The Supreme Law of the Land

Interpretation by Argumentation

In a book called *The Blessings of Liberty*, historian Michael Les Benedict writes: "In the United States, nearly all issues can be, and ultimately are, argued in [legal and] constitutional terms. Constitutional principles reinforce… efforts to secure our economic interests [and] to give to our moral convictions the force of law." If one considers only the period since 1917, how accurate is Benedicts statement? During this period did Americans also use legal and constitutional arguments to support their political and economic positions and to advance their political and economic interests? In answering this question be sure to address all of the major constitutional controversies and legal disputes that we have covered since the midterm

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The Constitution of the United States of America was established as the Supreme Law of the Land in 1789. Its purpose was to create a stronger union between the states with a government that "could sustain diplomatic initiatives abroad and contain interstate political and commercial competition at home."[1] In addition, a Bill of Rights was written to ensure that individual and state liberties were not obstructed. In the history of the United States, actions of individuals and governments have been guided, supported, and challenged by these Constitutional principles. When the nation has found itself in any turmoil, conflict, or controversy, just as historian Michael Les Benedict wrote, these "issues [have been] argued in [legal and] constitutional terms."[2] Benedict was partially correct when he stated, "constitutional principles reinforce efforts to secure our economic interests [and] to give to our moral convictions the force of law." However, this is not always true. Current interpretations of constitutional principles often do not reinforce arguments on behalf of economic and moral interests. Political, economic, and moral interests dominate the debate, but those who argue successfully manage to reframe the debate in terms of constitutional principles and, thereby, enjoy newly interpreted constitutional justification and the force of law. This has been shown from the beginning of World War I to the present as cases have confronted the Constitution.

Just as all previous wars challenged laws at home and policies abroad, when the United States entered World War I in 1917, this pattern continued. When the United States has been involved in war, the powers of the executive branch expand. Just as Abraham Lincoln extended his sphere of influence during the Civil War, President Woodrow Wilson "certainly believed that the president as commander-in-chief had near unlimited powers during an emergency."[3] Unfortunately, constitutional principles are often reinterpreted in ways that crises deem necessary. Within the first two years of the war, the President assumed control over railways,

telephone, and telegraph lines. This right of the government to seize property and set rates under its war powers was upheld by the Supreme Court in various cases. In 1919, "thirty-seven states and the National Association of Railway and Utility Commissions filed an amicus curiae" in *Northern Pacific Railway Co. v. North Dakota*.[4] It was argued that under the Commerce Clause, the federal government did not have the right to interfere with regulation of intrastate rates. The decision of the court upheld the federal government's interference, suggesting that federal power exceeded that of state power under such urgent situations.

The first great constitutional debate during the war was when President Wilson submitted a bill to Congress asking for the right to draft men into the military. In the *Selective Draft Law Cases* of 1917, this expansive power of the executive was challenged, but Congress had passed the bill. Under a unanimous decision, the Supreme Court upheld "Congress's explicit powers in Article I [of the Constitution] to 'provide for the common Defence,' 'to raise and support Armies,' […] and 'to declare War.'"[5] Constitutional principles could have reinforced efforts to ensure that no person "be deprived of life, liberty, or property"[6] by being forced into war, but under due process of the law, the political and economic interests of the nation outweighed such interpretation. Instead, an individual's duty to country and the nation's duty to provide men for the military were awarded the force of law.

Denying individuals of life, liberty, and property were not the only constitutional depravities of the war. In order to prevent any active rebellion or insurrection during wartime, freedom of speech was also limited. Any resistance or opposition to government policy could be construed as treason, and as such, the Espionage Act of 1917, the Sedition Act of 1918, and the Immigration Act of 1918 were all passed. The cases challenging these acts were not brought until after the war, and when they entered the courts, the Freedom of Speech arguments began.

In *Schenck v. United States* (1919), when Schenck was prosecuted for violation of the Espionage Act by condemning the draft and urging opposition, Justice Oliver Wendell Holmes of the Supreme Court applied the "clear and present danger" test. He argued that when a nation was at war, "many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and no Court could regard them as protected by any constitutional right."[7] The constitutional principle of freedom of speech was not reinforced, but rather, the successful argument reinterpreted the Constitution to have limits in times of war. This interpretation continued to be applied later that year in *Frohwerk v. United States*, *Debs v. United States*, and *Abrams v. United States*.[8]

The argument for limited speech in times of conflict was winning the force of law, but its victory continued to be challenged in the Court. By the time of the *Abrams* decision, Justice Holmes began to dissent after being influenced by arguments from legal scholars such as Zechariah Chafee, who argued effectively to convince Holmes that "his 'clear and present danger' had not only historical roots, but actually was very speech protective."[9] Thus began, in Holmes' mind, another reinterpretation of the constitutional principle of speech, and the "Great Dissenter […] in the field of civil liberties" was born.[10]

The 1920's proved to be a controversial decade for civil liberties, specifically in regards to the definition of free speech. In 1925, the Court upheld the conviction of the American communist Benjamin Gitlow, in *Gitlow v. New York*, for "publishing a radical newspaper."[11] Again, in 1927, the conviction of another communist was upheld in *Whitney v. California*. Both justices Brandeis and Holmes, two often-dissenting voices, concurred in the opinion of the Court, adding, "under certain circumstances a legislature could limit speech, […] if the words posed a clear and imminent danger to society, not just to property interests."[12] Despite the continuity of

these cases in regards to the decisions in *Frohwerk*, *Debs*, and *Abrams*, there was one portion of constitutional interpretation that actually changed. In *Gitlow*, the Court made the First Amendment applicable to the states, as implied by the Fourteenth Amendment. "The Court from the 1920's on has ruled that the Fourteenth Amendment's Due Process Clause means that the states cannot infringe on fundamental rights."[13] This shift in constitutional interpretation, though embodying the moral values of that time, is susceptible to future interpretation as contemporary values continue to be redefined.

The dominance of federal laws and treaties continued to be upheld throughout the 1920's, with few exceptions. In *Missouri v. Holland* (1920), the Court decided, "almost anything that the government conceived to be in the national interest could be the subject of a treaty; and under the Supremacy Clause, treaties took precedence over any state powers."[14] Federal authority in the Interstate Commerce Commission also increased, with the ruling in *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy Railroad* (1922), giving the ICC rate controls that essentially "wiped out any real distinction between intra- and interstate rates."[15] That same year, the Stockyards Act of 1921 was upheld in *Stafford v. Wallace* (1922), giving "the secretary of agriculture broad powers to proscribe unfair, discriminatory, and deceptive practices in the meat-packing industry."[16] The succeeding arguments favored federal regulation and constitutional interpretation thus leaned toward national interest as the guiding force of law.

With the war over, statutes continued to impose federal regulation over states and individuals, but the Court did turn against unjust federal usurpation in a few cases. In the 1920 case of *Silverthorne Lumber Company v. United States*, the Supreme Court ordered evidence inadmissible after Fourth Amendment rights were violated through search and seizure without a warrant.[17] In 1921, the Lever Act was struck down in *United States v. Cohen Grocery Store*

(1921), and the Supreme Court upheld the "guarantees and limitations of the Constitution in terms of assuring a fair trial.[18] In the famous case of *Adkins v. Children's Hospital* (1923), freedom of contract was the guiding constitutional principle "striking down a federal statute establishing minimum wages for women in the District of Columbia."[19] These cases, however, did not ensure a return to limited federal government. Indeed, the newly interpreted view of individual liberties guaranteed by the Fourteenth Amendment being applied to the States allowed for "the Court [to find] approximately 140 state laws unconstitutional" during this decade.[20]

The following decade began with the economic crisis of the Great Depression. With it came a change in government, as the Democratic Party took over both houses of Congress and President Franklin D. Roosevelt took over the presidency. Believing that "the Depression posed just as great a danger to the country"[21] as World War I, Roosevelt made use of what he recognized as constitutional flexibility allowing political and economic experimentation. During the New Deal era Roosevelt and his "planners […] ignored both traditional constitutional limits as well as the division of powers between state and national government in a federal system."[22]

Attempting to alleviate economic consequences of the Depression, Congress began to pass Roosevelt's New Deal policies, despite "sloppy legislative draftsmanship."[23] In the first cases that appeared before the Court involving these policies, they were upheld by narrow margins. Beginning in May of 1935, the first major cases declaring New Deal policies unconstitutional surfaced. "Justice Roberts joined the Four Horsemen [Justices Van Devanter, McReynolds, Sutherland, and Butler] to invalidate a rail pension law" in *Retirement Board v. Alton Railroad Company* (1935).[24] Black Monday followed later that month, declaring three New Deal acts unconstitutional. The Court "unanimously struck down the [National Industrial] Recovery Act in *Schechter v. United States*; it invalidated the Frazier-Lemke mortgage act in

Louisville Joint Stock Land Bank v. Radford; and it ruled that the president could not remove members of independent regulatory commissions in *Humphrey's Executor v. United States*."[25] The Court continued its stand in 1936 when it "struck down the Agricultural Adjustment Act [in *United States v. Butler*], […] took special pains to knock out the Guffey Coal Act [in *Carter v. Carter Coal Company*], and in [*Morehead v. New York ex Rel*.] *Tipaldo* invalidated a New York state minimum wage law."[26] Roosevelt knew that New Deal efforts to secure the nation's economic interests were in conflict with the Court's constitutional convictions and interpretations. To ensure victory and favorable constitutional interpretation, he came up with his infamous "Court-packing" plan.

The President realized that with his Party in control of Congress, he could "enlarge the Supreme Court, increasing the number of justices so as to permit the appointment of men in tune with the spirit of the age."[27] When Roosevelt announced his plan, it brought about a constitutional crisis and "helped weld together a bipartisan coalition on anti-New Deal Senators."[28] A division arose within the Democratic Party, Republicans felt alienated, and key reformers opposed his plan. Despite all of this, the constitutional crisis of 1937 soon gave way to the constitutional revolution of 1937. "In the midst of controversy over President Roosevelt's Court-packing message, the Court began to execute an astonishing about-face."[29]

In March and April of 1937, political and economic interests dominated in the Court, as constitutional principles were reinterpreted to reverse substantive due process ideas and extend previous ideas of federal power. All five decisions of the cases regarding the National Labor Relations Act upheld federal authority and the Wagner Act was sustained, despite its similarity to acts previously struck down by the same Court. Though previous cases such as *Tipaldo* had struck down state minimum wage laws, cases such as *West Coast Hotel Co. v. Parrish* (1937)

declared the very same such laws to be constitutional. The Court's interpretation had changed, pointing out that "the Constitution neither spoke of freedom of contract nor recognized an absolute liberty."[30] In addition to this change in rulings, Roosevelt was also given the opportunity to follow through with his "Court-stacking" plans. Though he was not allowed to increase the size of the Court, he was able to appoint six of his own Justices within four years as existing Justices stepped down. From this point on, President Roosevelt enjoyed constitutional justification in forming New Deal policies that held the force of law.

As the United States moved further in the direction of civil rights, new legal precedents were set. As mentioned earlier, the Court's view of individual liberties contained a new interpretation allowing the Bill of Rights to be applied directly to the states. Courts had previously ruled in ways reflecting Chief Justice John Marshall's interpretation that there was "no expression indicating an intention to apply [the Bill of Rights] to the state governments."[31] After the ratification of the Fourteenth Amendment in 1868, it was not until 1925, when the Court's ruling in *Gitlow v. New York* implied that the Fourteenth Amendment made the entire Bill of Rights applicable to the states. This new application of the Fourteenth Amendment had profound influence in the following decades.

The Fourteenth Amendment applied the religious freedom clause in the First Amendment to the states beginning in the 1940's. In the landmark *Cantwell v. Connecticut* (1940) decision, Justice Owen Roberts delivered the opinion that "the Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws" as respecting an establishment of religion or prohibiting the free exercise thereof.[32] This opinion was reiterated in the 1943 *Murdock v. Pennsylvania* decision. Moral and religious interests dominated states' rights in the new constitutional interpretation and became protected by the force of law.

The Fourteenth Amendment's reconstruction of constitutional principles continued in the case of *Brown v. Board of Education of Topeka, Kansas* (1954). Constitutional interpretation of *Plessy v. Ferguson* (1896), 50 years earlier, held that states controlled "broad powers to regulate in matters of race relations including legislation that mandated segregation."[33] Though the decision in *Brown* did not entirely overrule the *Plessy* doctrine of "separate but equal," it did declare such a doctrine unconstitutional in regards to education. "The Court concluded […] 'separate educational facilities are inherently unequal' and thus were in violation of the equal protection clause of the Fourteenth Amendment."[34] Educational interests outweighed all other interests, and desegregated education won constitutional justification and the force of law.

The decision in *Brown* was followed by the Court's follow-up ruling in *Brown II* (1955), which ordered "directions to implement desegregation 'with all deliberate speed,' […] under the guidance of federal judges in local communities."[35] Since there was no actual timetable in this ruling, desegregation lasted another decade. *Brown* proved to be "a catalyst for a whole new phase of the civil rights movement."[36] The power of the media was unleashed, and the increase in television better informed the public of racial issues. Although it began as a legal argument respecting state power to legislate segregation, the decision in *Brown* soon turned to a moral argument respecting the "great evil that had to be eradicated."[37] The next two decades would be filled with cases regarding such arguments, and existing constitutional interpretation would continue to be challenged based on moral conviction.

As the civil rights movement engulfed the nation, moral arguments finally made it to Congress as the Civil Rights Act of 1964 "mark[ed] the alignment of all three branches of the federal government in strong advocacy of civil rights."[38] Various attempts were made to "prevent enforcement of the public accommodations section," but the Court consistently "upheld

congressional power under the Commerce Clause, the Equal Protection Clause, and Section 5 of the Fourteenth Amendment."[39] In *Heart of Atlanta Motel v. United States* (1964) and *Katzenbach v. McClung* (1964), the Court confirmed the power of Congress to legislate civil rights using commerce powers granted by the Constitution. In this regard, constitutional principles reinforced congressional efforts to secure moral interests using complimentary economic interests and gave moral convictions against segregation the force of law.

Moral arguments continued to dominate the Court as hostilities in Vietnam increased in the early 1960's and the United States found itself in one of the most controversial wars in its history. "Antiwar agitation reached a peak during 'Stop the Draft Week' (16-22 October 1967), which began with nationwide protests against conscription that featured the burning and turning in of many draft cards, the picketing and disruption of Selective Service System offices, urban guerrilla tactics, and violent confrontations with police."[40] The first cases resulting from the Vietnam War were no different than those of previous wars and focused primarily on the Draft.

The Selective Service Act of 1917 had allowed for "exemption from combatant duty for members of 'any well-recognized religious sect […] who's existing creed or principles forbid its members to participate in war'."[41] Abandoning the condition of membership in a specific religious organization, the Selective Draft Act of 1940 allowed for combative exemption on the basis of "conscientious objections […] sustained by the local board."[42] The Selective Service Act of 1967 followed that such conscientious objections were viable provided "that 'religious training and belief' does not include essentially political, sociological, or philosophical views, or a merely personal moral code."[43] Objectors to the Vietnam War based on these views claimed that such selective conscientious objection (SCO) was a constitutional right. In *Gillette v. United States* (1971) and *Negre v. Larse*n (1971), the Court rejected this notion, ruling that

conscientious objection did not include a person who's "position was that war is sometimes morally permissible or even necessary, but is not morally justifiable in other circumstances."[44] The Court gave precedence to the "Government's interest in procuring the manpower necessary for military purposes" over the individual's moral interest, thus giving the "power of Congress to raise and support armies"[45] the force of law.

As the Vietnam War came to its end, the civil rights movement had already expanded from racial matters to include gender issues. Before the 1970's, the Court had affirmed state laws discriminating against women, such as in *Hoyt v. Florida* (1961). In *Hoyt*, the Court upheld a Florida statute preventing women from serving on juries, explaining that it was "a necessity to spare women from this obligation in light of their place at 'the center of home and family life.'"[46] Since the Civil Rights Act of 1964 had included Title VII, which "prohibited employment discrimination on the basis of […] sex,"[47] the Court began to face gender equality cases. In *Reed v. Reed* (1971) and *Phillips v. Martin Marietta Corporation* (1971), the Court affirmed the prohibition of sex discrimination. By the beginning of 1972, women's rights advocates had achieved Congress' approval of the Equal Rights Amendment (ERA). The ERA was never ratified by the states, largely due to a conservative woman activist, Phyllis Schlafly, who "convinced men and women that the ERA was the work of lesbians and Communists and would undermine the American way."[48] The Court soon found the difficulty between liberal and conservative gender arguments as it faced one of the most controversial cases in all of American legal history: *Roe v. Wade*.

The battle between liberal and conservative arguments in *Roe v. Wade* is a classic example of the power of successful argumentation. The liberal agenda argued for the "logic that women's bodies belonged to the women themselves, [and desired that] the concept of choice

would become a core value in constitutional law."[49] Conservatives argued that abortion was morally wrong, debasing of women, and degraded the sanctity of life. As the nation was sharply divided in regards to moral conviction, the Court could only rule on an interpretive basis. Thus began the era "of 'interpretivism,' which holds that judges can only enforce ideas that are clearly stated or strongly implied in the Constitution itself, and 'noninterpretivism,' which allows courts to range in other sources, so as to articulate what contemporary society sees as its most fundamental views."[50] The decision of the Court chose to "rely upon privacy as a core constitutional right,"[51] though with a limited scope.

Justice Harry A. Blackmun, delivering the opinion of the Court, used the trimester approach, judging that "in the first three months of pregnancy, the woman had an absolute right to an abortion[,] in the second trimester, […] the state […] could regulate the conditions under which it took place[, and] in the last months of pregnancy, the state's interest in the potential life of the fetus took precedence over the woman's privacy rights, and the state could prohibit abortions completely."[52] This judgment was given the force of law and the Constitution was thus interpreted. This interpretation, however, has since been challenged, and Justice Sandra Day O'Connor "shifted the legal foundation for regulating abortion away from the trimester approach of *Roe* to the doctrine of 'undue burden.'"[53] This shows how constitutional justification can change based on contemporaneous interpretation.

In recent decades, cases regarding presidential scandals and impeachment have received the primary focus of the media. In 1973, President Richard Nixon was plagued by the investigation of the Watergate scandal. Just as the media played a significant role in the civil rights movement, Watergate filled newspapers and television with allegations against the executive. The interpretation of the Constitution had yet to determine if "other high Crimes and

Misdemeanors" meant that the President "could be impeached only for an indictable criminal offense."[54] In the end, Nixon resigned before the question could be answered. It would only be brought up again in the 1990's with President Bill Clinton's impeachment proceedings. Clinton's impeachment trial and public perception has also shown the power of argumentation. Arguments in favor of impeachment have highlighted his lying under oath, and the "evidence that he attempted to obstruct justice."[55] Arguments against impeachment emphasized it as being a "political process, not a question of criminal law, […] [with] his actions vis-à-vis Monica Lewinsky to have been private in nature."[56] Ultimately, despite the House impeachment, the latter argument was successful, and Clinton won both public support and Senate acquittal.

Under Chief Justice William Rehnquist, the Court shifted toward the constitutional interpretivism of limited federal authority and greater state sovereignty. This notion of federalism has won in cases such as *New York v. United States* (1992), *United States v. Lopez* (1995), and *United States v. Morrison* (2000). In each of these cases, the Court has shown its reinterpretation "that 'the Constitution requires a distinction between what is truly national and what is truly local,' [thus] repudiating what had been the dominant jurisprudence of the Court for more than a half-century."[57]

Since *Roe v. Wade*, political, economic, and moral interests have continued to successfully win constitutional reinterpretation. Constitutional principles have reinforced efforts to secure these interests, while the interests themselves dominate the direction of debate. Under Chief Justice John Roberts, it is likely that these interests will continue to dominate the discussion and those who argue successfully enjoy newly interpreted constitutional justification. Therefore, the force of law will continue to be awarded on the basis of contemporaneous interpretation of the Constitution, which is subject to change by argumentation.

NOTES

[1] Peter S. Onuf & Leonard J. Sadosky, "American Internationalism and the U.S. Constitution," in Major Problems in American Foreign Relations, Volume 1: To 1920, eds. Dennis Merrill & Thomas G. Paterson (Boston: Houghton Mifflin Company, 2005), 51.

[2] Michael Les Benedict, The Blessings of Liberty: A Concise History of the Constitution of the United States (New York: D.C. Health, 1997), see cover page.

[3] Melvin I. Urofsky & Paul Finkelman, A March of Liberty: A Constitutional History of the United States, Volume II: From 1877 to the Present, 2nd ed. (New York: Oxford University Press, 2002), 598.

[4] Ibid., 600.

[5] Ibid., 601-2.

[6] "Amendment V, Constitution of the United States," in A March of Liberty: A Constitutional History of the United States, Volume II: From 1877 to the Present, 2nd ed., Eds. Melvin I. Urofsky & Paul Finkelman (New York: Oxford University Press, 2002), A17.

[7] Melvin I. Urofsky & Paul Finkelman, A March of Liberty: A Constitutional History of the United States, Volume II: From 1877 to the Present, 2nd ed. (New York: Oxford University Press, 2002), 615.

[8] Ibid., 617.

[9] Ibid., 616.

[10] William E. Leuchtenburg, The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt (New York: Oxford University Press, 1995), 4.

[11] Melvin I. Urofsky & Paul Finkelman, A March of Liberty: A Constitutional History of the United States, Volume II: From 1877 to the Present, 2nd ed. (New York: Oxford University Press, 2002), 651.

[12] Ibid., 653.

[13] Ibid., 652.

[14] Ibid., 631.

[15] Ibid., 630.

[16] Ibid., 631.

[17] Ibid., 622.

[18] Ibid., 603-604.

[19] Ibid., 637.

[20] Ibid., 639.

[21] Ibid., 675.

[22] Ibid., 676.

[23] Ibid., 676.

[24] William E. Leuchtenburg, The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt (New York: Oxford University Press, 1995), 133.

[25] Melvin I. Urofsky & Paul Finkelman, A March of Liberty: A Constitutional History of the United States, Volume II: From 1877 to the Present, 2nd ed. (New York: Oxford University Press, 2002), 678.

[26] William E. Leuchtenburg, The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt (New York: Oxford University Press, 1995), 133.

[27] Ibid., 122.

[28] Ibid., 157.

[29] Ibid., 216.

[30] Ibid., 216.

[31] Ibid., 239.

[32] John T. Noonan, Jr. & Edward McGlynn Gaffney, Jr., Religious Freedom: History, Cases, and Other Materials on the Interaction of Religion and Government (New York: Foundation Press, 2001), 353.

[33] Robert J. Cottrol, Raymond T. Diamond & Leland B. Ware, Brown v. Board of Education: Caste, Culture, and the Constitution (Lawrence, Kansas: University Press of Kansas, 2003), 42.

[34] Ibid., 180.

[35] Ibid., 185.

[36] Ibid., 184.

[37] Ibid., 231.

[38] Melvin I. Urofsky & Paul Finkelman, A March of Liberty: A Constitutional History of the United States, Volume II: From 1877 to the Present, 2nd ed. (New York: Oxford University Press, 2002), 806-807.

[39] Ibid., 807.

[40] Michal R. Belknap, The Vietnam War on Trial: The My Lai Massacre and the Court-Martial of Lieutenant Calley (Lawrence, Kansas: University Press of Kansas, 2002), 22.

[41] John T. Noonan, Jr. & Edward McGlynn Gaffney, Jr., Religious Freedom: History, Cases, and Other Materials on the Interaction of Religion and Government (New York: Foundation Press, 2001), 396.

[42] Ibid., 397.

[43] Ibid., 405.

[44] Ibid., 408.

[45] Ibid., 412.

[46] Melvin I. Urofsky & Paul Finkelman, A March of Liberty: A Constitutional History of the United States, Volume II: From 1877 to the Present, 2nd ed. (New York: Oxford University Press, 2002), 907.

[47] Ibid., 907.

[48] N.E.H. Hull & Peter Charles Hoffer, Roe v. Wade: The Abortion Rights Controversy in American History (Lawrence, Kansas: University Press of Kansas, 2001), 137.

[49] Ibid., 137.

[50] Melvin I. Urofsky & Paul Finkelman, A March of Liberty: A Constitutional History of the United States, Volume II: From 1877 to the Present, 2nd ed. (New York: Oxford University Press, 2002), 914.

[51] N.E.H. Hull & Peter Charles Hoffer, Roe v. Wade: The Abortion Rights Controversy in American History (Lawrence, Kansas: University Press of Kansas, 2001), 162.

[52] Melvin I. Urofsky & Paul Finkelman, A March of Liberty: A Constitutional History of the United States, Volume II: From 1877 to the Present, 2nd ed. (New York: Oxford University Press, 2002), 913.

[53] Donald T. Critchlow, Phyllis Schlafly and Grassroots Conservatism: A Woman's Crusade (New Jersey: Princeton University Press, 2005), 282.

[54] Melvin I. Urofsky & Paul Finkelman, A March of Liberty: A Constitutional History of the United States, Volume II: From 1877 to the Present, 2nd ed. (New York: Oxford University Press, 2002), 888.

[55] Ibid., 1021.

[56] Ibid., 1022.

[57] Ibid., 978.

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