

volving a required affirmative pledge of allegiance, stated succinctly and trenchantly the same thought.

"Words uttered under coercion are proof of loyalty to nothing but self-interest."

C. SECTION 1201 OF THE ECONOMIC OPPORTUNITY ACT, AS AMENDED, SHOULD BE REPEALED, BECAUSE IT CONSTITUTES A BILL OF ATTAINDER AND DENIES DUE PROCESS

Section 1201 of the Pub. Law 89-794, 80 Stat. 1477, provides that:

"No part of the funds appropriated under this Act to carry out the provisions of the Economic Opportunity Act of 1964 shall be used to provide payments, assistance, or services, in any form, with respect to any individual who is convicted, in any Federal, State, or local court of competent jurisdiction, of inciting, promoting, or carrying on a riot, or any group activity resulting in material damage to property or injury to persons, found to be in violation of Federal, State, or local laws designed to protect persons or property in the community concerned."

Although § 1201 requires a conviction prior to the imposition of a cut-off of funds, the automatic nature of the cut-off precludes escape from the bill of attainder clause. While the conviction necessary under § 1201 was obtained through the judicial process, there is no judicial determination as to whether a cut-off of "payments, assistance or services" is a justified punishment for one convicted "of inciting, promoting, or carrying on a riot." For a bill of attainder to be present it is not necessary that individuals be named, only that the legislature has made a decision to inflict some punishment without a judicial determination as to whether the punishment is warranted. *United States v. Brown*, 381 U.S. 437 (1965).

Further, there is no question that a cut-off of funds as found here constitutes punishment, which is one of the criteria to establish a violation of the bill of attainder clause. *United States v. Lovett*, 328 U.S. 303 (1946).

The contemporary view of the bill of attainder clause, formulated by Chief Justice Warren in *Brown*, is that it seeks to preserve a separation of powers between the legislature and judiciary. The judiciary, with its institutionalized procedures, can more accurately determine what punishment those inciting or encouraging riots deserve. As *Brown* itself said:

"[The] bill of attainder clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of judicial function, or more simply trial by the legislature."¹¹

The penalties imposed by § 1201 bear no relationship to their avowed purpose of curtailing civil disturbances. Where such relationship is absent, a violation of due process is present. Cf. *Meyer v. Nebraska*, 262 U.S. 390 (1923). In the absence of some rational relationship between the ends desired and the means employed, the action assumes the appearance of mere arbitrary fiat. No matter how many years have passed—even thirty or forty—an employee cannot be paid if he has ever been convicted of these crimes.

Further, § 1201 unwisely interferes with civil service requirements regarding discharge of governmental employees. The practical effect of a denial of funds to any employee is the same as a discharge from employment. The statute contains no standards whereby a discharge is to be effectuated. Provisions for removal of classified civil servants is contained in 5 U.S.C. § 562. Included within this section is the requirement of notice of charges, opportunity to answer the charges, and the right to receive a copy of the decision. Such safeguards are missing from § 1201.

A person's competence for the position he holds can better be determined by his superiors than by those whose only criticism is directed at his outside activities, rather than his professional competence.

In the United States, with its separation of powers, it is important that "the acts of each [branch of government] shall never be controlled by, or subjected, directly or indirectly, to, the coercive influences or either of the other departments." Mr. Justice Sutherland in *O'Donoghue v. United States*, 289 U.S. 516, 530.

¹¹ 381 U.S. at 42. See also *Cummins v. Missouri*, 71 U.S. (4 Wall.) 277 (1867) and *Ex-parte Garland*, 71 U.S. (4 Wall.) 333 (1867).