes involving plants in receivership. Compare *Trainmen* v. *Toledo P. & W. R. Co.*, 321 U. S. 50, 55, 58–61. No series of cases contributed more to the feeling that the district courts abused their equity jurisdiction than those involving employees of railroads in

[6] Hearings on S. 2054 before a Subcommittee of the Committee on the Judiciary, Senate, 77th Cong., 1st Sess., p. 14.

[7] *Id.* at pp. 16, 18, 130. When Senator Connally referred to the United States as an employer (*id.* at 120), he did so in a special context for the purposes of a discussion about collective bargaining with reference to wages. As to wages, of course, the Government would stand *in loco* "employer" during its operation of the plant. At other places, he refers to the private employer who "will continue to operate it under the supervision of the Government". *Id.* at 55. See also p. 57.

equity receivership in the federal courts.[8] If injunctions will not issue in disputes involving employees of railroads or other industries in receivership under operation by the federal courts, nothing relevant to the construction of the statute warrants the inference that Congress allowed the injunction to continue in disputes involving employees of plants in "receivership" under operation of the Secretary of the Interior.

It may fairly be said that such has been the common understanding of the Norris-LaGuardia Act. In the full debates on bills providing for Government seizure of plants, Congressional leaders clearly indicated their understanding that as the law then stood there could be no injunctions in labor disputes in seized plants.[9]

But not only was such the understanding when the legal question emerged in the course of considering the need of war legislation. Recent Acts and their legislative history are relevant not merely because they show later under-

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[8] See, *e. g.*, 1 Gresham, Life of Walter Quintin Gresham, cc. XXIII to XXV; Gregory, Labor and the Law, 95–97; Nelles, *A Strike and Its Legal Consequences—An Examination of the Receivership Precedent for the Labor Injunction* (1931) 40 Yale L. J. 507, *passim.*

[9] See especially the debates on a proposed amendment to the Smith-Connally Bill whereby Senator Connally sought to add the injunction as a remedy against violation of the Act.

"Mr. Connally. The provision is limited to plants which the Government takes over. It would not change the Norris-LaGuardia Act in any respect, *except in the one particular case.*

* * *

"Mr. Langer. Mr. President, is it not true that unless section 5 is stricken from the bill that a portion of the Norris-LaGuardia Act will be repealed?

"Mr. Danaher. It would certainly be overridden; . . ." (Emphasis supplied.) 89 Cong. Rec., 3988–89.

See also the statements of Senators Taft, Vandenberg, and Wagner, and compare those of Senators Revercomb and Barkley; and see the colloquy between Senators Connally and Vandenberg, *id.* at 3906, quoted *infra* note 12.

standing of the terms of an older statute. The War Labor Disputes Act of 1943 and its history are directly and primarily involved in our case. The whole controversy arises under the authority to seize mines given by the War Labor Disputes Act. The real question before us is whether in authorizing such seizure and operation Congress also gave to the United States the right to prevent interference with its statutory operation through the equitable remedies here invoked.

By that Act Congress created a new relationship among the Government, the plant owners, the employees. The rights, duties, remedies incident to that relation are those given by the Act. Congress naturally addressed itself to possible interferences with the Government's operation of seized plants. It dealt specifically with this subject. It gave the Government specific remedies which it might invoke against such interference.[10] Remedy by injunction was not given. It was not merely omitted. A fair reading of the legislative history shows that it was expressly and definitively denied. As reported out of the Senate Committee, S. 796 provided for plant seizure. It did not include the injunction among the remedies for interference with government operation.[11] But when the Bill reached the floor of the Senate, Senator Connally, sponsor of the Bill, offered and urged an amendment giving the district courts jurisdiction to restrain violations of the measure.[12] He accepted, somewhat reluctantly, the amendment of Senator Wagner to limit the proposed

[10] 57 Stat. 163, 16, 50 U. S. C. § 1506 (b).

[11] S. Rep. No. 147, 78th Cong., 1st Sess.

[12] 89 Cong. Rec. 3809. And see p. 3906:

"MR. VANDENBERG. . . .

"I am very anxious that there shall be additional statutory protection to the uninterrupted production of war necessities, but I am wondering whether in order to achieve that purpose it is necessary for me to impinge upon a very profound hostility I have always had to the use of injunctions in labor disputes. I voted for the original Norris-LaGuardia Act, and I have always felt that one of the most

amendment to an injunction at the behest of the Attorney General, precisely as was here sought and granted.[13] On

useful things we ever did, not only as a matter of fair play, but in respect to the status of the courts was substantially to separate from court jurisdiction the responsibility of, in effect, umpiring labor disputes.

"What I wish to ask the able Senator from Texas, if I may, is that: In his proposal, on page 4, it is provided that any person who willfully violates any provision of the act is guilty of a felony, and subject to a fine or imprisonment. Is not that a conclusive penalty? Is it necessary in addition to go back into all the old injunctive process in connection with labor disputes?

"MR. CONNALLY. That is not a legal inquiry really. Of course, it might be that we could get along without the provision. Like the Senator, I voted for the Norris-LaGuardia Act, and I favored the policy embodied therein. This provision, however, applies only to plants taken over by the Government. It seems to me that if the Government is to operate a plant, it should have the widest and the fullest authority to operate it as it wants to do and to prevent interruption. Therefore, because of the attitude of some who were interested in the bill, I inserted section 5. I do not think the bill would be very seriously crippled if it were eliminated, but I think it is improved by its remaining in. I do not think it would be fatal to strike out that provision, but I hope that will not be done.

"MR. VANDENBERG. I thank the Senator for his frank statement. When the Government has taken over the operation of a plant and it becomes in essence a Government operation, it is rather difficult to resist the argument that the Government should not be deprived of any instrumentality in the enforcement, virtually of its sovereignty.

"MR. CONNALLY. That is true.

"MR. VANDENBERG. Nevertheless, I apprehend that the very fact that the injunctive process is restored in the Senator's bill is the reason why it appears in the additional amendment offered by the able Senator from Ohio, where, it seems to me, it becomes decidedly more offensive, using that word in the sense in which I have used it."

The reference is to an amendment proposed by Senator Taft authorizing injunctions in any circuit court of appeals at the request of the Attorney General in case of failure to obey orders of the War Labor Board, or whenever "operations are hindered or reduced by lockout, strike, or otherwise". This applied apparently to plants in private operation. 89 Cong. Rec. 3897–98. Compare the Bill passed by the House, note 16.

[13] 89 Cong. Rec. 3907, 3988–89.

motion of Senator Danaher, this proposal was rejected by the Senate after full debate,[14] participated in by Senators especially conversant with the history and scope of the existing remedies available to the Government. With this remedy denied to the Government, the Bill was passed and sent to the House.[15] The House did not like the Bill. Its version did not see fit specifically to add to the limited seizure provisions of the Selective Service Act of 1940, although apparently it assumed that there could be seizure under existing law in the case of failure by defense plants to produce as a result of labor troubles. Instead the House version provided stringent anti-strike and anti-lockout provisions as to plants in private operation, and by specific amendment to the Norris-LaGuardia Act the district courts were authorized to restrain violations of those provisions. But this *pro tanto* repeal of the Norris-LaGuardia Act was not made available to the United States as a remedy against interference with operation of plants seized under the earlier, 1940 Act.[16]

The bill then went to conference. What came out was, so far as here material, the bill that had passed the Senate. The United States was granted power to seize and operate defense plants whose production was hampered by labor disputes. Specific remedies were formulated by Congress against interference with the Government's operation. The injunction was not included.[17] In neither House was further attempt made to reintroduce the Connally proposal giving the Government relief by injunction. Nor did any Congressman suggest that the Government

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[14] *Id.* at 3809.

[15] *Id.* at 3993.

[16] Compare § 4 (b) and (c) with § 12 (a) and b, 89 Cong. Rec. 5382–83. For the earlier seizure provisions see 54 Stat. 885, 892, 50 U. S. C. App. § 309.

[17] See Conference Report on S. 796, H. R. No. 531, 78th Cong., 1st Sess.

had that redress anyhow. On the floor of the Senate, Senator Thomas of Utah, Chairman of the Committee on Education and Labor, said:

> "Mr. President, I ask the Senator from New Mexico [Mr. Hatch], the Senator from Connecticut [Mr. Danaher], and the Senator from Texas [Mr. Connally], the sponsor of the bill, whether there is a unanimous opinion on the part of those three great lawyers that there will not be a reopening of the district courts to industry-labor disputes? . . . I should like that point to be made so firmly and so strongly that no lawyer in the land who would like to take advantage of the situation created by the mere mention of the words 'district court' will resort to the court in order to confuse our industry-labor relations."

Mr. Connally answered:

> "Mr. President, . . . I think I speak for the Senator from Vermont and the Senator from New Mexico and the Senator from Connecticut and also the Senator from Indiana [Mr. Van Nuys], although he is not present, when I say that there is no jurisdiction whatever conferred by this bill providing for resort to the United States district court, except the one mentioned by the Senator from Connecticut, which is merely the right to go there for a civil action for damages, and no jurisdiction whatever is given over labor disputes. Does that answer the Senator?"
>
> "MR. THOMAS of Utah. I thank the Senator for making that statement and I hope it will satisfy the lawyers of the country.
>
> "MR. CONNALLY. I am sure it will." [18]

The Bill became law under these circumstances and the seizure of the mines in our case was made under that law. To find that the Government has the right which Senator Connally's amendment sought to confer but which the Congress withheld is in effect to say that when the amendment was voted down it was the same as though the amendment had been voted up.

[18] 89 Cong. Rec. 5754. The Senators mentioned by Mr. Connally were the managers on the part of the Senate of the bill in conference.

Events since the passage of the Act underscore what would appear to be the controlling legislative history of the War Labor Disputes Act, and prove that Congress saw fit not to authorize district courts to issue an injunction in cases like this. In May, 1946, the country faced a crisis growing out of a labor dispute as acute as that leading to the controversy in the court below. To meet the railroad crisis in May of last year, Congress, upon the recommendation of the President and the Attorney General, deemed additional legislation necessary for dealing with labor disputes. The proposals in each House carried a provision which authorized an injunction to issue for violation of the War Labor Disputes Act.[19] In the Senate Senator Meade proposed an amendment to delete the provisions for injunctions.[20] In the debates that followed no one suggested that the new proposal was unnecessary, that the jurisdiction already existed, or that if granted, as requested by the Attorney General, it would not, as Senator Meade claimed, repeal *pro tanto* the Norris-LaGuardia Act. The debates show clearly that what was contemplated was a change in the War Labor Disputes Act whereby a new and an additional remedy would be authorized.[21] The Bill never became law.

As is well known, as the debates clearly show, as Senator Connally admitted, the War Labor Disputes Act was directed primarily against stoppage in the coal mines.[22] The

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[19] H. R. 6578, 79th Cong., 2d Sess.

[20] Cong. Rec. 6166.

[21] See particularly the statements of Senator Meade (P. 6171), Senator Morse (p. 6169), Senator Pepper (pp. 6169, 6170), Senator Wagner (p. 6170), Senator Wheeler (p. 6172), Senator Barkley (p. 6175), Senator Fullbright (p. 6171).

[22] Senator Connally said: "Mr. Lewis appeared before the Truman Committee 3 or 4 weeks ago. I happen to be a member of that Committee, and when he said he did not regard his no-strike agreement as binding . . . I determined then that if I could get this bill before the Senate, I was going to bring it up and press it in order

situation that Congress feared was exactly that which has occurred to form the controversy before us. To handle that situation, Congress gave to the United States the power to seize the mines. To vindicate this power the Government was given authority to invoke criminal penalties for interferences with the operation of the mines. Senator Connally sought more. He wanted Congress to empower the district courts to enjoin interference. The Senate did not want an injunction to issue and voted the proposal down. The Senate's position was adopted by the Conference Committee. The House of Representatives yielded its view and approved the Conference report. The whole course of legislation indicates that Congress withheld the remedy of injunction. This Court now holds that Congress authorized the injunction.

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that if he did disregard the agreement, the President or the Government of the United States would have a weapon with which to meet the threat and the danger." 89 Cong. Rec. 3886. See also H. Rep. No. 440, 78th Cong., 1st Sess., p. 6. The references to the coal situation in the debates are innumerable. See, *e. g.*, 89 Cong. Rec. 3767, 3886, 3888, 3889, 3900–01.

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To: The Chief Justice

From: Frankfurter, J. Concurring in part

Circulated: _____

Recirculated: 2-26-47

Previous changes incorporated, and stylistic changes throughout.

see P. 5.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner,
759 *v.*
United Mine Workers of America, an Unincorporated Association.

John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
760 *v.*
The United States of America.

United Mine Workers of America, an Unincorporated Association, Petitioner.
781 *v.*
The United States of America.

The United States of America, Petitioner,
782 *v.*
John L. Lewis, Individually and as President of the United Mine Workers of America.

United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
811 *v.*
The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[February —, 1947.]

MR. JUSTICE FRANKFURTER, concurring in part.

The historic phrase "a government of laws and not of men" epitomizes the distinguishing character of our political society. When John Adams put that phrase into

the Massachusetts Bill of Rights he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. "A government of laws and not of men" was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. But even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout our history. Or, what this Court has deemed its duty to decide may be changed by legislation, as it often has been, and, on occasion, by constitutional amendment.

But from their own experience and their deep reading in history, the Founders knew that Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised. "Civilization involves subjection of force to reason, and the agency of this subjection is law."[1] This conception of a government by laws dominated the thoughts of those who founded this Nation and designed its Constitution, although they knew as well as the belittlers of the conception that laws have to be made, interpreted and enforced through men. To that end, they set apart a body of men, who were to be the depositories of law, who by their disciplined training and character and by withdrawal from the usual temptations of private interest may reasonably be expected to be "as free, impartial, and independent as the lot of humanity will admit". So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial office with extraordinary safeguards and prestige. No one, no matter how exalted his public office or how righteous

[1] Pound, *The Future of Law* (1937) 47 Yale L. J. 1, 13.

his private motive, can be judge in his own case. That is what courts are for. And no type of controversy is more peculiarly fit for judicial determination than a controversy that calls into question the power of a court to decide. Controversies over "jurisdiction" are apt to raise difficult technical problems. They usually involve judicial presuppositions, textual doubts, confused legislative history, and like factors hardly fit for final determination by the self-interest of a party.

Even when a statute deals with a relatively uncomplicated matter and the "words in their natural sense as they would be read by the common man" would appear to give an obvious meaning, considerations underlying the statute have led this Court to conclude that "the words cannot be taken quite so simply." See *Millburn Co.* v. *Davis Co.*, 270 U. S. 390, 400. How much more true is this of legislation like the Norris-LaGuardia Act. This Act altered a long process of judicial history, but altered it by a scheme of complicated definitions and limitations. The Government here invoked the aid of a court of equity in circumstances which certainly were not commonplace nor dealt with by the Act with inescapable clarity. Colloquially speaking, the Government was "running" the mines. But it was "running" them not as an employer, in the sense that the owners of the coal mines were the employers of the men the day before the Government seized the mines. Nor yet was the relation between the Government and the men like the relation of the Government to the civil service employees in the Department of the Interior. It would be naive to assert that the scope of the Norris-LaGuardia Act in a situation like that presented by this bill raised a question so frivolous that any judge should have summarily thrown the Government out of court without day. Only when a court is so obviously traveling outside its orbit as to be merely usurping judicial forms and facilities, may an order issued by a court be disobeyed and treated as though it were a letter

to a newspaper. But short of a patent want of authority on the part of a court to entertain an appeal to its authority, the very existence of a court presupposes its power to entertain a controversy. Whether a defendant may be brought to the bar of justice is not for a defendant himself to decide. To be sure, an unquestionable limitation upon a court cannot be circumvented by pretending to inquire into the existence of a power that has obviously been withheld. Thus, the explicit denial to federal district courts of the power to issue injunctions in an ordinary labor dispute between a conventional employer and his employees cannot be defeated, and an existing right to strike impaired, by pretending to entertain a suit for such an injunction in order to decide whether the court has jurisdiction. In such a case, a judge would not be acting as a court. He would be a pretender, not a wielder, of judicial power.

But that is not this case. It required extended arguments, lengthy briefs, study and reflection preliminary to adequate discussion in conference, before final conclusions could be reached regarding the proper interpretation of the legislation controlling this case. A majority of my brethren find that neither the Norris-LaGuardia Act nor the War Labor Disputes Act limited the power of the district court to issue the orders under review. I have reached the contrary conclusion. But to suggest that the right to determine so complicated and novel an issue could not be brought within the cognizance of the district court, and eventually of this Court, is to deny the place of the judiciary in our scheme of government. And if the district court had power to decide whether this case was properly before it, it could make appropriate orders so as to afford the necessary time for fair consideration and decision while existing conditions were preserved. To say that the authority of the court may be flouted during the time necessary to decide is to reject the requirements of the judicial process. It does not mitigate such defiance of law to urge

that hard-won liberties of collective action by workers were at stake. The most prized liberties themselves presuppose an independent judiciary through which these liberties may be, as they so often have been, vindicated. When, in a real controversy such as is now here, an appeal is made to law, the issue must be left to the judgment of courts and not the personal judgment of one of the parties. This principle is a postulate of our democracy. And so I join the opinion of the court insofar as it sustains the judgment for criminal contempt upon the broad ground of vindicating the process of law. In the exercise of its equity jurisdiction the district court had power "to preserve the existing conditions" in the discharge of "its duty to permit argument and to take the time required for such consideration as it might need" to decide whether the controversy involved a labor dispute to which the Norris-LaGuardia Act applied. See *United States* v. *Shipp,* 203 U. S. 563, 573. It was not a conviction for contempt in a case "arising under this Act" to which alone are applicable the jury provisions of Section 11 of the Norris-LaGuardia Act.

It only remains to state the basis of my disagreement with the Court's views on the bearing of the Norris-LaGuardia Act and the War Labor Disputes Act. As to the former, the Court relies essentially on a general doctrine excluding the Government from the operation of a statute in which it is not named, and on the legislative history of the Act. I find the countervailing considerations weightier. The Norris-LaGuardia Act deprived the federal courts of jurisdiction to issue injunctions in labor disputes except under conditions not here relevant. The question before a court of equity therefore is whether a case presents a labor dispute as defined by the Act. Section 13 (c) defines "labor disputes":

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee."

That the controversy before the district court comes within this definition does not need to be labored. The controversy arising under the Lewis-Krug contract concerned "terms or conditions of employment" and was therefore a "labor dispute", whatever further radiations the dispute may have had. The Court deems it appropriate to interpolate an exception regarding labor disputes to which the Government is a party. It invokes a canon of construction according to which the Government is excluded from the operation of general statutes unless it is included by explicit language.

The Norris-LaGuardia Act has specific origins and definite purposes and should not be confined by an artificial canon of construction. The title of the Act gives its scope and purpose and the terms of the Act justify its title. It is an Act "to define and limit the jurisdiction of courts sitting in equity". It does not deal with the rights of parties but with the power of the courts. Again and again the statute says "no court shall have jurisdiction", on an equivalent phrase. Congress was concerned with the withdrawal of power from the federal courts to issue injunctions in a defined class of cases. Nothing in the Act remotely hints that the withdrawal of this power turns on the character of the parties. The only reference to parties is that the power is withdrawn in a labor dispute "regardless of whether or not the disputants stand in the proximate relation of employer and employee". That apart, the limitation on the jurisdiction of the Court depends entirely on the subject matter of the controversy. Section 13 (a) defines it:

> "A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees. . . ."

Did not the suit brought by the Government against Lewis and the United Mine Workers "grow out of a labor dispute" within the terms of § 13 (a)? Neither the context nor the content of the Act qualifies the terms of that section.

As already indicated the Court now finds an exception to the limitation which the Norris-LaGuardia Act placed upon the equity jurisdiction of the district court not in the Act but outside it. It invokes cases involving other statutes which apply a canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless named in it. As many cases can be found in this Court in which the rule did not prevail as cases in which it was found helpful. The fact is that in the cases in which it was deemed an aid to interpretation it was merely one in an ensemble of factors leading to a particular result. This canon, like other generalities about statutory construction, is not a rule of law. Whatever persuasiveness it may have in relation to a particular statute derives from the meaning conveyed by the terms of a statute in its total environment. "This rule has its historical basis in the English doctrine that the Crown is unaffected by acts of Parliament not specifically directed against it. . . . The presumption is an aid to consistent construction of statutes of the acting sovereign, when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated." So wrote the late Chief Justice for the whole Court in *United States* v. *California,* 297 U. S. 175, 186, and this point of view was very recently applied in *United States* v. *Rice,* 327 U. S. 742, 749. The text, context, content and historical setting of the Norris-LaGuardia Act all converge to indicate the unrestricted withdrawal by Congress from the federal district courts of the power to issue injunctions in labor disputes, excepting only under circumstances explicitly defined and not here pres-

ent. The meaning which a reading of the text conveys and which is confirmed by the history which led Congress to free the federal courts from entanglements in these industrial controversies through use of the injunction, ought not to be subordinated to an abstract canon of construction that carries the residual flavor of the days when a personal sovereign was the law-maker.

Moreover, the rule proves too much. If, because the United States is not named, the Courts are not limited in their jurisdiction when the United States is a party, the Act would not apply in any proceeding in which the United States is complainant. Accordingly, the limitations imposed by the Norris-LaGuardia Act upon the district court's jurisdiction could not deprive the United States of the remedies it theretofore had. It would mean that, in order to protect the public interest, which may be jeopardized just as much whether an essential industry continued under private control or has been temporarily seized by the Government, a court could, at the behest of the Attorney General of the United States, issue an injunction as courts did when they issued the *Debs,* the *Hayes* and the *Railway Shopmen's* injunctions.[2] But it was these very injunctions, secured by the Attorney General of the United States under claim of compelling public emergency, that gave the most powerful momentum to the enactment of the Norris-LaGuardia Act. This history is too familiar to be rehearsed. It is surely surprising to conclude that when a long and persistent effort to take the federal courts out of the industrial conflict, insofar as the labor injunction put them into it, found its way to the statute books, the Act failed to meet the grievances that were most dramatic and deepest in the memory of those most concerned with the legislation.

[2] *United States* v. *Debs,* 64 Fed. 724, 158 U. S. 564; *United States* v. *Hayes,* unreported, D. Ind. 1919; *United States* v. *Railway Employees' Dept. A. F. L.,* 283 Fed. 479, 286 Fed. 228, 290 Fed. 978.

It is urged, however, that legislative history cuts down what might otherwise be the scope of the Act. Reliance is placed on statements by two Representatives during the House debates on the Bill, calculated to show that Congress purposed to exclude from the limitation of the jurisdiction of the district courts labor disputes involving "employees" of the Government, at least where injunctions are sought by the Attorney General. Since both statements came from spokesmen for the Bill, they carry weight. The setting of these remarks, the circumstances under which they were delivered as well as their nature define their meaning and the significance to be given them as a gloss upon the Act.

There was before the House an Amendment by Representative Blanton which would have made the Act applicable "except where the United States Government is the petitioner." (75 Cong. Rec. 5503.) Representative LaGuardia opposed the Amendment remarking "I do not see how in any possible way the United States can be brought in under the provisions of this Bill." If this is to be read apart from the meaning afforded by the context of the debates and the whole course of the legislation, it would mean that the jurisdiction to grant a *Debs* injunction continued unaffected. No one would have been more startled by such a conclusion than Mr. LaGuardia. The fact is that a situation like the present, where the Government for a time has some relation to a labor dispute in an essentially private industry, was not in the thought of Mr. LaGuardia or of anybody else in the Congress. Mr. LaGuardia's statement regarding the position of the United States under the Act followed his reading of § 13 (b) under which a person is to be deemed interested in a labor dispute only if "engaged in the same industry, trade, craft, or occupation in which such dispute occurs." His brief, elliptical remark plainly conveyed that the business

of the Government of the United States is not an "industry, trade, craft, or occupation." This is made unequivocally clear by the colloquy that followed. Mr. Blanton inquired whether Mr. LaGuardia was willing "for the Army and the Navy to form a labor union and affiliate themselves with the American Federation of Labor and not permit the Government of the United States to preserve its rights?" The short answer for Mr. LaGuardia to have made was "The United States is not subject to the provisions of the Act, because by employer we mean a private employer." Instead of that, Mr. LaGuardia replied, "Oh, the Army and the Navy are not in a trade, craft, or occupation." In short, the scope of the limitation upon the jurisdiction of the courts depended not on party, but on subject matter. Representative Blanton's amendment was rejected by 125 to 21.

The second Representative upon whom the Court relies is Mr. Michener. He said, "Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government." (75 Cong. Rec. 5464.) Later he added ". . . This deals with labor disputes between individuals, not where the Government is involved. It is my notion that under this bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see this clarified, but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevented from applying for an injunction, if one is necessary in order that the Government may function." (*Id.* at 5509.) The claim of the Government in asking for the *Debs* injunction was precisely what Mr. Michener gave as *his* interpretation of

what survived the Norris-LaGuardia Act. That injunction was sought and granted in order that the Government might function. Insofar, then, as Mr. Michener's statements imply that the United States could again get a *Debs* injunction, his understanding is belied by the whole history of the legislation, as reflected in its terms.[3] These statements can only mean, then, that if, say, employees in the Treasury Department had to be enjoined so that government could go on, it was Representative Michener's view that an injunction could issue. No attempt was made to make this view explicit in the Act. It was not discussed, and only one statement appears to share it.[4] In any event, it does not imply a broader exemption than that of which Representative LaGuardia spoke.

It is to be noted that the discussion in the House followed passage in the Senate of what subsequently became the Act. It is a matter of history that the Senate Judiciary Committee was the drafting and driving force behind the Bill. The Bill had extended consideration by a subcommittee of the Senate Judiciary Committee followed by weighty reports and full discussion on the Senate floor. Not a suggestion, not a hint can be found in the Senate proceedings that the withdrawal of jurisdiction to issue injunctions in labor disputes was subject to a latent ex-

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[3] Compare Representative LaGuardia's reply to a proposed amendment by Representative Beck which would have exempted from the operation of the Act disputes "where the welfare, health, or lives of a public are concerned who are not parties to such labor dispute, or where a labor dispute involves the obstruction of any instrumentality of interstate or foreign commerce". LaGuardia claimed that the amendment was out of order because not germane to the purposes of the legislation. "The present bill refers only to disputes between employees and employer . . . The public is fully protected by penal and other statutes . . ." 75 Cong. Rec. 5503.

[4] See statement of Representative Schneider, 75 Cong. Rec. 5514.

ception as to injunctions sought by the Government. The whole contemporaneous history is against it. The remarks of Mr. LaGuardia and Mr. Michener ought not to be made the equivalent of writing an amendment into the Act. It is one thing to draw on all relevant aids for shedding light on the dark places of a statute. But to allow inexplicit remarks in the give-and-take of debate to contradict the very terms of legislation and the history behind it is to put out the controlling light on meaning shed by the explicit provisions of an Act in its setting.

But even if we assume that the Act was not intended to apply to labor disputes involving "employees" of the United States, are the miners in the case before us "employees" of the United States within the meaning of this interpolated exception? It can hardly be denied that the relation of the miners to the United States is a hybrid one. Clearly, they have a relation to the Government other than that of employees of plants not under Government operaiton. Equally clearly, they have a relation and a status different from the relation and status of the clerks at the Treasury Department. Nothing in the Acts authorizing seizure of private plants indicates that the employees of these plants were to be considered employees of the United States in the usual and natural meaning of the term. The only precise characterization of the status of employees in seized plants was expressed by Under Secretary Patterson at a hearing on the predecessor bill to that which became the law under which this seizure was made. He spoke of the role of the Government as that of "A receiver that would be charged with the continuity of operation of the plant".[5] The characterization was accepted by members

[5] Hearings on S. 2054 before a Subcommittee of the Committee on the Judiciary, Senate, 77th Cong., 1st Sess., p. 14.

of the Committee which approved the Bill.[6] In a limited sense, employees of plants in receivership in a federal court may be considered employees of the United States, since the operation of the plant is under the jurisdiction and control of a United States officer. But no one aware of the background of mischief which the Act was intended to remedy could find an intention in Congress to allow injunctions in labor disputes involving plants in receivership. No series of cases contributed more to the feeling that the district courts abused their equity jurisdiction than those involving employees of railroads in equity receivership in the federal courts.[7] If injunctions will not issue in disputes involving employees of railroads or other industries in receivership under operation by the federal courts, nothing relevant to the construction of the statute warrants the court in inferring an intention by Congress to allow injunctions in disputes involving employees of plants in "receivership" under operation of the Secretary of the Interior.

It may fairly be said that such has been the common understanding of the Norris-LaGuardia Act. In the full debates on bills providing for seizure, Congressional leaders clearly indicated their understanding that as the law

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[6] *Id.* at pp. 16, 18, 130. When Senator Connally referred to the United States as an Employer (*id.* at 120), he did so in a special context for the purposes of a discussion about collective bargaining with reference to wages. As to wages, of course, the Government would stand *in loco* "employer" during its operation of the plant. At other places, he refers to the private employer who "will continue to operate it under the supervision of the Government". *Id.* at 55. See also p. 57.

[7] See, *e. g.*, 1 Gresham, Life of Walter Quintin Gresham, cc. XXIII to XXV; Gregory, Labor and the Law, 95–97; Nelles, *A Strike and Its Legal Consequences—An Examination of the Receivership Precedent for the Labor Injunction* (1931) 40 Yale L. J. 507, *Passim.*

then stood there could be no injunctions in labor disputes in seized plants.[8]

But not only was such the understanding when the legal question emerged in the course of considering the need of war legislation. Recent Acts and their legislative history show more than merely later understanding of the terms of an older statute. The War Labor Disputes Act of 1943 and its history are directly and primarily relevant to our case. The whole controversy arises under the authority to seize mines given by the War Labor Disputes Act. The real question before us is whether in authorizing such seizure and operation Congress also gave to the United States the right to prevent interference with its statutory operation through the equitable remedies here invoked.

By that Act Congress created a new relationship among the Government, the plant owners, the employees. The rights, duties, remedies incident to that relation are those given by the Act. Congress naturally addressed itself to possible interferences with the Government's operation of seized plants. It dealt specifically with this subject. It gave the Government specific remedies which it might

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[8] See especially the debates on a proposed amendment to the Smith-Connally Bill whereby Senator Connally sought to add the injunction as a remedy against violation of the Act.

"MR. CONNALLY. The provision is limited to plants which the Government takes over. It would not change the Norris-LaGuardia Act in any respect, *except in the one particular case.*

* * *

"MR. LANGER. Mr. President, is it not true that unless section 5 is stricken from the bill that a portion of the Norris-LaGuardia Act will be repealed?

"MR. DANAHER. It would certainly be overridden; . . ." (Emphasis supplied.) 89 Cong. Rec., 3988–89.

See also the statements of Senators Taft, Vandenberg, and Wagner, adn compare those of Senators Revercomb and Barkley; and see the colloquy between Senators Connally and Vandenberg, *id.* at 3906, quoted *infra* note 11.

invoke against such interference.[9] Remedy by injunction was not given. It was not merely omitted. A fair reading of the legislative history shows that it was expressly and definitively denied. As reported out of the Senate Committee, S. 796 provided for plant seizure. It did not include the injunction among the remedies for interference with government operation.[10] But when the Bill reached the floor of the Senate, Senator Connally, sponsor of the Bill, offered and urged an amendment giving the district courts jurisdiction to restrain violations of the measure.[11] He accepted, somewhat reluctantly, the

[9] 57 Stat. 163, 16, 50 U. S. C. § 1506 (b).

[10] S. Rep. No. 147, 78th Cong., 1st Sess.

[11] 89 Cong. Rec. 3809.

"MR. VANDENBERG. . . .

"I am very anxious that there shall be additional statutory protection to the uninterrupted production of war necessities, but I am wondering whether in order to achieve that purpose it is necessary for me to impinge upon a very profound hostility I have always had to the use of injunctions in labor disputes. I voted for the original Norris-LaGuardia Act, and I have always felt that one of the most useful things we ever did, not only as a matter of fair play, but in respect to the status of the courts was substantially to separate from court jurisdiction the responsibility of, in effect, umpiring labor disputes.

"What I wish to ask the able Senator from Texas, if I may, is that: In his proposal, on page 4, it is provided that any person who willfully violates any provision of the act is to guilty of a felony, and subject to a fine or imprisonment. Is not that a conclusive penalty? Is it necessary in addition to go back into all the old injunctive process in connection with labor disputes?

MR. CONNALLY. That is not a legal inquiry really. Of course, it might be that we could get along without the provision. Like the Senator, I voted for the Norris-LaGuardia Act, and I favored the policy embodied therein. This provision, however, applies only to plants taken over by the Government. It seems to me that if the Government is to operate a plant, it should have the widest and the fullest authority to operate it as it wants to do and to prevent interruption. Therefore, because of the attiude of some who were inerested in the bill, I inserted section 5. I do not think the bill would be

amendment of Senator Wagner to limit the proposed amendment to an injunction at the behest of the Attorney General, precisely as was here sought and granted.[12] On motion of Senator Danaher, this proposal was rejected by the Senate after full debate,[13] participated in by Senators especially conversant with the history and scope of the existing remedies available to the Government. With this remedy denied to the Government, the Bill was passed and sent to the House.[14] The House did not like the Bill. Its version did not see fit specifically to add to the limited seizure provisions of the Selective Service Act of 1940, although apparently it assumed that there could be seizure under existing law in the case of failure by defense plants to produce as a result of labor troubles. Instead the House version provided stringent anti-strike and anti-

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very seriously crippled if it were eliminated, but I think it is improved by its remaining in. I do not think it would be fatal to strike out that provision, but I hope that will not be done.

"Mr. Vandenberg. I thank the Senator for his frank statement. When the Government has taken over the operation of a plant and it becomes in essence a Government operation, it is rather difficult to resist the argument that the Government should not be deprived of any instrumentality in the enforcement, virtually of its sovereignty.

"Mr. Connally. That is true.

"Mr. Vandenberg. Nevertheless, I apprehend that the very fact that the injunctive process is restored in the Senator's bill is the reason why it appears in the additional amendment offered by the able Senator from Ohio, where, it seems to me, it becomes decidedly more offensive, using that word in the sense in which I have used it."

The reference is to an amendment proposed by Senator Taft authorizing injunctions in any circuit court of appeals at the request of the Attorney General in case of failure to obey orders of the War Labor Board, or whenever "operations are hindered or reduced by lockout, strike, or otherwise". This applied apparently to plants in private operation. 89 Cong. Rec. 3897–98. Compare the Bill passed by the House, *infra* p. 15.

[12] *Id.* at 3907, 3988–89.

[13] *Id.* at 3809.

[14] *Id.* at 3993.

lockout provisions as to plants in private operation, and by specific amendment to the Norris-LaGuardia Act the district courts were authorized to restrain violations of those provisions. But this *pro tanto* repeal of the Norris-LaGuardia Act was not made available to the United States as a remedy against interference with operation of plants seized under the earlier, 1940 Act.[15]

The bill then went to conference. What came out was, so far as here material, the bill that had passed the Senate. The United States was granted power to seize and operate defense plants whose production was hampered by labor disputes. Specific remedies were formulated by Congress against interference with the Government's operation. The injunction was not included.[16] In neither House was further attempt made to reintroduce the Connally proposal giving the Government relief by injunction. Nor did any Congressman suggest that the Government had that redress anyhow. On the floor of the Senate, Senator Thomas of Utah, Chairman of the Committee on Education and Labor, said:

> "Mr. President, I ask the Senator from New Mexico [Mr. Hatch], the Senator from Connecticut [Mr. Danaher], and the Senator from Texas [Mr. Connally], the sponsor of the bill, whether there is a unanimous opinion on the part of those three great lawyers that there will not be a reopening of the district courts to industry-labor disputes? . . . I should like that point to be made so firmly and so strongly that no lawyer in the land who would like to take advantage of the situation created by the mere mention of the words 'district court' will resort to the court in order to confuse our industry-labor relations."

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[15] Compare § 4 (b) and (c) with § 12 (a) and b, 98 Cong. Rec. 5382–83. For the earlier seizure provisions see 54 Stat. 885, 892, 50 U. S. C. App. § 309.

[16] See Conference Report on S. 796, H. R. No. 531, 78th Cong., 1st Sess.

Mr. Connally answered:

> "Mr. President, . . . I think I speak for the Senator from Vermont and the Senator from New Mexico and the Senator from Connecticut and also the Senator from Indiana [Mr. Van Nuys], although he is not present, when I say that there is no jurisdiction whatever conferred by this bill providing for resort to the United States district court, except the one mentioned by the Senator from Connecticut, which is merely the right to go there for a civil action for damages, and no jurisdiction whatever is given over labor disputes. Does that answer the Senator?"
>
> "Mr. Thomas of Utah. I thank the Senator for making that statement and I hope it will satisfy the lawyers of the country.
>
> "Mr. Connally. I am sure it will." [17]

The Bill became law under these circumstances and the seizure of the mines in our case was made under that law. To find that the Government has the right which Senator Connally's amendment sought to confer but which the Congress withheld is in effect to say that when the amendment was voted down it was the same as though the amendment had been voted up.

Events since the passage of the Act underscore what would appear to be the controlling legislative history of the War Labor Disputes Act, and prove that Congress saw fit not to authorize district courts to issue an injunction in cases like this. In May, 1946, the country faced a crisis growing out of a labor dispute as acute as that leading to the controversy in the court below. To meet the railroad crisis in May of last year, Congress, upon the recommendation of the President and the Attorney General, deemed additional legislation necessary for dealing with labor disputes. The proposals in each House carried a provision which authorized an injunction to issue for

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[17] 89 Cong. Rec. 5754. The Senators mentioned by Mr. Connally were the managers on the part of the Senate of the bill in conference.

violation of the War Labor Disputes Act.[18] In the Senate Senator Meade proposed an amendment to delete the provisions for injunctions.[19] In the debates that followed no one suggested that the new proposal was unnecessary, that the jurisdiction already existed, or that if granted as requested by the Attorney General as to seized plants, it would not, as Senator Meade claimed, repeal *pro tanto* the Norris-LaGuardia Act. The debates show clearly that what was contemplated was a change in the War Labor Disputes Act whereby a new and an additional remedy would be authorized.[20] The Bill never became law.

As is well known, as the debates clearly show, as Senator Connally admitted, the War Labor Disputes Act was directed primarily against stoppage in the coal mines.[21] The situation that Congress feared was exactly that which has occurred to form the controversy before us. To handle that situation, Congress gave to the United States the power to seize the mines. To vindicate this power the Government was given authority to invoke criminal penalties for interferences with the operation of the mines.

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[18] H. R. 6578, 79th Cong., 2d Sess.

[19] Cong. Rec. 6166.

[20] See particularly the statements of Senator Meade (P. 6171), Senator Morse (p. 6169), Senator Pepper (pp. 6169, 6170), Senator Wagner (p. 6170), Senator Wheeler (p. 6172), Senator Barkley (p. 6175), Senator Fullbright (p. 6171).

[21] Senator Connally said: "Mr. Lewis appeared before the Truman Committee 3 or 4 weeks ago. I happen to be a member of that Committee, and when he said he did not regard his no-strike agreement as binding . . . I determined then that if I could get this bill before the Senate, I was going to bring it up and press it in order that if he did disregard the agreement, the President or the Government of the United States would have a weapon with which to meet the threat and the danger." 89 Cong. Rec. 3886. See also H. Rep. No. 440, 78th Cong., 1st Sess., p. 6. The references to the coal situation in the debates are innumerable. See, *e. g.*, 89 Cong. Rec. 3767, 3886, 3888, 3889, 3900–01.

Senator Connally sought more. He wanted Congress to empower the district courts to enjoin interference. The Senate did not want an injunction to issue and voted the proposal down. The Senate's position was adopted by the Conference Committee. The House of Representatives yielded its view and approved the Conference report. This Court now says that Congress authorized the injunction.

No. 759

To: The Chief Justice

From: Frankfurter, J.

Circulated:

Recirculated: 2/15/47

Minor changes. And

See pp. 6 & 15

FEB 17 1947

Memorandum for the Court

At the appropriate place in my opinion in the Lewis case, I shall add the following:

> "The records of this Court are full of cases, both civil and criminal, and involving life or land or small money demands, in which the Court proceeded to consider a federal claim that was not obviously frivolous. It retained such cases under its power until final judgment, though the claim eventually turned out to be unfounded and the judgment was one denying the jurisdiction either of this Court or of the court from which the case came."

F. F.

February 17, 1947

Memorandum for the Conference

No. 759 - United States v. United Mine Workers

At the appropriate place in my opinion I shall insert the following:

"The experience which gave rise to the Norris-LaGuardia Act only underscores the unrestricted limitation upon the jurisdiction of the courts, except in the narrowly defined situations of which this is not one. To find implications in the fact that in the course of the debates it was not explicitly asserted that the district courts could not issue an injunction in a labor controversy even at the behest of the Government is to find the silence of Congress more revealing than the natural meaning of legislation and the history which begot it."

F. F.

February 20, 1947

Memorandum to the Conference

At the appropriate place in my opinion in the Lewis case I shall add the following:

"In our country law is not a body of technicalities in the keeping of specialists or in the service of any special interest. There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny. Legal process is an essential part of the democratic process. For legal process is subject to democratic control by defined, orderly ways which themselves are part of law. In a democracy, power implies responsibility. The greater the power that defies law the less tolerant can this Court be of defiance. As the Nation's ultimate judicial tribunal, this Court, beyond any other organ of society, is the trustee of law and charged with the duty of securing obedience to it."

F. F.

February 24, 1947

File

HLB
Lewis case

I shall also add at the end of my opinion the following:

We have power to modify the decree in this case. I would not modify the amount of the penalty because I believe that the Court has full authority to impose whatever conditional penalty it might deem necessary to enforce its order. But I would modify the decree so as to require payment of the penalty only upon failure fully and unconditionally to obey the restraining order pending final determination of the merits of the controversy.

Chief:

This is skilful eyewash and makes it all the more important that we conclude this business without any ifs, ands and buts. I talked fiercely to Stanley & told him his proposal is "ignominious" and "stultifying".

VI

Supreme Court of the United States
Washington, D. C.

CHAMBERS OF
JUSTICE FELIX FRANKFURTER

February 28, 1947

Dear Chief:

At the end of my Lewis opinion I shall add the following:

"Under the compulsion of the ruling of the majority that the court below had jurisdiction to issue its orders, I concur in the Court's judgment."

Faithfully yours,

FF.

The Chief Justice

March 11, 1947

Memorandum to the Conference

With due deference to other views, if we treat the extraordinary situation in the Lewis case as though it were the common garden variety ordinary situation, we say to Lewis, in effect:

"This is and was a lawful order.

You should have obeyed it.

You should obey it.

You must obey it.

You must purge yourself of continuing contempt.

But - we'll give you twenty-five days to continue to be in contempt, for the purpose of submitting a petition for rehearing, which neither you nor we take seriously.

Incidentally, we delay matters so that whether you have purged yourself, and whether a potential new walk-out after March 31st is to be attributed to you, will have to be decided in the hurly-burly and heat of the last threatening moments."

F. F.

February 14, 1947

Memorandum for the Conference

No. 759 - United Mine Workers v. United States

At the appropriate place I shall add the following colloquy as a footnote:

"Mr. VANDENBERG. ***

I am very anxious that there shall be additional statutory protection to the uninterrupted production of war necessities, but I am wondering whether in order to achieve that purpose it is necessary for me to impinge upon a very profound hostility I have always had to the use of injunctions in labor disputes. I voted for the original Norris-LaGuardia Act, and I have always felt that one of the most useful things we ever did, not only as a matter of fair play, but in respect to the status of the courts was substantially to separate from court jurisdiction the responsibility of, in effect, umpiring labor disputes.

What I wish to ask the able Senator from Texas, if I may, is this: In his proposal, on page 4, it is provided that any person who willfully violates any provision of the act is to be guilty of a felony, and subject to a fine or imprisonment. Is not that a conclusive penalty? Is it necessary in addition to go back into all the old injunctive process in connection with labor disputes?

Mr. CONNALLY. That is not a legal inquiry really. Of course, it might be that we could get along without the provision. Like the Senator, I voted for the Norris-LaGuardia Act, and I favored the policy embodied therein. This provision, however, applies only to plants taken over by the Government. It seems to me that if the Government is to operate a plant, it should have the widest and the fullest authority to operate it as it wants to do and to prevent interruption. Therefore, because of the attitude of some who were interested in the bill, I inserted section 5. I do not think the bill would be very seriously crippled if it were eliminated, but I think it is improved by its remaining in. I do not think it would be fatal to strike out that provision, but I hope that will not be done.

Mr. VANDENBERG. I thank the Senator for his frank statement. When the Government has taken over the operation of a plant and it becomes in essence a Government operation, it is rather difficult to resist the argument that the Government should not be deprived of any instrumentality in the enforcement, virtually of its sovereignty.

Mr. CONNALLY. That is true.

Mr. VANDENBERG. Nevertheless, I apprehend that the very fact that the injunctive process is restored in the Senator's bill is the reason why it appears in the additional amendment offered by the able Senator from Ohio, where, it seems to me, it becomes decidedly more offensive, using that word in the sense in which I have used it."

The reference is to an amendment proposed by Senator Taft authorizing injunctions in any circuit court of appeals at the request of the Attorney General in case of failure to obey orders of the War Labor Board, or whenever operations are hindered or reduced by lockout, strike, or otherwise ***." This applied apparently to plants in private operation. 89 Cong. Rec. 3897-98. Compare the Bill passed by the House, infra p. 15."

F. F.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner, v. United Mine Workers of America, an Unincorporated Association, Respondent. (759)	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.
John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, v. The United States of America, Respondent. (760)	
United Mine Workers of America, an Unincorporated Association, Petitioner, v. The United States of America, Respondent. (781)	
The United States of America, Petitioner, v. John L. Lewis, Individually and as President of the United Mine Workers of America, Respondent. (782)	
United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, v. The United States of America, Respondent. (811)	

[February —, 1947.]

MR. JUSTICE FRANKFURTER, concurring in part.

The historic phrase "the government of laws and not of men" epitomizes the distinguishing character of our political society. When John Adams put that phrase into the Massachusetts Bill of Rights, he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. "A government of laws and not of men" was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. But even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout our history. Or, what this Court has deemed its duty to decide may be changed by legislation, as it often has been, and, on occasion, by constitutional amendment.

But from their own experience and their deep reading in history, the Founders knew that Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised. And this conception of a government by laws dominated the thoughts of those who founded this Nation and designed its Constitution, although they knew as well as the belittlers of the conception that laws have to be made, interpreted and enforced through men. To that end, they set apart a body of men, who were to be the depositories of law, who by their disciplined training and character and by withdrawal from the usual temptations of private interest may reasonably be expected to be "as free, impartial and independent as the lot of humanity will admit". So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial

office with extraordinary safeguards and prestige. No one, no matter how exalted his public office nor how righteous his private motive, can be judge in his own case. That is what courts are for. And no type of controversy is more peculiarly fit for judicial determination than a controversy that calls into question the power of a court to decide. Controversies over "jurisdiction" are apt to raise difficult professional problems. They usually involve judicial presuppositions, textual doubts, confused legislative history, and like factors hardly fit for final determination by the self-interest of a party.

Even when a statute deals with a relatively uncomplicated matter and the "words in their natural sense as they would be read by the common man" would appear to give an obvious meaning, considerations underlying the statute have led this Court to conclude that "the words cannot be taken quite so simply." See *Millburn Co.* v. *Davis,* 270 U. S. 390, 400. How much truer is this of legislation like the Norris-LaGuardia Act. This Act altered a long process of judicial history, but altered it by a scheme of complicated definitions and limitations. The Government here invoked the aid of a court of equity in circumstances which certainly were not commonplace nor dealt with by the Act with inescapable clarity. Colloquially speaking, the Government was "running" the mines. But it was "running" them not as an employer, in the sense that the owners of the coal mines were the employers of the men the day before the Government seized the mines. Nor yet was the relation between the Government and the men like the relation of the Government to the civil service employees in the Department of the Interior. It would be naive to assert that the scope of the Norris-LaGuardia Act in a situation like that presented by this bill raised a question so frivolous that any judge should have summarily thrown the Government out of court without delay. Only when a court is so obviously traveling outside its orbit as to be merely usurping

judicial forms and facilities, may an order issued by a court be disobeyed and treated as though it were a letter to a newspaper. But short of a patent want of authority on the part of a court to entertain an appeal to its authority, the very existence of a court presupposes its power to entertain a controversy. Whether a defendant may be brought to the bar of justice is not for a defendant himself to decide. To be sure, an unquestionable limitation upon a court cannot be circumvented by pretending to inquire into the existence of a power that has obviously been withheld. Thus, the explicit denial to federal district courts of the power to issue injunctions in an ordinary labor dispute between a conventional employer and his employees cannot be defeated, and an existing right to strike impaired, by pretending to entertain a suit for such an injunction in order to decide whether the court has jurisdiction. In such a case, a judge would not be acting as a court. He would be a pretender, not a wielder, of judicial power.

But that is not this case. It required extended arguments, lengthy briefs, study and reflection preliminary to adequate discussion in conference, final conclusions could be reached regarding the proper interpretation of the legislation controlling this case. A majority of my brethren find that neither the Norris-LaGuardia Act nor the War Labor Disputes Act limited the power of the district court to issue the orders under review. I have reached the contrary conclusion. But to suggest that the right to determine so complicated and novel an issue could not be brought within the cognizance of the district court, and eventually of this Court, is to deny the place of the judiciary in our scheme of government. But if the district court had power to decide whether this case was properly before it, it could make appropriate orders so as to afford the necessary time for fair consideration and decision while existing conditions were preserved. To say that the au-

thority of the court may be flouted during the time necessary to decide is to reject the requirements of the judicial process. It does not mitigate such defiance of law to urge that hard-won liberties of collective action by workers were at stake. The most prized liberties themselves presuppose an independent judiciary through which these liberties may be, as they so often have been, vindicated. When, in a real controversy such as is now here, an appeal is made to law, the issue must be left to the judgment of courts and not personal judgment of one of the parties. This principle is a postulate of our democracy. And so I join the opinion of the court insofar as it sustains the judgment for contempt upon the broad ground of vindicating the process of law.

It only remains to state the basis of my disagreement with the Court's views on the bearing of the Norris-LaGuardia Act and the War Labor Disputes Act. As to the former, the Court relies essentially on a general doctrine excluding the Government from the operation of a statute in which it is not named and on the legislative history of the Act. I find the countervailing considerations weightier. The Norris-LaGuardia Act deprived the federal courts of jurisdiction to issue injuncitons in labor disputes except under conditions not here relevant. The question before a court of equity therefore is whether a case presents a labor dispute as defined by the Act. Section 13 (c) defines "labor disputes":

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in approximate relation of employer and employee."

That the controversy before the district court comes within this definition does not need to be labored. The controversy arising under the Lewis-Krug contract concerned "terms or conditions of employment" and was therefore a "labor dispute", whatever further radiations

the dispute may have had. The Court deems it appropriate to interpolate an exception regarding labor disputes to which the Government is a party. It invokes a canon of construction according to which the Government is excluded from the operation of general statute unless explicit language covers the Government.

The Norris-LaGuardia Act has specific origins and definite purposes and should not be fitted into an artificial canon of construction. The title of the Act gives its scope and purpose and the terms of the Act justify its title. It is an Act "to define and limit the jurisdiction of courts sitting in equity". It does not deal with the rights of parties but with the power of the courts. Again and again, the statute says "no court shall have jurisdiction", etc. Congress was concerned with the withdrawal of power from the federal courts to issue injunctions in a defined class of cases. Nothing in the Act remotely hints that the withdrawal of this power turns on the character of the parties. The only reference to parties is that the power is withdrawn in a labor dispute "regardless of whether or not the disputants stand in the proximate relation of employer and employee". That apart, the limitation on the jurisdiction of the Court depends entirely on the subject matter of the controversy. Section 13 (a) defines it:

> "A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interest therein; or who are employees of the same employer or who are members of the same or an affiliated organization of employers or employees."

Did not the suit brought by the Government against Lewis and the United Mine Workers "grow out of a labor dispute" within the terms of § 13 (a)? Neither the context nor the content of the Act qualifies the terms of that section.

As already indicated the Court now finds an exception to the limitation which the Norris-LaGuardia Act placed upon the equity jurisdiction of the district court not in the Act but outside it. It invokes cases involving other statutes which xxxx apply a canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless named in it. As many cases can be found in this Court in which the rule did not prevail as in cases in which it was found helpful. The fact is that in the cases in which it was deemed an aid to interpretation it was merely one in an ensemble of factors leading to a particular result. This canon, like other generalities about statutory construction, is not a rule of law whatever persuasiveness it may have in relation to a particular statute derives from the meaning conveyed by the terms of a statute in its total environment. "This rule has its historical basis in the English doctrine that the Crown is unaffected by acts of Parliament not specifically directed against it *** the presumption is an aid to consistent construction of statutes of the acting sovereign, when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred to be disregarded bacause not explicitly stated." So wrote the late Chief Justice for the whole Court in United States v. California, 297 U. S. 186., and this point of view was very recently applied in United States v. Rice, 327 U. S. 742, 749. The text, content, content and historical setting of the Norris-LaGuardia Act all converge to indicate the unrestricted withdrawal by Congress from the federal district courts of the power to issue injunctions in labor disputes, excepting only under circumstances

explicitly defined and not here present. The meaning which a reading of the text conveys and which is confirmed by the history which led Congress to free the federal courtsfrom entanglements in these industrial controversies through use of the injunction, ought not to be subordinated to an abstract canon of construction that carries theresidual flavor of the days when a personal sovereign was the law-maker.

Moreover, the rule proves too much. If , because the United States is not named, the Courts are not limited in their jurisdiction when the United States is a party, the Act would apply to any proceeding by the United States as complainant. Accordingly, the limitations imposed by the Norris-LaGuardia Act upon the district court's jurisdictionc could not deprive the United States of the remedies it theretofore had. It would mean that, in order to protect the public interest which may be jeopardized just as much whether an essential industry continued under private control or has been temporarily seized by the Government, a court could, at the behest of the Attorney General of the United States, issue an injunction as courts did when they issued the Debs, the Hayes and the Railway Shopmen's injunctions. But it was these very injunctions, secured by the Attorney General of the United States under claim of compelling public emergency, that gave the most powerful momentum to the enactment of the Norris-LaGuardia Act. This history is too familiar to be rehearsed. It is surely surprising to conclude that when a long and persistent effort to take the federal courts out of the industrial conflict insofar as the labor injunction put them into itfound its way to the statute books, the Act failed to meet the grievances

that were most dramatic and deepest in memory by those most concerned with the legislation. xxx

It is urged, however, that legislative history cuts down what might otherwise be the scope of the Act. Reliance is place on statements by two Representatives during the final stage in the passage of the Bill, calculated to show that Congress purposed to exclude from the limitation of the jurisdiction of the district courts labor disputes involving "employees" of the Government, at least where injunctions are sought by the Attorney General. Since both statements came from spokesmen for the Bill, they carry weight. The setting of these remarks, the circumstances under which they were delivered as well as their nature define their meaning and the significance to be given them as a gloss upon the Act.

There was before the House an Amendment by Representative Blanton wh ch would have made the Act applicable "except where the United States Government is the petitioner." (75 Cong. Rec. 5503). Representative LaGuardia opposed the Amendmend remarking "I do not see hwo in any possible way the United States can be brought in under the provisions of this Bill." If this is to be read apart from the meaning afforded by the context of the debates and the whole course of the legislation, it would not mean that the jurisdiction to grant a Debs injunction continued unaffected. No one would have been more startled by such a conclusion than Mr. LaGuardia. The fact is that a situation like the present, where the Government for xx a time has some relation to a labor dispute in an essentially private industry, was not in the thought of Mr. LaGuardia or of anybody else in the Congress.

Mr. LaGuardia's statement regarding the position of the United States under the Act followed his reading of §13 (b) under which a person is to be deemed interested in a labor dispute only if "engaged in the same industry, trade, carft or occupation in which such dispute occurs." His brief, elleptical remark plainly conveyed that the business of the Government of the United States is not an "industry, trade, craft or occupation." This is made unequivocally clear by the colloquy that followed. Mr. Blanton inquired whetherh Mr. LaGuardia was prepared to have "the Army and the Navy form a labor union and affiliate themselves with the American Federation of Labor and not permit the Government of the United States to preserve its rights?" The short answer for Mr. LaGuardia to have made was "The United States is not subject to the provisions of the Act, because by employer we mean a private employer." Instead of that, Mr. LaGuardia replied, "Oh the Army and Navy are not a trade, craft or occupation." In short, the scope of the limitation upon the jurisdiction of the courts was not who was the party, but what was the subject matter. The second representative upon whom the Court relies is Mr. Michener. He said, ""Be it remebered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government." (75 Cong. Rec. 5464.) Later he added "*** This deals with labor disputes between individuals, now where the Government is involved. It is my notion that under this bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see

this clarified, but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevent from applying for an injunction, if one is necessary in order that the Government may function."

The claim of the Government in asking for the Debs injunction was precisely what Mr. Michener gave as his interpretation. Of what survived the Norris-Laguardia Act. That injunction was sought and granted in order that the Government might function. Insofar then as Mr. Michener's statements imply that the United States could again get a Debs injunction, his understanding is belief by the whole history of the legislation, as reflected in its terms. These statements can only mean then that if, say, employees in the Treasury Department had to be enjoined so that the government could go on, it was Representative Michener's view that an injunction could issue. No attempt was made to make this view explicit in the Act. It was not discuseed, andonly one statement appears to share it. In any event, it does not imply a broader exemption than that of which Representative LaGuardia spoke,

It is to be noted that the discussion in the House followed passage in the Senate of what subsequently became the Act. It is a matter of history that the Senate Judiciary Committee was the drafting and driving force behind the Bill. The Bill had extended consideration by a subcommittee of the Senate Judiciary Committee followed by weighty reports and full discussion on the Senate floor. Not a suggestion, not a hint can be found in the Senate proceedings that the withdrawal of jurisdiction to issue injunctions in labor disputes was subject to a latent exception as to injunctions sought by the Government. The whole contemporaneous history is against

it. The remarks of Mr. LaGuardia and Mr. Michener ought not to be made the equivalent of writing an amendment into the ~~xxxx~~ Act. It is one thing to draw on all relevant aids for shedding light on the dark places of a statute. But to allow inexplicit remarks in the give-and-take of debate to contradict the very terms of legislation and the history behind it is to put out the controlling light on meaning shed by the explicit provisions of an Act in its setting.

But even if we assume that the Act was not intended to apply to labor disputes involving "employees" of the United States, are the miners in the case before us "employees" of the United States within the meaning of this interpolated exception? It can hardly be denied that the relation of the miners to the United States is a hybrid one. Clearly, they have a relation to the Government not true of employees of plants not under Government operation, equally clearly, they have a relation and a status different from the relation and status of the clerks at the Treasury Department. Nothin in the Acts authorizing seizure of private plants indicates that the employees of these plants were to be considered employees of the United States in the usual and natural meaning of the term. The only precise characterization of the status of employees in seized plants was expressed by Under-Secretary Patterson at a hearing on the predecessor bill to that which became the law under which this seizure was made. He spoke of the role of the Government as that of "a receiver that would be charged with the continuity of operation of the plant." The characterization was accepted by members of the Committee which approved the bill. In a limited sense employees of plants in receivership in a federal court may be considered employees of the United States, sinc e the operation of the plant is under

the jurisdiction and control of a United States officer. But no one aware of the background of mischief which the Act was intended to remedy could find an intention in Congress to allow injunctions in labor disputes involving plants in receivership. No series of cases contributed more to the feeling that the district courts abused their equity jurisdiction than those involving injunctions against employees of railroads in equity receivership in the federal courts. If injunctions will not issue in disputes involving employees of plants in receivership under operation by the federal courts, nothing relevant to the construction of the statute warrants the court in inferring an intention by Congress to allow injunctions in disputes involving employees of plants in "receivership" under operation of the Secretary of the Interior. It may fairly be said that such has been the common understanding of the Norris-LaGuardia Act. In the full debates on bills providing for seizure, Congressional leaders clearly indicated their understanding that as the law then stood there could be no injunctions in labor disputes in seized plants. Not only was such the understanding when the legal question emerged in the course of considering the need of war legislation, Recent Acts and their legislative history show more than merely later understanding of the terms of an older statute. The War Labor Disputes Act of 1943 and its history are directly and primarily relevant. The whole controversy arises under the authority to seize mines given by the War Labor Disputes Act. The real question before us is whether in authorizing such seizure and operation Congress also gave to the United States the right to prevent interference with its statutory operation through the equitable remedies here invoked.

By that Act Congress created a new relationship among the Government, the plant owners, the employees. The rights, duties, remedies incident to that relation are those given by the Act. Congress naturally addressed itself to possible interferences with the Government's operation of seized plants. It dealt specifically with this subject. It gave the Government specific remedies which it might invoke against such interference. Remedy by injunction was not given. It was not merely withheld. It was expressly and definitively denied. As reported out of the Senate Committee, S. 796 provided for plant seizure. It did not include the injunction among the remedies for interference with government operation. But when the Bill reached the floor of the Senate, Senator Connolly, sponsor of the Bill, offered and urged an amendment giving the district courts jurisdiction to restrain violations of the measure. He accepted, somewhat reluctantly, the amendment of Senator Wagner to limit the proposed amendment to an injunction at the behest of the Attorney General, precisely as was here sought and granted. On motion of Senator Danaher, this proposal was rejected by the Senate after full debate, participated in by senators especially conversant with the history and scope of the existing remedies available to the Government. With this remedy denied, to the Government , the Bill then went to the House. The House did not like the Bill. Its version did not see fit specifically to add to the limited seizure provisions of the Selective Service Act of 1940, although apparently it assumed that there could be seizure under existing law in the case of failure by defense plants to produce as a result of labor troubles Instead the House version provided stringent anti-strike and anti-lockout provisions as to plants in private operation, and by specific amendment to the Norris-LaGuardia Act the district courts were authorized to restrain violations of those provsisions. But this pro tanto repeal of the Norris-LaGuardia Act was not made available to the United States as a remedy against interference with operation of plants seized under the earlier, 1940 Act. The bill then went to conference. What came out was, sofar as here material, the bill that had passed the Senate. The United States was granted power to seize and operate defense plants whose production was hampered by labor disputes. Specific remedies were formulated by Congress against interference with the Government's operation . The injunction was not included. In neither House was further attempt made to reintroduce the Connolly proposal giving the Government relief by injunction. Nor did any Congressman suggest that the Government had that redress anyhow.

On the floor of the Senate, Senator Thomas of Utah said:

> "Mr. President, I ask the Senator from New Mexico [Mr. Hatch], the Senator from Connecticut [Mr. Danaher], and the Senator from Texas [Mr. Connolly], the sponsor of the Bill, whether there is a unanimous opinion on the part of those three great lawyers that there will not be a reopening of the district courts to industry - labor disputes? *** I should like that point to be made so firmly and so strongly that no lawyer in the land who would like to take advantage of the situation created by the mere mention of the words 'district court' will resort to the court in order to confuse our industry-labor relations."

Mr. Connolly answered:

> "Mr. President, *** I think I speak for the Senator from Vermont and the Senator from New Mexico and the Senator from Connecticut and also the Senator from Indiana [Mr. Van Nuys], although he is not present, when I say that there is no jurisdiction whatever conferred by this Bill providing for resort to the United States district court, except the one mentioned by the Senator from Connecticut, which is merely the right to go there for a civil action for damages, and no jurisdiction whatever is given over labor disputes. Does that answer the Senator?"
>
> "Mr. THOMAS of Utah. I thank the Senator for making that statement and I hope it will satisfy the lawyers of the country."
>
> "Mr. CONNOLLY. I am sure it will." (89 Cong. Rec. 5754-55)

The Bill became law under these circumstances and the seizure of the mines was made under that law. To find that the Government has the right which Senator Connolly's amendment sought to confer but which the Congress withheld is in effect to say that when the amendment was voted down it was the same as though the amendment had been voted up.

Events since the passage of the Act underscore what would appear to be the controlling legislative history of the War Labor Disputes Act, and to prove that Congress saw fit not to authorize district courts to issue an injunction in cases

like this. In May, 1946, the country faced a crisis growing out of a labor dispute as acute as that leading to the controversy in the court below. To meet the railroad crisis in May of last year Congress, upon the President's and the Attorney ~~General's~~ General's recommendation, ~~ddemed~~ deemed additional legislation necessary for dealing with labor disputes. The proposals in each House carried a provision which authorized an injunction to issue for violation of the War Labor Disputes Act. In the Senate Senator Meade proposed an amendment to delete the provisions for injunction. In the debates that followed no one suggested that the new proposal was unnecessary, that the jurisdiction already existed, or that if granted as requested by the Attorney General as to seized plants, it would not repeal pro tento the Norris-LaGuardia Act as Senator Meade claimed. The debates show clearly that what was contemplated was a change in the War Labor Disputes Act whereby a new and an additional remedy would be authorized. The Bill never became law.

As is well known, as the debates clearly show, as Senator Connolly admitted the War Labor Disputes Act was directed primarily against stoppage in the coal mines. The situation that Congress feared was exactly that which has occurred to form the controversy before us. To handle that situation, Congress gave to the United States the power to seize the mines. To vindicate this power the Government was given authority to invoke criminal penalties for interferences with the operation of the mines. Senator Connolly sought more. He wanted Congress to empower the district courts to enjoin interference. The Senate did not want an injunction to issue and voted the proposal down. The conference committee decided that an injunction should not issue. The House of Representatives agreed that the injunction before us should not issue. This Court now says that Congress authorized the injunction.

Footnotes:

1. United States v. Debs, 64 Fed. 724, 158 U. S. 564; United States v. Hayes, unreported, D. Ind. 1919; United States v. Railway Employees' Dept. A.F.L., 283 Fed. 479, 286 Fed 228, 290 Fed 978.

2. Compare Reppresentative LaGuardia's reply to a proposed amendment by Representative Beck which would have exempted from the operation of the Act disputes "where the welfare, health, or lives of a public are concerned who are not parties to such labor dispute, or where a labor dispute involves the obstruction of any instrumentality of interstate or foreign commerce". LaGuardia claimed that the amendment was out of order because not germane to the purposes of the legislation. "The present bill refers only to disputes between employees and employer *** The public is fully protected by penal and other statutes ***." 75 Cong. Rec. 5503.

3. See Statement of Representative Schneider, 75 Cong. Rec. 5514. Hearings before a Subcommittee of the Committee on the Judiciary, Senate, 77th Cong., 1st Sess., on S. 2054, p. 14.

4, Id. at pp. 16, 18, 130. See the statement of Senator Burton: "I have been impressed with your emphasis of the need of a receivership, that is, an operating receivership instead of a liquidating receivership. "Id at 16. When Senator Connolly referred to the United States as an employer (id. at 120), he did so in a special context for the purposes of a discussion about collective bargaining with reference to wages. As to wages, of course the Government would stand in loco "employer" during its operation of the plant. At other places, he refers to the private employer "who will continue to operate it under the supervision of the Government". Id.at 55 See also p. 57.

5. Compare, ~~xxxxxx~~ e. g., 1 Gresham, Life of Walter Quintin Gresham, cc. XXIII to XXV.

6. See especially the debates on a proposed amendment to the Smith-Connelly Bill where by Senator Collolly sought to add the injunction as a remedy against violation of the Act.

> "Mr. CONNOLLY. The provision is limited to plants which the Government takes over. It would not change the Norris-LaGuardia Act in any respect, except in the one particular case.
>
> *******
>
> "Mr. LANGER. Mr. President, is it not true that unles section 5 is stricken from the bill that a portion of the Norris-LaGuardia Act will be repealed?
>
> "Mr. DANAHER. It would certainly be overridden; ***"

(Emphasis supplied). 89 Cong. Rec. 3988-89.

See also the statements of Senators Taft, Vandenberg, and Wagner, and compare those of Senators Rivercomb and Barkley; and see the colloquy between Senators Connolly and Vandenberg, id. at 3906, quoted infra note - .

7. 57 Stat. 163, 16 50 U. S. C. §1506 (b)

8. S. Rep. No. 147, 78th Cong., 1st Sess.

10. 89 Cong Rec. 3809.

10. Id. at 3907, 3988-89.

11. Id. at 3809.

12. Id at 3993

13. Compare §4 (b) and (c) with §12 (a) & b, 98 Cong. Rec. 5382 -83. For the earlier seizure provisions see 54 Stat. 892, 50 U. S. C. App. §309.

14. See Conference Report on S. 796, H. R. No 531, 78th Cong. 1st Sess.

15. H. R. 6578, 79th Cong., 2d Sess.

16. Cong. Rec. 6166.

17. See particularly the statements of Senator Meade (P. 6171), Senator Morse (p. 6169), Senator Pepper (pp. 6169, 6170), Senator Wagner (p. 6170), Senator Wheeler (p. 6172), Senator Barkley (p. 6175), Senator Fullbright (p. 6171).

18. Senator Connelly said:"Mr. Lewis appeared before the Truman Committee 3 or 4 weeks ago. I happen to be a member of that Committee, and when he said he did not regard his no-strike agreement as binding *** I determined then that if I could get this bill before the Senate, I was going to bring it up and press it in order that if he did disregard the agreement, the President or the Government of the United States would have a weapon with which to meet the threat and the danger." 89 Cong. Rec. 3886. See also H. Rep. No. 440, 78th Cong., 1st Sess, p. 6. The freferences to the coal situation in the debates are innumerable. See, e. g., 89 Cong. Rec. 3767, 3886, 3888, 3889, 3900-01.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 and 811.—October Term, 1946.

The United States of America, Petitioner,
759 *v.*
United Mine Workers of America, an Unincorporated Association.

John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
760 *v.*
The United States of America.

United Mine Workers of America, an Unincorporated Association, Petitioner.
781 *v.*
The United States of America.

The United States of America, Petitioner,
782 *v.*
John L. Lewis, Individually and as President of the United Mine Workers of America.

United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
811 *v.*
The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[February —, 1947.]

Mr. Justice Frankfurter, concurring in part.

The historic phrase "a government of laws and not of men" epitomizes the distinguishing character of our

political society. When John Adams put that phrase into the Massachusetts Bill of Rights, he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. "A government of laws and not of men" was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. But even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout our history. Or, what this Court has deemed its duty to decide may be changed by legislation, as it often has been, and, on occasion, by constitutional amendment.

But from their own experience and their deep reading in history, the Founders knew that Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised. And this conception of a government by laws dominated the thoughts of those who founded this Nation and designed its Constitution, although they knew as well as the belittlers of the conception that laws have to be made, interpreted and enforced through men. To that end, they set apart a body of men, who were to be the depositories of law, who by their disciplined training and character and by withdrawal from the usual temptations of private interest may reasonably be expected to be "as free, impartial and independent as the lot of humanity will admit". So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial office with extraordinary safeguards and prestige. No one, no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That

is what courts are for. And no type of controversy is more peculiarly fit for judicial determination than a controversy that calls into question the power of a court to decide. Controversies over "jurisdiction" are apt to raise difficult professional problems. They usually involve judicial presuppositions, textual doubts, confused legislative history, and like factors hardly fit for final determination by the self-interest of a party.

Even when a statute deals with a relatively uncomplicated matter and the "words in their natural sense as they would be read by the common man" would appear to give an obvious meaning, considerations underlying the statute have led this Court to conclude that "the words cannot be taken quite so simply." See *Millburn Co.* v. *Davis,* 270 U. S. 390, 400. How much truer is this of legislation like the Norris-LaGuardia Act. This Act altered a long process of judicial history, but altered it by a scheme of complicated definitions and limitations. The Government here invoked the aid of a court of equity in circumstances which certainly were not commonplace nor dealt with by the Act with inescapable clarity. Colloquially speaking, the Government was "running" the mines. But it was "running" them not as an employer, in the sense that the owners of the coal mines were the employers of the men the day before the Government seized the mines. Nor yet was the relation between the Government and the men like the relation of the Government to the civil service employees in the Department of the Interior. It would be naive to assert that the scope of the Norris-LaGuardia Act in a situation like that presented by this bill raised a question so frivolous that any judge should have summarily thrown the Government out of court without delay. Only when a court is so obviously traveling outside its orbit as to be merely usurping judicial forms and facilities, may an order issued by a court be disobeyed and treated as though it were a letter

to a newspaper. But short of a patent want of authority on the part of a court to entertain an appeal to its authority, the very existence of a court presupposes its power to entertain a controversy. Whether a defendant may be brought to the bar of justice is not for a defendant himself to decide. To be sure, an unquestionable limitation upon a court cannot be circumvented by pretending to inquire into the existence of a power that has obviously been withheld. Thus, the explicit denial to federal district courts of the power to issue injunctions in an ordinary labor dispute between a conventional employer and his employees cannot be defeated, and an existing right to strike impaired, by pretending to entertain a suit for such an injunction in order to decide whether the court has jurisdiction. In such a case, a judge would not be acting as a court. He would be a pretender, not a wielder, of judicial power.

But that is not this case. It required extended arguments, lengthy briefs, study and reflection preliminary to adequate discussion in conference, before final conclusions could be reached regarding the proper interpretation of the legislation controlling this case. A majority of my brethren find that neither the Norris-LaGuardia Act nor the War Labor Disputes Act limited the power of the district court to issue the orders under review. I have reached the contrary conclusion. But to suggest that the right to determine so complicated and novel an issue could not be brought within the cognizance of the district court, and eventually of this Court, is to deny the place of the judiciary in our scheme of government. And if the district court had power to decide whether this case was properly before it, it could make appropriate orders so as to afford the necessary time for fair consideration and decision while existing conditions were preserved. To say that the authority of the court may be flouted during the time necessary to decide is to reject the requirements of the judicial

process. It does not mitigate such defiance of law to urge that hard-won liberties of collective action by workers were at stake. The most prized liberties themselves presuppose an independent judiciary through which these liberties may be, as they so often have been, vindicated. When, in a real controversy such as is now here, an appeal is made to law, the issue must be left to the judgment of courts and not the personal judgment of one of the parties. This principle is a postulate of our democracy. And so I join the opinion of the court insofar as it sustains the judgment for contempt upon the broad ground of vindicating the process of law.

It only remains to state the basis of my disagreement with the Court's views on the bearing of the Norris-LaGuardia Act and the War Labor Disputes Act. As to the former, the Court relies essentially on a general doctrine excluding the Government from the operation of a statute in which it is not named and on the legislative history of the Act. I find the countervailing considerations weightier. The Norris-LaGuardia Act deprived the federal courts of jurisdiction to issue injunctions in labor disputes except under conditions not here relevant. The question before a court of equity therefore is whether a case presents a labor dispute as defined by the Act. Section 13 (c) defines "labor disputes":

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in approximate relation of employer and employee."

That the controversy before the district court comes within this definition does not need to be labored. The controversy arising under the Lewis-Krug contract concerned "terms or conditions of employment" and was therefore a "labor dispute", whatever further radiations the dispute may have had. The Court deems it appropriate to interpolate an exception regarding labor disputes

to which the Government is a party. It invokes a canon of construction according to which the Government is excluded from the operation of general statute unless explicit language covers the Government.

The Norris-LaGuardia Act has specific origins and definite purposes and should not be fitted into an artificial canon of construction. The title of the Act gives its scope and purpose and the terms of the Act justify its title. It is an Act "to define and limit the jurisdiction of courts sitting in equity". It does not deal with the rights of parties but with the power of the courts. Again and again, the statute says "no court shall have jurisdiction", etc. Congress was concerned with the withdrawal of power from the federal courts to issue injunctions in a defined class of cases. Nothing in the Act remotely hints that the withdrawal of this power turns on the character of the parties. The only reference to parties is that the power is withdrawn in a labor dispute "regardless of whether or not the disputants stand in the proximate relation of employer and employee". That apart, the limitation on the jurisdiction of the Court depends entirely on the subject matter of the controversy. Section 13 (a) defines it:

> "A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interest therein; or who are employees of the same employer or who are members of the same or an affiliated organization of employers or employees."

Did not the suit brought by the Government against Lewis and the United Mine Workers "grow out of a labor dispute" within the terms of § 13 (a)? Neither the context nor the content of the Act qualifies the terms of that section.

As already indicated the Court now finds an exception to the limitation which the Norris-LaGuardia Act placed

upon the equity jurisdiction of the district court not in the Act but outside it. It invokes cases involving other statutes which apply a canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless named in it. As many cases can be found in this Court in which the rule did not prevail as cases in which it was found helpful. The fact is that in the cases in which it was deemed an aid to interpretation it was merely one in an ensemble of factors leading to a particular result. This canon, like other generalities about statutory construction, is not a rule of law. Whatever persuasiveness it may have in relation to a particular statute derives from the meaning conveyed by the terms of a statute in its total environment. "This rule has its historical basis in the English doctrine that the Crown is unaffected by acts of Parliament not specifically directed against it. . . . The presumption is an aid to consistent construction of statutes of the acting sovereign, when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated." So wrote the late Chief Justice for the whole Court in *United States* v. *California*, 297 U. S. 175, 186, and this point of view was very recently applied in *United States* v. *Rice*, 327 U. S. 742, 749. The text, context, content and historical setting of the Norris-LaGuardia Act all converge to indicate the unrestricted withdrawal by Congress from the federal district courts of the power to issue injunctions in labor disputes, excepting only under circumstances explicitly defined and not here present. The meaning which a reading of the text conveys and which is confirmed by the history which led Congress to free the federal courts from entanglements in these industrial controversies through use of the injunction, ought not to be subordinated to an abstract canon of construction that carries the residual flavor of the days when a personal sovereign was the law-maker.

Moreover, the rule proves too much. If, because the United States is not named, the Courts are not limited in their jurisdiction when the United States is a party, the Act would apply to any proceeding by the United States as complainant. Accordingly, the limitations imposed by the Norris-LaGuardia Act upon the district court's jurisdiction could not deprive the United States of the remedies it theretofore had. It would mean that, in order to protect the public interest which may be jeopardized just as much whether an essential industry continued under private control or has been temporarily seized by the Government, a court could, at the behest of the Attorney General of the United States, issue an injunction as courts did when they issued the *Debs*, the *Hayes* and the *Railway Shopmen's* injunctions.[1] But it was these very injunctions, secured by the Attorney General of the United States under claim of compelling public emergency, that gave the most powerful momentum to the enactment of the Norris-LaGuardia Act. This history is too familiar to be rehearsed. It is surely surprising to conclude that when a long and persistent effort to take the federal courts out of the industrial conflict, insofar as the labor injunction put them into it, found its way to the statute books, the Act failed to meet the grievances that were most dramatic and deepest in the memory of those most concerned with the legislation.

It is urged, however, that legislative history cuts down what might otherwise be the scope of the Act. Reliance is placed on statements by two Representatives during the House debates on the Bill, calculated to show that Congress purposed to exclude from the limitation of the jurisdiction of the district courts labor disputes involving "employees" of the Government, at least where injunctions are

[1] *United States* v. *Debs*, 64 Fed. 724, 158 U. S. 564; *United States* v. *Hayes*, unreported, D. Ind. 1919; *United States* v. *Railway Employees' Dept., A. F. L.*, 283 Fed. 479, 286 Fed. 228, 290 Fed. 978.

sought by the Attorney General. Since both statements came from spokesmen for the Bill, they carry weight. The setting of these remarks, the circumstances under which they were delivered as well as their nature define their meaning and the significance to be given them as a gloss upon the Act.

There was before the House an Amendment by Representative Blanton which would have made the Act applicable "except where the United States Government is the petitioner." (75 Cong. Rec. 5503.) Representative LaGuardia opposed the Amendment remarking "I do not see how in any possible way the United States can be brought in under the provisions of this Bill." If this is to be read apart from the meaning afforded by the context of the debates and the whole course of the legislation, it would mean that the jurisdiction to grant a *Debs* injunction continued unaffected. No one would have been more startled by such a conclusion than Mr. LaGuardia. The fact is that a situation like the present, where the Government for a time has some relation to a labor dispute in an essentially private industry, was not in the thought of Mr. LaGuardia or of anybody else in the Congress. Mr. Guardia's statement regarding the position of the United States under the Act followed his reading of § 13 (b) under which a person is to be deemed interested in a labor dispute only if "engaged in the same industry, trade, craft or occupation in which such dispute occurs." His brief, elliptical remark plainly conveyed that the business of the Government of the United States is not an "industry, trade, craft or occupation." This is made unequivocally clear by the colloquy that followed. Mr. Blanton inquired whether Mr. LaGuardia was prepared to have "the Army and the Navy form a labor union and affiliate themselves with the American Federation of Labor and not permit the Government of the United States to preserve its rights?" The short answer for Mr. LaGuardia to have

made was "The United States is not subject to the provisions of the Act, because by employer we mean a private employer." Instead of that, Mr. LaGuardia replied, "Oh the Army and Navy are not a trade, craft or occupation." In short, the scope of the limitation upon the jurisdiction of the courts was not who was the party, but what was the subject matter. Representative Blanton's amendment was rejected by 125 to 21.

The second Representative upon whom the Court relies is Mr. Michener. He said, "Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government." (75 Cong. Rec. 5464.) Later he added ". . . This deals with labor disputes between individuals, not where the Government is involved. It is my notion that under this bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see this clarified, but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevented from applying for an injunction, if one is necessary in order that the Government may function." The claim of the Government in asking for the *Debs* injunction was precisely what Mr. Michener gave as *his* interpretation of what survived the Norris-LaGuardia Act. That injunction was sought and granted in order that the Government might function. Insofar, then, as Mr. Michener's statements imply that the United States could again get a *Debs* injunction, his understanding is belied by the whole history of the legislation, as reflected in its terms.[2] These statements can

[2] Compare Representative LaGuardia's reply to a proposed amendment by Representative Beck which would have exempted from the

only mean then that if, say, employees in the Treasury Department had to be enjoined so that government could go on, it was Representative Michener's view that an injunction could issue. No attempt was made to make this view explicit in the Act. It was not discussed, and only one statement appears to share it.[3] In any event, it does not imply a broader exemption than that of which Representative LaGuardia spoke.

It is to be noted that the discussion in the House followed passage in the Senate of what subsequently became the Act. It is a matter of history that the Senate Judiciary Committee was the drafting and driving force behind the Bill. The Bill had extended consideration by a subcommittee of the Senate Judiciary Committee followed by weighty reports and full discussion on the Senate floor. Not a suggestion, not a hint can be found in the Senate proceedings that the withdrawal of jurisdiction to issue injunctions in labor disputes was subject to a latent exception as to injunctions sought by the Government. The whole contemporaneous history is against it. The remarks of Mr. LaGuardia and Mr. Michener ought not to be made the equivalent of writing an amendment into the Act. It is one thing to draw on all relevant aids for shedding light on the dark places of a statute. But to allow inexplicit remarks in the give-and-take of debate to contradict the very terms of legislation and the history behind it is to put out the controlling light on meaning shed by the explicit provisions of an Act in its setting.

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operation of the Act disputes "where the welfare, health, or lives of a public are concerned who are not parties to such labor dispute, or where a labor dispute involves the obstruction of any instrumentality of interstate or foreign commerce". LaGuardia claimed that the amendment was out of order because not germane to the purposes of the legislation. "The present bill refers only to disputes between employees and employer . . . The public is fully protected by penal and other statutes . . ." 75 Cong. Rec. 5503.

[3] See Statement of Representative Schneider, 75 Cong. Rec. 5514.

But even if we assume that the Act was not intended to apply to labor disputes involving "employees" of the United States, are the miners in the case before us "employees" of the United States within the meaning of this interpolated exception? It can hardly be denied that the relation of the miners to the United States is a hybrid one. Clearly, they have a relation to the Government not true of employees of plants not under Government operation. Equally clearly, they have a relation and a status different from the relation and status of the clerks at the Treasury Department. Nothing in the Acts authorizing seizure of private plants indicates that the employees of these plants were to be considered employees of the United States in the usual and natural meaning of the term. The only precise characterization of the status of employees in seized plants was expressed by Under Secretary Patterson at a hearing on the predecessor bill to that which became the law under which this seizure was made. He spoke of the role of the Government as that of "a receiver that would be charged with the continuity of operation of the plant." [4] The characterization was accepted by members of the Committee which approved the Bill.[5] In a limited sense, employees of plants in receivership in a federal court may be considered employees of the United States, since the operation of the plant is under the jurisdiction and control of a United States officer. But no one aware

[4] Hearings on S. 2054 before a Subcommittee of the Committee on the Judiciary, Senate, 77th Cong., 1st Sess., p. 14.

[5] *Id.* at pp. 16, 18, 130. See the statement of Senator Burton: "I have been impressed with your emphasis of the need of a receivership, that is, an operating receivership instead of a liquidating receivership. "*Id.* at 16. When Senator Connally referred to the United States as an Employer (*id.* at 120), he did so in a special context for the purposes of a discussion about collective bargaining with reference to wages. As to wages, of course the Government would stand *in loco* "employer" during its operation of the plant. At other places, he refers to the private employer "who will continue to operate it under the supervision of the Government". *Id.* at 55. See also p. 57.

of the background of mischief which the Act was intended to remedy could find an intention in Congress to allow injunctions in labor disputes involving plants in receivership. No series of cases contributed more to the feeling that the district courts abused their equity jurisdiction than those involving injunctions against employees of railroads in equity receivership in the federal courts.[6] If injunctions will not issue in disputes involving employees of plants in receivership under operation by the federal courts, nothing relevant to the construction of the statute warrants the court in inferring an intention by Congress to allow injunctions in disputes involving employees of plants in "receivership" under operation of the Secretary of the Interior.

It may fairly be said that such has been the common understanding of the Norris-LaGuardia Act. In the full debates on bills providing for seizure, Congressional leaders clearly indicated their understanding that as the law then stood there could be no injunctions in labor disputes in seized plants.[7]

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[6] Compare, *e. g.*, 1 Gresham, Life of Walter Quintin Gresham, cc. XXIII to XXV.

[7] See especially the debates on a proposed amendment to the Smith-Connally Bill whereby Senator Connally sought to add the injunction as a remedy against violation of the Act.

"Mr. CONNALLY. The provision is limited to plants which the Government takes over. It would not change the Norris-LaGuardia Act in any respect, *except in the one particular case.*

* * *

"Mr. LANGER. Mr. President, is it not true that unless section 5 is stricken from the bill that a portion of the Norris-LaGuardia Act will be repealed?

"Mr. DANAHER. It would certainly be overridden; . . ." (Emphasis supplied.) 89 Cong. Rec., 3988–89.

See also the statements of Senators Taft, Vandenberg, and Wagner, and compare those of Senators Rivercomb and Barkley; and see the colloquy between Senators Connally and Vandenberg, *id.* at 3906, quoted *infra* note —.

But not only was such the understanding when the legal question emerged in the course of considering the need of war legislation. Recent Acts and their legislative history show more than merely later understanding of the terms of an older statute. The War Labor Disputes Act of 1943 and its history are directly and primarily relevant. The whole controversy arises under the authority to seize mines given by the War Labor Disputes Act. The real question before us is whether in authorizing such seizure and operation Congress also gave to the United States the right to prevent interference with its statutory operation through the equitable remedies here invoked.

By that Act Congress created a new relationship among the Government, the plant owners, the employees. The rights, duties, remedies incident to that relation are those given by the Act. Congress naturally addressed itself to possible interferences with the Government's operation of seized plants. It dealt specifically with this subject. It gave the Government specific remedies which it might invoke against such interference.[8] Remedy by injunction was not given. It was not merely withheld. It was expressly and definitively denied. As reported out of the Senate Committee, S. 796, provided for plant seizure. It did not include the injunction among the remedies for interference with government operation.[9] But when the Bill reached the floor of the Senate, Senator Connally, sponsor of the Bill, offered and urged an amendment giving the district courts jurisdiction to restrain violations of the measure.[10] He accepted, somewhat reluctantly, the amendment of Senator Wagner to limit the proposed amendment to an injunction at the behest of the Attorney General, precisely as was here sought and granted.[11] On

[8] 57 Stat. 163, 16, 50 U. S. C. § 1506 (b).
[9] S. Rep. No. 147, 78th Cong., 1st Sess.
[10] 89 Cong. Rec. 3809.
[11] *Id.* at 3907, 3988–89.

motion of Senator Danaher, this proposal was rejected by the Senate after full debate,[12] participated in by senators especially conversant with the history and scope of the existing remedies available to the Government. With this remedy denied to the Government, the Bill was passed and sent to the House.[13] The House did not like the Bill. Its version did not see fit specifically to add to the limited seizure provisions of the Selective Service Act of 1940, although apparently it assumed that there could be seizure under existing law in the case of failure by defense plants to produce as a result of labor troubles. Instead the House version provided stringent anti-strike and anti-lockout provisions as to plants in private operation, and by specific amendment to the Norris-LaGuardia Act the district courts were authorized to restrain violations of those provisions. But this *pro tanto* repeal of the Norris-LaGuardia Act was not made available to the United States as a remedy against interference with operation of plants seized under the earlier, 1940 Act.[14]

The bill then went to conference. What came out was, so far as here material, the bill that had passed the Senate. The United States was granted power to seize and operate defense plants whose production was hampered by labor disputes. Specific remedies were formulated by Congress against interference with the Government's operation. The injunction was not included.[15] In neither House was further attempt made to reintroduce the Connally proposal giving the Government relief by injunction. Nor did any Congressman suggest that the Government

[12] *Id.* at 3809.

[13] *Id.* at 3993.

[14] Compare § 4 (b) and (c) with § 12 (a) and b, 98 Cong. Rec. 5382–83. For the earlier seizure provisions see 54 Stat. 892, 50 U. S. C. App. § 309.

[15] See Conference Report on S. 796, H. R. No. 531, 78th Cong., 1st Sess.

had that redress anyhow. On the floor of the Senate, Senator Thomas of Utah said:

> "Mr. President, I ask the Senator from New Mexico [Mr. Hatch], the Senator from Connecticut [Mr. Danaher], and the Senator from Texas [Mr. Connally], the sponsor of the Bill, whether there is a unanimous opinion on the part of those three great lawyers that there will not be a reopening of the district courts to industry—labor disputes? . . . I should like that point to be made so firmly and so strongly that no lawyer in the land who would like to take advantage of the situation created by the mere mention of the words 'district court' will resort to the court in order to confuse our industry-labor relations."

Mr. Connally answered,

> "Mr. President, . . . I think I speak for the Senator from Vermont and the Senator from New Mexico and the Senator from Connecticut and also the Senator from Indiana [Mr. Van Nuys], although he is not present, when I say that there is no jurisdiction whatever conferred by this Bill providing for resort to the United States district court, except the one mentioned by the Senator from Connecticut, which is merely the right to go there for a civil action for damages, and no jurisdiction whatever is given over labor disputes. Does that answer the Senator?"
>
> MR. THOMAS of Utah. I thank the Senator for making that statement and I hope it will satisfy the lawyers of the country.
>
> "MR. CONNALLY. I am sure it will."

The Bill became law under these circumstances and the seizure of the mines was made under that law. To find that the Government has the right which Senator Connally's amendment sought to confer but which the Congress withheld is in effect to say that when the amendment was voted down it was the same as though the amendment had been voted up.

Events since the passage of the Act underscore what would appear to be the controlling legislative history of

the War Labor Disputes Act, and prove that Congress saw fit not to authorize district courts to issue an injunction in cases like this. In May, 1946, the country faced a crisis growing out of a labor dispute as acute as that leading to the controversy in the court below. To meet the railroad crisis in May of last year Congress, upon the recommendation of the President and the Attorney General, deemed additional legislation necessary for dealing with labor disputes. The proposals in each House carried a provision which authorized an injunction to issue for violation of the War Labor Disputes Act.[16] In the Senate Senator Meade proposed an amendment to delete the provisions for injunction.[17] In the debates that followed no one suggested that the new proposal was unnecessary, that the jurisdiction already existed, or that if granted as requested by the Attorney General as to seized plants, it would not repeal *pro tanto* the Norris-LaGuardia Act, as Senator Meade claimed. The debates show clearly that what was contemplated was a change in the War Labor Disputes Act whereby a new and an additional remedy would be authorized.[18] The Bill never became law.

As is well known, as the debates clearly show, as Senator Connally admitted, the War Labor Disputes Act was directed primarily against stoppage in the coal mines.[19] The

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[16] H. R. 6578, 79th Cong., 2d Sess.

[17] Cong. Rec. 6166.

[18] See particularly the statements of Senator Meade (P. 6171), Senator Morse (p. 6169), Senator Pepper (pp. 6169, 6170), Senator Wagner (p. 6170), Senator Wheeler (p. 6172), Senator Barkley (p. 6175), Senator Fullbright (p. 6171).

[19] Senator Connally said: "Mr. Lewis appeared before the Truman Committee 3 or 4 weeks ago. I happen to be a member of that Committee, and when he said he did not regard his no-strike agreement as binding . . . I determined then that if I could get this bill before the Senate, I was going to bring it up and press it in order that if he did disregard the agreement, the President or the Govern-

situation that Congress feared was exactly that which has occurred to form the controversy before us. To handle that situation, Congress gave to the United States the power to seize the mines. To vindicate this power the Government was given authority to invoke criminal penalties for interferences with the operation of the mines. Senator Connally sought more. He wanted Congress to empower the district courts to enjoin interference. The Senate did not want an injunction to issue and voted the proposal down. The conference committee decided that an injunction should not issue. The House of Representatives agreed that the injunction before us should not issue. This Court now says that Congress authorized the injunction.

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ment of the United States would have a weapon with which to meet the threat and the danger." 89 Cong. Rec. 3886. See also H. Rep. No. 440, 78th Cong., 1st Sess., p. 6. The references to the coal situation in the debates are innumerable. See, *e. g.*, 89 Cong. Rec. 3767, 3886, 3888, 3889, 3900–01.

No 259

To: The Chief Justice

From: Frankfurter, J.

Circulated: 2/13/47

Recirculated:

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judges, balancing fines, we
recognize that the defendants
had something on their side.

This might come in the middle
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P 2/19/43

Chief – In revamping your conclusion please give thought to my suggestion that you had a short paragraph stating the defendants position in some what the way I tried to in my page dated Feby 15.

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SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner, 759 *v.* United Mine Workers of America, an Unincorporated Association.	
The United States of America, Petitioner, 760 *v.* John L. Lewis, Individually and as President of the United Mine Workers of America.	
United Mine Workers of America, an Unincorporated Association, Petitioner, 781 *v.* The United States of America.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.
John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 782 *v.* The United States of America.	
United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 811 *v.* The United States of America.	

[March 6, 1947.]

MR. JUSTICE FRANKFURTER, concurring in the judgment.

The historic phrase "a government of laws and not of men" epitomizes the distinguishing character of our political society. When John Adams put that phrase into

the Massachusetts Declaration of Rights he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. "A government of laws and not of men" was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. Even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout our history. Or, what this Court has deemed its duty to decide may be changed by legislation, as it often has been, and, on occasion, by constitutional amendment.

But from their own experience and their deep reading in history, the Founders knew that Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised. "Civilization involves subjection of force to reason, and the agency of this subjection is law."[1] The conception of a government by laws dominated the thoughts of those who founded this Nation and designed its Constitution, although they knew as well as the belittlers of the conception that laws have to be made, interpreted and enforced by men. To that end, they set apart a body of men, who were to be the depositories of law, who by their disciplined training and character and by withdrawal from the usual temptations of private interest may reasonably be expected to be "as free, impartial, and independent as the lot of humanity will admit". So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial office with extraordinary safeguards and prestige. No one,

[1] Pound, *The Future of Law* (1937) 47 Yale L. J. 1, 13.

no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That is what courts are for. And no type of controversy is more peculiarly fit for judicial determination than a controversy that calls into question the power of a court to decide. Controversies over "jurisdiction" are apt to raise difficult technical problems. They usually involve judicial presuppositions, textual doubts, confused legislative history, and like factors hardly fit for final determination by the self-interest of a party.

Even when a statute deals with a relatively uncomplicated matter, and the "words in their natural sense as they would be read by the common man" would appear to give an obvious meaning, considerations underlying the statute have led this Court to conclude that "the words cannot be taken quite so simply." See *Millburn Co.* v. *Davis Co.*, 270 U. S. 390, 400. How much more true this is of legislation like the Norris-LaGuardia Act. This Act altered a long process of judicial history, but altered it by a scheme of complicated definitions and limitations.

The Government here invoked the aid of a court of equity in circumstances which certainly were not covered by the Act with inescapable clarity. Colloquially speaking, the Government was "running" the mines. But it was "running" them not as an employer, in the sense that the owners of the coal mines were the employers of the men the day before the Government seized the mines. Nor yet was the relation between the Government and the men like the relation of the Government to the civil service employees in the Department of the Interior. It would be naive or wilful to assert that the scope of the Norris-La Guardia Act in a situation like that presented by this bill raised a question so frivolous that any judge should have summarily thrown the Government out of court without day. Only when a court is so obviously traveling outside its orbit as to be merely usurping

judicial forms and facilities, may an order issued by a court be disobeyed and treated as though it were a letter to a newspaper. Short of an indisputable want of authority on the part of a court, the very existence of a court presupposes its power to entertain a controversy, if only to decide, after deliberation, that it has no power over the particular controversy. Whether a defendant may be brought to the bar of justice is not for the defendant himself to decide.

To be sure, an obvious limitation upon a court cannot be circumvented by a frivolous inquiry into the existence of a power that has unquestionably been withheld. Thus, the explicit withdrawal from federal district courts of the power to issue injunctions in an ordinary labor dispute between a private employer and his employees cannot be defeated, and an existing right to strike thereby impaired, by pretending to entertain a suit for such an injunction in order to decide whether the court has jurisdiction. In such a case, a judge would not be acting as a court. He would be a pretender to, not a wielder of, judicial power.

That is not this case. It required extended arguments, lengthy briefs, study and reflection preliminary to adequate discussion in conference, before final conclusions could be reached regarding the proper interpretation of the legislation controlling this case. A majority of my brethren find that neither the Norris-LaGuardia Act nor the War Labor Disputes Act limited the power of the district court to issue the orders under review. I have come to the contrary view. But to suggest that the right to determine so complicated and novel an issue could not be brought within the cognizance of the district court, and eventually of this Court, is to deny the place of the judiciary in our scheme of government. And if the district court had power to decide whether this case was properly before it, it could make appropriate orders so as to afford

the necessary time for fair consideration and decision while existing conditions were preserved. To say that the authority of the court may be flouted during the time necessary to decide is to reject the requirements of the judicial process.

It does not mitigate such defiance of law to urge that hard-won liberties of collective action by workers were at stake. The most prized liberties themselves presuppose an independent judiciary through which these liberties may be, as they often have been, vindicated. When in a real controversy, such as is now here, an appeal is made to law, the issue must be left to the judgment of courts and not the personal judgment of one of the parties. This principle is a postulate of our democracy.

And so I join the opinion of the Court insofar as it sustains the judgment for criminal contempt upon the broad ground of vindicating the process of law.[2] The records of this Court are full of cases, both civil and criminal, involving life or land or small sums of money, in which the Court proceeded to consider a federal claim that was not obviously frivolous. It retained such cases under its power until final judgment, though the claim eventually turned out to be unfounded and the judgment was one denying the jurisdiction either of this Court or of the court from which the case came. In the case before us, the District Court had power "to preserve the existing conditions" in the discharge of "its duty to permit argument and to take the time required for such consideration as it might need" to decide whether the controversy involved a labor dispute to which the Norris-LaGuardia Act applied. *United States* v. *Shipp*, 203 U. S. 563, 573, and *Howat* v. *Kansas*, 258 U. S. 181.

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[2] Since, in my view, this was not a conviction for contempt in a case "arising under this Act" the jury provisions of § 11 of the Norris-LaGuardia Act do not apply. For obvious reasons, the petitioners do not claim that the Constitution of the United States affords them a right to trial by jury.

In our country law is not a body of technicalities in the keeping of specialists or in the service of any special interest. There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny. Legal process is an essential part of the democratic process. For legal process is subject to democratic control by defined, orderly ways which themselves are part of law. In a democracy, power implies responsibility. The greater the power that defies law the less tolerant can this Court be of defiance. As the Nation's ultimate judicial tribunal, this Court, beyond any other organ of society, is the trustee of law and charged with the duty of securing obedience to it.

It only remains to state the basis of my disagreement with the Court's views on the bearing of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. § 101, and the War Labor Disputes Act, 57 Stat. 163, 50 U. S. C. App. § 1501. As to the former, the Court relies essentially on a general doctrine excluding the Government from the operation of a statute in which it is not named, and on the legislative history of the Act. I find the countervailing considerations weightier. The Norris-LaGuardia Act deprived the federal courts of jurisdiction to issue injunctions in labor disputes except under conditions not here relevant. The question before a court of equity therefore is whether a case presents a labor dispute as defined by the Act. Section 13 (c) defines "labor disputes":

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee."

That the controversy before the district court comes within this definition does not need to be labored. The controversy arising under the Lewis-Krug contract con-

cerned "terms or conditions of employment" and was therefore a "labor dispute", whatever further radiations the dispute may have had. The Court deems it appropriate to interpolate an exception regarding labor disputes to which the Government is a party. It invokes a canon of construction according to which the Government is excluded from the operation of general statutes unless it is included by explicit language.

The Norris-LaGuardia Act has specific origins and definite purposes and should not be confined by an artificial canon of construction. The title of the Act gives its scope and purpose, and the terms of the Act justify its title. It is an Act "to define and limit the jurisdiction of courts sitting in equity". It does not deal with the rights of parties but with the power of the courts. Again and again the statute says "no court shall have jurisdiction", or an equivalent phrase. Congress was concerned with the withdrawal of power from the federal courts to issue injunctions in a defined class of cases. Nothing in the Act remotely hints that the withdrawal of this power turns on the character of the parties. The only reference to parties underscores their irrelevance to the issue of jurisdiction, for the power of the courts is withdrawn in a labor dispute "regardless of whether or not the disputants stand in the proximate relation of employer and employee". The limitation on the jurisdiction of the court depends entirely on the subject matter of the controversy. Section 13 (a) defines it:

> "A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; . . ."

Neither the context nor the content of the Act qualifies the terms of that section. Did not the suit brought by the

Government against Lewis and the United Mine Workers "grow out of a labor dispute" within the terms of § 13 (a)?

As already indicated, the Court now finds an exception to the limitation which the Norris-LaGuardia Act placed upon the equity jurisdiction of the district court, not in the Act but outside it. It invokes a canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless named in it. At best, this canon, like other generalities about statutory construction, is not a rule of law. Whatever persuasiveness it may have in construing a particular statute derives from the subject matter and the terms of the enactment in its total environment. "This rule has its historical basis in the English doctrine that the Crown is unaffected by acts of Parliament not specifically directed against it. . . . The presumption is an aid to consistent construction of statutes of the acting sovereign when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated." So wrote the late Chief Justice for the whole Court in *United States* v. *California,* 297 U. S. 175, 186, and this point of view was very recently applied in *United States* v. *Rice,* 327 U. S. 742, 749. It is one thing to read a statute so as not to bind the sovereign by restrictions, or to impose upon it duties which are applicable to ordinary citizens. It is quite another to interpolate into a statute limiting the jurisdiction of a court, the qualification that such limitation does not apply when the Government invokes the jurisdiction. No decision of this Court gives countenance to such a doctrine of interpolation. The text, context, content and historical setting of the Norris-LaGuardia Act all converge to indicate the unrestricted withdrawal by Congress from the federal district courts of the power to issue injunctions in labor disputes, excepting only under circumstances explicitly defined and not here pres-

ent. The meaning which a reading of the text conveys and which is confirmed by the history which led Congress to free the federal courts from entanglements in these industrial controversies through use of the injunction, ought not to be subordinated to an abstract canon of construction that carries the residual flavor of the days when a personal sovereign was the law-maker.

Moreover, the rule proves too much. If the United States must explicitly be named to be affected, the limitations imposed by the Norris-LaGuardia Act upon the district court's jurisdiction could not deprive the United States of the remedies it theretofore had. Accordingly, the courts would not be limited in their jurisdiction when the United States is a party and the Act would not apply in any proceeding in which the United States is complainant. It would mean that, in order to protect the public interest, which may be jeopardized just as much whether an essential industry continued under private control or has been temporarily seized by the Government, a court could, at the behest of the Attorney General of the United States, issue an injunction as courts did when they issued the *Debs,* the *Hayes* and the *Railway Shopmen's* injunctions.[3] But it was these very injunctions, secured by the Attorney General of the United States under claim of compelling public emergency, that gave the most powerful momentum to the enactment of the Norris-LaGuardia Act. This history is too familiar to be rehearsed. It is surely surprising to conclude that when a long and persistent effort to take the federal courts out of the industrial conflict, insofar as the labor injunction put them into it, found its way to the statute books, the Act failed to meet the grievances that were most dramatic and deepest in the memory of those most concerned with the legislation.

[3] *United States* v. *Debs,* 64 Fed. 724, 158 U. S. 564; *United States* v. *Hayes,* unreported, D. Ind. 1919; *United States* v. *Railway Employees' Dept. A. F. L.,* 283 Fed. 479, 286 Fed. 228, 290 Fed. 978.

It is urged, however, that legislative history cuts down what might otherwise be the scope of the Act. Reliance is placed on statements by two Representatives during the House debates on the Bill, calculated to show that Congress purposed to exclude from the limitation of the jurisdiction of the district courts labor disputes involving "employees" of the Government, at least where injunctions are sought by the Attorney General. Since both statements came from spokesmen for the Bill, they carry weight. The nature of these remarks, the circumstances under which they were delivered, as well as their setting, define their meaning and the significance to be given them as a gloss upon the Act.

There was before the House an Amendment by Representative Blanton which would have made the Act applicable "except where the United States Government is the petitioner." (75 Cong. Rec. 5503.) Representative LaGuardia opposed the Amendment, remarking "I do not see how in any possible way the United States can be brought in under the provisions of this bill." If this is to be read apart from the meaning afforded by the context of the debates and the whole course of the legislation, it would mean that the jurisdiction to grant a *Debs* injunction continued unaffected. No one would have been more startled by such a conclusion than Mr. LaGuardia. The fact is that a situation like the present, where the Government for a time has some relation to a labor dispute in an essentially private industry, was evidently not in the thought of Congress. Certainly it was not discussed. Mr. LaGuardia's statement regarding the position of the United States under the Act followed his reading of § 13 (b) under which a person is to be deemed interested in a labor dispute only if "engaged in the same industry, trade, craft, or occupation in which such dispute occurs." His brief, elliptical remark plainly conveyed that the business of the Government of the United States is not an "indus-

try, trade, craft, or occupation." This is made unequivocally clear by the colloquy that followed. Mr. Blanton inquired whether Mr. LaGuardia was willing "for the Army and the Navy to form a labor union and affiliate themselves with the American Federation of Labor and not permit the Government of the United States to preserve its rights?" The short answer for Mr. LaGuardia to have made was "The United States is not subject to the provisions of the Act, because by employer we mean a private employer." Instead of that, Mr. LaGuardia replied, "Oh, the Army and the Navy are not in a trade, craft, or occupation." In short, the scope of the limitation upon the jurisdiction of the courts depended not on party, but on subject matter. Representative Blanton's amendment was rejected by 125 to 21.

The second Representative upon whom the Court relies is Mr. Michener. He said, "Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government." (75 Cong. Rec. 5464.) Later he added ". . . This deals with labor disputes between individuals, not where the Government is involved. It is my notion that under this bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see this clarified, but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevented from applying for an injunction, if one is necessary in order that the Government may function." (*Id.* at 5509.) What Mr. Michener gave as *his* interpretation of what survived the Norris-LaGuardia Act, was precisely the claim of the Government in asking for the *Debs* injunction. That

injunction was sought and granted in order that the Government might function. Insofar, then, as Mr. Michener's statements imply that the United States could again get a *Debs* injunction, his understanding is belied by the whole history of the legislation, as reflected in its terms.[4] These statements can only mean, then, that if, say, employees in the Treasury Department had to be enjoined so that government could go on, it was Representative Michener's view that an injunction could issue. No attempt was made to make this view explicit in the Act. It was not discussed, and only one statement appears to share it.[5] In any event, it does not imply a broader exemption than that of which Representative LaGuardia spoke.

It is to be noted that the discussion in the House followed passage in the Senate of that which subsequently became the Act. It is a matter of history that the Senate Judiciary Committee was the drafting and driving force behind the Bill. The Bill had extended consideration by a subcommittee of the Senate Judiciary Committee followed by weighty reports and full discussion on the Senate floor. We are not pointed to a suggestion or a hint in the Senate proceedings that the withdrawal of jurisdiction to issue injunctions in labor disputes was subject to a latent exception as to injunctions sought by the Government. The whole contemporaneous history is against it. The experience which gave rise to the Norris-LaGuardia Act only

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[4] Compare Representative LaGuardia's reply to a proposed amendment by Representative Beck which would have exempted from the operation of the Act disputes "where the welfare, health, or lives of a public are concerned who are not parties to such labor dispute, or where a labor dispute involves the obstruction of any instrumentality of interstate or foreign commerce". Mr. LaGuardia claimed that the amendment was out of order because not germane to the purposes of the legislation. "The present bill refers only to disputes between employees and employer . . . The public is fully protected by penal and other statutes . . ." 75 Cong. Rec. 5503.

[5] See statement of Representative Schneider, 75 Cong. Rec. 5514.

underscores the unrestricted limitation upon the jurisdiction of the courts, except in situations of which this is not one. To find implications in the fact that in the course of the debates it was not explicitly asserted that the district courts could not issue an injunction in a labor controversy even at the behest of the Government is to find the silence of Congress more revealing than the natural meaning of legislation and the history which begot it. The remarks of Mr. LaGuardia and Mr. Michener ought not to be made the equivalent of writing an amendment into the Act. It is one thing to draw on all relevant aids for shedding light on the dark places of a statute. To allow inexplicit remarks in the give-and-take of debate to contradict the very terms of legislation and the history behind it is to put out the controlling light on meaning shed by the explicit provisions of an Act in its setting.

But even if we assume that the Act was not intended to apply to labor disputes involving "employees" of the United States, are the miners in the case before us "employees" of the United States within the meaning of this interpolated exception? It can hardly be denied that the relation of the miners to the United States is a hybrid one. Clearly, they have a relation to the Government other than that of employees of plants not under Government operaiton. Equally clearly, they have a relation and a status different from the relation and status of the clerks at the Treasury Department. Never in the country's history have the terms of employment of the millions in Government service been established by collective bargaining. But the conditions of employment—hours, wages, holidays, vacations, Health and Welfare Program, etc.—were so fixed for the miners during the period of Government seizure. The proper interpretation of this collective agreement between the Government and the United Mine Workers is precisely what is at the bottom of this contro-

versy. Neither a spontaneous nor a sophisticated characterization would resort to the phrase "Government employees" without more, in speaking of the miners during the operation of the mines by the Government. The only concrete characterization of the status of employees in seized plants was expressed by Under Secretary Patterson at a hearing on the predecessor bill to that which became the law under which this seizure was made. He spoke of the role of the Government as that of "A receiver that would be charged with the continuity of operation of the plant".[6] Nothing in the Acts authorizing seizure of private plants indicates that the employees of these plants were to be considered employees of the United States in the usual and natural meaning of the term. In the full

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[6] Hearings on S. 2054 before a Subcommittee of the Committee on the Judiciary, Senate, 77th Cong., 1st Sess., p. 14. The characterization was accepted by members of the Committee which approved the Bill. *Id.* at pp. 16, 18, 130. Senator Connally refers to the private employer who "will continue to operate it under the supervision of the Government". *Id.* at 55. See also p. 57. While at one point he referred to the United States as an employer (*id.* at 120), he did so in a special context for the purposes of a discussion about collective bargaining with reference to wages. As to wages, of course, the Government would stand *in loco* "employer" during its operation of the plant.

The analogy of equity receivership is not inapt. In a limited sense, employees of plants in receivership in a federal court may be considered employees of the United States, since the operation of the plant is under the jurisdiction and control of a United States officer. But no one aware of the background of mischief which the Act was intended to remedy could find an intention in Congress to allow injunctions in labor disputes involving plants in receivership. Compare *Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50, 55, 58–61. No series of cases contributed more to the feeling that the federal courts abused their equity jurisdiction than those involving employees of railroads in equity receivership. See, *e. g.*, 1 Gresham, Life of Walter Quintin Gresham, cc. XXIII to XXV; Gregory, Labor and the Law, 95–97; Nelles, *A Strike and Its Legal Consequences—An Examination of the Receivership Precedent for the Labor Injunction* (1931) 40

debates on bills providing for Government seizure of plants, Congressional leaders clearly indicated their understanding that as the law then stood there could be no injunctions in labor disputes in seized plants.[7]

But not only was such the understanding when the legal question emerged in the course of considering the need of war legislation. Recent legislation and its history are relevant not merely because they show later understanding of the terms of an older statute. The War Labor Disputes Act of 1943 is directly and primarily involved in this case. The whole controversy arises under the authority to seize mines given by that Act. The real question before us is whether in authorizing such seizure and operation Congress also gave to the United States

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Yale L. J. 507, *passim*. If injunctions will not issue in disputes involving employees of railroads or other industries in receivership under operation by the federal courts, nothing relevant to the construction of the statute warrants the inference that Congress allowed the injunction to be available in disputes involving employees of plants in "receivership" under operation of the Secretary of the Interior.

[7] See especially the debates on a proposed amendment to the Smith-Connally Bill whereby Senator Connally sought to add the injunction as a remedy against violation of the Act.

"MR. CONNALLY. . . . The provision is limited to plants which the Government takes over. It would not change the Norris-LaGuardia Act in any respect, *except in the one particular case*.

* * *

"MR. LANGER. Mr. President, is it not true that unless section 5 is stricken from the bill that a portion of the Norris-LaGuardia Act will be repealed?

"MR. DANAHER. It would certainly be overridden; . . ." (Emphasis supplied.) 89 Cong. Rec. 3988–89.

See also the statements of Senators Taft, Vandenberg, and Wagner, and compare those of Senators Revercomb and Barkley; and see the colloquy between Senators Connally and Vandenberg, *id.* at 3906, quoted *infra* note 10.

the right to prevent interference with its statutory operation through the equitable remedies here invoked.

By the War Labor Disputes Act Congress created a new relationship among the Government, the plant owners, the employees. The rights, duties, remedies incident to that relation are those given by the Act. Congress naturally addressed itself to possible interferences with the Government's operation of seized plants. It dealt specifically with this subject. It gave the Government specific remedies which it might invoke against such interference.[8] Remedy by injunction was not given. It was not merely omitted. A fair reading of the legislative history shows that it was expressly and definitively denied. As reported out of the Senate Committee, S. 796 provided for plant seizure. It did not include the injunction among the remedies for interference with Government operation.[9] But when the Bill reached the floor of the Senate, Senator Connally, sponsor of the Bill, offered and urged an amendment giving the district courts jurisdiction to restrain violations of the measure.[10] He accepted, somewhat reluctantly, the amendment of Senator Wagner to limit the proposed

[8] 57 Stat. 163, 165–66, 50 U. S. C. App. § 1506 (b).

[9] S. Rep. No. 147, 78th Cong., 1st Sess.

[10] 89 Cong. Rec. 3809. And see p. 3906:

"MR. VANDENBERG. . . .

"I am very anxious that there shall be additional statutory protection to the uninterrupted production of war necessities, but I am wondering whether in order to achieve that purpose it is necessary for me to impinge upon a very profound hostility I have always had to the use of injunctions in labor disputes. I voted for the original Norris-LaGuardia Act, and I have always felt that one of the most useful things we ever did, not only as a matter of fair play, but in respect to the status of the courts was substantially to separate from court jurisdiction the responsibility of, in effect, umpiring labor disputes.

"What I wish to ask the able Senator from Texas, if I may, is this: In his proposal, on page 4, it is provided that any person who will-

amendment to an injunction at the behest of the Attorney General, precisely as was here sought and granted.[11] On motion of Senator Danaher, this proposal was rejected by the Senate after full debate,[12] participated in by Senators especially conversant with the history and scope of the

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fully violates any provision of the act is to be guilty of a felony, and subject to a fine or imprisonment. Is not that a conclusive penalty? Is it necessary in addition to go back into all the old injunctive process in connection with labor disputes?

"MR. CONNALLY. That is not a legal inquiry really. Of course, it might be that we could get along without the provision. Like the Senator, I voted for the Norris-LaGuardia Act, and I favored the policy embodied therein. This provision, however, applies only to plants taken over by the Government. It seems to me that if the Government is to operate a plant, it should have the widest and the fullest authority to operate it as it wants to do and to prevent interruption. Therefore, because of the attitude of some who were interested in the bill, I inserted section 5. I do not think the bill would be very seriously crippled if it were eliminated, but I think it is improved by its remaining in. I do not think it would be fatal to strike out that provision, but I hope that will not be done.

"MR. VANDENBERG. I thank the Senator for his frank statement. When the Government has taken over the operation of a plant and it becomes in essence a Government operation, it is rather difficult to resist the argument that the Government should not be deprived of any instrumentality in the enforcement, virtually of its sovereignty.

"MR. CONNALLY. That is true.

"MR. VANDENBERG. Nevertheless, I apprehend that the very fact that the injunctive process is restored in the Senator's bill is the reason why it appears in the additional amendment offered by the able Senator from Ohio, where, it seems to me, it becomes decidedly more offensive, using that word in the sense in which I have used it."

The reference is to an amendment proposed by Senator Taft authorizing injunctions in any circuit court of appeals at the request of the Attorney General in case of failure to obey orders of the War Labor Board, or whenever "operations are hindered or reduced by lockout, strike, or otherwise". This applied apparently to plants in private operation. 89 Cong. Rec. 3897–98. Compare the Bill passed by the House, note 14.

[11] 89 Cong. Rec. 3907, 3988–89.

[12] *Id.* at 3989.

existing remedies available to the Government. With this remedy denied to the Government, the Bill was passed and sent to the House.[13] The House did not like the Bill. Its version did not see fit specifically to add to the limited seizure provisions of the Selective Service Act of 1940, although apparently it assumed that there could be seizure under existing law in the case of failure by defense plants to produce as a result of labor troubles. Instead, the House version provided stringent anti-strike and anti-lockout provisions as to plants in private operation, and by specific amendment to the Norris-LaGuardia Act the district courts were authorized to restrain violations of such provisions. But this *pro tanto* repeal of the Norris-LaGuardia Act was not made available to the United States as a remedy against interference with operation of plants seized under the earlier, 1940 Act.[14]

The bill then went to conference. What came out was, so far as here material, the bill that had passed the Senate. The United States was granted power to seize and operate defense plants whose production was hampered by labor disputes. Specific remedies were formulated by Congress against interference with the Government's operation. The injunction was not included.[15] In neither house was further attempt made to reintroduce the Connally proposal giving the Government relief by injunction. Nor was it suggested that the Government had such redress under existing law. On the floor of the Senate, Senator Thomas of Utah, Chairman of the Committee on Education and Labor, said:

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[13] *Id.* at 3993.

[14] Compare § 4 (b) and (c) with § 12 (a) and (b), 89 Cong. Rec. 5382–83. For the earlier seizure provisions see 54 Stat. 885, 892, 50 U. S. C. App. § 309.

[15] See Conference Report on S. 796, H. R. No. 531, 78th Cong., 1st Sess.

> "Mr. President, I ask the Senator from New Mexico [Mr. Hatch], the Senator from Connecticut [Mr. Danaher], and the Senator from Texas [Mr. Connally], the sponsor of the bill, whether there is a unanimous opinion on the part of those three great lawyers that there will not be a reopening of the district courts to industry-labor disputes? . . . I should like that point to be made so firmly and so strongly that no lawyer in the land who would like to take advantage of the situation created by the mere mention of the words 'district court' will resort to the court in order to confuse our industry-labor relations."

Mr. Connally answered:

> "Mr. President, . . . I think I speak for the Senator from Vermont and the Senator from New Mexico and the Senator from Connecticut and also the Senator from Indiana [Mr. Van Nuys], although he is not present, when I say that there is no jurisdiction whatever conferred by this bill providing for resort to the United States district court, except the one mentioned by the Senator from Connecticut, which is merely the right to go there for a civil action for damages, and no jurisdiction whatever is given over labor disputes. Does that answer the Senator?"
>
> "Mr. Thomas of Utah. I thank the Senator for making that statement and I hope it will satisfy the lawyers of the country.
>
> "Mr. Connally. I am sure it will." [16]

Under these circumstances the Bill became law, and the seizure giving rise to this controversy was made under that law. The separate items of this legislative history cannot be judged in isolation. They must be considered together, and as part of the course of legislation dealing with injunctions in labor disputes. To find that the Government has the right which Senator Connally's amendment sought to confer but which the Congress withheld is to say that voting down the amendment had the same effect as voting it up.

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[16] 89 Cong. Rec. 5754. The Senators mentioned by Mr. Connally were the managers on the part of the Senate of the bill in conference.

Events since the passage of the Act underscore what would appear to be the controlling legislative history of the War Labor Disputes Act, and prove that Congress saw fit not to authorize district courts to issue an injunction in cases like this. To meet the grave crisis growing out of the strike on the railroads last May, Congress, upon the recommendation of the President and the Attorney General, deemed additional legislation necessary for dealing with labor disputes. The proposals in each house carried a provision which authorized an injunction to issue for violation of the War Labor Disputes Act.[17] Senator Meade proposed an amendment to delete the provisions for injunctions.[18] In the debates that followed no one suggested that the new proposal was unnecessary, that the jurisdiction proposed to be conferred already existed, or that if granted, as requested by the Attorney General, it would not, as Senator Meade claimed, repeal *pro tanto* the Norris-LaGuardia Act. The debates show clearly that what was contemplated was a change in the War Labor Disputes Act, whereby a new and an additional remedy would be authorized.[19] The Bill never became law.

As is well known, as the debates clearly show, as Senator Connally admitted, the War Labor Disputes Act was directed primarily against stoppage in the coal mines.[20] The situation that Congress feared was exactly that which has

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[17] H. R. 6578, 79th Cong., 2d Sess.

[18] Cong. Rec. 6166.

[19] See, particularly, the statements of Senator Meade (P. 6171), Senator Morse (p. 6169), Senator Pepper (pp. 6169, 6170), Senator Wagner (p. 6170), Senator Wheeler (p. 6172), Senator Barkley (p. 6175), Senator Fullbright (p. 6171).

[20] Senator Connally said: "Mr. Lewis appeared before the Truman Committee 3 or 4 weeks ago. I happen to be a member of that committee, and when he said he did not regard his no-strike agreement as binding . . . I determined then that if I could get this bill before the Senate, I was going to bring it up and press it in order

occurred and which underlies this controversy. To deal with the situation, Congress gave the United States the power to seize the mines. To effectuate this power, the Government was given authority to invoke criminal penalties for interferences with the operation of the mines. Senator Connally sought more. He wanted Congress to empower the district courts to enjoin interference. The Senate did not want an injunction to issue and voted the proposal down. The Senate's position was adopted by the Conference Committee. The House of Representatives yielded its view and approved the Conference report. The whole course of legislation indicates that Congress withheld the remedy of injunction. This Court now holds that Congress authorized the injunction.

I concur in the Court's opinion insofar as it is not inconsistent with these views, and, under the compulsion of the ruling of the majority that the court below had jurisdiction to issue its orders, I join in the Court's judgment.

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that if he did disregard the agreement, the President or the Government of the United States would have a weapon with which to meet the threat and the danger." 89 Cong. Rec. 3886. See also H. Rep. No. 440, 78th Cong., 1st Sess., p. 6. The references to the coal situation in the debates are innumerable. See, *e. g.*, 89 Cong. Rec. 3767, 3886, 3888, 3889, 3900–01.

March 6, 1947

Memorandum to the Conference:

Re: Nos. 759 et al - The Lewis case.

The opinion which I circulated is practically identical with the one which will be handed down today. Certain deletions and stylistic changes have been made which I have not thought important enough to mention. Two sentences, however, have been added in appropriate places. These are:

"In my opinion, the miners remained private employees despite the temporary gloss of Government possession and operation of the mines; they bear no resemblance whatever to employees of the executive departments, the independent agencies and the other branches of the Government."

and

"Moreover, if the Government is to use its seizure power to repudiate the Norris-LaGuardia Act and to intervene by injunction in private labor disputes, that policy should be determined by Congress."

Frank Murphy

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 and 811.—October Term, 1946.

The United States of America, Petitioner, 759 *v.* United Mine Workers of America, an Unincorporated Association.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.
The United States of America, Petitioner, 760 *v.* John L. Lewis, Individually and as President of the United Mine Workers of America.	
United Mine Workers of America, an Unincorporated Association, Petitioner, 781 *v.* The United States of America.	
John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 782 *v.* The United States of America.	
United Mine Workers of America, an Unincorporated Association, and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioners, 811 *v.* The United States of America.	

[March —, 1947.]

Mr. Justice Murphy, dissenting.

To an objective reader, the Norris-LaGuardia Act means exactly what it says. Section 4 provides in clear,

unmistakable language that "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute . . ." That language, which is repeated in other sections of the Act, is sufficient by itself to dispose of this case without further ado. But when proper recognition is given to the background and purpose of the Act, it becomes apparent that the implications of today's decision cast a dark cloud over the future of labor relations in the United States.

Due recognition must be given to the circumstances that gave rise to this case. The Government was confronted with the necessity of preserving the economic health of the nation; dire distress would have eventuated here and abroad from a prolonged strike in the bituminous coal mines. It was imperative that some effective action be taken to break the stalemate. But those factors do not permit the Government or this Court to pervert the judicial process into a weapon for misapplying statutes according to the grave exigencies of the moment. That can have tragic consequences even more serious and lasting than a temporary dislocation of the nation's economy resulting from a strike of the miners.

The whole thrust of the Norris-LaGuardia Act is directed toward the use of restraining orders and injunctions in cases arising out of labor disputes between private employers and private employees. It was in that setting that the abuses of federal equity power had flourished; and it was those abuses that led to the adoption of the Act. The application of the Act to the instant situation is clear. It cannot be denied that this case is one growing out of a labor dispute between the private coal operators and the private miners. That is a matter of common knowledge. Executive Order No. 9728, which authorized the Secretary of the Interior to take possession of and to operate the coal mines, explicitly stated that this action

was taken "as a result of existing or threatened strikes and other labor disturbances." Those strikes and labor disturbances grew out of the relations between the operators and the miners. The Government further recognized that fact by its subsequent refusal to negotiate with the miners on their demands and its insistance that these demands be addressed to the private mine owners. It is precisely in a situation of this nature that Congress has said that no court of the United States shall have jurisdiction to issue any restraining order or injunction.

The crux of this case is whether the fact that the Government took over the possession and operation of the mines changed the private character of the underlying labor dispute between the operators and the miners so as to make inapplicable the Norris-LaGuardia Act. The answer is obvious. Much has been said about the Government's status as employer and the miners' status as Government employees following the seizure. But when all is said and done, the obvious fact remains that this case involves and grows out of a labor dispute between the operators and the miners. Government seizure of the mines cannot hide or change that fact. Nor does the public interest which led to the seizure make the basic dispute any less private in character. The important point is that Congress has decreed that strikes and labor disturbances growing out of private labor disputes are to be dealt with by some means other than federal court restraining orders and injunctions. Congress has made no exception where the public interest is at stake or where the Government has seized the private properties involved. Congress can so provide. But it has not done so as yet; until it does, we are not free to sanction the use of restraining orders and injunctions in a case of this nature.

The Government's seizure of the coal mines thus becomes irrelevant to the issue. The federal equity power to issue restraining orders and injunctions simply cannot

be invoked in this case, since it grows out of a private labor dispute. And it makes no difference that the party seeking the proscribed relief is the Government rather than a private employer. Among the specific evils which the framers of the Norris-LaGuardia Act had in mind were the injunctions secured by the Government in the *Debs,* the *Hayes* and the *Railway Shopmen's* cases. The Act was drawn to prevent the recurrence of such injunctions. The Government concededly could not obtain an injunction in a private labor dispute where there has been no seizure of private properties, no matter how great the public interest in the dispute might be. To permit the Government to obtain an injunction where there has been a seizure would equally flout the language and policy of the Act. In whatever capacity the Government acts, this statute closes the doors of the federal courts where a restraining order or injunction is sought in a case arising out of a private labor dispute.

Moreover, if seizure alone justifies an injunction contrary to the expressed will of Congress, some future Government could easily utilize seizure as a subterfuge for breaking all strikes in private industries. Under some war-time or emergency power, it could seize private properties at the behest of the employers whenever a strike threatened or occurred on a finding that the public interest was in peril. A restraining order could then be secured on the specious theory that the Government was acting in relation to its own employees. The workers would be effectively subdued under the impact of the restraining order and contempt proceedings. After the strike was broken, the properties would be handed back to the private employers. That essentially is what has happened in this case. That is what makes the decision today so full of dangerous implications for the future. If the Government is to become the nation's leading strike-breaker through use of its seizure power, that policy should be

determined by Congress. It is not the function of this Court to sanction that policy where Congress has remained silent. Once Congress has spoken, it will be time enough to consider the constitutional issues raised by an application of that policy.

Since in my view the restraining order and the temporary injunction in this case are utterly void and without effect, there remains for me only the contention that the defendants are guilty of criminal contempt for having willfully ignored the void restraining order. It is said that the District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief; hence the defendants acted at their own peril in disobeying the restraining order. Eloquent pleas are made for the supremacy of the judiciary over the individual and the necessity that a person obey court orders until they are reversed by orderly and proper proceedings. Heavy emphasis is placed upon *United States* v. *Shipp*, 203 U. S. 418.

These arguments have a seductive attractiveness here. It is usually better policy to obey a void order than run the risk of a contempt citation. And as a general proposition, individuals cannot be allowed to be the judges of the validity of court orders issued against them. But the problem raised by the violation of the restraining order in this case must be viewed against the background and language of the Norris-LaGuardia Act.

Unlike most other situations, this Act specifically prohibits the issuance of restraining orders except in situations not here involved. There is no exception in favor of a restraining order where there is some serious doubt about the court's jurisdiction; indeed, the prohibition against restraining orders would be futile were such an exception recognized for the minds of lawyers and judges are boundless in their abilities to raise serious jurisdictional objections. And so Congress has flatly forbidden

the issuance of all restraining orders under this Act. It follows that when such an order is issued despite this clear prohibition, no man can be held in contempt thereof, however unwise his action may be as a matter of policy. When he violates the void order, 28 U. S. C. § 385 comes into operation, permitting punishment for contempt only where there has been disobedience of a "lawful writ, process, order, rule, decree, or command" of a court.

This absolute outlawry of restraining orders in cases involving private labor disputes is not without reason. The issuance of such orders prior to the adoption of the Norris-LaGuardia Act had a long and tortured history. Time and again strikes were broken merely by the issuance of a temporary restraining order, purporting to maintain the *status quo*. Because of the highly fluid character of labor disputes, the delay involved in testing an order of that nature often resulted in neutralizing the rights of employees to strike and picket. And too often, these orders did more than stabilize existing conditions; they called for affirmative change. The restraining order in the instant case is but one example of this. While purporting to preserve the *status quo*, it actually commands the defendants to rescind the strike call—thereby affirmatively interfering with the labor dispute.

Congress was well aware of this use of restraining orders to break strikes. After full consideration, it intentionally and specifically prohibited their use, with certain exceptions not here relevant. We are not free to disregard that prohibition. Hence the doctrine of the *Shipp* case has no relation whatever to our present problem. That case dealt with an order of this Court staying the execution of a rapist, an order which lay within the [redacted] power recognized of this Court and which had not been validly prohibited by Congress. Naturally, no man could violate that order with impunity. But we are acting here in the unique field of labor relations, dealing with a type of order which Con-

gress has specifically proscribed. If we are to hold these defendants in contempt for having violated a void restraining order, we must close our eyes to the expressed will of Congress and to the whole history of equitable restraints in the field of labor disputes. We must disregard the fact that to compel one to obey a void restraining order in a case involving a labor dispute and to require that it be tested on appeal is to sanction the use of the restraining order to break strikes—which was what Congress specifically wanted to avoid. Every reason supporting the salutary principle of the *Shipp* case breaks down when that principle is applied in this setting. I would therefore reverse the judgment of the District Court *in toto*.

It has been said that the actions of the defendants threatened orderly constitutional government and the economic and social stability of the nation. Whatever may be the validity of those statements, we lack any power to ignore the plain mandates of Congress and to impose vindictive fines upon the defendants. They are entitled to be judged by this Court according to the sober principles of the law, not according to the popular passions of the moment. A judicial disregard of what Congress has decreed may seem justified for the moment in view of the crisis which gave birth to this case. But such a disregard may ultimately have more disastrous and lasting effects upon the economy of the nation than the reckless actions of an aggressive labor leader.

759 etc

Mr. Chief Justice Vinson

from

Murphy, J

Feb. 25

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 and 811.—October Term, 1946.

759 — The United States of America, Petitioner, *v.* United Mine Workers of America, an Unincorporated Association.

760 — The United States of America, Petitioner, *v.* John L. Lewis, Individually and as President of the United Mine Workers of America.

781 — United Mine Workers of America, an Unincorporated Association, Petitioner, *v.* The United States of America.

782 — John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, *v.* The United States of America.

811 — United Mine Workers of America, an Unincorporated Association, and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioners, *v.* The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 6, 1947.]

Mr. Justice Murphy, dissenting.

An objective reading of the Norris-LaGuardia Act removes any doubts as to its meaning and as to its appli-

cability to the facts of this case. Section 4 provides in clear, unmistakable language that "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute . . ." That language, which is repeated in other sections of the Act, is sufficient by itself to dispose of this case without further ado. But when proper recognition is given to the background and purpose of the Act, it becomes apparent that the implications of today's decision cast a dark cloud over the future of labor relations in the United States.

Due recognition must be given to the circumstances that gave rise to this case. The Government was confronted with the necessity of preserving the economic health of the nation; dire distress would have eventuated here and abroad from a prolonged strike in the bituminous coal mines. It was imperative that some effective action be taken to break the stalemate. But those factors do not permit the conversion of the judicial process into a weapon for misapplying statutes according to the grave exigencies of the moment. That can have tragic consequences even more serious and lasting than a temporary dislocation of the nation's economy resulting from a strike of the miners.

The whole thrust of the Norris-LaGuardia Act is directed toward the use of restraining orders and injunctions in cases arising out of labor disputes between private employers and private employees. It was in that setting that the abuses of federal equity power had flourished; and it was those abuses that led to the adoption of the Act. The application of the Act to the instant situation is thus clear. It cannot be denied that this case is one growing out of a labor dispute between the private coal operators and the private miners. That is a matter of common knowledge. Executive Order No. 9728, which authorized the Secretary of the Interior to take possession of and to

operate the coal mines, explicitly stated that this action was taken "as a result of existing or threatened strikes and other labor disturbances." Those strikes and labor disturbances grew out of the relations between the operators and the miners. The Government further recognized that fact by its subsequent refusal to negotiate with the miners on their demands and its insistance that these demands be addressed to the private mine owners. It is precisely in situations arising out of disputes of this nature that Congress has said that no court of the United States shall have jurisdiction to issue any restraining order or injunction.

The crux of this case is whether the fact that the Government took over the possession and operation of the mines changed the private character of the underlying labor dispute between the operators and the miners so as to make inapplicable the Norris-LaGuardia Act. The answer is clear. Much has been said about the Government's status as employer and the miners' status as Government employees following the seizure. In my opinion, the miners remained private employees despite the temporary gloss of Government possession and operation of the mines; they bear no resemblance whatever to employees of the executive departments, the independent agencies and the other branches of the Government. But when all is said and done, the obvious fact remains that this case involves and grows out of a labor dispute between the operators and the miners. Government seizure of the mines cannot hide or change that fact. Indeed, the seizure took place only because of the existence of the dispute and because it was thought some solution might thereafter result. The dispute, however, survived the seizure and is still very much alive. And it still retains its private character, the operators on the one side and the coal miners on the other.

The important point, and it cannot be overemphasized, is that Congress has decreed that strikes and labor disturbances growing out of private labor disputes are to be dealt with by some means other than federal court restraining orders and injunctions. Further confirmation, if any be needed, is to be found in the terms and in the history of the War Labor Disputes Act. To this clearly enunciated policy of making "government by injunction" illegal, Congress has made no exception where the public interest is at stake or where the Government has seized the private properties involved. Congress can so provide. But it has not done so as yet; until it does, we are not free to sanction the use of restraining orders and injunctions in a case of this nature.

The Government's seizure of the coal mines thus becomes irrelevant to the issue. The federal equity power to issue restraining orders and injunctions simply cannot be invoked in this case, since it grows out of a private labor dispute. And it makes no difference that the party seeking the proscribed relief is the Government rather than a private employer. The touchstone of the Norris-La-Guardia Act is the existence of a labor dispute, not the status of the parties. Among the specific evils which the framers of the Act had in mind were the injunctions secured by the Government in the *Debs*, the *Hayes* and the *Railway Shopmen's* cases. The Act was drawn to prevent, among other things, the recurrence of such injunctions. The Government concededly could not obtain an injunction in a private labor dispute where there has been no seizure of private properties, no matter how great the public interest in the dispute might be. To permit the Government to obtain an injunction where there has been a seizure would equally flout the language and policy of the Act. In whatever capacity the Government acts, this statute closes the doors of the federal courts where a restraining order or injunction is sought in a case arising out of a private labor dispute.

Moreover, if seizure alone justifies an injunction contrary to the expressed will of Congress, some future Government could easily utilize seizure as a subterfuge for breaking any or all strikes in private industries. Under some war-time or emergency power, it could seize private properties at the behest of the employers whenever a strike threatened or occurred on a finding that the public interest was in peril. A restraining order could then be secured on the specious theory that the Government was acting in relation to its own employees. The workers would be effectively subdued under the impact of the restraining order and contempt proceedings. After the strike was broken, the properties would be handed back to the private employers. That essentially is what has happened in this case. That is what makes the decision today so full of dangerous implications for the future. Moreover, if the Government is to use its seizure power to repudiate the Norris-LaGuardia Act and to intervene by injunction in private labor disputes, that policy should be determined by Congress. It is not the function of this Court to sanction that policy where Congress has remained silent. Once Congress has spoken, it will be time enough to consider the constitutional issues raised by an application of that policy.

Since in my view the restraining order and the temporary injunction in this case are void and without effect, there remains for me only the contention that the defendants are guilty of criminal contempt for having willfully ignored the void restraining order. It is said that the District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief; hence the defendants acted at their own peril in disobeying the restraining order. Eloquent pleas are made for the supremacy of the judiciary over the individual and the requirement that a person obey court orders until they are reversed by orderly

and proper proceedings. Heavy emphasis is placed upon *United States* v. *Shipp*, 203 U. S. 563.

These arguments have a seductive attractiveness here. Ordinarily, of course, it is better policy to obey a void order than run the risk of a contempt citation. And as a general proposition, individuals cannot be allowed to be the judges of the validity of court orders issued against them. But the problem raised by the violation of the restraining order in this case must be viewed against the background and language of the Norris-LaGuardia Act.

Unlike most other situations, this Act specifically prohibits the issuance of restraining orders except in situations not here involved. There is no exception in favor of a restraining order where there is some serious doubt about the court's jurisdiction; indeed, the prohibition against restraining orders would be futile were such an exception recognized for the minds of lawyers and judges are boundless in their abilities to raise serious jurisdictional objections. And so Congress has flatly forbidden the issuance of all restraining orders under this Act. It follows that when such an order is issued despite this clear prohibition, no man can be held in contempt thereof, however unwise his action may be as a matter of policy. When he violates the void order, 28 U. S. C. § 385 comes into operation, forbidding punishment for contempt except where there has been disobedience of a "lawful writ, process, order, rule, decree, or command" of a court.

This absolute outlawry of restraining orders in cases involving private labor disputes is not without reason. The issuance of such orders prior to the adoption of the Norris-LaGuardia Act had a long and tortured history. Time and again strikes were broken merely by the issuance of a temporary restraining order, purporting to maintain the *status quo*. Because of the highly fluid character of labor disputes, the delay involved in testing an order of that nature often resulted in neutralizing the rights of

employees to strike and picket. And too often, these orders did more than stabilize existing conditions; they called for affirmative change. The restraining order in the instant case is but one example of this. While purporting to preserve the *status quo*, it actually commands the defendants to rescind the strike call—thereby affirmatively interfering with the labor dispute.

Congress was well aware of this use of restraining orders to break strikes. After full consideration, it intentionally and specifically prohibited their use, with certain exceptions not here relevant. We are not free to disregard that prohibition. Hence the doctrine of the *Shipp* case has no relation whatever to our present problem. That case dealt with an order of this Court staying the execution of a convicted felon, an order which lay within the recognized power of this Court and which had not been validly prohibited by Congress. Naturally, no man could violate that order with impunity. But we are acting here in the unique field of labor relations, dealing with a type of order which Congress has definitely proscribed. If we are to hold these defendants in contempt for having violated a void restraining order, we must close our eyes to the expressed will of Congress and to the whole history of equitable restraints in the field of labor disputes. We must disregard the fact that to compel one to obey a void restraining order in a case involving a labor dispute and to require that it be tested on appeal is to sanction the use of the restraining order to break strikes—which was precisely what Congress wanted to avoid. Every reason supporting the salutary principle of the *Shipp* case breaks down when that principle is applied in this setting. I would therefore reverse the judgment of the District Court *in toto*.

It has been said that the actions of the defendants threatened orderly constitutional government and the economic and social stability of the nation. Whatever

may be the validity of those statements, we lack any power to ignore the plain mandates of Congress and to impose vindictive fines upon the defendants. They are entitled to be judged by this Court according to the sober principles of law. A judicial disregard of what Congress has decreed may seem justified for the moment in view of the crisis which gave birth to this case. But such a disregard may ultimately have more disastrous and lasting effects upon the economy of the nation than any action of an aggressive labor leader in disobeying a void court order. The cause of orderly constitutional government is ill-served by misapplying the law as it is written, inadequate though it may be, to meet an emergency situation, especially where that misapplication permits punitive sanctions to be placed upon an individual or an organization.

March 3, 1947

MEMORANDUM FOR THE CONFERENCE:

On page 15 of my opinion in the Lewis case I am inserting the following paragraph:

> Indeed, in Gompers v. Buck's Stove & R. Co., 221 U. S. 418, decided five years after the Shipp decision, a unanimous Court joined in citing Ex parte Rowland, 104 U. S. 612, in context consistent only with the view that its doctrine, and therefore that of others like it decided prior to the Shipp case, remained fully effective. P. 436. There was no intimation, as otherwise necessarily would have been given, that the Shipp decision had reversed or modified the Rowland case, or any like it, in any way. And in Ex parte Young, 209 U. S. 123, not only the Court, p. 143, but the opposing distinguished counsel, pp. 135, 139, all concurred in reaffirming the Rowland ruling. Harlan, J., dissenting, retracted his former contrary view (see note 19 supra) in this respect. Pp. 169, 174. And Holmes, J., who spoke for the Court in the Shipp case, joined with the Court's reaffirmation of the Rowland doctrine in both the Gompers and Young opinions.

On page 33 I am adding the following quotation:

> "Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. We think this includes the assistance of counsel, if requested, and the right to call witnesses to give testimony, relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed." Cooke v. United States, 267 U. S. 517, 537.

The last paragraph on page 2 of my opinion has been revised to read as follows:

> Mr. Justice Frankfurter has shown conclusively, I think, that the policy of the Norris-LaGuardia Act applies to this situation. The legislative history he marshals so accurately and cogently compels the conclusion that the War Labor Disputes Act of 1943 not only confirms the applicability of the earlier statute, but itself excludes resort to injunctive relief for enforcement of its own provisions in situations of this sort.

Wiley Rutledge

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner, 759 *v.* United Mine Workers of America, an Unincorporated Association.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.
The United States of America, Petitioner, 760 *v.* John L. Lewis, Individually and as President of the United Mine Workers of America.	
United Mine Workers of America, an Unincorporated Association, Petitioner, 781 *v.* The United States of America.	
John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 782 *v.* The United States of America.	
United Mine Workers of America, an Unincorporated Association, and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioners, 811 *v.* The United States of America.	

[March —, 1947.]

MR. JUSTICE RUTLEDGE, dissenting.

This case became a *cause célèbre* the moment it began. No good purpose can be served by ignoring that obvious

fact. But it cannot affect our judgment save only perhaps to steel us, if that were necessary, to the essential and accustomed behavior of judges.[1] In all cases great or small this must be to render judgment evenly and dispassionately according to law, as each is given understanding to ascertain and apply it.

No man or group is above the law. Nor is any beyond its protection. *In re Yamashita,* 327 U. S. 1, dissenting opinion, 41. These truths apply equally to the Government. When its power is exerted against the citizen or another in the nation's courts, those tribunals stand not as partisans, but as independent and impartial arbiters to see that the balance between power and right is held even. In discharging that high function the courts themselves, like the parties, are subject to the law's majestic limitations. We are not free to decide this case, or any, otherwise than as in conscience we are enabled to see what the law commands.

I.

MR. JUSTICE FRANKFURTER has shown conclusively, I think, that the policy of the Norris-LaGuardia Act, 47 Stat. 20, applies to this situation. The legislative history he marshals so accurately and cogently compels the conclusion that the War Labor Disputes Act of 1943, 57 Stat. 163, not only confirms the applicability of the earlier statute, but itself excludes resort to injunctive relief for enforcement of its own provisions in situations of this sort.

[1] "Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend." Holmes, J., dissenting, in *Northern Securities Co.* v. *United States,* 193 U. S. 197, 400–401.

That Act expressly provides the remedies for its enforcement. Beyond seizure of plants, mines and facilities for temporary [2] governmental operation, they are exclusively criminal in character.[3] They do not include injunctive or other equitable relief. Nor was the omission unintentional or due to oversight. It was specific and deliberate.

The Senate thoroughly considered and debated various proposals for authorizing equity to intervene in labor disputes, one by the Act's sponsor in that body. Positively, repeatedly and unwaveringly it rejected all of them. They were likewise rejected in conference, where the Senate's view prevailed over that of the House. The latter body had not been inattentive to the problem. It sought and failed to secure the very thing this Court now says, in

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[2] "*Provided*, That whenever any such plant, mine, or facility has been or is hereafter so taken by reason of a strike, lock-out, threatened strike, threatened lock-out, work stoppage, or other cause, such plant, mine, or facility *shall be returned to the owners thereof as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency thereof prevailing prior to the taking of possession thereof. . . .*" (Emphasis added.) War Labor Disputes Act § 3 [Act of June 25, 1943, 57 Stat. 163, 50 U. S. C. App. §§ 1501, 1503].

[3] "SEC. 6 (a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment.

"(b) Any person who willfully violates any provision of this section shall be subject to a fine of not more than $5,000, or to imprisonment for not more than one year, or both." War Labor Disputes Act of 1943, § 6.

effect, was included.[4] That issue and that policy were indeed the main thrust and focus of the legislative struggle, and the outcome was not negative; it was positive and conclusive against using or giving the equitable remedies.

Surely we have not come so far toward complete inversion of legislative history as to write out of the law the views concerning a matter of such major policy held by the chamber which prevailed at the final stage of enactment and to write into the law diametrically opposing views of another chamber which yielded at that time. The case, as MR. JUSTICE FRANKFURTER demonstrates beyond any doubt, cannot be one where inattention, oversight or inaction may explain or give significance to what was done by the House of Representatives. That body was defeated, not simply silent, in the outcome. Willingly or otherwise, it acquiesced in the Senate's policy of refusing to authorize injunctive relief, and in doing so joined formally and effectively in the final act which made that policy law.

This means to me that Congress, in that action, did not simply confirm the Norris-LaGuardia Act's policy or leave it untouched with respect to situations within the War Labor Disputes Act's coverage. It means that Congress was not departing from or nullifying that policy. Rather by the later Act Congress adopted the same policy, the long prevailing national policy, for those situations.

The Senate, and at the end the Congress, were not declining expressly to authorize labor injunctions only to turn squarely about and nullify that refusal in the same

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[4] The issue is not avoided, nor is the effect of final legislative rejection nullified, by the easy device of resting the power said to exist upon common law rules of statutory construction which, if otherwise pertinent, were in the very teeth of Congress' positive refusal to confer the power after the fullest and most attentive consideration. That device only conceals the true issue. See also note 11.

breath, merely by virtue of the fact that the employees of seized plants necessarily were made subject temporarily to ultimate governmental operating direction and control.[5] We cannot attribute to Congress an intent so duplicitous. Thus to construe the Act not only would bring the provision for temporary control into collision with its remedial provisions as the history shows they were intended to apply. It would be to find Congress guilty of using a devious method for achieving indirectly exactly the thing it expressly declined to do. The words "governmental employee," "employee . . . for the purposes of this case" or "relationship . . . substantially that of employer and employee," none of which appear in the statute, cannot be given effect consistently with our function to write into the Act, by judicial interpolation, remedial provisions which Congress flatly and finally declined to incorporate.

Whether Congress acted wisely in this refusal is not our concern. But it is not irrelevant to the Act's meaning, purpose and effect that there were good reasons, indeed strong ones, for Congress to continue to follow the Norris-LaGuardia Act's policy rather than break away from it at that crucial time. Under the statute practically every

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[5] Seizure without such ultimate control, of course, would have been only one-sided, halfway seizure, operative only against management and owners. But seizure with such control did not require or mean that the control was to be exercised by labor injunctions. There was, and is, no inconsistency whatever between conferring the one power and denying the other. For this is exactly what Congress has done with reference to all plants not subject to the seizure power. Besides imputing to Congress the purpose to do with one hand what the other denied was being done, the identification of these two very distinct things serves only to confuse and make obscure the real question. This is simply whether Congress intended to abrogate for seized plants or to continue in force the established policy against labor injunctions as a method of exercising the powers of ultimate control conferred upon the Government.

industrial or mining facility, together with many of transportation,[6] was subject to seizure and governmental operation. Introducing the labor injunction into the Act's structure therefore would have been tantamount to repeal of the Norris-LaGuardia Act for the duration of the emergency powers, since seizure was authorized whenever the President should find, after investigation, and proclaim that there was an interruption of operations "as a result of a strike or other labor disturbance." § 3. Ready means thus would have been made available, if such had been the statute's purpose, for suspending the Norris-LaGuardia policy and provisions in any case where they might become operative.

Congress was thoroughly familiar with the history and effects of injunctions in labor disputes, with the long settled national policy against them, and with the universal abhorrence in the ranks of labor, however otherwise divided, toward them. In view of all these things Congress well may have felt and I think did feel, as my brother's recital of the history shows, that it was both unnecessary and unwise, perhaps would even be harmful to furtherance of the war effort, in substance to repeal the Norris-LaGuardia policy for the duration of the war emergency and thus to resurrect, in that critical situation, the long disused instruments that Act had outlawed.

It is important in this connection that 1943, rather than 1945 or 1946, was the year in which the War Labor Disputes Act was adopted. We were then not yet over the hump of the war. But neither had we reached the peak of labor disturbances which came only after active hostilities ceased, more than two years later.[7] The great body of

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[6] Section 2 (c) excludes carriers as defined in Title I of the Railway Labor Act, 45 U. S. C. § 151, or carriers by air as subject to Title II of the Railway Labor Act, 45 U. S. C. § 181.

[7] The available statistics speak in terms of "strikes" for 1943 and "work stoppages arising from labor-management disputes" for 1945

American workers was bending to the patriotic duty of peak production for war purposes. By comparison with what occurred after the fighting ended, the volume of man-days lost was about one-tenth of the later postwar peak loss.[8] Moreover, at that time the War Labor Board, specially constituted to deal with such disturbances, was functioning with a high degree of efficiency in their settlement.[9] There was nevertheless strong feeling that labor disputes should not be allowed to interrupt war production, regardless of cause or blame. And from this arose the demand for more effective powers to deal with them.

It was in this setting and to meet the problems it had thrown up, not the later one out of which this controversy arose, that the War Labor Disputes Act was adopted. The Act was exactly what its title indicated, a measure

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and 1946. For 1943, 13,500,529 man-days were lost through strikes. For 1945, 38,025,000 man-days were lost through work stoppages, and 113,000,000 man-days were so lost in 1946. In 1943 there were 3,752 strikes. In 1945 there were 4,750 work stoppages and in 1946, 4,700. See Strikes in 1943, Bull. No. 782, U. S. Bureau of Labor Statistics; Work Stoppages Caused by Labor-Management Disputes in 1945, Bull. No. 878, U. S. Bureau of Labor Statistics; Review of Labor-Management Disputes, 1946, U. S. Bureau of Labor Statistics Release, January 11, 1947.

[8] See note 7.

[9] See Hearings before the Committee on Military Affairs of the House of Representatives on S. 796, 78th Cong., 1st Sess., 25–26. "The War Labor Board was set up to deal with industrial relations. While this Board may not have a perfect record, it has a very good record to its credit, particularly when we consider the great problems it must deal with." 89 Cong. Rec. 5339.

The number of War Labor Board cases resulting in plant seizures by the United States, so far as statistics are available, is as follows: Four cases from June 25, 1943, the date of the passage of the War Labor Disputes Act, to December 31, 1943; seventeen cases from January 1, 1944, to December 31, 1944; fifteen cases from January 1, 1945, to August, 1945. We are informed that in no instance of seizure, except the one under consideration, was a labor injunction issued at the behest of the Government.

for dealing with labor disputes in the emergency of the war. Congress, it is true, anticipated that for a limited period after the end of fighting the same emergency powers would be needed.[10] But this does not mean that those powers were shaped, or are now to be measured in scope, so as to meet all of the situations which since have arisen in the vastly changed circumstances; or that Congress intended them to be met by repealing the settled policy against injunctions in labor disputes in the sweeping manner now accomplished by the Court's decision. On the contrary, in June of 1943, Congress dealt with the situation then before it and refused to authorize such relief because that situation did not demand this.

In view of all these considerations, I cannot believe that Congress, in effect and by indirection, was exerting its war power to the greatest possible extent or was thereby either repealing or suspending the nation's settled policy against injunctions in labor disputes. Rather, the conclusion is inescapable that Congress was relying exclusively upon the added powers of enforcement expressly conferred by the Act, namely, the power of seizure and the force of the criminal sanction, to accomplish the needed results.[11]

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[10] Section 3 provides: "*Provided further,* That possession of any plant, mine, or facility shall not be taken under authority of this section after the termination of hostilities in the present war, as proclaimed by the President, or after the termination of the War Labor Disputes Act; and the authority to operate any such plant, mine, or facility under the provisions of this section shall terminate at the end of six months after the termination of such hostilities as so proclaimed."

It may be noted that on December 31, 1946, the President by proclamation announced the end of hostilities. 12 Fed. Reg. 1. The emergency powers conferred by the Act terminate six months thereafter.

[11] If general common law rules of statutory construction were appropriate for criteria to determine such issues as this case presents for the meaning of the Act, certainly that rule would be equally applicable

These were in themselves powerful sanctions. They carried with them the added and very great sanction of aroused public opinion [12] which would follow not simply upon interruption of essential war production but more particularly upon such an event in any facility taken over and operated under governmental auspices. Congress, after mature deliberation, concluded that these sanctions were adequate, and for that reason made them exclusive. In no other way can its repeated and final refusals to confer the strenuously sought equitable remedies be made consistent with the legislative and general history or be given meaning and effect. To construe the Act as permitting what Congress thus so explicitly refused to allow is to go beyond our function and intrude upon that of Congress. This we have no right or power to do. If the situation presented by the facts of this case is one which goes beyond the powers Congress has conferred for dealing with it, that is a matter for Congress' consideration, not for correction by this Court.

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with any other which dictates that when a statute provides specific remedies adequate for enforcing its provisions those remedies alone are deemed to be made available. But in view of the legislative and other history, this case is not one to be turned, in my opinion, by such vague, conveniently selective and often, as here, contradictory canons of construction.

[12] It is this sanction upon which Congress has chosen to rely ultimately, for instance, in the Railway Labor Acts, though provision is made for preliminary resort to processes of conciliation, mediation and voluntary arbitration before the use of ultimate economic force by strike or lockout, when the sanction of public opinion comes chiefly into play. See *Brotherhood of Railway Trainmen* v. *Toledo, Peoria & W. R. R.*, 321 U. S. 50; *General Committee* v. *Missouri-Kansas-Texas R. R.*, 320 U. S. 323. On the whole that policy and the sanctions provided have worked successfully to eliminate stoppages in railway transportation. And as of June, 1943, it may be fairly assumed that Congress, in declining to authorize the issuance of labor injunctions, was conscious of and chose to rely upon this accepted sanction together with the specific ones then conferred by the War Labor Disputes Act.

Accordingly, upon the specific terms of the War Labor Disputes Act itself, upon the legislative history as summarized by MR. JUSTICE FRANKFURTER, and upon the historical setting in which the statute was enacted as defining the problems it was designed to meet, together with shaping the nature and scope of the measures required to meet them, I conclude that that Act in no way impaired but on the contrary adopted and incorporated the policy of the Norris-LaGuardia Act concerning the issuance of injunctions in labor disputes.

II.

This conclusion substantially compels the further one that *United States* v. *Shipp*, 203 U. S. 563, has no valid application to the situation presented by this case.

This Court has not yet expressly denied, rather it has repeatedly confirmed Congress' power to control the jurisdiction of the inferior federal courts and its own appellate jurisdiction. Const., Art. III, § 2. *Ex parte McCardle*, 7 Wall. 506; *Lockerty* v. *Phillips*, 319 U. S. 182, 187, and authorities cited. See Warren, New Light on the History of the Federal Judiciary Act of 1789 (1923), 37 Harv. L. Rev. 49, 67 ff. That power includes the power to deny jurisdiction as well as to confer it. *Ibid.* And where Congress has acted expressly to exclude particular subject matter from the jurisdiction of any court, except this Court's original jurisdiction, I know of no decision here which holds the exclusion invalid, or that a refusal to obey orders or judgments contravening Congress' mandate is criminal or affords cause for punishment as for contempt.

If that were the law, the result could only be to nullify the congressional power over federal jurisdiction for a great volume of cases. And if it should become the law, for every case raising a question not frivolous concerning the court's jurisdiction to enter an order or judgment, that punishment for contempt may be imposed irrevocably

simply upon a showing of violation, the consequences would be equally or more serious. The force of such a rule, making the party act on pain of certain punishment regardless of the validity of the order violated or the court's jurisdiction to enter it as determined finally upon review, would be not only to compel submission.[13] It would be also in practical effect for many cases to terminate the litigation, foreclosing the substantive rights involved without any possibility for their effective appellate review and determination.

This would be true, for instance, wherever the substantive rights asserted or the opportunity for exercising them would vanish with obedience to the challenged order. Cf. *Ex parte Fisk,* 113 U. S. 713. The First Amendment liberties especially would be vulnerable to nullification by such control. Thus, the constitutional rights of free speech and free assembly could be brought to naught and censorship established widely over those areas merely by applying such a rule to every case presenting a substantial question concerning the exercise of those rights. This Court has refused to countenance a view so destructive of the most fundamental liberties. *Thomas* v. *Collins,* 323 U. S. 516. These and other constitutional rights would be nullified by the force of invalid orders issued in flat violation of the constitutional provisions securing them, and void for that reason. The same thing would be true also in other cases involving doubt, where statutory or other rights asserted or the benefit of asserting them would vanish, for any practical purpose, with obedience.

Indeed it was because these were so often the effects, not simply of final orders entered after determination upon the merits, but of interlocutory injunctions and *ex parte* restraining orders, that the Norris-LaGuardia Act became

[13] More especially when account is taken of the vast liberty, called "discretion," which courts are said to have, and in this case are held to have, in fixing punishments for contempts. But see Part IV.

law and, as I think, the War Labor Disputes Act continued in force its policy. For in labor disputes the effect of such orders, it was pointed out officially and otherwise,[14] is generally not merely failure to maintain the status quo pending final decision on the merits. It is also most often to break the strike, without regard to its legality or any conclusive determination on that account, and thus to render moot and abortive the substantive controversy.[15]

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[14] "The restraining order and the preliminary injunction invoked in labor disputes reveal the most crucial points of legal maladjustment. Temporary injunction relief without notice, or, if upon notice, relying upon dubious affidavits, serves the important function of staying defendant's conduct regardless of the ultimate justification of such restraint. The preliminary proceedings, in other words, make the issue of final relief a practical nullity. . . . the suspension of strike activities, even temporarily, may defeat the strike for practical purposes and foredoom its resumption, even if the injunction is later lifted." Frankfurter and Greene, The Labor Injunction (1930) 200–201.

"Time is the essence of the strike. Keeping the injunction alive by dilatory tactics blunts the edge of the only effective instrument that labor possesses, namely, the strike.

"The bill now before us makes it well-nigh impossible to secure a restraining order except under the well-defined and limited conditions set out in sections 7 and 8." 75 Cong. Rec. 5489. See also *People ex rel. Sandnes* v. *Sheriff of King's County*, 299 N. Y. Supp. 9, 16.

[15] See note 14. *Ex parte Fisk*, 113 U. S. 713, presents another clear illustration of the type of right which would be wholly nullified by general application of the alleged broad conception of the *Shipp* doctrine. There the Circuit Court, in contravention of explicit acts of Congress as this Court found, had ordered Fisk to submit to oral examination before trial in a removed civil cause, the examination to be before a justice of the court and according to procedure prescribed by state law for the state court from which the case was removed. Fisk refused to obey the order, standing upon the Circuit Court's lack of jurisdiction to enter it, was held in contempt for this, and fined $500 and ordered imprisoned until the fine was paid. He brought habeas corpus to secure release from the imprisonment thus imposed.

This Court held void both the order for examination and the order of commitment, as beyond the Circuit Court's jurisdiction, and

It is not every case therefore where substantial doubt appears, concerning either the issues in the main cause or the court's jurisdiction to issue interlocutory or other orders, in which violation will bring the so-called *Shipp* doctrine into play. If that were true then indeed would a way have been found to nullify the constitutional limitations placed upon the powers of courts, including the control of Congress over their jurisdiction. Then also the liberties of our people would be placed largely at the mercy of invalid orders issued without power given by the Constitution and in contravention of power constitutionally withheld by Congress. *Ex parte Fisk,* 113 U. S. 713; *Thomas* v. *Collins, supra.*

Indeed the *Shipp* doctrine thus broadly conceived would go far toward nullifying the historic jurisdiction of this Court and others in habeas corpus, for it would do this in the many situations where the cause of commitment is violation of a doubtfully valid court order and the ground asserted for release is the court's lack of jurisdiction to enter it. Thus, in this case, if the party Lewis had been imprisoned rather than fined, the broad application now made of the *Shipp* decision would dictate that he could not be released by habeas corpus, even though it were now held here that the restraining orders were beyond the District Court's jurisdiction to issue.[16] If those

granted petitioner's release from custody. The Court said: "Not only is no such power [of examination] conferred, but it is prohibited by the plain language and the equally plain purpose of the acts of Congress. . . . The Circuit Court was, therefore, without authority to make the orders for the examination of petitioner in this case, and equally without authority to enforce these orders by process for contempt." Pp. 724, 726. Had Fisk submitted, as *Shipp* is now said to require should be done, not only would the specific commands of Congress have been nullified. His right, secured by those commands, could never have been vindicated. The statutes would have been made dead letters.

[16] Indeed at least one state court has held this result to follow and in his dissenting opinion in *In re Sawyer,* 124 U. S. 200, 224, Harlan, J.,

orders were valid, for purposes of finally and conclusively imposing punishment in contempt, regardless of the court's want of power to issue them, this would be so whether the punishment were fine or imprisonment. And it clearly would follow in cases of criminal contempt,[17] perhaps in others, that the court's lack of jurisdiction could furnish no basis for granting relief, unless the penalty were found to be cruel and unusual or, in the case of a fine, excessive.[18]

I cannot believe that the historic powers of our courts in habeas corpus or the rights of citizens, confirmed as these have been for so long by an unbroken line of decisions,[19] have been or can be overthrown and subverted,

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stated this to be his view of the law (see however note 19), as apparently also it was of Waite, C. J. P. 223. See *Reid* v. *Independent Union*, 200 Minn. 599 (certiorari), but see the dissenting opinion, 200 Minn. at 612; Collateral Attack Upon Labor Injunctions Issued in Disregard of Anti-Injunction Statutes (1938) 47 Yale L. J. 1136; *People ex rel. Sandnes* v. *Sheriff of Kings County*, 299 N. Y. Supp. 9.

[17] See Part IV.

[18] *Ibid.*

[19] *Ex parte Rowland*, 104 U. S. 604; *Ex parte Fisk*, 113 U. S. 713; *In re Ayers*, 123 U. S. 443, 507; *In re Sawyer*, 124 U. S. 200; *In re Burrus*, 136 U. S. 586; *Thomas* v. *Collins*, 323 U. S. 516 (arising under state law). And see *Ex parte Young*, 209 U. S. 123, 143; cf. pp. 135, 139, collecting the authorities.

In the *Sawyer* case, *supra*, the Court said: "The case cannot be distinguished in principle from that of a judgment of the Common Bench in England in a criminal prosecution, which was *coram non judice;* or the case of a sentence passed by the Circuit Court of the United States upon a charge of an infamous crime, without a presentment, or indictment by a grand jury. *Case of the Marshalsea*, 10 Rep. 68, 76; *Ex parte Wilson*, 114 U. S. 417; *Ex parte Bain*, 121 U. S. 1." 124 U. S. at 221. Hardly can it be said that the *Sawyer* decision went on the ground that the question of jurisdiction to enter the order was not substantial, in view of the length and detail of the Court's opinion, which gave no hint of such a suggestion, and in view also of the fact that Field, J., concurred in a separate opinion and Waite, C. J., and Harlan, J., wrote separate dissents taking the posi-

merely by the fact that the question of the court's power to issue the order violated may be doubtful and not merely frivolous. Nor do I think the *Shipp* decision accomplished or purported to accomplish so much.

Certainly if its purpose had been to overrule the decisions so thoroughly established, and to trench so heavily upon the historic liberties they and the Constitution itself secure, some note would have been taken of that fact. So great a revolution hardly could have been wrought unanimously or without attentive recognition of what was being done. There was indeed reference in the opinion to the previous decisions. The Court stated: "It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt," citing the *Sawyer, Fisk,* and *Rowland* cases.[20] 203 U. S. at 573. But there was not the slightest suggestion, by this reference or otherwise, that the Court had any purpose whatever to impair the force of those decisions, much less to overrule them. Nor in fact was this its intent. It mentioned them only to put them aside as inapplicable to the situation before it.

Indeed, in *Gompers* v. *Buck's Stove & R. Co.,* 221 U. S. 418, decided five years after the *Shipp* decision, a unanimous Court joined in citing *Ex parte Rowland,* 104 U. S. 612, in context consistent only with the view that its doctrine, and therefore that of others like it decided prior to the *Shipp* case, remained fully effective. P. 436. There was no intimation, as otherwise necessarily would have been given, that the *Shipp* decision had reversed or modified the *Rowland* case, or any like it, in any way. And in *Ex parte Young,* 209 U. S. 123, not only the Court, p. 143, but the opposing distinguished counsel, pp. 135, 139, all

tion which the Court now accepts for this case. See note 16 *supra.* Harlan, J., however, receded from his view in *Ex parte Young, supra,* where he dissented on other grounds. 209 U. S. at 169, 174.

[20] See note 19.

concurred in reaffirming the *Rowland* ruling. Harlan, J., dissenting, retracted his former contrary view (see note 19 *supra*) in this respect. Pp. 169, 174. And Holmes, J., who spoke for the Court in the *Shipp* case, joined with the Court's reaffirmation of the *Rowland* doctrine in both the *Gompers* and *Young* opinions.

The Court in *Shipp* was dealing with a situation quite different from the ones presented in the previous decisions and in this case. In none of them was the action which violated the court's order such as would have defeated its jurisdiction not only to enter the order but also to proceed with the cause before it in any manner, except to deal with the matter of contempt.[21] In them the Court was not

[21] In *Ex parte Rowland*, 104 U. S. 604, the county commissioners' disobedience of an order commanding them to collect a certain tax did not moot the controversy, which was whether the judgment debtor, by proceeding against the proper county official, the tax collector, could satisfy its judgment by forcing collection of the tax; and, the order being held void, their action in disobeying it was held not to be contempt.

The disobedience of the petitioner in *Ex parte Fisk*, 113 U. S. 713, deprived the plaintiff in the suit against him of the use of his testimony but did not defeat this suit or the ability of the courts to decide whether he could be forced to submit to examination. See note 19 *supra*.

In *Ex parte Sawyer*, 124 U. S. 200, the refusal of the city officials to obey an order enjoining them from removing a police judge did not vitiate judicial power to decide the issue whether the city officials possessed the removal power. The controversy remained and, as this Court pointed out, it was determinable by mandamus or *quo warranto*. This Court held the order invalid and the officials not guilty of contempt.

In *Ex parte Burrus*, 136 U. S. 586, the refusal of the grandparents to give up the child upon order issued by a federal court did not destroy the power of the court, which had already been exercised, though improperly the Court held, to determine whether the child was properly in their custody or in the custody of the father. As the contempt order was held void, habeas corpus was granted.

Moreover in none of these cases did the disobedience destroy the jurisdiction of the trial and appellate courts to determine jurisdiction.

faced with the necessity for taking action to vindicate its power to hear and determine the main controversy, as well as the incidental one arising upon the validity of the interlocutory or other order. Nor is it here.

But exactly such a situation was presented in the *Shipp* case. The conduct there held to be contempt not only was in itself criminal and in violation, as it turned out, of this Court's lawful order for taking the appeal in Johnson's case. It ousted this Court altogether of jurisdiction to take any action in that cause. It rendered the cause moot, thereby putting an end to any proceedings concerning it here or elsewhere. Shipp's alleged conduct constituted therefore the most serious possible interference with the due and orderly course of administering justice. It utterly destroyed the power of all courts to act. Further, the order violated was not made directly in contravention of an act of Congress, as was true in the *Fisk* case and, as I think, in this one. It rather was made in complete conformity with the statutes conferring authority on this Court to take jurisdiction of and hear such causes. Nothing in it violated either a congressional mandate and policy or the rights of any party.

Moreover the decision was not effective, as its doctrine is now said to be, to put Shipp to any choice of obedience on pain of certain punishment regardless of the violated order's validity or invalidity as ultimately determined on review. No such situation was presented on the facts, and no such ruling could properly have been made. Shipp had not been convicted. The case came here upon a challenge *in limine*, not after the event, made upon the pleadings in the contempt proceedings to their validity. The basis asserted was the invalidity of the order allowing the appeal in Johnson's case, for alleged want of jurisdiction of this Court to enter it.[22] That contention was rejected

[22] See note 24. The order allowing appeal directed "that all proceedings be stayed and the custody of the said appellant be retained during this appeal."

and the order was held valid. It was in this connection only that the Court stated it had "jurisdiction to determine its jurisdiction" in doubtful cases. That statement was not a ruling that, regardless of a violated order's ultimate validity as determined on review,[23] punishment in contempt for violating it could be irrevocably imposed. It was merely a statement of the reason for the order's validity.[24] The holding was that this Court had jurisdiction, as of course it does in doubtful as well as clear cases, to de-

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[23] See note 24. The Court was reviewing its own order, the one that was violated.

[24] The statement was made in response to counsel's contention that the order allowing the appeal was void and therefore would not support a conviction for contempt. The Court rejected the premise, not the conclusion.

The basis of counsel's contention was that the Circuit Court lacked jurisdiction and therefore that this Court also lacked jurisdiction. His brief stated: "The only question, therefore, is whether Johnson's proceeding in habeas corpus in the Circuit Court did or did not in fact constitute a 'case that involves the construction or application of the Constitution of the United States.' If it did, this Court had appellate jurisdiction of it and should proceed to inquire whether its order has been disobeyed. If it did not, this Court had no jurisdiction of it, *and should now so hold for the purposes of this proceeding. . . .*" (Emphasis added.) And elsewhere the brief stated: "We assume that it will hardly be contended that the mere allowance of an appeal is sufficient to give the court jurisdiction of a case which from its nature is not appealable. Such action is *pro forma* only, and as it is necessarily had in every such case the jurisdiction of the court would always be established by an *ex parte* order."

In answer to these arguments the Government's brief said: "Certainly no one would challenge the jurisdiction of this Court if the Circuit Court had jurisdiction, and accordingly the defendants here deny the jurisdiction of this court simply as a corollary to their contention that the Circuit Court did not possess jurisdiction. But the jurisdiction of this court is not dependent upon contentions, and it has jurisdiction to take the case and retain it for final determination whether it turns out that the Circuit Court has jurisdiction or not."

termine whether the federal courts—the Circuit Court and accordingly this Court also—had power to pass upon Johnson's petition for habeas corpus.[25]

From that ruling and from it alone the consequence followed that Shipp could be held in contempt on proof, still to be made, that he had done acts in violation of the order as thus conclusively determined to be valid by the court of last resort. This was a far cry from holding that punishment in contempt can be laid irrevocably, regardless of the outcome on review concerning the order's validity. The Court by its ruling was not making void orders valid for purposes of punishment by way of contempt. Only if the Court has held its own order which Shipp violated invalid would such a question have been presented.

The *Shipp* decision therefore was in fact simply an application of the long established rule that punishment in contempt may be inflicted on proof of violation of a valid order of court as determined finally on review. It did not overrule, nor was it in any way inconsistent with the long prior course of decisions holding that when an order is void for want of jurisdiction it may be disobeyed with impunity pending but depending upon determination of its invalidity by appeal, habeas corpus, or other mode of review. *Gompers* v. *Buck's Stove & R. Co., supra; Ex parte Young, supra.* It was an application, in the circumstances presented, of the settled rule that one who takes it upon himself to violate an order of court he thinks void thereby takes the risk that on review he will be sustained

[25] See note 24. No argument was made that even if the Circuit Court had jurisdiction this Court did not. Thus, the statement in the opinion "But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this Court had no jurisdiction of the appeal, this Court, and this Court alone, could decide that such was the law," 203 U. S. at 573, means "But even if the Circuit Court had no jurisdiction to entertain Johnson's petition and if *for that reason* this Court had no jurisdiction of the appeal," etc.

and, in the contrary event and then only, will he be subject irrevocably to punishment for contempt. *Ibid.*

In my judgment this is the rule properly applicable in this case, the only one consistent with the settled and unvaried course of decision, with the commands of the War Labor Disputes Act, of the Norris-LaGuardia Act, and with § 268 of the Judicial Code, 36 Stat. 1163, 28 U. S. C. § 385.

Apart from immediate and other interferences with judicial proceedings not presented here, that section authorizes punishment for contempt only for disobedience of a "*lawful* writ, process, order, rule, decree, or command of the said courts." (Emphasis added.) The section by its terms, apart from the exceptions not here applicable, limits power to punish for contempt to violations of lawful orders, thereby necessarily excluding others. Nor did it purport to make lawful for that purpose interlocutory orders issued without jurisdiction as determined finally upon review.[26]

This case, unlike the *Shipp* case, in no way involves interference with any of the legal proceedings or the due course of administering justice in any sense contemplated by § 268 or by the *Shipp* decision. No court, trial or appellate, was deprived by the defendant's conduct of jurisdiction or power to take any action in any of the proceed-

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[26] It has been held that habeas corpus will not lie where the disobedience was to a lawful, but erroneous, order of a court. *Ex parte Kearney*, 7 Wheat. 38. See also *Locke* v. *United States*, 75 F. 2d 157, 159: "Error must be corrected by appeal, and cannot be tested by disobedience. . . . Willful disobedience of an injunction, however erroneous, issued by a court having jurisdiction while such injunction is in force unreversed constitutes contempt of court." And it has been said that if an injunction is reversed on appeal on grounds other than "jurisdiction," the violator may nevertheless be punished for criminal, though not for civil, contempt. *Worden* v. *Searls*, 121 U. S. 14; *Salvage Process Corp.* v. *Acme Tank Clean Process Corp.*, 86 F. 2d 727.

ings, collateral or in the main suit, which existed at the beginning of the controversy. The order therefore falls exclusively within the concluding clause of § 268 and the power to punish for contempt on account of its violation depends, by the command of that clause, upon the order's lawful character.

Since in my opinion the order was jurisdictionally invalid when issued, by virtue of the War Labor Disputes Act and its adoption of the Norris-LaGuardia Act's policy, it follows that the violation gave no sufficient cause for sustaining the conviction for contempt. *Ex parte Fisk, supra.* Lewis and the United Mine Workers necessarily took the risk that the order would be found valid on review and, in that event, that punishment for contempt would apply. They did not take the risk that it would apply in any event, even if the order should be found void as beyond the jurisdiction of the Court to enter. See the dissenting opinion in *Carter* v. *United States,* 135 F. 2d 858, 862. The Shipp case furnishes no precedent for such a view nor do I know of any other in this Court which does.[27]

On the contrary that view has been long rejected, and I do not think we should disturb or depart from that settled course of decision now. "If the command of the writ [of mandamus] was in excess of jurisdiction, so necessarily were the proceedings for contempt in not obeying." *Ex parte Rowland,* 104 U. S. 604, 617–618. The power of the federal courts to issue stay orders to maintain the status quo pending appeal, like other matters affecting

[27] To be distinguished are cases in which Congress provides an adequate but limited opportunity for challenging the validity of administrative or other orders, but forecloses such opportunity when it is not taken as prescribed. See *Yakus* v. *United States,* 321 U. S. 414, cf. dissenting opinion, p. 460. See also *United States* v. *Ruzicka,* 329 U. S. —; *Falbo* v. *United States,* 320 U. S. 549; *Estep* v. *United States,* 327 U. S. 114; *Gibson* v. *United States,* 329 U. S. —. That is very different from affording no opportunity whatever except by obedience.

their jurisdiction except in the case of this Court's original jurisdiction, is subject to Congress' control. That control has been exercised, in my view, to exclude such jurisdiction in cases of this character. And, this being true, I do not think either we or any other court subject to that mandate has power to punish as for contempt the violation of such an order issued in contravention of Congress' command. *Ex parte Fisk, supra.*

III.

The issues concerning the manner in which the contempt proceeding was conducted are in themselves of great moment, apart from the foregoing conclusions which I think are dispositive of the controversy. And the Court's rulings upon them are of such a character that I cannot accede by silence.

At times in our system the way in which courts perform their function becomes as important as what they do in the result. In some respects matters of procedure constitute the very essence of ordered liberty under the Constitution. For this reason, especially in the Bill of Rights, specific guaranties have been put around the manner in which various legal proceedings shall be conducted. They differentiate sharply between the procedures to be followed in criminal proceedings and in civil ones. These differences mark one of the great constitutional divides.[28] They separate the zone of punishment for crime, with all its odious consequences, from that of giving civil relief, where no such consequences attend, not partially but completely.

In any other context than one of contempt, the idea that a criminal prosecution and a civil suit for damages or equitable relief could be hashed together in a single criminal-civil hodgepodge would be shocking to every

[28] *Yakus* v. *United States,* 321 U. S. 414, dissenting opinion, at 479 ff.

American lawyer and to most citizens. True, the same act may give rise to all these varied legal consequences. But we have never adopted, rather our Constitution has totally rejected the continental system of compounding criminal proceedings with civil adjudications.[29] Our tradition is exactly the contrary and few would maintain that this has had no part in bringing about the difference existing today for individual freedom here and in Europe.

I do not think the Constitution contemplated that there should be in any case an admixture of civil and criminal proceedings in one. Such an idea is altogether foreign to its spirit. There can be no question that contempt power was conferred adequate to sustain the judicial function, in both civil and criminal forms. But it does not follow that the Constitution permits lumping the two together or discarding for the criminal one all of the procedural safeguards so carefully provided for every other such proceeding.

The founders did not command the impossible. They could not have conceived that procedures so irreconcilably inconsistent in many ways[30] could be applied simultane-

[29] Thus, in some civil law countries damages, as well as other penalties, are assessed in a criminal proceeding. See Schwenk, Criminal Codification and General Principles of Criminal Law in Argentina, Mexico, Chile and the United States: A Comparative Study (1942) 4 La. L. Rev. 351, 373–374; Goirand and Thompson, The French Judicial System and Procedure in French Courts (1919) 14. See also Esmein, A History of Continental Criminal Procedure (1913) 429–430.

[30] Upon the authorities, the following procedural provisions of the Bill of Rights, at least, would seem to apply to criminal contempt: The provision against double jeopardy, see *In re Bradley*, 318 U. S. 50; the provision against self-incrimination, *Gompers* v. *Buck's Stove & R. Co.*, 221 U. S. 418, 444; the provision for due process insofar as it necessitates "suitable notice and adequate opportunity to appear and to be heard," *Blackmer* v. *United States*, 284 U. S. 421, 440; and, although the Sixth Amendment protections have been said not to

ously. Nor was their purpose to create any part of judicial power, even in contempt, wholly at large, free from any constitutional limitation or to pick and choose between the conflicting civil and criminal procedures and remedies at will. Much less was it to allow mixing civil remedies and criminal punishments in one lumped form of relief, indistinguishably compounding them and thus putting both in unlimited judicial discretion, with no possibility of applying any standard of measurement on review.[31]

If this can be done in any case, it can be done in others. And that being true, if it can be done at all, not simply a loophole but a very large breach has been left in the wall of procedural protections thrown around the citizen's punishment for crime. For it is to be recalled that under the Court's ruling here upon the *Shipp* doctrine not merely

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apply as such to criminal contempts, *Myers* v. *United States*, 264 U. S. 95, 104–105; *Blackmer* v. *United States*, 284 U. S. at 440, but see text *infra*, doubtless at least the provisions for "a speedy and public trial," for "compulsory process" and for the assistance of counsel, see *Cooke* v. *United States*, 267 U. S. 517, 537, are implied in the due process provision of the Fifth Amendment. And it has been said that the protection against cruel and unusual punishments in the Eighth Amendment applies to criminal contempt, *United States ex rel. Brown* v. *Lederer*, 140 F. 2d 136, 139.

There are also protections not expressly included in the Bill of Rights which apply in criminal contempt, *e. g.*, that the defendant is presumed to be innocent and must be proved guilty beyond a reasonable doubt. *Gompers* v. *Buck's Stove & R. Co.*, 221 U. S. 418, 444. And see *Ex parte Hudgings*, 249 U. S. 378, 383: "Existing within the limits of and sanctioned by the Constitution, the power to punish for contempt committed in the presence of the court is not controlled as to modes of accusation and methods of trial generally safeguarding the rights of the citizen. This, however, expresses no purpose to exempt judicial authority from constitutional limitations, since its great and only purpose is to secure judicial authority from obstruction in the performance of its duties to the end that means appropriate for the preservation and enforcement of the Constitution may be secured."

[31] See Part IV.

the violation of valid judicial orders, but also the disobedience of invalid orders issued in excess of any court's jurisdiction becomes a crime and punishable as such by summary proceedings in criminal contempt, although the substantive rights involved in the litigation are wholly civil ones. The vastly expanded area of criminal conduct under this conception would afford equally wide room for dispensing with the criminal procedural protections under the unrestricted scope, otherwise than by "judicial discretion," which the present ruling concerning criminal or criminal-civil proceedings in contempt affords.

In my opinion, our system does not comprehend a power so unconfined anywhere within its broad borders, and it is time the large confusion about this were swept away.[32] It is not necessary in this case to ask or decide whether all of

[32] The confusion, at least as to the matter of indictments and jury trial, cf. note 33, has its origin in historical error exposed in Fox, The History of Contempt of Court (1927), and Frankfurter and Landis, Power of Congress over Procedure in 'Inferior' Federal Courts—A Study in Separation of Powers (1924) 37 Harv. L. Rev. 1010. "Down to the early part of the eighteenth century cases of contempt even in and about the common-law courts when not committed by persons officially connected with the court were dealt with by the ordinary couse of law, *i. e.* tried by jury, except when the offender confessed or when the offense was committed 'in the actual view of the court'." Frankfurter and Landis, *supra*, at 1042. Until 1720 "there is no instance in the common-law precedents of punishment otherwise than after trial in the ordinary course and not by summary process." *Id.*, 1046.

However, Wilmot, J., in 1765, influenced by Star Chamber procedure and precedents, although the Star Chamber had been abolished in 1641, stated that it was "immemorial usage" to punish all contempts summarily. Almon's Case, Wilmot's Notes, p. 243. And although this opinion was not published until thirty-seven years later, "there is ample evidence that as a result of private communication between Wilmot and Blackstone, Wilmot's views of 1765 found their way 'both in phrase and matter' into the four volumes of the famous Commentaries published in 1769. . . ." Frankfurter and Landis,

the Constitution's criminal procedural protections thrown about all other criminal prosecutions, without suggestion of explicit exception, apply to criminal contempt proceedings. It is enough that we are sure some of them apply, as this Court has ruled repeatedly.[33] It does not matter that some of those which incontestably are applicable may not have been put in issue or preserved for review in this case.[34] The question cuts more deeply than the application of any specific guaranty. It affects the right to insist upon or have the benefit of any.

This case is characteristic of the long existing confusion concerning contempts and the manner of their trial,

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supra, at 1046, n, 128. Wilmot's error "has bedevilled the law of contempt both in England and in this country ever since." *Id.*, 1047.

This history furnishes a slender thread indeed for thinking that the Constitution makers had no purpose to apply the usual procedural protections to criminal contempts. ". . . it is very doubtful whether at the date of the Constitution that doctrine [of *Almon's Case*, *supra*] did form part of the common law adopted by the United States. Mr. Justice Wilmot's undelivered judgement lay concealed until the year 1802, and, so far as is known, was not cited in an English Court until the hearing of *Burdett* v. *Abbott* in 1811. It was first cited with approval from the Bench in 1821, and was not therefore adopted as the common law of England until after the establishment of the American Constitution." Fox, *supra*, at 207.

[33] See note 30. It has been ruled consistently, however, that the rights to have the proceeding begun by indictment, Amend. V, and tried by jury, Amend. VI, do not apply. *E. g.*, *Eilenberger* v. *District Court*, 134 U. S. 31; *Gompers* v. *United States*, 233 U. S. 604; *In re Debs*, 158 U. S. 564.

[34] Defendants have not argued either in the District Court or in this Court that they are constitutionally entitled to a jury trial. And they expressly waived in open court whatever rights they had to an advisory jury. On the other hand if, as I think, the Norris-LaGuardia Act's provisions have been adopted for this and like cases, cf. Part I, § 11 of that Act of its own force secured the right of trial by jury and forbade waiver otherwise than in writing. Federal Rules of Criminal Procedure, Rule 25 (a).

among other things, in that most frequently the question of the nature and character of the proceeding, whether civil or criminal, is determined at its end in the stage of review rather than, as it should be and as in my opinion it must be, at the beginning. *Gompers* v. *Buck's Stove & R. Co.*, 221 U. S. 418, 444. And this fact in itself illustrates the complete jeopardy in which rights are placed when the nature of the proceeding remains unknown and unascertainable until the final action on review.

Not only is one thus placed in continuing dilemma throughout the proceedings in the trial court concerning which set of procedural rights he is entitled to stand upon, whether upon the criminal safeguards or only on the civil. He also does not and cannot know until it is too late, that is, until the appellate phase is ended, whether one group or the other of appellate jurisdictional and procedural rules applies. Indeed he may find that his right of review has been taken either prematurely or too late depending entirely on whether the appellate court finally concludes that the proceeding has been civil or criminal in character.[35]

[35] In civil cases under Rule 73 appeal is taken by filing notice thereof "within the time prescribed by law," and generally, though there are exceptions, the time is three months. 28 U. S. C. § 230; *Mosier* v. *Federal Reserve Bank*, 132 F. 2d 710, 712. In criminal cases the Federal Rules now allow taking an appeal by filing notice of appeal as in civil cases. But an appeal must be taken by a defendant within 10 days after entry of judgment or after denial of motion for new trial. Rule 37 (a) (2). In *Nye* v. *United States*, 313 U. S. 33, it was held that 28 U. S. C. § 230 rather than the Criminal Appeals Rules governed timeliness in a criminal contempt appeal. But the new Criminal Rules would seem to apply to criminal contempts. *Moore* v. *United States*, 150 F. 2d 323, 324. See Rules 42 and 54; 55 Stat. 779; 18 U. S. C. § 689.

On certiorari, if the Rules of Criminal Procedure govern, there is also a difference. In civil cases the time for petitioning for certiorari is three months. In criminal cases the petition must be filed within thirty days after entry of judgment. Rule 37 (b) (2). Com-

See Swayzee, Contempt of Court in Labor Injunction Cases (1935) 21–22.

Precisely for these reasons this Court, when confronted in the *Gompers* case, *supra,* with a proceeding commingling civil and criminal features, such as we have here, refused to countenance such a mixture and, finding that the proceedings had been civil, held the criminal penalty of fixed terms of imprisonment to be invalid.[36] The Court said:

> "There was therefore a departure—a variance between the procedure adopted and the punishment imposed, when, in answer to a prayer for remedial relief, in the equity cause, the court imposed a punitive sentence appropriate only to a proceeding at law for criminal contempt. The result was as fundamen-

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pare *Nye* v. *United States, supra,* at 42, n. 6, as to the law prior to the new Criminal Rules.

The largest present difference between appeals in civil and criminal contempts is that, "except in connection with an appeal from a final judgment or decree, a party to a suit may not review upon appeal an order fining or imprisoning him for the commission of a civil contempt." *Fox* v. *Capital Co.,* 299 U. S. 105, 107, and cases cited. Compare *Lamb* v. *Cramer,* 285 U. S. 217. On the other hand, if the contempt is criminal, it may be directly reviewed. *Union Tool Co.* v. *Wilson,* 259 U. S. 107. It has been held that where the contempt is both civil and criminal, the criminal procedure governs for purposes of review so that there may be immediate review of both the part that is civil and the part that is criminal. *Union Tool Co.* v. *Wilson, supra,* at 111; *Nye* v. *United States,* 313 U. S. at 42–43.

[36] There as here the contempt proceedings were entitled and conducted as collateral to civil litigation between the parties and the order for contempt had been grounded upon disobedience to a restraining order issued in the course of the litigation, conduct which would have sustained either civil or criminal penalty. The Court of Appeals had held the proceeding criminal. But this Court held it to be civil since it was collateral, not an independent suit at law to vindicate the public interest. Hence, it followed that the criminal penalty could not stand. Neither the Norris-LaGuardia Act nor the War Labor Disputes Act was then in force.

tally erroneous as if in an action of 'A. vs. B. for assault and battery', the judgment entered had been that the defendant be confined in prison for twelve months." 221 U. S. at 449.

Not only must the punishments be kept separate and distinct.[37] This must be done with the entire proceedings.[38] Punishment and civil relief must be correlated with the character of the proceeding. Procedural rights not only in matters of practice,[39] but in others "which in-

[37] Throughout the opinion the Court insisted the two forms of relief are altogether incompatible not only for interchangeability between the two types of proceeding, but necessarily for commingling in indistinguishable conglomeration. Imprisonment as penalty for criminal contempt could be imposed for fixed terms, but in civil contempt this could not be done, the court's power being limited to remedial or coercive imprisonment, that is, until the person convicted should comply with the court's order. So also with fines, which in civil contempt can be no more in amount than is commensurate with the injury inflicted or is necessary to secure compliance and must be contingent, whereas the limitation requiring correlation to the amount of injury does not apply to fines in criminal proceedings. 221 U. S. at 442–444, 449. The same distinction applies as to the payment of costs. P. 447. See Part IV.

As will appear, this distinction is of paramount importance in this case. And so it was in the *Gompers* case, for the main cause had been settled, and the Court held this required not only reversal, but dismissal of the contempt proceeding, which would not have been true in one for criminal contempt. 221 U. S. at 451–452.

[38] As with the factor of relief, the opinion throughout uses alternative, not conjunctive, language concerning the two types of proceedings. Civil contempts, it said, "are between the original parties and are instituted and tried as part of the main cause. But on the other hand, proceedings at law for criminal contempt are between the public and the defendant, and are not part of the original cause." 221 U. S. at 445. See also p. 446.

[39] For example, most frequently perhaps the methods and times for securing appellate review, which at the time of the *Gompers* decision included whether the case could be reviewed by writ of error or appeal. 221 U. S. at 444; cf. *Bassette* v. *Conkey,* 194 U. S. 324. See note 40; see also note 35.

volve substantial rights and constitutional privileges,"[40] are so distinct and in some instances contradictory that "manifestly" they cannot be intermingled. Nor can those applicable in criminal proceedings be disregarded when criminal penalty is sought. Not only such matters as the privilege against self-incrimination, the presumption of innocence, the necessity for proof beyond a reasonable doubt,[41] the allowance of costs, the appropriate mode of review[42] with attendant limitations of time and other differences, require this. What is most important, because the application and observance of all these rights and others depend upon it, is that the person charged is entitled to know from the beginning, not merely at the end or some intermediate stage,[43] in which sort of proceeding he is involved.

This, the Court said, "is not a mere matter of form, for manifestly every citizen, however unlearned in the law, by a mere inspection of the papers in the contempt proceedings ought to be able to see whether it was insti-

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[40] "The question as to the character of such proceedings has generally been raised, in the appellate court, to determine whether the case could be reviewed by writ of error or on appeal. *Bessette* v. *Conkey*, 194 U. S. 324. But it may involve much more than mere matters of practice. For, notwithstanding the many elements of similarity in procedure and in punishment, there are some differences between the two classes of proceedings which involve substantial rights and constitutional privileges. Without deciding what may be the rule in civil contempt, it is certain that in proceedings for criminal contempt the defendant is presumed to be innocent, he must be proved to be guilty beyond a reasonable doubt, and cannot be compelled to testify against himself. *Boyd* v. *United States*, 116 U. S. 616; *United States* v. *Jose*, 63 Fed. Rep. 951; *State* v. *Davis*, 50 W. Va. 100; *King* v. *Ohio Ry.*, 7 Biss. 529; *Sabin* v. *Fogarty*, 70 Fed. Rep. 482; *Drakeford* v. *Adams*, 98 Georgia 724." 221 U. S. at 444.

[41] See note 40.

[42] See notes 35, 37, 39.

[43] Cf. note 40.

tuted for private litigation or for public prosecution. . . . He should not be left in doubt as to whether relief or punishment is the object in view. He is not only entitled to be informed of the nature of the charge against him, but to know that it is a charge and not a suit. *United States* v. *Cruikshank,* 92 U. S. 542, 549." 221 U. S. at 446.

This rule has now been incorporated also in Rule 42 (b) of the Federal Rules of Criminal Procedure,[44] and was applicable in this case. By the terms of that rule the charge of criminal contempt was required to be "prosecuted on notice" and it was further commanded that the notice state "the essential facts constituting the criminal contempt charged *and describe it as such,*" which was not done here. The rule was adopted to outlaw "the frequent confusion between civil and criminal contempt proceedings," following immediately a suggestion made in *McCann* v. *New York Stock Exchange,* 80 F. 2d 211.[45]

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[44] "A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. . . ." Rule 42 (b), Federal Rules of Criminal Procedure.

[45] Judge L. Hand's opinion in the *McCann* case reads in part as follows: ". . . The respondent will often find it hard to tell whether the prosecution is not a remedial suit, undertaken on behalf of the client. This can be made plain if the judge entered an order in limine, directing the attorney to prosecute the respondent criminally on behalf of the court, and if the papers supporting the process contain a copy of this order or alleging its contents correctly. We think that *unless this is done the prosecution must be deemed to be civil and will support no other than a remedial punishment.* Nothing of

See also *Nye* v. *United States*, 313 U. S. 33, 42–43. But it flatly incorporates the effect of the decision in the *Gompers* case, *supra*.

The language used by the Court was language of the Constitution, reinforced by citation of the *Cruikshank* case. Careful as it was about expressly overruling prior decisions [46] where the Sixth Amendment's requirement [47] had not been observed, there can be no doubt that the Court was announcing for the future that the constitutional requirement must be complied with. And the result in the case itself accorded with what this view required.[48]

One who does not know until the end of litigation what his procedural rights in trial are, or may have been, has

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the sort was done here, and the order must be reversed. . . ." (Emphasis added.) 80 F. 2d 211, 214–215.

The possibilities of confusion are multiplied when the contempt is instituted in a suit in which the United States is a party, since the United States may bring civil as well as criminal contempt proceedings. *McCrone* v. *United States*, 307 U. S. 61.

[46] The Court said: "Inasmuch, therefore, as proceedings for civil contempt are a part of the original cause, the weight of authority is to the effect that they should be entitled therein. But the practice has hitherto been so unsettled in this respect that we do not now treat it as controlling, but only as a fact to be considered along with others, as was done in *Worden* v. *Searle*, 121 U. S. 25, in determining a similar question." 221 U. S. at 446.

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

[48] Not only in the ruling that reversal was required for the imposition of the criminal penalty in the proceeding held to be civil, but also in the order for dismissal on the ground that the cause, including the contempt phase, had become moot. See note 37 *supra*.

no such rights. He is denied all by a hide-and-seek game between those that are criminal and those that are civil. The view which would seem to be the only one consistent with the whole spirit of the Constitution, and with the nature of our free institutions, is that all of the constitutional guaranties applicable to trials for crime should apply to such trials for contempt, excepting only those which may be wholly inconsistent with the nature and execution of the function the court must perform.[49] As has been said, courts in performing this function are not above the Constitution; rather they are empowered to perform it in order to make the Constitution itself operative.[50] Accordingly, not the least but the greatest possible application of it to this phase of their work is the only rule consistent with their place in the constitutional scheme. *In re Michael*, 326 U. S. 224, 227.

Hence, whatever may be true of indictment and jury trials, I see no compelling reason whatever for not applying the other limitations of the Sixth Amendment. None of them is inconsistent with the due and proper performance of the court's function in criminal contempt. Some at the least are applicable by virtue of the due process guaranty of the Fifth Amendment. "Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable oppor-

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[49] Cf. *In re Michael*, 326 U. S. 224, 227; dissenting opinion of Holmes, J., in *Toledo Newspaper Publishing Co.* v. *United States*, 247 U. S. 402, 422; *Michaelson* v. *United States*, 266 U. S. 42, 67: "The only substantial difference between such a proceeding as we have here [criminal contempt], and a criminal prosecution by indictment or information, is that in the latter the act complained of is the violation of a law, and, in the former, the violation of a decree. In the case of the latter, the accused has a constitutional right of trial by jury; while in the former he has not."

[50] See *Ex parte Hudging*, 249 U. S. 378, 383, quoted in note 30 *supra*.

tunity to meet them by way of defense or explanation. We think this includes the assistance of counsel, if requested, and the right to call witnesses to give testimony, relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed." *Cooke* v. *United States*, 267 U. S. 517, 537. Only one case, apart from those involving indictment or jury trial, has held the Sixth Amendment inapplicable in such proceedings.[51] Whether or not that case was a departure from our long established tradition that in criminal proceedings the defendant is entitled to be confronted with the witnesses against him, other departures should not be made.

Surely the rights to a speedy and public trial, to have compulsory process for obtaining witness in his favor, to have the assistance of counsel for his defense, and, as the *Gompers* case held, to be informed of the *nature* as well as the cause of the accusation, cannot be denied in our system to any person charged with crime, with the single exception of contempts committed in the immediate presence of the court by way of interference with the proceedings. Those guaranties are in no way inconsistent with the court's proper and complete discharge of its function in contempt. And they would seem to be essential to any conception of a fair trial as the Fifth Amendment's due process clause comprehends this.

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[51] *Blackmer* v. *United States*, 284 U. S. 421, 440. The ruling was first made in *Myers* v. *United States*, 264 U. S. 95, 104–105, in connection with a statutory venue problem relating to judicial districts and divisions which is correlative constitutionally to the right of jury trial. The ruling was reasserted in *Ex parte Grossman*, 267 U. S. 87, 117, which held that the pardoning power extended to criminal contempts. In the *Grossman* case the statement was obviously dictum. In the *Myers* case it was dictum as to all guaranties except perhaps that of trial in the district where the crime was committed, a guaranty as stated above correlated to jury trial.

When the assertion and securing of all other rights depends upon one, that one is the core of all. Here the right "to know that it was a charge, and not a suit" comprehended all other procedural rights in the trial and appellate courts. Without this, none could be asserted or maintained. The denial of that right, deferring it until the decision here is handed down, is in my opinion not only a denial of all. It is a violation both of the Constitution and of Rule 42 (b).

But we are told that this, and all that followed or may have followed from it, make no difference because there was no prejudice. There are at least two answers. This Court has held that the denial of constitutional guaranties in trials for crime is in itself prejudice. *Kotteakos* v. *United States*, 328 U. S. 750, 765, and cases cited in n. 19. The other, there was prejudice and in the most important thing beyond knowing the nature of the proceeding in advance of trial, namely, in the penalty itself.

IV.

Not only was the penalty against the union excessive, as the Court holds. Vice infected both "fines" more deeply. As the proceeding itself is said to have been both civil and criminal, so are the two "fines." Each was imposed in a single lump sum, with no allocation of specific portions as among civil damages, civil coercion and criminal punishment. The Government concedes that some part of each "fine" was laid for each purpose. But the trial court did not state, and the Government has refused to speculate, how much was imposed in either instance for each of those distinct remedial functions.

This was in the teeth of the *Gompers* and other previous decisions here. The law has fixed standards for each remedy, and they are neither identical nor congealable. They are, for damages in civil contempt, the amount of injury

proven and no more, *Gompers* v. *Buck's Stove & R. Co.*, *supra*, at 444; for coercion, what may be required to bring obedience and not more, whether by way of imprisonment or fine; [52] for punishment, what is not cruel and unusual or, in the case of a fine, excessive within the Eighth Amendment's prohibition. And for determining excessiveness of criminal fines there are analogies from legislative action which in my opinion are controlling.[53]

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[52] As stated in note 37, coercive relief is civil in character, *Gompers* v. *Buck's Stove & R. Co.*, 221 U. S. 418, 442, the decree being when imprisonment is imposed that the defendant stand committed unless and until he performs the act required by the court's order. When this is done the sentence is discharged, for the defendant carries the keys of his prison in his own pocket. *In re Nevitt*, 117 F. 448, 461. The limitation is a corollary of the civil character of the remedy. This forbids imposition of fixed-term sentences for coercive purposes. *Gompers* v. *Buck's Stove & R. Co.*, *supra*, although they have "incidental" coercive effects. *Id.*, at 443.

The purpose and character of the relief, not its particular form, determine its limits. *Id.*, at 443, citing *Doyle* v. *London Guarantee Co.*, 204 U. S. 599, 605, 607. Hence, when a fine is used in substitution for coercive imprisonment, it also must be contingent, giving opportunity for compurgation. Unless this is done, the fine takes on punitive character. *Doyle* v. *London Guarantee Co.*, *supra*.

[53] It is in defining the nature and character of criminal penalties that legislative judgment and, within the authority it confers, the judgment of the trial court rather than appellate courts have the widest range. Legislative experience and judgment in this field therefore furnish a measure entitled to great and in some instances I think conclusive weight for consideration of the allowable range of punishment, as such, in criminal contempts where the penalty is undefined by statute.

The only crime for which the amount of the fine has no maximum is treason, where the fine authorized is not less than $10,000. 18 U. S. C. § 2. For rescue of one convicted of a capital crime while going to or during execution the fine may be not more than $25,000. 18 U. S. C. § 248. Maximum fines of $20,000 are set for offering a bribe to a judicial officer and for acceptance of a bribe by a judge. 18 U. S. C. §§ 237, 238. The same maximum is set for mailing matter with intent to increase weight in order to increase the compensation

The Government concedes that the Eighth Amendment's limitation applies to penalties in criminal contempt; and that in civil contempt the damages awarded cannot exceed the proven amount of injury. It also concedes, as I understand, that purely coercive relief can be no greater than is necessary to secure obedience. But in its view there was no necessity here for allocation of specific amounts in order to comply with these distinct standards. Rather punishment and damages may be lumped with a third undefined amount for civil coercion; and the whole mass sustained, without reference to the constituent elements or any of the established standards for measuring them, other than by over-all application of the Eighth Amendment's limitation to the mass. And in this view it maintains neither "fine" is excessive.

Obviously, however, when all these distinct types and functions of relief are lumped together, in a single so-called "fine," none of the long established bases for measurement can be applied, for there is nothing to which they can apply. We can only speculate upon what portion of each "fine" may have been laid to compensate for damages, what for punishment, and what, if any,[54] for civil coercion.

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of a railroad mail carrier. 18 U. S. C. § 358. In some cases of embezzlement and like crimes, the fine may be the amount embezzled, *e. g.*, 18 U. S. C. § 173, and in one instance twice that amount. 18 U. S. C. § 172. But ordinarily the maximum allowed by Congress has been $10,000, and often it is less.

Moreover, where Congress itself has fixed a maximum fine for criminal punishment of the act held to be a contempt, that judgment would seem to furnish a standard to be applied in the contempt proceeding. See *In re Michael*, 326 U. S. 224, 227. In this case the War Labor Disputes Act authorized a fine of not over $5000 or imprisonment for not over one year, or both. 50 U. S. C. App. § 1506 (b).

[54] The fines in this case were flat fines imposed absolutely, without contingency for compurgation or otherwise. The court acted on the Government's recommendation, which as to the union was made on the basis of $250,000 a day for the fourteen days elapsed after the restraining orders issued and the violations occurred. No part of the

Moreover, the District Court made no findings whatever concerning the amount of civil damages sustained, even if it could be assumed that there was evidence to sustain such findings.[55] And on the record none of the "fine" was made contingent, affording an opportunity for compurgation, as is required for coercive penalties.[56]

It follows that we have no basis except our own speculative imagination by which to determine whether the so-called "fines," or either of them, are excessive as damages, or indeed as coercive relief looking to the future, or as penalty for past crime.

In this state of things, it is utterly impossible to perform our function of review in the manner heretofore required, even within the broad limits prescribed for cases of civil and criminal contempt. This commingling of the

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fine was laid contingently upon future conduct. Both penalties therefore would seem to be strictly criminal, or criminal combined with civil damages for past conduct, not coercive in the sense of coercive relief as contemplated in the decisions, see note 52, although the amounts fixed for each fine gave it "incidental" coercive effect in the popular sense. *Ibid.*

[55] The Government's asserted loss in revenues, chiefly relied on for this purpose, was not only highly speculative rather than proven in amount. It was injury which would have followed from the strike had it arisen before or after seizure. Such damages may result from any strike whether the Government or another is "employer," and would seem to be both speculative and indirect within the rule forbidding the award of such damages. *Hadley* v. *Baxendale*, 9 Ex. 341.

[56] See notes 54, 57. The order for coercive fines reads, by analogy to the order for coercive imprisonment, cf. note 52, that, unless there is obedience to the order of the court, the fine shall be paid on or before a day certain, in default of which the defendant shall be imprisoned until it is paid. See *Doyle* v. *London Guarantee Co.*, 204 U. S. 599, 602. In the case of corporations or unincorporated associations, the default provision is either that the responsible officers be imprisoned, *Parker* v. *United States*, 126 F. 2d 370, 379, or perhaps that execution issue against the contemnor's property. See *United States* v. *Ridgewood Garment Co.*, 44 F. Supp. 435, 436. Compare Rev. Stat. § 1041, 18 U. S. C. § 569, with 38 Stat. 738, 28 U. S. C. § 387.

various forms of relief, like that of the proceedings themselves, deprives these contemnors of any possibility for having the scope of the relief given against them measured according to law.

That is no insubstantial deprivation. When hybrid proceedings can produce hybrid penalties, concealing what is for punishment and what remedial, what criminal and what civil, and in the process can discard constitutional procedural protections against just such consequences, as convenience or other wholly discretionary impulse may command, then indeed to the extent we allow this will we have adopted the continental tradition of the civilians and rejected our own. No case in this Court heretofore has ever sustained such conglomerate proceedings and penalties.[57]

That the Government is complainant here, both as "employer" seeking remedial relief and in sovereign capacity [58] seeking to vindicate the court's authority by criminal penalty, does not nullify all these long established limitations or put the courts wholly at large, limited by nothing except their unconfined discretion as to the scope

[57] See the opinion of the Court, 329 U. S. —, —, n. 74. Only in rare instances have other federal courts, after consideration, done so. See *Kreplik* v. *Couch Patents Co.*, 190 Fed. 565. See also the discussion, by way of dictum, in *Hendryx* v. *Fitzpatrick*, 19 Fed. 810, 811, 813. In still other instances the two types of contempt have been mingled without discussion. See *Chicago Directory Co.* v. *United States Directory Co.*, 123 Fed. 194. And see *Wilson* v. *Byron Jackson Co.*, 93 F. 2d 577, dismissing for jurisdictional reasons an appeal from an order adjudging the appellants guilty of civil and criminal contempt.

[58] The two capacities are distinct, not identical. Each, it is true, may be exercised ultimately in the public interest. But if in the capacity of temporary "employer" the Government is to have the benefits of that status, it should be subject also to its limitations except as Congress otherwise provides. To jumble the two capacities as is done here is only to nullify the rights in trial and remedy of employees and others.

and character of the relief allowable. Power there is to take adequate measures when violation is clearly shown and adequate proof is made to sustain them. For proven violation, criminal penalty within the Eighth Amendment's limits as we would measure similar impositions placed by Congress, at the most; for damages proven and found, civil award commensurate with the finding; and for coercion, civil relief by way of imprisonment or "fine," but in either case contingent only, not final, giving opportunity for compurgation and for termination, on its being made, of further penalty for the future.

These are the limitations the law has prescribed. They apply equally when the Government is complainant, and whether in one capacity or the other, or both, as when others are.[59] They cannot be dispensed with, separately or by conglomerating all into a single indiscriminate lump, at the suit of the Government or another, in this case or for others. To permit this would be to throw overboard the limitations prescribed by law and make the courts purely discretionary arbitrators of controversies. That cannot be done in our system.

The Court seemingly recognizes this, in part, in the revision it makes of the District Court's penalties. Lewis' fine is affirmed in amount but wholy changed in character. Instead of composite relief as the District Court made it, the Court makes that fine wholly a criminal penalty, thus in effect increasing the amount of his criminal imposition. The union's fine, though held excessive and "reduced," by what standard is not apparent, is replaced by a flat criminal fine of $700,000 plus a contingent penalty of $2,800,000 said to be entirely for civil coercion, although the

[59] The limitations upon criminal contempt, procedural and remedial, always apply to the Government, for it alone can bring that proceeding. It cannot defeat them by mingling that proceeding and relief with civil ones, merely by virtue of being also the complaining civil litigant.

strike was ended in December. Any award for civil damages allegedly sustained is apparently eliminated.

The Court thus purports to make separate the distinct items of relief commingled in the District Court's action. But in doing so, in my opinion, it wholly disregards the established standard for measuring criminal fines and its own as well as the District Court's function relating to them. If Lewis and the union had been convicted on indictment and jury trial in a proceeding surrounded by all the constitutional and other safeguards of criminal prosecution for violating the War Labor Disputes Act, the maximum fines which could be applied by that Act's terms would be $5,000 for each. In addition, Lewis could have been imprisoned for a year.[60]

In my opinion, when Congress prescribes a maximum penalty for criminal violation of a statute, that penalty fixes the maximum which can be imposed whether the conviction is in a criminal proceeding as such for its violation or is for contempt for violating an order of court to observe it temporarily. If the fine or other penalty in such a case can be multiplied twice or any other number of times, merely by bringing a civil suit, securing a temporary restraining order and then convicting the person who violates it of criminal contempt, regardless of the order's validity and of any of the usual restraints of criminal procedure, the way will have been found to dispense with substantially all of those protections relating not only to the course of the proceedings but to the penalty itself.

But it is in relation to the flat criminal fine of $700,000 against the union that the Court's disregard of the constitutional and other standards is most apparent. By what measuring rod this sum has been arrived at as the appropriate and lawful amount, I am unable to say, unless indeed it is simply by a rough estimate of what the union should be forced to pay on all counts. Never has a crim-

[60] See note 53 *supra*.

inal fine of such magnitude been heretofore laid and sustained, so far as I am able to discover. And only for treason, with one other possible exception,[61] has Congress authorized one so large. The Court's enumeration of factors to be taken into account indicates expressly, as I read the opinion, that one is the coercive effect of the imposition for the future, though it is thoroughly settled that in contempt criminal punishment is to be laid only for past conduct.[62] *Gompers* v. *Buck's Stove & R. Co., supra,* and authorities cited.

Thus, the Court in effect imposes double coercive penalties, in view of the additional contingent award of $2,800,000 for that specific and sole purpose. I think the criminal fine of $700,000 not only constitutionally excessive, far beyond any heretofore sustained for violation of any statute or order of court. It is also an unlawful commingling of civil coercive and criminal penalties, without the essential contingent feature in the coercive phase, under our prior decisions.

Moreover, it is the District Court's function, not ours, in the first instance to fix the amounts of criminal fines. In equity proceedings for coercive relief, appellate courts including this one have power to revise and fix awards for such purposes, and if damages also are sought to review amounts awarded for this purpose for consistency with the proof. *Gompers* v. *Buck's Stove & R. Co., supra.* But in a criminal proceeding which is at law even in contempt, *ibid.,* our function is not in the first instance to fix the fines ourselves. That function is the District Court's. *Ibid.* We can only determine whether those

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[61] *Ibid.*

[62] The opinion states: "In imposing a fine for criminal contempt, the trial judge may properly take into consideration . . . the necessity of effectively terminating the defendant's defiance as required by the public interest. . . ." 330 U. S. —, —.

imposed by it are excessive under the Eighth Amendment.

In its revision of the penalties therefore the Court in my opinion not only fails to unscramble the coercive and criminal elements, as the prior decisions here require to be done.[63] It imposes grossly excessive criminal penalties, determined in amount by wholly arbitrary estimate related to no previously established standard legislatively or judicially fixed. And in doing so, it usurps the District Court's function. All this flows in part at least from its basic error, which is its failue to follow the rule of the *Gompers* and other cases that not only civil and criminal penalties, but also civil and criminal proceedings are altogether different and separate things, and under the Constitution must be kept so.

Much more is involved in this controversy than the issues which have been discussed. The issues in the main suit have not been determined and it would be beyond our function to intimate opinion concerning them now. But beyond this controversy as a whole lie graver questions still. They involve opposing claims concerning the right to strike and the power of the Government, as against this, to keep the nation's economy going. Those are indeed grave matters.

No right is absolute. Nor is any power, governmental or other, in our system. There can be no question that it provides power to meet the greatest crises. Equally certain is it that under "a government of laws and not of men" such as we possess, power must be exercised according to law and government, including the courts, as well as the governed, must move within its limitations.

[63] The statement in the *Gompers* opinion, 221 U. S. at 443, that criminal penalties have incidental coercive effects and civil ones incidental penal effects, was not intended to contradict its ruling that criminal penalties cannot be imposed in civil contempt proceedings or therefore commingled indistinguishably.

This means that the courts and all other divisions or agencies of authority must act within the limits of their respective functions. Specifically it means in this case that we are bound to act in deference to the mandate of Congress concerning labor injunctions, as in judgment and conscience we conceive it to have been made. The crisis here was grave. Nevertheless, as I view Congress' action, I am unable to believe that it has acted to meet, or authorized the courts to meet, the situation which arose in the manner which has been employed.

No man or group is above the law. All are subject to its valid commands. So are the government and the courts. If, as I think, Congress has forbidden the use of labor injunctions in this and like cases, that conclusion is the end of our function. And if modification of that policy is to be made for such cases, that problem is for Congress in the first instance, not for the courts.

MR. JUSTICE MURPHY joins in this opinion.

The Chief Justice
from
Rutledge, J.
3/5/47 recirc.
changes marked,
partic. pp 40-43.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 and 811.—October Term, 1946.

The United States of America, Petitioner, 759 *v.* United Mine Workers of America, an Unincorporated Association.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.
The United States of America, Petitioner, 760 *v.* John L. Lewis, Individually and as President of the United Mine Workers of America.	
United Mine Workers of America, an Unincorporated Association, Petitioner, 781 *v.* The United States of America.	
John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 782 *v.* The United States of America.	
United Mine Workers of America, an Unincorporated Association, and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioners, 811 *v.* The United States of America.	

[March —, 1947.]

Mr. Justice Rutledge, dissenting.

The reasons for my conclusions in this case may be stated in part by reference to other opinions which have

been filed. So far as possible therefore I shall follow that course, setting forth independently only what is essential to make my position plain.

A preliminary word may be appropriate. This case became a *cause célèbre* the moment it began. No good purpose can be served by ignoring that obvious fact. But it cannot affect our judgment save only perhaps to steel us, if that were necessary, to the essential and accustomed behavior of judges.[1] In all cases great or small this must be to render judgment evenly and dispassionately according to law, as each is given understanding to ascertain and apply it.

No man or group is above the law. Nor is any beyond its protection. *In re Yamashita*, 327 U. S. 1, dissenting opinion, 41. These truths apply equally to the Government. When its power is exerted against the citizens or others in the nation's courts, those tribunals stand not as partisans, but as independent and impartial arbiters to see that the balance between power and right is held even. In discharging that high function the courts themselves, like the parties, are subject to the law's majestic limitations. We are not free to decide this case, or any, otherwise than as in conscience we are enabled to see what the law commands.

MR. JUSTICE FRANKFURTER has shown conclusively, I think, that the Norris-LaGuardia Act applies to this situation. But in my view the legislative history he marshals so accurately and cogently dictates a conclusion beyond

[1] "Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend." Holmes, J., dissenting, in *Northern Securities Co.* v. *United States*, 193 U. S. 197, 400–401.

the one he reaches. It is that the War Labor Disputes Act of 1943 not only confirms the applicability of the earlier statute, but itself excludes resort to injunctive relief for enforcement of its own provisions in situations of this sort.

That Act expressly provides the remedies for its enforcement. Beyond seizure of plants, mines and facilities for temporary [2] governmental operation, they are exclusively criminal in character.[3] They do not include injunctive or other equitable relief. Nor was the omission unintentional or due to oversight. It was specific and deliberate.

The Senate thoroughly considered and debated various proposals for authorizing equity to intervene in labor disputes, one by the Act's sponsor in that body. Positively,

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[2] "*Provided*, That whenever any such plant, mine, or facility has been or is hereafter so taken by reason of a strike, lock-out, threatened strike, threatened lock-out, work stoppage, or other cause, such plant, mine, or facility *shall be returned to the owners thereof as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency thereof prevailing prior to the taking of possession thereof. . . .*" War Labor Disputes Act § 3 [Act of June 25, 1943, c. 144, 57 Stat. 163, 50 U. S. C. App. (Supp. V) 1501].

[3] SEC. 6 (a) Whenever any plant, mine, or facility is in the possession of the United States, *it shall be unlawful for any person* (1) *to* coerce, instigate, *induce*, conspire with, *or encourage any person to interfere, by* lock-out, *strike*, slow-down, or other interruption, *with the operation* of such plant, mine, or facility, *or* (2) *to aid* any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment.

"(b) Any person who willfully violates any provision of this section shall be subject to a fine of not more than $5,000, or to imprisonment for not more than one year, or both." War Labor Disputes Act of 1943, § 6.

repeatedly and unwaveringly it rejected all of them. They were likewise rejected in conference, where the Senate's view prevailed over that of the House. The latter body had not been inattentive to the problem. It sought and failed to secure the very thing this Court now says, in effect, was included.[4] That issue and that policy were indeed the main thrust and focus of the legislative struggle, and the outcome was not negative; it was positive and conclusive against using or giving the equitable remedies.

Surely we have not come so far toward complete inversion of legislative history as to write out of the law the views concerning a matter of such major policy held by the chamber which prevailed at the final stage of enactment and to write into the law diametrically opposing views of another chamber which yielded at that time. The case, as MR. JUSTICE FRANKFURTER demonstrates beyond any doubt, cannot be one where inattention, oversight or inaction may explain or give significance to what was done by the House of Representatives. That body was defeated, not simply silent, in the outcome. Willingly or otherwise, it acquiesced in the Senate's policy of refusing to authorize injunctive relief, and in doing so joined formally and effectively in the final act which made that policy law.

This means to me that Congress, in that action, did not simply confirm the Norris-LaGuardia Act's policy or leave it untouched with respect to situations within the War Labor Disputes Act's coverage. It means that Congress was not departing from or nullifying that policy. Rather by the later Act Congress adopted the same policy, the long prevailing national policy, for those situations.

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[4] The issue is not avoided, nor is the effect of final legislative rejection nullified, by the easy device of resting the power said to exist upon common law rules of statutory construction which, if otherwise pertinent, were in the very teeth of Congress' positive refusal to confer the power after the fullest and most attentive consideration. That device only conceals the true issue. See also note 11.

The Senate, and at the end the Congress, were not declining expressly to authorize labor injunctions only to turn squarely about and nullify that refusal in the same breath, merely by virtue of the fact that the employees of seized plants necessarily were made subject temporarily to ultimate governmental operating direction and control.[5] We cannot attribute to Congress an intent so duplicitous. Thus to construe the Act not only would bring the provision for temporary control into collision with its remedial provisions as the history shows they were intended to apply. It would be to find Congress guilty of using a devious method for achieving indirectly exactly the thing it expressly declined to do. The words "governmental employee," "employee for this purpose" or "status of employee for the time being," none of which appear in the statute, cannot be given effect consistently with our function to write into the Act, by judicial interpolation, remedial provisions which Congress flatly and finally declined to incorporate.

Whether Congress acted wisely in this refusal is not our concern. But it is not irrelevant to the Act's meaning, purpose and effect that there were good reasons, indeed strong ones, for Congress to continue to follow the Norris-LaGuardia Act's policy rather than break away from it

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[5] Seizure without such ultimate control, of course, would have been only one-sided, halfway seizure, operative only against management and owners. But seizure with such control did not require or mean that the control was to be exercised by labor injunctions. There was, and is, no inconsistency whatever between conferring the one power and denying the other. For this is exactly what Congress has done with reference to all plants not subject to the seizure power. Besides imputing to Congress the purpose to do with one hand what the other denied was being done, the identification of these two very distinct things serves only to confuse and make obscure the real question. This is simply whether Congress intended to abrogate for seized plants or to continue in force the established policy against labor injunctions as a method of exercising the powers of ultimate control conferred upon the Government.

at that crucial time. Under the statute practically every industrial or mining facility, together with many of transportation,[6] was subject to seizure and governmental operation. Introducing the labor injunction into the Act's structure therefore would have been tantamount to repeal of the Norris-LaGuardia Act for the duration of the emergency powers, since seizure was authorized whenever the President should find, after investigation, and proclaim that there was an interruption of operations "as a result of a strike or other labor disturbance." § 3. Ready means thus would have been made available, if such had been the statute's purpose, for suspending the Norris-LaGuardia policy and provisions in any case where they might become operative.

Congress was thoroughly familiar with the history and effects of injunctions in labor disputes, with the long settled national policy against them, and with the universal abhorrence in the ranks of labor, however otherwise divided, toward them. In view of all these things Congress well may have felt and I think did feel, as my brother's recital of the history shows, that it was both unnecessary and unwise, perhaps would even be harmful to furtherance of the war effort, in substance to repeal the Norris-LaGuardia policy for the duration of the war emergency and thus to resurrect, in that critical situation, the long disused instruments that Act had outlawed.

It is important in this connection that 1943, rather than 1945 or 1946, was the year in which the War Labor Disputes Act was adopted. We were then not yet over the hump of the war. But neither had we reached the peak of labor disturbances which came only after active hostilities

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[6] Section 2 (d) excludes carriers as defined in Title I of the Railway Labor Act, or carriers by air as subject to Title II of the Railway Labor Act.

ceased, more than two years later.[7] The great body of American workers was bending to the patriotic duty of peak production for war purposes. By comparison with what occurred after the fighting ended, the volume of man-hours lost was about one-tenth of the later postwar peak loss.[8] Moreover, at that time the War Labor Board, specially constituted to deal with such disturbances, was functioning with a high degree of efficiency in their settlement.[9] There was nevertheless strong feeling that labor disputes should not be allowed to interrupt war production, regardless of cause or blame. And from this arose the demand for more effective powers to deal with them.

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[7] The available statistics speak in terms of "strikes" for 1943 and "work stoppages arising from labor-management disputes" for 1945 and 1946. For 1943 13,500,529 man-days were lost through strikes. For 1945 38,025,000 man-days were lost through work stoppages, and in 1946 113,000,000 man-days were so lost. In 1943 there were 3,752 strikes. In 1945 there were 4,750 work stoppages and in 1946, 4,700. See Strikes in 1943, Bull. No. 782 U. S. Bureau of Labor Statistics; Work Stoppages Caused by Labor-Management Disputes in 1945, Bull. No. 878, U. S. Bureau of Labor Statistics; Review of Labor-Management Disputes, 1946, U. S. Bureau of Labor Statistics Release, January 11, 1947.

[8] See note 7.

[9] See Hearings before the Committee on Military Affairs of the House of Representatives on S. 796, 78th Cong., 1st Sess., 25–26. "The War Labor Board was set up to deal with industrial relations. While this Board may not have a perfect record, it has a very good record to its credit, particularly when we consider the great problems it must deal with." 89 Cong. Rec. 5339.

The number of War Labor Board cases resulting in plant seizures by the United States, so far as statistics are available, are as follows: Four cases from June 25, 1943, the date of the passage of the War Labor Disputes Act, to December 31, 1943; seventeen cases from January 1, 1944, to December 31, 1944; fifteen cases from January 1, 1945, to August, 1945. We are informed that in no instance of seizure, except the one under consideration, was a labor injunction issued at the behest of the Government.

It was in this setting and to meet the problems it had thrown up, not the later one out of which this controversy arose, that the War Labor Disputes Act was adopted. The Act was exactly what its title indicated, a measure for dealing with labor disputes in the emergency of the war. Congress, it is true, anticipated that for a limited period after the end of fighting the same emergency powers would be needed.[10] But this does not mean that those powers were shaped, or are now to be measured in scope, so as to meet all of the situations which since have arisen in the vastly changed circumstances; or that Congress intended them to be met by repealing the settled policy against injunctions in labor disputes in the sweeping manner now accomplished by the Court's decision.

On the contrary, in June of 1943, when Congress acted, neither Congress nor the nation was confronted with any such situation relating to labor disputes as arose after the termination of hostilities, or therefore with any such necessity for the most drastic measures to deal with them as have been thought required for dealing with this dispute. That fact in itself furnished the strongest basis for Congress' refusal to go the full length of its power and provide for labor injunctions in the War Labor Disputes Act. The event on the whole vindicated the congressional policy for the period mainly contemplated, namely,

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[10] Section 3 provides: *Provided further*, That possession of any plant, mine, or facility shall not be taken under authority of this section after the termination of hostilities in the present war, as proclaimed by the President, or after the termination of the War Labor Disputes Act; and the authority to operate any such plant, mine, or facility under the provisions of this section shall terminate at the end of six months after the termination of such hostilities as so proclaimed."

It may be noted that on December 31, 1946, the President by proclamation announced the end of hostilities. 12 Fed. Reg. 1. The emergency powers conferred by the Act terminate six months thereafter.

the duration of active hostilities. If it has not done so since that time, we are not at liberty to infer that Congress intended to provide, for the anticipated later interval of postwar transition, powers greater than it thought necessary for the successful prosecution of the war itself.

In view of all these considerations, I cannot believe that Congress, in effect and by indirection, was exerting its war power to the greatest possible extent or was thereby either repealing or suspending the nation's settled policy against injunctions in labor disputes. On the contrary, the conclusion is inescapable that Congress was relying exclusively upon the added powers of enforcement expressly conferred by the Act, namely, the power of seizure and the force of the criminal sanction, to accomplish the needed results.[11]

These were in themselves powerful sanctions. They carried with them the added and very great sanction of aroused public opinion which would follow not simply upon interruption of essential war production but more particularly upon such an event in any facility taken over and operated under governmental auspices.[12] In my

[11] If general common law rules of statutory construction were appropriate for criteria to determine such issues as this case presents for the meaning of the Act, certainly that rule would be equally applicable with any other which dictates that when a statute provides specific remedies adequate for enforcing its provisions those remedies alone are deemed to be made available. But in view of the legislative and other history, this case is not one to be turned, in my opinion, by such vague and conveniently selective and often, as here, contradictory canons of construction.

[12] It is this sanction upon which Congress has chosen to rely ultimately, for instance, in the Railway Labor Acts, though provision is made for preliminary resort to processes of conciliation, mediation and voluntary arbitration before the use of ultimate economic force by strike or lockout, when the sanction of public opinion comes chiefly into play. See *Brotherhood of Railway Trainmen* v. *Toledo, Peoria & W. R. R.*, 321 U. S. 50; *General Committee* v. *Missouri-Kansas-*

opinion Congress, after mature deliberation, concluded that these sanctions were adequate, and for that reason made them exclusive. In no other way can its repeated and final refusals to confer the strenuously sought equitable remedies be made consistent with the legislative and general history or be given meaning and effect. To construe the Act as permitting what Congress thus so explicitly refused to allow is to go beyond our function and intrude upon that of Congress. This we have no right or power to do. If the situation presented by the facts of this case is one which goes beyond the powers Congress has conferred for dealing with it, that is a matter for Congress' consideration, not for correction by this Court.

Accordingly, upon the specific terms of the War Labor Disputes Act itself, upon the legislative history as summarized by MR. JUSTICE FRANKFURTER, and upon the historical setting in which the statute was enacted as defining the problems it was designed to meet, together with shaping the nature and scope of the measures required to meet them, I conclude that that Act in no way impaired but on the contrary adopted and incorporated the policy of the Norris-LaGuardia Act concerning the issuance of injunctions in labor disputes.

II.

This conclusion substantially compels the further one that *United States* v. *Shipp*, 203 U. S. 563, has no valid application to the situation presented by this case.

This Court has not yet expressly denied, rather it has repeatedly confirmed Congress' power to control the jurisdiction of the inferior federal courts and its own appellate

Texas R. R., 320 U. S. 323. On the whole that policy and the sanctions provided have worked successfully to eliminate stoppages in railway transportation. And as of June, 1943, it may be fairly assumed that Congress, in declining to authorize the issuance of labor injunctions, was conscious of and chose to rely upon this accepted sanction together with the specific ones then conferred by the War Labor Disputes Act.

jurisdiction. Const., Art. III, § 2. *Ex parte McCardle*, 7 Wall. 506; *Lockerty* v. *Phillips*, 319 U. S. 182, 187, and authorities cited. See Warren, New Light on the History of the Federal Judiciary Act of 1789 (1923), 37 Harv. L. Rev. 49, 67 ff. That power includes the power to deny jurisdiction as well as to confer it. *Ibid.* And where Congress has acted expressly to exclude particular subject matter from the jurisdiction of any court, except this Court's original jurisdiction, I know of no decision here which holds the exclusion invalid, or that a refusal to obey orders or judgments contravening Congress' mandate is criminal or affords cause for punishment as for contempt.

If that were the law, the result could only be to nullify the congressional power over federal jurisdiction for a great volume of cases. And if it should become the law, for every case raising a question not frivolous concerning the court's jurisdiction to enter an order or judgment that punishment for contempt may be imposed irrevocably simply upon a showing of violation, the consequences would be equally or more serious. The force of such a rule, making the party act on pain of certain punishment regardless of the validity of the order violated or the court's jurisdiction to enter it as determined finally upon review, would be not only to compel submission.[13] It would be also in practical effect for many cases to terminate the litigation, foreclosing the substantive rights in litigation without any possibility for their effective appellate review and determination.

This would be true, for instance, wherever the substantive rights asserted or the opportunity for exercising them would vanish with obedience to the challenged order. Cf. *Ex parte Fisk*, 113 U. S. 713. The First Amendment liberties especially would be vulnerable to nullification by such control. Thus, the constitutional rights of free speech and

[13] More especially when account is taken of the vast liberty, called "discretion," which courts are said to have, and in this case are held to have, in fixing punishments for contempts. But see Part III.

free assembly could be brought to naught and censorship established widely over those areas merely by applying such a rule to every case presenting a substantial question concerning the exercise of those rights. This Court has refused to countenance a view so destructive of the most fundamental liberties. *Thomas* v. *Collins*, 323 U. S. 516. These and other constitutional rights would be nullified by the force of invalid orders issued in flat violation of the constitutional provisions securing them, and void for that reason. The same thing would be true also in other cases involving doubt, where statutory or other rights asserted or the benefit of asserting them would vanish, for any practical purpose, with obedience.

Indeed it was because these were so often the effects, not simply of final orders entered after determination upon the merits, but of interlocutory injunctions and *ex parte* restraining orders, that the Norris-LaGuardia Act became law and, as I think, the War Labor Disputes Act continued in force its policy. For in labor disputes the effect of such orders, it was pointed out officially and otherwise,[14] is

[14] "The restraining order and the preliminary injunction invoked in labor disputes reveal the most crucial points of legal maladjustment. Temporary injunction relief without notice, or, if upon notice, relying upon dubious affidavits, serves the important function of staying defendant's conduct regardless of the ultimate justification of such restraint. The preliminary proceedings, in other words, make the issue of final relief a practical nullity. . . . the suspension of strike activities, even temporarily, may defeat the strike for practical purposes and fore-doom its resumption, even if the injunction is later lifted." Frankfurter and Greene, The Labor Injunction (1930) 200–201.

"Time is the essence of the strike. Keeping the injunction alive by dilatory tactics blunts the edge of the only effective instrument that labor possesses, namely, the strike.

"The bill now before us makes it well-nigh impossible to secure a restraining order except under the well-defined and limited conditions set out in sections 7 and 8." 75 Cong. Rec. 5489.

generally not merely failure to maintain the *status quo* pending final decision on the merits. It is also most often to break the strike, without regard to its legality or any conclusive determination on that account, and thus to render moot and abortive the substantive controversy.[15]

It is not every case therefore where substantial doubt appears, concerning either the issues in the main cause or the court's jurisdiction to issue interlocutory or other orders, in which violation will bring the so-called *Shipp* doctrine into play. If that were true then indeed would a way have been found to nullify the constitutional limitations placed upon the powers of courts, including the control of Congress over their jurisdiction. Then also

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[15] *Ibid.* *Ex parte Fisk*, 113 U. S. 713, presents another clear illustration of the type of right which would be wholly nullified by general application of the alleged broad conception of the *Shipp* doctrine. There the Circuit Court, in contravention of explicit acts of Congress as this Court found, had ordered Fisk to submit to oral examination before trial in a removed civil cause, the examination to be before a justice of the court and according to procedure prescribed by state law for the state court from which the case was removed. Fisk refused to obey the order, standing upon the Circuit Court's lack of jurisdiction to enter it, was held in contempt for this, and fined $500 and ordered imprisoned until the fine was paid. He brought *habeas corpus* to secure release from the imprisonment thus imposed.

This Court held void both the order for examination and the order of commitment, as beyond the Circuit Court's jurisdiction, and granted petitioner's release from custody. The Court said: "Not only is no such power [of examination] conferred, but it is prohibited by the plain language and the equally plain purpose of the acts of Congress. . . . The Circuit Court was, therefore, without authority to make the orders for the examination of petitioner in this case, and equally without authority to enforce these orders by process for contempt." Pp. 724, 726. Had Fisk submitted, as *Shipp* is now said to require should be done, not only would the specific commands of Congress have been nullified. His right, secured by those commands, could never have been vindicated. The statutes would have been made dead letters.

the liberties of our people would be placed largely at the mercy of invalid orders issued without power given by the Constitution and in contravention of power constitutionally withheld by Congress. *Ex parte Fisk,* 113 U. S. 713; *Thomas* v. *Collins, supra.*

Indeed the *Shipp* doctrine thus broadly conceived would go far toward nullifying the historic jurisdiction of this Court and others in *habeas corpus,* for it would do this in the many situations where the cause of commitment is violation of a doubtfully valid court order and the ground asserted for release is the court's lack of jurisdiction to enter it. Thus, in this case, if the party Lewis had been imprisoned rather than fined, the broad application now made of the *Shipp* decision would dictate that he could not be released by *habeas corpus,* even though it were now held here that the restraining orders were beyond the District Court's jurisdiction to issue.[16] If that order was valid, for purposes of finally and conclusively imposing punishment in contempt, regardless of the court's want of power to issue it, this would be so whether the punishment were fine or imprisonment. And it clearly would follow in cases of criminal contempt,[17] perhaps in others, that the court's lack of jurisdiction could furnish no basis for granting relief, unless the penalty were found to be cruel and unusual or, in the case of a fine, excessive.[18]

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[16] Indeed at least one state court has held this result to follow and in his dissenting opinion in *In re Sawyer,* 124 U. S. 200, 224, Harlan, J., stated this to be his view of the law, as apparently also it was of Waite, C. J. P. 223. See *Reid* v. *Independent Union,* 200 Minn. 599, but see the dissenting opinion, 200 Minn. at 612; Collateral Attack Upon Labor Injunctions Issued in Disregard of Anti-Injunction Statutes (1938), 47 Yale L. J. 1136; *People ex rel. Sandnes* v. *Sheriff of Kings County,* 299 N. Y. Supp. 747, 478.

[17] See Part III at note —— and text.

[18] *Ibid,* at note —— and text.

I cannot believe that the historic powers of our courts in *habeas corpus* or the rights of citizens, confirmed as these have been for so long by an unbroken line of decisions,[19] have been or can be overthrown and subverted, merely by the fact that the question of the court's power to issue the order violated may be doubtful and not merely frivolous. Nor do I think the *Shipp* decision accomplished or purported to accomplish so much.

Certainly if its purpose had been to overrule the decisions so thoroughly established, and to trench so heavily upon the historic liberties they and the Constitution itself secure, some note would have been taken of that fact. So great a revolution hardly could have been wrought unanimously or without attentive recognition of what was being done. There was indeed reference in the opinion to the previous decisions. The Court stated: "It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt," citing the *Sawyer, Fisk,*

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[19] *Ex parte Rowland,* 104 U. S. 604; *Ex parte Fisk,* 113 U. S. 713; *In re Ayers,* 123 U. S. 443, 507; *In re Sawyer,* 124 U. S. 200; *In re Burrus,* 138 U. S. 586. *Thomas* v. *Collins,* 323 U. S. 516 (applying state law).

In the *Sawyer* case, *supra,* the Court said: "The case cannot be distinguished in principle from that of a judgment of the Common Bench in England in a criminal prosecution, which was *coram non judice;* or the case of a sentence passed by the Circuit Court of the United States upon a charge of an infamous crime, without a presentment, or indictment by a grand jury. *Case of the Marshalsea,* 10 Rep. 68, 76; *Ex parte Wilson,* 114 U. S. 417; *Ex parte Bain,* 121 U. S. 1." 124 U. S. at 221. Hardly can it be said that the *Sawyer* decision went on the ground that the question of jurisdiction to enter the order was not substantial, in view of the length and detail of the Court's opinion, which gave no hint of such a suggestion, and in view also of the fact that Field, J., concurred in a separate opinion and Waite, C. J., and Harlan, J., wrote separate dissents taking the position which the Court now accepts for this case. See note 16 *supra.*

and *Rowland* cases.[20] 203 U. S. at 573. But there was not the slightest suggestion, by this reference or otherwise, that the Court had any purpose whatever to impair the force of those decisions, much less to overrule them. Nor in fact was this its intent. It mentioned them only to put them aside as inapplicable to the situation before it.

The Court in *Shipp* was dealing with a situation quite different from the ones presented in the previous decisions and in this case. In none of them was the action which violated the court's order such as would have defeated its jurisdiction not only to enter the order but also to proceed with the cause before it in any manner, except to deal with the matter of contempt.[21] In them the Court was not

[20] See note 19.

[21] In *Ex parte Rowland*, 104 U. S. 604, the county commissioners' disobedience of an order commanding them to collect a certain tax did not moot the controversy, which was whether the judgment debtor, by proceeding against the proper county official, could satisfy its judgment by forcing collection of the tax. The county commissioners were not the proper officials, and the judgment debtor retained his power to proceed against the tax collector.

The disobedience of the petitioner in *Ex parte Fisk*, 113 U. S. 713, deprived the plaintiff in the suit against him of the use of his testimony but did not defeat this suit or the ability of the courts to decide whether he could be forced to submit to examination. See note 19 *supra*.

In *Ex parte Sawyer*, 124 U. S. 200, the refusal of the city officials to obey an order enjoining them from removing a police judge did not vitiate judicial power to decide the issue whether the city officials possessed the removal power. The controversy remained and, as this Court pointed out, it was determinable by mandamus or *quo warranto*.

In *Ex parte Burrus*, 136 U. S. 586, the refusal of the grandparents to give up the child upon order issued by a federal court did not destroy the power of the court, which had already been exercised, though improperly, to determine whether the child was properly in their custody or in the custody of the father.

And moreover in none of these cases did the disobdience destroy the jurisdiction of the trial and appellate courts to determine jurisdiction.

faced with the necessity for taking action to vindicate its power to hear and determine the main controversy, as well as the incidental one arising upon the validity of the interlocutory or other order. Nor is it here.

But exactly such a situation was presented in the *Shipp* case. The conduct there held to be contempt not only was in itself criminal and in violation, as it turned out, of this Court's lawful order for taking the appeal in Johnson's case. It ousted this Court altogether of jurisdiction to take any action in that cause. It rendered the cause moot, thereby putting an end to any proceedings concerning it here or elsewhere. Shipp's alleged conduct constituted therefore the most serious possible interference with the due and orderly course of administering justice. It utterly destroyed the power of all courts to act. Moreover the order violated was not made directly in contravention of an act of Congress, as was true in the *Fisk* case and, as I think, in this one. It rather was made in complete conformity with the statutes conferring authority on this Court to take jurisdiction of and hear such causes. Nothing in it violated either a congressional mandate and policy or the rights of any party.

Moreover the decision was not effective, as its doctrine is now said to be, to put Shipp to any choice of obedience on pain of certain punishment regardless of the violated order's validity or invalidity as ultimately determined on review. No such situation was presented on the facts, and no such ruling could properly have been made. Shipp had not been convicted. The case came here upon a challenge *in limine*, not after the event, made upon the pleadings in the contempt proceedings to their validity. The basis asserted was the invalidity of the order allowing the appeal in Johnson's case, for alleged want of jurisdiction of this Court to enter it.[22] That contention was rejected

[22] The order allowing appeal directed "that all proceedings be stayed and the custody of the said appellant be retained during this appeal."

and the order was held valid. It was in this connection only that the Court stated it had "jurisdiction to determine its jurisdiction" in doubtful cases. That statement was not a ruling that, regardless of the order's ultimate validity as determined on review,[23] punishment in contempt for violating it could be irrevocably imposed. It was merely a statement of the order's validity.[24] The holding was that this Court had jurisdiction to determine whether the federal courts, the Circuit Court and accord-

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[23] That is, upon review of the Circuit Court's order denying Johnson's petition for *habeas corpus*.

[24] The statement was made in response to counsel's contention that the order was void and therefore would not support a conviction for contempt. The Court rejected the premise, not the conclusion.

The basis of counsel's contention was that the Circuit Court lacked jurisdiction and therefore that this Court also lacked jurisdiction. His brief stated: "The only question, therefore, is whether Johnson's proceeding in *habeas corpus* in the Circuit Court did or did not in fact constitute a 'case that involves the construction or application of the Constitution of the United States.' If it did, this Court had appellate jurisdiction of it and should proceed to inquire whether its order has been disobeyed. If it did not, this Court had no jurisdiction of it, and should now so hold for the purposes of this proceeding. . . ."

And elsewhere counsel's brief stated: "We assume that it will hardly be contended that the mere allowance of an appeal is sufficient to give the court jurisdiction of a case which from its nature is not appealable. Such action is *pro forma* only, and as it is necessarily had in every such case the jurisdiction of the court would always be established by an *ex parte* order."

In answer to these arguments the Government brief said: "Certainly no one would challenge the jurisdiction of this Court if the Circuit Court had jurisdiction, and accordingly the defendants here deny the jurisdiction of this court simply as a corollary to their contention that the Circuit Court did not possess jurisdiction. But the jurisdiction of this court is not dependent upon contentions, and it has jurisdiction to take the case and retain it for final determination whether it turns out that the Circuit Court has jurisdiction or not."

ingly this Court also, had power to pass upon Johnson's petition for *habeas corpus*.[25]

From that ruling and from it alone the consequence followed that Shipp could be held in contempt on proof, still to be made, that he had done acts in violation of the order as thus conclusively determined to be valid by the court of last resort. This was a far cry from saying that punishment in contempt can be laid irrevocably, regardless of the outcome, on review concerning the order's validity. The Court by its ruling was not making void orders valid for purposes of punishment by way of contempt. So to expand the decision would be to ignore the facts on which it was rendered and the law it applied.

The *Shipp* decision therefore was in fact simply an application of the long established rule that punishment in contempt may be inflicted on proof of violation of a valid order of court as determined finally on review. It did not overrule, nor was it in any way inconsistent with, the long prior course of decisions or any subsequent one holding that when an order is void for want of jurisdiction it may be disobeyed with impunity pending but depending upon determination of its invalidity by appeal, *habeas corpus*, or other mode of review. It was an application, in the circumstances presented, of the settled rule that one who takes it upon himself to violate an order of court he thinks void thereby takes the risk that on review he will be sustained and, in the contrary event and only then, he will be subject irrevocably to punishment for contempt.

[25] See note 24. No argument was made that even if the Circuit Court had jurisdiction this Court did not. Thus, the statement in the opinion "But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this Court had no jurisdiction of the appeal" means "But even if the Circuit Court had no jurisdiction to entertain Johnson's petition and if *for that reason* this Court had no jurisdiction of the appeal."

In my judgment this is the rule properly applicable in this case, the only one consistent with the settled course of decision, with the commands of the War Labor Disputes Act and the Norris-LaGuardia Act, or with § 268 of the Judicial Code, 28 U. S. C. § 385. That section authorizes punishment for contempt, apart from immediate and other interferences with judicial proceedings, only for disobedience of a "*lawful* writ, process, order, rule, decree, or command of the said courts." (Emphasis added.) The section by its terms, apart from the exceptions not here applicable, limits power to punish for contempt to violations of lawful orders, thereby necessarily excluding others. Nor did it purport to make lawful for that purpose interlocutory orders issued without jurisdiction as determined finally upon review.[26] This case, unlike the *Shipp* case, in no way involves interference with any of the legal proceedings or the due course of administering justice in any sense contemplated by § 268 or by the *Shipp* decision. No court, trial or appellate, was deprived of jurisdiction or power to take any action in any of the proceedings, collateral or in the main suit, which existed at the beginning of the controversy. The order therefore falls exclusively within the concluding clause of § 268 and the power to punish for contempt on account of its violation depends, by the command of that clause, upon the order's lawful character.

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[26] Of course *habeas corpus* will not lie where the disobedience was to a lawful, but erroneous, order of a court. *Ex parte Kearney*, 7 Wheat. 38. See also *Locke* v. *United States*, 75 F. 2d 157, 159: "Error must be corrected by appeal, and cannot be tested by disobedience. . . . Wilfull disobedience of an injunction, however erroneous, issued by a court having jurisdiction while such injunction is in force unreversed constitutes contempt of court." And it is said that if an injunction is reversed on appeal on grounds other than "jurisdiction," the violator may nevertheless be punished for criminal, though not for civil, contempt. *Worden* v. *Searls*, 121 U. S. 14; *Salvage Process Corp.* v. *Acme Tank Clean Process Corp.*, 86 F. 2d 727.

Since in my opinion the order was jurisdictionally invalid when issued, by virtue of the War Labor Disputes Act and its adoption of the Norris-LaGuardia Act's policy, it follows that the violation gave no sufficient cause for sustaining the conviction for contempt. Lewis and the United Mine Workers necessarily took the risk that the order would be found valid on review and, in that event, that punishment for contempt would apply. They did not take the risk that it would apply in any event, even if the order should be found void as beyond the jurisdiction of the Court to enter. See the dissenting opinion in *Carter* v. *United States*, 135 F. 2d 858, 862. The *Shipp* case furnishes no precedent for such a view nor do I know of any other in this Court which does.[27] On the contrary that view has been long rejected, and I do not think we should disturb or depart from that settled course of decision now. See *Ex parte Rowland*, 104 U. S. 604, 617–618: "If the command of the writ [of mandamus] was in excess of jurisdiction, so necessarily were the the proceedings for contempt in not obeying." The power of the federal courts to issue stay orders to maintain the *status quo* pending appeal, like other matters affecting their jurisdiction except in the case of this Court's original jurisdiction, is subject to Congress' control. It has been exercised, in my view, to exclude such jurisdiction in cases of this character. And, that being true, I do not think either we or any other court subject to that mandate has power to punish as for contempt the violation of such an order issued in contravention of Congress' command.

[27] To be distinguished are cases in which Congress provides an adequate but limited opportunity for challenging the validity of administrative or other orders, but forecloses such opportunity when it is not taken as prescribed. See *Yakus* v. *United States*, 321 U. S. 414, cf. dissenting opinion, p. 460. That is very different from affording no opportunity whatever except by obedience. See also *United States* v. *Ruzicka*, 329 U. S. ——; *Falbo* v. *United States*, 320 U. S. 549; *Estep* v. *United States*, 327 U. S. 114; *Gibson* v. *United States*, 329 U. S. ——.

III.

The issues concerning the manner in which the contempt proceeding was conducted are in themselves of great moment, apart from the foregoing conclusions which I think are dispositive of the controversy. And the Court's rulings upon them are of such a character that I cannot accede by silence.

At times in our system the way in which courts perform their function becomes as important as what they do in the result. In some respects matters of procedure constitute the very essence of ordered liberty under the Constitution. For this reason, especially in the Bill of Rights, specific guaranties have been put around the manner in which various legal proceedings shall be conducted. They differentiate sharply between the procedures to be followed in criminal proceedings and in civil ones. These differences mark one of the great constitutional divides.[28] They separate the zone of punishment for crime, with all its odious consequences, from that of giving civil relief, where no such consequences attend, not partially but completely.

In any other context than one of contempt, the idea that a criminal prosecution and a civil suit for damages or equitable relief could be hashed together in a single criminal-civil hodgepodge would be shocking to every American lawyer and to most citizens. True, the same act may give rise to all these varied legal consequences. But we have never adopted, rather our Constitution has totally rejected the continental system of compounding criminal proceedings with civil adjudications.[29] Our tra-

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[28] *Yakus* v. *United States,* 321 U. S. 414, dissenting opinion, at 479 ff.

[29] Thus, in some civil law countries damages, as well as other penalties, are assessed in a criminal proceeding. See Schwenk, Criminal Codification and General Principles of Criminal Law in Argentina, Mexico, Chile and the United States: A Comparative Study (1942) 4

dition is exactly the contrary and few would maintain that this has had no part in bringing about the difference existing today for individual freedom here and in Europe.

I do not think the Constitution contemplated that there should be in any case an admixture of civil and criminal proceedings in one. Such an idea is altogether foreign to its spirit. There can be no question that contempt power was conferred adequate to sustain the judicial function, in both civil and criminal forms. But it does not follow that the Constitution permits lumping the two together or discarding for the criminal one all of the procedural safeguards so carefully provided for every other such proceeding.

The founders did not command the impossible. They could not have conceived that procedures so irreconcilably inconsistent [30] in many ways could be applied simultane-

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La. L. Rev. 351, 373–374. See also Goirand and Thompson, The French Judicial System and Procedure in French Courts (1919) 14; Esmein, A History of Continental Criminal Procedure (1913) 429–430.

[30] Upon the authorities, the following procedural provisions of the Bill of Rights, at least, would seem to apply to criminal contempt: The provision against double jeopardy, see *In re Bradley*, 318 U. S. 50; the provision against self-incrimination, *Gompers* v. *Buck's Stove & R. Co.*, 221 U. S. 418, 444; the provision for due process insofar as it necessitates "suitable notice and adequate opportunity to appear and to be heard," *Blackmer* v. *United States*, 284 U. S. 421; and, although because of the narrow construction given the term "in all criminal prosecutions" the Sixth Amendment protections have been said not to apply as such to criminal contempts, *Myers* v. *United States*, 264 U. S. 95, 104; *Blackmer* v. *United States*, 284 U. S. at 440, doubtless at least the provisions for "a speedy and public trial," for "compulsory process" and for the assistance of counsel are implied in the due process provision of the Fifth Amendment. But see, as to confrontation and for its bearing upon the other protections, *Blackmer* v. *United States*, *supra* at 421. And it has been held that criminal contempt proceedings may be instituted in the division of the judicial

ously. Nor was their purpose to create any part of judicial power, even in contempt, wholly at large, free from any constitutional limitation or to pick and choose between the conflicting civil and criminal procedures and remedies at will. Much less was it to allow mixing civil remedies and criminal punishments in one lumped form of relief, indistinguishably compounding them and thus putting both in unlimited judicial discretion, with no possibility of applying any standard of measurement on review.[31]

If this can be done in any case, it can be done in others. And that being true, if it can be done at all, not simply a loophole but a very large breach has been left in the wall of procedural protections thrown around the citizen's punishment for crime. For it is to be recalled that under the Court's ruling here upon the *Shipp* doctrine not merely the violation of valid judicial orders, but also the disobedi-

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district where the order was issued instead of in the division of the district where the order was disobeyed, *Myers* v. *United States*, 264 U. S. 95. It has been said that the protection against cruel and unusual punishments in the Eighth Amendment applies to criminal contempt, *United States ex rel. Brown* v. *Lederer*, 140 F. 2d 136, 138; and it would seem clearly to follow that the other protections afforded by the Amendment would also apply.

There are also protections not expressly included in the Bill of Rights which are available in criminal contempt. In proceedings for criminal contempt the defendant is presumed to be innocent and he must be proved to be guilty beyond a reasonable doubt. *Gompers* v. *Buck's Stove & R. Co.*, 221 U. S. 418, 444. And see *Ex parte Hudgings*, 249 U. S. 378: "Existing within the limits of and sanctioned by the Constitution, the power to punish for contempt committed in the presence of the court is not controlled as to modes of accusation and methods of trial generally safeguarding the rights of the citizen. This, however, expresses no purpose to exempt judicial authority from constitutional limitations, since its great and only purpose is to secure judicial authority from obstruction in the performance of its duties to the end that means appropriate for the preservation and enforcement of the Constitution may be secured."

[31] See text *infra* at note —.

ence of invalid orders issued in excess of any court's jurisdiction becomes a crime and punishable as such by summary proceedings in criminal contempt, although the substantive rights involved in the litigation are wholly civil ones. The vastly expanded area of criminal conduct under this conception would afford equally wide room for dispensing with the criminal procedural protections under the unrestricted scope, otherwise than by "judicial discretion," which the present ruling concerning criminal or criminal-civil proceedings in contempt affords.

I agree with MR. JUSTICE BLACK that our system does not comprehend a power so unconfined anywhere within its broad borders, and with his view that it is time the large confusion about this were swept away.[32] It is not

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[32] The confusion, at least as to the matter of indictments and jury trial, cf. note 33, has its origin in historical error which is exposed in Fox, The History of Contempt of Court (1927), and Frankfurter and Landis, Power of Congress over Procedure in 'Inferior' Federal Courts—A Study in Separation of Powers (1924), 37 Harv. L. Rev. 1010. "Down to the early part of the eighteenth century cases of contempt even in and about the common-law courts when not committed by persons officially connected with the court were dealt with by the ordinary couse of law, *i. e.* tried by jury, except when the offender confessed or when the offense was committed 'in the actual view of the court'." Frankfurter and Landis, *supra*, at 1042. Until 1720 "there is no instance in the common-law precedents of punishment otherwise than after trial in the ordinary course and not by summary process." *Id.*, 1046. However, Wilmot, J., in 1765, influenced by Star Chamber procedure and precedents, although the Star Chamber had been abolished in 1641, stated that it was "immemorial usage" to punish all contempts summarily. Almon's Case, Wilmot's Notes, p. 243. And although this opinion was not published until thirty-seven years later, "there is ample evidence that as a result of private communication between Wilmot and Blackstone, Wilmot's views of 1765 found their way 'both in phrase and matter' into the four volumes of the famous Commentaries published in 1769. . . ." Frankfurter and Landis, *supra*, at 1046, n. 128. Wilmot's error "has

necessary in this case to ask or decide whether all of the Constitution's criminal procedural protections thrown about all other criminal prosecutions, without suggestion of explicit exception, apply to criminal contempt proceedings. It is enough that we are sure some of them apply, as this Court has ruled repeatedly.[33] It does not matter that some of those which incontestably are applicable may not have been put in issue or preserved for review in this case.[34] The question cuts more deeply than the

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bedevilled the law of contempt both in England and in this country ever since." *Id.*, 1047.

So far as appears, there has been no research as to whether the framers of the Constitution drew their ideas about contempt from Blackstone's incorporation of Wilmot's error. See *Fox*, *supra*, at 207: "It may be that if the doctrine of *Almon's Case* was part of the common law of England when the American Constitution was established, it became the common law of the United States and part of the 'judicial power' which Congress was authorized to confer upon the Courts, but it is very doubtful whether at the date of the Constitution that doctrine did form part of the common law adopted by the United States. Mr. Justice Wilmot's undelivered judgment lay concealed until the year 1802, and, so far as is known, was not cited in an English Court until the hearing of *Burdett* v. *Abbott* in 1811. It was first cited with approval from the Bench in 1821, and was not therefore adopted as the common law of England until after the establishment of the American Constitution."

[33] Thus, although it has been consistently ruled that the rights to have the proceeding begun by indictment, U. S. Const. Amend. V, and tried by jury, Amend. VI, do not apply, *e. g.*, *Eilenberger* v. *District Court*, 131 U. S. 31; *Gompers* v. *United States*, 233 U. S. 604; *In re Debs*, 158 U. S. 564; *Blackmer* v. *United States*, 284 U. S. 421, it is equally well established that other guaranties, some of them exclusively applicable in criminal proceedings, do apply. See note 30.

[34] Defendants have not argued either in the District Court or in this Court that they are constitutionally entitled to a jury trial. And they expressly waived in open court whatever rights they had to an advisory jury. On the other hand if, as I think, the Norris-LaGuardia Act's provisions have been adopted for this and like cases, cf. Part I, § 11 of that Act secured the right of trial by jury and forbade waiver otherwise than in writing.

application of any specific guaranty. It affects the right to insist upon or have the benefit of any.

This case is characteristic of the long existing confusion concerning contempts and the manner of their trial, in that most frequently the question of the nature and character of the proceeding, whether civil or criminal, is determined at its end in the stage of review rather than as it should be and as in my opinion it must be, at the beginning. *Gompers* v. *United States,* 221 U. S. 418, 444; *Besette* v. *Conkey,* 194 U. S. 324. And this fact in itself illustrates the complete jeopardy in which rights are placed when the nature of the proceeding remains unknown and unascertainable until the final action on review. Not only is one thus placed in continuing dilemma throughout the proceedings concerning which set of procedural rights, civil or criminal, he is entitled to stand upon. He does not and cannot know until it is too late, that is, until the appellate phase is ended, whether one group or the other of appellate jurisdictional and procedural rules applies; and he may find that his right of review has been taken either prematurely or too late depending entirely on whether the appellate court finally concludes that the proceeding has been civil or criminal in character.[35] See

[35] In civil cases Rule 73 provides: "When an appeal is permitted by law from a district court to a circuit court of appeals and within the time prescribed, a party may appeal from a judgment by filing with the district court a notice of appeal." Generally, though there are exceptions, the time is three months. 28 U. S. C. § 230; *Mosier* v. *Federal Reserve Bank,* 132 F. 2d 710.

In criminal cases the Federal Rules now allow taking an appeal by filing notice of appeal as in civil cases. But an appeal must be taken by a defendant within 10 days after entry of judgment or after denial of motion for new trial. Rule 37 (a) (2).

There would seem, however, to be a question whether the new Criminal Rules are applicable to appeals from criminal contempts. In *Nye* v. *United States,* 313 U. S. 33, it was held that 28 U. S. C. § 230 rather than the Criminal Appeals Rules governed timeliness in a

Swayzee, Contempt of Court in Labor Injunction Cases (1935) 21–22.

Precisely for this reason this Court, when confronted in the *Gompers* case, *supra,* with a proceeding commingling civil and criminal features, such as we have here, refused to countenance this and held the criminal penalty of fixed terms of imprisonment to be invalid. There as here the contempt proceedings were entitled and conducted as collateral to civil litigation between the parties and the order for contempt had been grounded upon disobedience to a restraining order issued in the course of the litigation, conduct which would have sustained either civil or criminal penalty.[36] The Court of Appeals had held the proceeding criminal. But this Court held it to be civil since it was collateral, not an independent suit at law to vindicate the public interest. Hence, it fol-

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criminal contempt appeal. But the new Criminal Rules would seem to apply to criminal contempts. See Rules 42 and 54.

On certiorari, if the Rules of Criminal Procedure govern, there is also a difference. In civil cases the time for petitioning for certiorari is three months. In criminal cases the petition must be filed within thirty days after entry of judgment. Rule 37 (b) (2). Compare *Nye* v. *United States, supra,* at 42, n. 6, as to the law prior to the new Criminal Rules.

The biggest present difference between appeals in civil and criminal contempts is that, "except in connection with an appeal from a final judgment or decree, a party to a suit may not review upon appeal an order fining or imprisoning him for the commission of a civil contempt." *Fox* v. *Capital Co.,* 299 U. S. 105, and cases cited. And compare *Lamb* v. *Cramer,* 285 U. S. 217. On the other hand, if the contempt is criminal, it may be directly reviewed. *Union Tool Co.* v. *Wilson,* 259 U. S. 107. It has been held that where the contempt is both civil and criminal, the criminal procedure governs for purposes of review so that there may be immediate review of both the part that is civil and the part that is criminal. *Union Tool Co.* v. *Wilson, supra,* at 111; *Nye* v. *United States,* 313 U. S. 33.

[36] Neither the Norris-LaGuardia Act nor the War Labor Disputes Act was then in force.

lowed that the criminal penalty could not stand. The Court said:

> "There was a departure—a variance between the procedure adopted and the punishment imposed, when in answer to a prayer for remedial relief, in the equity cause, the court imposed a punitive sentence appropriate only to a proceeding at law for criminal contempt. The result was as fundamentally erroneous as if in an action of 'A. v. B. for assault and battery', the judgment entered had been that the defendant be confined in prison for twelve months." 221 U. S. at 449.

Not only must the punishments be kept separate and distinct,[37] this must be done with the entire proceedings.[38]

[37] Throughout the opinion the Court insisted the two forms of relief are altogether incompatible not only for interchangeability between the two types of proceeding, but necessarily for commingling in indistinguishable conglomeration. Imprisonment as penalty for criminal contempt could be imposed for fixed terms, but in civil contempt this could not be done, the court's power being limited to remedial or coercive imprisonment, that is, until the person convicted should comply with the court's order. So also with fines, which in civil contempt can be no more in amount than is commensurate with the injury inflicted or is necessary to secure compliance, whereas the limitation requiring correlation to the amount of injury does not apply to fines in criminal proceedings. 221 U. S. at 442–444, 449. The same distinction applies as to the payment of costs. P. 447.

As will appear, this distinction is of paramount importance in this case. And so it was in the *Gompers*, for the main cause had been settled, and the Court held this required not only reversal, but dismissal of the contempt proceeding, which would not have been true in one for criminal contempt. 221 U. S. at 451–452.

[38] As with the factor of relief, the opinion throughout uses alternative, not conjunctive, language concerning the two types of proceedings. Civil contempts, it said, "are between the original parties and are instituted and tried as part of the main cause. But on the other hand, proceedings at law for criminal contempt are between the public and the defendant, and are not part of the original cause." 221 U. S. at 445. See also p. 446.

Punishment and relief must be correlated with the character of the proceeding. Procedural rights not only in matters of practice,[39] but in others "which involve substantial rights and constitutional privileges," [40] are so separate, distinct and in some instances contradictory that "manifestly" they cannot be intermingled. Nor can those applicable in criminal proceedings be disregarded when criminal penalty is sought. Not only such matters as the privilege against self-incrimination, the presumption of innocence, the necessity for proof beyond a reasonable doubt,[41] the allowance of costs, the appropriate mode of review [42] with attendant limitations of time and other differences, require this. What is most important because the application and observance of all these distinctions and others depend upon it, is that the person charged is entitled to know from the beginning, not merely at the

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[39] For example, most frequently perhaps the methods and times for securing appellate review, which at the time of the *Gompers* decision included whether the case could be reviewed by writ of error or appeal. 221 U. S. at 444; cf. *Bassette* v. *Conkey,* 194 U. S. 324. See note 40. See also note 35.

[40] "The question as to the character of such proceedings has generally been raised, in the appellate court, to determine whether the case could be reviewed by writ of error or on appeal. *Bessette* v. *W. B. Conkey Co.,* 194 U. S. 324. But it may involve much more than mere matters of practice. For, notwithstanding the many elements of similarity in procedure and in punishment, there are some differences between the two classes of proceedings which involve substantial rights and constitutional privileges. Without deciding what may be the rule in civil contempt, it is certain that in proceedings for criminal contempt the defendant is presumed to be innocent, he must be proved to be guilty beyond a reasonable doubt, and cannot be compelled to testify against himself. *Boyd* v. *United States,* 116 U. S. 616; *United States* v. *Jose,* 63 Fed. 951; *State* v. *Davis,* 50 W. Va. 100; *King* v. *Ohio & M. R. Co.,* Fed. Cas. No. 7,800; *Sabin* v. *Fogarty,* 70 Fed. 482; *Drakeford* v. *Adams,* 98 Ga. 724." 221 U. S. at 444.

[41] See note 40.

[42] See notes 35, 37, 39.

end or some intermediate stage,[43] in which sort of proceeding he is involved.

This, the Court said, "is not merely a matter of form, for manifestly every citizen, however unlearned in the law, by a mere inspection of the papers in the contempt proceedings ought to be able to see whether it was instituted for private litigation or for public prosecution. . . . He should not be left in doubt as to whether relief or punishment is the object in view. He is not only entitled to be informed of the nature of the charge against him, but to know that it is a charge and not a suit. *United States* v. *Cruikshank,* 92 U. S. 542, 549." 221 U. S. at 446.

This rule has now been incorporated in Rule 42 (b) of the Federal Rules of Criminal Procedure,[44] and was applicable in this case. By the terms of that rule the charge of criminal contempt was required to be "prosecuted on notice" and it was further required that the notice state "the essential facts constituting the criminal contempt charged and describe it as such," which was not done here. The rule was adopted to outlaw "the frequent confusion between civil and criminal contempt proceedings" following immediately a suggestion made in *McCann* v. *New York Stock Exchange,* 80 F. 2d 211.[45]

[43] Cf. note 40.

[44] "A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States Attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. . . ." Rule 42 (b), Federal Rules of Criminal Procedure.

[45] Judge L. Hand's opinion in the *McCann* case reads in part as follows: . . . The respondent will often find it hard to tell whether the prosecution is not a remedial suit, undertaken on behalf of the

See also *Nye* v. *United States,* 313 U. S. 33, 42–43. But it flatly incorporates the effect of the decision in the *Gompers* case, *supra,* a decision in which the Court, though recognizing the preexisting confusion,[46] spoke in constitutional terms in respect to this requirement. The right to be informed of the nature of the charge includes, it ruled, the right to know that it is a charge and not a suit, and, necessarily, to know this at the beginning of the proceeding rather than by later discovery.

The language used by the Court was language of the Constitution, reinforced by citation of the *Cruikshank* case. Careful as it was about expressly overruling prior decisions [47] where the Sixth Amendment's requirement [48]

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client. This can be made plain if the judge entered an order in limine, directing the attorney to prosecute the respondent criminally on behalf of the court, and if the papers supporting the process contain a copy of this order or alleging its contents correctly. We think that *unless this is done the prosecution must be deemed to be civil and will support no other than a remedial punishment.* Nothing of the sort was done here, and the order must be reversed. . . ." (Emphasis added.) 80 F. 2d 211, 214–215.

The possibilities of confusion are multiplied when the contempt is instituted in a suit in which the United States is a party, since the United States may bring civil as well as criminal contempt proceedings. *McCrone* v. *United States,* 307 U. S. 61.

[46] The Court said: "Inasmuch, therefore, as proceedings for civil contempt are a part of the original cause, the weight of authority is to the effect that they should be entitled therein. But the practice has hitherto been so unsettled in this respect that we do not now treat it as controlling, but only as a fact to be considered along with others, as was done in *Worden* v. *Searle,* 121 U. S. 25, in determining a similar question." 221 U. S. at 446.

[47] See note 46.

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

had not been observed, there can be no doubt that the Court was announcing for the future that the constitutional requirement must be complied with. The result in the case itself accorded with what this view required.[49]

One who does not know until the end of litigation what his procedural rights in trial are, or may have been, has no rights. The view which would seem to be the only one consistent with the whole spirit of the Constitution, and with the nature of our free institutions, is that all of the constitutional guaranties applicable to trials for crime should apply to such trials for contempt excepting only those which may be inconsistent with the nature and execution of the function the court must perform.[50] As has been said, courts in performing this function are not above the Constitution. Rather they are empowered to perform it in order to make the Constitution itself operative.[51] Accordingly, not the least but the greatest possible application of it to this phase of their work is the only rule consistent with their place in the constitutional scheme.

Hence, whatever may be true of indictment and jury trials, I see no compelling reason whatever for not applying the other limitations of the Sixth Amendment. None

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[49] Not only in the ruling that reversal was required for the imposition of the criminal penalty in the proceeding held to be civil, but also in the order for dismissal on the ground that the cause, including the contempt phase, had become moot. See note 37 *supra*.

[50] Cf. *In re Michael*, 326 U. S. 224, 227; dissenting opinion of Holmes, J., in *Toledo Newspaper Publishing Co.* v. *United States*, 247 U. S. 402, 422; *Michaelson* v. *United States*, 266 U. S. 42, 67: "The only substantial difference between such a proceeding as we have here [criminal contempt] and a criminal prosecution by indictment or information, is that in the latter the act complained of is the violation of a law, and, in the former, the violation of a decree. In the case of the latter, the accused has a constitutional right of trial by jury; while in the former he has not."

[51] See *Ex parte Hudging*, 249 U. S. 378, 383, quoted in note 30 *supra*.

of them is inconsistent with the due and proper performance of the court's function in criminal contempt. Some at the least would be applicable by virtue of the due process guaranty of the Fifth Amendment. Only one case, apart from those involving indictment or jury trial, has held the Sixth Amendment inapplicable in such proceedings.[52] Whether or not that case was a departure from our long established tradition that in criminal proceedings the defendant is entitled to be confronted with the witnesses against him other departures should not be made. Surely the rights to a speedy and public trial, to have compulsory process for obtaining witness in his favor, to have the assistance of counsel for his defense, and in my opinion, as the *Gompers* case held, to be informed of the nature and cause of the accusation, cannot be denied in our system to any person charged with crime, with the single exception of contempts committed in the immediate presence of the court by way of interference with the proceedings. These guaranties are in no way inconsistent with the court's proper and complete discharge of its function in contempt. And they would seem to be essential to any conception of a fair trial as the Fifth Amendment's due process clause comprehends this.

When the assertion and securing of all other rights depends upon one, that one is the core of all. Here the right "to know that it was a charge, and not a suit" comprehended all other procedural rights in the trial and appellate courts. The denial of that right, deferring it until the decision here is handed down, is in my opinion a violation both of the Constitution and of Rule 42 (b).

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[52] *Blackmer* v. *United States*, 284 U. S. 421. The ruling was first made in *Myers* v. *United States*, 264 U. S. 95, in connection with a statutory venue problem relating to judicial districts and divisions which, of course, involves jury trial. It was repeated in *Ex parte Grossman*, 267 U. S. 87, 117, which held that the pardoning power extended to criminal contempts. In both cases the ruling was dictum.

But we are told that this, and all that followed or may have followed from it, make no difference because there was no prejudice. There are at least two answers. This Court has held that the denial of constitutional guaranties in trials for crime is in itself prejudice. *Kotteakos* v. *United States*, 328 U. S. ——, ——, and cases cited in n. 19. The other, there was prejudice and in the most important thing beyond knowing the nature of the proceeding, namely, in the penalty itself.

Not only was the penalty against the union excessive, as the Court holds. It was infected more deeply with vice. As the proceeding itself is said to have been both civil and criminal, so are the two "fines." They were imposed in single lump sums, with no allocation in either as among damages, coercion and punishment. The trial court did not state, and the Government has refused to speculate, how much was imposed for each of these remedial functions.

This is in the teeth of the *Gompers* decision. If damages for injury caused, in civil contempt, must be correlated to the amount of the injury,[53] that correlation has been made impossible here. If measurable damages had been shown,[54] there can be nothing to correlate with that proof, for we are not told and we cannot ascertain how much of the lump sums awarded were for this purpose. Neither therefore do we, nor can we, know how much was given for coercion and punishment. It would seem to follow clearly that, in view of this, we have no basis except our own speculation by which to determine whether the so-called "fines," or either of them, are excessive. Moreover, if in any portion they are fines in the criminal sense, we have no power here to fix the amounts. This we might do in an equity proceeding, on proof of damages in-

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[53] See note 37 *supra*.

[54] I express no opinion concerning this now.

curred, if specific amounts were fixed in the "penalty" for this purpose. Cf. *Gompers* v. *Buck's Stove & R. Co.*, *supra*. But in a criminal proceeding at law, we have no power to fix the fines ourselves. That function is the District Court's. *Ibid.* We can only determine whether those imposed are excessive under the Eighth Amendment.

The Government concedes that this limitation applies to penalties in criminal contempt and that in civil contempt the damages awarded cannot exceed the proven amount of injury. But in its view there is no necessity for allocation here; rather punishment and damages may be lumped with a third undefined amount for coercion; and the whole mass sustained, without reference to the constituent elements or any standards for measurement except over-all application of the Eighth Amendment's limitation to the mass. In this view it maintains neither fine is excessive. Apparently also the Court now accepts that view, except that it regards the union's fine as excessive. For it not only holds Lewis' fine valid *in toto*. It also holds the union's fine excessive and itself fixes a new one, acting in both instances without reference to any of the accepted standards of limitation, civil, criminal or coercive; indeed, so far as I am able to determine, any other than a rough estimate of what the union should be forced to pay on all counts.

There are standards which the law has fixed for these matters. As I have said, for damages in civil contempt, the amount of injury proven, *Gompers* v. *Buck's Stove & R. Co.*, *supra*, at 444; for coercion, what may be required to bring obedience and no more, whether by way of imprisonment or fine; [55] for punishment, what is not cruel

[55] Coercive relief is civil in character, *Gompers* v. *Buck's Stove & R. Co.*, 221 U. S. 418, 442, the decree being when imprisonment is imposed that the defendant stand committed unless and until he performs the act required by the court's order. When this is done the

and unusual or, in the case of a fine, excessive. For determining excessiveness, there are analogies from legislative action which are strongly pertinent.[56]

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sentence is discharged, for the defendant "carries the keys of his prison in his own pocket." *In re Nevitt*, 117 Fed. 451. The limitation is a corollary of the civil character of the remedy. This forbids imposition of fixed-term sentences for coercive purposes. *Gompers* v. *Buck's Stove & R. Co.*, *supra*, although they too have incidental coercive effects. *Id.*, at 443.

The purpose and character of the relief, not its particular form, determine its limits. *Id.*, at 443, citing *Doyle* v. *London Guarantee Co.*, 204 U. S. 509, 605, 607. Hence, when a fine is used in substitution for coercive imprisonment, it also must be contingent, giving opportunity for compurgation. Unless this is done, the fine takes on punitive character. *Doyle* v. *London Guarantee Co.*, *supra*.

[56] It is in defining the nature and character of criminal penalties that legislative judgment and, within the authority it confers, the judgment of the trial court rather than appellate courts has he widest range. Legislative experience and judgment in this field therefore furnish a measure of appropriate action entitled to great weight for consideration of the allowable range of punishment, as such, in criminal contempts where the penalty is undefined by statute.

The only crime for which the amount of the fine has no maximum is treason, where the fine authorized is not less than $10,000. 18 U. S. C. § 2. For rescue of one convicted of a capital crime while going to or during execution the fine may be not more than $25,000. 18 U. S. C. § 248. Maximum fines of $20,000 are set for offering a bribe to a judicial officer and for acceptance of a bribe by a judge. 18 U. S. C. §§ 237, 238. The same maximum is set for mailing matter with intent to increase weight in order to increase the compensation of a railroad mail carrier. 18 U. S. C. § 358. In some cases of embezzlement and like crimes, the fine may be the amount embezzled, *e. g.*, 18 U. S. C. § 173, and in one instance twice that amount. 18 U. S. C. § 172. But ordinarily the maximum allowed by Congress has been $10,000, and often it is less.

Moreover, where Congress itself has fixed a maximum fine for criminal punishment of the act held to be a contempt, that judgment would seem to furnish a standard to be applied in the contempt proceeding. In this case the War Labor Disputes Act authorized a fine of not over $5000 or imprisonment for not over one year, or both. 50 U. S. C. App. § 1506 (b).

Obviously, however, when all these distinct things are lumped together, in a single so-called "fine," none of those established bases for measurement can be applied, for there is nothing to which they can apply. We can only speculate upon what portion of each "fine" may have been laid to compensate for damages, what for punishment, and what, if any,[57] for coercion. Moreover, the District Court made no findings concerning the amount of civil damages sustained. On the record none of the "fine" was made contingent, affordnig an opportunity for compurgation, as is required for coercive penalties.[58]

In this state of things, it is utterly impossible to perform our function of review in the manner heretofore required even within the broad limits prescribed for cases of civil and criminal contempt. Much less have we power, or the essential bases for judgment, on this record, to fix the various items ourselves. The commingling of the various forms of relief, like that of the proceedings themselves, deprives these contemnors of any possibility

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[57] The fines in this case were flat fines imposed absolutely, without contingency for compurgation or otherwise. The Court acted on the Government's recommendation, which as to the union was made on the basis of $250,000 a day for the fourteen days elapsed after the restraining orders issued and the violations occurred. No part of the fine was laid for future conduct. Both penalties therefore would seem to be strictly criminal, or that combined with civil damages for past conduct, not coercive in the sense of coercive relief as this is contemplated in the decisions, see note 55, although the amounts fixed for each fine gave it "incidental" coercive effect in the popular sense. *Ibid.*

[58] See notes 55, 57. The order for coercive fines reads, by analogy to the order for coercive imprisonment, cf. note 55, that, unless there is obedience to the order of the court, the fine shall be paid on or before a day certain, in default of which the defendant shall be imprisoned until it is paid. In the case of corporations or unincorporated associations, the default provision of course is that execution shall issue to collect the "fine." See *Doyle* v. *London Guarantee Co.*, 204 U. S. 599, 602.

for having the scope of the relief given against them measured according to law. That is no insubstantial deprivation. When hybrid proceedings can produce hybrid penalties, concealing what is for punishment and what remedial, what criminal and what civil, and in the process discard constitutional procedural protections as convenience or other wholly discretionary impulse may command, then indeed to the extent we accept this will we have adopted the continental tradition of the civilians and rejected our own.

That the Government is complainant here, both as employer seeking remedial relief and sovereign capacity [59] seeking to vindicate the court's authority by criminal penalty, does not nullify all these long established limitations or put the courts wholly at large, limited by nothing except their unconfined discretion as to the scope and character of the relief allowable. Power there is to take adequate measures when violation is clearly shown and adequate proof is made to sustain them. For proven violation, criminal penalty within the Eighth Amendment's limits as we would measure similar impositions placed by Congress, at the most; for damages proven and found, civil award commensurate with the finding; and for coercion, civil relief by way of imprisonment or "fine," but in either case contingent only, not final, giving opportunity for compurgation and for termination of further penalty for the future on making it.

These are the limitations the law has prescribed. They apply equally when the Government is complainant, and

[59] The two capacities are distinct, not identical. Each, it is true, may be exercised ultimately in the public interest. But if in the capacity of temporary "employer" the Government is to have the benefits of that status, it should be subject also to its limitations except as Congress otherwise provides. To jumble the two capacities as is done here is only to nullify the rights in trial and remedy of employees and others.

whether in one capacity or the other or both, as when others are.[60] They cannot be dispensed with, separately or by conglomerating all into a single indiscriminate lump, at the suit of the Government or another, in this case or for others. To permit this would be to throw overboard the limitations prescribed by law and make the courts purely discretionary arbitrators of controversies. That cannot be done in our system.

Much more is involved in this controversy than the issues which have been discussed. The issues in the main suit have not been determined and it would be beyond our function to intimate opinion concerning them now. But beyond this controversy as a whole lie graver issues still. They involve opposing claims concerning the right to strike and the power of the Government, as against this, to keep the nation's economy going. Those are indeed grave matters.

No right is absolute. Nor is any power, governmental or other, in our system. There can be no question that it provides power to meet the greatest crisis. Equally certain is it that under "a government of laws not of men," such as we possess, that power must be exercised according to law and that government, including the courts, as well as the governed, must move within its limitations.

This means that the courts and all other divisions or agencies of authority must act within the limits of their respective functions. Specifically it means in this case that we are bound to act in deference to the mandate of Congress concerning labor injunctions, as in judgment and conscience we conceive it to have been made. The crisis

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[60] The limitations upon criminal contempt, procedural and remedial, always apply to the Government, for it alone can bring that proceeding. It cannot defeat them by mingling that proceeding and relief with civil ones, merely by virtue of being also the complaining civil litigant.

here was grave. Nevertheless, as I view Congress' action, I am unable to believe that it has acted to meet, or authorized the courts to meet, the situation which arose in the manner which has been employed.

Being of this view, I close where I began. No man or group is above the law. All are subject to its valid commands. So are the government and the courts. If, as I think, Congress has forbidden the use of labor injunctions in this and like cases, that conclusion is the end of our function. And if modification of that policy is to be made for such cases, that problem is for Congress in the first instance, not for the courts.

The Chief Justice
from
Rutledge, J.
2/27/47