ROBERT JACKSON'S NON-DELEGATION DOCTRINE

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THE NON-DELEGATION DOCTRINE is constitutional law's most enduring mystery. Though not applied to invalidate an Act of Congress since 1935, the doctrine is the subject of a vast academic literature.[1] But basic questions remain unanswered. For instance, does the Constitution limit Congress's authority to delegate its authority? If so, then what are the limits?

This Essay contends that Solicitor General Robert H. Jackson gave thoughtful answers to these questions in a brief that he filed on behalf of the United States in *Currin v. Wallace*.[2] The brief, written in 1938, offered a sophisticated theory of non-delegation. The Supreme Court decided *Currin* without addressing Jackson's theory and the brief was forgotten.[3] But the

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[1] *See, e.g.*, A.L.A. Schechter Poultry v. United States, 295 U.S. 495 (1935) (invalidating one portion of National Industrial Recovery Act on non-delegation grounds); Panama Refining Company v. Ryan, 295 U.S. 388 (1935) (invalidating another part of the NIRA on non-delegation grounds); Julian Davis Mortenson & Nicholas Bagley, *Delegation at the Founding*, 121 COLUM. L. REV. 277 (2021).

[2] 306 U.S. 1 (1939); *see* Brief for the United States, Currin v. Wallace, 306 U.S. 1 (1939) (No. 275), 1938 WL 63974, at 44-65 [hereinafter Jackson Brief].

[3] *Currin*, 306 U.S. at 386-38 (holding that the Tobacco Inspection Act was not an unconstitutional delegation of authority to the Secretary of Agriculture). Jackson alluded to the

Currin brief deserves attention for its reasoning and its conclusions. First, Jackson argued that there were no internal limits on Congress's discretion to delegate its power to executive agencies. Second, he argued that there were internal limits on Congress's discretion to delegate its power over domestic affairs directly to the President. The first point confirms, albeit in Jackson's inimitable style, the consensus since 1935. But his second point would, if adopted, transform separation-of-powers law by placing constitutional limits on the power that Congress may confer on the President.[4]

The *Currin* brief also clarifies Jackson's canonical concurrence in *Youngstown Sheet and Tube Co. v. Sawyer*.[5] In setting forth the first of his three categories for judging the legality of a presidential action, Justice Jackson explained: "When the President acts pursuant to an express or implied authorization of Congress, his authority is at his maximum, for it includes all that he possesses in his own right plus all that Congress can delegate."[6] This statement can be read to mean that a presidential action authorized by Congress is invalid only if the action is beyond the reach of the entire federal government. But that reading is incorrect. Jackson qualified the phrase "all that Congress can delegate" with a footnote stating that a presidential

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brief in his book about the Court-packing crisis. *See* ROBERT H. JACKSON, THE STRUGGLE FOR JUDICIAL SUPREMACY: A STUDY OF A CRISIS IN AMERICAN POWER POLITICS 95 (1941) [hereinafter JACKSON] ("[T]he Court that required Congress to define standards to govern delegated power has, though urged by the Solicitor General, failed to set forth standards by which to define unconstitutional delegation."); *id.* at 95 n.9 (citing "Brief for the Government, *Currin v. Wallace*, No. 275. October Term, 1938").

[4] *See* Rebecca L. Brown, *Who Constrains Presidential Exercise of Delegated Powers*, 29 WM. & MARY BILL RTS. J. 591, 594 (2021) (suggesting "that the nondelegation doctrine should indeed be revived, but specifically for the purpose of limiting, constraining, and reviewing the actions of a President pursuant to direct delegated authority"); *cf.* Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2365 (2001) (stating that the nondelegation doctrine "might well distrust presidential action, but only when this action derives from a direct delegation to the President").

[5] 343 U.S. 579, 634-655 (1952) (Jackson, J., concurring). For the classic account of *Youngstown*, see MAEVA MARCUS, TRUMAN AND THE STEEL SEIZURE CASE: THE LIMITS OF PRESIDENTIAL POWER (1977).

[6] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

Solicitor General Robert Jackson (right, in traditional attire for an appearance at the Supreme Court) on January 4, 1939, when Jackson presented new Attorney General Frank Murphy (left) to the Court. Jackson had filed his brief in Currin *less than a month before:*

> "There is urgent need for some clarification of the doctrine of non-delegability. If it is to be applied to legislation, it is only just to legislators that standards be clearly outlined by which the adequacy of legislative standards is to be tested. The invocation of a vagrant and uncanalized judicial doctrine to prevent vagrant and uncanalized legislation leaves both legislators and litigants confused."
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> Brief for the United States in *Currin v. Wallace*

action can be invalid because Congress cannot delegate power over domestic affairs directly to the President.[7] Accordingly, a narrow non-delegation doctrine is consistent with the *Youngstown* concurrence.

PART I
THE BRIEF

This Part recovers the Government's brief in *Currin*. Robert Jackson was appointed Solicitor General in February 1938 and is generally regarded as one of the greatest occupants of that office.[8] The *Currin* brief is a superb example of the pragmatism and prose that would become hallmarks of Justice Jackson's opinions.

Currin involved a constitutional challenge to the Tobacco Inspection Act, which delegated to the Agriculture Secretary the authority to develop quality and inspection standards for the crop.[9] Jackson's brief described the Tobacco Inspection Act, explained why the Act was a valid exercise of Congress's commerce power, and said why the Act was not an improper delegation of authority.[10] But the brief's most innovative section said that

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[7] *See id.* at 635 n.2 (noting "the strict limitation upon congressional delegations of power to the President over internal affairs"). Many statutes delegate power over domestic affairs directly to the President. *See* Shalev Roisman, *Presidential Law*, 105 MINN. L. REV. 1269, 1281-88 (2021) (providing a comprehensive list of these authorities).

[8] *See* NOAH FELDMAN, SCORPIONS: THE BATTLES AND TRIUMPHS OF FDR'S GREAT SUPREME COURT JUSTICES 129 (2010) ("Jackson was an amazingly successful solicitor general, by far the greatest on record. He won thirty-eight of his forty-four cases, a record unlikely ever to be surpassed."); *see also* JOHN Q. BARRETT, THAT MAN: AN INSIDER'S PORTRAIT OF FRANKLIN D. ROOSEVELT xvi (2003) (quoting Justice Brandeis's (perhaps apocryphal) comment that Jackson "should be Solicitor General for life"). Paul Freund, who became one of the leading constitutional scholars of his generation, was part of the Solicitor General's Office in 1938 and probably worked on *Currin*, though a search of Freund's papers at Harvard came up empty. *See* JACKSON, *supra* note 3, at xix-xx ("I am heavily indebted to Paul Freund for many helpful criticisms of my text, and for the index. Heading the staff of the Solicitor General's Office from 1933 to 1939, the government briefs during this critical period bore the impress of his scholarship and judgment. I turn to his counsel from habit.")

[9] *See Currin*, 306 U.S. at 5-6.

[10] *See id.* at 5 (noting Jackson's appearance); *see also* Jackson Brief, *supra* note 2, at 3-13 (discussing the statutory details); *id.* at 15-32 (addressing the Commerce Clause); *id.* at

the non-delegation doctrine "should be reconsidered and limited to a scope consistent with the history of our constitutional development and with the practical effectiveness of democratic government."[11]

"The contentions in this case," he wrote, "illustrate the rather fantastic limitations upon the Congress which counsel read into the decisions of this Court on the subject of delegation of power. The confusion and uncertainty surrounding this subject not only lead earnest members of the profession into repeated attacks upon legislation as unlawfully delegating power, but also present to legislators a dilemma in framing legislation."[12] Members of Congress "are confronted on the one hand with the nebulous requirements of due process. If they pronounce a rigid set of standards, unforeseen cases to which the standards may apply present the danger of unconstitutionality because of caprice or arbitrary application."[13] "If, on the other hand," the brief continued, "they seek to avoid the danger of capricious and arbitrary application through provision for flexibility in application, the statute is then attacked for undue delegation, an equally nebulous and undefined concept. This dilemma of avoiding the infirmity of unlawful delegation by running into the infirmity of caprice, or vice versa, faces legislators in most of their important tasks."

To escape the problem that he framed, Jackson argued that the non-delegation doctrine should apply only when Congress delegated authority over domestic affairs directly to the President.[14] "[T]he only cases in which legislation was held unconstitutional for excessive delegation," the brief stated, "were the *Schechter* [*Poultry*] and [*Panama Refining v.*] *Ryan* cases, both of which dealt with a delegation to the President himself. These cases, therefore, involve the question of separation of powers, for the office of President was not created by the Congress and the President was not

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65-75 (explaining why the delegation was proper).

[11] Jackson Brief, *supra* note 2, at 14.

[12] *Id.* at 44-45.

[13] *Id.* at 45. The next quote in the text comes from the same page of the brief.

[14] The Solicitor General did suggest that the Court's non-delegation cases were wrongly decided because they present "not a question of law but a question as to what is, under the circumstances, a reasonable legislative policy – a subject of questionable justiciability." *Id.* at 46. But the brief did not ask the Court to overrule its precedents.

responsible to the Congress."[15] He then justified the recharacterization of the non-delegation cases as separation-of-powers cases as follows: "The executive was there endowed with nonexecutive functions. The legislative power was there delegated to the President, whose powers are in many respects independent of the Congress. It is generally held that the Judiciary will not assume nonjudicial functions, and that Congress cannot assume nonlegislative functions."[16] As a result, the Court acted in *Panama Refining* and in *Schechter Poultry* "with a measure of consistency that the Executive was excluded from legislative functions beyond those considered necessary in filling in the details of legislation and in determining its applicability."[17]

The brief then observed that there were no examples of a judicial invalidation of a delegation to anyone who was not the President. "[T]here is no precedent in American constitutional law," the Solicitor General said, "for striking down legislation which delegates legislative power to an agency created by Congress and controlled by Congress, and where the agency exercising the delegated powers is completely subject to the control of Congress and may at any time be abolished." Jackson also stressed the difference between delegations and alienations of power. "It would appear elementary that no department can *divest* itself of the power thus *vested* in it. In other words, there can be no *alienation* of power. *Delegation*, however, stops far short of *divesting* or *alienation*."[18] "To turn over to a body created

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[15] *Id.* at 46-47; see Kagan, *supra* note 4, at 2364-65 (making essentially the same point about these cases and the non-delegation doctrine). Jackson accurately described the holdings of *Panama Refining* and *Schechter Poultry*, but those decisions did not limit themselves to delegations from Congress to the President. Indeed, *Panama Refining* criticized the idea that Congress could transfer its authority "to the President or other officer or to an administrative body." *Panama Refining*, 295 U.S. at 430. Likewise, *Schechter Poultry* said that Congress "is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested." *Schechter Poultry*, 295 U.S. at 529.

[16] Jackson Brief, *supra* note 2, at 47. The next two quotes in the text come from the same page of the brief.

[17] The best modern justification for treating direct delegations to the President more stringently is that the President is not subject to the Administrative Procedure Act. *See* Franklin v. Massachusetts, 505 U.S. 788, 800-801 (1992). To the extent that the APA is the practical substitute for the non-delegation doctrine, its lack of application to the President might imply that the doctrine should apply only to the President.

[18] Jackson Brief, *supra* note 2, at 48. The next quote in the text is from the same page of the brief.

by and responsible to the Congress a defined and limited measure of power, or a power over a given subject or object, at all times subject to recall and supervision by Congress," the brief explained, "is in no sense a *divesting* or *alienation* of its power." The brief provided no examples of an alienation of power by Congress, perhaps because there are none.[19]

Jackson's next point was that the Constitution's text justified the absence of precedent striking down a delegation to anyone other than the President. First, the "language vests in the Congress powers which it is obvious could be exercised only through delegates. . . . [I]t is in the Congress that power is vested to *collect* taxes, to borrow money, to coin money, to punish piracies, to raise and support armies, to maintain a navy. It is perfectly obvious that the body of the Congress would not and could not exercise these powers, but that they would be delegated."[20] Second, "[t]he executive power which, it has always been assumed, can be delegated, and would be utterly impotent if it could not be delegated, is vested in the President by the same words that are used to vest the legislative power in the Congress. There is no reason to imply a limitation in the language of one section that is not to be implied in the language of the other."[21] Third, "[i]f it were intended that delegation should have been prohibited," he observed, "it could have been accomplished by the simplest phrase."[22]

The Solicitor General wrote that "the silence of the Constitution on the subject of delegation has added significance when we consider that the constitutional convention was familiar with the extravagant delegation of governmental power which was in vogue in that day." Jackson provided many instances of broad statutory delegations from Great Britain, from the colonies, and from the states during the eighteenth century.[23] He noted,

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[19] The best example might be the Bank of the United States, which received a twenty-year charter from Congress in 1791 (and then again in 1816) and was a private corporation not subject to congressional oversight. But Jackson emphasized in his brief that the validity of the Bank was upheld in *M'Culloch v. Maryland*. *See* Jackson Brief, *supra* note 2, at 60 ("The assumption underlying the decision of that case is that the Bank of the United States was an instrument to which certain governmental power could properly be delegated.").

[20] Jackson Brief, *supra* note 2, at 49. The only possible exception involved appropriations. *See id.* at 48 n.25.

[21] *Id.* at 48-49.

[22] *Id.* at 50. The next quote in the text comes from the same page of the brief.

[23] *See id.* at 50-59.

for instance, that Parliament actually alienated its powers to private firms such as The Hudson's Bay Company (for part of Canada).[24] Some colonies, such as Virginia, were established under royal charters that were equally broad and were administered by private firms.[25] In the states, Jackson stated, "what is known today as a primary standard was not always prescribed in the Acts by which the power was delegated."[26]

Wrapping up his presentation, Jackson turned to pragmatism. He told the Justices that the non-delegation doctrine "simply results in the centralization in Congress of work essentially administrative that could be far better performed if delegated."[27] "A doctrine which tends to require a great volume of administrative work to be half done by a central legislative authority rather than to permit the same volume of work to be well done and well considered by a more decentralized administrative authority," he contended, "is to be asserted with definiteness and applied with caution." Clarifying the non-delegation doctrine would "relieve the Government from the necessity of defending each law in which Congress imposes administrative duties upon an executive officer against attempts to extend the principles stated in the *Schechter* and the *Panama* cases to fantastically restrictive extremes." "It would also enable the Congress in drafting laws to keep within the still vague limits of its power to delegate and yet, at the same time, avoid frustrating democratic government by rules so rigid as to preclude effective administration." Finally, Jackson explained that "[i]n dealing with many of the complicated situations encountered by modern government, attempts to express standards assured of conformity with the apparently prevailing rule are met with the difficulty that if standards existed which could be suitably expressed according to that rule the delegation might not be necessary."

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[24] *See id.* at 50-51.

[25] *See id.* at 52.

[26] *Id.* at 54.

[27] Jackson Brief, *supra* note 2, at 64. The quotes in the rest of the textual paragraph come from the same page of the brief.

The Court did not take up the Solicitor General's invitation and simply upheld the Act as a proper delegation.[28] Jackson did not renew his argument in another case and – except for a brief aside in his book on the Court-packing crisis – never again mentioned his brief in *Currin*.[29] But the brief did leave a mark on one of Justice Jackson's most famous opinions.

PART II
RECONSIDERING *YOUNGSTOWN*'S CATEGORY ONE

This Part explores how part of Jackson's concurrence in *Youngstown* is consistent with the *Currin* brief. In explaining how judicial review of presidential authority should proceed, Justice Jackson described three rough analytic categories separated by whether Congress authorized, said nothing about, or rejected, the President's assertion of authority.[30] The first category is often misunderstood as declaring that if Congress authorizes the President to act then only an external limit like the First Amendment can invalidate the exercise of that power.[31] In fact, Justice Jackson said in

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[28] *See Currin*, 306 U.S. at 15-18 (rejecting the non-delegation argument).

[29] *See* JACKSON, *supra* note 3, at 95 & n.9. As a Justice, Jackson did not challenge *Panama Refining* or *Schechter Poultry*. In 1947, he wrote for the Court and described those cases without referring to the fact that they involved direct delegations to the President. *See* Fahey v. Malonee, 332 U.S. 245, 249 (1947) ("Both cited cases dealt with delegation of a power to make federal crimes of acts that never had been such before and to devise novel rules of law in a field in which there had been no settled law or custom . . ."). When Jackson spoke for himself, though, he did emphasize the direct presidential delegation in those cases. *See* ROBERT H. JACKSON, THE SUPREME COURT IN THE AMERICAN SYSTEM OF GOVERNMENT 63 (1955) ("In the cases striking down the NIRA, the Court refused to sanction the congressional practice of delegating power to the President to make codes for industry that would be the equivalent of new laws.").

[30] *See Youngstown*, 343 U.S. at 635-38 (Jackson, J., concurring).

[31] *See, e.g.*, Dames & Moore v. Regan, 453 U.S. 654, 674 (1981) (stating that rejecting a presidential action authorized by Congress "would mean that the federal government as a whole lacked the power exercised by the President"); Eric A. Posner & Adrian Vermuele, *Inside or Outside the System?*, 80 U. CHI. L. REV. 1743, 1772 (2013) (stating that under Category One "the president wields the full combined power of the legislative and executive branches").

Youngstown that there were internal limits on congressional delegations to the President.[32]

Justice Jackson's opinion in *Youngstown* is widely admired, but the non-delegation aspect of his analysis is just as widely overlooked.[33] In an otherwise stellar recent book on presidential power, Michael McConnell says that the concurrence "simply disregards the question" of non-delegation.[34] In *Youngstown*, the Court was not reviewing a congressional delegation to President Truman of the power to seize steel mills. Understandably then, Jackson did not spend much time addressing the scope of permissible delegation in concluding that the President lacked the authority to seize the mills. But he did not disregard the question of non-delegation. He spoke directly to that point in the first part of his framework, which assessed the validity of presidential actions authorized by Congress. But the clarity of that discussion is obscured by Jackson's use of a footnote.

Category One in the *Youngstown* concurrence said that "[w]hen the President acts pursuant to an express or implied authorization of Congress his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate."[35] What does "all that Congress can delegate" mean? One reading is that Congress cannot give the President the power to violate constitutional prohibitions or authorize actions beyond its own enumerated powers. To assess that interpretation, let's look at the next two sentences: "In these circumstances, and in these only, may he be said (for what it may be worth), to personify the federal sovereignty. If his

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[32] *See Youngstown*, 343 U.S. at 636-37 & 636 n.2 (Jackson, J. concurring); *see also* WILLIAM R. CASTO, ADVISING THE PRESIDENT: ATTORNEY GENERAL ROBERT H. JACKSON AND FRANKLIN D. ROOSEVELT 94 (2018) (picking up on this point).

[33] On the brilliance of Jackson's opinion, see, for example, Sanford Levinson, *Speaking In the Name of the Law: Some Reflections on Professional Responsibility and Judicial Accountability*, 1 U. ST. THOMAS L.J. 447, 462 (2003) (calling the *Youngstown* concurrence "the greatest opinion in our 215-year history of constitutional opinions"); William H. Rehnquist, *Robert H. Jackson: A Perspective Twenty-Five Years Later*, 44 ALB. L. REV. 533, 539 (1980) (describing Jackson's concurrence as "a 'state paper' of the same order as the best of the Federalist Papers, or of John Marshall's opinions for the Court").

[34] *See* MICHAEL W. MCCONNELL, THE PRESIDENT WHO WOULD NOT BE KING: EXECUTIVE POWER UNDER THE CONSTITUTION 278-84 (2020) (providing an insightful critique of Jackson's three-part framework in *Youngstown*).

[35] *Youngstown*, 343 U.S. at 635 (Jackson, J. concurring).

act is held unconstitutional under these circumstances, it usually means that the Federal Government as an undivided whole lacks power."[36] Notice, though, how Jackson qualified these comments. He asserted that the President "may" personify the federal sovereignty when Congress provides authorization and that invalidating a presidential action under those circumstances "usually" meant that the federal government lacked power.[37] These qualifications implied that there were some internal limits on "all that Congress can delegate."

This non-delegation implication was confirmed by the footnote to the line discussing "all that Congress can delegate." Footnote Two of the *Youngstown* concurrence expressly discussed non-delegation principles.[38] Citing *United States v. Curtiss-Wright Export Corporation*,[39] Jackson stated: "[T]he strict limitation upon congressional delegations of power to the President over internal affairs does not apply with respect to delegations of power in external affairs."[40] Far from ignoring or rejecting non-delegation, then, he acknowledged that there were limits on Congress's power to give the President authority over domestic affairs.

This presidential non-delegation reading is confirmed by Jackson's drafts of his concurrence.[41] In one draft, he described Category One this way: "Where the President acts in accord with an express enactment or policy of Congress, he can invoke for its support the sum of his own powers plus the sum of congressional powers at their maximum. Even so, it may be found unconstitutional. *See* Railroad Retirement Board v. Alton R. Co., 295 U.S. 330; Panama Refining Co. v. Ryan, 293 U.S. 389; Carter v. Carter Coal Co., 239; United States v. Butler, 297 U.S. 1; Schechter Poultry Co.

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[36] *See id.* at 635-37 (Jackson, J., concurring).

[37] When the Court canonized Jackson's *Youngstown* concurrence in *Dames & Moore v. Regan*, the word "usually" was omitted from the quote. *See* 453 U.S. at 674.

[38] *See Youngstown*, 343 U.S. at 636 n.2 (Jackson, J., concurring).

[39] 299 U.S. 304, 311-13 (1936) (rejecting a delegation limit for foreign affairs).

[40] *See Youngstown*, 343 U.S. at 636 n.2 (Jackson, J., concurring).

[41] *See* The Papers of Robert Jackson, Library of Congress, Manuscript Division, Box 176 [hereinafter Jackson Papers] (containing drafts and other materials related to the concurring opinion in *Youngstown*); *see also* Adam J. White, *Justice Jackson's Draft Opinions in the Steel Seizure Cases*, 69 ALB. L. REV. 1107 (2006) (providing an excellent overview of the drafts). Since this is an Essay about Robert Jackson's non-delegation doctrine, I think the material in his *Youngstown* drafts is fair game.

v. United States, 295 U.S. 495."[42] The *Panama Refining* cite is telling, as that case was about only the non-delegation doctrine. Jackson retained these citations in the next draft with some edits to the text before switching to the citations and the text that ended up in the published opinion.[43]

Accordingly, the best reading of the *Youngstown* concurrence is that the Justice thought that the non-delegation doctrine did exist but applied to only the President. One conclusion that follows is that *Panama Refining* and *Schechter Poultry* are properly understood as Category One cases. They do not sit outside of the *Youngstown* framework, which would be a reasonable thought if Category One contemplated only external limits on the congressional delegation of power to the President. In both cases, Congress provided the President with the relevant authority in a statute and so these actions were "supported by the strongest of presumptions and the widest latitude of judicial interpretation."[44] While *Panama Refining* and *Schechter Poultry* rejected the congressional delegations, the placement of the non-delegation doctrine into Category One means that courts should invalidate direct delegations to the President sparingly.[45]

CONCLUSION

The current debate over the non-delegation doctrine is centered on Congress's relationship to executive agencies, while the Supreme Court's separation-of-powers cases dwell on the extent to which Congress can take power from the President.[46] Robert Jackson took the opposite

[42] Jackson Papers, *supra* note 41 (quoting from the May 7th draft).

[43] *See id.*

[44] *See Youngstown*, 343 U.S. at 635 (Jackson, J., concurring). In *Schechter Poultry* the delegation was also held to exceed Congress's Commerce Clause authority, thus the invalidation of the NIRA was based on both internal and external grounds.

[45] The most obvious candidate for a non-delegation challenge under Justice Jackson's analysis is the National Emergencies Act. *See* Pub. L. No. 94-412, 90 Stat. 1255 (1976) (codified at 50 U.S.C. §§ 1601-1651 (2018). Since legislation is pending to amend the National Emergency Act in a significant way, *see* H.R. 5314, 117th Cong., § 531 (2021), I will not address that potential challenge here.

[46] *See* Gundy v. United States, 139 S. Ct. 2116, 2131-48 (2019) (Gorsuch, J., dissenting) (arguing for a robust non-delegation doctrine enforced by courts). For recent cases limiting Congress's ability to remove executive power, see, for example, Seila Law LLC v. Consumer Fin. Protection Bureau, 140 S. Ct. 2183 (2020) (holding that Congress may

view on both counts. In his *Currin* brief and in *Youngstown* he contended that the non-delegation doctrine is not about Congress's relationship to executive agencies. Instead, "the balanced power structure of our Republic" calls for judicial scrutiny of delegations by Congress only when they empower the President directly.[47]

not make the Bureau director removable by the President only for cause); Free Enterprise Fund v. Public Co. Accounting Oversight Bd., 561 U.S. 477 (2010) (striking down a multi-level "for-cause" removal provision for members of the Board).

[47] *Youngstown*, 343 U.S. at 634 (Jackson, J., concurring).