

Extended Controversial Issue Discussion Lesson Plan Template

Lesson Title: Pro Se Court - West Coast Hotel Co. v. Parrish

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Appropriate for Grade Level(s): 11th/12th grades

US History Standard(s)/Applicable CCSS(s): H2.[9-12]. 10 Analyze the the policies and prgrams of the New Deal, and their effects on political, economic, and diplomatic instituions.

Discussion Question(s): See attached.

Engagement Strategy: Mock Supreme Court Trial

Student Readings (list): Summary background from PBS on the case, syllabus of the case from Oyez.org

Total Time Needed: One 50 minute class period.

Lesson Outline:

Time Frame (e.g. 15 minutes)	What is the teacher doing?	What are students doing?
0-10	Organizing students into groups, hand out materials.	Groups discuss their roles, develop strategies and work through materials.
11-15	Break students into smaller groups of three, one from each role.	Students meet with their classmates to form triad.
16-26	Teacher facilitates small group meetings.	Petitioner has 90 seconds to present case. Judge questions. Respondent has 90 seconds. Judge questions. 30 second rebuttal for both sides
26-31	Teacher asks for silence. Asks judges to make a decision.	Judges render their decisions in writing.
31-41	Teacher asks for report from justices.	Justices deliver opinions to the class.
41-50	Teacher leads students in comparison of mock case and real case.	Students take notes on real outcome.

Description of Lesson Assessment: Students will be assessed based on their completion of their various component parts. The lawyers in the activity are assessed on their ability to make a claim based on the evidence in the information provided. The judges are graded on their ability to successfully render a judgement based on their understanding of the legal precedents associated wiht this case and their ability to clearly explain their reasoning.

How will students reflect on the process and their learning? Whole group discussion on the process after the student justices render tehir opinion and a review question the following day as an sponge type question.

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BACKGROUND ESSAY

The extent to which President Franklin D. Roosevelt's actions in the midst of economic calamity fall under the auspices of Article II of the US Constitution is debatable. However, the fast moving and aggressive nature in which the 32nd President sought to combat the Great Depression were seen, by many, as necessary measures at the time. The determination of the constitutionality of New Deal legislation has traditionally fallen into two categories of study usually centered on Roosevelt's efforts to "pack" the Court. The first category referred to as an "externalist" approach in which the "externalists argue for the importance of politics"¹ making the Court packing efforts fail in the midst of political upheaval. Second, the "internalists, highlight the primacy of law over politics, pointing to doctrinal changes"² that call into the question whether or not 1937 was indeed a "constitutional revolution" as it is often referred to. Recent scholarship draws no distinction between either view, and many including G. Edward White, have actually tried to problematize the era with new analysis.

White's main premise³ points out that historical narrative of FDR packing the court has remained "durable" more because of the common origins of most historians and their similar theses related to that era as opposed to a the accuracy of the historical record. The romantic notions associated with the presidency of FDR have continued to creep into our history text books and White seeks to dash those notions and point to a more accurate if incomplete narrative of the era.

It is important to point out here that the New Deal Era and Roosevelt's' aggressive policies challenged the Court in new ways. Much of the early courts decisions in this time period were in fact decisions that outlawed or stopped many New Deal initiatives.⁴ These early cases would seem to call into questions that 1937 was some sort of "revolution" as it is often referred to. In fact, the Court seemed to be a bulwark of conservative ideologies as even liberal judges sought to reign in accumulating executive forces at 1600 Pennsylvania Ave. But the Court seemed to turn itself on its ear

¹ Kalman, Laura. "The Constitution, the SUPreme COurt, and the New Deal." *American Historical Review*. Oct.. (2005): 1052-1080. p.1054

² Ibid. p.1055

³ White, G. Edward. *The Constitution and the New Deal*. Cambridge: Harvard University Press, 2000.

⁴ See *Blaisdell & Nebbia* in 1934 and *Schechter & Butler* in 1935-1936 as examples.

when it handed down its decision in *West Coast Hotel v. Parish*. This one split decision seemed to lay the “Lochnerian Constitution to rest” and ended up “constitutionalizing”⁵ the New Deal. This apparent course correction helped the court preserve its number as the decision in *West Coast* seemed to signal to the country and more importantly to the Congress that the Court had finally joined the ship of state as it moved in a direction toward the New Deal. As a result, the efforts to pack the court withered and died. In essence the Court preserved itself by surrendering to Roosevelt.⁶

As White points out however, the decision of the Court in *West Coast* has often been seen as a sort of chastisement of the Court as opposed to a move of mere survival. And as a result, again according to White, this is why the early 20th Century is often viewed as the origin of a seminal shift in constitutional jurisprudence. He calls this wide held belief into question. Others like White have asked historians to understand both the context, constitutional thinking of the day, and the political arena of which Supreme Court justices are not immune.⁷

Looking at the New Deal from another lens, it is also important to not minimize the human toll that the Great Depression was taking on the country. With the calamity that Roosevelt faced, he understandably needed to take both immediate and drastic measure to deal with the crisis. The 18th century document that he had had his disposal was insufficient in many ways and the perfect instrument in others. The Framers had created a unitary executive in efforts to make the decision making process streamlined, but the growth of the bureaucracy and an entrenched Congress render this provision nearly impotent. Also, the focus on limited government and separation of powers as designed by the writers of the Constitution often curtail certain actions by the executive branch.

The New Deal and its wide spread popular appeal point out that , “neither limited government nor stability can be regarded as an unambiguous good.”⁸ These traditional and structural limits on government inherent in the Constitution itself render government action ineffective and often impossible as a result. This is especially true for the Court and the government itself in a “post-Lochner era understanding of the relationship between the citizen and the

⁵ Kalman, Laura. "The Constitution, the Supreme Court, and the New Deal." *American Historical Review*. Oct.. (2005): 1052-1080. p.1052

⁶ *Ibid.* p. 1054

⁷ *Ibid.* p. 1079

⁸ Sunstein, Cas R.. "Constitutionalism After the New Deal." *Harvard Law Review*. (1987): 421-510. p.451

state.”⁹ One only need to look at the current economic climate and see the aggressive role that the Obama administration as taken in efforts to avoid further calamity. The question then changes from a constitutional question, as the Court as already rendered that decision, but rather a question of political expediency and survival.

⁹ Ibid. p. 451

WEST COAST HOTEL CO. v. PARRISH

Did the minimum wage law violate the liberty of contract as construed under the Fifth Amendment as applied by the Fourteenth Amendment?

JUDGES HANDOUT

BRIEF HISTORY OF US SUPREME COURT DECISIONS REGARDING LABOR REGULATION

CONGRATULATIONS! You are now a Supreme Court Justice... With your fellow justices, review the timeline below and underline the most pertinent part of each decision. Next, answer the attached questions. Remember your goal is to become an expert (as much as possible) on the information here to make a decision based on oral arguments made by the to attorneys.

1905	<u>US Supreme Court Hands Down Lochner v New York Decision</u> – in a 5-4 decision the Court struck down New York’s Bakeshop Act which restricted the number of hours [10 per day or 60 per week] bakers could work on the basis that it violated the due process rights of employers and employees to freedom of contract (to bargain over the number of hours worked).
1908	<u>US Supreme Court Hands Down Muller v. Oregon Decision</u> – in a 9-0 decision the Court upheld a state statute limiting the number of hours [10] women could work under the theory that states had a greater interest in regulating employment of women because of their central role as child bearers meant that women’s health was essential to the well-being of future generations.
1913	<u>State of Washington Passes Legislation</u> It is “unlawful to employ women or minors...under conditions of labor detrimental to their health or morals, and...to employ women workers in any industry...at wages which are not adequate for their maintenance.”
1923	<u>US Supreme Court Hands Down Adkins v. Children’s Hospital Decision</u> – in a 5-3 decision the Court declared that a minimum wage act for women was unconstitutional because it violated the liberty of contract (for wages in return for work) that is guaranteed by the Constitution.
1933	Franklin Delano Roosevelt becomes President in the midst of the Great Depression. New Deal begins.

1933	Congress passes the National Industrial Recovery Act under which the National Recovery Administration (NRA) is established. The NRA establishes codes that regulate weekly employment hours, wages, and minimum wages of employees.
1933	Congress passes the Agricultural Adjustment Act under which the government pays farmers for not producing. Funds come from a tax on food processors.
1935	US Supreme Court Hands Down Schechter Poultry Corp. v United States Decision - in a 9-0 decision the justices ruled that Congress unconstitutionally granted legislative powers to the executive branch when it authorized the National Recovery Administration to establish codes regulate weekly employment hours, wages, and minimum ages of employees.
1936	US Supreme Court Hands Down Butler v United States Decision - in a 6-3 decision the Court strikes down the Agricultural Adjustment Act concluding that the government had no right to regulate agriculture, either by limiting production or taxing food processors.
1936	US Supreme Court Hands Down Morehead v New York ex rel. Tipaldo Decision – in a 5-4 decision the Court struck down New York’s minimum wage for women and children on the grounds that the right to contract in return for work “is part of the liberty protected by the due process clause [of the 14 th Amendment].”
1936	November – President Roosevelt wins the biggest margin of victory in the history of the electoral college.
1936	December – Supreme Court hears arguments in West Coast Hotel. Co. v Parrish
1937	President Roosevelt introduces a plan to “vitalize” the judicial branch. He proposes to add one justice to the Supreme Court (up to 6) for each justice age 70 who has served at least 10 years and has not retired.

1. How would you describe the Supreme Court’s constitutional thinking in terms of cases involving government regulation of business? Support your answer with evidence. (HINT: Can you group the cases?)

2. **What are some trends (change or continuity) over time suggested by the timeline?**
 - a. **patterns of continuity**

 - b. **patterns of change**

3. **Which branch or branches of government appear to be pushing for change?**

4. **Which branch or branches of government appear to be constraining change?**

5. **What do you believe the role of precedents (previous Court decisions) is in shaping future decisions?**

BACKGROUND: West Coast Hotel Co. v. Parrish

December 16-17, 1936

In 1932, Washington State passed a law entitled "Minimum Wages for Women." It called for minimum wages for women and children as a means to combat "pernicious effects on their health and morals" and provided for a special commission, with input from industry and the public, to determine appropriate minimum wage levels. Elsie Parrish, a chambermaid at the West Coast Hotel, later sued the hotel in a state court claiming that it had not paid her the law's minimum wages. Parrish sought the balance of her income between what she was actually paid and the minimum wage (set at \$14.50 per week of 48 hours). West Coast Hotel defended by arguing that the law was unconstitutional. The state court agreed and ruled for the hotel. Parrish appealed to the Washington Supreme Court, which reversed the lower

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court's ruling and directed that damages be paid to Parrish. West Coast Hotel appealed to the U.S. Supreme Court, which reviewed the case in 1936 and issued its opinion in 1937.

In the summer of 1933, Elsie Lee, a woman of about forty who would soon marry and be Elsie Parrish, had taken a job as a chambermaid at the Cascadian Hotel in Wenatchee, Washington. Parrish worked irregularly over the next year and a half cleaning toilets and sweeping rugs for an hourly wage of twenty-two cents, later raised to a quarter. When she was discharged in May 1935, she asked for back pay of \$216.19, the difference between what she had received and what she would have gotten had she been paid each week the \$14.50 minimum mandated for her occupation under the laws of the state of Washington. The Cascadian, which was owned by the West Coast Hotel Company, offered to settle for \$17, but she would not hear of it. Instead, she and her husband Ernest sued for what she insisted was due her. Parrish brought a suit to recover the difference between the wages paid to her and the minimum wage fixed by state law.

In 1905, the Supreme Court recognized "liberty of contract," meaning that individuals were free to negotiate the conditions under which they worked without government interference.

The question in Parrish is: *Did Washington's minimum wage laws violate the liberty of contract as it had been read into the Fifth Amendment and applied by the Fourteenth Amendment in 1905?*

SUPREME COURT SYLLABUS: West Coast Hotel v. Parrish

****NOTE: Supreme Court syllabi do not necessarily reflect the opinion of the Court. Rather they are compiled by clerks to aid in referencing and research.**

West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937)

Argued December 16, 17, 1936

Decided March 29, 1937

1. Deprivation of liberty to contract is forbidden by the Constitution if without due process of law, but restraint or regulation of this liberty, if reasonable in relation to its subject and if adopted for the protection of the community against evils menacing the health, safety, morals and welfare of the people, is due process. P. [300 U. S. 391](#).
2. In dealing with the relation of employer and employed, the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression. P. [300 U. S. 393](#).
3. The State has a special interest in protecting women against employment contracts which through poor working conditions, long hours or scant wages may leave them inadequately supported and undermine their health; because:
 - (1) The health of women is peculiarly related to the vigor of the race;

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- (2) Women are especially liable to be overreached and exploited by unscrupulous employers; and
- (3) This exploitation and denial of a living wage is not only detrimental to the health and wellbeing of the women affected, but casts a direct burden for their support upon the community. Pp. [300 U. S. 394](#), [300 U. S. 398](#), et seq.
4. Judicial notice is taken of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved. P. [300 U. S. 399](#).
5. A state law for the setting of minimum wages for women is not an arbitrary discrimination because it does not extend to men. P. [300 U. S. 400](#).
6. ...

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This was an appeal from a judgment for money directed by the Supreme Court of Washington, reversing the trial court, in an action by a chambermaid against a hotel company to recover the difference between the amount of wages paid or tendered to her as per contract and a larger amount computed on the minimum wage fixed by a state board or commission.

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Sources

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

OYEZ: U.S. Supreme Court Multimedia at <http://www.oyez.org/oyez/resource/case/439/> (West Coast Hotel v Parrish) and <http://www.oyez.org/oyez/resource/case/211/> (Lochner v New York).

Social Studies Coalition of Delaware, Signature Lesson: Civics 2

<http://supreme.justia.com/cases/federal/us/300/379/>

DECISIONS PAGE:

As a justice, you have the option to render a decision based on one of the following ideologies (belief systems) which are accurate to the justices of the Court at the time of this decision. Read each ideology and as a group list one argument that a lawyer would make to appeal to that ideology. After each side argues their case and you make your decision, put an "X" in the ONE DECISION box you align your decision with. Provide an explanation of your decision below citing specific evidence from your reading AND the lawyers' arguments.

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<p>You are one of the conservative justices who tends to support long held ideas of laissez-faire (minimize government regulation of the economy and business); liberty of contract (government should not interfere with the right of an employer and employee to negotiate working agreements); and stare decisis (reluctance to change earlier decisions of the Court).</p>	<p>You are one of the “swing voters” on the Court who votes with the conservatives on some issues and with the liberals on other issues. Mostly, however, you vote with the conservatives who believe in laissez-faire, liberty of contract, and stare decisis. Your mind is not closed to some government regulation, however.</p>	<p>You have been positioned as a liberal on the Court. Liberals tend to allow for greater government regulation over the economy, believe that our liberty was never intended to be completely unrestricted, and are more likely to embrace change.</p>	<p>You are one of the “swing voters” on the Court who votes with the conservatives on some issues and with the liberals on other issues. Mostly, however, you vote with the liberals who believe that the Constitution does allow for some government regulation of the economy.</p>
<p>DECISION:</p>	<p>DECISION:</p>	<p>DECISION:</p>	<p>DECISION:</p>
<p>ARGUMENT:</p>	<p>ARGUMENT:</p>	<p>ARGUMENT:</p>	<p>ARGUMENT:</p>

DECISION EXPLANATION:

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LAWYERS HANDOUT

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5th AMENDMENT TO THE UNITED STATES CONSTITUTION:

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; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

1. What does the “liberty of contract” mean and can it be found in the 5th Amendment? (Cite specific lines of the 5th Amendment if present OR explain why it is not present.

14th AMENDMENT (SECTIONS 1 & 5) TO THE UNITED STATES CONSTITUTION:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

1. Summarize the language of sections 1 and 5 of the Fourteenth Amendment.

2. What does the 14th Amendment do to the Bill of Rights as it relates to the States?

ARGUMENT PAGE FOR LAWYER #1::

You are the lawyer for the West Coast Hotel. Based on the timeline of Supreme Court decisions, the backgrounds of the case, discussion with your fellow lawyers and parts of the Constitution make one claim below for your client. BE DETAILED... remember you presenting in front of the highest court in the land! Next, provide TWO SPECIFIC pieces of evidence that can be used to support your case. List their origin. Merely listing and Amendment, Court case, etc. is NOT evidence! ANSWER THE CONSTITUTIONAL QUESTION!

CLAIM:

PIECES OF EVIDENCE:

1.

2.

ARGUMENT PAGE FOR LAWYER #2:

You are the lawyer for Ms. Parrish. Based on the timeline of Supreme Court decisions, the backgrounds of the case, discussion with your fellow lawyers and parts of the Constitution make one claim below for your client. BE DETAILED... remember you presenting in front of the highest court in the land! Next, provide TWO SPECIFIC pieces of evidence that can be used to support your case. List their origin. Merely listing and Amendment, Court case, etc. is NOT evidence! ANSWER THE CONSTITUTIONAL QUESTION!

CLAIM:

PIECES OF EVIDENCE:

1.

2.