it from a decision to make war; and these forces of decision would operate whether or not an act of war had been committed. Indeed, the mere fearfulness to take action against aggression and injury could be as much an "act of war," in the sense of causing war to come, as would a direct use of force, for the aggressor might consider such a supine attitude as an invitation to attack.

There can be no objection to the exercise of ordinary reason and discretion in seeking to anticipate the results of our actions in terms of the possibility of war; but international lawyers should guard their science against such misuse of its terms as is now frequently to be heard in public discussion.

CLYDE EAGLETON

CONFLICT OF FEDERAL AND STATE LAW IN RESPECT TO THE REGISTRATION OF ALIENS

The decision of the United States Supreme Court on January 20, 1941,[1] affirming the injunction granted against the Secretary of the Pennsylvania Department of Labor and prohibiting the enforcement of the Pennsylvania Alien Registration Act of 1939, has forged another link in the chain of decisions which endow the Federal Government with the power of a constitutionally centralized sovereign state in matters affecting its relations with foreign powers. The extent of the reserved sovereignty of the States has often been brought into question with reference to the treaty-making power. A different angle is presented where a State assumes to legislate with respect to the rights and duties of aliens in such manner as to interfere with the freedom of action of the Federal Government in matters affecting foreign relations.

The Pennsylvania Alien Registration Act of 1939 required resident aliens of eighteen years and over to register each year, to supply certain information demanded by the Department of Labor of Pennsylvania, to pay a registration fee and to carry at all times an alien identification card. Two aliens of different nationalities brought action to enjoin the Pennsylvania Secretary of Labor from enforcing the Act upon various constitutional grounds all of which were left open by the Supreme Court with the exception of the contention that the power to regulate and register aliens as a distinct group is subordinate to the supreme national law. At the time of the passage of the Pennsylvania statute, Congress had not yet passed its own registration statute, but during the pendency of the action the Federal Registration Act of 1940 was enacted. It was therefore contended that, having adopted a comprehensive integrated scheme for the regulation of aliens, Congress had precluded State action of the nature of the Pennsylvania statute.

The court does not say that federal power in this field is exclusive, but it lays particular emphasis upon the importance of maintaining the supremacy of national power in this field without harassment of divergent State legislation. Justice Black, writing the opinion of the court, quoted with approval

[1] Lewis G. Hines *v.* Bernard Davidowitz *et al.* (1941), United States Supreme Court, Advance Opinions, L. ed., Vol. 85, p. 366.

the significant dictum of Justice Field in the Chinese Exclusion Case:[2] "For local interests the several States of the Union exist; but for national purposes, embracing our relations with foreign nations, we are but one people, one nation, one power." Justice Black points out that international controversies of the gravest moment, sometimes even leading to war, may arise from real or imagined wrongs to aliens inflicted or permitted. Registration statutes are burdensome when applicable only to individuals belonging to a certain group. The importance of uniformity in this respect is stressed. Whether the Pennsylvania statute would have been upheld had not Congress subsequently passed its own Registration Act cannot be stated with certainty. Its passage undoubtedly weighed heavily with the court. Justice Black holds that Congress was trying to steer a middle path in the realization that any registration requirement would be a departure from our traditional policy of not treating aliens in a separatist manner.

The basis of the dissenting opinion by Justice Stone (concurred in by the Chief Justice and by Justice McReynolds) is that while the National Government has exclusive control over the admission of aliens, an alien resident is, after entry, subject to the police powers of the States; that the Federal Government has no police power over aliens; that no conflict is represented by the Pennsylvania statute and that there was no indication that Congress intended to withdraw power from the States. In other words, a minority of the court placed the field of alien registration upon the same basis as revenue and licensing laws and police regulations where interstate commerce is involved. On the other hand, the majority opinion insists that an alien registration statute deals with "the rights, liberties and personal freedoms of human beings and is in an entirely different category from State tax statutes and State pure food labels." The contrast of the opinion of a majority of the court, expressed through an Alabama justice insisting upon national power, against the minority opinion, expressed through a justice of the court born in New Hampshire pleading for States' rights, will not be lost on those giving attention to the historical and psychological factors in judicial precedents.

The test as to whether Congress intended to exclude State legislation should certainly not be more favorable to the States in this matter than in the field of interstate commerce, where legislation relating to intrastate acts is often held unconstitutional as a "burden on interstate commerce." Thus, in a decision of the court in which Justice Stone himself wrote the opinion, the Federal Railway Labor Act, with its compulsion upon railroads to accept the provisions with respect to collective bargaining, was held applicable to employees engaging solely in intrastate activities.[3] On the other hand, a State statute providing for the regular inspection of the hull and machinery of vessels to insure safety and seaworthiness was held not to come into conflict with federal legislative power in this field. Chief Justice Hughes in-

[2] (1889), 130 U. S. 581 at p. 606.

[3] Virginian Railway Co. *v.* System Federation No. 40 (1937), 300 U. S. 515.

timated, however, that if the State attempted to impose particular standards of structure, design, equipment and operation, it would encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule.[4]

The difference of opinion among the members of the Supreme Court in the instant case was therefore as to the extent of obstruction represented by the Pennsylvania statute. The decision of the court will certainly facilitate the conduct of our relations with foreign governments. The possible violations of treaty obligations presented by State legislation relating to aliens, and particularly by the manner in which such legislation is likely to be enforced, can be a source of much friction. In this connection we are reminded of the trenchant remark of the Marquis Rudini, Italian Minister of Foreign Affairs, at the time of the riots against alleged members of the Mafia in Louisiana in the early nineties. Complaining to the Italian Envoy in Washington of the failure of the Federal Government to redress grievances for which the State of Louisiana was held responsible, the Marquis said: "Let the Federal Government reflect upon its side, if it is expedient to leave to the mercy of each State of the Union, irresponsible to foreign countries, the efficiency of treaties pledging its faith and honor to entire nations." [5]

The founders of the Republic anticipated these dangers from an early date. In the Federalist Papers (No. 41), Madison referred to the class of power lodged in the general government with regard to intercourse with foreign nations: "If we are to be one nation in any respect, it clearly ought to be in respect to other nations." Hamilton (No. 80), stated the principle succinctly as follows: "The peace of the *whole* ought not to be left at the disposal of a *part*." Jefferson expressed a similar view in 1787: "My own general idea was, that the States should severally preserve their sovereignty in whatever concerns themselves alone, and that whatever may concern another State or any foreign nation should be made a part of the Federal sovereignty." [6]

It is not generally realized that in seven States of the Union, statutes passed during 1917–1918, empowering the governor to require registration of aliens during a state of war or public necessity, are still in existence though dormant.[7] The confusion that would arise may easily be imagined if all or many of the States passed conflicting registration statutes embodying some or all of the drastic provisions of the Pennsylvania law. The decision of the court in the present case insures the avoidance of embarrassments with foreign nations in this respect and is therefore to be welcomed, especially at the present critical moment of our international relations.

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[4] Kelly *v.* Washington (1937), 302 U. S. at p. 15.

[5] Foreign Relations of the United States, 1891, p. 712.

[6] Memoir, Correspondence and Miscellanies from the Papers of Thomas Jefferson, Vol. 2, p. 230, letter to Mr. Wythe.

[7] See New York Consolidated Laws (Executive Law, Sec. 10).