AMERICAN CONSTITUTIONALISM
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Supplementary Material

Chapter 8: The New Deal/Great Society Era—Democratic Rights/Citizenship

Schneiderman v. United States, 320 U.S. 118 (1943)

In 1940, a federal district court in California revoked William Schneiderman's citizenship on the ground that Schneiderman had fraudulently procured that citizenship in 1927. Federal law at the time required immigrants seeking citizenship to demonstrate that for the previous five years they had "demonstrated attachment to the principles of the Constitution of the United States." The federal district court ruled that Schneider's oath was invalid because at the time or immediately before he became a citizen he was a member of the Communist Party.

Schneiderman was one of several cases in which the Supreme Court interpreted federal naturalization laws in light of New Deal commitments to democracy. In 1946, the justices by a 6–3 vote declared that pacifists could become citizens of the United States. Overruling such past decisions as United States v. Schwimmer *(1929), Justice Douglas's opinion insisted that congressional statutes on naturalization be implemented in light of both the freedom of speech and freedom of religion. His opinion concluded,*

> *The test oath is abhorrent to our tradition. Over the years Congress has meticulously respected that tradition and even in time of war has sought to accommodate the military requirements to the religious scruples of the individual. We do not believe that Congress intended to reverse that policy when it came to draft the naturalization oath. Such an abrupt and radical departure from our traditions should not be implied.*

The Supreme Court by a 6-3 vote declared that Schneiderman's citizenship could not be revoked. Justice Murphy's majority opinion insisted that persons could swear allegiance to the Constitution even if they believed fundamental principles could be improved, as long as they supported constitutional means for constitutional improvement. Should/would the justices have reached the same result had William Schneiderman been a Nazi, a member of al-Qaeda, a white supremacist, or a person committed to the divine right of kings? Only immigrants seeking citizenship must swear to adhere to the principles of the Constitution. Is this consistent with equal protection or broader constitutional principles? What, in your opinion, must a person believe in order to pledge good faith allegiance to the Constitution?[1]

JUSTICE MURPHY delivered the opinion of the Court.

We brought this case here on certiorari, . . . because of its importance and its possible relation to freedom of thought. The question is whether the naturalization of petitioner, an admitted member of the Communist Party of the United States, was properly set aside by the courts below some twelve years after it was granted. . . . Our concern is with what Congress meant by certain statutes and whether the Government has proved its case under them.

While it is our high duty to carry out the will of Congress in the performance of this duty we should have a jealous regard for the rights of petitioner. We should let our judgment be guided so far as the law permits by the spirit of freedom and tolerance in which our nation was founded, and by a desire to secure the blessings of liberty in thought and action to all those upon whom the right of American

[1] For one interesting rumination on these subjects, see Sanford Levinson, *Constitutional Faith* (Princeton, NJ: Princeton University Press, 1989).

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citizenship has been conferred by statute, as well as to the native born. And we certainly should presume that Congress was motivated by these lofty principles.

We are directly concerned only with the rights of this petitioner and the circumstances surrounding his naturalization, but we should not overlook the fact that we are a heterogeneous people. In some of our larger cities a majority of the school children are the offspring of parents only one generation, if that far, removed from the steerage of the immigrant ship, children of those who sought refuge in the new world from the cruelty and oppression of the old, where men have been burned at the stake, imprisoned, and driven into exile in countless numbers for their political and religious beliefs. Here they have hoped to achieve a political status as citizens in a free world in which men are privileged to think and act and speak according to their convictions, without fear of punishment or further exile so long as they keep the peace and obey the law.

This proceeding was begun on June 30, 1939 . . . [A Federal law passed in 1906] gives the United States the right and the duty to set aside and cancel certificates of citizenship on the ground of 'fraud' or on the ground that they were 'illegally procured.' The complaint charged that the certificate had been illegally procured in that petitioner was not, at the time of his naturalization, and during the five years proceeding his naturalization had not behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, but in truth and in fact during all of said times, respondent (petitioner) was a member of and affiliated with and believed in and supported the principles of certain organizations then known as the Workers (Communist) Party of America and the Young Workers (Communist) League of America, whose principles were opposed to the principles of the Constitution of the United States and advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence.' . . .

This is not a naturalization proceeding in which the Government is being asked to confer the privilege of citizenship upon an applicant. Instead the Government seeks to turn the clock back twelve years after full citizenship was conferred upon petitioner by a judicial decree, and to deprive him of the priceless benefits that derive from that status. In its consequences it is more serious than a taking of one's property, or the imposition of a fine or other penalty. For it is safe to assert that nowhere in the world today is the right of citizenship of greater worth to an individual than it is in this country. It would be difficult to exaggerate its value and importance. By many it is regarded as the highest hope of civilized men. This does not mean that once granted to an alien, citizenship cannot be revoked or cancelled on legal grounds under appropriate proof. But such a right once conferred should not be taken away without the clearest sort of justification and proof. So, whatever may be the rule in a naturalization proceeding . . . in an action . . . for the purpose of depriving one of the precious right of citizenship previously conferred we believe the facts and the law should be construed as far as is reasonably possible in favor of the citizen.

. . .

Petitioner testified further that [when he became a citizen and a present] he has belonged to the [Young Workers] League and the [Communist] Party, [and] he has subscribed to the principles of those organizations. He stated that he 'believed in the essential correctness of the Marx theory as applied by the Communist Party of the United States,' that he subscribed 'to the philosophy and principles of Socialism as manifested in the writings of Lenin', and that his understanding and interpretation of the program, principles and practice of the Party since he joined 'were and are essentially the same as those enunciated' in the Party's 1938 Constitution. He denied the charges of the complaint and specifically denied that he or the Party advocated the overthrow of the Government of the United States by force and violence, and that he was not attached to the principles of the Constitution. He considered membership in the Party compatible with the obligations of American citizenship. He stated that he believed in retention of personal property for personal use but advocated social ownership of the means of production and exchange, with compensation to the owners. He believed and hoped that socialization could be achieved here by democratic processes but history showed that the ruling minority has always used force against the majority before surrendering power. By dictatorship of the proletariat petitioner meant that the 'majority of the people shall really direct their own destinies and use the instrument of the state for these truly democratic ends.' He stated that he would bear arms against his native Russia if necessary.

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The Constitution authorizes Congress 'to establish an uniform Rule of Naturalization' and we may assume that naturalization is a privilege, to be given or withheld on such conditions as Congress sees fit. Cf. *United States v. Macintosh* (1931). . . . But because of our firmly rooted tradition of freedom of belief, we certainly will not presume in construing the naturalization and denaturalization acts that Congress meant to circumscribe liberty of political thought by general phrases in those statutes. . . .

When petitioner was naturalized in 1927, the applicable statutes did not proscribe Communist beliefs or affiliation as such. They did forbid the naturalization of disbelievers in organized government or members of organizations teaching such disbelief. Polygamists and advocates of political assassination were also barred. Applicants for citizenship were required to take an oath to support the Constitution, to bear true faith and allegiance to the same and the laws of the United States, and to renounce all allegiance to any foreign prince, potentate, state or sovereignty. And, it was to 'be made to appear to the satisfaction of the court' of naturalization that immediately preceding the application, the applicant 'has resided continuously within the United States five years at least, . . . and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.' Whether petitioner satisfied this last requirement is the crucial issue in this case.

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The claim that petitioner was not in fact attached to the Constitution and well disposed to the good order and happiness of the United States at the time of his naturalization and for the previous five year period is twofold: First, that he believed in such sweeping changes in the Constitution that he simply could not be attached to it; Second, that he believed in and advocated the overthrow by force and violence of the Government, Constitution and laws of the United States.

In support of its position that petitioner was not in fact attached to the principles of the Constitution because of his membership in the League and the Party, the Government has directed our attention first to petitioner's testimony that he subscribed to the principles of those organizations, and then to certain alleged Party principles and statements by Party Leaders which are said to be fundamentally at variance with the principles of the Constitution. At this point it is appropriate to mention what will be more fully developed later—that under our traditions beliefs are personal and not a matter of mere association, and that men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles. . . .

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The constitutional fathers, fresh from a revolution, did not forge a political strait-jacket for the generations to come. Instead they wrote Article V and the First Amendment, guaranteeing freedom of thought, soon followed. Article V contains procedural provisions for constitutional change by amendment without any present limitation whatsoever except that no State may be deprived of equal representation in the Senate without its consent. . . . This provision and the many important and far-reaching changes made in the Constitution since 1787 refute the idea that attachment to any particular provision or provisions is essential, or that one who advocates radical changes is necessarily not attached to the Constitution. . . . As Justice Holmes said [in dissent in *United States v. Schwimmer* (1929)] , 'Surely it cannot show lack of attachment to the principles of the Constitution that (one) thinks that it can be improved.' Criticism of, and the sincerity of desires to improve the Constitution should not be judged by conformity to prevailing thought because, 'if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.' See, also, Chief Justice Hughes dissenting in *United States v. Macintosh*. . . . Whatever attitude we may individually hold toward persons and organizations that believe in or advocate extensive changes in our existing order, it should be our desire and concern at all times to uphold the right of free discussion and free thinking to which we as a people claim primary attachment. To neglect this duty in a proceeding in which we are called upon to judge whether a particular individual has failed to manifest attachment to the Constitution would be ironical indeed.

. . . The Government agrees that an alien may think that the laws and the Constitution should be amended in some or many respects' and still be attached to the principles of the Constitution within the meaning of the statute. Without discussing the nature and extent of those permissible changes, the

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Government insists that an alien must believe in and sincerely adhere to the general political philosophy' of the Constitution. . . . It was argued at the bar that since Article V contains no limitations, a person can be attached to the Constitution no matter how extensive the changes are that he desires, so long as he seeks to achieve his ends within the framework of Article V. But we need not consider the validity of this extreme position for if the Government's construction is accepted, it has not carried its burden of proof even under its own test.

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With regard to the constitutional changes he desired petitioner testified that he believed in the nationalization of the means of production and exchange with compensation, and the preservation and utilization of our 'democratic structure * * * as far as possible for the advantage of the working classes.' He stated that the 'dictatorship of the proletariat' to him meant 'not a government, but a state of things' in which 'the majority of the people shall really direct their own destinies and use the instrument of the state for these truly democratic ends.' None of this is necessarily incompatible with the 'general political philosophy' of the Constitution as outlined above by the Government. It is true that the Fifth Amendment protects private property, even against taking for public use without compensation. But throughout our history many sincere people whose attachment to the general constitutional scheme cannot be doubted have, for various and even divergent reasons, urged differing degrees of governmental ownership and control of natural resources, basic means of production, and banks and the media of exchange, either with or without compensation. And something once regarded as a species of private property was abolished without compensating the owners when the institution of slavery was forbidden. Can it be said that the author of the Emancipation Proclamation and the supporters of the Thirteenth Amendment were not attached to the Constitution? We conclude that lack of attachment to the Constitution is not shown on the basis of the changes which petitioner testified he desired in the Constitution.

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. . . The erection of a new proletariat state upon the ruins of the old bourgeois state, and the creation of a dictatorship of the proletariat may be considered together. The concept of the dictatorship of the proletariat is one loosely used, upon which more words than light have been shed. Much argument has been directed as to how it is to be achieved, but we have been offered no precise definition here. In the general sense the term may be taken to describe a state in which the workers or the masses, rather than the bourgeoisie or capitalists are the dominant class. Theoretically it is control by a class, not a dictatorship in the sense of absolute and total rule by one individual. So far as the record before us indicates, the concept is a fluid one, capable of adjustment to different conditions in different countries. There are only meager indications of the form the 'dictatorship' would take in this country. It does not appear that it would necessarily mean the end of representative government or the federal system. The Program and Constitution of the Workers Party (1921–24) criticized the constitutional system of checks and balances, the Senate's power to pass on legislation, and the involved procedure for amending the Constitution, characterizing them as devices designed to frustrate the will of the majority. The 1928 platform of the Communist Party of the United States, adopted after petitioner's naturalization and hence not strictly relevant, advocated the abolition of the Senate, of the Supreme Court, and of the veto power of the President, and replacement of congressional districts with 'councils of workers' in which legislative and executive power would be united. These would indeed be significant changes in our present government structure—changes which it is safe to say are not desired by the majority of the people in this country—but whatever our personal views, as judges we cannot say that a person who advocates their adoption through peaceful and constitutional means is not in fact attached to the Constitution—those institutions are not enumerated as necessary in the Government's test of 'general political philosophy', and it is conceivable that 'ordered liberty' could be maintained without them. The Senate has not gone free of criticism and one object of the Seventeenth Amendment was to make it more responsive to the public will. The unicameral legislature is not unknown in the country. It is true that this Court has played a large part in the unfolding of the constitutional plan (sometimes too much so in the opinion of some observers), but we would be arrogant indeed if we presumed that a government of laws, with protection for minority groups, would be impossible without it. Like other agencies of government, this Court at various times in its existence has not escaped the shafts of critics whose sincerity and attachment to the Constitution is beyond question—critics who have accused it of assuming functions of judicial review not

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intended to be conferred upon it, or of abusing those functions to thwart the popular will, and who have advocated various remedies taking a wide range. And it is hardly conceivable that the consequence of freeing the legislative branch from the restraint of the executive veto would be the end of constitutional government. By this discussion we certainly do not mean to indicate that we would favor such changes. Our preference and aversions have no bearing here. Our concern is with the extent of the allowable area of thought under the statute. We decide only that it is possible to advocate such changes and still be attached to the Constitution within the meaning of the Government's minimum test.

If any provisions of the Constitution can be singled out as requiring unqualified attachment, they are the guaranties of the Bill of Rights and especially that of freedom of thought contained in the First Amendment. . . . We do not reach, however the question whether petitioner was attached to the principles of the Constitution if he believed in denying political and civil rights to persons not members of the Party or of the so-called proletariat, for on the basis of the record before us it has not been clearly shown that such denial was a principle of the organizations to which petitioner belonged. Since it is doubtful that this was a principle of those organizations, it is certainly much more speculative whether this was part of petitioner's philosophy. Some of the documents in the record indicate that 'class enemies' of the proletariat should be deprived of their political rights. Lenin, however, wrote that this was not necessary to realize the dictatorship of the proletariat. The party's 1928 platform demanded the unrestricted right to organize, to strike and to picket and the unrestricted right of free speech, free press and free assemblage for the working class. The 1928 Program of the Communist International states that the proletarian State will grant religious freedom, while at the same time it will carry on anti-religious propaganda.

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. . . We do not say that a reasonable man could not possibly have found, as the district court did, that the Communist Party in 1927 actively urged the overthrow of the Government by force and violence. But that is not the issue here. . . . This is a denaturalization proceeding in which, if the Government is entitled to attack a finding of attachment as we have assumed, the burden rests upon it to prove the alleged lack of attachment by 'clear, unequivocal and convincing' evidence. That burden has not been carried. The Government has not proved that petitioner's beliefs on the subject of force and violence were such that he was not attached to the Constitution in 1927.

In the first place this phase of the Government's case is subject to the admitted infirmities of proof by imputation. The difficulties of this method of proof are here increased by the fact that there is, unfortunately, no absolutely accurate test of what a political party's principles are. Political writings are often over-exaggerated polemics bearing the imprint of the period and the place in which written. . . . Every utterance of party leaders is not taken as party gospel. And we would deny our experience as men if we did not recognize that official party programs are unfortunately often opportunistic devices as much honored in the breach as in the observance. On the basis of the present record we cannot say that the Communist Party is so different in this respect that its principles stand forth with perfect clarity, and especially is this so with relation to the crucial issue of advocacy of force and violence, upon which the Government admits the evidence is sharply conflicting. . . .

Of the relevant prior to 1927 documents relied upon by the Government three are writings of outstanding Marxist philosophers, and leaders, the fourth is a world program. The Manifesto of 1848 was proclaimed in an autocratic Europe engaged in suppressing the abortive liberal revolutions of that year. . . . Its authors later stated, however, that there were certain countries, 'such as the United States and England in which the workers may hope to secure their ends by peaceful means. Lenin doubted this in his militant work, *The State and Revolution*, but this was written on the eve of the Bolshevist revolution in Russia and may be interpreted as intended in part to justify the Bolshevist course and refute the anarchists and social democrats. Stalin declared that Marx's exemption for the United States and England was no longer valid. He wrote, however, that 'the proposition that the prestige of the Party can be built upon violence . . . is absurd and absolutely incompatible with Leninism.' And Lenin wrote 'In order to obtain the power of the state the class conscious workers must win the majority to their side. As long as no violence is used against the masses, there is no other road to power. We are not Blanquists, we are not in favor of the seizure of power by a minority.' The 1938 Constitution of the Communist Party of the United States, which petitioner claimed to be the first and only written constitution ever officially

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adopted by the Party and which he asserted enunciated the principles of the Party as he understood them from the beginning of his membership, ostensibly eschews resort to force and violence as an element of Party tactics.

A tenable conclusion from the foregoing is that the Party in 1927 desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justified the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained control in a peaceful manner, or as a method of last resort to enforce the majority will if at some indefinite future time because of peculiar circumstances constitutional or peaceful channels were no longer open.

There is a material difference between agitation and exhortation calling for present violent action which creates a clear and present danger of public disorder or other substantive evil, and mere doctrinal justification or prediction of the use of force under hypothetical conditions at some indefinite future time-prediction that is not calculated or intended to be presently acted upon, thus leaving opportunity for general discussion and the calm processes of thought and reason. . . . Because of this difference we may assume that Congress intended, by the general test of 'attachment' in the 1906 Act, to deny naturalization to persons falling into the first category but not to those in the second. Such a construction of the statute is to be favored because it preserves for novitiates as well as citizens the full benefit of that freedom of thought which is a fundamental feature of our political institutions. Under the conflicting evidence in this case we cannot say that the Government has proved by such a preponderance of the evidence that the issue is not in doubt, that the attitude of the Communist Party of the United States in 1927 towards force and violence was not susceptible of classification in the second category. . . .

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JUSTICE DOUGLAS, concurring

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JUSTICE RUTLEDGE, concurring

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CHIEF JUSTICE STONE, dissenting

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The two courts below have found that petitioner, at the time he was naturalized, belonged to Communist Party organizations which were opposed to the principles of the Constitution, and which advised, advocated and taught the overthrow of the Government by force and violence. They have found that petitioner believed in and supported the principles of those organizations. They have found also that petitioner 'was not, at the time of his naturalization . . . and during the period of five years immediately preceding the filing of his petition for naturalization had not behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same.'

I think these findings are abundantly supported by the evidence, and hence that it is not within our judicial competence to set them aside—even though, sitting as trial judges, we might have made some other finding. The judgment below, cancelling petitioner's citizenship on the ground that it was illegally obtained, should therefore be affirmed.

[The dissent then asserted that the statute permitted federal courts to make a factual judgment as to whether the petitioner at the time of naturalization was attached to the principles of the Constitution and that the federal government need only satisfy a preponderance of the evidence standard.]

. . . [T]he trial court was justified in finding that petitioner, in 1927, was not and had not been attached to the principles of the Constitution. My brethren of the majority do not deny that there are principles of the Constitution. . . . In the absence of any disclaimer I shall assume that there are such principles and that among them are at least the principle of constitutional protection of civil rights and of life, liberty and property, the principle of representative government, and the principle that constitutional laws are not to be broken down by planned disobedience. I assume also that all the principles of the Constitution are hostile to dictatorship and minority rule; and that it is a principle of our Constitution

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that change in the organization of our government is to be effected by the orderly procedures ordained by the Constitution and not by force or fraud. With these in mind, we may examine petitioner's behavior as disclosed by the record, during the five years which preceded his naturalization, in order to ascertain whether there was basis in the evidence for the trial judge's findings. . . .

Petitioner testified that at the time of his naturalization he subscribed to the philosophy and principles of socialism as manifested in the writings of Lenin. *The State and Revolution*, by Lenin, with which petitioner was familiar, and which was circulated by the Literature Department of the Communist Party in 1924 and 1925 and used by Communist Party classes, declared: 'The necessity of systematically fostering among the masses this and only this point of view about violent revolution lies at the root of the whole of Marx's and Engels' teaching, and it is just the neglect of such propaganda and agitation both by the present predominant Social-Chauvinists and the Kautskian schools that brings their betrayal of it into prominent relief.' And in order that there might be no misunderstanding of the term 'revolution,' Engels' definition of revolution was revived and restated as follows: 'Revolution is an act in which part of the population forces its will on the other parts by means of rifles, bayonets, cannon, i.e., by most authoritative means. And the conquering party is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reactionaries.' . . . The teachers of Socialism took the revolution very seriously. It was clear to them that the proletariat could not convert the bourgeoisie, and that the workers would have to impose their will upon their enemies through a war carried on by guns and bayonets.

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In order to determine whether petitioner's behavior established his attachment to the principles of the Constitution, we are entitled to consider the political system which his Party proposed to establish and toward which his own efforts in promoting the Communist cause were directed. About this there is and can be no serious dispute. Under the new system existing constitutional principles were to be abandoned. In the new government to be established by the Communists, the freedoms guaranteed by the Bill of Rights were to be ended. '. . . There can be no talk of "freedom" for everybody. The dictatorship of the proletariat is incompatible with the freedom of the bourgeoisie. The dictatorship is, in fact, necessary to deprive the bourgeoisie of their freedom, to chain them hand and foot in order to make it absolutely impossible for them to fight the revolutionary proletariat.' There was to be 'immediate and unconditional confiscation of the estates of the landowners and big landlords' and 'no propaganda can be admitted in the ranks of the Communist parties in favor of an indemnity to be paid to the owners of large estates for their expropriation.' The new state was not to include 'representatives of the former ruling classes.' 'The dictatorship of the proletariat cannot be a 'complete democracy, a democracy for all, for rich and poor alike; it has to be a State that is democratic, but only for the proletariat and the propertyless, a State that is dictatorial, but only against the bourgeoisie,' . . . Under the dictatorship of the proletariat, democracy is proletarian: it is democracy for the exploited majority, based on the limitation of the rights of the exploiting minority and directed against this minority.

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. . . The evidence, as a whole, and the exhibits which we have especially mentioned, show a basis for finding in the Party teachings, during the period in question, an unqualified hostility to the most fundamental and universally recognized principles of the Constitution. On the argument we were admonished that petitioner favored change in our form of government, which is itself a principle of the Constitution, since the Constitution provides for its own amendment. . . . It is true that the Constitution provides for its own amendment by an orderly procedure but not through the breakdown of our governmental system by lawless conduct and by force. It can hardly satisfy the requirement of 'attachment to the principles of the Constitution' that one is attached to the means for its destruction. . . .

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Petitioner's pledge of adherence to Communist Party principles and tactics, and his membership in the Communist organizations, were neither passive nor indolent. . . . He spent his time actively arranging for the dissemination of a gospel of which he never has asserted either ignorance or disbelief. His wide acquaintance with Party literature, and his zealous promotion of Party interests for many years, preclude the supposition that he did not know the character of its teachings and did not aid in their advocacy. They are persuasive that he was without attachment to the constitutional principles which

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those teachings aimed to destroy. Yet the Court's opinion seems to tell us that the trier of fact must not examine petitioner's gospel to find out what kind of man he was, or even what his gospel was; that the trier of fact could not 'impute' to petitioner any genuine attachment to the doctrines of these organizations whose teachings he so assiduously spread. It might as well be said that it is impossible to infer that a man is attached to the principles of a religious movement from the fact that he conducts its prayer meetings, or, to take a more sinister example, that it could not be inferred that a man is a Nazi and consequently not attached to constitutional principles who, for more than five years, had diligently circulated the doctrines of *Mein Kampf*.

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JUSTICE ROBERTS and JUSTICE FRANKFURTER join in this dissent.

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