clusion that the dividend payments made to respondent's stockholders were income realized by it," Mr. Justice Douglas pointed out, "marks no innovation in income tax law. . . . . 'Income is not any the less taxable income of the taxpayer because by his command it is paid directly to another in performance of the taxpayer's obligation to that other.' "[34]

These cases are distinguishable from each other and from the types discussed above; yet, a common element exists in all. It is fairly easy to see that a corporation should pay income tax on income distributed to its stockholders, or that one should be taxed on income used by him to discharge a continuing obligation of support.[35] Little violence is done, moreover, when the Court compels a man to pay income tax on the income from land in which he has the capital investment and of which he may direct the exploitation. The common element in these cases is the *dominion* over a thing which constitutes the major premise of the most sophisticated notions of ownership.[36] With this in mind, taxation of the income of a trust to one who has retained the right to vote the stock composing the corpus, for example, does not seem a tour de force. And the opinion in the *Horst* case, besides its straightforward warning, refines the elemental conceptions of ownership relevant to income taxation.

PICKETING FOR CLOSED SHOP—CONSTITUTIONALLY ENJOINABLE?

The defendant union, aiding a strike for a closed shop, was enjoined from picketing. On appeal, the Massachusetts Supreme Court affirmed the decree, asserting that it did not violate the First Amendment. *Fashioncraft v. Halpern.*[1]

It has now been almost two years since the United States Supreme Court held picketing to be guaranteed under the right of free speech.[2] During that time, critics have been skeptical of the doctrine;[3] state courts and lower federal courts have shown a decided distaste for it;[4] and the Supreme Court itself has twice restricted its applicability. First, in *Milk Wagon Drivers' Union v. Meadowmoor*

[34] Ibid., at 49.

[35] See Helvering v. Stuart, 317 U.S. 154 (1942) (settlor held taxable for all the income of a trust which *might* be used for the maintenance and support of his minor children).

[36] Ames, The Nature of Ownership, in Lectures on Legal History 192 (1913); cf. Holmes, The Common Law 206 et seq. (1881).

[1] 48 N.E. 2d (Mass. 1943). [2] Thornhill v. Alabama, 310 U.S. 88 (1941).

[3] Teller, Picketing and Free Speech, 56 Harv. L. Rev. 18 (1942); Gregory, Peaceful Picketing and Freedom of Speech, 26 A.B.A.J. 709 (1940). But see Jaffe, In Defense of the Supreme Court's Picketing Doctrine, 41 Mich. L. Rev. 1037 (1943); Dodd, Picketing and Free Speech: A Dissent, 56 Harv. L. Rev. 513 (1942); Sherwood, the Picketing Cases and How They Grew, 10 Geo. Wash. L. Rev. 763 (1942).

[4] The attitude of these courts is discussed in Objective Tests for Determining the Legality of Labor Activities, 41 Mich. L. Rev. 1143 (1943); Ratner and Come, The Norris-La Guardia Act in the Constitution, 11 Geo. Wash. L. Rev. 428 (1943); Teller, op. cit. supra note 3, at 453.

Dairies,[5] an injunction was upheld where violence had been used. Second, in *Carpenters and Joiners Union of America v. Ritter's Cafe*,[6] the Court held that the picketers and the parties picketed must occupy the same "area in industry."[7]

The Massachusetts court now proposes a third limitation, namely, that picketing be prohibited wherever it is "directed to the accomplishment of an unlawful purpose."[8] Since a strike for a closed shop is still a tort in Massachusetts,[9] picketing in support of such a strike is said to have "an unlawful purpose."[10] The court cites the *Meadowmoor* case for the proposition that unlawful methods make picketing enjoinable. And if unlawful methods may have this effect, why not unlawful ends, asks the court.

Actually, of course, the *Meadowmoor* decision was based, not upon the methods used, but upon the "clear and present danger" which was thought to have resulted from those methods. If the "lawful objective" test achieves acceptance, it will do so, then, not as an inevitable corollary to some "lawful means" test, but simply because the Supreme Court has recognized that picketing may be coercive as well as informative, and hence that its regulation is not totally barred by the free speech guaranty.

In the *Meadowmoor* and the *Ritter's Cafe* cases, the Court began the task of outlining the area of permissive restriction. Whether it will proceed by adopting the "lawful objective" criterion is, of course, conjectural.[11] It indicated in a dictum last year that it might.[12] However, the test is exceedingly vague, and its

[5] 312 U.S. 287 (1941).

[6] 315 U.S. 722 (1942). [7] Ibid., at 728.

[8] Fashioncraft v. Halpern, 48 N.E. 2d 1, 5 (Mass. 1943).

[9] Quinton's Market v. Patterson, 303 Mass. 315, 21 N.E. 2d 546 (1939); Simon v. Schwachman, 301 Mass. 573, 18 N.E. 2d 1 (1938).

[10] To say, as does the Massachusetts court, that the strike has an unlawful objective because it seeks a closed shop, and that the picketing has an unlawful objective because it supports the unlawful strike, seems unnecessarily complicated. Actually, both the strike and the picketing are motivated by the desire for a closed shop, and hence both must be unlawful under Massachusetts law, as expressed in the instant case, at 3: "Whatever advantage might in general accrue to trade unionism by the acquisition of a closed shop arrangement with an employer, there is not sufficient relationship between the aim sought and the self interest of the strikers to justify the intentional infliction of harm on another."

[11] It has been suggested that, instead, the Court will follow the criteria already enunciated, though for a different purpose. Section 4 of the Norris-La Guardia Act and the cases decided thus far under the Thornhill doctrine are analyzed to support this theory. Ratner and Come, op. cit. supra note 4.

[12] "The respondents say that the basis of the decision below was revealed in a subsequent opinion of the Court of Appeals, where it was said with regard to the present case that 'we held that it was an unlawful labor objective to attempt to coerce a peddler employing no employees in his business and making approximately thirty-two dollars a week, to hire an employee at nine dollars a day for one day a week.' Opera-on-Tour v. Weber, 285 N.Y. 348, 357, 34 N.E. 2d 349, certiorari denied, 314 U.S. 615. But this lacks the deliberateness and formality of a certification, and was uttered in a case where the question of the existence of a

past abuse is well known.[13] Critics who advocate its adoption do so, naturally, because they recognize the need for a thoroughgoing judicial consideration of labor's objectives, a consideration which the present Court has so far, to a large extent, inhibited.[14] A better answer to this need, however, would seem to be a weighing and sifting of these objectives by the Supreme Court itself.

THE REPORT ON THE DETROIT RACE RIOT

Perhaps unfortunately, the legal system can take but a passive part in the prevention of race riots. This is true because the chief underlying cause of such conflicts is a maldirection of character. Racial harmony is not a matter of getting good laws on the books or even of perfecting legal administration. This harmony will come only when individuals acquire a compelling habit of acting justly.

Yet, much of the material damage and many of the tragedies of the Detroit riot could have been prevented by skilful legal action. In the factual report[1] submitted to Governor Kelly of Michigan, Herbert J. Rushton, Attorney-General, William E. Dowling, Prosecuting Attorney, Oscar Olander, Commissioner of State Police, and John H. Witherspoon, Commissioner of the Detroit Police Department—the appointed committee of investigation—pointed out that an adequate police force might have done much to minimize the human and material damage.[2] More important to the subject of this note, the committee also indicated that if federal military aid could have been secured speedily, much of the damage might have been avoided.[3]

right to free speech under the Fourteenth Amendment was neither raised nor considered." Bakery and Pastry Drivers v. Wohl, 315 U.S. 769, 774–75 (1942).

Of this, Teller says, "Apparently then, the Supreme Court would have sustained the injunction had the New York Court of Appeals made a finding that the picketing was for an unlawful labor objective." Teller, op. cit. supra note 3, at 193.

[13] Mr. Justice Frankfurter has given one of the ablest descriptions of this abuse. Frankfurter and Greene, The Labor Injunction (1930).

[14] Gregory, Peacetime Restraints on Collective Bargaining, 10 Univ. Chi. L. Rev. 177 (1943); Teller, op. cit. supra note 3; Teller, Focal Problems in American Labor Law—Opera-on-Tour, Inc. v. Weber, 28 Va. L. Rev. 727 (1942); Arnold, Bottlenecks of Business c. 11 (1940).

[1] The purpose of the Report as stated in its Foreword is "to make publicly known the whole truth in respect to the rioting." The three parts of the Report deal with (I) a statement of the events, (II) an appendix composed of a series of statistical exhibits, and (III) a discussion by the compilers of the various factors contributing to the tension between the white and negro populations of Detroit.

[2] Instead of increasing proportionally with the half-million increase in population since 1931, the Detroit police force has decreased steadily and considerably since then. In 1931 the population of Detroit was 1,526,763, and the actual personnel of the police force was then 3749. In 1943 the population is 2,106,671, and the police force is now 3418. Exhibit 10, Part II, Factual Report to the Governor.

[3] Ibid., Exhibit 12.