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tional Labor Relations Act of 1949 (H.R. 2032), Mr. Adam Clayton Powell, Jr., of New York, raised a point of order:

> MR. POWELL: If this bill uses language which is no longer in keeping with our laws, I raise the point of order that it is incorrectly drawn. On page 53, line 13, this bill uses the language, "to review by the appropriate circuit court of appeals." I make the point of order that there is no longer any circuit court of appeals.
>
> THE SPEAKER:[6] There might be 203 Members take the same position that the gentleman from New York does, but that does not alter the situation.

The question is on the engrossment and third reading of the bill.

§ 3. Private Bills

Private legislation is the means by which the Congress grants relief to ". . . one or several specified persons, corporations, institutions, etc. . . ."[7] who may have no other legal remedy available to them. It also provides a means whereby honoraria are granted to individuals, but by far its most common usage pertains to granting a remedy to the personal and pecuniary grievances of individuals.[8]

Private laws constitute a significant portion of the total number of laws passed by each Congress. For example, in the 92d Congress 161 private laws and 607 public laws were enacted.[9]

The distinction between public and private bills is sometimes difficult to make. A statutory definition of a private bill was nacted in 1895[10] and amended in 1905.[11] However, this definition[12] was removed from title 44 of the United States Code when that title was enacted into positive law in 1968.[13] Through the years the

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6. Sam Rayburn (Tex.).

7. 4 Hinds' Precedents Sec. 3285.

8. In the 92d Congress, for example, 609 bills and resolutions regarding claims against the United States were referred to the House Committee on the Judiciary and 2,144 bills and resolutions concerning individual immigration problems. U.S. House of Representatives. Final Legislative Calendar, Committee on the Judiciary (92d Cong.), p. 10.

9. For a table listing private and public laws enacted in each Congress since the 52d Congress, see Calendars of the United States House of Representatives and History of Legislation, Final Edition (92d Cong.), p. 261.

10. Jan. 12, 1895, Ch. 23, § 55, 28 Stat. 609.

11. Jan. 20, 1905, Ch. 50, § 2, 33 Stat. 611.

12. ". . . The term 'private bill' shall be construed to mean all bills for the relief of private parties, bills granting pensions, bills removing political disabilities, and bills for the survey of rivers and harbors." Codified at 44 USC Sec. 189 (1964 ed).

13. Oct. 22, 1968 Pub. L. No. 90–620, § 706, 82 Stat. 1238, 1248.

term "private bill" has been used to describe widely differing types of legislation.[14]

Since 1968, the preponderance of private laws enacted by the House has continued to be for the relief of individuals devoid of other legal remedy. Citizenship for a person or persons otherwise ineligible on a technicality is frequently granted by private law.

A Speaker or former Speaker, and Members of Congress have on more than one occasion been granted permission to accept, or accept and wear, a foreign decoration,[15] when such acceptance would otherwise be constitutionally prohibited.[16]

Other purposes for which private laws have been enacted have included: permitting free entry to the United States of scientific and musical apparatus destined for use at specific colleges and universities; conveyance of real property and rights of the United States; relief of certain named private businesses; exemption from taxation of specific property in the District of Columbia; authorization for the Secretary of Agriculture to grant an easement over certain lands to a railroad company; and requirements that the Foreign Claims Settlement Commission determine or redetermine the validity of claims of named individuals against specified foreign governments.

In the Legislative Reorganization Act of 1946,[17] Congress limited the types of measures that may be considered as private bills:

> Sec. 131. No private bill or resolution (including so-called omnibus claims or pension bills), and no amendment to any bill or resolution, authorizing or directing (1) the payment of money for property damages, for personal injuries or death for which suit may be instituted under the Tort Claims Procedure as provided in Title 28, United States Code, or for a pension (other than to carry out a provision of law or treaty stipulation); (2) the construction of a bridge across a navigable stream; or (3) the correction of a military or naval record, shall be received or considered in the House.[18]

Certain of the categories in which private bills were banned under the act were delegated to other agencies by other sections of the act. The Secretaries of War, the Navy, and the Treasury were authorized to establish civilian

14. 4 Hinds Precedents § 3285.

15. Priv. L. No. 89–61 (H.R. 10132); Priv. L. No. 91–244 (H.J. Res. 1420); Priv. L. No. 92–24 (H.J. Res. 850).

16. U.S. Const. art. I, § 9 clause 8.

17. Aug. 2, 1946, Ch. 753, 60 Stat. 812.

18. 60 Stat. 831. This provision was incorporated into the rules of the House in 1953. See Rule XXII clause 2, *House Rules and Manual* § 852 (1981).

boards to review military and naval records to correct errors and remove any injustices.[19] The Federal Tort Claims Act provided administrative and judicial remedies in certain personal injury cases involving negligence of federal employees acting within the scope of their employment.[20] And general authority for the construction of bridges over the navigable waters of the United States was delegated to the Chief of Engineers and the Secretary of War.[21]

Today private bills considered and passed in the Congress fall largely into two major categories: claims cases and immigration and naturalization cases. Other less frequently introduced types of private bills include conveyances of real property to identified individuals or private groups, bills affecting military rank (though not correcting military records) of individuals, bills or resolutions paying tribute to or conferring awards or medals upon living persons, bills documenting private vessels, and bills permitting U.S. citizens to be employed by foreign governments.

Claims Cases

Since the United States may not be sued absent the authority of an act of Congress,[1] Congress has over the years enacted a series of laws allowing the administrative and judicial settlement of claims against the United States in order to alleviate the determination of individual cases by means of private legislation.

The Court of Claims was created by the Act of Feb. 24, 1855,[2] ". . . primarily to relieve the pressure on Congress caused by the volume of private bills."[3] Under this act the court was directed to hear claims and report its findings and recommendations to Congress. By the Act of Mar. 3, 1863,[4] the judgments of the court were made final, but appeals to the Supreme Court were allowed in certain cases.

In 1887, Congress enacted the Tucker Act the[5] whereby the jurisdiction of the court was greatly expanded. Its present form in the revised title 28 provides:

> The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of

19. Sec. 207, 60 Stat. 837, now at 10 USC § 1552.

20. Title IV, §§ 401–403, 60 Stat. 842.

21. Title V, §§ 501–511, 60 Stat. 847.

1. *United States* v *Clarke,* 8 Pet. (33 U.S.) 436 (1834).

2. Ch. 122, 10 Stat. 612.

3. Opinion of Justice Harlan, *Glidden Company* v *Zdanok,* 370 U.S. 530, 552 (1962).

4. Ch. 92, § 5, 12 Stat. 765, 766.

5. Mar. 3, 1887, Ch. 359, 24 Stat. 505.

an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. . . .[6]

Congress has also authorized suits against the United States in the Court of Claims for patent infringement,[7] in U.S. District Court for admiralty and maritime torts,[8] and in U.S. District Court for torts by employees of the government while acting within the scope of their employment.[9]

Furthermore, the Congress has established the Customs Court,[10] the Court of Customs and Patent Appeals,[11] and the Tax Court[12] to hear claims cases against the government in these areas.

Cases that do not fall into any of the above categories or where a statute of limitations under one of those judicial or administrative remedies has run, become possible subjects for private legislation to be considered by the Congress itself. However, the separation between judicial and congressional determination of claims cases is not complete since Congress frequently refers private bills to the Court of Claims[13] for a determination of the nature of the claims ". . . and the amount, if any, legally or equitably due from the United States. . . ."[14]

Perhaps the clearest, although indirect, statement upholding the constitutional basis of private claims legislation was made by

6. 28 USC § 1491.

7. 28 USC § 1498 (1970 ed.).

8. Feb. 28, 1920, Ch. 95, § 2, 41 Stat. 525, 46 USC § 742 (1970 ed.); and Mar. 3, 1925, Ch. 428, § 1, 43 Stat. 1112, 46 USC § 781 (1970 ed.).

9. Federal Tort Claims Act, 28 USC §§ 1346(b), 2671 et seq.

10. 28 USC § 1581.

11. 28 USC § 211 et seq.

12. 28 USC § 7441 et seq.

13. 28 USC § 1492.

14. 28 USC § 2509. The congressional reference of claims has generated some question as to the nature of the Court of Claims as legislative or constitutional. That court and the Court of Customs and Patent Appeals were declared constitutional under art. III in *Glidden* v *Zdanok,* 370 U.S. 530 (1962). However, no clear standard for pronouncing a court to be legislative (art. I) rather than constitutional (art. III) has been announced by the Supreme Court. See: *Constitution of the United States of America* pp. 590–596, S. Doc. No. 92–82, 92d Cong. 2d Sess. (1972).

It is clear that a court is of a legislative character when it performs functions of a legislative or advisory nature which are subject to review by a legislative or executive body. See *Gordon* v *United States,* 5 Wall. (72 U.S.) 419 (1867). Thus, the Court of Claims commissioners, not the Court of Claims judges, are performing a nonjudicial advisory function under the congressional reference statute (28 USC § 2509(b)).

the U.S. Supreme Court in the case of *Pope* v *United States.*[15] That case was decided on appeal to the Supreme Court after the Court of Claims had refused to give effect to a private law directing that court to render judgment for the petitioner.

The petitioner first sued for the costs incurred in performing additional work in connection with a contract with the government for the construction of a tunnel as part of the water system of the District of Columbia. The Court of Claims denied these costs since such additional work was not specified in the contract. After a review of the case was denied by the Supreme Court, the petitioner obtained a private law from Congress directing the Court of Claims to order payment of the costs in question. The Court of Claims declined to follow this private law on the grounds that it was an invasion of a judicial function which that court had already exercised.

The Supreme Court ruled that the private law in question did not set aside the former judgment but created a new obligation on the part of the government where none existed before. Mr. Chief Justice Stone, writing for the Court, went on to say:

> We perceive no constitutional obstacle to Congress' imposing on the Government a new obligation where there had been none before, for work performed by petitioner which was beneficial to the Government and for which Congress thought (petitioner) had not been adequately compensated. The power of Congress to provide for the payment of debts, conferred by § 8 of Article I of the Constitution, is not restricted to payment of those obligations which are legally binding on the Government. It extends to the creation of such obligations in recognition of claims which are merely moral or honorary.[16]

A similar interpretation of article I, section 8, clause 1 of the

15. 323 U.S. 1 (1944).

The Supreme Court on two occasions has upheld the validity of private laws affecting controversies between individuals. Those cases were *Maynard* v *Hill,* 125 U.S. 190 (1888), and *Paramino Co.* v *Marshall,* 309 U.S. 370 (1940). The former involved a private law granting an individual an ex parte divorce in the Oregon Territory, and the latter involved a private law directing the reopening of a work injury case against a private insurance carrier under the Longshoremen's and Harbor Workers' Compensation Act. A commentator has suggested that such laws would not be upheld today under modern concepts of equal protection (Private Bills in Congress, 79 Harv. L. Rev. 1684, 1696.) Private bills now generally do not affect rights between individuals.

16. *Pope* v *United States,* 323 U.S. 1 at p. 9.

Constitution was announced by the Supreme Court in 1895 in the case of *United States* v *Realty Company*.[17] Although that case did not involve a private law, it did provide to a class of individuals the type of relief that is dispensed under a private bill. The Court said, "The term 'debts' includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual."[18]

In 1949, the Court of Claims, citing both the *Pope* and *Realty Co.* cases, made clear that the "debts" of the United States to be paid by private legislation are not limited in their determination by ". . . principles of right and justice as administered by courts of equity, but (by) the broader moral sense based upon general equitable consideration. . . ."[19]

Immigration Cases

The second major subject of private legislation now considered in Congress involves situations arising under the immigration and naturalization laws.[1] Specifically, Congress has acted to exempt individuals from the application of the law in hardship cases where the law would otherwise prohibit entry into or require deportation from the United States, or where individuals are capable of rendering service to the nation but are otherwise incapable of fulfilling citizenship requirements.

Deportation cases are inherently difficult because, by the nature of the process, an individual subject to deportation is likely to be removed from the country before a private bill exempting him can be introduced and considered in Congress. To alleviate this problem the Department of Justice and the House and Senate Judiciary Committees follow a procedure under which the deportation of an individual will be halted when a private bill has been introduced on his behalf and the Committee on the Judiciary of either the House or Senate has requested a report from the Immigration and Naturalization Service.[2]

17. 163 U.S. 427.

18. *Id.* at p. 440.

19. *Burkhardt* v *United States,* 84 F Supp 553, 559 (Ct. Cl. 1949).

1. 8 USC §§ 1101–1503 (1970).

2. Rules of the Committee on the Judiciary, Subcommittee on Immigration, U.S. House of Representatives, Rule No. 3, 93d Cong. (1973). Rule 4 of these rules provides further, that a departmental report shall not be requested in cases of those ". . . who have entered the United States as nonimmigrants, stowaways, in tran-

Collateral References

Col. M. T. Bennett. Private Claims Acts and Congressional References, Reprinted by House Committee on the Judiciary. 90th Cong. 2d Sess. (Committee Print 1968).

Private Bills in Congress. 79 Harv. L. Rev. 1684 (1966).

Private Bills and the Immigration Law. 69 Harv. L. Rev. 1083 (1956).

Gelhorn and Lauer. Congressional Settlement of Tort Claims Against the United States, 55 Colum. L. Rev. 1 (1955).

Authorizing Acceptance of Foreign Honors or Awards

§ 3.1 A private bill authorizing a former Speaker of the House to accept an award from a foreign government passed the House on the Private Calendar.

On Aug. 3, 1965,[3] the House passed a private bill (H.R. 10132) to authorize the Honorable Joseph W. Martin, Jr., of Massachusetts, a former Speaker, to accept from the Government of Portugal the award of the Military Order of Christ with the rank of Grande Officer.[4]

Indemnifying a Foreign Government

§ 3.2 A bill to indemnify a foreign government for injury to its nationals is a public bill.

On Apr. 6, 1936,[5] the Clerk called on the Consent Calendar

sit, deserting crewmen, or by surreptitiously entering without inspection through the land or sea borders of the United States."

The committee has subsequently placed further conditions and restrictions on when and in what types of cases it will request a report.

Under a prior practice, mere introduction of a bill was sufficient to stay deportation. The procedure was recognized in United States ex rel. *Knauff* v *McGrath* (171 F2d 839, 2d cir. 1950), where a writ of habeas corpus was issued staying the deportation of one on whose behalf a private bill granting admission has been introduced in Congress.

3. 111 CONG. REC. 19210, 89th Cong. 1st Sess.

4. See also H.R. 11227, authorizing Representative Eugene J. Keogh (N.Y.), to accept the award of the Order of Isabella the Catholic from Spain. 112 CONG. REC. 12480, 89th Cong. 2d Sess., June 7, 1966.

Congress has by law consented to the acceptance of decorations by Members, officers, or employees of the House. [See 5 USC § 7342(d), Foreign Gifts and Decorations Act, Pub. L. No. 95–105.] The Committee on Standards of Official Conduct has promulgated regulations concerning such acceptance and retention of decorations and gifts from foreign governments (see Ethics Manual for Members and Employees, published each Congress by the committee).

5. 80 CONG. REC. 5027, 5028, 74th Cong. 2d Sess.

the bill (H.R. 11961) authorizing an appropriation for the payment of the claim of General Higinio Alvarez, a Mexican citizen, with respect to certain lands in Arizona. Mr. Jesse P. Wolcott, of Michigan, raised a point of order against consideration of the bill on the grounds that it was of a private character and should be on the Private Calendar instead of the Consent Calendar.

The Speaker[6] ruled, "In the opinion of the Chair, this is a public bill. It provides that part of this money shall be paid to the Government of Mexico."[7]

Indian Claims

§ 3.3 A bill dealing with Indians as a nation and not with Indians as individuals is a public bill.

On Feb. 4, 1931,[8] the Clerk called on the House Calendar the bill (S. 3165) conferring jurisdiction upon the Court of Claims to hear, consider, and report upon a claim of the Choctaw and Chickasaw Indian nations or tribes for fair and just compensation for certain lands.

Mr. William H. Stafford, of Wisconsin, raised a point of order against the bill contending that it was a private bill:

> A private bill is a bill for the relief of one or several specified persons, corporations, institutions, etc., and is distinguished from a public bill, which relates to public matters and deals with individuals by classes only.

The Chair[9] ruled that, ". . . As the Chair recollects the law, the United States deals with the Choctaw and Chickasaw tribes as nations and through treaties. Therefore this bill deals with the Indians as a nation and not with Indians as individuals. The Chair believes that this is a public bill and is properly on the public calendar, and overrules that point of order. . . ."

Disposition of Private Bills

§ 3.4 Where a bill affects an individual or particular individuals or corporations or institutions, it should go to the Private Calendar.

On Mar. 17, 1930,[10] Mr. William H. Stafford, of Wisconsin,

6. Joseph W. Byrns (Tenn.).
7. Speaker Byrns cited *Cannon's Procedure* (p. 335, 1963 ed.) for authority that, "A bill to indemnify a foreign government for injury to its nationals" is a public bill. For a similar ruling by Speaker William B. Bankhead (Ala.), see 81 CONG. REC. 649, 75th Cong. 1st Sess., Feb. 1, 1937.
8. 73 CONG. REC. 3969–71, 71st Cong. 3d Sess.
9. Earl C. Michener (Mich.).
10. 72 CONG. REC. 5454, 71st Cong. 2d Sess.

raised a point of order against the consideration on the Consent Calendar of the bill (H.R. 5917), for the relief of certain newspapers (for advertising services rendered the Public Health Service), that it was a private bill and not properly on the Consent Calendar.

The Chair[11] ruled that, ". . . Where a bill affects an individual, individuals, corporations, institutions, and so forth, it should and does go to the Private Calendar. Where it applies to a class and not to individuals as such, it then becomes a general bill and would be entitled to a place on the Consent Calendar. In the judgment of the Chair this bill, while affecting a class of concerns, specifies individuals, and for the purpose of the rule the Chair holds that the bill is improperly on this [Consent] Calendar and transfers it as of the date of the original reference to the Private Calendar."

§ 4. Joint Resolutions

The joint resolution is another legislative instrument employed by the Congress in the exercise of its power under article I, section 1 of the Constitution. It is the type of measure that requires an affirmative vote by both Houses and submission to the President for approval under article I, section 7. When a joint resolution is approved by the President, or when he fails to return it to the Congress within the prescribed time, or when he vetoes it and his veto is overridden it becomes public law and it is published in the statutes-at-large as such.[12]

Thus, the joint resolution is considered in the same manner as a bill, with one important exception: where a joint resolution is used to bring about a constitutional amendment,[13] the resolution, after approval thereof by both Houses by two-thirds vote, is submitted to the states for ratification. It is not submitted to the President.[14]

There are no established rules requiring the use of a joint resolu-

11. Earl C. Michener (Mich.).

12. 1 USC §§ 106, 106a, 112.

13. Since 1936 the following amendments to the Constitution have been adopted pursuant to joint resolutions: 22d amendment, H.J. Res. 27. 93 CONG. REC. 2392, 80th Cong. 1st Sess., Mar. 21, 1947; 23d amendment, S.J. Res. 39. 106 CONG. REC. 12858, 86th Cong. 2d Sess., June 16, 1960; 24th amendment, S.J. Res. 29. 108 CONG. REC. 17670, 87th Cong. 2d Sess., Sept. 14, 1962; 25th amendment, S.J. Res. 1. 111 CONG. REC. 15593, 89th Cong. 1st Sess., July 6, 1965; and 26th amendment, S.J. Res. 7. 117 CONG. REC. 7570, 92d Cong. 1st Sess., Mar. 23, 1971.

14. U.S. Const. art. 5.