essential in a limited constitution. . . (which) . . . can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing . . . No legislative act contrary to the Constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves."

Now, breaking off there, let us consider in relation to what follows, the Smith Act (an act of Congress) on one hand, and the Constitution of the United States on the other.

"A Constitution is in fact," wrote Hamilton of the Court, "and must be regarded by the judges, as a fundamental law. . . . If there should happen to be an irreconcilable variance between a legislative act and the Constitution, the Constitution ought to be preferred to the statue, the intention of the people to the intention of their agents. . . Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people declated in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their dec sions by the fundamental law, rather than by those which are not fundamental. . ."

Clearly the authors of the Constitution left the court no choice. Where there is conflict between legislative enactment and the Constitution, the Constitution must prevail, not partly but absolutely.

But what about the special "circumstances" which cause Chief Justice Vinson to rule that the First Amendment is "not an unlimited, unqualified right?" What about ---and these are all quotes from Justice Vinson's majority opinion--- what about the "scope" of the First Amendment, what about the "world crisis", the "inflammable nature of world conditions", the "touch and go relations" with other countries, which, according to the Chief Justice, require that the First Amendment "be subordinated to other values and considerations."?

The authors of the Constitution did not recognize such limitations and subordinations of the guaranteed rights of citizens. Alexander Hamilton wrote specifically of the "inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensible in the courts of justice . . ." And as for those special conditions which Mr. Vinson cites throughout his decisions, as for the "public opinion . . . present pressures, passions and fears" to which Justice Black ascribes the Court's rulings, the authors of the Constitution specifically intended that the Supreme Court must ignore them, and they said as much in clear words:

". . . it is not to be inferred," wrote Hamilton again in that treasure house of Constitutional theory, The Federalist, ". . . that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions

"The independence of the judges," wrote Hamilton, again in ~~that treasure house of Constitutional theory,~~ The Federalist, "is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men or the influence of popular conjectures sometimes disseminate among the people themselves, and which . . . have a tendency . . . to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community . . .

"It is not to be inferred . . . that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, ~~incompatible with the provisions in the existing Constitution,~~ would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively as well as individually; and no presumption, or even knowledge of their sentiments can warrant their representatives in a departure from it . . . ~~But it is easy to see that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.~~

"But it is not with a ~~xxx~~ view to ~~xxx~~ infractions of the Constitution only that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens by unjust and impartial laws. Here also the firmness of the judicial magistracy is of vast

importance in mitigating the severity and operation of such laws . . .

"Considerate men of every description ought to prize whatever will tend to beget or fortify that temper in the courts: no man can be sure that he may not be tomorrow the victim of a spirit of injustice by which he may be the gainer today. And every man must now feel that the inevitable tendency of such a spirit is to sap the foundations of the public and private confidence, and to introduce in its stead universal distrust."

I believe that no living man could write so damning an indictment of Monday's action of the Supreme Court as has already been written by the men who conceived that court and defined its duties and established it under the constitution. In every respect the Court has violated the stern obligations laid upon it by the authors of the Constitution, and in violating them it has desecrated the instrument it was created to protect.

But when we speak of the Court in terms of Monday's decision, we speak only of six members of the Court---that same half-dozen who for five disastrous years have prostrated themselves before the executive and legislative branches of the government. There are two other members of that Court who did not agree with the majority decision---two members who have never agreed with the majority in its deep mistrust of our form of government. We can take considerable comfort from their dissenting opinions if we look back upon our history and realize that the great dissenters have always been the great justices, and that their dissenting opinions have always paved the way for the majority opinions of the future.

Justice Hugo Black, wrote of the eleven convicted men in these terms: "They were not even charged with saying anything or writing anything designed to overthrow the government. . . It is impossible to reconcile past decisions of the court with this majority opinion . . . No matter how it is worded, this is a virulent form of prior censorship of speech and press, which I believe the First Amendment forbids."

Justice William O. Douglas declared: "Not a single seditious act is charged in the indictment. To make lawful speech unlawful because two men conceive it, is to raise the law of conspiracy to appalling proportions. That course is to make a radical break with the past and to violate one of the cardinal principles of our constitutional scheme.

"Never until today has anyone seriously thought that the ancient law of conspiracy could constitutionally be used to turn speech into seditions conduct. Yet that is precisely what is suggested. I repeat that we deal here with speech alone, not with speech plus acts of sabotage or unlawful conduct.

"The act, as construed, requires the element of intent---that those who teach the creed believe in it. The crime then depends not on what is taught, but on who teaches it. That is to make freedom of speech turn not on what is said, but on the intent with which it is said. Once we start down that road we enter territory dangerous to the liberties of every citizen. We then start probing men's minds for motive and purpose; they become entangled in the law not for what they did, but for what they thought."

Nor are these two great justices alone in their condemnation of Monday's Constitutional betrayal. The New York Post, one of the most consistently anti-Communist papers in the country, declared: