1962

Mr. Justice Jackson: The Struggle for Federal Supremacy

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> I believe that the mass of Americans rightly feel that no good will come to them from any side in a war of abstract ideologies. The way of life of the American is practical, hard-headed and concrete. It is not made of what Justice Holmes once called "pernicious abstraction." Its distinguishing ideology is that it has no "ideology" except to get results.[1]

Robert Houghwout Jackson, in defining the American way of life, reflects a penetrating self-analysis and summarizes his basic approach to judicial review. With this outlook, Attorney General Jackson was appointed to the United States Supreme Court in 1941 to fill the place left vacant by Harlan Fiske Stone upon his ascendancy to the position of Chief Justice. His appointment came at a time of political unrest and international tension. Bar and press were skeptical, indeed cynical, of "The Roosevelt Court." The days were wrapped in talk of defense, rearmament, neutrality, lend-lease. Just as a new relationship had been begrudgingly assumed between the United States and allied nations abroad, so too there was at home and before the Court a similar rearrangement between the American and his government. It was, in the words of the newly appointed Justice, "a change in the fundamental relation of the federal government toward the governed, which has come so quickly that we have not recognized its significance."[2]

It is the object of this article to examine some of the Supreme Court decisions of Justice Jackson, to show to what extent Jackson shaped this "change in fundamental relation," and to demonstrate how many of his decisions sought to enlarge the federal sphere of influence in the American society. Such an examination may be timely because the segregation cases and the recent decision in the Tennessee reapportionment case dramatize the persistent trend to "expand the influence of the Federal Courts as instruments of social change."[3] The jurist from Jamestown contributed to that trend with the vigor of a frontier federalist, in language tart, majestic and convincing.

The New Federalism

Mr. Justice Jackson viewed the United States in terms of nationhood, in opposition to a patchwork of states. Indeed he could never be charged with taking the 10th amendment! Profoundly influenced in his thinking by the English temper and the English approach to law, he seemed eagerly disposed to pattern both the American bar and its legal procedure after the British so

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1 This statement by Justice Jackson is reprinted in Ranson, *Associate Justice Robert H. Jackson*, 27 A.B.A.J. 478, 481 (1941).

2 Jackson, *The Bar and the New Deal*, 21 A.B.A.J. 93 (1935). (Address delivered by Robert H. Jackson before the Association of American Law Schools, December 28, 1934).

3 N.Y. Times, March 27, 1962, § 1, p. 1, col. 4.

far as the American constitutional process would allow.[4] But because England is a unitary government, at least in its internal affairs, application of the English approach oft times requires a totally national frame of reference — which the states' rights concept is unwilling to yield. Nevertheless Jackson sought to expound a law which was singularly federal and American, and to those under this law he stressed the rights of the federal citizen.

This drive also gave impetus to Jackson's desire for uniformity of law among the states, and where it was lacking, a federal court, not too tightly drawn by *Erie Ry. Co. v. Tompkins,*[5] would order its decisions precisely, even mechanically, for sake of that uniformity. With him these were the corollaries of the New Deal, the new relation of the American and his government. Impressed by English uniformity and the colonial American federalists, Jackson's opinions show his trend to a neo-federalism.

In *United States v. Standard Oil Co. of California,*[6] the majority of the court held, through Mr. Justice Rutledge, that the United States could not recover money damages from the Oil Company tortfeasor for loss of services

4 Jackson's extrajudicial writings and addresses point up this characteristic. *E.g.* (1)

> I would favor a movement in the direction of the British system (of a unified bar) — without, however, entertaining any wish that evolution in that direction be unduly forced or any delusion that even an approximation of their excellent system can, under American conditions, be accomplished.

Jackson, *Compulsory Incorporation of the Bar from the County Lawyer's Viewpoint,* 4 N.Y.U. L. Rev. 316 (1926); (2)

> Compared with the dignity, simplicity and sincerity of a British trial, the tone of the average American trial is decidedly low. Some of wide publicity resemble in dignity and intellectual effort the hog calling contests that are popular at county fairs.

Jackson, *Advocacy as a Specialized Career,* 7 N.Y.U. L. Rev. 77 (1929); (3) After expressing his distrust of American Administrative law, Justice Jackson said: ". . . In England, however, the administrator is never out of reach of Parliament, which has a continuing supervision and can make sure that he uses his power with sense and moderation." Jackson, *Lawyers Today: The Legal Profession in a World of Paradox,* 33 A.B.A.J. 24 (1947); (4) See also his dissent in Vermilya-Brown Co. v. Connell, 335 U.S. 377 (1948).

5 304 U.S. 64 (1938). Jackson's most illuminating explanation of his view of the Erie rule appears in his concurring opinion in *D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp.,* 315 U.S. 447, 469 (1942) where he says:

> I do not understand Justice Brandeis's statement in *Erie v. Tompkins* . . . that "There is no federal general common law," to deny that the common law may in proper cases be an aid to or the basis of decision of federal questions. In its context it means to me only that federal courts may not apply their own notions of the common law at variance with applicable state decisions except "where the Constitution, treaties or statutes of the United States (so) require or provide." Indeed, in a case decided on the same day as *Erie R. Co. v. Tompkins,* Justice Brandeis said that "whether the water of an interstate stream must be apportioned between the two states is a question of 'federal common law' upon which neither the statutes nor the decisions of either State can be conclusive."

Hinderlider v. LaPlata Co., 304 U.S. 82, 110 (1937). Jackson, at another place in his opinion said:

> Federal law is no juridical chameleon, changing complexion to match that of each state wherein law suits happen to be commenced because of the accidents of service of process and of the application of the venue statutes. It is found in the federal constitution, statutes or common law. Federal common law implements the federal Constitution and statutes, and is conditioned by them. Within these limits, federal courts are free to apply the traditional common-law technique of decision and to draw upon all the sources of the common law in (nondiversity) cases such as the present.

D'Oench, supra, 471-2. See also Jackson, *The Rise and Fall of Swift v. Tyson,* 24 A.B.A.J. 609 (1938).

6 332 U.S. 301 (1947).

and medical expenses of a United States soldier disabled by Standard's negligence. In the absence of a controlling statute, Jackson invoked what amounted to a reacceptance of a federal common law rule in order to justify the government's right to recovery. He reasoned, with an eye to the English approach:

> The law of torts has been developed almost exclusively by the judiciary in England and this country by common law methods. With few exceptions, tort liability does not depend upon legislation. If there is one function which I should think we would feel free to exercise under a Constitution which vests in us judicial power, it would be to apply well established common law principles to a case whose only novelty is in facts. The courts of England whose scruples against legislating are at least as sensitive as ours normally are, have not hesitated to say that His Majesty's Treasury may recover outlay to cure a British soldier from injury by negligent wrongdoer and the wages he was meanwhile paid. *Attorney General v. Valle-Jones* (1935) 2 K. B. 209. I think we could hold as much without being suspected of trying to usurp legislative function.[7]

While the English case cited in Jackson's opinion is factually in point, the jurist overlooked the basic difference in constitutional structure between the two nations, and he avoided discussing the central problem presumably resolved in *Erie v. Tompkins*. Instead he emphasized "the judicial power" as a base for readopting a federal common law.

He relied on federal supremacy outright in *United States v. County of Allegheny*.[8] In that case the federal government contracted with the Mesta Machine Company and agreed to supply machinery to its plant in Allegheny County, Pennsylvania, provided the machinery be used exclusively to manufacture field guns for the defense effort. Under the contract the Government agreed to reimburse Mesta for certain taxes it paid including local property assessments. The County of Allegheny increased the assessment of the Mesta plant by the value of the newly installed, government-owned machinery. In the litigation between Mesta and the County over the increase, the Government intervened in Mesta's behalf and denied tax liability under its contract setting up its own sovereign immunity. The court of last resort in Pennsylvania nevertheless affirmed the increased assessment and the United States brought appeal to the Supreme Court. Mr. Justice Jackson held that for tax purposes title to the machinery was in the United States, and because of the supremacy clause[9] of the Constitution, the Government was immune from the tax. He reasoned that historically and constitutionally there was no room for the localities to impose either retaliatory or compensatory taxation on government property interests.

Mr. Justice Frankfurter dissented from the majority on grounds that the question was purely a state question and the governmental immunity was not as broad as Jackson's opinion would indicate. Justice Roberts dissented and objected to the majority's refusal to accept Pennsylvania law as its Supreme Court defined it to be. He felt the decision should rest on a nonfederal ground.

7 *Id.* at 318.
8 322 U.S. 174 (1944).
9 Article VI, clause 2.

a. *National Commerce*

That Justice Jackson would jealously guard interstate commerce from the not infrequent inroads of state legislation first appeared in *Duckworth v. Arkansas,*[10] decided shortly after his appointment to the Court. He concurred with Chief Justice Stone when the majority held that an Arkansas statute requiring a permit for the transportation of intoxicating liquor through the state was not violative of the commerce clause of the Constitution but Jackson qualified his approval of Stone's result saying: "I would rest the decision of the constitutional provision applicable only to the transportation of liquor, and refrain from what I regard as an unwise extension of state power over interstate commerce."[11] At another place in his concurring opinion he lamented that the decision "adds another to the already too numerous and burdensome state restraints of natural commerce and pursues a trend with which I would have no part."[12]

Following this view he consistently rebuffed state action which intruded upon national commerce. In *Bethlehem Steel Co. v. New York Labor Relations Board,*[13] he struck down a state attempt to regulate the labor relations of foremen and employers where Congress had already undertaken to deal with the relationship through machinery provided in the National Labor Relations Act, and he dissented from an opinion sustaining the constitutionality of a New Jersey tax on foreign corporations maintaining storage facilities for goods in transit in that state.[14]

Jackson's untiring demand for a national commerce uninhibited by state action was pointed up once again in *H. P. Hood & Sons, Inc. v. DuMond.*[15] Hood & Sons, a distributor of milk in Massachusetts, operated three milk receiving plants licensed under New York regulation. The company purchased raw milk in New York, weighed, tested and shipped much of it from the receiving plants in New York to Boston for resale. Hood applied to the New York Milk Commission for a license to open an additional plant at Greenwich, New York. The Commissioner refused the license on the grounds that its issuance would reduce the supply of milk available for New York consumption, and further because it would result in destructive competition in a market already adequately served. The New York Court of Appeals affirmed the Commissioner's right to deny the license. From its determination appeal was brought to the Supreme Court. Jackson, writing for the majority, ruled that as applied in the Hood case, the New York milk control law violated the commerce clause of the Constitution of the United States. He admitted that the production and distribution of milk were so intimately related to public health that need for regulation was apparent but he reasoned that there is a deeply rooted distinction between the power of the state to shelter its people from menaces to their health

10 314 U.S. 390 (1941).
11 *Id.* at 397.
12 *Id.* at 402.
13 330 U.S. 767 (1947).
14 331 U.S. 70, 91 (1947).
15 336 U.S. 525 (1949).

and its lack of power to retard commerce. He relied on Justice Cardozo's opinion in *Baldwin v. G. A. F. Seelig, Inc.*,[16] another milk case, which held that the state might not promote its own economic advantage by curtailment of interstate commerce. Critics of the opinion concur with Justice Black that the record on appeal was inadequate for such a summary holding especially if the decision were to turn on a quantitative appraisal of a state's interference with interstate commerce.

Clearly when two conflicting constitutional interests collided, one represented by the state's right to police power and health regulation, and the other a federal demand for free commerce, federal authority prevailed.

b. *Federal Jurisdiction*

Nor was Mr. Justice Jackson hesitant in extending the jurisdiction of the federal courts to allow a wide choice of forum within the federal orbit. *Mutual Insurance Co. v. Tidewater Transfer Co.*[17] questioned the constitutionality of the 1940 attempt by Congress to extend federal jurisdiction to citizens of the District of Columbia and other territories of the United States. The legislation attempted to reverse a policy dating to Chief Justice Marshall's opinion in 1805 that the Judiciary Act of 1789 did not open the federal district courts to citizens of the District of Columbia since they were not "citizens of a state." Jackson held for a divided court that the congressional extension was valid. He declined to overrule Marshall's opinion in *Hepburn & Dundas v. Ellzey*[18] to the extent that it held the District of Columbia not to be a state within the meaning of article III of the Constitution, but reasoned ingeniously that power to legislate for the District (article I, section 8) permitted Congress to open any and all federal courts to citizens of the District. By treading this path he managed to arrive at an obviously desirable result and at the same time superficially preserve Marshall's questionable decision in *Hepburn*. In adopting this line of reasoning it is not unlikely that Jackson was influenced by a provocative article cited in the Government's brief as amicus curiae, advocating constitutional affirmance of the new right for residents of the District of Columbia.[19]

Jackson's rationale — supported only by Black and Burton — met with sharp reproach from both Rutledge and Murphy who joined Jackson's result on other grounds. Rutledge, writing for Murphy and himself, scored the wisdom of Marshall's view in the *Hepburn* case. He thought that in writing that case

16 294 U.S. 511 (1935).
17 337 U.S. 582 (1949).
18 2 Cranch 445 (U.S. 1805).
19 Rathvon & Keefe, *Washingtonians and Roumanians*, 27 NEB. L. REV. 375, 379 (1948) cited in the Attorney General's brief at pp. 24, 45 and 50. They said:

> The preponderance of decided cases to the contrary notwithstanding we believe that the 1940 amendment broadening diversity jurisdiction can be upheld as constitutional on these three grounds, each sure if the other fails:
>
> 1. By revising the concept that a court must be wholly legislative or wholly constitutional and that the two types of jurisdicion may not be exercised by one court.
> 2. By finding that the grant of judicial power is not limited to Article 3.
> 3. By interpreting Article 3, Section 2 more broadly so that citizens of territories and the District of Columbia are included within its provisions.

the "master's hand . . . faltered" and he predicted Jackson's approach would ensnarl the District courts in contradictions and complexities that had evolved from the *Hepburn* holding. The minority likewise divided. Chief Justice Vinson and Justice Douglas agreed with Rutledge that confusion would follow Jackson's view and held it too high a price to pay for opening the courts to Columbians. Justice Frankfurter, joined by Justice Reed, agreed with his fellow dissenters to the extent that they upheld the validity of Marshall's early view.

Jackson's rationale in *Tidewater* is appealing because it reached a desired result, but closer scrutiny opens it to question. This is true because of the Supreme Court's earlier decision in *O'Donoghue v. United States.*[20] It was there decided that the District Court for the District of Columbia is a "constitutional" court and for that reason the salaries of its judges could not be reduced without offending article III, section 1 of the Constitution. If it is true that the District Court is a creature of article III, and this has not been denied, then it is difficult to see how Congress could legislate its growth under article I.

Jackson replied that Congress has already given constitutional courts jurisdiction beyond article III without judicial challenge in the matter of claims against the United States and in bankruptcy cases. He pointed out that federal jurisdiction over actions in connection with bankruptcies and reorganizations stems from the article I powers of Congress. But Frankfurter and Rutledge answered this defense by showing that claims against the United States were "controversies to which the United States shall be a party" according to the phraseology of article III, section 1, and the article I power merely made bankruptcy a conventional federal question whereas the District courts were controlled exclusively by article III. Unusual as it is in the history of the Court, Mr. Justice Jackson won his point although five justices opposed his reasoning.

We have said that Jackson allowed a wide choice of forum within the federal orbit in keeping with the broad scope of the national judicial system. This point is demonstrated in *Miles v. Illinois Cent. R.R. Co.*,[21] wherein he concurred separately with the majority view that permitted the widow of a railroad employee, a resident of Tennessee, to prosecute her claim under the Federal Employers Liability Act in a Missouri District Court although the deceased was a resident of Tennessee, fatally injured in that State and all of the witnesses resided there. Defendant-employer maintained places of business in both Missouri and Tennessee. The suit was obviously brought in Missouri in the hope that a metropolitan jury would award more liberal damages. Although Justice Jackson admitted that the widow was "shopping" for her judge and jury, and that the practice was not favored by the judiciary, he reasoned that Congress "could not have intended (to prohibit) the relatively minor additional burden to the interstate commerce from loading the dice a little in favor of the workman in the matter of venue."[22] He further tried to justify his result by saying that Congress had come to think of a forum as a "private matter between

20 289 U.S. 553 (1933).
21 315 U.S. 698 (1942).
22 *Id.* at 708.

litigants."[23] This result was later nullified by Congressional action and Court decision.[24]

c. *Full Faith and Credit*

As broad as Justice Jackson conceived the range of the federal judicial system to be, he indicated — particularly in conflict of laws decisions arising under the full faith and credit clause of the Constitution — that while the 14th amendment assures federal citizenship, the American is at the same time a citizen of the state wherein he resides.[25] He urged the view that the citizen and the corporation have some fixed place within the federal system where he or it *really* belongs for purposes of fixing legal status and determining by whom they shall be directly governed. In *Northwest Airlines v. Minnesota,*[26] he urged the Court to go further and hold that Minnesota had the exclusive right to tax a fleet of airplanes which operated interstate but maintained its "home port" in that state. He even suggested that such a concept of state citizenship may be required by the 14th amendment. This does not mean to say that he pegs the state localization of the citizen on a higher level in his hierarchy of values. On the contrary he leans toward federal supremacy but he regrets that the full faith and credit clause of the constitution has frankly not worked to build a respected framework of extraterritorial recognition of state law. He felt that local policies and balance of local interest dominate the application of the federal requirements. He suggested that this is strange since the states have less to fear from a strong federal influence in dealing with full faith and credit than with most other constitutional provisions. He thought that anything taken from the state by way of freedom to deny faith and credit is thereby added to the state by way of a right to exact faith and credit for its own acts. But because the states have failed to understand this basis of exchange, Justice Jackson apparently felt that it became the duty of the Supreme Court to adjust the interstate legal relationship. These views were more concretely applied in the Justice's dissent in *Williams v. North Carolina.*[27]

In the first *Williams* case the majority of the Court held that a divorce granted by a Nevada Court on a finding that one spouse was domiciled in Nevada, must be respected in North Carolina, where Nevada's finding of domicil was not questioned. Two Nevada divorce decrees were procured by residents of North Carolina who moved to Nevada long enough to meet the six week domicil requirement of that state. A decree was entered without *in personam* jurisdiction of the other spouses. Thereafter they married each other and returned to North Carolina to resume their status as citizens of their native state. Williams and his second wife were convicted of bigamous cohabitation by a North Carolina court which refused to recognize the Nevada decrees.

23 *Id.* at 706.
24 28 U.S.C. § 1404 (a) (1958) as interpreted in Missouri v. Mayfield, 340 U.S. 1 (1950); *Ex parte* Collett, 337 U.S. 55 (1949).
25 JACKSON, FULL FAITH & CREDIT, THE LAWYER'S CLAUSE OF THE CONSTITUTION (1945) (4th Annual Benjamin N. Cardozo Lecture, delivered December 7, 1944).
26 322 U.S. 292 (1944).
27 317 U.S. 287 (1942).

Justice Jackson vigorously attacked the majority view which he said nullified the power of each state to protect its own citizens against dissolution of their marriages by the courts of other states which sanction an easier system of divorce. He stated:

> It is not an exaggeration to say that this decision repeals the divorce laws of all the states and substitutes the law of Nevada as to all marriages one of the parties to which can afford a short trip there.[28]

He assailed the majority decision on two general grounds: (1) the Nevada divorce decrees deprived the spouses remaining in North Carolina of due process of law for the court admittedly had no personal jurisdiction over them, nor did Jackson admit that the Nevada court had *in rem* jurisdiction which the majority acknowledged; (2) Williams and friend failed to establish a domicil *in good faith* in Nevada, for they obviously intended to return to North Carolina.

To support his first contention, Jackson recalled that on the oral argument of the case counsel defending the Nevada decree suggested that the *res* of marriage existed in duplicate, one for each party to the marriage. If so, queried the Justice, what happened to the *res* that remained behind in North Carolina? Further, he attacked treating marriage as a *res* and felt that it was a contract between parties — in this case the Nevada court had only one party to the contract before it and by proceeding it did not meet the due process requirement. Secondly, he denied a *bona fide domicil.* On this score he made the cryptic remark that "The only suggestion of a domicil within Nevada was a stay of about 6 weeks at the Alamo Auto Court, an address hardly suggestive of permanence."[29]

He argued that Nevada might as readily prescribe a six day requirement to establish domicil, and logically, it could require only a filing of a declaration of intent. On the whole issue he felt that the majority view fitted in with the Court's trend to break down the rigid concept of domicil as a test of the right of the state to deal with the fundamental relations of its citizens.

Justice Jackson distinguished between the internal and external power of Nevada in entering her divorce decrees. He admitted their finality within the State but felt it was quite another thing for Nevada to dissolve the marriages of North Carolinians. He thought the Court had slighted the due process clause in its preoccupation with full faith and credit, and he argued that it was futile to examine the full faith question before first establishing the existence of jurisdiction itself. But since there was no jurisdiction in Nevada over spouses remaining in North Carolina, there could be no occasion for requiring extraterritorial recognition of the Nevada decrees. Again we see him striving for federal uniformity of law and developing a state base in which to ground it. He denied that the chain of state divorce policy is only as strong as its weakest link. Relying on his *bona fide* resident test for determining domicil, the weak-link states are re-enforced by the federal requirement that a state have a legitimate concern with the matrimonial status of the parties who seek to rely on its decrees.

28 *Id.* at 312.
29 *Id.* at 321.

Although Justice Jackson held the first *Williams* decision in low esteem, nonetheless his sense of duty to precedent led him to apply it. In *Magnolia Petroleum Company v. Hunt*,[30] such a test appeared. Hunt, a resident of Louisiana and employed there, was injured in Texas in the course of his employment. He recovered workmen's compensation from Magnolia under a Texas statute by the terms of which the award was "final" and *res judicata*. Chief Justice Stone, writing for the majority, held that under the full faith and credit clause, the Texas compensation award precluded Hunt's recovery in Louisiana against his employer under Louisiana law— even though the Texas award was set-off against the later Louisiana recovery. Jackson concurred with the majority in a separate opinion saying:

> Overruling a precedent always introduces some confusion and the necessity for it may be unfortunate. But it is as nothing to keep on our books utterances to which we ourselves will give full faith and credit only if the outcome pleases us. I shall abide by the *Williams* case until it is taken off our books, and for that reason concur in the decision herein.[31]

To this observation Justice Douglas retorted in defense for the earlier product of his pen:

> I do not agree with the view that the full faith and credit clause is to be enforced "only if the outcome pleases us." We are dealing here with highly controversial subjects where honest differences of opinion are almost certain to occur. Each case involves a clash between the policies of two sovereign States. The question is not which policy we prefer; it is whether two conflicting policies can somehow be accommodated.[32]

But Justice Douglas was not to have the last word on the problem of full faith and credit presented in the first *Williams* case. The Williamses returned in 1945.

The second *Williams* case to a large degree justified Jackson's earlier view.[33] In the second case, Justice Frankfurter, writing for the majority which Jackson joined, held that the state of domiciliary origin should not be bound by an unfounded recital in the record of a court of a sister state. He wrote:

> As to the truth or existence of a fact, like that of domicil, upon which depends the power to exert judicial authority, a State not a party to the exertion of such judicial authority in another State but seriously affected by it has a right, when asserting its own unquestioned authority, to ascertain the truth or existence of that crucial fact.[34]

On this reasoning the majority affirmed the North Carolina conviction of Williams for bigamy because it was based on a North Carolina jury finding that the accused parties had not established a *bona fide* domicil in the State of Nevada

30 320 U.S. 430 (1943).
31 *Id.* at 447.
32 *Ibid.*
33 Williams v. North Carolina, 325 U.S. 226 (1945).
34 *Id.* at 230.

and, therefore, the divorce decree was a nullity. Mr. Justice Douglas, who wrote the majority opinion in the first *Williams* case, dissented and relied on Justice Black's opinion that the majority was here grounded on refusal to recognize what another state had apparently regarded as adequate domicil, and on the further reasoning that the Constitution does not "measure the power of state courts to pass upon petitions for divorce."

The Jackson-Douglas rift on the questions of the full faith and credit clause and the disagreements evidenced in the *Williams* case reappeared.[35] The question arose whether a New York decree awarding respondent monthly payments for her maintenance and support in a separation proceeding survived a Nevada divorce decree later granted petitioner. The husband discontinued payments subsequent to entry of the Nevada decree of divorce taking the stand that it superseded the earlier New York separation provisions. Douglas, writing for the majority, held that although the Nevada judgment was valid to dissolve the marriage, it lacked jurisdiction to terminate the husband's liability under the New York separation. Justice Jackson dissented vigorously claiming that if the Nevada judgment was to have full faith and credit, it should have the same effect as a similar divorce decree would have, had it been procured in New York. He felt strongly that the court had reached a "Solomon-like" conclusion; that the Nevada decree was half-good and half-bad under the full faith and credit clause. "Good to free the husband from the marriage, . . . not good to free him from its incidental obligations."[36]

Jackson's objection to *ex parte* divorce decrees probably reflected the influence of New York law which has long given maximum recognition to foreign decrees where the defendant appeared and minimum recognition where the defendant neither appeared nor was served personally within the jurisdiction.

These cases demonstrate Justice Jackson's view of federal supremacy in matters touching national commerce; his desire to open federal courts to residents of the District of Columbia; his approval of a flexible federal venue and his demand for a fixed base of citizenship within the federal orbit. In sum they again suggest his approval of a well-ordered but extensive national government. Through his opinions he expressed credence in the central theme of the New Deal and defined that theme as a fundamental change in relation between the government and the governed, allowing to government a broader sphere of national management for benefit of the governed but, at the same time, preserving to the governed their traditional personal liberties. His ability to strike a balance between the expansive strides of federal government and yet preserve the guarantees of American citizenship — in spite of the war powers, was perhaps his greatest single contribution to the Court he served so well.

35 Estin v. Estin, 334 U.S. 541 (1948). See also Rice v. Rice, 336 U.S. 674 (1949).
36 Estin v. Estin, 334 U.S. 541, 554 (1948).