

## ***Keeping Faith: Chapter 4 – Promoting the General Welfare***

### Two Dimensions to Promotion of the General Welfare

- The duty of government to provide for the basic needs of the citizenry.
- The scope of government authority to respond to the nation's needs.
- In general, our Constitution has not been interpreted to encompass positive rights to social or economic provision, although there are good arguments that it is properly read to secure the material conditions necessary for full citizenship and equal opportunity.

### Judicial Doctrine Restricting Government Authority to Regulate the Economy

- Until 1937, the Supreme Court interpreted the principle of federalism to limit Congress's power to regulate the economy, reserving much of that sphere for state governments. The Court took a narrow view of federal authority under the Commerce Clause and the Taxing and Spending Clause.
- The Supreme Court's interpretation of Fourteenth Amendment "liberty" in *Lochner v. New York* (1905) to encompass "freedom of contract" disabled state governments from enacting various labor laws, price regulations, maximum hours, minimum wage laws, and other economic regulations.

### Industrialization, Economic Crisis and Judicial Roadblocks to Governmental Response

- As the nation became more industrialized and as the national economy became more integrated, the impact of the Court's doctrines on government's ability to respond to economic conditions became more pronounced. One of those conditions was the increasing concentration of corporate power through trusts and monopolies.
- The Supreme Court articulated a restrictive view of federal and state authority that blocked measures to reduce some of the inequities, hardships, and economically harmful conditions that accompanied the industrialization and urbanization of the economy. These doctrinal roadblocks deepened the genuine crisis facing the nation after the economy fell into the grip of the Great Depression.

### The Court and the New Deal

- In the first hundred days of his administration, President Roosevelt proposed and Congress enacted ambitious programs to stabilize the economy. In a series of decisions striking down these enactments as beyond the power of Congress, the Supreme Court thwarted the focused response of the President and Congress to meet the most pressing economic crisis the country had ever faced.
- In February 1937, President Roosevelt proposed the Judiciary Reorganization Act of 1937, which would have enabled the President to appoint six new Justices to the Supreme Court. Before the Act's validity could be tested legally or politically, the Court handed down a remarkable series of decisions dismantling the jurisprudence that had stymied federal and state legislative action. The court-packing plan was never enacted, as congressional support for the bill dwindled.

### Lessons for Constitutional Interpretation

- The Court's changed understanding of the scope of federal and state power to oversee the economy has endured with the support of a broad national consensus. The legitimacy of such government action rests comfortably on a proper reading of the Constitution as a declaration of general principles "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*.
- In recent years, the Court has signaled new interest in policing the boundaries of Congress's commerce power.
- The lesson of the New Deal is similar to the lesson of *Brown*: constitutional interpretation that is untethered to social context and unresponsive to the lived experience of the American people cannot keep faith with a charter of government designed to endure and meet the challenges facing each generation, and will not long command legitimacy.