

# The Burger Court Opinion Writing Database

## *Alfred Dunhill of London, Inc. v. Republic of Cuba*

426 U.S. 682 (1976)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

April 14, 1976

Re: 73-1288 - Dunhill v. Republic of Cuba

Dear Byron:

I join your March 24 circulation.

Regards,

LRB

Mr. Justice White

Copies to the Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 4, 1976

RE: No. 73-1288 Alfred Dunhill of London v. Republic of  
Cuba

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Dear Thurgood:

Please join me in your dissenting opinion in the  
above.

Sincerely,

*WJ*

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 4, 1976

No. 73-1288, Alfred Dunhill of London, Inc.  
v. Republic of Cuba

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Dear Thurgood,

Please add my name to your dissenting opinion in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 3-24-76

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1288

Alfred Dunhill of London, Inc., Petitioner,  
v.  
The Republic of Cuba et al. } On Writ of Certiorari to the  
United States Court of  
Appeals for the Second  
Circuit.

[April —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether the failure of respondents to return to petitioner Alfred Dunhill of London, Inc. (Dunhill), funds mistakenly paid by Dunhill for cigars that had been sold to Dunhill by certain expropriated Cuban cigar businesses was an "act of state" by Cuba precluding an affirmative judgment against respondents.

I

The rather involved factual and legal context in which this litigation arises is fully set out in the District Court's opinion in this case, *Mendez v. Gaber, Coe & Gregg*, 345 F. Supp. 527, and in closely related litigation, *Palicio v. Brush*, 256 F. Supp. 481 (SDNY 1966), aff'd, 375 F. 2d 1011 (CA2), cert. denied, 389 U. S. 830 (1967). For present purposes, the following recitation will suffice. In 1960, the Cuban government confiscated the business and assets of the five leading manufacturers of Havana cigars. These companies, three corporations and two partnerships, were organized under Cuban law. Virtually all of their owners were Cuban nationals. None were American. These companies sold large quantities

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 5-7-76

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 73-1288

Alfred Dunhill of London, Inc., Petitioner,  
v.  
The Republic of Cuba et al. } On Writ of Certiorari to the  
United States Court of  
Appeals for the Second  
Circuit.

[April —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.\*

The issue in this case is whether the failure of respondents to return to petitioner Alfred Dunhill of London, Inc. (Dunhill), funds mistakenly paid by Dunhill for cigars that had been sold to Dunhill by certain expropriated Cuban cigar businesses was an "act of state" by Cuba precluding an affirmative judgment against respondents.

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\*Part III of this opinion is joined only by THE CHIEF JUSTICE, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST.

✓  
p - 9

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr. Justice Marshall~~  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

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4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 73-1288

Alfred Dunhill of London, Inc., Petitioner,  
v.  
The Republic of Cuba et al. } On Writ of Certiorari to the  
United States Court of  
Appeals for the Second  
Circuit.

[April —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court \*

The issue in this case is whether the failure of respondents to return to petitioner Alfred Dunhill of London, Inc. (Dunhill), funds mistakenly paid by Dunhill for cigars that had been sold to Dunhill by certain expropriated Cuban cigar businesses was an "act of state" by Cuba precluding an affirmative judgment against respondents

1

The rather involved factual and legal context in which this litigation arises is fully set out in the District Court's opinion in this case, *Mendez v. Gaber, Coe & Gregg*, 345 F. Supp. 527, and in closely related litigation, *Palicio v. Brush*, 256 F. Supp. 481 (SDNY 1966), aff'd, 375 F. 2d 1011 (CA2), cert. denied, 389 U. S. 830 (1967). For present purposes, the following recitation will suffice. In 1960, the Cuban government confiscated the business and assets of the five leading manufacturers of Havana cigars. These companies, three corporations and two partnerships, were organized under Cuban law. Virtually all of their owners were Cuban nationals. None were American. These companies sold large quantities

\*Part III of this opinion is joined only by THE CHIEF JUSTICE, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 7, 1976

Re: No. 73-1288 -- Alfred Dunhill of London, Inc. v.  
The Republic of Cuba

Dear Byron:

In due course I will circulate a separate opinion in  
this case.

Sincerely,

*T.M.*

T.M.

Mr. Justice White

cc: The Conference



To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: MAY 3 1976

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1288

Alfred Dunhill of London, Inc.,	} On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.
Petitioner,	
<i>v.</i>	
The Republic of Cuba et al.	

[May —, 1976]

MR. JUSTICE MARSHALL, dissenting.

The act of state doctrine commits the courts of this country not to sit in judgment of the acts of a foreign government performed within its own territory.<sup>1</sup> Under any realistic view of the facts of this case, the intervenors' retention of and refusal to return funds paid to them by Dunhill constitute an act of state, and no affirmative recovery by Dunhill can rest on the invalidity of that conduct. The Court of Appeals so concluded, and I would affirm its judgment.

### I

As of September 15, 1960, when the Cuban Government "intervened," or nationalized, five Cuban-owned cigar manufacturers, petitioner Dunhill had received some \$148,600 worth of cigars for which it had not yet paid. In the period between intervention and February

<sup>1</sup>The classic American formulation of the doctrine, see *Banco Nacional de Cuba v. Sabbatino*, 376 U. S. 398, 416 (1964), appears in *Underhill v. Hernandez*, 168 U. S. 250, 252 (1897):

"Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves."

22-23

STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Marshall

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1288

Alfred Dunhill of London, Inc., Petitioner,  
v.  
The Republic of Cuba et al. } On Writ of Certiorari to the  
United States Court of  
Appeals for the Second  
Circuit.

[May —, 1976]

MR. JUSTICE MARSHALL, dissenting.

The act of state doctrine commits the courts of this country not to sit in judgment of the acts of a foreign government performed within its own territory.<sup>1</sup> Under any realistic view of the facts of this case, the intervenors' retention of and refusal to return funds paid to them by Dunhill constitute an act of state, and no affirmative recovery by Dunhill can rest on the invalidity of that conduct. The Court of Appeals so concluded, and I would affirm its judgment.

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<sup>1</sup> The classic American formulation of the doctrine, see *Banco Nacional de Cuba v. Sabbatino*, 376 U. S. 398, 416 (1964), appears in *Underhill v. Hernandez*, 168 U. S. 250, 252 (1897):

"Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves."

✓  
1, 8, 9, 10, 11, 14

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Marshall

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4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1288

Alfred Dunhill of London, Inc., Petitioner,  
v.  
The Republic of Cuba et al. } On Writ of Certiorari to the  
United States Court of  
Appeals for the Second  
Circuit.

[May —, 1976]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE BLACKMUN join, dissenting.

The act of state doctrine commits the courts of this country not to sit in judgment of the acts of a foreign government performed within its own territory.<sup>1</sup> Under any realistic view of the facts of this case, the intervenors' retention of and refusal to return funds paid to them by Dunhill constitute an act of state, and no affirmative recovery by Dunhill can rest on the invalidity of that conduct. The Court of Appeals so concluded, and I would affirm its judgment.

### I

As of September 15, 1960, when the Cuban Government "intervened," or nationalized, five Cuban-owned cigar manufacturers, petitioner Dunhill had received some \$148,600 worth of cigars for which it had not yet

<sup>1</sup>The classic American formulation of the doctrine, see *Banco Nacional de Cuba v. Sabbatino*, 376 U. S. 398, 416 (1964), appears in *Underhill v. Hernandez*, 168 U. S. 250, 252 (1897):

"Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves."

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 20, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 73-1288 -- Alfred Dunhill of London, Inc. v.  
The Republic of Cuba

As a result of Byron's most recent circulation,  
I intend simply to change footnote 7 to read as follows:

7/ "The Court acknowledges that this statement reflects an alternative contention by respondents that, assuming the ineffectiveness of the September 15th decree in reaching the Dunhill account receivable and the existence of a quasi-contractual obligation to return the monies to Dunhill, their repudiation of that obligation was an act of state. Ante, at 9n. 8. But the Court emphasizes the fact that respondents have not admitted the existence of an obligation to Dunhill, and concludes that it remains unclear whether respondents have determined to retain the monies even if a United States court declares the obligation to exist. The very fact that respondents are making the alternative argument referred to herein, however, should remove any doubt as to their intentions."

If it is agreeable to everyone, the case can come down on Monday. Byron has indicated that he will make no changes in response to the above.

T.M.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 5, 1976

Re: No. 73-1288 - Alfred Dunhill of London  
v. Republic of Cuba

Dear Thurgood:

Please join me in your dissenting opinion for  
this case.

Sincerely,

A handwritten signature in dark ink, appearing to read "Harry", with a long horizontal flourish extending to the right.

Mr. Justice Marshall

cc: The Conference

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 29, 1976

No. 73-1288 Alfred Dunhill v. Cuba

Dear Byron:

Please join me in your opinion for the Court.

I may add two or three sentences in a concurring opinion to reaffirm the view I expressed in First National City Bank v. Banco Nacional de Cuba.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Powell

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2nd DRAFT

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SUPREME COURT OF THE UNITED STATES

No. 73-1288

Alfred Dunhill of London, Inc., Petitioner,  
v.  
The Republic of Cuba et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Second  
Circuit.

[April —, 1976]

MR. JUSTICE POWELL, concurring.

I join the opinion of the Court. Since the line between commercial and political acts of a foreign state often will be difficult to delineate, I write to reaffirm my view that even in cases deemed to involve purely political acts, it is the duty of the judiciary to decide for itself whether deference to the political branches of government requires abstention. As I stated in *First National City Bank v. Banco de Nacional Cuba*, 406 U. S. 759, 775 (1972) (concurring):

“Unless it appears that an exercise of jurisdiction would interfere with delicate foreign relations conducted by the political branches, I conclude that federal courts have an obligation to hear cases such as this.”

Just as I saw no circumstances requiring judicial abstention in that case, I see none here. Nor can I foresee any in cases involving only the commercial acts of a foreign state.

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 5, 1976

Re: No. 73-1288 - Alfred Dunhill of London v. The  
Republic of China

Dear Byron:

Please join me in your proposed opinion. I can see the logical force to John's suggestion that only the first holding is necessary to the decision, but after argument and reargument on the broader question I don't think we will ever know more about it than we do now.

Sincerely,  
*W. H. R.*

Mr. Justice White

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 25, 1976

Re: 73-1288 - Alfred Dunhill of London, Inc.  
v. Cuba

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Dear Byron:

Although I am not prepared to disagree with your persuasive exposition of the reasons why the act of state doctrine should not apply to a foreign sovereign's repudiation of a commercial debt, I am presently of the view (a) that this issue need not be addressed to decide this case, and (b) that this is the kind of issue that we should make every legitimate effort to avoid discussing because of its potential and unpredictable effect on foreign and political affairs.

Subject to further study, and to reading what our brethren have to say, it is therefore my present intention to join pages 1-10 of this opinion and to write a brief explanation of why I go no further.

Respectfully,



Mr. Justice White

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

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1st DRAFT

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## SUPREME COURT OF THE UNITED STATES

No. 73-1288

Alfred Dunhill of London, Inc.,	} On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.
Petitioner,	
v.	
The Republic of Cuba et al.	

[May —, 1976]

MR. JUSTICE STEVENS, concurring.

For reasons stated in the first 10 pages of the Court's opinion, I agree that the act of state doctrine does not bar the entry of the judgment in favor of Dunhill.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 20, 1976

Re: 73-1288 - Alfred Dunhill v. Cuba

Dear Byron:

After reflection, I have decided to file the  
attached concurrence which I have sent to the Printer.

Respectfully,



Mr. Justice White

Copies to the Conference

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To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

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1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 73-1288

Alfred Dunhill of London,	}	On Writ of Certiorari to the
Inc., Petitioner,		United States Court of
v.		Appeals for the Second
The Republic of Cuba et al.		Circuit.

[May —, 1976]

MR. JUSTICE STEVENS, concurring.

Parts I and II

For reasons stated in ~~the first 10 pages~~ of the Court's opinion, I agree that the act of state doctrine does not bar the entry of the judgment in favor of Dunhill.