The New York Times Debates an Issue

The *New York Times* is the most influential newspaper in this country, quite probably in the world. Its unparalleled journalistic apparatus brings to its columns a massive news coverage that constitutes a basic documentation of our age. It is our only national newspaper; and it is international also, for its audience, like its coverage, is world-wide. There are other papers, here and in Europe, with larger circulations than the *Times*' by far; but there is none that has a circulation of such weight. Every morning the *Times* lies on the breakfast table or office desk of every member of Congress, every important official of the executive branch, the higher judges, the ministers and correspondents of all foreign nations, the elite of the communications world, editors, college presidents, writers, preachers, professors.

The *New York Times*, that is to say, is a great power in the land, one of the formative factors in our nation's policy and character.

That influence it could never have attained but for a reputation for honesty, fairness, moderation.

In fact, the *Times*, while enjoying that reputation and reaping its abundant harvest, has, in its editorial columns, become scandalously irresponsible. The fact of its irresponsibility is not widely noticed precisely because of the contrary presumptions—because of its putative fairness. So that its readers do not bring to a reading of the *Times* their critical defenses, thus permitting to the *Times* the kind of outrageous abuse of its clientele that, in any lesser enterprise, would forever discredit it.

We undertake to prove our point by a painstaking examination of a typical recent editorial on a current controversy. We intend to prove that in editorializing on the Butler and Jenner Bills the *Times* uses smear, prejudice, oversimplification, slogans, and packaged thought—in lieu of fair analysis.

We are not questioning, on this occasion, the specific stand that the *Times* takes against the bill. We differ with that stand, but we know that there are many thoughtful citizens, including not a few conservatives, who oppose the Jenner-Butler proposal. We direct attention, not to the *position* taken by the *Times*, but to its way of handling itself, of "debating" the issue.

Herewith, in bold face type, a breakdown of the editorial, "Jenner-cum-Butler":

Since Senator Jenner's extremist bill to limit jurisdiction of the Supreme Court has been running into trouble, his brother-in-arms Senator Butler has come up with a proposal to accomplish the same ends by different means.

With what a casual air the rhetoric sets the mood! There they are, Jenner and Butler, the roughneck, weapon-swinging fanatics, sneaking through their extreme measures on the Bolshevik axiom that the end justifies the means! Now the *Times* knows (but does not remind most of its readers who do not know, or have forgotten) that the Jenner Bill even in its original form, which went considerably further than the Butler substitute, received the vote of *half* of the large Judiciary Committee, all of whose members are experienced lawyers, many of them with judicial service. The *Times* also knows (but does not tell its readers) that the nation's foremost constitutional scholar, Professor Edward S. Corwin, while refraining from an endorsement of the original Jenner Bill, *endorsed its motivation and called for just such an ap-*

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JENNER-CUM-BUTLER

Since Senator Jenner's extremist bill to limit jurisdiction of the Supreme Court has been running into trouble, his brother-in-arms Senator Butler has come up with a proposal to accomplish the same ends by different means.

Instead of imposing blanket restrictions on the court's appellate jurisdiction, as Mr. Jenner would do, Senator Butler would merely reverse a few of the decisions that he and Mr. Jenner don't like. They happen to include some of the most important civil liberties decisions made by the court in recent years, including the pre-eminently sensible one in the Cole case limiting Government dismissal of employes as security risks to those holding sensitive jobs. Instead of concentrating the Federal security-risk program on those areas where there may be a genuine question of national security, Maryland's senior Senator would expand it by law—just the opposite of what is needed. He would also put states into the anti-sedition business, which by rights and by court decision belongs to the Federal Government; and he would overturn the Watkins decision, which set some proper limits to the powers of Congressional investigating committees.

Not surprisingly, Senator Jenner is supporting the Butler amendment to his own bill. There is a chance that despite the efforts of Senator Hennings, a sturdy and unobtrusive fighter for civil liberties, the measure might get out of the Judiciary Committee, hardly noted in recent years for its liberalism. If it does, the bill deserves death on the floor of the Senate.

proach as the Butler substitute proposes—in a letter to the *New York Times!* And the *Times* knows (but does not remind us) that the dean of the country's liberal jurists, Judge Learned Hand, devoted last year's Holmes lectures at Harvard (reviewed a month ago in the *Times'* book section) to *a critique of the Warren Court's self-constitution as a super-legislature,* citing as misdeeds many of the decisions the Butler and Jenner Bills propose to correct.

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The original Jenner Bill proposed not "blanket restrictions" but defined and enumerated restrictions. The *Times,* of course, knows (but does not tell us) that it is *not* Senator Jenner, but Sections 1 and 2 of Article III of the Constitution that, for better or worse, put the appellate jurisdiction of the Supreme Court into the hands of Congress.

Reverse a few of the decisions that he and Mr. Jenner don't like? Correct—but only on the supposition that a majority of the Congress, representing the will of the majority of the American people, don't like them either. Jenner and Butler are not proposing a *coup d'état.* They are proposing *legislation,* which, as *legislators,* it is presumably their privilege and duty to do, according to their own lights, and with reference to the desires of their constituencies. The fact that Senators Butler and Jenner, Justice Hand, and Professor Corwin oppose a few decisions that the *Times* favors, does not mean that, as legislators and critics, they should keep silent; or does it?

. . . the pre-eminently sensible [decision] in the Cole case limiting Government dismissal of employes as security risks . . .

"Sensible." That is, what sober, responsible citizens (like the *Times'* editors and everyone else except such wild men as Senators Jenner and Butler) would approve. James Madison, known as "the Father of the Constitution," declared an *unqualified* removal power to be solely "an executive power." That was in 1789. Until the Cole case, this view prevailed unchallenged with respect to executive officers appointed without legally fixed terms. Extending this principle even to civil service employes, Congress in 1946 and repeatedly thereafter, gave to agency heads the right, in their absolute discretion, to fire persons whose continued service, in their absolute discretion, was contrary to the national interest.

He would also put states into the anti-sedition business, which by rights and by court decision belongs to the Federal Government . . .

Kreuttner

"What do you mean, 'one-sided news coverage'? How can they give two sides of a question when it's perfectly obvious that there's only one side?"

Imaginative fellow, Butler—proposing something no one ever dreamed of before, to "put the states into the anti-sedition business." . . . Yet the *Times* knows (but does not tell its readers) that until the Steve Nelson decision of 1956 the states *have always been in the anti-sedition business;* and that by the Nelson decision the Court struck down anti-sedition laws at that moment on the books of forty-two states; and that the sponsor of the Smith Act (at issue in the Nelson case) had himself expressed, on the floor of Congress, the explicit congressional understanding that the Act would *not* supersede state laws in the same field. The first and only "court decision" that ever in the nation's history suggested that sedition was *not* properly a state concern was this same decision, the Nelson case, that the *Times* refers to in a perfect (but hidden) logical circle as an argument for itself.

. . . he would overturn the Watkins decision, which set some proper limits to the powers of Congressional investigating committees.

The *Times* knows (but does not tell us) that the new—and unprecedented—doctrine of the Watkins

decision was not a definition of "proper limits" in the sense of protecting a witness' constitutional rights or blocking a usurpation of judicial power, but a judicial declaration of how Congress should proceed in *its own* business of legislating, of which it is by Section 1 of Article I of the Constitution made the sole repository. In the series of Supreme Court decisions on investigations starting in 1821, Congress' power was never questioned before *Watkins,* nor was the right of Congress itself to decide whether and how investigations were related to the legislative process. Now tradition may conceivably have been wrong until June 1957. But to think otherwise would not seem enough to place one beyond the bounds of rational mankind.

Not surprisingly, Senator Jenner is supporting the Butler amendment to his own bill.

Not surprisingly—? Senator Jenner travels from a "bad" measure to a "less bad" one. Why is that "not surprising" if one assumes the worse the measure, the more likely Senator Jenner is to support it? We do not understand—except that there is a connotation in the rhetoric injurious to Senator Jenner and that, for the *Times,* is sufficient reason.

There is a chance that despite the efforts of Senator Hennings, a sturdy and unobtrusive fighter for civil liberties . . .

Ah, the tragic lot of these austere heroes of the Liberal pantheon! Tirelessly working in the cause of liberty against rising despotism, albeit so modestly that the public scarcely knows their names, much less their daily sacrifices.

. . . the Judiciary Committee, hardly noted in recent years for its liberalism.

Define liberalism as siding with the *Times.* Which the Committee did, by the way, in overwhelmingly endorsing the President's nomination to the Supreme Court of those outstandingly illiberal gentlemen, Earl Warren and William Brennan.

. . . the bill deserves death . . .

Of course. As with all things outlawed, murderous, only *execution*—not just "a negative vote," "disapproval," "rejection"—can satisfy the demands of the higher justice.

As last item in the list, a most eloquent omission. Not a word, in the editorial, of the Konigsberg case, singled out as the primary issue in the Butler substitute. Here too the *Times* cannot be unaware that 95 per cent of American lawyers, whatever their views on the other matters, consider *Konigsberg,* in which the Court dictated to the states the terms on which lawyers should be admitted to the State Bars, an arrogant and intolerable usurpation.

We repeat that our purpose here is not to argue in favor of the Jenner-Butler Bill. There are serious arguments against the Bill, but they are not to be found in the *Times.* Here there is no analysis, or evidence (on the contrary, there is palpable suppression of evidence). There is no discussion, or debate. There is no examination of the theoretical argument that one branch of government is encroaching upon the rights of others. There is merely aggressive and question-begging rhetoric; an endeavor to thrust the entire issue, so serious for the future of the nation, beyond the limits of debate.

The *Times* rhetoric is thus in its essence totalitarian. Those who differ with the *Times* are not merely mistaken, but enemies of the people, whose opposition is to be met with a rhetorical purge. The *Times* thereby repudiates the conception of the discussion process that is the dividing line between a free and a despotic society.

If it chooses so to conduct its affairs, let it do so; but let it surrender, or be forced to surrender, its pretensions.

Heave-Ho for Pearson

The smashing defeat of Canada's Liberal Party under the leadership of Lester Pearson would be grounds, in any case, for dancing in the streets, for Pearson ("Nehru in a homburg") has long been a deadly enemy of the true interests of the West. But what gives his collapse its special zest is the fact that the international Liberal apparatus had done its damnedest for him.

For years his arrival at Harvard, or at the UN, or at any of a score of Liberal dovecotes on both shores of the Atlantic, had dependably produced a flutter of cooing admiration. Short months ago he was garlanded with the Nobel Peace Prize—appeasement's Iron Cross. And during the Canadian election campaign the Liberal press corps in Ottawa lied itself blue in the face, in the teeth of all the evidence, to make Pearson sound like a winner, or at any rate a hot contender.

Luckily, the voters of Canada had other ideas. We congratulate Mr. Diefenbaker and hope he rewards the nation with freedom, prosperity, and resolution in the face of the Soviet challenge.

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