



LIBERTY TREE

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A COMPELLING INTEREST

Editorial by Dick Greb

in Constitutional Conflict

In the well-known case *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1 (1916), Supreme Court Chief Justice White discussed arguments made in that case that the 16th Amendment created a class of direct tax that wasn't subject to the requirement of apportionment, yet because it was also not an indirect tax, would not be subject to the requirement of uniformity either; that is, a tax that would be subject to neither of the Constitutional limitations on the taxing power, "thus giving power to impose a different tax in one state or states than was levied in another state or states." White begins his reasoning by pointing out that the Constitution cannot be construed in such a way as "would cause one provision of the Constitution to destroy another." In other words, every provision of it must be construed in harmony with the rest, giving each its proper and full significance. This month, I want to look at that principle with respect to the Bill of Rights.

It's interesting that the Supreme Court seems to treat the Bill of Rights as an inferior part of the Constitution, rather than an equal part. This is evident from the principles it uses when it makes judgments on rights-based challenges to the constitutionality of legislation. A brief statement of one such principle was given by Chief Justice Warren in *Sweezy v. State of New Hampshire*, 354 U.S. 234, 265 (1957): "For a citizen to be made to forego

even a part of so basic a liberty as his political autonomy, the subordinating **interest of the State must be compelling.**"

Justice Harlan, in *National Association for the Advancement of Colored People v. State of Alabama*, 357 U.S. 449, 461 (1958), explains this "compelling interest" of the state in the context of the Constitutionally protected right of association:

In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that **abridgement of such rights**, even though unintended, **may inevitably follow from varied forms of governmental action**. Thus in *Doubs* [*American Communications Ass'n v. Doubs*, 339 U.S. 382], the Court stressed that the legislation there challenged, which on its face sought to regulate labor unions and to secure stability in interstate commerce, would have the practical effect 'of discouraging' the exercise of constitutionally protected political rights, 339 U.S. at page 393, and it upheld that statute only after concluding that **the**

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As local governments across the country fret about how to make *their* ends meet in the souring economy, they have no qualms about stamping on your constitutionally guaranteed rights. One of the best games in town for increasing revenue is traffic citations. It's a game played with corporate players who want a pile of cash too.

The speed and red-light camera craze (no cops needed!) has been sweeping the country for some time, and it does pull in the cash. For example, a single red light camera, run by Redflex Traffic Systems of Australia (a foreign corporation) in Riverside, California issued \$1 million worth of right-hand-turn-on-red tickets in just one month in 2009. Riverside's program, as is common with most cities, began with locations where people were pushing the envelope of yellow-light timing. Since drivers learned to avoid those intersections over time, Redflex began installing cameras which captured "rolling" right

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reasons advanced for its enactment were constitutionally sufficient to justify its possible deterrent effect upon such freedoms [emphasis added].

The more one looks at this concept of compelling interest, the more it can be seen for what it really is, a thinly disguised rationalization for violating our rights. It matters not that sometimes courts deign to uphold our rights in the face of governmental encroachment; only that oftentimes they don't. After all, if the Constitution must be construed so as to give effect to every part, then why does the Bill of Rights get the short end of the stick so often?

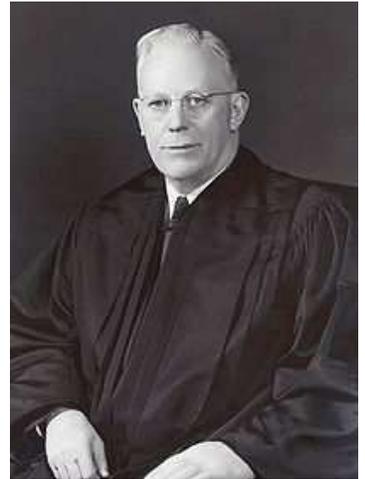
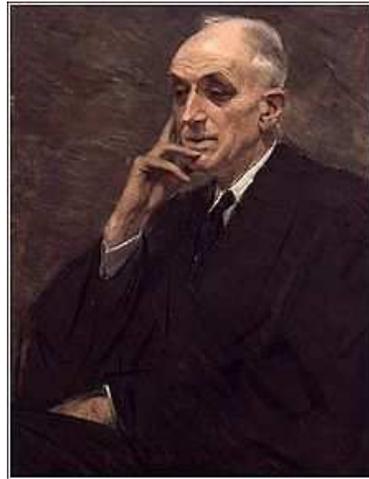
The problem really centers around the whole concept of limited enumerated powers (*e.g.*, the Bill of Rights and Art. I, Sec. 8) and the otherwise unlimited residual powers (see the Tenth Amendment). These two groups are complementary, and thus comprise all powers (or rights) that humans can exercise. The Constitution created a federal government which was limited to the exercise of only those powers in the first group — that is, the ones specifically enumerated in that document. All the rest then — the residual powers — were, by operation of the Tenth Amendment¹ just as specifically withheld from it.

But while the government embraces the complementary nature of such powers, they draw the line of demarcation somewhat differently. They see the split as being between the rights specifically mentioned in the Bill of Rights and every conceivable power that doesn't completely annihilate one of those rights. By this standard, which of course destroys the whole purpose of the Constitution, every encroachment on the first group makes the second group larger, and it is that second group that government claims it is entitled to exercise. Thus, since its power is inversely proportional to our rights, it's easy to see that government has a compelling interest in the constant contraction of them. And unfortunately for us, since the government is the judge of its own causes, such contraction is likely to continue relatively unabated, until it reaches its natural conclusion in totalitarianism.

However, if the courts were to follow Justice White's prescription for proper construction, the provisions

of the Bill of Rights must at least be set on an equal footing with the enumerated powers in the rest of the Constitution. When apparent conflicts occur, the powers cannot be given greater weight merely because government can come up with some compelling reason why infringement is deemed necessary. Quite the contrary; the rights should be deemed sacrosanct in any such contest.

Thus, every enumerated power granted by the Constitution must be exercised in such a manner that it doesn't infringe on any of its enumerated rights. The Bill of Rights was proposed during the ratification process of the States, and such ratification was conditioned on its subsequent consideration. Therefore, all of the States were aware of the powers granted thereby, and in asserting the existence of rights not to be infringed, must have



The Bill of Rights gets the short end of the stick: Chief Justice Edward Douglass White (left) recognized that the Constitution cannot be construed to “cause one provision of the Constitution to destroy another.” This principle is often ignored with respect to the Bill of Rights: Chief Justice Earl Warren (right) wrote that the compelling interest of the government can at times override basic liberties, and Justice John Marshall Harlan (center) supported the idea that there could exist “constitutional” reasons for government action which could justify abridging the Bill of Rights.

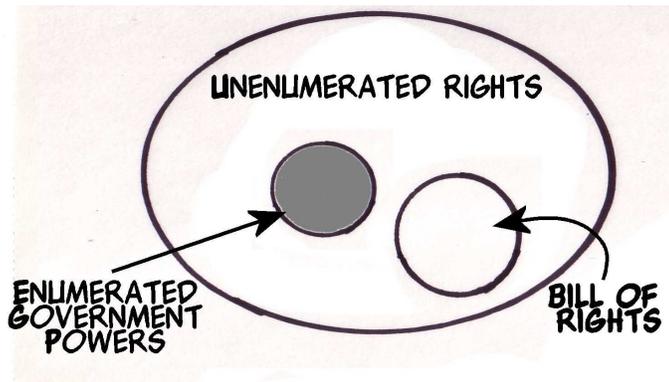
done so with the expectation that the protection of those rights would be paramount over the exercise of said powers. If it were meant to be otherwise, surely they would have enumerated the exceptions, and prescribed the conditions under which the rights would be subordinated. For example, “the right of the people to keep and bear Arms, shall not be infringed, **except when regulation of interstate commerce is inconvenienced thereby.**” Or, “Congress shall make no law abridging the right of the people peaceably to assemble, **except when ‘free speech zones’ are provided elsewhere.**” But the fact that they did not do so should be seen as the denial of any such subordination.

In fact, it can be seen that when it was deemed necessary to subordinate the protection of certain rights to some power, those exceptions were clearly enumerated. The Third Amendment says: “No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, **nor in time of war, but in a manner to**

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1. “The powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively, or to the people.”

HOW THE PEOPLE SEE IT



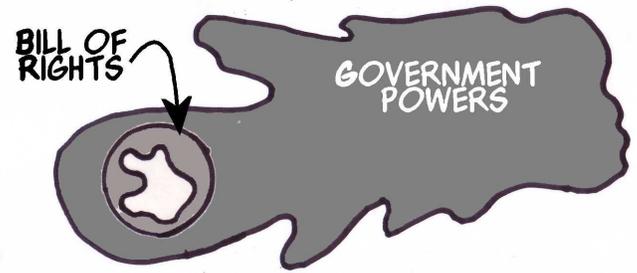
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be prescribed by law.” Thus, the specific circumstance deemed appropriate for a relaxation of protection of this right is given, not left to chance or Congressional prerogative. Likewise, the Fifth Amendment says: “No person shall be held to answer for a capital, or otherwise infamous crime, **unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger.**” This example shows multiple exclusions and the conditions relative to each. The general right not to be held answerable to a capital crime is subordinated to Grand Jury indictments or presentments in all cases, except those that arise in the military, but only if in service in time of war.² Clearly then, whenever exceptions to the protection of rights was to be authorized, those exceptions were spelled out, and conversely, whenever none were given, there was meant to be no exceptions.

That brings us to the Ninth Amendment, which says: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” So, unlike the enumerated powers referenced in the Tenth Amendment, the enumerated rights are not exhaustive. Yet, simply because those rights are not listed, does it follow that they are necessarily subordinated to government power? Certainly, an argument can be made that enumerated powers must in some way trump one or another of the unenumerated rights, especially if you take the broadest view of rights — *i.e.*, that we each have the right to do all that doesn’t infringe on the equal rights of anyone else.

An example of this is the power to tax. In light of the broad view of rights, virtually every tax infringes on some right. For example, property taxes obviously infringe on the right to own real property; duties infringe on the right to buy foreign-made goods; even excise taxes infringe on your right to sell (or buy) the goods on which the taxes are imposed. The bottom line is that forcing you to pay taxes of any kind infringes on your right to keep or use that portion of your property as you

HOW GOVERNMENT SEES IT



At left is the Constitutional model of government. Human rights encompass the entire spectrum of powers which can be exercised without violating others’ rights; thus, the enumerated powers of government form a subset of that spectrum, just as enumerated rights do. The Constitution is to guarantee that government’s powers do not intersect the Bill of Rights.

At right is the way government agents view their power. To them, the entire spectrum of powers belongs to them, and the Bill of Rights is merely a carved-out exception to their powers. Amoeba-like, they seek to engulf and erode those rights until nothing is left.

see fit. This being so, the power to tax cannot legitimately be exercised without infringing on unenumerated rights. But, even if some unenumerated right or another must be infringed for any tax, does it follow that the **enumerated** rights can likewise be infringed? Of course not!

The beauty of our Constitution of limited powers is that the mischief that might be done is significantly reduced by the nature of the powers granted. Because they relate for the most part to the relations between the States, and between our federal government and foreign countries, the opportunity for exercising its powers in a manner detrimental to the individual should be almost nonexistent. The enumerated powers are few in number because only those which can be exercised in a manner that benefits each of us equally are amenable to being done by a government acting as a collective agent.³ And that’s why it’s so important that government doesn’t exceed those limited powers, because once it ventures into any other areas, the potential for abuse becomes manifest.

The corrupting influence of power, especially arbitrary power over others, being a constant enticement, must be guarded against at all times. As always, education is the key to effective action, and Liberty Works Radio Network is working to provide that education to the masses. Help us spread LWRN across the country by supporting it any way you can. As more people come to understand our Constitution and the protection it offers (if observed) from would-be tyrants, we hope they too will become jealous guardians of the liberty it provides, and will join with us to spread that message even further.



2. The limitation to “time of War” must be construed to mean Congressionally declared war, and so the absence of such a declaration would seem to prohibit court martials for capital crimes without Grand Jury intervention.

3. See “Government? Agents!” in *Reasonable Action* #248 for more on this issue.

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turns on red, and *voilà!* They were back in business.¹

Anyone who gets such a ticket should, for their own sake and the sake of all Americans, stand up to this blatant violation of their rights as guaranteed by the Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." A red-light camera is not a witness; a photo generated by such a camera cannot be cross-examined. Moreover, most cameras take photos only of the vehicle and the license plate, with the ticket being sent to the registered owner. Since the person actually driving the vehicle "violated" the traffic law (presupposing the camera has been calibrated properly and is not malfunctioning in any way), then the camera is not even a "witness" to the most pressing mystery of the 'crime' — whodunit?

There is increasing hope that these cameras will be banned across America. Nine states have now passed laws limiting or banning their use.² In June, South Carolina Governor Mark Sanford signed a law banning the use of red-light and speed cameras in the state. The measure swept unanimously through the Senate 38 to 0 on June 2, through the House 106 to 0 on June 3, and is already in effect.³ Voters in at least ten cities have thrown out photo enforcement by referendum. Getting a petition signed in your town, and forcing the issue to referendum is something concrete that any citizen can do to stop this atrocity. Let's stand UP.

Even judges are starting to see the red light. In California, an Orange County Appellate Court panel ruled that red-light camera images are inadmissible as evidence in court, since the photos and video were just hearsay, and no live police officer actually witnessed the incident. "You should be able to cross examine (red-light camera operator) Redflex to make sure they did their job properly," said Allen Baylis, the Huntington Beach attorney who handled the case. "I have never had a witness testify that knew which Redflex employee processed the violation."⁴

One man received a citation from the Sheriff of San Bernardino, Calif., asking him to identify the driver of his car when it was caught on a red-light camera. When he appeared in traffic court, a judge and sheriff's deputies said they would charge him with obstruction of justice if he didn't identify the actual driver, he said. Following his attorney's advice, he kept refusing and the citation was eventually dismissed. "My lawyer told me that under the law, I was not required to be the state's witness," said the man.⁴

If everyone who gets such a traffic ticket were to respond as this man did, the reign of the corporations and petty bureaucrats who make money by fleecing the ignorant public would be over, and red-light and speed cameras would go the way of the dinosaurs.

Remember, if you get such a citation, that there is no witness, and there is no evidence that points to you as the driver/violator of the law. You do not have to be the state's witness as to who the driver was, and you do not have to testify against yourself (the Fifth Amendment). If you or yours are cited with such a ticket, Save-A-Patriot is happy to talk with you about it, and to inform you of the laws in your area of the country, so that you can fight it properly. Remember, stopping tyranny benefits all of us. So please, stand UP.



First Image - Before Shot of Violation



Second Image - Shot of Vehicle in Intersection



License Plate Close-up from one of the two violation images

The photos above are examples of typical shots captured by red-light cameras. The images consist only of the vehicle and the license plate. An actual driver cannot be seen, and thus no evidence exists of the person alleged to have violated the traffic law.



1. www.thetruthaboutcars.com/california-right-turn-camera-makes-1-million-a-month/
2. See thenewspaper.com/news/27/2769.asp for details.
3. www.thetruthaboutcars.com/south-carolina-bans-photo-enforcement/
4. www.vvdailypress.com/news/court-20120-red-light.html



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