

## Chapter 15

### The Supreme Court and the New Deal

When Federal Constitution was written in 1787, America consisted of thirteen semi-independent states strung along the Atlantic seaboard. At that time 90 percent of its population were farmers and the Atlantic Ocean was the major artery of transportation between the states. It is unlikely that any of the men who wrote the constitution could have imagined that the original thirteen states would expand into fifty, stretched across a mighty continent, linked by steel rails, pipelines, telephone wires, radios and jet planes. But as the country grew the powers of it's government expanded.

With few important exceptions the process of adapting the Constitution to the twentieth century occurred without amending that document. Instead, the Supreme Court gradually re-interpreted the clauses of the Constitution in light of the needs of the times. Thus, the power to regulate commerce among the states once meant to prevent states from obstructing trade among one-another, but in the 1870's it came to mean preventing railroads from overcharging customers when hauling goods across state lines. In the early 1900's, the commerce clause meant granting Congress the power to prevent interstate shipments of foods or drugs that endangered the people's health. Did it also mean Congress could prevent shipment of goods made by children under sixteen years of age or by underpaid women workers? Woodrow Wilson and his Congress said yes, but the Supreme Court later reversed their decision.

Did Congress have the power to regulate manufacturing, to prescribe workers' hours, set minimum wages, and prescribe working conditions? During the 1930's, President Roosevelt and Congress formulated the New Deal's answers to these questions. Yes, they said, the Constitution's commerce clause gave the government the right to regulate manufacturing, mining and agriculture. But the Supreme Court clung to the opposite view: no, the commerce clause was meant to be interpreted strictly, and mining, manufacturing, and farming were local activities outside of congressional control.

Normally, a president does not have the power to modify the Supreme Court's opinions unless he has the good fortune of choosing replacements for retiring judges. President Roosevelt feared that the Supreme Court would invalidate his entire New Deal program before he could appoint new judges. He therefore proposed that Congress give him the power to appointed additional justices to "assist" those over the age of 70. But this approach raised at least as many questions as it answered. If the President with Congress's consent could change the Court to conform to their ideas, what was the purpose of having a Supreme Court or a Constitution, or a separation of powers?

This chapter raises the question whether the country would be best served by resisting President Roosevelt's "court packing" scheme, or by expanding the definition of the commerce clause to permit the Federal government to regulate farming and manufacturing, as well as wages, hours, working conditions, etc.

#### The Court Decides of the Schecter "Blue Eagle Case"

The time was high noon, on Monday, May 27, 1935; the place was the US Supreme Court's chambers in the dignified old building that once housed the Senate. Almost 300 people packed the small semi-circular room. Enveloped in their somber black robes, the nine justices of the Supreme Court sat behind the bench facing their hushed audience. Bearded and solemn, Chief Justice Charles Evans Hughes

in his high-backed chair was flanked by associate justices, formally arranged on either side of him according to their years of service with the Court.

All attention was focused on the strong face of the Chief Justice as he read his decision in the case, *Schechter v. the United States*. Hughes' words echoed across the silent room. The Court had decided against the US government. The Live Poultry Code, embodying regulations issued by the National Recovery Administration, was unconstitutional.

Although the Schecters bought their chickens outside of New York State, the Court claimed, that the poultry could not be considered part of interstate commerce because it "was trucked to [the Schecter's] slaughterhouses in Brooklyn for local disposition and sale. The interstate transaction in relationship to that poultry then ended." Using this logic the Court concluded that the buying and selling of chickens was a local industry and could not be regulated by the Federal government. Therefore the Federal code enacted under the auspices of the National Recovery Act was null and void, and the Federal government could not make laws regulating wages, hours, or working conditions in similarly constituted businesses.

## A Return to "Horse and Buggy Days"

Four days later President Roosevelt expressed his disappointment with the Supreme Court's decision, claiming that "we have been regulated to the horse and buggy days of interstate commerce" and wondering whether the decision meant that the United States government has no control over any national economic problem?

As if to answer the President's inquiry, early the next year the Supreme Court ruled the Agricultural Adjustment Act unconstitutional because:

*Its stated purpose is the control of agricultural production, a purely local activity, in an effort to raise the prices paid the farmer. Indeed, ...the commerce clause, for the purpose of the present case, may be put aside as irrelevant....*<sup>8</sup>

The same year the Supreme Court applied the principle in the NRA and the AAA cases to the Guffey Bituminous Coal Act of 1935 because:

*The local character of mining, of manufacturing and of crop growing is a fact, whatever may be done with the products.*<sup>9</sup>

The Supreme Court apparently had taken little account of the fact that 97 percent of the coal produced by the company just ruled out of interstate commerce was sold outside of the state in which it was mined.

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8 Quoted in James Morton Smith and Paul L. Murphy, *Liberty and Justice-A Historical Record of American Constitutional Development* (New York: Alfred A. Kropf, 1958), p. 414.

9 Quoted in *ibid.*, p. 416.

## Criticism of the Court

By rigidly defining interstate commerce to mean only goods actually moving between states, the Supreme Court claimed to be preserving the rights of states against the powers of the national government. But in a split decision in 1936, the Court declared a New York State law unconstitutional which set a minimum wage for women because it interfered with their freedom of contract. Decisions of this kind had already invalidated a federal minimum wage law, and prompted United Mine Workers Union President John L. Lewis to proclaim, "it is a sad commentary on our form of government when every decision of the Supreme Court seems designed to fatten capital and to starve and destroy labor."

There were others who agreed with Lewis, including a minority in the Court itself. Justice Cardozo, for instance, believed, "that the Constitution did not condemn Congress "to inactivity in the face of price wars and wage wars." Justice Stone in the minimum wage case proclaimed he could find "no basis for the majority's decision, other than our own personal economic predilections." Furthermore, he opined that "[t]here is grim irony in speaking of the freedom of contract of those who, because of their economic necessities, give their services for less than is needful to keep body and soul together."

## The President's "Court Packing Scheme"

Believing that "the judges have decided that, under the Constitution, the Federal government



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*take an appeal from the Supreme Court to the Constitution itself. We want a Supreme Court that will do justice under the Constitution – not over it. In our courts we want a government of laws and not of men.*

cannot lift men, women, and children out of the degradation of unconscionable hours, wages, or working conditions "...because it invades the right of property," President Roosevelt delivered a bombshell to Congress on February 5, 1937. His proposed Judicial Reorganization bill stressed the need of adding younger judges – one for each over 70 years of age. He defended his plan as follows:

*Since the rise of the modern movement for social and economic progress through legislation, the Court has more and more often and more boldly asserted a power to veto laws passed by the Congress and State legislatures. ...*

*In the last four years the sound rule of giving statutes the benefit of all reasonable doubt has been cast aside....*

*We have, therefore, reached the point as a Nation where we must take action to save the Constitution from the Court and the Court from itself. We must find a way to*

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*I want – as all Americans want – an independent judiciary as proposed by the framers of the Constitution. That means a Supreme Court that will enforce the Constitution as written – that will refuse to amend the Constitution by the arbitrary exercise of judicial power – amending by judicial say-so. It does not mean a judiciary so independent that it can deny the existence of facts universally recognized.<sup>10</sup>*

## Opposition to Court Packing

After due consideration the Senate Judiciary Committee emphatically disagreed with President Roosevelt's ideas of Court reform. Its report cited the Founding Fathers' commitment to the idea of separation of powers, which would be violated if one branch of government, or even two branches, could irrevocably alter the Constitution to achieve its legislative ends:

*Today it may be the Court which is charged with forgetting its constitutional duties. Tomorrow it may be the Congress. The next day it may be the Executive. If we yield to temptation now to lay the lash upon the Court, we are only teaching others how to apply it to ourselves and to the people when the occasion seems to warrant. Manifestly, if we may force the hand of the court to secure our interpretation of the Constitution, then some succeeding Congress may repeat the process to secure another and a different interpretation and one which may not sound so pleasant in our ears as that for which we now contend. ...*

*If this be supported by the toilers of this country upon the ground that they want a Court which will sustain legislation limiting hours and providing minimum wages, they must remember that the procedure employed in the bill could be used in another administration to lengthen hours and to decrease wages. If farmers want agricultural relief and favor this bill upon the ground that it gives them a Court which will sustain legislation in their favor, they must remember that the procedure employed might some day be used to deprive them of every vestige of a farm relief.<sup>11</sup>*

## Suggested student exercises:

1. What was the basic disagreement over the interpretation of the commerce clause between President Roosevelt and Congress on one side, and the Supreme Court on the other? Why was this difference in interpretation so important at that time and to this day?
2. What was President Roosevelt's remedy for the Court's views on the commerce clause, and how might his remedy correct the problem but create others?
3. Take the position of the President or of the Senate Judiciary Committee to argue for or against his proposal for judicial reorganization.

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<sup>10</sup> Quoted in Henry Steele Commager, Documents of American History (New York: Appleton Century Croft, , 1963), pp. 384-85

<sup>11</sup> Quoted in Henry Steele, op. cit., p. 389

## Epilogue: A Switch in Time

Even before Roosevelt delivered his “court packing” message, changes occurred within the Supreme Court which seemed to decrease the need for reorganization. In a notable decision on the Wagner Act, written before but delivered after Roosevelt’s request for reorganization, the Court had already begun reversing itself on the limitations of interstate commerce:

*Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control.*

The Court’s shift to a broader interpretation of the commerce power was demonstrated again in its decision upholding the Social Security Act. The Court reversed itself again in upholding a state minimum wage law very similar to the New York law it found unconstitutional a few months earlier. In May of 1937, Justice Van Devanter announced his retirement from the Court, which gave President Roosevelt the opportunity to appoint a Supreme Court justice with views more similar to his own. Altogether Roosevelt was able to appoint six new Supreme Court justices and thus won the battle to redirect the thinking of the Supreme Court without violating the principle of the separation of powers.

Despite his victories in securing a broader interpretation of the commerce clause, President Roosevelt paid a heavy price for his attempt to pack the Supreme Court. After the uproar over his court packing bill, Republicans were able to make substantial gains in Congress, and Roosevelt never again possessed the majorities that allowed him to pass such liberal legislation as the farm program, minimum wage, Social Security, or TVA. With war clouds rising over Europe and Asia, the attention of the President and the country shifted from his program of domestic reform to foreign affairs. Within three years, Dr. “End-the-Depression” was replaced by “Dr. Win-the-War”. Further debates over domestic reforms had to be postponed to the post war era, and the clash between liberals and conservatives was temporarily and partially put aside only to be fully resumed after World War II.

## End of Unit Essay Question:

Based on your understanding of the material in this unit, decide whether the U.S. should follow liberal or conservative economic policies. Then write an essay of at least 1,200 words supporting your answer. Your essay should cover the following topics:

- a. On the whole, were conservative policies responsible for the prosperity of the 1920's or for the Depression that followed (or for both)? Give evidence (including statistics) to support your claim.
- b. On the whole, were the aid programs you studied in Roosevelt's New Deal unnecessary and unsuccessful or did they meet the real needs of those they were supposed to help? Give specific examples of at least three New Deal Programs (and be sure to include the idea of deficit spending).
- c. Did the New Deal policies under Roosevelt go too far in the direction of reducing the civil liberties of Americans and threaten to destroy the system of checks and balances embodied in the US Constitution?

Your essay should include an introduction, a thesis in which you state the major idea you will support, a paragraph which foreshadows or anticipates your major arguments, a main body incorporating supportive evidence from this unit, and a conclusion which states what you have proved.