

OUR SUPREME COURT ON COMMUNISM

I should like to talk to you tonight on the subject of Communism--particularly on the attitude Americans should take toward the Communist party in this country. This is a perplexing subject upon which there has been much loose thinking--a kind of thinking of which many of us have been guilty. Our appraisal is complicated by the fact that the Communist party has never been outlawed in this country. The problem was recently analyzed by Justice Robert H. Jackson in an opinion of the United States Supreme Court. Before the Court was a case involving that controversial section of the controversial Taft-Hartley Act that requires officers of labor unions to take an oath that they are not members of the Communist party and further do not believe in the overthrow of our Government by force or by any illegal or unconstitutional methods.

This section of the law was under attack on the ground that it violated the Bill of Rights, particularly the rights of free speech, assembly and belief. Chief Justice Vinson handed down the decision upholding the law in its entirety. Justice Jackson, agreeing in part with the Chief Justice and disagreeing in part, took the occasion to turn the legal searchlight on the larger question of the Communist party's place in America.

I think too many of us have for too long neglected the wisdom that lies embalmed in the opinions of our courts of last resort. Too often we are prone to regard our supreme court judges as doddering old fogies who spend their spare time before a fireplace in carpet slippers re-reading the memoirs of McKinley--or of Grover Cleveland, to keep this discussion on a strictly non-partisan level! Tonight I am making Justice Jackson's opinion the heart of my talk. It is an absorbing and provocative discussion of an important public issue and I now propose to read you certain portions of his opinion. While I do not suppose that all of you will agree with all that he says--I'm not quite sure that I do myself--I feel confident that all of you will be stimulated to further mind-searching by the clarity and vigor of his utterance. Here is one judge that is certainly no old fogey...

Perhaps I need not add that I believe all of us are joined here tonight in a common loathing of Communism and all that it stands for. The Eagle and the Bear are locked in a death grapple. The burning question is: How should the Eagle fight? To oversimplify, it may be said that the nature of our dilemma is that we must try not to succumb to the lure of fighting Communism with weapons made in Russia; we must continue to fight Communism with Democratic weapons made in America. But on with the business of the evening. What you now hear will be quoted from the Supreme Court opinion of Justice Jackson.

* * * *

CORRESPONDENCE

BOND

BIRKBECK

If the statute before us required labor union officers to forswear membership in the Republican party, the Democratic party or the Socialist party, I suppose all agree that it would be unconstitutional. But why, if it is valid as to the Communist party?

The answer, for me, is in the decisive differences between the Communist party and every other party of any importance in the long experience of the United States with party government. *** To state controlling criteria definitively is both important and difficult, because those Communist party activities visible to the public closely resemble those of any other party. Parties, whether in office or out, are often irresponsible in their use and abuse of freedoms of speech and press. They all make scapegoats of unpopular persons or classes and make promises of dubious sincerity or feasibility in order to win votes. All parties, when in opposition, strive to discredit and embarrass the Government of the day by spreading exaggerations and untruths and by inciting prejudiced or unreasoning discontent, not even hesitating to injure the nation's prestige among the family of nations.

The Communist party, at least outwardly, only exaggerates these well-worn political techniques and many persons are thus led to think of it as just another more radical political party. If it were nothing but that, I think this legislation would be unconstitutional. There are, however, contradictions between what meets the eye and what is covertly done, which, in my view of the issues, provide a rational basis upon which Congress reasonably could have concluded that the Communist party is something different in fact from any other substantial party we have known, and hence may constitutionally be treated as something different in law.

From information before its several committees and from facts of general knowledge, Congress could rationally conclude that, behind its political party facade, the Communist party is a conspiratorial and revolutionary junta, organized to reach ends and to use methods which are incompatible with our constitutional system. A rough and compressed grouping of these data would permit Congress to draw these important conclusions as to its distinguishing characteristics:

1: The goal of the Communist party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate. It seeks not merely a change of administration or of Congress, or reform legislation within the constitutional framework. Its program is not merely to socialize property more rapidly and extensively than the other parties are doing. While the difference between other parties in these matters is largely as to pace, the Communist party's difference is one of direction.

The Communist program only begins with seizure of government, which then becomes a means to impose upon society an organization on principles fundamentally opposed to those presupposed by our Constitution. It purposes forcibly to recast our whole social and political structure after the Muscovite model of police-state dictatorship. It rejects the entire religious and cultural heritage of Western civilization, as well as the American economic and political systems. This Communist movement is a belated counter-revolution to the American Revolution, designed to undo the Declaration of Independence, the Constitution, and our Bill of Rights, and overturn our system of free, representative self-government. * * *

2: The Communist party alone among American parties past or present is dominated and controlled by a foreign Government. * * * The chain of command from the Kremlin to the American party is stoutly denied and usually invisible, but it was unmistakably disclosed by the American Communist party somersaulting in synchronism with shifts in the Kremlin's foreign policy. Before Munich the Soviet Union's policy was anti-German--"anti-Fascist"--and the Communists in this country were likewise. However, when Stalin concluded a nonaggression pact with Hitler, and Nazi Germany and the Soviet Union became partners in war, the Communists here did everything within their power to retard and embarrass the United States policy of rendering aid short of war to victims of aggression by that evil partnership. * * *

The Old World may be rich in lessons which our statesmen could consult with advantage. But it is one thing to learn from or support a foreign power because that policy serves American interests, and another thing to support American policies because they will serve foreign interests. In each country where the Communists have seized control they have so denationalized its foreign

policy as to make it a satellite and vassal of the Soviet Union and enforced a domestic policy in complete conformity with the Soviet pattern, tolerating no deviation in deference to any people's separate history, tradition or national interests.

3: Violent and undemocratic means are the calculated and indispensable methods to attain the Communist party's goal. It would be incredible naivete to expect the American branch of this movement to forego the only methods by which a Communist party has anywhere come into power. In not one of the countries it now dominates was the Communist party chosen by a free or contestable election; in not one can it be evicted by any election. The international police state has crept over Eastern Europe by deception, coercion, coup d'etat, terrorism and assassination. * * *.

The American Communists have imported the totalitarian organization's disciplines and techniques, notwithstanding the fact that this country offers them and other discontented elements a way to peaceful revolution by ballot. * * * Instead of resting their case upon persuasion and any appeal inherent in their ideas and principles, the Communist party adopts the techniques of a secret cabal—false names, forged passports, code messages, clandestine meetings. To these it adds occasional terroristic and threatening methods, such as picketing courts and juries, political strikes and sabotage.

This cabalism and terrorism is understandable in the light of what they want to accomplish and what they have to overcome. The Communist program does not presently, nor in foreseeable future elections, commend itself to enough American voters to be a substantial political force. Unless the Communist party can obtain some powerful leverage on the population it is doomed to remain a negligible factor in the United States. Hence, conspiracy, violence, intimidation and the coup d'etat are all that keep hope alive in the Communist breast.

4: The Communist party has sought to gain this leverage and hold on the American population by acquiring control of the labor movement. All political parties have wooed labor and its leaders. But what other parties seek is principally the vote of labor. The Communist party, on the other hand, is not primarily interested in labor's vote, for it does not expect to win by votes.

It strives for control of labor's coercive power--the strike, the sit-down, the slowdown, sabotage, or other means of producing industrial paralysis.

Congress has legalized the strike as labor's weapon for improving its own lot. But where Communists have labor control, the strike can be and sometimes is, perverted to a party weapon. * * *

This labor leverage, however, usually can be obtained only by concealing the Communist tie from the union membership. Whatever grievances American workmen may have with American employers, they are too intelligent and informed to seek a remedy through a Communist party which defends Soviet conscription of labor, forced labor camps and the police state. Hence the resort is concealment, and hence the resentment of laws to compel disclosure of Communist party ties. The membership is not likely to entrust its bargaining power, its records and its treasury to such hands.

When it does, the union finds itself a more or less helpless captive of the Communist party. Its officers cease to be interested in correcting grievances, but seek to worsen and exploit them; they care less for winning strikes than that they be long, bitter and disruptive. * * *

5: Every member of the Communist party is an agent to execute the Communist program. What constitutes a party? Major political parties in the United States have never been closely knit or secret organizations. Anyone who usually votes the party ticket is reckoned a member, although he has not applied for or been admitted to membership, pays no dues, has taken no pledge, and is free to vote, speak and act as he wills. Followers are held together by rather casual acceptance of general principles, the influence of leaders, and sometimes by the cohesive power of patronage. Membership in the party carries with it little assurance that the member understands or believes in its principles and none at all that he will take orders from its leaders. * * * Of course, when party organization is of this character there is little ground for inference that all members are committed to party plans or that they are agents for their execution.

Membership in the Communist party is totally different. The party is a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrination in its policies, to which the member is fully committed.

They are provided with cards or credentials, usually issued under false names so that the identification can only be made by officers of the party who hold the code. Moreover, each pledges unconditional obedience to party authority. * * * Inferences from membership in such an organization are justifiably different from those to be drawn from membership in the usual type of political party.

Individuals who assume such obligations are chargeable, on ordinary conspiracy principles, with responsibility for and participation in all that makes up the party's program. The conspiracy principle has traditionally been employed to protect society against all "ganging up" or concerted action in violation of its laws. No term passes that this Court does not sustain convictions based on that doctrine for violations of the anti-trust laws or other statutes. However, there has recently entered the dialectic of politics a cliché used to condemn application of the conspiracy principle to Communists. "Guilt by association" is an epithet frequently used and little explained, except that it is generally accompanied by another slogan, "guilt is personal." Of course it is; but personal guilt may be incurred by joining a conspiracy. That ~~the~~ act of association makes one responsible for the acts of others committed in pursuance of the association. It is wholly a question of the sufficiency of evidence of association to imply conspiracy. * * *

I cannot believe that Congress has less power to protect a labor union from Communist party domination than it has from employer domination. This Court has uncompromisingly upheld power of Congress to disestablish labor unions where they are company-dominated and to eradicate employer influence, even when exerted only through spoken or written words which any person not the employer would be free to utter.

Congress has conferred upon labor unions important rights and powers in matters that affect industry, transport, communications and commerce. And Congress has not now denied any union full self-government nor prohibited any union from doing so unknowingly. And if members deliberately choose to put the union in the hands of Communist officers, Congress withdraws the privileges it has conferred on the assumption that they will be devoted to the welfare of their members.

It would be strange indeed if it were constitutionally powerless to protect these delegated functions from abuse and misappropriation to the service of the Communist party and the Soviet Union. Our Constitution is not a covenant of nonresistance toward organized efforts at disruption and betrayal, either of labor or of the country.

Counsel stress that this is a civil-rights or a free-speech or a free-press case. But it is important to note what this act does not do. The act does not suppress or outlaw the Communist party, nor prohibit it or its members from engaging in any aboveboard activity normal in party struggles under our political system. It may continue to nominate candidates, hold meetings, conduct campaigns and issue propaganda, just as other parties may. No individual is forbidden to be or to become a philosophical Communist or a full-fledged member of the party. No one is penalized for writing or speaking in favor of the party or its philosophy. Also, the act does not require or forbid anything whatever to any person merely because he is a member of, or is affiliated with the Communist party. It applies only to one who becomes an officer of a labor union.

I am aware that the oath is resented by many labor leaders of unquestioned loyalty and above suspicion of Communist connections; indeed by some who have themselves taken bold and difficult steps to rid the labor movement of Communists. I suppose no one likes to be compelled to exonerate himself from connections he has never acquired. I have sometimes wondered why I must file papers showing I did not steal my car before I can get a license for it. But experience shows there are thieves among automobile drivers, ~~and that there are thieves among automobile drivers,~~ and that there are Communists among labor leaders. The public welfare, in identifying both, outweighs any affront to individual dignity. * * *

I conclude that we cannot deny Congress power to take these measures under the Commerce Clause to require labor union officers to disclose their membership in, or affiliation with, the Communist party.

Congress has, however, required an additional disclaimer, which in my view does encounter serious constitutional objections. A union officer must swear "he does not believe in * * * the overthrow of the United States Government by force or by any illegal or unconstitutional methods."

If Congress has power to condition any right or privilege of an American citizen upon disclosure and disavowal of belief on any subject, it is obviously this one. But the serious issue is whether Congress has power to proscribe any opinion or belief which has not manifested itself in any overt act. While the forepart of the oath requires disclosure and disavowal of relationships which depend on overt acts of membership or affiliation, the afterpart demands revelation and denial of mere beliefs or opinions, even though they may never have matured into any act whatever or even been given utterance. * * *

That this difference is decisive on the question of power becomes unmistakable when we consider measures of enforcement. The only sanction prescribed, and probably the only one possible in dealing with a false affidavit, is punishment for perjury. If one is accused of falsely stating that he was a member of, or affiliated with, the Communist party, his conviction would depend upon proof of visible and knowable overt acts or courses or conduct sufficient to establish that relationship. But if one is accused of falsely swearing that he did not believe something that he really did believe, the trial must revolve around the conjecture as to whether he candidly exposed his state of mind. * * *

Our trial processes are clumsy and unsatisfying for inferring cogitations which are incidental to actions, but they do not even pretend to ascertain the thought that has had no outward manifestation. Attempts of the courts to fathom modern political meditations of an accused would be as futile and mischievous as the efforts in the infamous heresy trials of old to fathom religious belief. * * *

How far we must revert toward these discredited systems if we are to sustain this oath is made vivid by the Court's reasoning that the act applies only to those "whose beliefs strongly indicate a will to engage in political strikes. * * *" Since Congress has never outlawed the political strike itself, the Court must be holding that Congress may root out mere ideas which, even if acted upon, would not result in crime. It is a strange paradox if one may be forbidden to have an idea in mind that he is free to put into execution.

But apart from this, efforts to weed erroneous beliefs from the minds of men have always been supported by the argument which the Court invokes today-- that beliefs are springs to action, that evil thoughts tend to become forbidden

deeds. Probably so. But if power to forbid acts includes power to forbid contemplating them, then the power of government over beliefs is as unlimited as its power over conduct, and the way is open to force disclosure of attitudes on all manner of social, economic, moral and political issues.

Communists are not the only faction which would put us all in mental straitjackets. Indeed, all ideological struggles, religious or political, are primarily battles for dominance over the minds of people. It is not to be supposed that the age-old readiness to try to convert minds by pressure or suppression, instead of reason and persuasion, is extinct. Our protection against all kinds of fanatics and extremists, none of whom can be trusted with unlimited power over others, lies not in their forbearance but in the limitations of our Constitution. * * *

Moreover, in judging the power to deny a privilege to think otherwise, we cannot ignore the fact that our own Government originated in revolution and is legitimate only if overthrow by force may sometimes be justified. That circumstances sometimes justify it is not Communist doctrine but an old American belief.

(Note: Nothing is more pernicious than the idea that every radical measure is "communistic" or every liberal-minded person a "Communist." One of the tragedies of our time is the confusion between reform and communism-- a confusion to which both the friends and enemies of reform have contributed, the one by failing to take a clear stand against Communists and communism, and the other by characterizing even the most moderate suggestion of reform as "communistic" and its advocates as "Communists." Unquestioning idolatry of the status quo has never been an American characteristic.)

While I think Congress may make it a crime to take one overt step to use or to incite violence or force against our Government, I do not see how in the light of our history a mere belief that one has a natural right under some circumstances to do so can subject an American citizen to prejudice any more than possession of any other erroneous belief. Can we say that men of our time must not even think about the propositions on which our own Revolution was justified? * * *

The idea that a Constitution should protect individual nonconformity is essentially American and is the last thing in the world that Communists will tolerate. Nothing exceeds the bitterness of their demands for freedom for themselves in this country except the bitterness of their intolerance for others where they are in power. An exaction of some profession of belief or nonbelief is precisely what the Communists would enact--each individual must adopt the ideas that are common to the ruling group. Their whole philosophy is to minimize man as an individual and to increase the power of man acting in the mass. If any single characteristic distinguishes our democracy from communism it is our recognition of the individual as a personality rather than as a soulless part in the jigsaw puzzle that is the collectivist state. * * *

A catalogue of rights was placed in our Constitution, in my view, to protect the individual in his individuality, and neither statutes which put those rights at the mercy of officials nor judicial decisions which put them at the mercy of the mob are consistent with its text or its spirit.

I think that under our system it is time enough for the law to lay hold of the citizen when he acts illegally, or in some rare circumstances when his thoughts are given illegal utterance. I think we must let his mind alone.

The task of this Court to maintain a balance between liberty and authority is never done, because new conditions today upset the equilibriums of yesterday. The seesaw between freedom and power makes up most of the history of governments, which as Bryce points out, on a long view consists of repeating a painful cycle from anarchy to tyranny and back again. The Court's day-to-day task is to reject as false, claims in the name of civil liberty which, if granted, would paralyze or impair authority to defend existence of our society, and to reject as false claims in the name of security which would undermine our freedoms and open the way to oppression.

These are the competing considerations involved in judging any measures which government may take to suppress or disadvantage its opponents and critics.

I conclude that today's task can only be discharged by holding that all parts of this oath which require disclosure of overt acts of affiliation or membership in the Communist party is within the competence of Congress to enact and that any parts of it that call for a disclosure of belief unconnected with any overt act is beyond its power.

54th Annual Convention
MICHIGAN PROBATE JUDGES ASSOCIATION
MARQUETTE, MICHIGAN

MONDAY, JUNE 26th, 1950

9:00 A. M. — 12:00 Registration, Northland Hotel
1:30 P. M. General Session — Court House
Presiding: The Honorable William E. Doran, President Michigan Probate
Judges Association
Welcome by Mayor of Marquette, Michigan
Response by President
Introduction of Guests
2:00 P. M. Recent Court Decisions
Hon. Benjamin W. Franklin
Hon. Frank L. McAvinchey
4:00 P. M. Adjournment

TUESDAY, JUNE 27th, 1950

NORTHLAND HOTEL

9:30 A. M. — 12:00 Probate Practice and Procedure
Estates: Hon. Frank L. McAvinchey
Mental Cases: Hon. Arthur L. Moore
Mental Health: Charles F. Wagg, Director of Department of Mental
Health.
2:00 P. M. Regional Detention Homes; Sherwood Norman, National Probation As-
sociation
2:30 P. M. Duties and Problems of County Agents, Miles Betts, Marquette County Agent
3:00 P. M. Question Box: Hon. Richard W. Bryant
3:45 P. M. Report of Nominating Committee and Election of Officers.
4:00 P. M. Adjournment.
6:30 P. M. Annual Banquet—Lee Hall, Northern Michigan College of Education
Invocation: Rev. Emil F. Beyer
Toastmaster: Walter F. Gries
Introduction of Guests: Hon. William E. Doran, President
Address of Welcome: H. A. Tape, President of Northern Michigan College
of Education
Speaker: John D. Voelker Prosecuting Attorney of Marquette County
Benediction: Rev. John F. Alford

WEDNESDAY, JUNE 28th, 1950

9:30 A. M. Panel Discussion on State and Private Agencies; Moderator: Rev. Casimir
Adasiewicz, St. Joseph of Assinins Orphanage
11:00 A. M. Hon. Jay H. Payne: Observations at National Council of Juvenile Court
Judges Conference at Pittsburgh, Pa.
11:30 — 12:00 Question Box: Hon. Richard W. Bryant
1:00 P. M. Dinner at Bill Carlson's Lumber Camp at Deerton
3:00 P. M. Recreation period. Fishing, Golf, Sightseeing, etc.

THURSDAY, JUNE 29th, 1950

9:30 A. M. Report of Committees
Business Session and Selection of site for 1951 Convention
11:30 A. M. Adjournment

**The ladies will be entertained at a tea to be given on the Rushton lawn
from 3:30 to 5:00 P. M., Monday, June 26th. Automobiles will also be
available for the ladies on the afternoon of Tuesday, June 27 for any who
wish to go sightseeing. Please watch the bulletin board in the lobby of
the Hotel Northland.

MICHIGAN
PROBATE JUDGES
ASSOCIATION

54th ANNUAL CONVENTION

Banquet

LEE AND CAREY HALL

Northern Michigan College of Education

June 27th, 1950

Marquette, Michigan

Hon. William E. Doran, President

Hon. Carroll C. Rushton, Vice-President

Hon. Glenn W. Hollenbeck, Sec-Treas.

- 1: Prob. Judges Quinn
- 2: Deal - Storm
- 3: Real talk - dated

The part of law, then—law honored and respected and alive—is the high function of happiness and peace, of security and honor, of good faith and justice toward which mankind will ever strive. It is the path which guides the world toward the ever-nearer, ever-receding goal; the goal which was vaguely the hope of men in the dim days before history began; the goal that humanity has envisioned as peace on earth, good will to men.

Dean Paul Shipman Andrews.

**Marquette is Honored
to be your host.**

We Want You to Come Again

MARQUETTE CHAMBER OF COMMERCE