was not.[35] Debt legislation was defined as that designed to satisfy a claim against the government while favor legislation grants some special private or group benefit from the state. The term "claim" is of course ambiguous, but it would seem that while the German interests had no "property" in the confiscated items,[36] they certainly had some moral ground for reimbursement.

Labor Law—Picketing—Injunction against Picketing Blended with Violence—[Federal].—The petitioner, a Chicago dairy company, employed the "vendor" system[1] for the distribution of its product. In an endeavor to compel the unionization of those employed in the distribution system, the defendant union attempted to negotiate with the petitioner. The failure of these efforts occasioned a wave of violence, following which the union established placard-carrying patrols of one or two men before shops retailing the petitioner's products. Although no violence took place on the picket lines, sporadic acts of violence continued elsewhere. After a hearing on a petition for an injunction, the master recommended that all picketing as well as violent acts be enjoined. The trial court enjoined the violence but specifically exempted peaceful picketing from the scope of the injunction. The Supreme Court of Illinois reversed and remanded, directing a permanent injunction as recommended by the master.[2] On certiorari, the Supreme Court of the United States *held*, that the decree did not violate the due process clause of the Fourteenth Amendment in enjoining acts of picketing in themselves peaceful when "enmeshed with contemporaneously violent conduct." Injunction upheld, Justices Black, Reed, and Douglas dissenting. *Meadowmoor Dairies, Inc. v. Milk Wagon Drivers Union.*[3]

The principal case might well be considered a foreseeable consequence of *Thornhill v. Alabama.*[4] Mr. Justice Murphy there indicated rather vague limits to the protection afforded picketing as an exercise of the right to freedom of speech.[5] His criteria, "the clear danger of substantive evils" and "the interests of society," appear to accord with prevailing notions as to the limitations on freedom of speech in general.[6] Not until the principal case, however, has the Court indicated what circumstances and conditions

[35] Gesellschaft für Drahtlose Telegraphie, M.B.H. v. Brown, 64 App. D.C. 357, 78 F. (2d) 410 (1935), cert. den. 296 U.S. 618 (1935); Brown v. Gesellschaft für Drahtlose Telegraphie, M.B.H., 70 App. D.C. 94, 104 F. (2d) 227 (1939), cert. den. 307 U.S. 640 (1939).

[36] Cummings v. Deutsche Bank und Discontogesellschaft, 300 U.S. 115 (1937).

[1] A "vendor" uses his own truck for delivery of milk which he purchases directly from dairies for resale to retailers, the dairies repurchasing from him all unsold milk. Since vendors work longer hours and earn less than union members, the use of the vendor system has enabled retailers to sell milk for less than milk distributed door-to-door by union members. Competition from sale of milk at a lower price in retail shops resulted in a decline in business for dairies employing union members and a consequent loss of union membership. See Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc., 311 U.S. 91, 95 (1940).

[2] 371 Ill. 377, 21 N.E. (2d) 308 (1939).

[3] 61 S. Ct. 552 (1941).

[4] 310 U.S. 88 (1940); cf. Carlson v. California, 310 U.S. 106 (1940).

[5] 310 U.S. 88, 103–105 (1940).

[6] See Cantwell v. Connecticut, 310 U.S. 296, 308 (1940); Schneider v. State, 308 U.S. 147, 160 (1939); cf. Minersville School Dist. v. Gobitis, 310 U.S. 586 (1940).

will so alter the character of picketing as to remove it from the protection of the constitutional guarantee. While the factual situation in the principal case arguably brings it within the exceptions anticipated by Mr. Justice Murphy, the remoteness of the violence from the picketing enjoined may, together with other factors, warrant the conclusion that it marks a distinct broadening of the exceptions suggested in the *Thornhill* case. Not only were the pickets themselves completely non-violent,[7] but their activities did not induce violence on the part of others; moreover, the union explicitly disclaimed the collateral acts of violence[8] and instructed its pickets to be orderly, and the evidence showed that the frequency and intensity of the violence had considerably decreased.[9] Any threat to the interests of society would thus have been adequately countered by the decree of the trial court enjoining acts of violence.[10] It is not clear that the activities of the placard-carriers increased the danger to society; rather they would seem to constitute an "effective exercise of the right to discuss freely industrial relations which are matters of public concern,"[11] in view of the public interest in the method of distribution and the price of milk. The Court, however, chose to unite these activities, apparently legitimate in themselves, with violent acts committed by but a small portion of the union membership and temporally and spatially removed from the picketing. Comparison of the principal case with the decision of the Circuit Court of Appeals for the Sixth Circuit in *NLRB v. Ford Motor Co.*[12] reveals a possible anomaly resulting from the treatment of picketing as an exercise of free speech. The court there refused to sustain a restriction upon an employer's freedom to communicate, although the statements were made in an anti-union campaign which had included acts of violence by the employer. The decision in the principal case would appear to require a contrary result.

Inasmuch as many labor disputes involve a certain amount of physical violence, the decision in the principal case, which will most probably be widely followed, may be employed to prohibit much otherwise legitimate labor activity. The frequent use in the past of vague concepts such as "coercion" and "intimidation" as the basis for issuance of anti-labor decrees[13] demonstrates that this fear is not unfounded. The Court sug-

[7] 61 S. Ct. 552, 564 (1941). In this respect the Court's citation of Nann v. Raimist, 255 N.Y. 307, 174 N.E. 690 (1931), as a comparable situation seems questionable. In that case the union was enjoined from all picketing only after violation of a previous injunction permitting peaceful picketing showed that the union was incapable of non-violent picketing.

[8] 61 S. Ct. 552, 558 (1941). The union accepted the injunction against violence. Cf. Busch Jewelry Co. v. United Retail Employees' Union, Local 830, 281 N.Y. 150, 22 N.E. (2d) 320 (1939), noted in 7 Univ. Chi. L. Rev. 171 (1939), where the union sponsored mass picketing and other disorderly acts.

[9] 61 S. Ct. 552, 565 (1941).

[10] Any intimidating effect the picketers may have had on the consumers because of the latter's association of the collateral acts of violence with the picketers would have been removed by enjoining the violence.

[11] Thornhill v. Alabama, 310 U.S. 88, 104 (1940).

[12] 114 F. (2d) 905 (C.C.A. 6th 1940), cert. den. on other grounds, 61 S. Ct. 621 (1941), noted in 8 Univ. Chi. L. Rev. 350 (1941).

[13] See Witte, The Government in Labor Disputes 58–59 (1932); Willcutt & Sons Co. v. Driscoll, 200 Mass. 110, 85 N.E. 897 (1908); Bull v. Int'l Alliance of Theatrical Stage Employees, 119 Kan. 713, 241 Pac. 459 (1925).

gests that state legislation is the proper antidote for anti-labor injunctions.[14] But comparatively few state acts give such protection as does the Norris-LaGuardia Act,[15] and the possibility under present conditions of the spread of such legislation is remote.[16]

Indeed, the Court's suggestion appears to involve an implicit admission that labor cannot expect adequate protection for picketing from the judiciary under the free speech category. The holding of *AFL v. Swing*,[17] decided the same day as the principal case, may be cited against this view. There the Court held that, notwithstanding state common law which outlawed peaceful picketing in the absence of an immediate employer-employee relationship, the constitutional guarantee of freedom of discussion applies. And it cannot be denied that the very recognition that there is a constitutional protection is important. Nonetheless, legislative recognition of picketing as a part of union activity essential to the attainment of union aims would provide a more realistic basis for defining the limits of its protection.

Labor Law—Picketing—Interpretation of Statute Prohibiting "Loitering" near Defense Industries—[Ontario].—The defendant, leader in a labor dispute, peacefully picketed the Windsor, Ontario, plant of Chrysler Corporation of Canada, Ltd. When he disregarded the request of a constable that he leave the premises, the defendant was arrested and convicted for violating Regulation 6(3) of the Defense of Canada Regulations (Consolidation) 1940, which provides that "no person loitering in the vicinity .... of any premises [designated for the performance of services essential to the Canadian defense program] shall continue to loiter in that vicinity after being requested by the appropriate person to leave it."[1] Upon appeal to the Supreme Court of Ontario, *held*, that Regulation 6(3) applies, even though the "loiterer" is picketing the plant during a labor dispute. Judgment affirmed. *Rex v. Burt.*[2]

Without the aid of written constitutional guarantees such as the first ten amendments to the Constitution of the United States, Canadian courts ordinarily protect fundamental personal rights by means of a long-established technique of interpretation.[3] They frequently resolve ambiguity in a social security act, an act imposing penalties,

[14] The Illinois anti-injunction statute, Ill. Rev. Stat. (1939) c. 48, § 2a, was interpreted by the lower court to apply only to disputes between employers and employees. Meadowmoor Dairies, Inc. v. Milk Wagon Drivers' Union, 371 Ill. 377, 21 N.E. (2d) 308 (1939).

[15] For an analysis of state statutes see Riddlesbarger, State Anti-Injunction Legislation, 14 Ore. L. Rev. 501 (1935); 23 Corn. L. Q. 339 (1938).

[16] Legislation pending in Congress and the state legislatures contemplates the curtailing rather than expansion of labor activities. See Picketing and Free Speech, 9 Geo. Wash. L. Rev. 185 (1940).

[17] 61 S. Ct. 568 (1941).

[1] P.C. 4750, 3 Proclamations and Orders in Council 90 (Canada 1940); Defense of Canada Regulations (Consolidation) 1940, reg. 6(3). These regulations were made by the Governor General of Canada in Council pursuant to the War Measures Act 1914 (2d session) c. 2, § 6. Rev. Stat. Can. (1927) c. 206, § 3. Reg. 3(1) provides that the Minister of Justice designate certain industries which he considers essential to the defense program to which the regulations thereafter apply.

[2] [1941] 1 D.L.R. 598 (Ont.).

[3] Willis, Statutory Interpretation in a Nutshell, 16 Can. B. Rev. 1 (1938).