AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 8: The New Deal and Great Society Era – Federalism

United States v. Pink, 315 U.S. 203 (1942)

In 1907, the First Russian Insurance Company established a New York branch and in compliance with the laws of the state of New York deposited funds in that branch sufficient to secure potential claims. After the Russian Revolution, the Soviet government nationalized the Russian insurance business and all of its property and voided all insurance contracts and debts arising from them. Nonetheless, the First Russian Insurance Company continued to do business in New York, until a 1925 state court order authorized Louis Pink, the state superintendent of insurance, to seize the branch's assets and repay all existing domestic claimants and creditors of the company. Pink was directed to use the balance of the assets to repay foreign creditors and finally to liquidate the remainder to the board of directors as equity stakeholders.

In 1933, the United States recognized the Soviets as the de jure government of Russia, and a stay was issued that halted payment to domestic claimants of the funds. As part of the executive agreement between the president and the Soviet government to settle all financial disputes between the two countries, any Russian assets in the United States were ceded to the U.S. government. The U.S. government immediately filed suit to recover the assets of the Russian Insurance Company. Following the logic of the early actions of the Soviet government, the United States contended that all of the assets of the New York branch had become the property of the Soviet government (and had in turn now been ceded to the U.S. government). Pink and various claimants argued that the Soviet decree cancelling all insurance policies and debts had no legal effect in New York, and thus the assets should be distributed to all legal claimants before any residual was given to the U.S. government. A divided New York high court dismissed the government's suit, concluding that New York law favored the initial claimants under the liquidation proceedings that had begun in 1925. The U.S. government appealed to the U.S. Supreme Court, which held in a 7–2 vote that the claims of the United States superseded those of the private claimants and that New York law had to give way to the international agreement made by the president.

The constitutional case turned on the implications of executive action for the supremacy clause. The supremacy clause holds that laws and treaties of the United States are the supreme law of the land, notwithstanding contrary state laws. Did the executive agreement between the president and the Soviet leadership (the Litvinov Agreement) trigger the supremacy clause? What were the legal ramifications of the president's decision to grant formal recognition to the Soviet Union? Did the president have the authority to trump state law over the disposition of assets held within a state? Does the conduct of U.S. foreign policy always require that states concede to presidential directives?

JUSTICE DOUGLAS delivered the opinion of the Court.

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[*United States v. Belmont* (1933)] is determinative of the present controversy.

This Court, speaking through Justice Sutherland, held that the conduct of foreign relations is committed by the Constitution to the political departments of the Federal Government; that the propriety of the exercise of that power is not open to judicial inquiry; and that recognition of a foreign sovereign conclusively binds the courts and "is retroactive and validates all actions and conduct of the government

so recognized from the commencement of its existence." It further held that recognition of the Soviet Government, the establishment of diplomatic relations with it, and the Litvinov Assignment were "all parts of one transaction, resulting in an international compact between the two governments." After stating that, "in respect of what was done here, the Executive had authority to speak as the sole organ" of the national government, it added: "The assignment and the agreements in connection therewith did not, as in the case of treaties, as that term is used in the treaty making clause of the Constitution, require the advice and consent of the Senate." It held that the "external powers of the United States are to be exercised without regard to state laws or policies. The supremacy of a treaty in this respect has been recognized from the beginning." And it added that "all international compacts and agreements" are to be treated with similar dignity for the reason that "complete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states." This Court did not stop to inquire whether in fact there was any policy of New York which enforcement of the Litvinov Assignment would infringe since "no state policy can prevail against the international compact here involved."

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The powers of the President in the conduct of foreign relations included the power, without consent of the Senate, to determine the public policy of the United States with respect to the Russian nationalization decrees. "What government is to be regarded here as representative of a foreign sovereign state is a political rather than a judicial question, and is to be determined by the political department of the government." *Guaranty Trust Co. v. United States* (1938). That authority is not limited to a determination of the government to be recognized. It includes the power to determine the policy which is to govern the question of recognition. . . . Recognition is not always absolute; it is sometimes conditional. Power to remove such obstacles to full recognition as settlement of claims of our nationals certainly is a modest implied power of the President who is the "sole organ of the federal government in the field of international relations." *United States v. Curtiss-Wright Export Corp.* (1936). Effectiveness in handling the delicate problems of foreign relations requires no less. Unless such a power exists, the power of recognition might be thwarted or seriously diluted. No such obstacle can be placed in the way of rehabilitation of relations between this country and another nation, unless the historic conception of the powers and responsibilities of the President in the conduct of foreign affairs is to be drastically revised. It was the judgment of the political department that full recognition of the Soviet Government required the settlement of all outstanding problems including the claims of our nationals. Recognition and the Litvinov Assignment were interdependent. We would usurp the executive function if we held that that decision was not final and conclusive in the courts.

"All constitutional acts of power, whether in the executive or in the judicial department, have as much legal validity and obligation as if they proceeded from the legislature, . . ." *The Federalist*, No. 64. A treaty is a "Law of the Land" under the supremacy clause of the Constitution. Such international compacts and agreements as the Litvinov Assignment have a similar dignity.

It is, of course, true that even treaties with foreign nations will be carefully construed so as not to derogate from the authority and jurisdiction of the States of this nation unless clearly necessary to effectuate the national policy. . . . But state law must yield when it is inconsistent with, or impairs the policy or provisions of, a treaty or of an international compact or agreement. . . .

Enforcement of New York's policy . . . would collide with and subtract from the Federal policy, whether it was premised on the absence of extraterritorial effect of the Russian decrees, the conception of the New York branch as a distinct juristic personality, or disapproval by New York of the Russian program of nationalization. . . . In the first place, such action by New York, no matter what gloss be given it, amounts to official disapproval or non-recognition of the nationalization program of the Soviet Government. . . . It is in the face of the underlying policy adopted by the United States when it recognized the Soviet Government. In the second place, to the extent that the action of the State in refusing enforcement of the Litvinov Assignment results in reduction or non-payment of claims of our nationals, it

helps keep alive one source of friction which the policy of recognition intended to remove. Thus the action of New York tends to restore some of the precise irritants which had long affected the relations between these two great nations and which the policy of recognition was designed to eliminate.

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The action of New York in this case amounts in substance to a rejection of a part of the policy underlying recognition by this nation of Soviet Russia. Such power is not accorded a State in our constitutional system. To permit it would be to sanction a dangerous invasion of Federal authority. For it would "imperil the amicable relations between governments and vex the peace of nations." . . .

We repeat that there are limitations on the sovereignty of the States. No State can rewrite our foreign policy to conform to its own domestic policies. Power over external affairs is not shared by the States; it is vested in the national government exclusively. It need not be so exercised as to conform to state laws or state policies, whether they be expressed in constitutions, statutes, or judicial decrees. And the policies of the States become wholly irrelevant to judicial inquiry when the United States, acting within its constitutional sphere, seeks enforcement of its foreign policy in the courts. For such reasons, Justice Sutherland stated in *Belmont*, "In respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear. As to such purposes the State of New York does not exist."

We hold that the right to the funds or property in question became vested in the Soviet Government as the successor to the First Russian Insurance Co.; that this right has passed to the United States under the Litvinov Assignment; and that the United States is entitled to the property as against the corporation and the foreign creditors.

The judgment is *reversed* . . . .

JUSTICE FRANKFURTER, concurring.

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CHIEF JUSTICE STONE, joined by JUSTICE ROBERTS, dissenting.

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This Court has repeatedly decided that the extent to which a state court will follow the rules of law of a recognized foreign country in preference to its own is wholly a matter of comity, and that, in the absence of relevant treaty obligations, the application in the courts of a state of its own rules of law rather than those of a foreign country raises no federal question. . . .

In the application of this doctrine, this Court has often held that a state, following its own law and policy, may refuse to give effect to a transfer made elsewhere of property which is within its own territorial limits. . . .

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I assume for present purposes that these sweeping alterations of the rights of states and of persons could be achieved by treaty or even executive agreement, although we are referred to no authority which would sustain such an exercise of power as is said to have been exerted here by mere assignment unratified by the Senate. It is true that, in according recognition and in establishing friendly relations with a foreign country, this Government speaks for all the forty-eight states. But it was never true that recognition alters the substantive law of any state or prescribes uniform state law for the nationals of the recognized country. On the contrary, it does not even secure for them equality of treatment in the several states, or equal treatment with citizens in any state, save as the Constitution demands it. . . .

It would seem, therefore, that in deciding this case some inquiry should have been made to ascertain what public policy or binding rule of conduct with respect to state power and individual rights

has been proclaimed by the recognition of the Soviet Government and the assignment of its claims to the United States. The mere act of recognition and the bare transfer of the claims of the Soviet Government to the United States can, of themselves, hardly be taken to have any such effect . . . Even when courts deal with the language of diplomacy, some foundation must be laid for inferring an obligation where previously there was none, and some expression must be found in the conduct of foreign relations which fairly indicates an intention to assume it. Otherwise, courts, rather than the executive, may shape and define foreign policy which the executive has not adopted.

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Recognition opens our courts to the recognized government and its nationals. It accepts the acts of that government within its own territory as the acts of the sovereign, including its acts as a de facto government before recognition. But, until now, recognition of a foreign government by this Government has never been thought to serve as a full faith and credit clause compelling obedience here to the laws and public acts of the recognized government with respect to property and transactions in this country. . . .

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Under our dual system of government, there are many circumstances in which the legislative and executive branches of the national government may, by affirmative action expressing its policy, enlarge the exercise of federal authority and thus diminish the power which otherwise might be exercised by the states. It is indispensable to the orderly administration of the system that such alteration of powers and the consequent impairment of state and private rights should not turn on conceptions of policy which, if ever entertained by the only branch of the government authorized to adopt it, has been left unexpressed. It is not for this Court to adopt policy, the making of which has been by the Constitution committed to other branches of the government. It is not its function to supply a policy where none has been declared or defined and none can be inferred.