Blunders of the Supreme Court of the United States

Part 1

The author has in the course of his research found several mistakes made by various courts on different issues. Rather than to write on all of these, the author has instead, decided to write on two mistakes made by the Supreme Court of the United States. The two are of such consequence that the author has given them the description blunders. This article will deals with the first blunder. The second article, the second blunder.

The first blunder of the Supreme Court of the United States is in the case of *United States v. Curtiss-Wright Export Corporation* (299 U.S. 304, 1936). The blunder occurs at pages 316 thru 317:

"It will contribute to the elucidation of the question if we first consider the differences between the powers of the federal government in respect of foreign or external affairs and those in respect of domestic or internal affairs. That there are differences between them, and that these differences are fundamental, may not be doubted.

The two classed of powers are different, both in respect of their origin and their nature. The broad statement that the federal government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs. In that field, the primary purpose of the Constitution was to carve from the general mass of legislative powers then possessed by the states such portions as it was thought desirable to vest in the federal government, leaving those not included in the enumeration still in the states. *Carter v. Carter Coal Company*, 298 U.S. 238, 294. That this doctrine applies only to powers which the states had, is self evident. And since the states severally never possessed international powers, such powers could not have been carved from the mass of state powers but obviously were transmitted to the United States from some other source. During the colonial period, those powers were possessed exclusively by and were entirely under the control of the Crown. By the Declaration of Independence, 'the Representatives of the United States of America' declared the United [not the several] Colonies to be free and independent states, and as such to have 'full Power to levy War, conclude Peace, contract Alliances, establish Commerce and to do all other Acts and Things which Independent States may of right do.'

As a result of the separation from Great Britain by the colonies acting as a unit, the powers of external sovereignty passed from the Crown not to the colonies severally, but to the colonies in their collective and corporate capacity as the United States of America. Even before the Declaration, the colonies were a unit in foreign affairs, acting through a common agency – namely the Continental Congress, composed of delegates from the thirteen colonies. That agency exercised the powers of war and peace, raised an army, created a navy, and finally adopted the Declaration of Independence. Rulers come and go; governments end and forms of government change; but sovereignty survives. A political society cannot endure without a supreme will somewhere. Sovereignty is never held in suspense. When, therefore, external sovereignty of Great Britain in respect of the colonies ceased, it immediately passed to the Union. See *Penhallow v. Doane*, 3 Dall. 54, 80-81. That fact was given practical application almost at once. The treaty of peace, made on September 23, 1783, was concluded between his Brittanic Majesty and the 'United States of America.' 8 Stat. – European Treaties -- 80."

http://scholar.google.com/scholar_case?case=16160678651618183198

According to this case, sovereignty passed from Great Britain to the United Colonies, when the Declaration of Independence was passed. Lets see what Chief Justice John Marshall said on this issue:

"By the treaty which concluded the war of our revolution, Great Britain relinquished all claim, not only to the government, but to the 'propriety and territorial rights of the United States' whose boundaries were fixed in the second article. ***By this treaty [of September 23, 1783], the powers of government, and the right to soil, which had previously been in Great Britain, passed definitively to these States.*** We had before taken possession of them by declaring independence; but neither the declaration of independence, nor the treaty confirming it, could give us more than that which we before possessed, or to which Great Britain was before entitled." Johnson & Graham's Lessee v. McIntosh: 21 U.S. (Wheat. 8) 543, at 584 (1823).

http://books.google.com/books?id=GgwyAAAAIAAJ&pg=PA584#v=onepage&q&f=false

According to John Marshall: 1) the powers of government (sovereignty) passed from Great Britain upon the treaty of September 23, 1783, and not the Declaration of Independence, and 2) the powers of government (sovereignty) passed to the States, and not the United Colonies.

Which means that sovereignty passed to the several States first, then to the United

States. The United Colonies, were colonies under the domain of the British Crown. The Declaration of Independence as the title suggests, was a declaration by the United Colonies that they desired to be free and independent States, not free and united States:

"We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which ***Independent States*** may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor."

http://www.archives.gov/exhibits/charters/declaration_transcript.html

After the Declaration of Independence, the United Colonies considered themselves free and independent States, that is nations. This can be seen by them replacing their Royal Charters with Constitutions. The Articles of Confederation was established for a "perpetual Union between the States of New Hampshire, Massachusetts-bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia."

http://www.usconstitution.net/articles.html

The Constitution of the United States was adopted to "form a more perfect Union."

http://www.archives.gov/exhibits/charters/constitution_transcript.html

In both documents the several States retained their sovereignty:

"Each State retains its sovereignty, freedom and independence." Article II, Articles of Confederation.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Amendment X, Constitution of the United States of America.

If the several States had not succeeded in their rebellion against Great Britain, all that was done; that is, the Declaration of Independence, Constitutions of the several States, Articles of Confederation, would have been for not. **[Footnote 1]** They would have not become free and independent States, but rather would have remained colonies of the British Crown. The revolution, however, did succeed. Because of that, the United Colonies became free and independent States.

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Footnotes:

1. A similar thing occurred in the United States. Called the Civil War, though inaccurate; the Rebellion of the South was suppressed by the Union. Acts done by the rebelling states had no legal significance. For example, for the State of Texas, see *Texas v. White* (74 U.S. (Wall. 7) 700, 1869):

" . . . The union between Texas and the other States was as complete, as perpetual, and as indissoluble as the union between the original States. There was no place for reconsideration, or revocation, except through revolution, or through consent of the States.

Considered therefore as transactions under the Constitution, the ordinance of secession, adopted by the convention and ratified by a majority of the citizens of Texas, and all the acts of her legislature intended to give effect to that ordinance, were absolutely null. They were utterly without operation in law. The obligations of the State, as a member of the Union, and of every citizen of the State, as a citizen of the United States, remained perfect and unimpaired. It certainly follows that the State did not cease to be a State, nor her citizens to be citizens of the Union. If this were otherwise, the State must have become foreign, and her citizens foreigners. The war must have ceased to be a war for the suppression of rebellion, and must have become a war for conquest and subjugation." Texas v. White: 74 U.S. (Wall. 7) 700, 726 (1869).

http://books.google.com/books?id=MfY7AAAAIAAJ&pg=PA726#v=onepage&q&f=false

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