AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 8: The New Deal/Great Society Era – Separation of Powers

Watkins v. United States, 354 U.S. 178 (1957).

One tool that Congress has used to check the executive branch and advance its own policy agenda is the power to hold investigative hearings. Hearings are the most public means by which legislative committees do their work. At hearings, legislators collect testimony from witnesses about matters of legislative interest. Some hearings are designed to produce legislation. Some hearings are designed to evaluate a nominee for a judicial or executive office. Some hearings are designed to provide oversight of other government officials. Investigative hearings are not associated with any particular piece of legislation but serve as general fact-gathering by Congress. They might publicize a social problem or expose bad behavior by private individuals or government officials. They might set the stage for later legislative action, or they might accomplish their purpose simply by exposing witnesses to legislative questioning.

The House Un-American Activities Committee (HUAC) and the Senate Internal Security Subcommittee (SISS) were among the most controversial congressional committees in American history, particularly in the 1940s and 1950s. Part of the reason why they generated controversy was because they aggressively used their investigatory powers to force private individuals and government officials to testify in front of them. The HUAC and SISS hearings were rarely directly tied to a new piece of legislation. Instead, they were general investigatory hearings concerned with identifying "subversives" and subversive activity in the United States. Many state legislatures had their own versions of the un-American activities committees. For a time the committees made political stars of such figures as Republican Representative Richard Nixon and Republican Senator Joseph McCarthy.

The un-American activities committees became the flashpoint for a larger constitutional debate over the congressional power to conduct hearings. Many conservatives and liberals supported the activities of the committees, at least initially. Other liberals and their allies on the left sought to rein in the committees by limiting how they could conduct hearings and what questions they could ask witnesses. The executive branch under President Truman and President Eisenhower was likewise unenthusiastic about congressional investigations into internal security. The Supreme Court had previously concluded in McGrain v. Daugherty *(1927) that the legislative investigatory power was in implied power. But the basis of that implied power was the power of Congress to legislate. According to the Court in* Kilbourn v. Thompson *(1881), congressional hearings, and how those hearings were conducted, were justified to the extent that they helped Congress make new laws.*

The New Deal Court had read implied powers and the necessary and proper clause quite broadly when it came to issues such as economic regulation. Should the justices read implied powers more narrowly when it came to the legislative power to hold hearings? Or were there other constitutional principles that could be invoked to restrict congressional hearings? In Watkins v. United States *(1957), the Supreme Court initially suggested that there were significant constitutional constraints on congressional investigatory powers. Similarly, in* New Hampshire v. Sweezy *(1957), the Court held that a state legislature could not rely on the state attorney general to conduct a legislative investigation of subversive activities without risking constitutional violations. Shortly afterward, in cases such as* Uphaus v. Wyman *(1959) (upholding a New Hampshire contempt citation) and* Barenblatt v. United States *(1959), the Court backed off. In between those two types of decisions, the Senate nearly passed a bill stripping the Supreme Court's jurisdiction to hear an important class of national security cases and two new justices joined the Court.*

John Watkins was a labor leader in Chicago who had cooperated with members of the Communist Party during the 1940s. When subpoenaed by the House Un-American Activities Committee, Watkins elaborated in great length about his relationship to the Communist Party, but he refused to identify former Communists who had long

since left the Party. For refusing to cooperate with Congress, Watkins was convicted of contempt of Congress in federal district court and given a suspended sentence. He appealed his conviction, claiming that Congress had no authority to ask about former Communists and that the questions violated his First and Fifth Amendment rights. A divided panel on the Court of Appeals for the District of Columbia reversed the trial court, but the full court of appeals overturned the panel in an en banc hearing. Watkins appealed to the Supreme Court.

The Supreme Court voted 6-1 to overturn his conviction (Justices Burton and Whitaker did not participate). The precise grounds of the judicial decision, however, are unclear. Chief Justice Warren made clear his distaste for the House Un-American Activities Committee, suggesting that committee members were engaged in exposure for exposure sake, and indicated that the committee lacked the clear authorization necessary to conduct its investigation. After discussing possible constitutional limitations on committee power, however, the majority opinion concluded that the questions Watkins refused to answer lacked the statutorily required "pertinency."

Watkins *was a typical Warren Court performance during the mid-1950s. As Professor Scot Powe notes, the justices during the 1956 term rejected government power in all twelve cases involving Communists. None of these cases were explicitly based on the First Amendment. Instead, majorities relied on statutory construction or failure to follow statutory procedures. These decisions left "the loyalty-security programs . . . in shambles," but they also left the door open for future congressional, executive, and judicial action on these issues.*[1] *As you read the opinion below, think about whether Warren should have rested the decision on one of the many constitutional grounds he discusses instead of relying on the "pertinency" argument.*

CHIEF JUSTICE WARREN delivered the opinion of the Court.

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We start with several basic premises on which there is general agreement. The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste. But, broad as is this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. . . . Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to "punish" those investigated are indefensible.

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Abuses of the investigative process may imperceptibly lead to abridgment of protected freedoms. The mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of governmental interference. And when those forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous. This effect is even more harsh when it is past beliefs, expressions or associations that are disclosed and judged by current standards rather than those contemporary with the matters exposed. Nor does the witness alone suffer the consequences. Those who are identified by witnesses and thereby placed in the same glare of publicity are equally subject to public stigma, scorn and obloquy. Beyond that, there is the more subtle and immeasurable effect upon those who tend to adhere to the most orthodox and uncontroversial views and associations in order to avoid a similar fate at some future time. That this impact is partly the result of non-governmental activity by private persons cannot relieve the investigators of their responsibility for initiating the reaction.

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Accommodation of the congressional need for particular information with the individual and personal interest in privacy is an arduous and delicate task for any court. . . . It is manifest that despite the adverse effects which follow upon compelled disclosure of private matters, not all such inquiries are

[1] Lucas A. Powe, Jr., *The Warren Court and American Politics* (Cambridge, Mass.: Harvard University Press, 2000), 90.

barred. *Kilbourn* v. *Thompson* (1881) teaches that such an investigation into individual affairs is invalid if unrelated to any legislative purpose. That is beyond the powers conferred upon the Congress in the Constitution. *United States* v. *Rumely* (1953) makes it plain that the mere semblance of legislative purpose would not justify an inquiry in the face of the Bill of Rights. The critical element is the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosures from an unwilling witness. We cannot simply assume, however, that every congressional investigation is justified by a public need that overbalances any private rights affected. To do so would be to abdicate the responsibility placed by the Constitution upon the judiciary to insure that the Congress does not unjustifiably encroach upon an individual's right to privacy nor abridge his liberty of speech, press, religion or assembly.

We have no doubt that there is no congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals. But a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served.

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. . . . It is the responsibility of the Congress, in the first instance, to insure that compulsory process is used only in furtherance of a legislative purpose. That requires that the instructions to an investigating committee spell out that group's jurisdiction and purpose with sufficient particularity. . . . The more vague the committee's charter is, the greater becomes the possibility that the committee's specific actions are not in conformity with the will of the parent House of Congress.

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It would be difficult to imagine a less explicit authorizing resolution [than that of the House Un-American Activities Committee]. Who can define the meaning of "un-American"? What is that single, solitary "principle of the form of government as guaranteed by our Constitution"? There is no need to dwell upon the language, however. At one time, perhaps, the resolution might have been read narrowly to confine the Committee to the subject of propaganda. The events that have transpired in the fifteen years before the interrogation of petitioner make such a construction impossible at this date.

The members of the Committee have clearly demonstrated that they did not feel themselves restricted in any way to propaganda in the narrow sense of the word.

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Combining the language of the resolution with the construction it has been given, it is evident that the preliminary control of the Committee exercised by the House of Representatives is slight or non-existent. . . . No doubt every reasonable indulgence of legality must be accorded to the actions of a coordinate branch of our Government. But such deference cannot yield to an unnecessary and unreasonable dissipation of precious constitutional freedoms.

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. . . . Protected freedoms should not be placed in danger in the absence of a clear determination by the House or the Senate that a particular inquiry is justified by a specific legislative need.

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Absence of the qualitative consideration of petitioner's questioning by the House of Representatives aggravates a serious problem, revealed in this case, in the relationship of congressional investigating committees and the witnesses who appear before them. Plainly these committees are restricted to the missions delegated to them, *i.e.,* to acquire certain data to be used by the House or the Senate in coping with a problem that falls within its legislative sphere. No witness can be compelled to make disclosures on matters outside that area. This is a jurisdictional concept of pertinency drawn from the nature of a congressional committee's source of authority. It is not wholly different from nor unrelated to the element of pertinency embodied in the criminal statute under which petitioner was prosecuted. When the definition of jurisdictional pertinency is as uncertain and wavering as in the case of the Un-American Activities Committee, it becomes extremely difficult for the Committee to limit its inquiries to statutory pertinency.

. . . .[T]he statute [under which Watkins was prosecuted] defines the crime as refusal to answer "any question pertinent to the question under inquiry." Part of the standard of criminality, therefore, is the pertinency of the questions propounded to the witness.

. . . . There are several sources that can outline the "question under inquiry" in such a way that the rules against vagueness are satisfied. The authorizing resolution, the remarks of the chairman or members of the committee, or even the nature of the proceedings themselves, might sometimes make the topic clear. This case demonstrates, however, that these sources often leave the matter in grave doubt.

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We are mindful of the complexities of modern government and the ample scope that must be left to the Congress as the sole constitutional depository of legislative power. Equally mindful are we of the indispensable function, in the exercise of that power, of congressional investigations. The conclusions we have reached in this case will not prevent the Congress, through its committees, from obtaining any information it needs for the proper fulfillment of its role in our scheme of government. The legislature is free to determine the kinds of data that should be collected. It is only those investigations that are conducted by use of compulsory process that give rise to a need to protect the rights of individuals against illegal encroachment. That protection can be readily achieved through procedures which prevent the separation of power from responsibility and which provide the constitutional requisites of fairness for witnesses. A measure of added care on the part of the House and the Senate in authorizing the use of compulsory process and by their committees in exercising that power would suffice. That is a small price to pay if it serves to uphold the principles of limited, constitutional government without constricting the power of the Congress to inform itself.

The judgment of the Court of Appeals is *reversed* . . . .

JUSTICE BURTON and JUSTICE WHITTAKER took no part in the decision of this case.

JUSTICE FRANKFURTER, concurring.

. . . . Prosecution for contempt of Congress presupposes an adequate opportunity for the defendant to have awareness of the pertinency of the information that he has denied to Congress. And the basis of such awareness must be contemporaneous with the witness' refusal to answer and not at the trial for it. Accordingly, the actual scope of the inquiry that the Committee was authorized to conduct and the relevance of the questions to that inquiry must be shown to have been luminous at the time when asked and not left, at best, in cloudiness. The circumstances of this case were wanting in these essentials.

JUSTICE CLARK, dissenting.

. . . . So long as the object of a legislative inquiry is legitimate and the questions propounded are pertinent thereto, it is not for the courts to interfere with the committee system of inquiry. To hold otherwise would be an infringement on the power given the Congress to inform itself, and thus a trespass upon the fundamental American principle of separation of powers. The majority has substituted the judiciary as the grand inquisitor and supervisor of congressional investigations. It has never been so.

Legislative committees to inquire into facts or conditions for assurance of the public welfare or to determine the need for legislative action have grown in importance with the complexity of government. The investigation that gave rise to this prosecution is of the latter type. Since many matters requiring statutory action lie in the domain of the specialist or are unknown without testimony from informed witnesses, the need for information has brought about legislative inquiries that have used the compulsion of the subpoena to lay bare needed facts and a statute, 2 U.S.C. § 192 here involved, to punish recalcitrant witnesses. The propriety of investigations has long been recognized and rarely curbed by the courts, though constitutional limitations on the investigatory powers are admitted. . . .

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Permanent or standing committees of both Houses have been given power in exceedingly broad terms. . . . Such committees have been "authorized and directed" to make full and complete studies "of whether *organized crime* utilizes the facilities of interstate commerce or otherwise operates in interstate commerce"; "of . . . *all lobbying activities* intended to influence, encourage, promote, or retard legislation"; "to determine the extent to which current literature . . . containing *immoral,* [or] *obscene* . . . matter, or placing *improper* emphasis on crime . . . are being made available to the people of the United States . . ."; and "of the extent to which criminal or other *improper* practices . . . are, or have been, engaged in in *the field of labor-management relations* . . . to the *detriment* of the *interests* of the public . . . ." (Emphasis added in each example.) Surely these authorizations permit the committees even more "tremendous latitude" than the "charter" of the Un-American Activities Committee. Yet no one has suggested that the powers granted were too broad. To restrain and limit the breadth of investigative power of this Committee necessitates the similar handling of all other committees. The resulting restraint imposed on the committee system appears to cripple the system beyond workability.

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Watkins had been an active leader in the labor movement for many years and had been identified by two previous witnesses at the Committee's hearing in Chicago as a member of the Communist Party. There can be no question that he was fully informed of the subject matter of the inquiry. His testimony reveals a complete knowledge and understanding of the hearings at Chicago. . . .

. . . .[T]he Committee attempted to have Watkins identify 30 persons, most of whom were connected with labor unions in some way. While one "operated a beauty parlor" and another was "a watchmaker," they may well have been "drops" or other functionaries in the program of cooperation between the union and the Party. It is a *non sequitur* for the Court to say that since "almost a quarter of the persons on the list are not labor people, the inference becomes strong that the subject before the Subcommittee was not defined in terms of Communism in labor." I submit that the opposite is true.

I think the Committee here was acting entirely within its scope and that the purpose of its inquiry was set out with "undisputable clarity." . . . Watkins' action at the hearing clearly reveals that he was well acquainted with the purpose of the hearing. . . .

The Court makes much of petitioner's claim of "exposure for exposure's sake" and strikes at the purposes of the Committee through this catch phrase. But we are bound to accept as the purpose of the Committee that stated in the Reorganization Act together with the statements of the Chairman at the hearings involved here. Nothing was said of exposure. . . .

The pertinency of the questions is highlighted by the need for the Congress to know the extent of infiltration of communism in labor unions. This technique of infiltration was that used in bringing the downfall of countries formerly free but now still remaining behind the Iron Curtain. . . . [T]he Party is not an ordinary political party and has not been at least since 1945. Association with its officials is not an ordinary association. . . .Watkins' silence prevented the Committee from learning this information which could have been vital to its future investigation. The Committee was likewise entitled to elicit testimony showing the truth or falsity of the prior testimony of the witnesses who had involved Watkins and the union with collaboration with the Party. If the testimony was untrue a false picture of the relationship between the union and the Party leaders would have resulted. For these reasons there were ample indications of the pertinency of the questions.

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