The Revolution in the U.S.A.

The essence of the peril in which Christian civilisation stands is the conspiracy between the richest men in the world—the international financiers—and the Communists. The technique of this conspiracy is the subversive destruction of the traditional institutions of the individual nations, together with the progressive improvement of Communist Russia's total strategic position. At some time, quite possibly in the near future, "Western" civilisation is intended to collapse—either in the light of Russia's strategic position, or as a result of economic catastrophe, and aided by racial disorders and Asian and Arab 'nationalism.'

It is not very generally recognised that this conspiracy is just as much operative in the U.S.A. as elsewhere. But there are masses of evidence of penetration of Government departments and agencies by Communist agents; it is known that the National Association for the Advancement of Coloured People—which actively promotes 'integration' of the Negroes—is a Communist front; and it was the U.S. Supreme Court which over-ruled States' rights in the matter of segregation in schools. The Supreme Court has given a number of rulings which have protected Communists.

For its high evidential value we reproduce below some extracts from the "Report of the Committee on Federal-State Relationships as affected by Judicial Decisions," adopted by the 1958 Conference of Chief Justices. The extracts are published by Human Events in its issue of September 1, 1958, prefaced by the following explanation:

The Conference of Chief Justices of the several states met recently in Pasadena, California. Presented for approval by the ranking jurists of America was a lengthy report analysing some controversial decisions of the U.S. Supreme Court, and criticising the Court for its lack of "judicial self-restraint." Signing the report were ten state Chief Justices, seven of them from outside the South. The report was subsequently adopted by vote of the entire Conference, by the overwhelming margin of 36 to 8. Human Events here presents excerpts from this unprecedented document, including discussion of some individual High Court decisions and the state justices' conclusions. Omissions from the text are indicated by asterisks (***).

*** It is a part of our obligation to seek to uphold respect for law. We do not believe that this goes so far as to impose upon us an obligation of silence when we find ourselves unable to agree with pronouncements of the Supreme Court (even though we are bound by them), or when we see trends in decisions of that Court which we think will lead to unfortunate results. We hope that the expression of our views may have some value. They pertain to matters which directly affect the work of our state courts. In this report we urge the desirability of self-restraint on the part of the Supreme Court in the exercise of the vast powers committed to it.

The difference between matters primarily local and matters primarily national was the guiding principle upon which the framers of our national Constitution acted in outlining the divisions of powers between national and state governments.

The fundamental need for a system of distribution of powers between national and state governments was impressed sharply upon the framers of our Constitution not only because of their knowledge of the governmental systems of ancient Greece and Rome. They also were familiar with the government of England; they were even more aware of the colonial governments in the original states and the governments of those states after the Revolution. Included in government on this side of the Atlantic was the institution known as the New England town meeting, though it was not in use in all the states. A town meeting could not be extended successfully to any large unit of population, which, for legislative action, must rely upon representative government.

But it is this spirit of self-government, of local self-government, which has been a vital force in shaping our democracy from its very inception.

The outstanding development in federal-state relations since the adoption of the national Constitution has been the expansion of the power of the national Government and the consequent contraction of the powers of the state governments. To a large extent this is wholly unavoidable and indeed is a necessity, primarily because of improved transportation and communication of all kinds and because of mass production. On the other hand our Constitution does envision federalism. The very name of our Nation indicates that it is to be composed of states. The Supreme Court of a bygone day said in Texas v. White, 7 Wall. 700,721 (1868): "The Constitution, in all its provisions, looks to an indestructible Union of indestructible states.”

Second only to the increasing dominance of the national Government has been the development of the immense power of the Supreme Court in both state and national affairs. It is not merely the final arbiter of the law; it is the maker of policy in many major social and economic

(Continued on page 2.)
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levels. It is not subject to the restraints to which a legisla-

tive body is subject. There are points at which it is difficult to delineate precisely the line which should circumscribe the judicial function and separate it from that of policy making. **

But if and when a court in construing and applying a constitutional provision or a statute becomes a policy maker, it may leave construction behind and exercise functions which are essentially legislative in character, whether they serve in practical effect as a constitutional amendment or as an amendment of a statute. It is here that we feel the greatest concern, and it is here that we think the greatest restraint is called for. There is nothing new in urging judicial self-restraint, though there may be, and we think there is, new need to urge it.

Many, if not most, of the problems of federalism today arise either in connection with the commerce clause and the vast extent to which its sweep has been carried by the Supreme Court, or they arise under the Fourteenth Amendment. Historically, cases involving the doctrine of pre-emption pertain mostly to the commerce clause. More recently the doctrine has been applied in other fields, notably in the case of Commonwealth of Pennsylvania v. Nelson, in which the Smith Act and other Federal statutes dealing with communism and loyalty problems were held to have pre-empted the field and to invalidate or suspend the Pennsylvania anti-subversive statute which sought to impose a penalty for conspiracy to overthrow the govern-

ment of the United States by force or violence. In that particular case it happens that the decision of the Supreme Court of Pennsylvania was affirmed. That fact, however, emphasises rather than detracts from the wide sweep now given to the doctrine of pre-emption.

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In the field of taxation the doctrine of intergovernmental immunity has been seriously curtailed partly by judicial decisions and partly by statute. ** On the whole, the Supreme Court seems perhaps to have taken a more liberal view in recent years towards the validity of state taxation than it formerly took.

In many other fields, however, the Fourteenth Amendment has been invoked to cut down state action. This has been noticeably true in cases involving not only the Four-

teenth Amendment but also the First Amendment guarantee of freedom of speech or the Fifth Amendment protection against self-incrimination. State anti-subversive acts have been practically eliminated by Pennsylvania v. Nelson in which the decision was rested on the ground of pre-emption of the field by the Federal statutes.

One manifestation of this restrictive action under the Fourteenth Amendment is to be found in Sweeney v. New Hampshire, 354 U.S. 234. In that case, the State of New Hampshire had enacted a subversive activity statute which imposed various disabilities on subversive persons and sub-

versive organisations. In 1953 the legislature adopted a resolution under which it constituted the Attorney General a one-man legislative committee to investigate violations of that Act and to recommend additional legislation. Sweeney, described as a non-Communist Marxist, was summoned to testify at the investigation conducted by the Attorney General, pursuant to this authorisation. He testified freely about many matters but refused to answer two types of questions: (1) inquiries concerning the activities of the Progressive Party in the state during the 1948 campaign, and (2) inquiries concerning a lecture Sweeney had delivered in 1954 to a class at the University of New Hampshire. He was adjudged in contempt by a state court for failure to answer these questions. The Supreme Court reversed the conviction, but there is no majority opinion.

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The Chief Justice said in part: “The respective roles of the legislature and the investigator thus revealed are of considerable significance to the issue before us. It is eminently clear that the basic discretion of determining the direction of the legislative inquiry has been turned over to the investigative agency. The Attorney General has been
given such a sweeping and uncertain mandate that it is his
discretion which picks out the subjects that will be pur-
sued, what witnesses will be summoned and what questions
will be asked. In this circumstance, it cannot be stated
authoritatively that the legislature asked the Attorney General
to gather the kind of facts comprised in the subjects upon
which the petitioner was interrogated."

* * *

In commenting on this case Professor Conant [con-
sultant to the committee of state judges] says: "The
most puzzling aspect of the Sweezy case is the reliance
by the Chief Justice on delegation-of-power conceptions.
New Hampshire had determined that it wanted the informa-
tion which Sweezy refused to give; to say that the State
has not demonstrated that it wants the information seems
so unreal as to be incredible. The State had delegated
power to the Attorney General to determine the scope of
inquiry within the general subject of subversive activities.
Under these circumstances the conclusion of the Chief
Justice that the vagueness of the resolution violates the due
process clause must be, despite his protestations, a holding
that a state legislature cannot delegate such a power."

* * *

Konigsberg v. State Bar of California, 353, U.S. 252,
seems to us to reach the high water mark so far established
by the Supreme Court in overthrowing the action of a state
and in denying to a state the power to keep order in its
own house.

* * *

The majority opinion * * * turned to the merits of
Konigsberg's application for admission to the bar. Applic-
able state statutes required one seeking admission to show
that he was a person of good moral character and that he
did not advocate the overthrow of the national or state
government by force or violence. The Committee of Bar
Examiners, after hearing several hearings on Konigsberg's
application, notified him that his application was denied
because he did not show that he met the above qualifications.

The Supreme Court made its own review of the facts.

On the score of good moral character, the majority
found that Konigsberg had sufficiently established it, that
certain editorials written by him attacking this country's
participation in the Korean War, the actions of political
leaders, the influence of "big business" on American life,
racial discrimination and the Supreme Court decision in
Dennis v. United States, 341 U.S. 494, would not support
any rational inference of bad moral character, and that his
refusal to answer questions "almost all" of which were
described by the Court as having "concerned his political
affiliations, editorials and beliefs" (353 U.S. 269) would
not support such an inference either. * * *

The majority asserted that Konigsberg "was not denied
admission to the California Bar simply because he refused
to answer questions."

* * *

The majority, however, having reached the conclusion
above stated, that Konigsberg had not been denied admission
to the bar simply because he refused to answer questions,
than proceeded to demolish a straw man by saying that
there was nothing in the California statutes or decisions,
or in the rules of the Bar Committee which had been called
to the Court's attention, suggesting that a failure to answer
questions "is, ipso facto, a basis for excluding an applicant
from the Bar, irrespective of how overwhelming is his
showing of good character or loyalty or how flimsy are the
suspicions of the Bar Examiners." Whether Konigsberg's
"overwhelming" showing of his good character would have
been shaken if he had answered the relevant questions which
he refused to answer, we cannot say. We have long been
under the impression that candour is required of members
of the bar and, prior to Konigsberg, we should not have
had thought that there was any doubt that a candidate for
admission to the bar should answer questions as to matters
relating to his fitness for admission, and that his failure
or refusal to answer such questions would warrant an in-
ference unfavorable to the applicant or a finding that he
had failed to meet the burden of proof of his moral fitness.

* * *

We believe that strong state and local governments are
essential to the effective functioning of the American system
of federal government; that they should not be sacrificed
needlessly to leveling, and sometimes deadening, uniformity;
and that in the interest of active, citizen participation in
self-government—the foundation of our democracy—they
should be sustained and strengthened.

* * *

We are now concerned specifically with the effect of
judicial decisions upon the relations between the Federal
Government and the state governments. Here we think
that the over-all tendency of decisions of the Supreme
Court over the last 25 years or more has been to press
the extension of Federal power and to press it rapidly.
There have been, of course, and still are, very considerable
differences within the Court on these matters, and there
has been quite recently a growing recognition of the fact
that our Government is still a Federal Government and
that the historic line which experience seems to justify
between matters primarily of national concern and matters
primarily of local concern should not be hastily or lightly
obliterated. A number of justices have repeatedly demon-
strated their awareness of problems of federalism and their
recognition that federalism is still a living part of our system
of government.

The extent to which the Supreme Court assumes the
function of policy-maker is also of concern to us in the
conduct of our judicial business. We realise that in the
course of American history the Supreme Court has fre-
quently—one might, indeed, say customarily—exercised
policy-making powers going far beyond those involved, say,
in making a selection between competing rules of law.

We believe that in the fields with which we are con-
cerned, and as to which we feel entitled to speak, the Supreme
Court too often has tended to adopt the role of policy-
maker without proper judicial restraint. We feel this is
particularly the case in both the great fields we have dis-
cussed—namely, the extent and extension of the Federal
power, and the supervision of state action by the Supreme
Court by virtue of the Fourteenth Amendment.

In the light of the immense power of the Supreme Court

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and its practical non-reviewability in most instances no more important obligation rests upon it, in our view, than that of careful moderation in the exercise of its policy-making role.

We are not alone in our view that the Court, in many cases arising under the Fourteenth Amendment, has assumed what seems to us primarily legislative powers. (See Judge Learned Hand on the Bill of Rights.) * We do not believe that either the framers of the original Constitution or the possibly somewhat less gifted draftsmen of the Fourteenth Amendment ever contemplated that the Supreme Court would, or should, have the almost unlimited policy-making powers which it now exercises. It is strange, indeed, to reflect that, under a Constitution which provides for a system of checks and balances and of distribution of power between national and state governments, one branch of one government—the Supreme Court—should attain the immense, and in many respects, dominant power which it now wields.

We believe that the great principle of distribution of powers among the various branches of government and between levels of government has vitality today and is the crucial base of our democracy. We further believe that in construing and applying the Constitution and laws made in pursuance thereof, this principle of the division of power based upon whether a matter is primarily of national or of local concern should not be lost sight of or ignored, especially in fields which bear upon the meaning of a constitutional or statutory provision, or the validity of state action presented for review. For, with due allowance for the changed conditions under which it may or must operate, the principle is as worthy of our consideration today as it was of the consideration of the great men who met in 1787 to establish our Nation as a Nation.

It has long been an American boast that we have a government of laws and not of men. We believe that any study of recent decisions of the Supreme Court will raise at least considerable doubt as to the validity of that boast. We find first that in constitutional cases unanimous decisions will raise at least considerable doubt as to the validity of that boast. We find first that in constitutional cases unanimous decisions will raise, in most instances, no more important obligation rests upon it, in our view, than that of careful moderation in the exercise of its policy-making role.

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