

that its success could have set a dangerous precedent allowing future presidents or Congresses to pack the Court in the wake of unpopular decisions, and might thus have undermined the independence of the Court and the ability of American constitutional law to restrain the will of the majority.

### Bibliography and Further Readings

- Ackerman, Bruce. *We The People: Transformations*. Cambridge, Massachusetts: Harvard University Press, 1998.
- Brinkley, Alan. *The End of Reform: New Deal Liberalism in Recession and War*. New York, New York: Random House, 1995.
- Caldeira, Gregory A. "Public Opinion and the U.S. Supreme Court: FDR's Court-Packing Plan" *American Political Science Review* 81 (Dec. 1987): 1139-53.
- Kennedy, David M. *Freedom From Fear: The American People in Depression and War, 1929-1945*. New York, New York: Oxford University Press, 1999.
- Leuchtenburg, William. *The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt*. New York, New York: Oxford University Press, 1995.
- McKenna, Marian C. *Franklin Roosevelt and the Great Constitutional War: The Court-Packing Crisis of 1937*. New York, New York: Fordham University Press, 2002.
- Shaw, Stephen K., William D. Pederson, and Frank J. Williams, eds. *Franklin D. Roosevelt and the Transformation of the Supreme Court*. Armonk, New York: M.E. Sharpe, 2004.

Matthew S.R. Bewig

## HUGHES, CHARLES EVANS

1862–1948

Chief Justice of the United States

The political career of Charles Evans Hughes, spanning the Progressive Era through the New Deal, exemplifies the continuities and contrasts between Progressive-era reform and New Deal liberalism. Although this volume focuses on the period 1921 to 1945, Hughes's career in that period cannot be understood without an examination of his earlier

activities, when he was a Progressive reformer, governor, Supreme Court justice, and presidential candidate. As secretary of state from 1921 to 1925, he advocated positions that were more internationalist than the presidents he served. As chief justice from 1930 to 1941, he was unable to reconcile himself completely to the constitutional changes necessitated by the crisis of the Great Depression and advocated by President Franklin Roosevelt and other liberals. The erstwhile Progressive had become a centrist.

### From Progressive Reformer to Associate Justice of the Supreme Court

Charles Evans Hughes's political career began suddenly and unexpectedly in 1905, when his masterful investigations of New York City's public utility monopoly and of New York's life insurance industry transformed the successful New York City attorney into a celebrated Progressive reformer. Both investigations, undertaken as counsel for special state legislative committees, revealed price-gouging, political corruption, financial manipulation, and other illegal and predatory practices common in that era of nearly unregulated laissez faire capitalism. As a result, the state legislature enacted a host of regulatory reforms that Hughes proposed.

Although Hughes had once responded to a suggestion that he run for a judgeship by stating that "I don't want a judgeship or any other office" (Pusey, I, 109), Republican President Theodore Roosevelt, long critical of the conservative culture of corruption in Albany, intervened in state party politics to ensure Hughes's nomination for governor in 1906. As governor, he successfully pushed for new utility regulatory commissions, stricter banking regulations, a path-breaking worker's compensation act, and other labor reforms. A failed effort to achieve ballot reform and direct primaries, coupled with his aloofness from intra-party politics, spelled the end of his political fortunes in New York. In 1910, near the end of his second two-year gubernatorial term, Hughes gratefully accepted Republican President William Howard Taft's nomination to the U.S. Supreme Court.

As an associate justice, Hughes compiled a progressive record. In *Frank v. Mangum*, 237 U.S. 309

(1915), he joined Justice Oliver Wendell Holmes Jr. in dissenting from the Court's dismissal of defendant Leo Frank's argument that his Atlanta murder trial was fundamentally unfair because of the presence of a large and vocal anti-Semitic mob demanding his conviction. On labor, Hughes dissented from the Court's notorious case of *Coppage v. Kansas*, 236 U.S. 1 (1915), which overturned a Kansas statute prohibiting employers from compelling workers to promise not to join unions. Hughes also wrote two important opinions for the Court embracing the power of Congress, under the commerce clause, to regulate intrastate railroad traffic when it was commingled with interstate traffic: *Minnesota Rate Cases*, 230 U.S. 352 (1913) and *Shreveport Rate Cases*, 234 U.S. 342 (1914). No friend to racial discrimination, Hughes wrote two majority opinions invalidating racist state laws: one enforcing debt peonage, which was tantamount to the involuntary servitude outlawed by the Thirteenth Amendment, *Bailey v. Alabama*, 219 U.S. 219 (1911), and the other allowing intrastate carriers to provide sleeping cars and other amenities only to white passengers, *McCabe v. Atchison, Topeka & Santa Fe Railroad*, 235 U.S. 151 (1914).

### **Presidential Candidate and Secretary of State**

In 1916, heeding the call of his party, Hughes resigned from the Supreme Court to accept the Republican nomination for president, the only justice ever to do so. Running against President Woodrow Wilson, who also fit the Progressive mold, Hughes could find few disagreements on domestic issues. Instead, his campaign emphasized foreign policy by urging more forceful policies against Germany and Mexico, as well as stronger measures of military preparedness. He lost in a very close race, and resumed his law practice. As a private citizen, he protested the excesses of the 1919–1920 Red Scare, in which thousands of people, citizens and aliens alike, were arrested for their political beliefs. Many aliens were deported for alleged revolutionary activities, and legitimate labor activism was forcibly repressed on trumped up charges of subversion.

In 1921, Republican President Warren G. Harding nominated Hughes to be secretary of state, an office he

held from 1921 to 1925. In that role, Hughes attempted to moderate the isolationism then dominant in Republican foreign policy circles. He cultivated friendly relations with Latin American countries and unsuccessfully supported U.S. membership in the League of Nations and participation in the World Court. Hughes's greatest accomplishment as secretary of state was his leadership of the 1921–1922 Washington Disarmament Conference, which he chaired. Hughes opened the conference, which was attended by all the great powers of the day except the Soviet Union and Germany, by making concrete and far-reaching proposals. These included not only limiting current naval armaments, but also actually scrapping ships already built or under construction. Hughes's proposals formed the basis of the nine separate treaties signed at the conference, all of which the Senate ratified. Hughes resigned as Secretary of State in 1925, citing his desire to "recoup his fortune" after nearly 20 years of uninterrupted public service (Hendel, 77).

### **Chief Justice of the United States**

In 1930, Republican President Herbert Hoover nominated Hughes to be the eleventh chief justice of the United States, succeeding Chief Justice William Howard Taft. When Hughes took the oath of office on February 24, 1930, he became the only Supreme Court justice ever to serve non-consecutive terms on the Court. Hughes's term as chief justice, however, was different from his earlier stint, as he now presided over the Court during one of its most controversial and tumultuous periods during which major areas of constitutional jurisprudence were radically revised. The Great Depression of 1929–1941 prompted governments at all levels to respond with bold economic reform policies, some of which were rooted in the Progressive Era and some of which were novel. At the federal level, Democratic President Franklin D. Roosevelt initiated the New Deal, a constellation of reforms intended to stimulate economic growth, bring greater stability to the economic cycle, regulate business more closely, and distribute the wealth more equitably. State and local governments also enacted similar programs.

Business groups and others challenged many of these economic and social reforms on the grounds

that such laws violated the Constitution's commerce clause or compromised its guarantees of liberty and property rights. At the time, the Court's commerce clause jurisprudence distinguished between the transportation of goods across state lines, which Congress could regulate, and the local manufacture of goods, which Congress could not touch, unless the local activity "directly affected" the "stream of commerce." In practice, however, the distinctions between manufacturing and commerce, and between direct and indirect affects, proved impossible to apply in a principled manner. Court conservatives often invoked the commerce clause to invalidate social reform laws, as in *Hammer v. Dagenhart*, 247 U.S. 251 (1918), which held that Congress could not ban the products of child labor from interstate commerce. Similarly, since roughly the 1890s, the Court had held that the right to property and the so-called liberty of contract sharply limited the ability of states and the federal government to pass pro-labor and social legislation. This tendency was epitomized in *Lochner v. New York*, 198 U.S. 45 (1905), wherein the Court invalidated a ten-hour per day limit on working hours. Minimum wage legislation was likewise out of bounds.



**Chief Justice Charles Evans Hughes (left) administering the oath of office to Franklin Delano Roosevelt at the U.S. Capitol in 1933.**

The reform legislation of the New Deal and of various states posed a direct challenge to these old doctrines. Congress passed laws such as the Agricultural Adjustment Act and the National Industrial Recovery Act, which regulated manufacturing having less than a "direct effect" on interstate commerce, while both Congress and the states passed minimum wage, maximum hours, and other pro-labor laws that limited the "contractual liberty" of workers to accept low wages or work long hours.

Chief Justice Hughes was consistent with his earlier opinions opposing laissez faire economics as a basis of constitutional law. He rejected the liberty of contract arguments advanced against state labor, business regulation, and debtor relief laws, sustaining such statutes in cases like *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937) (setting a minimum wage for women); *Nebbia v. New York*, 291 U.S. 502 (1934) (regulating milk prices); and *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934) (providing temporary relief from mortgage foreclosures).

In cases involving the denial of due process and equal protection of the law to African Americans, Hughes similarly maintained his earlier progressive views, upholding the right of blacks to sit on juries in *Norris v. Alabama*, 294 U.S. 587 (1935) and *Patterson v. Alabama*, 294 U.S. 600 (1935). He also voted to overturn the rape convictions of the Scottsboro Boys in *Powell v. Alabama*, 287 U.S. 45 (1932), because their right to due process had been denied by the trial court's failure to provide counsel and wrote an important civil rights opinion, *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938), which held that Missouri's failure to provide a law school for blacks, who were barred from the University of Missouri, violated the separate but equal standard enunciated in *Plessy v. Ferguson*, 163 U.S. 537 (1896).

Despite his evident sympathy for victims of the Depression, Hughes found it difficult to extend the reach of the commerce clause beyond its traditional confines. Thus, the Old Progressive voted to overturn New Deal programs for their failure to meet the "directly affecting the stream of commerce" standard in cases such as *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) (invalidating the National

Industrial Recovery Act); and *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936) (striking the Bituminous Coal Conservation Act). At the same time however, in *Railroad Retirement Board v. Alton Railroad Co.*, 295 U.S. 330 (1935), Hughes dissented from a ruling invalidating the Railroad Retirement Act, which established a compulsory retirement and pension system for railway workers, pointing out that the rail system operated necessarily in interstate commerce. Further, in 1937, perhaps in response to Roosevelt's "court-packing" plan, Hughes voted to sustain several New Deal statutes pursuant to a far more expansive interpretation of the commerce clause. See, e.g., *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, 301 U.S. 1 (1937); *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937).

### Conclusion

Charles Evans Hughes was one of the leading reformers and statesmen of his era. Starting out as an accidental politician, he became a prominent Progressive of unimpeachable character and integrity. As a Supreme Court justice, he helped to develop a more realistic view of the relationship between law and society. His intolerance of racism stands out. Never an effective political campaigner, he was an outstanding secretary of state fostered a surprising degree of comity on the deeply divided Court of the 1930s. Several of his constitutional law opinions remain good law in the early twenty-first century. Though he was more centrist in his term as chief justice than during his earlier stint on the Court, his opposition to some New Deal reforms was based not on reactionary ideology, but on his adherence to older doctrines, which he eventually proved willing to modify.

### RELATED ENTRIES

THIS VOLUME (1921-1945)

Agricultural Adjustment Acts; Court Packing; Great Depression; National Labor Relations Board v. Jones and Laughlin; National Recovery Administration; New Deal; Roosevelt, Franklin D.; Supreme Court and the Judiciary

OTHER VOLUMES

Holmes, Oliver Wendell (v. 4); Labor (v. 2-7); Supreme Court and the Judiciary (v. 2-7)

### Bibliography and Further Readings

Ackerman, Bruce. *We The People: Transformations*.

Cambridge, Massachusetts: Harvard University Press, 1998.

Hendel, Samuel. *Charles Evans Hughes and the Supreme Court*. New York, New York: Russell & Russell, 1951.

Hughes, Charles Evans. *The Supreme Court of the United States: Its Foundation, Methods and Achievements: An Interpretation*. New York, New York: Columbia University Press, 1928.

———. *The Autobiographical Notes of Charles Evans Hughes*. Cambridge, Massachusetts: Harvard University Press, 1973.

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

Pusey, Merlo J. *Charles Evans Hughes*. 2 vols. New York, New York: The Macmillan Company, 1951.

Shaw, Stephen K., William D. Pederson, and Frank J. Williams, eds. *Franklin D. Roosevelt and the Transformation of the Supreme Court*. Armonk, New York: M.E. Sharpe, 2004.

Wesser, Robert F. *Charles Evans Hughes: Politics and Reform in New York, 1905-1910*. Ithaca, New York: Cornell University Press, 1967.

Matthew S.R. Bewig