International Journal of Science and Research (IJSR)
ISSN (Online): 2319-7064
Index Copernicus Value (2015): 78.96 | Impact Factor (2015): 6.391

The Judicial Review

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Abstract: ***The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written Constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable [Marshall,1803].***

Keywords: Constitution , Supreme Court, Judiciary Act , Ordinary legislative Act, Marshall C.J., Council of Censors

1. Introduction

But it is not with a view to infractions of the Constitution only, that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed, but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments, then but few may be aware of [Hamilton ,1788)] .

2. The Constitution of the Commonwealth of Pennsylvania, 1776

In order that the freedom of the commonwealth may be preserved inviolate for ever, there shall be chosen by ballot by the freemen in each city and county respectively, on the second Tuesday in October, in the year one thousand seven hundred and eighty three and on the second Tuesday in October, in every seventh year thereafter, two persons in each city and county of this state, to be called the COUNCIL OF CENSORS; who shall meet together on the second Monday of November next ensuing their election; the majority of whom shall be a quorum in every case, except as to calling a convention, in which two thirds of the whole number elected shall agree: And whose duty it shall be to enquire whether the constitution has been preserved inviolate in every part; and whether the legislative and executive branches of government have performed their duty as guardians of the people, or assumed to themselves, or exercised other or greater powers than they are intitled to by the constitution: They are also to enquire whether the public taxes have been justly laid and collected in all parts of this commonwealth, in what manner the public monies have been disposed of, and whether the laws have been duly executed. For these purposes they shall have power to send for persons, papers, and records; they shall have authority to pass public censures, to order impeachments, and to recommend to the legislature the repealing such laws as appear to them to have been enacted contrary to the principles of the constitution. These powers they shall continue to have, for and during the space of one year from the day of their election and no longer: The said council of censors shall also have power to call a convention, to meet within two years after their sitting, if there appear to them an absolute necessity of amending any article of the constitution which may be defective, explaining such as may be thought not clearly expressed, and of adding such as are necessary for the preservation of the rights and happiness of the people; But the articles to be amended, and the amendments proposed, and such articles as are to be proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject [Selsam,1971] .

3. The Constitution of the United States , 1787

3.1 Article III

a) Section 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offi ces during good Behaviour, and shall at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

b) Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - [between a State and Citizens of another State;-] between Citizens of different States, - between Citizens of the same State claiming Lands under Grants of different States, [and between a State, or the Citizens thereof;- and foreign States, Citizens or Subjects.] In all Cases affecting Ambassadors, other public Ministers and

Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

c) Section 3

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

3.2 Article VI

All Debts contracted and Engagements entered into, befor the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States [Story,1858] .

4. The Federalist Papers

4.1 Federalist No. 78 , 1788

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents. Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental. This exercise of judicial discretion, in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens, that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by any fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is, that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law [Hamilton,1788] .

4.2 Federalist No. 80 ,1788

There is no third course that I can imagine. The latter appears to have been thought by the convention preferable to the former, and, I presume, will be most agreeable to the States. As to the second point, it is impossible, by any argument or comment, to make it clearer than it is in itself. If there are such things as political axioms, the propriety of the judicial power of a government being coextensive with its legislative, may be ranked among the number. The mere necessity of uniformity in the interpretation of the national laws, decides the question. Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed. Still less need be said in regard to the third point. Controversies between the nation and its members or citizens, can only be properly referred to the national tribunals. Any other plan would be contrary to reason, to precedent, and to decorum [Hamilton,2008] .

4.3 Federalist No. 82, 1788

The courts of the latter will of course be natural auxiliaries to the execution of the laws of the Union, and an appeal from them will as naturally lie to that tribunal which is destined to unite and assimilate the principles of national justice and the

rules of national decisions. The evident aim of the plan of the convention is, that all the causes of the specified classes shall, for weighty public reasons, receive their original or final determination in the courts of the Union. To confine, therefore, the general expressions giving appellate jurisdiction to the Supreme Court, to appeals from the subordinate federal courts, instead of allowing their extension to the State courts, would be to abridge the latitude of the terms, in subversion of the intent, contrary to every sound rule of interpretation. But could an appeal be made to lie from the State courts to the subordinate federal judicatories? This is another of the questions which have been raised, and of greater difficulty than the former [Hamilton,1852] .

5. The Judiciary Act of 1789

And be it further enacted, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favour of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before provided, may at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before mentioned questions of validity or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute [O'Connor,1990] .

6. Hayburn's Case, 1792

This was a motion for a mandamus to be directed to the Circuit Court for the District of Pennsylvania commanding the said court to proceed in a certain petition of Wm. Hayburn, who had applied to be put on the pension list of the United States as an invalid pensioner. The principal case arose upon the act of Congress passed 23 March, 1792. The Attorney General (Randolph) who made the motion for the mandamus, having premised that it was done ex officio, without an application from any particular person, but with a view to procure the execution of an act of Congress particularly interesting to a meritorious and unfortunate class of citizens, the court declared that it entertained great doubt upon his right, under such circumstances and in a case of this kind, to proceed ex officio, and directed him to state the principles on which he attempted to support the right. The Attorney General accordingly entered into an elaborate description of the powers and duties of his office. But the court being divided in opinion on that question, the motion, made ex officio, was not allowed. The Attorney General then changed the ground of his interposition, declaring it to be at the instance and on behalf of Hayburn, a party interested; and he entered into the merits of the case upon the act of Congress and the refusal of the judges to carry it into effect. The Court observed that it would hold the motion under advisement until the next term, but no decision was ever pronounced, as the legislature, at an intermediate session, provided in another way for the relief of the pensioners [Marcus,1988] .

7. United States v. Todd , 1794

The Case of Todd was docketed by consent in the Supreme Court, and the Court appears to have been of opinion that the Act of Congress of 1793, directing the Secretary of War and Attorney General to take their opinion upon the question, gave them original jurisdiction. In the early days of the government, the right of Congress to give original jurisdiction to the Supreme Court in cases not enumerated in the Constitution was maintained by many jurists, and seems to have been entertained by the learned judges who decided Todd's Case. But discussion and more mature examination has settled the question otherwise, and it has long been the established doctrine, and we believe now assented to by all who have examined the subject, that the original jurisdiction of this Court is confined to the cases specified in the Constitution, and that Congress cannot enlarge it. In all other cases, its power must be appellate [Ritz,1958] .

8. Hylton v. United States, 1796

The act of Congress of 6 June 1794, laying "a tax on carriages for the conveyance of persons, kept for the use of the owner," is a constitutional law, and is within the authority granted to Congress by the eighth section of the first article of the Constitution. This was a writ of error directed to the Circuit Court for the District of Virginia, and upon the return of the record the following proceedings appeared. An action of debt had been instituted to May Term, 1795, by the attorney of the district in the name of the United States against Daniel Hylton to recover the penalty imposed by the Act of Congress of 5 June, 1794, for not entering and paying the duty on a number of carriages for the conveyance of persons which he kept for his own use. The defendant pleaded nil debet, whereupon issue was joined. But the parties, waiving the right of trial by jury, mutually submitted the controversy to the court on a case which stated "That the defendant, on 5 June, 1794, and there from to the last day of September following, owned, possessed, and kept, 125

chariots for the conveyance of persons, and no more; that the chariots were kept exclusively for the defendant's own private use, and not to let out to hire or for the conveyance of persons for hire, and that the defendant had notice according to the act of Congress entitled 'An act laying duties upon carriages for the conveyance of persons,' but that he omitted and refused to make an entry of the said chariots and to pay the duties thereupon as in and by the said recited law is required, alleging that the said law was unconstitutional and void. If the court adjudged the defendant to be liable to pay the tax and fine for not doing so and for not entering the carriages, then judgment shall be entered for the plaintiff for $2,000 dollars, to be discharged by the payment of $16, the amount of the duty and penalty; otherwise that judgment be entered for the defendant." After argument, the court (consisting of Wilson & Justices) delivered their opinions, but being equally divided, the defendant, by agreement of the parties, confessed judgment, as a foundation for the present writ of error, which (as well as the original proceeding) was brought merely to try the constitutionality of the tax [Frankel,2003] .

9. Ware v. Hylton, 1796

The act of the Legislature of Virginia of 1779 entitled "An act concerning escheats and forfeitures from British subjects," and under which a debtor to a subject of Great Britain had, in conformity to the provisions of that law, during the war, paid into the loan office of the state a portion of the debt due by him, did not operate to protect the debtor from a suit for such debt after the treaty of peace in 1783. The statute of Virginia, if it was valid and the legislature could pass such a law, was annulled by the fourth article of the treaty, and under this article, suits for the recovery of debts so due might be maintained, the provisions of the Virginia law to the contrary notwithstanding [Frankel,2003] .

10. Hollingsworth v. Virginia, 1798

The amendment of the Constitution of the United States by which the judicial power of the United States was declared not to extend to any suit commenced or prosecuted by a citizen or citizens of another state or by foreign subjects against a state prevented the exercise of jurisdiction in any case past or future. The decision of the court, in the case of Chisholm v. Georgia, 2 U. S. 419, produced a proposition in Congress for amending the Constitution of the United States according to the following terms: "The judicial power of the United States shall not be construed to extend to any suit in law and equity commenced or prosecuted against one of the United States by citizens of another state or by citizens or subjects of any foreign state." The proposition being now adopted by the constitutional number of states, Lee, Attorney General, submitted this question to the Court whether the amendment did or did not supersede all suits depending, as well as prevent the institution of new suits against any one of the United States by citizens of another state. The Court, on the day succeeding the argument, delivered an unanimous opinion that the amendment being constitutionally adopted, there could not be exercised any jurisdiction in any case, past or future, in which a state was sued by the citizens of another state or by citizens or subjects of any foreign state [Tillman,2004] .

11. Cooper v. Telfair, 1800

By the Confiscation Act of Georgia, a debt due to the plaintiff on bond by a citizen of the State of Georgia had become forfeited to the state, he having been attainted by an act of the legislature of that state for adhering to the British cause in the war of the Revolution. In a suit instituted by him for the debt, upon the act of the legislature being pleaded in bar by the obligor, he replied that the acts of the legislature were contrary to the constitution of that state and void. Held that the Confiscation Acts of Georgia were valid [Perry,1985] .

12. Marbury v. Madison ,1803

The clerks of the Department of State of the United States may be called upon to give evidence of transactions in the Department which are not of a confidential character. The Secretary of State cannot be called upon as a witness to state transactions of a confidential nature which may have occurred in his Department. But he may be called upon to give testimony of circumstances which were not of that character. Clerks in the Department of State were directed to be sworn, subject to objections to questions upon confidential matters. Some point of time must be taken when the power of the Executive over an officer, not removable at his will, must cease. That point of time must be when the constitutional power of appointment has been exercised. And the power has been exercised when the last act required from the person possessing the power has been performed. This last act is the signature of the commission. If the act of livery be necessary to give validity to the commission of an officer, it has been delivered when executed, and given to the Secretary of State for the purpose of being sealed, recorded, and transmitted to the party. In cases of commissions to public officers, the law orders the Secretary of State to record them. When, therefore, they are signed and sealed, the order for their being recorded is given, and, whether inserted inserted into the book or not, they are recorded.When the heads of the departments of the Government are the political or confidential officers of the Executive, merely to execute the will of the President, or rather to act in cases in which the Executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy. The President of the United States, by signing the commission, appointed Mr. Marbury a justice of the peace for the County of Washington, in the District of Columbia, and the seal of the United States, affixed thereto by the Secretary of State, is conclusive testimony of the verity of the signature, and of the completion of the appointment; and the appointment conferred on him a legal right to the office for the space of five years. Having this legal right to the office, he has a consequent right to the commission, a refusal to deliver

which is a plain violation of that right for which the laws of the country afford him a remedy. To render a mandamus a proper remedy, the officer to whom it is directed must be one to whom, on legal principles, such writ must be directed, and the person applying for it must be without any other specific remedy. Where a commission to a public officer has been made out, signed, and sealed, and is withheld from the person entitled to it, an action of detinue for the commission against the Secretary of State who refuses to deliver it is not the proper remedy, as the judgment in detinue is for the thing itself, or its value. The value of a public office, not to be sold, is incapable of being ascertained. It is a plain case for a mandamus, either to deliver the commission or a copy of it from the record. To enable the Court to issue a mandamus to compel the delivery of the commission of a public office by the Secretary of State, it must be shown that it is an exercise of appellate jurisdiction, or that it be necessary to enable them to exercise appellate jurisdiction. It is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted, and does not create the cause. The authority given to the Supreme Court by the act establishing the judicial system of the United States to issue writs of mandamus to public officers appears not to be warranted by the Constitution. It is emphatically the duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret the rule. If two laws conflict with each other, the Court must decide on the operation of each. If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply [Marshall,1803] .

13. Fletcher v. Peck, 1810

If the breach of covenant assigned be that the State had no authority to sell and dispose of the land, it is not a good plea in bar to say that the Governor was legally empowered to sell and convey the premises, although the facts stated in the plea as inducement are sufficient to justify a direct negative of the breach assigned. It is not necessary that a breach of covenant be assigned in the very words of the covenant. It is sufficient if it show a substantial breach. The Court will not declare a law to be unconstitutional unless the opposition between the Constitution and the law be clear and plain [Wilkins,1988] .

14. Martin v. Hunter's Lessee, 1816

This was a writ of error to the Court of appeals of the state of Virginia, founded upon the refusal of that Court to obey the mandate of this Court, requiring the judgment rendered in this same cause, at February Term, 1813, to be carried into due execution. The following is the judgment of the Court of appeals, rendered on the mandate: "The Court is unanimously of opinion that the appellate power of the Supreme Court of the United States does not extend to this Court under a sound construction of the Constitution of the United States; that so much of the 25th section of the act of Congress, to establish the judicial courts of the United States as extends the appellate jurisdiction of the Supreme Court to this Court is not in pursuance of the Constitution of the United States. That the writ of error in this cause was improvidently allowed under the authority of that act; that the proceedings thereon in the Supreme Court were coram non judice in relation to this Court, and that obedience to its mandate be declined by the Court" [Miller, 1988] .

15. Cohens v. Virginia, 1821

This Court has, constitutionally, appellate jurisdiction under the Judiciary Act of1789, c. 20, § 25, from the final judgment or decree of the highest court of law or equity of a state, having jurisdiction of the subject matter of the suit, where is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United State, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under, any state, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of such, their validity; or of the constitution, or of treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed, by either party under such clause of the constitution, treaty, statute, or commission [Graber, 1995] .

16. Ogden v. Saunder, 1827

A bankrupt or insolvent law of any state which discharges both the person of the debtor and his future acquisitions of property is not "a law impairing the obligation of contracts" so far as respects debts contracted subsequent to the passage of such law in those cases where the contract was made between citizens of the state under whose laws the discharge was obtained and in whose courts the discharge may be pleaded [Bayne,1951] .

17. Dred Scott v. Sandford, 1857

1) Upon a writ of error to a Circuit Court of the United States, the transcript of the record of all the proceedings in the case is brought before the court, and is open to inspection and revision.
2) When a plea to the jurisdiction, in abatement, is overruled by the court upon demurrer, and the defendant pleads in bar, and upon these pleas the final judgment of the court is in his favor -- if the plaintiff brings a writ of error, the judgment of the court upon the plea in abatement is before this court, although it was in favor of the plaintiff -- and if the court erred in overruling it, the judgment must be reversed, and a mandate issued to the Circuit Court to dismiss the case for want of jurisdiction.
3) In the Circuit Courts of the United States, the record must show that the case is one in which, by the Constitution and laws of the United States, the court had jurisdiction -- and if this does not appear, and the judgment must be reversed by this court -- and the parties cannot be consent waive the objection to the jurisdiction of the Circuit Court.
4) A free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a

"citizen" within the meaning of the Constitution of the United States.

5) When the Constitution was adopted, they were not regarded in any of the States as members of the community which constituted the State, and were not numbered among its "people or citizens." Consequently, the special rights and immunities guarantied to citizens do not apply to them. And not being "citizens" within the meaning of the Constitution, they are not entitled to sue in that character in a court of the United States, and the Circuit Court has not jurisdiction in such a suit.
6) The only two clauses in the Constitution which point to this race treat them as persons whom it was morally lawfully to deal in as articles of property and to hold as slaves.
7) Since the adoption of the Constitution of the United States, no State can by any subsequent law make a foreigner or any other description of persons citizens of the United States, nor entitle them to the rights and privileges secured to citizens by that instrument.
8) A State, by its laws passed since the adoption of the Constitution, may put a foreigner or any other description of persons upon a footing with its own citizens as to all the rights and privileges enjoyed by them within its dominion and by its laws. But that will not make him a citizen of the United States, nor entitle him to sue in its courts, nor to any of the privileges and immunities of a citizen in another State.
9) The change in public opinion and feeling in relation to the African race which has taken place since the adoption of the Constitution cannot change its construction and meaning, and it must be construed and administered now according to its true meaning and intention when it was formed and adopted.
10) The plaintiff having admitted, by his demurrer to the plea in abatement, that his ancestors were imported from Africa and sold as slaves, he is not a citizen of the State of Missouri according to the Constitution of the United States, and was not entitled to sue in that character in the Circuit Court.
11) This being the case, the judgment of the court below in favor of the plaintiff on the plea in abatement was erroneous [Vishneski, 1988] .

18. Myers v. United States , 1926

A postmaster who was removed from office petitioned the President and the Senate committee on Post Offices for a hearing on any charges filed; protested to the Post Office Department; and, three months before his four-year term expired, having pursued no other occupation and derived no compensation for other service in the interval, began suit in the Court of Claims for salary since removal. No notice of the removal, nor any nomination of a successor, had been sent in the meantime to the Senate whereby his case could have been brought before that body, and the commencement of suit was within a month after the ending of its last session preceding the expiration of the four years. Held that the plaintiff was not guilty of laches [Dobie,1926] .

19. Ashwanderv. Tennessee ValleyAuth., 1936

The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of ali the constitutional questions pressed upon it for decision. They are:

1) The Court will not pass upon the constitutionality of legislation in a friendly, non adversary, proceeding, declining because to decide such questions "is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act."
2) The Court will not "anticipate a question of constitutional law in advance of the necessity of deciding it."
3) The Court will not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." Liverpool, N.Y. &P. S.S.
4) The Court will not pass upon a constitutional question, although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.
5) The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation.
6) The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.
7) "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided" [Shulman, 1936] .

20. United States v. Carolene Products Co., 1938

The Filled Milk Act of Congress of Mar. 4, 1923, defines the term Filled Milk as meaning any milk, cream, or skimmed milk, whether or not condensed or dried, etc., to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, so that the resulting product is in imitation or semblance of milk, cream, or skimmed milk, whether or not condensed, dried, etc.; it declares that Filled Milk, as so defined, "is an adulterated article of food, injurious to the public health, and its sale constitutes a fraud upon the public", and it forbids and penalizes the shipment of such Filled Milk in interstate commerce. Defendant was indicted for shipping interstate certain packages of an article described in the indictment as a compound of condensed skimmed milk and coconut oil made in the imitation or semblance of condensed milk or cream, and further

characterized by the indictment in the words of the statute, as "an adulterated article of food, injurious to the public health" [Powell,1982] .

21. Conclusion

Certainly all those who have framed written Constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the Legislature repugnant to the Constitution is void [Marshall,1803] .

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