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The Supreme Court as the Arbiter of Economic Affairs through Interpretation of the Commerce Clause from 1789 through 1937

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THE SUPREME COURT AN THE ARBITER OF ECONOMIC AFFAIRS THROUGH INTERPRETATION OF THE COMMERCE CLAUSE FROM 1789 THROUGH 1937

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"The judicial Power of the United States shall be vested in one Supreme Court..." (Article III, section 1, clause 1).

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States..." (Article III, section 2, clause 1).

"The Congress shall have Power:...To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;..." (Article 1, section 8, clause 3).[1]

From these three clauses of the United States Constitution, the Supreme Court derived the authority necessary to make it the arbiter of United States economic affairs.

Under the Articles of Confederation, Congress did not have the power to regulate interstate and foreign commerce. As a result, each state attempted to protect local business at the expense of the other states through the enforcing of trade barriers. Removal of these restrictions on commercial relations imposed by the "sovereign" states became one of the "moving purposes" which brought about the Constitutional Convention in 1787. There seems to be no doubt that the commerce clause was inserted in the Constitution to prevent the states from interfering with the freedom of commercial intercourse.

The constitutional meaning of the commerce clause has been developed and expanded by statutory enactments and through judicial interpretation. These have converted this clause into one of the most important grants of authority in the Constitution. Justice Harlan Stone once said that the

"commerce clause and the wise interpretation of it, perhaps more than any other contributing element, have united to bind the several states into a nation." It is largely through the commerce power that Congress has gained the authority to regulate almost every conceivable aspect of American life. And the commerce power continues to expand to immense proportions.

The commerce clause has a two-fold effect. (1) It is the greatest source of power exercised by the federal government in times of peace. (2) It is the most important limitation on the powers of the states, with the exception of the Fourteenth Amendment. Therefore, as Justice William Douglas noted, the commerce clause "has a negative as well as a positive aspect. It not only serves to augment federal authority. By its own force it also cuts down the power of a constitutent state in its exercise of what normally would be part of its residual police power. Both the positive and negative aspects of the commerce clause have grave importance."[2]

> "But the Constitution does not define specific spheres of state and national authority over interstate commerce. Thus, by default, the Supreme Court is given the power to decide finally what the states and the federal government may or may not do with respect to interstate commerce. In this process the Court again becomes the referee between the claims of national and local authorities."[3]

The foremost question concerning the commerce clause has been what was the clause originally intended to mean and has the Court deviated from this original meaning? At different periods in history, different Courts have given different meanings to this clause. There have been Courts which wished

to support only the negative aspects of the clause, and Courts which support the power being used for positive national regulation. There is no way of knowing which interpretation was actually held by the framers of the constitution.[4]

The first case to reach the Supreme Court which involved a construction of this clause was the famous "Steamboat Case," Gibbons v. Ogden, 9, U.S. 1, 1824. This first case involved the negative rather than the positive implications of the commerce clause. This litigation grew out of the conflict between a monopoly which the State of New York had conferred upon certain persons to navigate steamboats upon the waters of that State and an act of Congress regulating the coastwise trade. The case raised directly the scope of Congress's power over interstate commerce.

Chancellor Kent of New York, in upholding the monopoly granted by the state against the claim of Gibbons, operating under the authority of the federal licensing act, maintained that Congress did not have any direct jurisdiction over internal commerce or waters. Daniel Webster, arguing for Gibbons on appeal to the Supreme Court, asserted that the power of Congress to regulate commerce was exclusive. Counsel for the monopoly asserted that the power to regulate commerce was concurrent. Webster's definition of commerce as comprehending "almost all the business and intercourse of life" was countered by the definition of commerce as "the transportation and sale of commodities." Both men agreed that in case of a collision of state and national power, the latter must prevail, but Kent held that State power gave way only to the extent needed

to give effect to the federal law. Therefore, navigation on state waters remained under state control.[5]

Chief Justice John Marshall chose to examine the nature of national commerce power before finding the existence of a conflict. He rejected the restrictive definition of commerce as put forth by the counsel for Ogden in the following words:

> "Commerce undoubtedly is traffic, but it is something more; it is intercourse... .
>
> It has, we believe, been universally admitted, that these words comprehend every species of intercourse between the United States and foreign nations... . If this be the admitted meaning of the word in its application to foreign nations it must carry the same meaning throughout the sentence, and remain a unit, unless there be some plain intelligible cause which alters it."[6]

The opinion then proceeds:

> "The subject to which the power is next applied is to commerce 'among the several states.' The word 'among' means intermingled with. A thing which is among others is intermingled with them. Commerce among the States cannot stop at the external boundary line of each State, but may be introduced into the interior."[7]

"Among" meant that commerce which concerns more states than one. Though the states retain authority to enact, inspect, pilotage, and health laws, even here Congress could enter the field if it chose.

What, however, is Congress's power to regulate commerce? Marshall answers,

> "It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress is complete in itself, may be exercised to its utmost extent, and acknowledge no limitations, other than are prescribed in the Constitution...the power over commerce with foreign nations, and among the several states, is vested in Congress as absolutely as it would be in a

> single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States."[8]

In the case of Gibbons v. Ogden, Mr. Chief Justice Marshall delivered the opinion of the Court.

> "The appellant contends that this decree is erroneous, because the laws which purport to give the exclusive privilege it sustains are repugnant to the Constitution and laws of the United States.
>
> They are said to be repugnant--(1) To that clause in the Constitution which authorizes Congress to regulate commerce. (2) To that which authorizes Congress to promote the progress of science and useful arts... ."[9]

Marshall's opinion has been called the "emancipation proclamation of American commerce." But the Supreme Court did not answer the question as to whether or not the states had concurrent power over interstate commerce. The concurring opinion of Justice William Johnson maintained that Congress had exclusive power over interstate commerce. Although Marshall was inclined to agree with Johnson's view, he was unwilling to hold specifically that the federal power over commerce was exclusive.[10]

In the absence of a coherently expressed doctrine, the Court continued to be plagued with problems involving the validity of state laws affecting foreign or interstate commerce. The cases decided during much of the Taney era did not clarify the state of the law. Instead, the Court vacillated in a confused and muddled way on the extent to which the commerce clause limited regulations of interstate commerce by the state legislatures. Finally, in the classic case of Cooley v. Board of Wardens, the Supreme Court fashioned a new formula

which combined both the exclusive and concurrent doctrines. In short, the Court held that the commerce power is exclusive with respect to some matters and concurrent with respect to others. The principle of the Cooley case is still important, but since there are so many possible regulations of commerce, it is extremely difficult to apply. The opinion in the Cooley case does not constitute a precise, automatic rule for deciding cases, but it did turn the attention of the court away from an analysis of the commerce power to the subject upon which the power is operated. However, in each case the Court must now face the difficult question as to whether a particular subject of commercial regulation requires uniform and national control or whether it is so local in character that a state may regulate it.[11]

The decisions of the Supreme Court have made it clear that the "purpose of the commerce clause was not to preclude all state regulation of commerce crossing state lines but to prevent discrimination and the erection of barriers or obstacles to the free flow of commerce, interstate or foreign."[12] If the subject matter allowed regulation by state or local government, two questions still remained: Did the state law discriminate against interstate commerce, in favor of local commerce? Did the state act, although nondiscriminatory, place an unreasonable burden on interstate commerce? The attempts to answer these are inevitable colored by a host of socio-economic fact and theory, favored by judicial bias. Theories of federalism marched hand in hand with economic theory.

Actually, the states passed very little legislation designed principally for the purpose of regulating interstate commerce. However, much state legislation concerning local matters happens to deal with persons or transactions in interstate commerce, and many of these acts have been challenged on the ground that they place unconstitutional burdens on interstate commerce.

The state sometimes uses its "police power" (the power to protect the public health, safety, morals, and general welfare) to burden interstate commerce. Thus, a state police regulation is valid only if it does not conflict with a law of Congress and if it does not impose an unreasonable burden or interstate commerce.[13]

The power of the states to tax sometimes have a great impact on commerce.

> "In imposing taxes for state purposes a state is not exercising any power which the Constitution has conferred upon Congress. It is only when the tax operates to regulate commerce between the states or with foreign nations to an extent which infringes the authority conferred upon Congress, that the tax can be said to exceed constitutional limitations. Forms of state taxation whose tendency is to prohibit the commerce or place it at a disadvantage as compared with or in competition with intrastate commerce, and any state tax which discriminates against the commerce, are familiar examples of the exercise of state taxing power in an unconstitutional manner, because of its obvious regulatory effect upon commerce between the states... . Not all state taxation is to be condemned because, in some manner, it has an effect upon commerce between the states, and there are many forms of tax whose burdens, when distributed through the play of economic forces, affect interstate commerce which, nevertheless, fall short of the regulation of the commerce which the Constitution leaves to Congress."[14]

It is not possible to formulate a definite rule by which the Congress may determine whether the state police or

taxing powers have been exercised in such a way as to burden interstate commerce. Each case must be decided by viewing its own particular facts. Nevertheless, with the steady growth of interstate commerce, particularly since 1890, the commerce clause has been used with increasing frequency to invalidate state regulatory and tax measures.[15]

After 1890 two dominant themes began to pervade the application of the commerce clause: use of the commerce power by Congress to accomplish broad social and economic purposes; continuation and further development of the commerce clause as a restriction on state action affecting interstate commerce. Despite Marshall's broad interpretation of the federal government's commerce powers, the development of the commerce clause as a grant of "positive" powers to Congress had no substantial development until the beginning of the twentieth century. Before this there was little occasion for the affirmative exercise of the commerce power, and the influence of the clause on American life and law was a negative one. But as the nation grew and the industrial society emerged, more and more local commercial matters required a uniform system of national legislation.[16]

Perhaps nowhere is the change from local to national regulation better demonstrated than in the case of the railroads. In 1877 the group of Granger cases came before the Supreme Court. The Court held that the states could fix minimum and maximum rates for railroads and other in absence of congressional legislation. But only nine years later in the case of Wabash, St. Louis and Pacific Railroad Co. v.

Illinois, 118 U.S. 557, 1886, repudiated its views in the Granger cases. The Illinois act under consideration in the Wabash case had been applied as a corrective of long- and short-haul rate discriminations on shipments from Illinois to New York City. The Court held that the Illinois statute, which imposed a penalty for lower rates on long hauls which extended beyond the borders of the state, was in conflict with the commerce clause even though Congress had not legislated in this field.

But if the states could not legislate and Congress had not done so, how were railroad rates to be controlled? The answer came a few months later when Congress created the Interstate Commerce Commission to fill the gap. The enactment of the Interstate Commerce Act of 1887 was the first example of the commerce clause exerting a positive influence in American life and law. When the Sherman Anti-Trust Act was enacted in 1890, it manifested Congress' determination to use its power over interstate commerce for purposes far beyond anything hitherto attempted. These statutes brought with them a new phase of adjudication which required the Court to approach the interpretation of the commerce clause in the light of an actual exercise of Congress of its powers under the clause.[17]

Difficult questions arose at the very beginning concerning the applicability of the Sherman Anti-Trust Act to industry and commerce. The rationale of the Act was the contracts, combinations, and conspiracies, in the form of a trust or otherwise, which restrain, or attempt to monopolize interstate

trade, would be prohibited. However, when the Court first dealt with the Sherman Act, in United States v. E. C. Knight Co., 156 U.S. 1, 1895, it gave little scope to the powers of Congress. The Court, in the Knight case, held that the Sherman Act could not be applied to a virtual monopoly of the sugar industry because the manufacture of sugar was not in interstate commerce. To Chief Justice Fuller the only aspect of commerce subject to federal regulation was transportation. To achieve this limitation of national power the Court redefined "commerce" so as to practically restrict it to what Marshall considered its narrowest signification—"transportation." Fuller reasoned:

> "There must be a point of time when articles cease to be governed exclusively by domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment.../occurs when/ they commence their final movement from the state of their origin to that of their final destination."

In support of this limitation of Marshall's broad concept of commerce, Chief Justice Fuller invented one of the most enduring formulas in the Court's arsenal of power crippling devices—that of direct and indirect effects. Said Fuller:

> "Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly."

In this landmark case the Court was not enforcing the Constitution, nor Chief Marshall's version of it. Rather it applied a theory of the Union, and enthroned an economic dogma—laissez-faire. During the same term the Court delivered

two other extremely conservative opinions[18] which brought storms of protests from large segments of the American people who were now convinced that the judiciary had become the reactionary defender of entrenched economic interests.[19]

However, even while important opinions in this line of restrictive authority were being written, other cases called forth broader interpretations of the commerce clause destined to supersede the earlier ones, and to bring about a return to the principles of Chief Justice Marshall in Gibbons v. Ogden. In Swift and Co. v. United States, 196 U.S. 375, 1905, the Court held that a combination of meat packers was an illegal monopoly under the Sherman Act on the ground that their activities were transactions in interstate commerce.

For Chief Justice Fuller's view of commerce as manufacture, traffic, and transportation, Justice Holmes substituted the realistic view of commerce as a "current." The buying and selling of cattle was actually part "of a single plan." Speaking for the unanimous Court, Justice Holmes stated that

> "commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchase at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce."

Of Swift v. United States, Chief Justice Taft said in 1922 (Board of Trade of Chicago v. Olsen, 262 U.S. 1):

> "That case was a milestone in the interpretation of the commerce clause of the Constitution. It recognized the great changes and development in the business of this vast country and drew again

> the dividing line between interstate and intrastate commerce where the Constitution intended it to be. It refused to permit local incidents of great interstate movement, which, taken alone, were intrastate, to characterize the movement as such. The Swift case merely fitted the commerce clause to the real and practical essense of modern business growth."[20]

In a series of cases during this same period, the Court began to sustain the use of the commerce clause as a basis for the exercise of federal police powers. They clearly established the principle that the commerce power could be used to accomplish purely social objectives. In the leading case of Champion v. Ames, 188 U.S. 321, 1903, a federal act prohibiting the interstate shipment of lottery tickets was upheld. The Court reasoned that the facilities of interstate commerce were used to promote and spread the evil; so if a state under its police power could suppress lotteries within its limits, the Congress, invested with the power to regulate interstate commerce, could provide that such commerce "shall not be polluted by the carrying of lottery tickets from one state to another." Congress was the only authority capable of stopping that and similiar social evils. Shortly after the decision in the Lottery case, Congress proceeded to enact a number of statutes which barred objectionable articles from interstate commerce or which forbade the use of interstate commerce facilities for immoral or criminal activities.[21]

After 1918 the Supreme Court's restrictive interpretation of the commerce clause reappears in Hammer v. Dagenhart, 247 U.S. 251, 1918. The Court, following the seriously qualified Sugar Trust precedent, again drew a distinction between

commerce and manufacturing. Congress had prohibited transportation in interstate commerce of products produced by child labor (age 16 in mines, age 14 in factories, or more that 48 hour week for the age group 14-16 years). Justice Day characterized the precedents involving lotteries, food, and white slavery as attempts to regulate where transportation was used to accomplish harmful results; production and its incidents were local matters beyond the reach of Congress.

Returning to Chief Justice Fuller's narrow view of commerce, Justice Day reasoned:

> "Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation."

Day bolstered his reasoning by recourse to a theory of federalism. He wrote:

> "It must never be forgotten that the nation is made up of states to which are entrusted the powers of local government, and to them the powers not expressly /sic/delegated to the national government are reserved."[22]

In a dissenting opinion, Justice Holmes pointed out that powers granted are not reserved. Justice Holmes said:

> "The question, then, is narrowed to whether the exercise of its otherwise constitutional power by Congress can be pronounced unconstitutional because of its possible reaction upon the conduct of the states in a matter upon which I have admitted that they are free from direct control. I should have thought that that matter had been disposed of so fully as to leave no room for doubt. I should have thought that the most conspicuous decisions of this court had made it clear that the power to regulate commerce and other constitutional powers could not be cut down or qualified by the fact that it might interfere with the carrying out of the domestic policy of any state.
>
> ...It does not matter whether the supposed evil precedes or follows the transportation. It is enough

that, in the opinion of Congress, the transportation encourages the evil... .

The act does not meddle with anything belonging to the states. They may regulate their internal affairs and their domestic commerce as they like. But when they seek to send their products across the state line they are no longer within their rights. If there were no Constitution and no Congress their power to cross the line would depend upon their neighbors. Under the Constitution such commerce belongs not to the states, but to Congress to regulate. It may carry out its views of public policy whatever indirect effect they may have upon the activities of the states. Instead of being encountered by a prohibitive tariff at her boundaries, the state encounters the public policy of the United States, which it is for Congress to express. The public policy of the United States is shaped with a view to the benefit of the nation as a whole... ."[23]

The classic dissent by Justice Holmes in Hammer v. Dagenhart was used twenty-five years later by Justice Stone to overrule the majority opinion in United States v. Darby, 312 U.S. 100, 1941. He wrote:

"In the more than a century which has elapsed since the decision Gibbons v. Ogden, these principles of constitutional interpretation have been so long and repeatedly recognized by this Court as applicable to the Commerce Clause, that there would be little occasion for repeating them now were it not for the decision of this Court twenty-two years ago in Hammer v. Dagenhart... . In that case it was held by a bare majority of the Court, over the powerful and now classic dissent of Mr. Justice Holmes setting forth the fundamental issues involved, that Congress was without power to exclude the products of child labor from interstate commerce. The reasoning and conclusion of the Court's opinion there cannot be reconciled with the conclusion which we have reached, that the power of Congress under the Commerce Clause is plenary to exclude any article from interstate commerce subject only to the specific prohibition of the Constitution.

"Hammer v. Dagenhart has not been followed. The distinction on which the decision was rested that Congressional power to prohibit interstate commerce is limited to articles which in themselves have some harmful or deleterious property—a distinction which was novel when made and unsupported by any provision of the Constitution—has long been abandoned... .

> The conclusion is inescapable that Hammer v. Dagenhart was a departure from the principles which have prevailed in the interpretation of the Commerce Clause both before and since the decision and that such vitality, as a precedent, as it then had has long since been exhausted. It should be and now is overruled."[24]

Thus, when the Court was confronted with the constitutionality of the New Deal legislation under the commerce clause, two lines of precedent were available. The Court could take a narrow view of the commerce clause as done in United States v. E. C. Knight Co. and in Hammer v. Dagenhart. Or the Court could take a broad view of the commerce power as in Gibbons v. Ogden, Swift and Co. v. United States, and United States v. Darby.[25]

During the 1930's the Supreme Court was sharply divided between the conservative and liberal justices. President Roosevelt began working out the terms of his New Deal legislation, and as his legislation was enacted by Congress, attention began to vocus on the Supreme Court. It would be here that the life or death decisions for the New Deal would be made.

In 1936 the Supreme Court had all but wrecked the New Deal. In the process of invalidating a number of New Deal proposals, the Court majority opposed vigorously any expansion of the federal commerce power. The Court seemed determined, in the case Schechter Poultry Corp. v. United States, to maintain the distinction between commerce and manufacturing as enunciated in the Sugar Trust case and Hammer v. Dagenhart.

After Roosevelt's overwhelming victory in 1936, he was determined to find a way to make the Supreme Court favorable

to his legislation. He was not sure that the Court would give ground even in view of his vote of confidence obtained in the election, therefore, Roosevelt went to Congress early in 1937 proposing a drastic shakeup in the judiciary. This was Roosevelt's court-packing threat, and it ran into terrific public opposition. Overnight Supreme Court Justices were again pictured as demigods far above the sweaty crowd, weighing public policy on the delicate scales of the law. "Constitutionality" was talked about as if it were a tangible fact, undeviating and precise, not merely the current judiciary theory of what ought and what ought not to be done.

Yet in April 1937, the Supreme Court ruled that the Schechter case was unapplicable and upheld the National Labor Raltions Act in a series of five separate cases. The first and most important of these cases was National Labor Relations Board v. Jones and Laughlin Steel Corp., 301 U.S. 1, 1937. Here the Supreme Court gave the interstate commerce clause its maximum sweep. The Jones and Laughlin case is the great modern case on the scope of federal power over interstate commerce. Other cases involving smaller businesses were decided the same day with the same results. The panoramic view of the Jones and Laughlin case comes into view; the United States consists no longer of forty-eight separate economic entities. Economically we are one nation, and accordingly, in economic matters we stand or fall together.[26] "The Great Depression taught us this, and the Court of Nine Old Men confirmed it."[27]

Two facts must be noted about the Wagner Act cases: (1) The cases were decided by the same nine justices who had

invalidated the key New Deal measures. This was made possible when Justice Roberts abandoned the conservatives and voted with the liberal group. (2) The decisions came at a time when Roosevelt's court-packing threat was being hotly debated. The President's proposed court refore now seemed unnecessary.

Since 1937, the federal commerce clause has continued to expand. It may well be that today the interpretation of the federal commerce clause by the Supreme Court is as broad as the economic needs of the nation.[28]

This paper attempts to show the Supreme Court as the arbiter of the economic affairs of this nation since the time of our Constitution in 1787. The Court's decisions interpreting the powers of Congress under the commerce clause have varied through the years depending on the attitudes of the justices at the time. There have been periods when the Court would be restrictive, but the majority of the justices, over the years, favored a very broad interpretation of the commerce clause. The need for this broad interpretation became increasingly evident as the United States shifted from an agrarian to an industrial, urban society. The "Nine Old Men" lived up to the demands of our changing, modern society by gearing their interpretation of the federal commerce clause to the needs of the day.

FOOTNOTES

[1]The Constitution of the United States of America.

[2]Rocco J. Tresolini, American Constitutional Law (New York: The Macmillian Company, 1959), pp. 155-156; Alpheus Thomas Mason and William M. Beany, The Supreme Court in a Free Society (Englewood: Prentice-Hall, 1959), pp. 103-105.

[3]Rocco J. Tresolini, American Constitutional Law (New York: The Macmillian Company, 1959), pp. 156-157.

[4]Alpheus Thomas Mason and William M. Beany, The Supreme Court in a Free Society (Englewood: Prentice-Hall, 1959), pp. 104-106; Edward S. Corwin, The Commerce Power versus States Rights (Princeton: Princeton University Press, 1936), pp. 3-5.

[5]Charles Evans Hughes, The Supreme Court of the United States (New York: Columbia University Press, 1928), pp. 143-144; Edward S. Corwin, The Commerce Power versus States Rights (Princeton: Princeton University Press, 1936), pp. 5-6; Wallace Mendelson, Capitalism, Democracy, and the Supreme Court (New York: Appleton-Century-Crofts, Inc., 1960), pp. 21-22.

[6]9 Wheat 1; 6 L. Ed., pp. 189, 193-194.

[7]9 Wheat 1; 6 L. Ed., p. 188

[8]9 Wheat 1; 6 L. Ed., pp. 194-195

[9]9 Wheat 1; 6 L. Ed., p. 188.

[10]Rocco J. Tresolini, American Constitutional Law (New York: The Macmillian Company, 1959), pp. 157-158.

[11]Ibid., pp. 158-159.

[12]Justice Stone Dissenting in Di Santo v. Pennsylvania, 273 U.S. 34, 1927.

[13]Rocco J. Tresolini, American Constitutional Law (New York: The Macmillian Company, 1959), p. 159; Alpheus Thomas Mason and William M. Beany, The Supreme Court in a Free Society (Englewood: Prentice-Hall, 1959), pp. 114-115.

[14]McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33, 1940.

[15]Rocco J. Tresolini, American Constitutional Law (New York: The Macmillian Company, 1959), p. 160.

[16]Rocco J. Tresolini, American Constitutional Law (New York: The Macmillian Company, 1959), pp. 162-162; Alpheus Thomas Mason and William M. Beany, The Supreme Court in a Free Society (Englewood: Prentice-Hall, 1959), p. 117.

[17]Ibid., pp. 163-164 and pp. 151-152.

[18]In Pollock v. Farmers' Loan and Trust Co., 158 U.S. 601 (1895), the Court held that taxes on income derived from land or personal property were direct taxes, and therefore unconstitutional because they had not been properly levied. This case was overruled by the Sixteenth Amendment, ratified in 1913. In the case of In re Debs, 158 U.S. 564 (1895), the Court upheld a sweeping anti-labor injunction issued in connection with the famous Pullman strike in Chicago during the summer of 1894.

[19]Rocco J. Tresolini, American Constitutional Law (New York: The Macmillian Company, 1959), pp. 163-165; Alpheus Thomas Mason and William M. Beany, The Supreme Court in a Free Society (Englewood: Prentice-Hall, 1959), pp. 152-155.

[20]Ibid., p. 165 and pp. 155-156.

[21]Rocco J. Tresolini, American Constitutional Law (New York: The Macmillian Company, 1959), p. 166; Alpheus Thomas Mason and William M. Beany, The Supreme Court in a Free Society (Englewood: Prentice-Hall, 1959), pp. 157-158.

[22]Rocco J. Tresolini, American Constitutional Law (New York: The Macmillian Company, 1959), p. 166.

[23]Ibid., pp. 202-203.

[24]Tresolini, op. cit., pp. 205-206.

[25]Ibid., p. 166.

[26]Alfred Haines Cope and Fred Krinsky (eds.), Franklin D. Roosevelt and the Supreme Court (Boston: D. C. Heath and Company, 1952), p. 63; Paul A. Freund, The Supreme Court of United States (Cleveland: The World Publishing Company, 1965), p. 20; Edward Cahn (ed.), Supreme Court and Supreme Law (Bloomington: Indiana University Press, 1954), pp. 93-94.

[27]Tresolini, op. cit., pp. 167-168.

[28]Ibid., pp. 167-168.

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