Caroline Products Footnote

Harlan Fiske Stone
1938

In 1937 the United States faced a constitutional crisis. A conservative majority on the Supreme Court had used its power of judicial review to strike down economic reform laws aimed at ameliorating the harshness of the Great Depression. President Franklin D. Roosevelt proposed a plan to add new justices to the Court, but Congress refused to go along with the so-called "court-packing" plan. Nonetheless, although Roosevelt lost the battle, he won the war. Within a year, retirements from the Court allowed him to name younger and more liberal justices.

In 1938, the old battle lines between economic reformers and conservative judges were rapidly disappearing. The Court declared that in regard to economic legislation, if Congress had the power to act in a particular area -- such as control of interstate commerce -- judges would not question the wisdom of the measure. But aside from this, a new agenda was rapidly crowding onto the Court's docket. If questions of economic rights had been the chief concern of the judiciary in the first part of the twentieth century, questions of individual rights and liberties would occupy the courts for the rest of the century.

The pivotal point in this transformation can be precisely identified, in what is considered the most important footnote in American judicial history. In an otherwise unremarkable case regarding federal regulation of milk content (United States v. Carolene Products Co.), Justice Harlan Fiske Stone announced that Congress had the power to regulate interstate commerce, and if it chose to set minimal standards for milk quality, that was the business of the legislative and not the judicial branch.

Immediately following this statement, however, Stone inserted his famous Footnote 4, which asserted that in noneconomic regulation cases, the Court might adopt a higher level of scrutiny. Footnote 4 has been the basis for the Supreme Court's subsequent judgments in cases protecting the integrity of the political process or involving so-called "suspect" classifications, such as race, creed, alienage, religion and gender. The Court has assumed an obligation to examine these statutes carefully, to ensure that individual liberties have not been abridged.

While there had been some cases involving individual liberties prior to this decision, the footnote is the demarcation point in the Court's shift to an emphasis on protecting civil rights and liberties, as well as the integrity of the democratic political process.

For further reading: Alpheus T. Mason, Harlan Fiske Stone: Pillar of the Law (1956); Learned Hand, "Chief Justice Stone's Conception of the Judicial Function," 46 Columbia Law Review 696 (1946).

CAROLENE PRODUCTS FOOTNOTE (1938)

Footnote 4.

There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten Amendments, which are deemed equally specific when held to be embraced within the 14th. [Case citations deleted]

It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the 14th Amendments than are most other types of legislation...

Nor need we enquire whether similar considerations enter into the review of statues directed at particular religious...or nationaL...or racial minorities; [or] whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry...