subject to later review or alteration by administrative action."[512] The Court's early refusal to render advisory opinions has discouraged direct requests for advice so that the advisory opinion has appeared only collaterally in cases where there was a lack of adverse parties,[513] or where the judgment of the Court was subject to later review or action by the executive or legislative branches of government,[514] or where the issues involved were abstract or contingent.[515]

Declaratory Judgments.—Rigid emphasis upon such elements of judicial power as finality of judgment and award of execution coupled with equally rigid emphasis upon adverse parties and real interests as essential elements of a case and controversy created serious doubts about the validity of any federal declaratory judgment procedure.[516] These doubts were largely dispelled by Court decisions in the late 1920s and early 1930s,[517] and Congress quickly responded with the Federal Declaratory Judgment Act of 1934.[518] Quickly tested, the Act was unanimously sustained.[519] "The principle involved in this form of procedure," the House report said, "is to confer upon the courts the power to exercise in some instances preventive relief; a function now performed rather clumsily by our equitable proceedings and inadequately by the law courts."[520] The Senate report stated: "The declaratory judgment differs in no essential respect from any other judgment except that it is not followed by a decree for damages, injunction, specific performance, or other immediately coercive decree. It declares conclusively and finally the rights of parties in litigations over a contested issue, a form of relief which often suffices to settle controversies and fully administer justice."[521]

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[512] Chicago & S. Air Lines v. Waterman S.S. Corp., 333 U.S. 103, 113–114 (1948).

[513] Muskrat v. United States, 219 U.S. 346 (1911).

[514] United States v. Ferreira, 54 U.S. (13 How.) 40 (1852).

[515] United Public Workers v. Mitchell, 330 U.S. 75 (1947).

[516] *Cf.* Willing v. Chicago Auditorium Ass'n, 277 U.S. 274 (1928).

[517] Fidelity National Bank & Trust Co. v. Swope, 274 U.S. 123 (1927); Nashville, C. & St. L. Ry. v. Wallace, 288 U.S. 249 (1963). *Wallace* was cited with approval in Medimmune, Inc. v. Genentech, Inc., 549 U.S. 118, 126 (2007) ("Article III's limitation of federal courts' jurisdiction to 'Cases' and 'Controversies,' reflected in the 'actual controversy' requirement of the Declaratory Judgment Act, 28 U.S.C. § 2201(a), [does not] require[ ] a patent licensee to terminate or be in breach of its license agreement before it can seek a declaratory judgment that the underlying patent is invalid, unenforceable, or not infringed," id. at 120–21).

[518] 48 Stat. 955, as amended, 28 U.S.C. §§ 2201–2202.

[519] Aetna Life Ins. Co. v. Haworth, 300 U.S. 227 (1937) (cited with approval in Medimmune, Inc. v. Genentech, Inc., 549 U.S. 118, 126 (2007)).

[520] H. REP. NO. 1264, 73d Congress, 2d Sess. (1934), 2.

[521] S. REP. NO. 1005, 73d Congress, 2d Sess. (1934), 2.