Immigrants and the Incongruous Constitutional Philosophies of the U.S. Supreme Court

The Supreme Court of the United States ('the court', hereinafter)—its nine justices privileged with lifetime appointments—is the guardian and final interpreter of the Constitution of the United States ('the constitution', hereinafter)—an admirable document which is as resilient as it is old, and which has influenced the contents of innumerable modern constitutions and human rights instruments. Yet, through the period of recent memory, a relentless and immensely consequential debate among the justices of the court regarding their proper function has animated the opinions of the court in litigations where it was asked to assess the validity of legislative or executive actions against the touchstone of the constitution. While one class of justices hold that the court must adopt restraint while gauging the constitutional adequacy of legislations and executive policies, the other class of justices speak in favour of an interventionist approach which does not easily defer to the political branches of government. While the former class of justices appear to perceive that a democratic legislature is the true guardian of individual liberty, the latter class of justices appear to perceive that an independent judiciary must be the superior guardian since democratic processes have the potential to diminish individual liberty, especially the liberties of minorities. While the former class of justices proclaim that the constitution must be understood in terms of the original meaning and intent of its provisions, the latter class of justices proclaim that the constitution is an evolving, organic document whose provisions can acquire new meanings with the passage of time and that the declaration of these new meanings is the province of the judiciary. Observers of the court notice that depending on the composition of the court at particular points of time, either of these philosophies direct the majority opinions of the court (which opinions become law and precedent) while the other finds expression as powerful dissenting opinions (which opinions, though not law, have the value of precedent insofar as it can form the basis of a future reconsideration of the concerned majority opinion). What is common between the justices of these two classes, however, is their stated fidelity to the founding principles of the constitution; their historic obligation to honour the strictures of the common-law judicial process; their reliance on the democratic ideal to justify their respective, divergent perceptions of the judicial function; the reputation which some of them enjoy as great masters of the judicial craft (names such as Felix Frankfurter and Antonin Scalia on the one side; Robert H. Jackson and Ruth Bader Ginsburg on the other); and the conclusive impact which their decisions have on hugely contentious subjects of American public life such as racial equality, abortion, homosexual unions, the death penalty, etc. (this impact being the reason why the discourses and processes of appointments to the court have become intensely political and, often, disturbingly partisan). The incongruousness between the constitutional philosophies of the court also potently impacts the question of immigration into the United States and the rights which the constitution affords to immigrants—another controversial subject in that country's politics. The manner in which the disagreement, within the court, regarding the proper function of the court has affected the constitutional rights of immigrants in the United States will be the subject of this paper. It will attempt to perceive the intellectual process through which a judge decides a case—'the judicial process'—as a practice, proceeding to examine the ethical strength of the two philosophies.

The paper may also point to two recent, conflicting decisions of the Indian judiciary—the decision of the Supreme Court of India, in April 2021, to not intervene in the proposed deportation of Rohingya refugees who fled Myanmar due to ethnic persecution; the decision of the High Court of Manipur, in May 2021, allowing certain Myanmar citizens who fled to India fearing political persecution after the military coup in that country to travel to New Delhi to seek protection from the UNHCR.

Case laws

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