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JAMES F. BYRNES AND THE SUPREME COURT* 1941-42

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It may be said that Justice Byrnes began his preparation for an amazing career of public and professional service, including his service on the Supreme Court, when as a lad he "served a term as office boy in an attorney's firm." At the age of fourteen he worked for the late Benjamin Huger Rutledge of the Charleston bar, who arranged a library membership, mapped out a course of reading, and catechized him on what he had read.

Justice Byrnes said that this experience provided "a solid background" for the study of the law in the office of Judge Robert Aldrich in Aiken. It also provided the basic foundation for the development of one of the nation's most incisive intellects and articulate voices.

Years later, when great institutions of learning were honoring his exceptional service as Secretary of State, Justice Byrnes quipped that he was becoming "educated by degrees."

While reading law Justice Byrnes served as court stenographer, passed the bar examination, began practice and edited a local newspaper at the same time, became the prosecuting attorney of his circuit, and was elected to the Congress.

He served in the House of Representatives for seven terms. A Woodrow Wilson liberal, the value of his service on the Committee on Appropriations was attested by the President himself. This part of his career brought him into intimate association during the First World War with Franklin D. Roosevelt, then Assistant Secretary of the Navy.

In the period from 1925 to 1931, he engaged intensively in the general practice of the law in Spartanburg with the late Sam Nichols and Cecil Wyche. There was no stronger or more active law firm in the state than the firm of Nichols, Wyche & Byrnes.

He was in the United States Senate when Franklin D. Roosevelt became President, and he again became actively involved

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in the legislative implementation of a chief executive's liberal program.

Justice Byrnes served on the Supreme Court for the whole of the 1941-1942 term. His commission was recorded October 6, 1941, two months before Pearl Harbor.

Although called upon many times by the President for consultation and assistance, especially after the onset of the war, he missed no sessions of the Court in hearings or caucuses, was late only once, and authored his full share of the opinions filed for the Court during the term.

Justice Byrnes delivered sixteen opinions for the Court; Justices Black and Frankfurter seventeen each; Justice Roberts fifteen; Justice Murphy fourteen; and Justices Reed and Jackson twelve each. Only Chief Justice Stone and Justice Douglas delivered more than their average share.

He wrote no separate concurring opinions. Very likely his legislative experience in striving to achieve a consensus carried over into his early judicial service.

Dissents were registered to six of his opinions for the Court, three each by Justices Reed, Black, Douglas and Murphy, two by Chief Justice Stone, and one each by Justices Roberts and Frankfurter.

Justice Byrnes joined in dissenting opinions in twelve cases. In so doing, he joined Chief Justice Stone six times, Justices Black, Frankfurter and Douglas five times, Justice Roberts four times, Justices Murphy and Jackson twice, and Justice Reed once.

Four of the dissenting opinions in which he concurred were written by Justice Douglas, three by Chief Justice Stone, two each by Justices Black and Frankfurter, and one by Justice Roberts.

In his judicial opinions, as in his other public statements, he spoke with the power of brevity and the appropriate word, exemplifying Lord Bacon's aphorism that: "Reading maketh a full man, conference a ready man, and writing an exact man."

His skill in argument and effective exposition was brilliantly illustrated by his opinion in *United States v. Local 807,*[1] concurred in by seven other members of the Court, which held that the Federal Anti-Racketeering Act, designed to combat the pre-

1. 315 U.S. 521 (1942).

datory gangs of the Kelly and Dillinger types, did not, as written, show Congressional intention to include in its sweep militant labor activity, however deplorable and unlawful under state law, and by his dissenting opinion in the Wages and Hours case, *Walling v. A.H. Belo Corp.*,[2] which became the opinion of the Court when it won over Justice Jackson.[3] The *Belo* principle which was thus laid down was adhered to by the Court upon reconsideration some five years later.[4]

The variety of his cases included decisions upholding rights under the 13th and 14th Amendments in criminal appeals; dealing with claims of government priority in bankruptcies and receiverships; construing and applying Puerto Rico's statutes and local laws; considering in a labor relations matter whether a strike on shipboard away from the vessel's home port was a mutiny; and determining that a consent decree in an anti-trust case was subject to modification later.

Justice Byrnes filed his first opinion for the Court in the case of *Edwards v. California*,[5] which may well have been the most significant decision of the 1941-1942 term. A state statute was held invalid under the commerce clause of the United States Constitution because it penalized the bringing or assisting to bring into the state any indigent person knowing him to be indigent. Edwards had brought his wife's unemployed and impecunious brother from Arizona to California to live with them.

Chief Justice Stone and Justices Roberts, Reed, and Frankfurter concurred in Justice Byrnes' opinion. The other Justices preferred to predicate the holding on the privileges and immunities clause of the Fourteenth Amendment.[6]

Rejecting the theory of the Elizabethan poor laws, "that each community should care for its own indigent, that relief is solely the responsibility of local government," he wrote:

> [I]n an industrial society the task of providing assistance

2. 316 U.S. 624 (1942).

3. J. BYRNES, ALL IN ONE LIFETIME 142 (1958).

4. Walling v. Halliburton Oil Well Drilling Co., 331 U.S. 17 (1947).

5. 314 U.S. 160 (1941).

6. At the conference Byrnes approved the same view, but in writing the opinion he relied on the commerce clause instead, in part because it would grant protection to noncitizens lawfully in this country. A. MASON, HARLAN FISKE STONE: PILLAR OF THE LAW 578-580 (1956). *Cf.* 42 COLUM. L. REV. 139, 141 (1942): "The question of aliens and their rights is one in which prejudice runs strong, especially in wartime, and an unwarranted distinction on the basis of citizenship might well have unfortunate consequences."

> to the needy has ceased to be local in character. The duty to share the burden, if not wholly to assume it, has been recognized not only by State governments, but by the Federal government as well. The changed attitude is reflected in the Social Security laws under which the Federal and State governments co-operate for the care of the aged, the blind and dependent children . . . . It is reflected in the works programs under which work is furnished the unemployed, with the States supplying approximately 25% and the Federal government approximatley 75% of the cost . . . . It is further reflected in the Farm Security laws, under which the entire cost of the relief provisions is borne by the Federal government.[7]

It is not without significance that in the Senate Byrnes himself had studied the problems and worked in the forging of the remedial legislation thus referred to. Like Justice Cardozo, his stated belief was that the Constitution was framed upon the theory "that the peoples of the several States must sink or swim together, and that in the long run prosperity and salvation are in union and not division."[8]

The *Harvard Law Review* noted the *Edwards* decision in part:

> In this case, the Court has reasserted the essential federal nature of American government by destroying the barriers which more than half the states had erected as protection against the influx of depression migrants. . . . Although transportation of persons has uniformly been held "commerce," the Court in early decisions considered exclusionary measures against the "moral pestilence of paupers" valid exercises of state power . . . . Mr. Justice Byrnes, speaking for the majority, dismissed these decisions as inapplicable today because "Poverty and immorality are not synonymous," and held that the national interest in free opportunity and mobility outweighs any state interest in economic isolation.[9]

The *Columbia Law Review* observed:

> It seems apparent that an adequate solution of the ills caused by depression migration can be attained only by a federal program. By holding that the state legislation is an unconstitutional interference with interstate commerce, the Court

7. Edwards v. California, 314 U.S. 160, 174-75 (1942).
8. Baldwin v. Seelig, 294 U.S. 511, 523 (1935).
9. 55 HARV. L. REV. 873, 874 (1942).

> places the problem within the scope of Congressional regulation. . . .
>
> The decision is also noteworthy in that a majority, by holding the statute unconstitutional without specifically relying on a test of actual discrimination, implicitly rejects the position . . . that in the absence of actual discrimination relief must be obtained from Congress. This suggests that a majority of the Court, including the recently appointed Justices Byrnes and Jackson, view the Commerce Clause as a real limitation of state power, it being a function of the Court to apply this limitation to safeguard interstate commerce.[10]

Edwards v. California came less than ten months after Chief Justice Stone's landmark decision in *United States v. Darby*,[11] in which the Court began the process of returning the commerce power to the position accorded to it in *Gibbons v. Ogden* over a century earlier.[12] *Edwards* reaffirmed the principle that the Commerce Clause alone, without affirmative action by Congress, interdicted state interference with interstate intercourse in respect to a matter of national concern requiring regulation by a single authority. *Darby* overruled *Hammer v. Dagenhart*[13] and its hobbling limitation on Congressional power; *Edwards* overruled *City of New York v. Miln*.[14]

In these cases, and Chief Justice Stone's comprehensive synthesis in 1945 of the controlling cases in *Southern Pacific Co. v. Arizona*,[15] the national government was again recognized by the Court to possess the power over commerce among the several states which is essential to make the federal system work as the Framers intended that it should.

Twenty-five years later eight members of the Court in *Heart of Atlanta Motel, Inc. v. United States* held the provisions of the 1964 Civil Rights Act prohibiting discrimination on account of race in public accommodations offered to interstate travelers to be valid by reason of the commerce power.[16]

Not long after the adjournment of the 1941-42 term of the Court, President Roosevelt, heavily burdened by the crushing

10. 42 COLUM. L. REV. 139, 141-142 (1942).
11. 312 U.S. 100 (1941).
12. 22 U.S. (9 Wheat.) 1 (1824).
13. 247 U.S. 251 (1918).
14. 36 U.S. (11 Pet.) 102 (1837).
15. 325 U.S. 761 (1945).
16. 379 U.S. 241 (1964).

responsibilities of the war, called upon his old friend and long-time co-worker to assume "a position of highest importance to the carrying out of the war." In answering the call, Justice Byrnes did not agree that he could remain on the Court while discharging functions of the executive branch of the government. He believed strongly that the principle of separation of powers is probably the most important guaranty of the liberties of the people,[17] that "there is no liberty . . . if the judiciary be not separated from the legislative and executive,"[18] because, as Woodrow Wilson put it, a constitutional government "keeps its promises, or does not keep them, in its courts."[19]

Rarely has a Justice come to the Supreme Court with as favorable background of training and experience as Justice Byrnes possessed. Both as a court stenographer, a prosecuting attorney and an able advocate in the general practice of the law, he was at home in the workings of the machinery of justice. Both as a Congressman and a Senator, he had an innate understanding of the workings of the federal system and the respective responsibilities of the executive, legislative and judicial branches of the national government. His service in the Senate in the years of the great depression which so vastly affected the whole future of the nation, in which period he played a leading part in the enactment of measures devised to meet the depression's devastating effect, gave him an extraordinary insight into the judicial issues which would characterize the years ahead.

Although Justice Byrnes went on to render outstanding administrative and diplomatic service to the nation after leaving the Court, I think it proper to say that by his resignation the Court and the nation were deprived of a judicial career which already had the promise of greatness.

17. "It was . . . looked to as a bulwark against tyranny." United States v. Brown, 381 U.S. 437, 443 (1964).

18. MONTESQUIEU, THE SPIRIT OF THE LAWS, XI, vi (1748).

19. W. WILSON, CONSTITUTIONAL GOVERNMENT IN THE UNITED STATES 17 (1908).