Constitutional History of the United States

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The Supreme Court since 1937

Since the first period of the major doctrinal development of the court under John Marshall down to the Supreme Court crises of 1937, the overwhelming majority of constitutional sensitive cases decided by the court involved issues of property rights, land claims, contract enforcement, the property rights of slaves owners, the chartering of corporations, the regulation of enterprise, anti-trust laws, labor management relations, work conditions and taxation. These were the economic core context of the leading constitutional sensitive cases. We had approximately one hundred thirty years of property focused constitutional jurisprudence and during that one hundred thirty years period the Supreme Courts basic decisions supported the owners and users of property against the successive tide of reformers, liberals who sought to regulate economic enterprise for the general welfare because many of our ideas regarding the sacredness of private property that we inherited from John Locke. Property rights must be respected. These ideas were applied by judges who were trained in the concepts of property. They produced the wide active notion that this was the right role of the national judiciary, to protect the rights of property owners. One of testing this idea validity is to note who supported and who attacked the Supreme Courts basic philosophy of decisions in the constitutional sensitive cases from 1800-1937.

The major critics of the courts role in property and economic control were the reform groups, liberal groups in American History. These critics included the Jeffersonians, the Jacksonians, the anti-slavery forces and the Lincoln administration, the farm alliances, the Granger groups of 1870, the Populists, the Bryan Democrats of 1890, the Progressives, Theodore Roosevelt Bull Moose Party, the labor movements of the 1920's, the New Deal movement of the 1930's. These liberal reformer critics were constant critics of constitutional property jurisprudence. The complaint that this court is an unrelated and irresponsible body. Nine men who defiled the will of the majority as expressed through its elected representatives. Decade after decade these idiots struck down key property contracts which public feelings felt to be necessary and wise. At the same time the critics of the court were attacking justice and seeking to constitute power by congressional contacts.

The property conservative elements in America were singing hosannas to the court. These people were the beneficiaries of the court's rulings. New England merchants', planter speculators, the western land speculators, the southerner planters, the new industrial captains who emerged from the Civil War, main street markets of the 1920's and 1930's. The beneficiaries of the court's rulings praised the court as the voice of independence. The court was the guarantee of those precious rights deliberately instilled in the Constitution to protect them. They insisted that these nine men were exceedingly wise and they have a definite function.

Every time the Supreme Court faced serious attacks on its power, election campaigns and congressional sessions, these conservatives were champions and liberal reformers its critics. No twenty five year period has passed since John Marshall's day without this liberal conservative debate over the court's place in our government system.

Since 1937 a revolution has taken place in the relations of the Supreme Court to property questions top interest groups in America. First, the post 1937 Court has virtually has had its agenda, the regulation of property cases, no congressional act regulating property has been declared unconstitutional, the expansion of the Commerce Clause, and other sections of the constitution has given the federal government very broad powers to govern economic relations in this nation. Since 1937 the court has no longer substituted its judgment of its wisdom to that of economics.

Second, the post 1937 Court has placed its property agenda with what has become a central occupation of issues of states. These issues of states presents three major matters.

1. Problems of Equality, including minority rights of racial and non-rights groups such as Black Americans, Oriental Americans, Puerto Ricans, and discrimination against demographics threw gerrymandering election methods, manipulation of the electorate for unfair party advantage, unequal treatment of religious minorities such as Jewish, Jehovah Witnesses, Catholics and Seventh-Day-Adventist.
2. Problems of liberty involving freedom of expression. The rights of people who reject the American political and economic consensus. Should commies have rights, what rights should members of the Nazi party have? What rights should Black Panthers have? Problems of liberty involving those who reject the moral and literary rights of this country. Example, people who go beyond the canons of good taste in movies, plays, American consensus on sexual matters.

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3. Problems of justice involving the procedural fairness accorded to persons investigated by the police.

In all of these cases it is the quality of American life and the status accorded to those within society that is at state. The courts role has been a register of profound inter group changes in American society since the 1930's. The overwhelming majority of constitutional sensitive cases are in this status sector of quality, liberty, justice cases.

Since 1937 our judges have adopted a broadly liberal philosophy that has aided considerably the interest of Negroes, political dissenters, religious minorities, etc. The result of this switch in court doctrine has been a complete reversal in those defending and attacking the court. Today it is the liberals in the university, magazine and political parties who sing hosannas to the court.

The Americans for democratic action, NAACP, American Civil Liberties Union, the liberal party of New York, the American Jewish Congress, and the AFL-CIO. This is the organizational chorus praising the court. They tell the American public that the men on the court are very wise. That these men perform the function of a sober agency.

It is the conservative who is attacking the court, Chamber of Commerce, American Legion, Daughters of the Confederacy, American Bar Association, National Association of Police, that these are ridiculous old men, unelected, and irresponsible. To substitute their wisdom for the elected branches of the national government. The conservative insist that the courts are failing to protect American business from socialist measures that are destroying our free enterprise system, states to govern their own police, etc.

In 1937 when Franklin Delano Roosevelt tried to enlarge the court membership to fifteen, the conservatives defended the court. The liberals supported Roosevelt's court legislation in Congress. In the 1950's and the 1960's, when the Warren Court decisions in internal security, area of censorship, in area of criminal procedure, racial relations prompted people like James Eastman(Mississippi) who sponsored bills to curb the court. David Lawrence an author also influenced the court.

The Civil Liberties cases decided by the Roosevelt court, none were more significant than the Flag Salute Case which was complicated by the passions of patriotism.

The Flag Salute Case

The Fag Salute Case is by far Americans foremost type of homage to the American image. The Flag Salute ceremony originated in 1892 as a part of a national wide school celebration of the 400th year of the discovery of this country. It immediately became a very popular pledge and was used in the schools in every state. It was not always a matter of choice. By 1935 twenty four states had state statues requiring instruction for flag respect and of those twenty four states required that the flag salute be conducted in all public schools. School children were to learn patriotism. But another matter underlined the flag salute laws, it was to weed out disloyal teachers. The people very active in the overt display of patriotism included the Veterans of Foreign Wars, United Daughters of the Confederacy, KKK, Daughters of the Revolutionary War, and the Grand Army of Republic.

For several decades there was no opposition against the fag salute pledge. Following World War 1 school authorities could not end the many religious objections to the pledge. The Mennonites refused to salute as early as 1918. They refused because they insisted that they did not recognize earthly governments. The Jehovah Witnesses in Colorado considered the flag salute idolatry. This Sect is strict by hierarchal in its organization. During the 1930's and 1940's they were extremely unpopular. They had this sense of divine mission. They were dreadful and offensive to many people. Their leader was Joseph F. Rutherford (Judge).

Up till 1935 the flag salute controversy had been sporadic. All of that changed in 1935 with the appearance of the Jehovah Witnesses. They had a strong rejection to the pledge. They are a sect whose doctrine centered around the end of this world which is expected momentarily. They believe that all existing worldly institutions are hopelessly corrupt and under the direct influence of Satan. In this generation all except the Jehovah Witnesses will be destroyed at the great battle of Armageddon. That great battle is described in the book of Revelations. A small handful of faithful Christians will live forever on a good healthy earth. The Witnesses rejected to "Hail Hitler" in Germany. They thought that they saw a parallel in America. They stopped saluting and on October 6, 1935 Rutherford encouraged all Witnesses to stop saluting because they considered it a form of worship. Since the Devil rules the world, one who salutes the flag is saluting the Devil.