

# Town Meeting

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## Is Our Constitutional Government In Danger?

*Moderator Denny:*

GOOD EVENING, neighbors! We are tremendously gratified by the response we have received from citizens all over America who have taken the initiative in organizing formally and informally Town Meeting Discussion Groups in their homes, in clubs, schools, colleges, and churches. We are everlastingly indebted to the radio and particularly to the National Broadcasting Company for making it possible for millions of Americans to consider their common problems together and simultaneously after having heard two or more conflicting views on important public questions in the spirit of the early New England town meeting.

If you have formed or intend to form a listening-discussion group and have not yet written to us, won't you drop us a postcard tonight and help us answer the question we are so frequently asked: "How many discussion groups are listening to America's Town Meeting of the Air?" We can only answer this question with your help.

Tonight we are delighted to welcome back to our platform two former Town Meeting speakers, discussing

one of America's most fundamental problems. Leaving troubled Europe we pause to ask ourselves: "Is Our Own Constitutional Government in Danger?" Since the beginning of organized society, man has struggled to find a system of government which would give him maximum freedom with a minimum of external control. Constitutional government, or government of men under law, represents our highest achievement in this respect. The advent of the machine age, however, has multiplied this problem a thousandfold. Beyond the seas we see nations which have hopelessly abandoned constitutional government in favor of a totalitarian system. It is therefore apparent that we cannot enjoy the fruits of the machine age without the orderly operation of the processes of production, distribution, and consumption. The absence of order in this age leads quickly to chaos. Can democracies, then, through constitutional government provide for these orderly procedures?

Our speakers this evening are both outstanding authorities in the field of constitutional government, and while their opinions may differ on the question of the evening, they have respect for each other's views and are rendering a great service to the cause of American democracy in their willingness to discuss this subject frankly and openly before this great American audience listening tonight.

The Honorable Robert H. Jackson, Solicitor General of the United States, and Mr. Frederick H. Wood, celebrated New York attorney, are our speakers this evening, and I take pleasure in presenting at this time our first speaker, Mr. Wood.

*Mr. Wood:*

One hundred and fifty years ago there was established on this continent a constitutional government dedi-

cated to the principle that men should be free. Of late we have been told by some that our system—in which both men and enterprise are free—has become outmoded, and should be thrown into the discard. To many it has seemed that the world is going, or is in danger of going, collectivist. Consequently, people have asked themselves: Is our constitutional government, established for the purpose of insuring and preserving a nation of free men, in danger?

The first question is whether the admittedly unstable financial condition of the Government—deficits measured in the billions year after year—has any substantial effect on constitutional freedom. As early as 1932 President Roosevelt pointed out that liberal governments have frequently been wrecked on the rocks of financial instability. It is commonly supposed that the collapse of government credit was one of the causes of the downfall of the German Republic and of the rise of Hitler. Consequently, first on the list of those conditions which, unless seasonably remedied, may endanger our free institutions, must be placed our greatly increased and mounting public debt and continued deficit spending.

There are others. Next in order is the growing concentration of power in the Federal Government. As everyone knows, the activities of farmers, businessmen, wage earners, bankers, and others, as well as railroads, communication systems, and public utilities, are now, in one way or another, regulated by the Federal Government.

The third point is that there has now been a new concentration of power in the executive branch of the Federal Government. All these new fields of Federal activity are under the control of small boards or administrative agencies. These two concentrations of power—first, within the Federal Government, then, within the executive

branch of the Federal Government—go hand in hand. It is therefore doubly necessary that the exercise of these powers be surrounded by the safeguards necessary to keep a centralized government within bounds. As said by Madison, one of the great founders of the Democratic party, successor in the presidency to Thomas Jefferson, and the man who probably had more to do in the writing of the Constitution than any other single man:

The accumulation of all powers, legislative, executive and judiciary in the same hand, whether of the one, a few, or many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny.<sup>1</sup>

The separation of these powers was said by Lord Bryce in *The American Commonwealth* to constitute “the fundamental characteristic of the American national government.” It was upon this, said he, that the founders relied to secure and maintain “the freedom of the individual.”

These administrative agencies exercising these newly-found powers exercise all three of these powers referred to by Madison and Bryce. Each constitutes a little dictatorship in its own field. Together they control broad and constantly expanding fields of our national life.

They generally consist of boards of three or five members. Some consist of but a single officer. Regulation of the bituminous coal industry, for example, is in the hands of the Secretary of the Interior. Other regulatory powers are lodged in the Secretary of Agriculture. These Cabinet officers must sandwich in the performance of these important functions with other important duties as members of the Cabinet. Under the Bituminous Coal

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<sup>1</sup> *Federalist Papers*, No. XLVII, p. 373, edition of J. C. Hamilton.

Act, the Secretary of the Interior is empowered, and it is made his duty, to fix the prices of coal on every kind and classification of coal, at every mine, and in every consuming market in the United States. Obviously, no one single man can perform a task of such magnitude. And so, because of the very volume of their work, the exercise of the powers of these administrative officers and boards is left largely in the hands of their employees, appointed by them and responsible solely to them, of many of whom the public has never heard, and whose names and qualifications to perform their functions are completely unknown.

I am informed that the three-man Labor Board has almost a thousand subordinates, of whom from seventy-five to a hundred are so-called "review attorneys" who devote their entire time to preparing decisions for the Board to sign. These officers and boards exercise legislative power, by making rules to govern the conduct of those subject to their jurisdiction, which have all the force of an Act of Congress. As judges, they hear and decide cases brought by themselves before themselves against persons charged with the violation of law. It is as though the District Attorney, having procured an indictment against me, should thereafter proceed to mount the bench and try me as a judge, and also sit as a jury on the indictment which he has procured. In every case before the Labor Board, for example, in which an employer is charged with a violation of the National Labor Relations Act, the Board acts as prosecutor, judge, and jury. But in this respect it is no way different from all other administrative boards and officers; it simply happens to be the one which in the last two years has come into the greatest public prominence.

The courts are forbidden by statute to review the find-

ings of fact of these administrative agencies. As said by Chief Justice Hughes in an address before the Federal Bar Association:

The power of administrative bodies to make findings of fact which may be treated as conclusive, if there is evidence both ways, is a power of enormous consequence. An unscrupulous administrator might be tempted to say, "Let me find the facts for the people of my country, and I care little who lays down the general principles."

In a court proceeding, tried without a jury, as these cases are, findings of fact are made by a judge who himself hears the evidence. Members of these boards neither hear nor read the evidence. The procedure followed by the Labor Board is typical. As publicly stated by its chairman, its "review attorneys analyze the evidence (taken by an Examiner appointed by the Board), inform the Board of the contentions of all parties and the testimony relating thereto, and make initial drafts of the Board's findings and order." All this is done in the privacy of the Board's own chambers, without notice to the person charged with violation of the law, and without opportunity to be heard.

As I have said, there are seventy-five or more of such review attorneys in the service of the Board, many of them young men fresh from law school. I do not think it will be contended that they or, for the most part, the subordinates of other boards and agencies performing similar functions have either the qualifications or experience which would warrant their election as a State Court Judge or their appointment as a Federal Judge. Yet these cases are at least as important to the parties themselves and to the public as those decided by the courts.

It has always been our boast that ours is a government of laws and not of men. I think few people realize to

what an increasing extent many of the more important phases of our national life are now ruled by a series of Federal bureaucracies, thus substituting a government of men for one of laws. Their creation has been made necessary by the complexities of our modern economic and social life. Their number, their powers, and their fields of activities are almost certain to increase. More and more the daily lives and daily livelihood of increasing numbers of our people are certain to be subject to their control.

Unless provision is made for both a real and an impartial trial in cases coming before them, or a more effective court review allowed, constitutional government, as we have known it, is in danger in those fields of governmental activity which most directly affect the daily lives and livelihood of the people, and hence in those fields where its preservation is most important. I am not alone in this belief. The necessity for change has provoked discussion by others both in and out of Congress. Those who oppose the imposition of the necessary safeguards do so upon the ground of supposed resulting interference with the expeditious and effective exercise of the duties and powers of these boards. But the Nazi will tell you that his form of government is more expeditious and efficient than ours, and probably it is.

I have discussed the condition as it is. It might be worse. The President's original proposal for a reorganization of the Government contemplated that all of these boards and commissions should be placed directly within the executive departments, themselves under the control of the President. This proposal, although not accepted by Congress, illustrates the constant threat of greater and greater concentration of power, not only within the Federal Government as a whole, but in the executive.

Another possible source of danger to constitutional government lies in the nature of the proposals made from time to time for the further extension of governmental activity. Present-day conditions make it necessary for the Government to do many things which it has not done before, such as the provision of relief for the unemployed in times of national distress, and the enactment of required social legislation. But many of these proposals go further and contemplate affirmative control of economic activity. Affirmative control of economic activity means a substitution of planned economy for free enterprise, and planned economy is but another name for totalitarianism. Now it is said that our Constitution must be adapted to meet the changing conditions of the people. I agree. It has been; but in so doing the fundamental requirements of a free people must also be preserved. I believe they will be, but I believe they are in danger unless the people are vigilant to see that they are preserved.

In America men are free because enterprise is free, and enterprise is free because men are free. But if this freedom is to endure, the people must be as vigilant to see that governmental activities are kept within their proper sphere and are surrounded in their exercise by proper safeguards, as they are to see that abuses and injustices in our economic and social order are removed. Otherwise our liberties will be whittled away bit by bit. Otherwise our constitutional government—ordained, in the language of its framers, “to secure the blessings of liberty to ourselves and our posterity”—is in danger.

*Moderator:*

Thank you, Mr. Wood. And now it is my pleasure to present our second speaker, the Honorable Robert H. Jackson, Solicitor General of the United States.

The Constitution of the United States, as written by our forefathers and ratified by the people themselves, is not beyond the understanding of the average citizen. In simple language it sets up a skeleton government, sketches its powers and limitations in a few great clauses, and in ten short amendments declares those fundamental rights which make up our freedom. It does not use technical terms, and it is all contained in about 4,500 words. Such brevity proves that it is not a mere lawyer's document. I urge you to study it.

But the Constitution, like the Scriptures, has inspired a vast literature of comment and interpretation. The Supreme Court has written millions of technical words about the 4,500 simple words of the Constitution. As a whole these Court decisions are inconsistent and confusing. Laymen cannot hope to understand them because the judges disagree as to what they mean. But from these opinions a constitutional lawyer can quote texts for any purpose as readily as the Devil is reported to quote Scripture.

The New Deal has had no controversy with the Constitution itself. We have had a disagreement with some of the millions of words *about* the Constitution. President Roosevelt said in his second inaugural address:

The vital need is not an alteration of our fundamental law but an increasingly enlightened view with reference to it.

In the many constitutional cases that I have presented to the Supreme Court for his Administration, I have never tried to reconcile a century and a half of contradictory judicial opinion, but have argued that greater verity and assurance comes from a reading of the document itself. The spirit of the shift which has taken place

in constitutional doctrine was recently stated by Mr. Justice Frankfurter, who said:<sup>2</sup>

... the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.

We lawyers all agree that to have constitutional law simplified like this is bad for our business. Some lawyers who once demanded an unquestioning reverence for the Supreme Court have now become its most intemperate critics. In his presidential address to the American Bar Association, Mr. Frank Hogan solemnly proclaimed that we can no longer depend on the judicial department of the national government as a reliance against the exercise of arbitrary power.<sup>3</sup>

The chief reason given for such lamentation is that the Court has now decided that public officers and judges themselves must pay income taxes. Even after the people amended the Constitution to authorize a tax on incomes "from whatever source derived," the Court ruled that the Congress could not tax as income either stock dividends,<sup>4</sup> or salaries of State officers,<sup>5</sup> or interest on State or municipal bonds,<sup>6</sup> or the salaries of Federal judges.<sup>7</sup>

I have been challenging those decisions as often as there was opportunity. I doubt if the people will seriously believe that constitutional government is endangered by the fact that public officers will now pay income taxes and share the burdens they impose, or because judges are taxable under the revenue laws that they enforce.

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<sup>2</sup> *Graves v. O'Keefe*, 306 U.S. 466.

<sup>3</sup> *American Bar Association Journal*, August, 1939.

<sup>4</sup> *Eisner v. Macomber*, 252 U.S. 189.

<sup>5</sup> *Brush v. Commissioner*, 300 U.S. 352.

<sup>6</sup> *National Life Ins. Co. v. United States*, 277 U.S. 508.

<sup>7</sup> *Evans v. Gore*, 253 U.S. 245.

I think I know what the alarm is *really* about. Mr. Hogan once gave to the Bar its classic definition of a good client—"a rich man thoroughly scared." I think some of those grade A clients have been reading these decisions and are scared. They fear that the way is being opened to tax the vast amount of wealth now escaping all tax by being put in tax-exempt bonds. And maybe they are right. But do not let anyone tell you that constitutional government is endangered even if everybody does eventually pay taxes on the same basis. That is just going back to what the Constitution itself provides.

The Court also made a dramatic return to the Constitution, which illustrates the point I am trying to make, in reference to minimum wage laws. For nearly a quarter of a century the Supreme Court, against the protest of many of our most respected justices, condemned as unconstitutional any effort by either state or nation to establish minimum wages for women in industry. The reason given was that such a law deprived women of their constitutional freedom of contract.<sup>8</sup> But in 1937, before any change in its membership, Chief Justice Hughes wrote an opinion in which his former dissent became the law. His opinion referred to this doctrine of freedom of contract and asked, "What is this freedom?" And he answered thus: "The Constitution does not speak of freedom of contract."<sup>9</sup> And if he can't find it in the Constitution, I doubt if you will be able to. He demonstrated the complete absence of a constitutional basis for setting aside such social legislation.

The law was thus corrected, but not until two generations had been denied all right to control sweatshop

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<sup>8</sup> *Morehead v. N.Y. ex rel. Tipaldo*, 298 U.S. 587.

<sup>9</sup> *West Coast Hotel Co. v. Parrish*, 300 U.S. 379.

conditions, and on a theory not to be found in the Constitution at all. That is what I mean by saying that we must go back, and are going back, to the Constitution itself.

Mr. Wood has, at other times,<sup>10</sup> although he did not press the claim tonight, asserted that our constitutional right of free speech and free press is endangered because employers may no longer write or say that their employees must not join labor unions. Of course it is the constitutional right of an employer, or anyone else, to criticize the Labor Act or its administration, or to denounce labor unions. But it is important these days to remember what free speech does not protect, as well as what it does protect. Does anybody believe that free speech excuses false passport applications, or sabotage, or incitements to violence or crime? Neither does it excuse coercion or intimidation of labor.

One who merely uttered words, if they were threatening, might be put under bond to keep the peace, and penalties have long been exacted for intimidating or coercing voters. Freedom of speech never allowed you to say to another person: "Give up your money or your life"—even though you were only making use of words.

The Labor Relations Act now forbids an employer to say to a laborer: "Give up your union or give up your job." True, those are just words, but they are words of menace and coercion, especially when they are accompanied by firing of union men. The line that separates use from abuse of civil rights is a delicate one to draw. The circumstances of each case will give the words their color of guilt or innocence. But free speech for one man must always stop short of intimidating or bullying another.

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<sup>10</sup> See *New York Times*, October 15, 1939.

Are our great constitutional guarantees in danger? The answer really lies with the people themselves. Civil rights are pretty generally safe except in periods of widespread emotional instability. In such times there are always those who, either because they lack balance themselves or because they see an opportunity to exploit the anxiety of others, institute scares and make drives to save the country from exaggerated dangers by suppressing free speech, or censoring free press, or punishing free opinion. "Red-baiting" is really not so much a crime as it is a neurosis. Fear will cause a stampede among politicians just as it will among the nobler animals. The only cure for this is a steady and unfrightened public opinion strong enough and expressive enough to show that respect for civil rights is also good politics in America.

We defend free speech and free press, not because we agree with those who need defense. Rather, it is because these rights are the very best protection of our system against violent or underground movements. The soap box is a better line of defense for democracy than a Siberia. The freedom to bid for acceptance of any cause in the open marketplace of public opinion makes secret and conspiratorial movements ineffective with any large number of citizens. One is apt to look more foolish than dangerous when he whispers what he is free to shout. The membership of secret and subversive movements are always revealed as suckers more than menaces.

In spite of this, no administration has yet served our country in a time of emotional upheaval that did not blemish its record by excesses in suppression of civil rights. This Administration will need a good deal of dispassionate judgment and calm courage if it is to succeed where its predecessors have failed.

But it is a mistake to think that our democracy can

either be saved or destroyed in Washington alone. Democracy here is not a theory of officialdom; it is a habit of the American people. It is rooted in the everyday practice of speaking our minds. It is in our daily experience of sifting a little sense from the vast amount of nonsense that we hear and read. It is our daily custom to wait to hear the other side, to discount self-serving statements, and to read between the lines of propaganda. It is this experience in independence, in discernment, and in forming judgments that makes for the survival of democracy here. It fails wherever people lose or fail to acquire this experience in living democracy.

We Americans have passed through and still face a period of unusual emotional stress. But you know that the practice of government by the consent of the governed has not been abandoned or compromised in America.

You, almost alone among peoples of the earth, are preparing for a solemn referendum next year to ascertain the people's choice as to the kind of government you will have for the following four years. Any citizen will be free to influence that choice by any speech, fair or foul, with no fear of being thrown into a concentration camp. You know that the newspapers will pretty unanimously assail the government then in power, and the government not only will not censor them but will have its postmen deliver them—at postal rates less than cost. There will be no soldiers at the polls to help you make up your mind how to vote. And you know that no matter which party comes out second best, it will accept the decision in good sportsmanship, and wait for another chance. So long as we are in a state of mind to expect this as a part of our normal way of life, constitutional democracy cannot be in danger, because this habit will keep government mindful of its constitutional restraints

and will keep our people equal to their constitutional responsibilities.

*Moderator:* Thank you, Mr. Jackson. There are about 1,400 people here tonight, and I should explain to the listening audience that at least half of these people have never attended a Town Meeting in this hall before. I would like to have it clearly understood by our listeners that this is customarily about 50 percent a new audience. If you want to obtain admission to Town Hall to attend one of these Town Meetings, send your request to Town Hall, 123 West 43rd Street, New York City, with a stamped, self-addressed envelope, and you will receive a ticket, up to the capacity of the hall. About half of those here tonight are members of the Lecture Division of Town Hall; the other half are guests. Now we are ready for the questions.

*Woman:* Mr. Jackson, is there any more intimidation in an employer's making a statement that he dislikes unions than there is in a labor union's saying, "Give us more money or we will strike and ruin your market and your business"?

*Mr. Jackson:* The question of whether there is intimidation under any circumstances becomes, of course, as I have pointed out to you, a matter of the circumstances of each case. If the labor union conducts its campaign within the law, it is certainly not intimidation. It may be that the manufacturer doesn't like the threat—and I shouldn't like it if I were in his place—of discontinuing his operations. But the experience of the American people has shown that that is about the only weapon that labor possessed up to the time of the Labor Relations Act, and has sanctioned it.

*Man:* Mr. Jackson, you indicated that the New Deal might soon eliminate tax-exempt bonds. Well, just when does the New Deal intend to do so?

*Mr. Jackson:* I am sorry that you misunderstood me. I said that the way was being opened to do it. I made no pledge as to when it would be done. It has been recommended by President Roosevelt, a number of times, and has not been enacted. It was recommended by a large number of his predecessors in office, and has not been enacted.

*Man:* Mr. Wood, is it your thought that the National Labor Relations Act would function better if there was a jury entirely outside of the National Labor Relations Board to decide cases that come before the Board?

*Mr. Wood:* No, that is not my opinion. My opinion is that the National Labor Relations Board would operate more fairly and impartially, as would all other boards, if findings of fact were required to be made by impartial persons competent to make them and not, of necessity, by a large number of irresponsible subordinates.

*Woman:* Mr. Jackson, there are certain elements who are working to get the Jewish people disenfranchised and forbidden to own property. Does not the Constitution, particularly the Fourteenth Amendment, protect them, or did the legislation against the Japanese act as a precedent which would make this possible?

*Mr. Jackson:* Well, you have given me a very large order. The disenfranchisement proposal of which you speak has never, so far as I know, reached a stage where it could be tested. I doubt if it ever will. If it does, I

think there will be ample constitutional grounds for defeating any such un-American movement.

*Man:* Mr. Jackson, isn't it true that our constitutional government is already in danger in view of the agreement among major broadcasting companies refusing to sell time to speakers debating controversial issues, thus violating the right of free speech guaranteed by our Bill of Rights?

*Moderator:* Mr. Jackson, we are on a nice question regarding the freedom of speech on the air. We hope later to discuss that question. But you are free to comment on it now.

*Mr. Jackson:* It is my understanding that such action as has been taken has been taken by the broadcasting companies themselves, and not by the Government. I suppose that whether they see fit to utilize a particular kind of program or not presents no constitutional question.

*Man:* Mr. Wood, in your speech you objected to a planned economy for the reason that it might resemble the dictatorships of Europe. Isn't it possible to have an improved planned economy and thus better existing conditions?

*Mr. Wood:* The planned economy of which I speak is the kind of planned economy that was defined by Dr. Tugwell, afterwards Assistant Secretary of Agriculture, in an address before the American Economic Association in 1932, when he described it as an economy in which the Government would do all the planning, but business would entirely disappear, and any new indus-

try or progress could be had only at the consent of some governmental officer. It seems to me that is the only planned economy that really plans and carries its plans into effect.

*Man:* Mr. Jackson, do these boards and commissions make more mistakes in deciding cases than the courts do?

*Mr. Jackson:* Well, of course, that is a hard question to answer definitely, because the boards and commissions decide thousands of cases, where the courts decide hundreds, and the boards and commissions do have many young men as assistants, whereas a judge ordinarily has one young man as a law clerk. But, if you are interested in that subject, you will find in the last report of the Solicitor General a comparison of the reversals by the Supreme Court of boards and of courts. The boards have been reversed by the Supreme Court slightly less frequently than the lower Federal courts. It should be said, however, that the basis of comparison is not exactly fair, for there is a difference in review. But, the statistics, such as they are, show reversals of the courts by the courts as often as reversals of boards by the courts.

*Man:* Mr. Wood, in your talk you mentioned the regulation, particularly, of the bituminous industry by boards. Is there any doubt in your mind that the bituminous coal industry is engaged in interstate commerce, and that therefore Congress has complete control to provide for its regulation, and may delegate such power to boards?

*Mr. Wood:* That question, I think, comes up in the Supreme Court next week for decision. Since I once argued to the contrary and got half a verdict, I don't know what the rule is.

*Moderator:* Mr. Jackson, do you care to comment on that question?

*Mr. Jackson:* No. My argument on that subject will take nearly an hour before the Supreme Court, and I can't condense it into two minutes.

*Woman:* Mr. Jackson, did not the entrance of the Federal Government into relief and old age benefits and unemployment insurance threaten constitutional government?

*Mr. Jackson:* Why, I would say that it did not. If you will turn to your Constitution, you will find that the very first power which is given to Congress is the power to levy and collect taxes for the common defense and general welfare. The general welfare was put there by our forefathers on the same basis as common defense, as an object of Federal expenditure. I don't see that the utilization of that power, which I grant was always neglected down to the time of this Administration—it was never decided by the Supreme Court until this Administration—can possibly be a threat to the Constitution as it was written by our forefathers.

*Man:* Mr. Jackson, do you think that, in the course of a more progressively liberal interpretation of the Constitution, the actual identity of that document may be lost?

*Mr. Jackson:* No. I think it may be discovered.

*Man:* I am going back to Mr. Wood and asking him the same question that the lady asked Mr. Jackson, regarding the effect of relief and unemployment insurance on our future in this country.

*Mr. Wood:* Well, I have never had any doubt that the Federal Government had the constitutional authority to provide relief and to appropriate money for those objects which are really objects of general welfare. I would say, if it did not have that power, and did not exercise that power when it should be exercised, that our constitutional government would be a great deal more in danger than it is now.

*Moderator:* Do you want to comment on that, Mr. Jackson?

*Mr. Jackson:* I want to record an agreement with Mr. Wood on that one.

*Man:* Mr. Jackson, does not the creation of so many boards, bureaus, and commissions threaten constitutional government?

*Mr. Jackson:* I can't see how any constitutional question is involved in the creation of these boards. You must not forget that these boards are not only subject to the Constitution, but they are also subject to statute. Every power that they have is given by Congress and can be withdrawn by Congress. Every one of them that Congress creates it can disestablish, if the board abuses its power. Now, they do present questions of fair administration and efficiency, but they certainly present no menace to the Constitution as long as they are under complete Congressional control, which can not only abolish them, but can refuse to appropriate funds for them. There are a dozen ways of getting rid of them if they misbehave.

*Woman:* Mr. Jackson, do you not think that the re-

cent activities of the Dies Committee, especially their action against the American League for Peace and Democracy and labor organizations, have violated our Bill of Rights and our Constitution?

*Mr. Jackson:* I think I shall decline, as an officer of the Federal Government, to enter into a controversy with the Dies Committee, particularly as long as the courts of the United States are open to anyone whose rights are invaded.

*Woman:* Would Mr. Wood comment on that question?

*Mr. Wood:* Well, being a believer in the right of free speech by a communist, a fascist, or even a member of Congress, I question whether there has been any invasion of Constitutional right in any of the activities of the Dies Committee of which I have read.

*Woman:* Mr. Wood, is it not a fact that there have been fewer strikes since the advent of the National Labor Relations Board?

*Mr. Wood:* I can't answer that question. I have seen it stated that there have been more labor disturbances and I have heard it stated that there have been less. What the facts are, I don't know.

*Man:* Mr. Wood, don't you think that public ownership of the mineral resources of the country would relieve your clients of a great deal of the suffering entailed by regulation?

*Moderator:* We will take that as a comment from a member of the audience.

*Man:* Mr. Wood, how may the Labor Board's orders made by these so-called incompetent fact-finders be enforced to the detriment of employers?

*Mr. Wood:* Well, I should say that any order that was made without a proper consideration of the evidence by an impartial and competent person, if it is adverse to somebody, hurts him, and hurts him in a manner in which he should not be hurt.

*Man:* As one lawyer to another, Mr. Wood, just why is the Constitution more endangered by the fixation of coal prices by a disinterested and probably irresponsible coal administrator, or the settlement of labor disputes by a Labor Board having no personal interest in the outcome—and for which there *is* the right to appeal—than by the fixation of prices and of wages by an association of probably irresponsible mine operators or manufacturers meeting in the privacy of their own clubrooms where they have a personal interest in the outcome and from which there *is no* right to appeal?

*Mr. Wood:* Well, I would say, first, that I have not undertaken to make any argument against government regulation of those affairs which in the interest of the public should be regulated. Whether the coal industry is one of them is a debatable question. Whether industrial disputes are one of them, I should think was probably not a debatable question but an affair requiring governmental intervention. What I am saying is that the vast powers that are inherent in the exercise of these regulatory functions are such that those who are affected by them, who are bound to be affected by them, are entitled to have as fair a trial and as fair a review by the courts of their rights as a man who is accused of an

offense against a criminal law—and they do not get it today.

*Man:* Mr. Wood, do you think it advisable that our labor disputes be settled in the United States courts, since you feel that the members of the National Labor Relations Board are not a capable body for settling labor disputes, or just what part do you feel that our national Government should take in the settlement of national labor disputes?

*Mr. Wood:* Our national government intervenes in labor disputes in several ways. First, it attempts to mediate and bring the parties together. That it unquestionably should do. Then it sets up certain standards and provides that anything in violation of those standards shall be a violation of law. That is the kind of case that the Labor Board has to decide. I say that is the same kind of case that is ordinarily decided by a court, in accordance with the safeguards that are thrown around a defendant in a court. In my opinion, the courts are more competent to decide whether an employer has violated the law than a political body such as the Labor Board, particularly when it functions, of necessity, through a lot of subordinates without experience or qualification to weigh evidence and decide cases.

*Moderator:* Here is a telegraphic question from Sherman H. Dryer, the Radio Director of the University of Chicago Round Table. He says: "Press reports of speeches by Bund leaders indicate American fascist line to be 'America is a republic, not a democracy.' Should like to ask each of the speakers his opinion of the validity of this position. Is there difference between these two terms? If so, what liberties would I as an American citi-

zen gain or lose by being under one system as opposed to the other?"

*Mr. Jackson:* I don't see that the liberties which a citizen enjoys are affected by what is a rather abstract question as to whether we are a republic or a democracy. The Bill of Rights, consisting of ten amendments to the Constitution, governs us, whatever we may call ourselves. But there is one change, structurally, taking place in the United States. We were more nearly a republic at the institution of the government than we are today. I could give two examples. A republic being a more indirect and representative form, the Electoral College was designed to elect the President by the representatives of the people, not by the people themselves. Now we have shifted from that by just abandoning that system and making Electors vote as they say they will vote. The direct election of Senators is another example of our movement in favor of democracy and away from the indirect system of representation. But if the Bund has got to where it even believes in a republican form of government, I think we are making great progress.

*Moderator:* Mr. Wood, do you want to comment until this red light goes "stop" here?

*Mr. Wood:* I think this is the place for me to take advantage of returning Mr. Jackson's compliment and saying that this, at least, is one instance in which I agree with him.

*Moderator:* Thank you, Mr. Wood. Now, before we announce next week's program I want to tell you about an interesting expansion, and a very important one, in our essay contest on the subject, "What Does American

Democracy Mean To Me?" Since Mrs. Henry Morgenthau, Sr., generously provided \$1,000 for the cash prizes, which we announced to you in previous broadcasts, two other friends of Town Hall have provided an additional \$1,000 for a similar set of cash prizes for high-school and non-college youths who enter this essay contest. This second thousand dollars, which creates the special youth section of the contest, was donated by Mr. and Mrs. Walter E. Myer of Washington, D. C. Mr. Myer is the publisher of *The American Observer*. This doubles the total prize money and makes possible twice the number of winners. There will be two equal sets of prizes—one for the general public and the other restricted to non-college youths under seventeen years of age—for the best essay on the subject, "What Does American Democracy Mean to Me?" The rules of the contest remain the same as previously announced. The winner of the first prize in each set will receive \$500 in cash and in addition will be brought to New York, with all expenses paid, to appear on a subsequent Town Meeting program. The other prizes will be awarded on the same basis, in two sets, the youth group participants, and the adult or general participants. The second prize in each set is \$200 in cash; the third prize is \$100 in cash; and for each group there will be twenty additional prizes of \$10 each: altogether, \$2,000 in cash prizes. Duplicate prizes will be awarded in case of ties. Also, the two first-prize essays will be published first in the magazine *Current History* and later in *Town Meeting*, the bulletin of "America's Town Meeting of the Air." The essays will be judged on the basis of aptness, originality, sincerity, and clarity. The decision of the judges will be final. I might say that the judges have already started working; they are reading over a thousand essays that have already been submitted. All essays submitted become the property of Town Hall.

*Announcer:* If you are interested in organizing a Town Meeting Discussion Group in your community, address the Town Hall, 123 West 43rd Street, New York City.

Next week at this hour the subject for discussion will be: "How Will the War Situation Affect Unemployment?" The speakers will be Mr. John Carmody, Administrator of the Federal Works Agency; Mr. Mark M. Jones, consulting economist and president of the Akron Belting Company; and Dr. Henry Pratt Fairchild, Professor of Sociology, New York University.