The 'Competition of The Market': "Enter the Elephant!"

[A Restatement of a Most Perplexing First Amendment Conundrum]

William Van Alstyne

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas–that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and *that* truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of *our* Constitution.[1]

I. What This Short Paper Means to Address

A. One Illustration: "Enter The Elephant *from Stage Left*"

Suppose a majority of a state legislature concludes that mortality rates could be very significantly reduced were all persons other than authorized law officers forbidden to own or possess guns.[2] But suppose also that nearly all members of the legislature are convinced that were they *now* to vote for an overall "gun prohibition" law, they would be virtually certain to be turned out of office in the very next election cycle. They understand that this would be so, because every reliable poll indicates that there would be sufficient outrage over the adoption of this kind of law that those promising its prompt repeal would easily defeat any and every member of the legislature who had presumed to vote for it, regardless of the district in which he or she were running. So, given this background--

Suppose the legislature, *rightly* concluding that "the public" is "not yet ready" for "this salutary measure," (i.e., "salutary" in *their* view though far from "salutary" as the public would perceive it--the public is not yet ready, they would resent the law and seek recourse at the polls, to change representatives to others better reflecting their views), therefore sensibly concludes

[1] Holmes, J., in Abrams v. United States, 250 U.S. 616, **pin cite** (1919) (emphasis added).

[2] We do not care, for the purposes we shall be exploring, whether "the legislature" is in fact correct. (Indeed, the case is merely made more challenging by supposing that it is *not* correct, as may well be the case in point of fact.)

that at least until "the public" is "properly educated" on "this subject," there can be no real prospect to secure the enactment of "this salutary law."

But, suppose, too, then, that rather than therefore simply leave the matter to some later time (i.e., when the public may become "*properly educated*"[3]), the legislature sees for itself a more pro-active, *affirmative* role, namely, to *help* thus to "educate"[4] "the public"...and to do so in just the following way–

--By appropriating $50 million as an earmarked sum for the State Department Of Health and Human Services, over and apart from its usual budget, to be spent by the department to enter into contracts awarded in competitive bidding among advertising firms and/or other companies (for profit or nonprofit), the awards to be made strictly on the basis of "cost effectiveness" in the "success" of the campaign financed to "change the public's mind."

---These stipulated most cost-effective techniques will combine: (a) a heavy emphasis on the "costs," "hazards," "human toll," etc. of "gun death;" heightened for impact by (b) *omitting* any and all data of a countervailing character (e.g., deterrent effect on burglaries, or on rapes, murders, etc., from actual defensive use plus criminals' uncertainty of confronting persons obviously able to defend themselves;[5] (c) eliding differences among categories of "fatal" gun use (for example, by merging "suicide" with "homicide" rates, and with lawful self-defense rates as well; and (d) the use of high-tech graphics, funereal music, somber voice-over narration–so, in the end: to *combine the very best of professional propaganda techniques* thus to magnify the "social costs" of gun ownership. Insofar as its proselytizing campaign may succeed, the legislature (or more accurately, merely the "prevailing faction" therein), having won the day for

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[3] *"Properly educated*" is used here as a term of art. In this context, it merely means "persuaded to believe certain things re private gun ownership rather than other things and thus either to be pleased to have all private ownership of guns forbidden, or, at least, persuaded to be essentially indifferent insofar as a legislature would adopt such a law." ("Education" in this context is fungible with "propaganda," i.e., it is solely concerned with "the effective inculcation of such facts or other matter--and *only* such facts and or other matter to induce a state of mind consistent with a desire to have the legislature forbid the private ownership and any possession of guns.")

[4] [See footnote 3 *supra,* for the stipulated meaning of "educate"!]

[5] It has been usefully observed, in some of the critical literature, that even certain studies prepared by the Center for Disease Control, may engage in this "selective" data practice. (Appropriate citation to be supplied, on request.)

its favored idea, may then proceed to do that which it currently understands it cannot do without its members being at once voted out.[6]

B. Another Illustration: "Enter The Elephant" *from Stage Right.*"

Suppose a state legislature concludes that "any further labor organization in the state may adversely affect the state's general economy by discouraging capital investment and also by driving new companies either to other states or, indeed, to relocate outside the United States." The state currently has a strong "Right to Work" law, i.e., a law disallowing "union" shops. The legislature (or, more exactly, the current prevailing faction) believes this legislation is a*ltogether* sound. Nevertheless, recently increased trade union organizational-and-heightened political activity in the state is at such a level that members of the state legislature feel under increasing pressure to repeal the law, a move that a majority of the legislature believe would be extremely unwise.

Convinced that repeal of the state "right to work" law would be very "damaging to the state's economy," and convinced that "the public may not quite understand how capital markets operate and how trade union practices can lead to serious abuses" (e.g., the misappropriation of members' dues by union officials and infiltration by organized crime),[7] the legislature appropriates $50 million to be allocated to the State Department of Resources and Development. These earmarked funds are to be spent to enter into contracts with advertising firms that will prepare newspaper, billboard, internet, radio and television advertisements. The aim of all such advertisements is to bring to public attention only the *negative* aspects of trade unions and the *negative* aspects of any repeal of the right to work law. The purpose, that is, is thus to serve the

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[6] –After puzzling through this scenario at "Time 1," consider also the following plausible sequel to the legislature's successful domestic propaganda campaign–at "Time 2." First, assume that the enactment of the statewide "health and human services" "information" campaign to have brought about the desired change in the public mind (to favor the outlawing of private gun ownership or, at least to have rendered the public indifferent to such a law). And assume, also, that so much being true, it was followed by enactment of the prohibition (as all along the legislature, i.e., its dominant faction, had wanted to enact but was too politically fearful to do). *It is now "time 2."* The question arises as to whether *additional* appropriations of a *like* kind should *continue*, shifting merely as the "message" would now be one of trumpeting "how important" and "how excellent" the gun-prohibition law is, *all* by the same technique as before. The legislature agrees that this would be the "right" thing to do, and so renews its generous budgeting of anti-gun propaganda expenditures under state auspices...

[7] [And possibly influenced, insofar as a larger number of those both in the house and in the senate of the state legislature had benefitted from campaign contributions by employers and from various trade associations, than those who had benefitted from campaign contributions by workers and from various trade unions, though this is no necessary part of our hypothetical case.]

public interest as the legislature sees that interest , and to do so expressly by means of this specific "educational" program ("*educational*" indeed!).

Now, turning to this *second* case, is there a First Amendment basis (or any other basis) to seek *to enjoin the expenditure*? (Who might bring such an action? Where? On what theory might it be based? What relief, if any, are they–the plaintiffs (whoever they are)-- entitled to receive? But so, too, we now likewise ask, what of the first case as well?

Are the two preceding cases somehow distinguishable, such that, in respect to one, but *not* the other, there may be some solid First Amendment objection? If so, what might that distinction be? If there is no genuine distinction,[8] what, then, does one have to say, i.e., about the "relevance" of the First Amendment (or of anything else in the Constitution) to either or to each?

The general question meant to be framed by these alternative scenarios may quite obviously (even if also quite aggressively) be framed just in the following way--

Does the First Amendment permit a political faction not merely to take control[9] of the legislative process when it succeeds through fair and open elections, but to use that control to harness the power of government to levy taxes and to finance "government directed propaganda," in respect to the "proper" attitude toward and the "appropriate" disposition of, various social, political, and economic issues?[10]

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[8] [Is such "distinction" one may propose based on anything more substantial than a reflection of one's particular bias and preferences, e.g., that one favors unions but hates guns–or vice-versa?]

[9] **Note**: "To take control" does not per se imply anything sinister; rather, as we use the phrase here, it means merely "to take control" in the *usual, fully expected, democratic sense* of being conceded authority to *repeal* such laws–whether "spending" measures or "regulatory" measures--as in *its* view may warrant repeal and, likewise, *adopt* such laws–whether "spending" measures or "regulatory" measures as in *its* view, may warrant adoption; and thus *to set the legislative agenda for the states, as a polity, until* such time as it–this freely elected majority faction--may lose its majority status to others *who may then enjoy the same authority, neither more nor less*.

[10] Perhaps a fuller statement of "the" question might include the following related questions (simply as lesser-included parts): (a) If the First Amendment does not permit this activity, why not, i.e., on what basis does one so declare? (b) If the First Amendment does *not* foreclose this activity, may it nonetheless place *some* limits on *how far* it may extend? (If so, what are *those* "limits," and how is one to identify them?) And are there any other provisions within the Constitution, besides the First Amendment, that may be of assistance either in "informing" these questions or in providing some answers?

Each of these disparate (yet similar) scenarios surely raises interesting questions. At first blush, however, it would seem fanciful to try to approach either by trying to invoke the First Amendment. After all, while framed in exceptionally strong terms, still the relevant part of the First Amendment merely declares that

Congress shall make no law...*abridging* the freedom of speech, or of the press....

The obvious problem is not so much that the First Amendment applies exclusively to "Congress" and not to the States.[11] Rather, the problem is the more perplexing one, namely this: *unlike* the kind of prohibitory measure addressed in the case containing the quoted excerpt from Justice Holmes,[12] *neither* of the state "laws" involved in *either* of these paired cases is, or even appears to be, a law "**abridging**" *anyone's* "freedom of speech," or *anyone's* "freedom of the press."

In brief, neither law is "subtractive." Each is purely "additive," ie, each is a law that **adds** a government-sponsored voice to the preexisting cacophony of voices, all of which are still "freely" allowed, wholly uncensored: "voices for" and "voices against" gun control, on the one hand, and "voices for" and "voices against" repeal of the right to work law, on the other hand. All that we have here is "The government *'as the speaker'*" (not "the government *as the 'regulator*'") as the distinction is commonly said to be.

And so, too, I trust, the idea for the title of this essentially reiterative essay is now quite plain, Thus--"**Enter the Elephant**" (whether from "stage left"[13] *or* from "stage right"[14]) with a loud

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[11] To be sure, that is surely correct (i.e., that the First Amendment does apply merely to Congress–or at most to the national government–possibly including the executive branch and even the courts as well) and it is equally correct that the cases we have put have *nothing* to do with Congress. Rather, each is solely the product of a state legislature and does not come from the national government at all. This is not the problem for us, however, for it has been settled (at least since 1925) that the substance of this provision in the First Amendment was accepted as an equal restriction on state legislatures, i.e., that none of them may presume to "make [a] law...abridging the freedom of speech, or of the press," any more than Congress may presume to do, in the adoption of the Fourteenth Amendment (in l868). And, surely, our cases would be just as interesting (perhaps even dramatically more so) were we to pose them in terms of equivalent earmarked-for-special-spending domestic propaganda, measures by Congress, and not merely as domestic propaganda bills adopted by particular state legislatures.

[12] See text at note 1 *supra*.

[13] (Stage "left" meaning, of course, as in the first (gun ban) case, the political left: the left–of "sad-eyed, communitarian, vegan, pacifist "do-gooders" who know nothing of guns, who hate the Second Amendment, and who want no one to possess anything more deadly than a dull-edged butter knife," *and who would therefor be happy to have the government enter the "market" of competing ideas to side with them*...)

trumpet, it, the Elephant, may noisily sound according to the disposition of the legislative faction that now sits astride the powers of taxation and of spending to proselytize and to try to influence what "the people" may be propagandized to believe, and what measures to support or to oppose by way of public policy and of law.

II.

There has been a fair amount of both book-length, and even much more by way of article-length writing, addressed to this subject.[15] There is also a smattering of Supreme Court cases and dicta (and of state and lower federal court cases) [16] to have dealt with *some* aspects of it, too. But in the end, they at best offer certain distinctions that may be clarifying, without, however, offering any satisfactory certainty in responding to either of the hypotheticals we have raised.

Finally, but still merely as but a part of this reintroduction to this highly vexing subject– to try to provoke the reader's own best thought—I unapologetically submit the following fragment of historical comparison for consideration, to suggest, quite forcefully, *why* this subject assuredly deserves one's serious concern. It is this vivid recollection: that not the least reason for the horrendous "success" of the National Socialist Party in Germany (the "Nazi" Party), as it ascended to power and gained momentum in the early nineteen thirties, proceeded from the effective propaganda programs of Joseph Goebbels. In heading the Propaganda Ministry under Adolf Hitler, Joseph Goebbels was able to use the "tax-and-spend" authority of the national government (of Germany) to monstrously influential domestic effect.[17]

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[14] (Stage "right" meaning, of course, as in the second (the right-to-work law) case, the political right: the right of "complacent coupon-clippers who revel in their unearned wealth advantage as an "accurate" gauge of talent and skill, *and who are quite happy to have the government enter the "market" of competing ideas to side with them to combat laboring groups*.)

[15] [I omit a string of citations here, to be supplied only on request.]

[16] [These materials, too, I will supply only on request. Here, however, I shall summarize a small number, merely to show what they do–but also do not do–to resolve the harder questions implicated in our subject.]

[17] A mere reading of Goebbels' diary (as I managed even in my early 'teens), i.e., his diary, found partly charred nearby the bunker where, with Hitler, his life ended in l945, is well worth a person's time. It is as depressingly impressive as it is altogether cynical in it detail–in preparing propaganda. (Indeed, Goebbels' insights are widely employed today, often, of course, without even realizing, much less ever acknowledging, from whence they may have come....)

To be sure, the regime that was that dreadful Nazi regime certainly did not proceed *merely* by entering the "market of ideas" as a vigorous and effective "new speaker" via a centrally-run, well-financed, astute, and ideologically-committed "propaganda" ministry. As its particular "ideas" became increasingly "accepted" (as they clearly were *when thus so heavily sponsored by the government)*, however, so, too, then, were its measures to suppress dissenting voices facilitated as well. (And suppress them it did...to the point of mass extermination...as we well know.) Correspondingly, moreover, I think no serious student of the Nazi era has challenged the contributing and major significance of the Nazi *government's systematic domestic propaganda programs* in the shaping of German attitudes, German beliefs, understandings, and fears that made it so feasible to turn ever more harshly, first to suppress dissent and finally to "suppress" (i.e., to annihilate) dissenters.

But if, indeed, it *is* the case that whenever a faction fairly captures "a conventional right to legislate" because its right to legislate has been validated at the polls, that *that merely conventional* "power" *also* embraces an authority to stipulate what messages shall be publicly financed, prepared under government auspices or at its direction, loosed into the public forum, without *some* discernible, clean, and judicially-enforceable constitutional boundary, it would seem both very puzzling and disturbing. "Puzzling," surely, if just because one would never have imagined that this elephantine "voice" was ever to be an "entry" in the "competition" of "the market," at least not "the" market that Justice Holmes had in mind.[18] "Disturbing," also, because of what it may additionally and quite obviously further imply.

To be sure, I suppose, one might dismiss the imagery of a "National Ministry of 'Propaganda'"[19] And the added suggestion of some direct comparison of Joseph Goebbels and of the Nazis may–at least for now--be peremptorily dismissed as odious in the extreme. Still, so

[18] I.e., a political market wherein whatever party or coalition of parties may gain a voting majority within a legislature possessed of general powers to tax and to spend, may: freely pick a point of view to promote; wrap it in the verbal cellophane of "public interest;" and finance its mass promotional dissemination, *the better to insure that that point of view will hold sway and win out!*

[19] But of course, in the United States, such agencies, even though emphatically employed to purvey obvious propaganda, would not be *called* "propaganda" ministries or "propaganda" agencies (for surely the obtuseness of that odious label would be self-defeating and the legislative authors of such proposed agencies most likely find themselves swiftly defeated at the polls. Instead, however, they would be (as they sometimes are) called "*information* services," or "departments of health advisories," or departments of continuing "education," or...whatever one's penchant for mere euphemism may suitably suggest. (Indeed, in point of fact, "propaganda" is a term that Congress has reserved–*and used*--to label material issued under the auspices of *other* governments–but declined to use to identify any similar material issued under its own auspices. *See*, e.g., Meese v. Keene, 481 U.S. 465 (1987) (an "informative" example of just this kind of double standard written into a congressional act)).

much being admitted, there have been some[20] who have presciently cautioned us that phenomena of just this sort do not appear all at once, but instead in mere increments, in small installments, on easy grades and slippery slopes (just as in either of our hypothetical instances).

Indeed, I think it is highly instructive that it was within the very midst of World War II, in l943, that Justice Robert Jackson (who subsequently was also to serve as Chief Prosecutor for the United States in the Nuremberg trials), penned the following paragraph, likely with the conspicuous German example of "propaganda power" well in mind, in invalidating the exercise of compulsory flag salutes in state-run public schools:

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.***If there be any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. Free public education, if faithful to the ideal of secular instruction and neutrality, will not be partisan or enemy of any class, creed, party or faction. If it is to impose any ideological discipline, however, each party or denomination must seek to control, or failing that, to weaken the influence of the educational system.***It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings."[21]

III.

It would not be any stretch at all, in my view, to subscribe to Justice Jackson's salient view in *Barnette*, that *no* faction, whether by gaining control of a state legislature or, for that matter, Congress, may thereupon presume to "harness" the tax-and-spend powers to proselytize for some favored idea, so to enter into such ongoing debate as there may be between those lining up, say, with Sara Brady, Handgun Control, and other like-minded organizations (and like-minded individuals) on the one hand, or oppositely with those lining up with the NRA (on the other), so to lend its elephantine "weight"--by its willful culling of "facts" presented to promote a proselytizing objective, to take sides so to engender or rally more public credence in the views held by Handgun Control than in those oppositely entertained by the NRA.[22] And neither may it

[20]See, e.g., SINCLAIR LEWIS, IT CAN'T HAPPEN HERE! (1935).

[21]West Va. Bd of Educ. v. Barnette, 319 U.S. 624, 638 (1943).

[22] That it–the government--might well deem it appropriate to provide *an expanded public forum*, by means of providing tax-supported places or otherwise (thus *neutrally* facilitating the presentation of contending views),

do so in our other case as well, i.e., to harness tax-and-spend powers to invite public hostility to unionization, by its "educational" campaign of the kind reviewed above.

And, indeed, in a more recent case (i.e., "more recent," that is, than the wartime year of 1943) , Justice Hugo Black seemed to come very close to just this view of the matter in the following passage:

Probably no one would suggest that Congress could, without violating this Amendment [i.e., the First Amendment], pass a law taxing workers, or any persons for that matter (even lawyers), to create a fund to be used in helping certain political parties or groups favored by the government to elect their candidates or *promote their controversial causes*. Compelling a man by law to pay his money to...advocate laws or doctrines he is against differs only in degree, if at all, from compelling him by law to speak for a...cause he is against.[23]

And so, too, Justice Black went on to repeat this view in still another and later case as well:

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would be unaffected. (A suitable example of this easily distinguishable sort is Board of Regents v. Southworth, 529 U.S. 217 (2000) (sustaining compulsory public university student activity fee insofar as *all* on-campus student groups (*irrespective of their point of view*) were identically eligible for reimbursement of some of their expenses). It is also eminently plausible to distinguish government institutions and the use of public funds to contract with private institutions, simply to develop and "to contribute information" relevant to contested issues, i.e., to conduct research according to the best methods of unbiased inquiry, publishing the material such that it is useful simply to enrich the overall "data base" from which others may then draw in arguing pro or con re laws to adopt, to repeal, or to modify. (So, for example, studies conducted in research labs either operated by or funded by the E.P.A. simply to attempt a better understanding of the relation between, say, "diesel emissions" and "air quality," than may already be known.) (One would carefully *contrast* these types of endeavors from those defined in ftnote 3 *supra*, and obviously contrast them also with each of the hypothetical legislative scenarios with which we began this review.)

[23] International Ass'n of Machinists v. Street, 367 U.S. 746, 788 (1969) (dissenting opinion) (emphasis added). Note that in the quotation from Justice Black, the objectionable practice is the use of tax monies "to create a fund to be used" in certain ways *as such* (i.e., that no distinction is made between *delivering the money to a favored group* free to devote it to promote an agenda the legislature also favors, and *using the money itself to promote the agenda favored by certain groups*).

...I can think of few plainer, more direct abridgments of the freedoms of the First Amendment than to compel persons to support candidates, parties, ideologies, or causes they are against.[24]

But thus far, essentially, these–and several other--kinds of claims have had only very limited utility in the relevant case law from the Supreme Court. Indeed, in certain respects, moreover, the way in which they have been used successfully may have (ironically) also served just mischieviously *to sharpen* the distinction between "the elephant" and all others, i.e., cases holding, or at least strongly implying that insofar as the "speech" at issue can, indeed, be characterized with "*the government*" as "*the speaker*," there may be few, if any, First Amendment limits or restraints.[25] And, I think, none so far as I know that have thus far been identified either in the case law or in the several books and the many more law review articles examining the subject, that would provide any answer to *either* of the hypothetical cases described in the opening paragraphs of this brief review–a principal object of which has been to invite help from others, to offer their own observations, critical questions, and their very best thoughts.

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[24] Lathrop v. Donohue, 367 U.S. 820, 873 (1961) (dissenting opinion). (Justice Black's views correspond to the often-quoted phrases from Thomas Jefferson and James Madison (e.g., Jefferson's insistence that "...to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical"), and that he (Justice Black) found, within the First Amendment, an "enactment" of that very belief as a restriction on what government may not do (i.e., "compel a man to furnish contributions of money for the propagation of opinions" he may not share). (Such a proposition holds promise to provide some degree of objection in both the cases we have put.)

[25] I will here take a few of these up now but only to make things reasonably clear. A good example of a successful use of Justice Black's view may be found in Abood v. Detroit Bd. Of Educ., 431 U.S. 209 (l977) and also in Keller v. State Bar of Calif., 496 U.S. 1 (l990). A leading example of the latter (i.e., distinguishing "government" speech), however, may be provided by Rust v. Sullivan, 500 U.S. 173 (1991). And *see also* United States v. American Library Ass'n, 539 U.S. ___ (2003) (But see Board of Educ. v. Pico, 457 U.S. 853 (1982)). (The "distinction" has also been regarded as crucial in the "forced contribution" government or third-party/generic-food-product advertising" cases. *See, e.g.,* Johanns v. Livestock Marketing Ass'n, 544 U.S. 550, **pin cite** (2005) ("[T[he Government's own speech...is *exempt* from First Amendment scrutiny") (emphasis added), but compare United States v. United Foods, Inc., 533 U.S. 405 (2001).) See also Garcetti v. Ceballos, 547 U.S. 410 (2006).

(For a more recent case (again) declaring that "government speech...is not subject to scrutiny under the Free Speech Clause," *see* Pleasant Grove City v. Summum, 129 S.Ct. 1125, **pin cite** (2009).) (*But see* Stevens, J. (with Justice Ginsburg) dissenting in *Pleasant Grove* ("To date, our decisions relying on the newly minted government speech doctrine to uphold government action have been few and, *in my view, of doubtful merit*.") (For reasons briefly set forth immediately hereafter, I thoroughly agree with this latter observation of "doubtful "merit indeed.).

Insofar as it may matter (which it assuredly may not) or, at the least, be of some slight passing interest, as I hope it may (at least to some), my own strong inclination is to draw directly from the compelling observations of Justice Holmes, and likewise from those of Justice Black et al., the following proposition: Indeed, the first and fourteenth amendments do "enact" certain restrictions on the powers of government bodies, much the same as certain utterly commonplace clauses in various corporate charters and bylaws, i.e., clauses limiting the corporate spending authority of the board of directors. Accordingly, just as any shareholder may rightly sue to secure judicial assistance to restrain a company in which he or she holds any shares from acting ultra vires, so may any *citizen do likewise*, and merely equivalently, in each of the cases we posed.

Indeed, I believe that to hold otherwise ought not be treated lightly, much less should it be extolled as an "appropriate" exercise of judicial restraint. Rather, to the contrary, it is deplorable and it is to be condemned as but a disappointing example of judicial self-abnegation, the utter abdication of one's judicial responsibility and indeed, a violation of one's judicial oath of office as explicitly set forth in Article VI.)

But, of course, the reader even now may disagree (?). If so, then what more can I say? Perhaps in sadness, at least this:

Dear reader,

"Quo vadis?"

Sincerely,

William Van Alstyne
May 19, 2014