court in the present case, however, construes "shall appoint, in such manner" narrowly so that it does not negative an implied federal power. The result of this construction, if not the construction itself, is consistent with the effect of the interpretation given Art. I, § 4, Cl. 1, since both tend to increase congressional power.

Implied powers, inferable from the existence of one or more of the express powers of Congress, may occasionally be exercised to regulate matters incidental to federal elections. Cf. *Legal Tender Cases*, 12 Wall. (U.S.) 457, 532–533, 20 L. Ed. 287 (1871); *United States v. Gettysburg Electric Ry. Co.*, 160 U.S. 668, 16 Sup. Ct. 427, 40 L. Ed. 576 (1896). Thus Congress may prohibit interference with the right to vote in federal elections in exercising its power to protect the rights of citizens under the Constitution. *Ex parte Yarbrough*, 110 U.S. 651, 4 Sup. Ct. 152, 28 L. Ed. 274 (1884); *United States v. Mosley*, 238 U.S. 383, 386, 35 Sup. Ct. 904, 59 L. Ed. 1355 (1915). Under the power to obtain information as to authorized legislation, Congress may punish for perjury in inquiries before it as to campaign expenditures of candidates for election to the Senate. *United States v. Seymour*, 50 F. (2d) 930 (D.C. Neb. 1931). Congress may prohibit the solicitation or receipt of contributions for political purposes between federal officers, in exercising its power to control such officers. *Ex parte Curtis*, 106 U.S. 371, 1 Sup. Ct. 381, 27 L. Ed. 232 (1882); *United States v. Thayer*, 209 U.S. 39, 42, 28 Sup. Ct. 426, 52 L. Ed. 673 (1908); *United States v. Wurzbach*, 280 U.S. 396, 50 Sup. Ct. 167, 74 L. Ed. 508 (1930). Several cases indicate that such implied powers over matters incidental to federal elections may be derived from the express power to regulate the election itself. See *Ex parte Yarbrough*, 110 U.S. 651, 4 Sup. Ct. 152, 28 L. Ed. 274 (1884); *United States v. U.S. Brewers' Assn.*, 239 Fed. 163 (D.C. Pa. 1916).

The existence of an implied power has been denied, however, on the ground that it is unnecessary inasmuch as the police power of the states may be used to protect the purity of elections. *Newberry v. United States*, 256 U.S. 232, 41 Sup. Ct. 469, 65 L. Ed. 913 (1921), criticized in 22 Col. L. Rev. 54 (1922); 19 Mich. L. Rev. 860 (1921). The weakness of this argument lies in the fact that it ignores the well established principle that it is not the court's function to consider the actual necessity of the power. *McCulloch v. Maryland*, 4 Wheat. (U.S.) 316, 4 L. Ed. 579 (1819); *Juilliard v. Greenman*, 110 U.S. 421, 4 Sup. Ct. 132, 28 L. Ed. 204 (1884); *Fairbanks v. United States*, 181 U.S. 283, 21 Sup. Ct. 648, 45 L. Ed. 862 (1901).

The present case in finding an implied power to keep presidential elections free from corruption would seem to show a definite change in attitude on the part of the court since the *Newberry* case.

FRANK E. LEE

Constitutional Law—Definition of Phrase "Prima Facie Evidence"—Disorderly Conduct Statutes—[Michigan].—The defendants were convicted of being disorderly persons because of having engaged "in an illegal occupation or business." The statute under which they were convicted made "Proof of recent reputation for engaging in an illegal occupation of business . . . . prima facie evidence of being engaged in an illegal occupation or business." Michigan Acts (1931), No. 328, § 167. *Held*, the statute is unconstitutional as denying "due process of law." *People v. Licavoli*, 250 N.W. 520 (Mich. 1933), North, Weadock, Sharpe, JJ., dissenting.

The majority of the court defined the statute to mean that evidence of reputation of being engaged in illegal occupation, unexplained or uncontradicted, would alone be sufficient to warrant the jury in convicting. The minority, however, took the view that

the statute merely made such evidence competent and admissible and would require supporting evidence to warrant the jury in finding guilt.

Statutory presumptions making one fact prima facie evidence of another fact are upheld although the fact proved is, without more, sufficient to support a finding of guilt. *Geer v. Connecticut*, 161 U.S. 519, 16 Sup. Ct. 600, 40 L. Ed. 793 (1896); *People v. McBride*, 234 Ill. 146, 84 N.E. 865 (1908); *People v. B. & O.*, 246 Ill. 474, 92 N.E. 934 (1910); *Gillespie v. State*, 96 Miss. 856, 51 So. 811 (1910); *People v. Cannon*, 139 N.Y. 33, 34 N.E. 759 (1893). While the jury may be justified in finding a verdict of guilty from such proof, it may still refuse to do so unless satisfied of guilt beyond a reasonable doubt. *State v. Adams*, 22 Id. 485, 126 Pac. 401 (1912); *People v. McBride*, 234 Ill. 146, 89 N.E. 865 (1908); *People v. Beck*, 305 Ill. 593, 137 N.E. 454 (1922); *People v. Cannon*, 139 N.Y. 32, 34 N.E., 759 (1893); *State v. Momberg*, 14 N.D. 291, 103 N.W. 566 (1905); Brosman, The Statutory Presumption, 5 Tulane L. Rev. 17, 178, 196 (1930).

Due process of law, however, under state and Federal Constitutions, requires that there be a natural and rational relation between the fact proved and the fact presumed. *Mobile, J. & K. C. R. R. v. Turnipseed*, 219 U.S. 35, 31 Sup. Ct. 136, 55 L. Ed. 78 (1910); *Morrison v. California*, 54 Sup. Ct. 281 (1934); *Commonwealth v. Williams*, 6 Gray (Mass.) 1 (1856); *Horne v. Memphis & O. R. Co.*, 1 Coldwell (Tenn.) 72 (1860); *Meadowcroft v. People*, 163 Ill. 56, 45 N.E. 991 (1896); *State v. Thomas*, 144 Ala. 77, 40 So. 271 (1906); notes 51 A. L. R. 1139, 86 A. L. R. 179. Both majority and minority opinions agreed that if the statute was to be interpreted as making proof of reputation for illegal occupation sufficient, without more, to warrant a finding of such illegal occupation, it would be unconstitutional as depriving the defendant of due process of law. The decision must therefore be taken as a holding that there is not a sufficient rational relationship between reputation and conduct to warrant the presumption of the one from the other. In accord with this view: *State v. Beswick*, 13 R.I. 211 (1881); *State v. Kartz*, 13 R.I. 528 (1881); *Hughes v. State*, 29 Ohio C.C. 237 (1907); *Hammond v. State*, 78 Ohio St. 15, 84 N.E. 416 (1908); *Contra: State v. Thomas*, 47 Conn. 546 (1880); *State ex rel. Robertson v. New England Furniture & Carpet Co.*, 126 Minn. 78, 147 N.W. 951 (1914).

If the statute had created a conclusive, irrebuttable presumption of guilt from proof of reputation it is conceivable that it might have been upheld on the theory that it was a change in the substantive criminal law, i.e., that having the reputation was the crime and not the engaging in illegal business. *State v. Thomas*, 47 Conn. 546 (1880); *State v. Buckley*, 40 Conn. 246 (1873); *contra, State v. Kartz*, 13 R.I. 529 (1882). See Brosman, The Statutory Presumption, 5 Tulane L. Rev. 17, 38–40 (1930); Wigmore, Evidence (2d ed. 1923), 1059, 1354. That something similar to this may have been intended is suggested by the fact that the business in which the defendants were charged with having been engaged (extortion, carrying concealed weapons, robbery, murder) involved acts which of themselves carried much heavier penalties than that imposed by the statute in question. See Michigan Comp. Laws (1929), §§ 16708, 16722, 16724, 16726, 16754.

The legislation in question is the result of an effort to reach criminals who have been able to evade punishment because of the archaic technicalities of much of our criminal procedure, laxness of duty among law enforcing officials and affiliations with political organizations. See 16 St. Louis L. Rev. 153 (1931). But it seems somewhat extreme to convict a man for what others say of him. See 30 Mich. L. Rev. 600 (1932).

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