Balance of Legal and Personal Influences on Constitutional Judgments: Reversals and Redefinition of Precedent

Katja Stroke-Adolphe

In a Tortoiseshell: *In her paper, Katja considers the reversal of legal precedent as the result of justices' personal considerations. She argues that even when Supreme Court justices attempt to separate their judgments from their personal values, personal influence on their decisions is inevitable, for which the reversal of precedent and reconsideration of previous judgments may compensate. The implications of her final product culminate in an exemplary instance of* ***conclusion****.*

Excerpt

In deciding to reject *Adkins*, the Court is following what they view to be reasonable.[1] Yet the Court also holds that "[e]ven if the wisdom of the policy be regarded as debatable…still the Legislature is entitled to its judgment," because the legislative response to a "conviction both as to the presence of the evil and as to the means adapted to check it" cannot be found "arbitrary or capricious." [2] Hence, that the Legislature might find such a law reasonable, even if the judges did not, is held as evidence for overruling *Adkins*, following the concept of reasonableness in Holmes' dissents. Yet this overruling occurs through the union of doctrine and constitutional reasoning. The economic crisis both forced a philosophical rejection of *laissez faire* and proved the fallacy of *Adkins'* and *Lochner'*s accepting of *laissez faire* as fact. *West Coast Hotel* acknowledges the economic crisis as revealing a "compelling consideration"— the impact on the community of the imbalance of power between employer and employee.[3] But the philosophical shift from *Adkins*, which viewed the minimum wage as an unfair burden on the employer, is evident when the Court states that a minimum wage is justified because "[t]he community is not bound to provide what is in effect a subsidy for unconscionable employers." [4]

In his dissent, Justice Sutherland's logic follows *Adkins*.[5] Furthermore, he contests the reasonableness standard of Holmes and the *West Coast Hotel* majority, asserting that reasonableness refers only to an individual judge's mind.[6] Sutherland states: "The check upon the judge is that imposed by his oath of office, by the Constitution, and by his own conscientious and informed convictions."[7] This conforms

[1] Ibid., 398. "What can be closer to the public interest than the health of women and their protection from unscrupulous and overreaching employers?"
[2] Ibid., 399.
[3] Ibid., 399-400.
[4] Ibid., 399-400.
[5] Ibid., 406-7. Sutherland's dissent uses the four classes of cases as outlined in *Adkins*. Ibid., *409*-10. The dissent quotes *Adkins'* passages on a minimum wage compelling the employer to pay and being unequal in dealing only with the employee's necessities, and on minimum wage not being connected to the business of the employer.
[6] Ibid., 401.
[7] Ibid., 402.

to the view of the Supreme Court as representing impersonal supreme law and justice, yet the inclusion of "conscientious and informed convictions" appears contradictory. However, Sutherland rejects the claim that the "only check upon the exercise of the judicial power, when properly invoked, to declare a constitutional right superior to an unconstitutional statute is the judge's own faculty of self-restraint" as "ill considered," for he associates self-restraint with "will", not "judgment".[8] All the checks upon judges that Sutherland mentions belong to the domain of judgment, thus the convictions he refers to must pertain to a true interpretation of the Constitution, as personal convictions belong to the domain of will. Sutherland's comment on self-restraint is a criticism of the concept that personal motivations play an inherent role in constitutional decisions. Yet convictions, especially about ambiguous texts, cannot be impersonal. A sign of an exemplary judge may be his capacity to restrain himself from inserting biases and philosophies into judgments, as with Harlan in *Plessy*.

Sutherland appears to view the majority's decision as a break with judicial integrity, stating "the meaning of the Constitution does not change with the ebb and flow of economic events."[9] He implies that the Court's decision is an "amendment under the guise of interpretation," remarking that "to miss the difference" between amendment and interpretation is "to miss all that the phrase 'supreme law of the land' stands for and to convert what was intended as inescapable and enduring mandates into mere moral reflections."[10] Moreover, in stating that the three departments of government cannot be agents of each other,[11] he insinuates that the Court, in overruling *Adkins*, is acting as the agent of the Executive and Congress rather than the Constitution, likely alluding to the growing power of the Executive under Roosevelt.[12] Yet Sutherland's criticism of the *West Coast Hotel* majority is parallel to Holmes' claims in *Lochner* and *Adkins,* for both are claiming that the majority was influenced by improper concerns—doctrine, philosophy, or views on what signifies a public good.

The *Casey* plurality opinion was written by Justices O'Connor, Kennedy, and Souter, all of whom contributed to the overruling of *Booth v. Maryland* by *Payne v. Tennessee,* an overruling influenced by the "victim's rights" movement,[13] with the only significant change since *Booth* arguably being the membership of the court.[14] Regardless of whether *Payne* can be justified by the standards in *Casey*,[15] the *Booth* line of cases centers on the ambiguous meaning of "cruel and unusual," focusing on what is necessary for the death penalty to not be "cruel". Yet some have argued that the death penalty is inherently "cruel and unusual."[16]

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[8] Ibid., 402.
[9] Ibid., 402.
[10] Ibid., 404.
[11] Ibid., 405.
[12] Ibid., 405. "The view, therefore, of the Executive and of Congress that an act is constitutional is persuasive in a high degree; but is not controlling."
[13] 501 U.S. 808, 834. Scalia states as support for overruling *Booth* that the holding "conflicts with a public sense of justice keen enough that it has found voice in a nationwide 'victims' rights' movement."
[14] Ibid. See 849-851 for Marshall's arguments that the majority did not even attempt to claim that some sort of change had "undercut" *Booth* or that the underlying principle had been discredited—that the decision was based entirely on the change in the membership of the court.
[15] 505 U.S. 833, 950.
[16] See *Glossip v. Gross,* 576 U.S. ___ (2015) for arguments that the death penalty is "cruel and unusual,"

As problematic as are the ambiguities of the Constitution, they are essential. The authors of the Constitution had their own prejudices, and the passages that deal with specifics rather than general principles, such as those dealing with slavery prior to the thirteenth and fourteenth amendments,[17] may prove most problematic to constitutional interpretation, by creating an absolute separation between concepts of morality and law. For as dangerous as the intrusion of doctrine into judgment may be, the separation may be just as harmful, and a rigid constitution would likely lead to many reprehensible judgments, for such a constitution could not adapt to the changes since its adoption. The Constitution was conceived by a certain group at a particular moment in time, but because it is interpreted in a continually shifting manner by precedent, and its meaning redefined, the Constitution becomes the product of the minds of all the justices who made judgments upon what is constitutional.

due to its lack of reliability, arbitrariness, excessive delays, and the decline in its usage making it unusual. (Breyer's dissent)

[17] The Three-Fifths Compromise, Article I, Section 2, Paragraph 3; The Fugitive Slave Clause, Article IV, Section 2, Clause 3; Article 1, Section 9, Clause 1 on the slave trade.

Author Commentary

Katja Stroke-Adolphe

The concept of my paper originated in reading the cases *Booth v. Maryland* and *Payne v. Tennessee* for the course "Crime and Punishment," taught by Professor Brooks. The course focused on the connections between literature and law, and the overruling of *Booth* in *Payne* led me to consider to what extent precedent was a concrete and powerful part of law, only broken under extreme circumstances, or, instead, a narrative tool which could be shifted or dismissed based on the personal views of members of the court. This initial question led Professor Brooks to recommend looking at the case *Planned Parenthood v. Casey,* which outlines standards for evaluating reversals of precedent. *Casey* proved the starting point for looking at various reversals of precedent.

Most important in writing this paper was the collection and careful analysis of sources. Not all my analyses ended up in the paper, and the revision process consisted of cutting the paper's length in half, leaving the most essential points for the paper's argument. My research eventually focused on two lines of cases: from *Lochner v. New York* to *West Coast Hotel v. Parrish* and from *Plessy v. Ferguson* to *Brown v. Board of Education*. Reading these lines of cases led me to analyze the influence of personal elements in major reversals of precedent, and thereby see both the value and the threat that such elements may pose. The basic premise of my paper was that new cases, in their use of precedent, or breaking of precedent, redefine constitutional meanings. By tracing the manner in which constitutional meanings were redefined in major reversals of precedent, I hoped to reveal the dichotomy between constitutional elements as supreme law or judgment, as well as gaps in constitutional clarity which enable the intrusion of human moral principles, prejudices, and biases.

The paragraphs preceding this excerpt begin with my analysis of the *Lochner* line of cases, with *Adkins,* which followed the precedent of *Lochner*, and was overruled in *West Coast Hotel*. I analyze the ways that the opinions and dissents of those cases dealt with precedent cases, personal motivations, philosophies, reasonableness standards, and concepts of supreme law. I conclude that the presence of personal elements is both inherent and essential to constitutional law jurisprudence, despite how damaging the influence of bias or prejudice has often been. In these cases, the worst decisions were driven by personal motives, biases, or philosophies, but the greatest reversals also were driven by changes in what people believed to be right, or moral, and dissents often had a personal quality, too. There have been justices of the Supreme Court who fought to separate their judgments from personal stances, and that is admirable, and a subject I address in the paper outside of this excerpt. But even with the greatest justices, personal influences are to some extent unavoidable, and this is compensated for by constant reinterpretation.

Editor Commentary

Rosamond van Wingerden

In papers that incorporate many different sources and an extensive cast of characters, summarizing your argument in a concise but comprehensive conclusion can be the hardest part. Nonetheless, that's what Katja accomplishes in this excerpt. Early on in her paper, Katja introduces her reader to multiple court cases within two legal areas to illustrate the establishment and subsequent reversal of legal precedent as the result of the personal and legal considerations of the justices who supported or dissented from each decision. Throughout the essay, she gives a detailed analysis of each example but always maintains the clarity of her paper by orienting each source and highlighting its relevance to her argument. In her conclusion, Katja skillfully draws together all her evidence to make a broader claim with implications beyond the examples of constitutional judgment she has given.

By avoiding excessive summary in her conclusion and focusing on the more general trend she has identified through her sources, Katja is able to look beyond the two cases of the influence of personal beliefs on the reversal of legal precedent that she has considered. She now presents a broader claim that connects her examples of constitutional judgment both to the framing of the Constitution and to possibilities for its future interpretation, making the overarching argument that "as dangerous as the intrusion of doctrine into judgment may be, the separation may be just as harmful, and a rigid constitution would likely lead to many reprehensible judgments, for such a constitution could not adapt to the changes since its adoption." Katja's argument for the benefits of allowing personal morals to intrude on legal judgment may seem counterintuitive, but by preparing her conclusion with ample evidence and expert analysis throughout the paper, she makes a compelling case.

Bios

Katja Stroke-Adolphe '20 is a sophomore from New York City. She is an English major pursuing a certificate in Theater, and intends to become a criminal defense lawyer with a focus on defending members of vulnerable and disadvantaged communities. Katja acts in theater on campus, writes for the Daily Princetonian, and volunteers for Contact of Mercer County Crisis and Suicide Prevention Hotline.

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