

of the merchants could be recovered in damages.¹⁵⁰⁰ As to the field secretary of the local NAACP, the Court refused to permit imposition of damages based upon speeches that could be read as advocating violence, because any violent acts that occurred were some time after the speeches, and a “clear and present danger” analysis of the speeches would not find them punishable.¹⁵⁰¹ The award against the NAACP fell with the denial of damages against its local head, and, in any event, the protected right of association required a rule that would immunize the NAACP without a finding that it “authorized—either actually or apparently—or ratified unlawful conduct.”¹⁵⁰²

Claiborne Hardware is, thus, a seminal decision in the Court’s effort to formulate standards governing state power to regulate or to restrict expressive conduct that comes close to or crosses over the line to encompass some violent activities; it requires great specificity and the drawing of fine discriminations by government so as to reach only that portion of the activity that does involve violence or the threat of violence, and forecloses the kind of “public policy” limit on demonstrations that was approved in *Hughes v. Superior Court*.¹⁵⁰³

¹⁵⁰⁰ 458 U.S. at 920–26. The Court distinguished *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287 (1941), in which an injunction had been sustained against both violent and nonviolent activity, not on the basis of special rules governing labor picketing, but because the violence had been “pervasive.” 458 U.S. at 923.

¹⁵⁰¹ 458 U.S. at 926–29. The field secretary’s “emotionally charged rhetoric . . . did not transcend the bounds of protected speech set forth in *Brandenburg v. Ohio*, 395 U.S. 444 (1969).”

¹⁵⁰² 458 U.S. at 931. In ordinary business cases, the rule of liability of an entity for actions of its agents is broader. *E.g.*, *American Soc’y of Mech. Eng’rs v. Hydrolevel Corp.*, 456 U.S. 556 (1982). The different rule in cases of organizations formed to achieve political purposes rather than economic goals appears to require substantial changes in the law of agency with respect to such entities. Note, 96 HARV. L. REV. 171, 174–76 (1982).

¹⁵⁰³ “Concerted action is a powerful weapon. History teaches that special dangers are associated with conspiratorial activity. And yet one of the foundations of our society is the right of individuals to combine with other persons in pursuit of a common goal by lawful means.”

“[P]etitioners’ ultimate objectives were unquestionably legitimate. The charge of illegality . . . derives from the means employed by the participants to achieve those goals. The use of speeches, marches, and threats of social ostracism cannot provide the basis for a damages award. But violent conduct is beyond the pale of constitutional protection.”

“The taint of violence colored the conduct of some of the petitioners. They, of course, may be held liable for the consequences of their violent deeds. The burden of demonstrating that it colored the entire collective effort, however, is not satisfied by evidence that violence occurred or even that violence contributed to the success of the boycott. [The burden can be met only] by findings that adequately disclose the evidentiary basis for concluding that specific parties agreed to use unlawful means, that carefully identify the impact of such unlawful conduct, and that recognizes the