SUPREME COURT OF THE UNITED STATES

No. 92–1625

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, ET AL., PETITIONERS
v. JOHN L. BAGWELL ET AL.
ON WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA
[June 30, 1994]

JUSTICE GINSBURG, with whom THE CHIEF JUSTICE joins, concurring in part and concurring in the judgment.

The issue in this case is whether the contempt proceedings brought against the petitioner unions are to be classified as "civil" or "criminal." As the Court explains, if those proceedings were "criminal," then the unions were entitled under our precedents to a jury trial, and the disputed fines, imposed in bench proceedings, could not stand. See *ante*, at 5.

Gompers v. *Bucks Stove & Range Co.*, 221 U. S. 418 (1911), as the Court notes, see *ante*, at 6, is a path-marking case in this area. The civil contempt sanction, *Gompers* instructs, is designed "to coerce the defendant to do the thing required by the order for the benefit of the complainant," rather than "to vindicate the authority of the law." 221 U. S., at 442. The sanction operates coercively because it applies continuously until the defendant performs the discrete, "affirmative act" required by the court's order, for example, production of a document or presentation of testimony. *Ibid.* The civil contemnor thus "`carries the keys of his prison in his own pocket'": At any moment, "[h]e can end the sentence and discharge himself . . . by doing what he had previously refused to do." *Ibid.*, quoting *In re Nevitt*, 117 F. 448, 461 (1902).

The criminal contempt sanction, by contrast, is "punitive, [imposed] to vindicate the authority of the court." *Gompers*, *supra*, at 441. Unlike the civil contemnor, who has refused to perform some discrete, affirmative act commanded by the court, *Gompers* explains, the criminal contemnor has "do[ne] that which he has been commanded not to do." 221 U. S., at 442. The criminal contemnor's disobedience is past, a "completed act," *id.*, at 443, a deed no sanction can undo. See *id.*, at 442. Accordingly, the criminal contempt sanction operates not to coerce a future act from the defendant for the benefit of the complainant, but to uphold the dignity of the law, by punishing the contemnor's disobedience. *Id.*, at 442–443. Because the criminal contempt sanction is determinate and unconditional, the Court said in *Gompers*, "the defendant is furnished no key, and he cannot shorten the term by promising not to repeat the offense." *Id.*, at 442.

Even as it outlined these civil and criminal contempt prototypes, however, the Court in *Gompers* acknowledged that the categories, when filled by actual cases, are not altogether neat and tidy. Civil contempt proceedings, although primarily remedial, also "vindicat[e] . . . the court's authority"; and criminal contempt proceedings, although designed "to vindicate the authority of the law," may bestow "some incidental benefit" upon the complainant, because "such punishment tends to prevent a repetition of the disobedience." *Id.*, at 443.

The classifications described in *Gompers* have come under strong criticism, particularly from scholars. Many have observed, as did the Court in *Gompers* itself, that the categories, "civil" and "criminal" contempt, are unstable in theory and problematic in practice. See *ante*, at 6, n. 3 (citing scholarly criticism); see also Dudley, Getting Beyond

the Civil/Criminal Distinction: A New Approach to the Regulation of Indirect Contempts, 79 Va. L. Rev. 1025, 1025, n. 1 (1993) (citing additional scholarly criticism).

Our cases, however, have consistently resorted to the distinction between criminal and civil contempt to determine whether certain constitutional protections, required in criminal prosecutions, apply in contempt proceedings. See, *e.g., United States* v. *Dixon*, 509 U. S. ___, ___ (1993) (slip op., at 6) ("We have held that [certain] constitutional protections for criminal defendants . . . apply in nonsummary criminal contempt prosecutions just as they do in other criminal prosecutions.") (citing cases). And the Court has repeatedly relied upon *Gompers*' delineation of the distinction between criminal and civil contempt. See, *e.g.*, *Hicks* v. *Feiock*, 485 U. S. 624, 631–633, 635–636 (1988). The parties, accordingly, have presented their arguments within the *Gompers* framework.

Two considerations persuade me that the contempt proceedings in this case should be classified as "criminal" rather than "civil." First, were we to accept the logic of Bagwell's argument that the fines here were civil, because "conditional" and "coercive," no fine would elude that categorization. The fines in this case were "conditional," Bagwell says, because they would not have been imposed if the unions had complied with the injunction. The fines would have been "conditional" in this sense, however, even if the court had not supplemented the injunction with its fines schedule; indeed, any fine is "conditional" upon compliance or noncompliance before its imposition. Cf. *ante*, at 15 (the unions' ability to avoid imposition of the fines was "indistinguishable from the ability of any ordinary citizen to avoid a criminal sanction by conforming his behavior to the law"). Furthermore, while the fines were "coercive," in the sense that one of their purposes was to encourage union compliance

with the injunction, criminal contempt sanctions may also "coerce" in this same sense, for they, too, "ten[d] to prevent a repetition of the disobedience." *Gompers*, 221 U. S., at 443. Bagwell's thesis that the fines were civil, because "conditional" and "coercive," would so broaden the compass of those terms that their line-drawing function would be lost.[1]

Second, the Virginia courts' refusal to vacate the fines, despite the parties' settlement and joint motion, see *ante*, at 3–4, is characteristic of criminal, not civil proceedings. In explaining why the fines outlived the underlying civil dispute, the Supreme Court of Virginia stated: "Courts of the Commonwealth must have the authority to enforce their orders by employing coercive, civil sanctions if the dignity of the law and public respect for the judiciary are to be maintained." 244 Va. 463, 478, 423 S. E. 2d 349, 358 (1992). The Virginia court's references to upholding public authority and maintaining "the dignity of the law" reflect the very purposes *Gompers* ranked on the criminal contempt side. See *supra*, at 2. Moreover, with the private complainant gone from the scene, and an official appointed by the Commonwealth to collect the fines for the Commonwealth's coffers, it is implausible to

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[1]Bagwell further likens the prospective fines schedule to the civil contempt fine imposed in *United States* v. *Mine Workers*, 330 U. S. 258 (1947). In that case, however, the contemnor union was given an opportunity, after the fine was imposed, to avoid the fine by "effect[ing] full compliance" with the injunction. As the Court explains, see *ante*, at 8–9, n. 4, for purposes of allowing the union to avoid the fine, "full compliance" with the broad no-strike injunction, see 330 U. S., at 266, n. 12, was reduced to the performance of three affirmative acts. This opportunity to purge, consistent with the civil contempt scenario described in *Gompers*, see *supra*, at 1–2, was unavailable to the unions in this case.

invoke the justification of benefiting the civil complainant. The Commonwealth here pursues the fines on its own account, not as the agent of a private party, and without tying the exactions exclusively to a claim for compensation. Cf. *Hicks*, 485 U. S., at 632 ("[A] fine . . . [is] punitive when it is paid to the court," but "remedial" or "civil" "when the defendant can avoid paying the fine simply by performing the affirmative act required by the court's order."). If, as the trial court declared, the proceedings were indeed civil from the outset, then the court should have granted the parties' motions to vacate the fines.

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Concluding that the fines at issue "are more closely analogous to . . . criminal fines" than to civil fines, *ante*, at 16, I join the Court's judgment and all but Part II–B of its opinion.