AMERICAN CONSERVATISM
An Encyclopedia

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Field, Stephen Johnson (1816–99)

A late-nineteenth-century jurist, Stephen Johnson Field was a principal architect of the substantive due process doctrine. Field’s father was a Congregational minister of modest means who moved the family to Stockbridge, Massachusetts, in 1819 after accepting a call from a congregation earlier served by Jonathan Edwards. Stephen, the sixth of eight children, was preceded in fame and fortune by two brothers: David Dudley Jr., an attorney, and Cyrus, an inventor and transatlantic cable pioneer. His nephew, David Brewer, served a term on the Supreme Court overlapping with his own.

Field spent nearly three years abroad before enrolling at Williams College in 1833, where he came under the influence of the moral philosopher Mark Hopkins. Afterwards he read law under his brother David and became his junior partner in 1841. Gifted with a logical mind and great ambition, he grew restless in his brother’s shadow. David became a leader of the codification movement (replacing the traditional common law with a statutory code) in New York and was the principal author of the Field Code, which was adopted by the New York state legislature in 1848. Stephen Field moved to California where he won a reputation for shrewdness, feuding with judges and other lawyers and mixing common and civil (code) law.

After trying sixty cases before the California Supreme Court, he won a seat on the bench in 1857 as a Democrat. Regarded as a radical at the time of his appointment, Field showed his independence early.

Field was nominated (and confirmed) for a seat on the U.S. Supreme Court in 1863 on the strength of his loyalty to the Union and his families. The highly moralistic attitudes of his youth had by now acquired an individualistic cast. The development of Field’s jurisprudence is best understood by studying the role he played in three series of cases.

In a number of postwar civil liberties cases, Field repeatedly and often successfully sought to restrain Reconstruction policies and practices. He joined the Court’s unanimous decision in Ex parte Milligan (1866) that the power to suspend habeas corpus does not authorize the president to substitute military commissions while civil courts are operative. Field wrote the Court’s opinion in two test oath cases, Cummings v. Missouri and Ex parte Garland (1867), which involved the dismissal of teachers and attorneys who had supported the South. Characterizing the oaths as bills of attainder and ex post facto laws, he anticipated the doctrine of substantive due process by setting forth a theory of inalienable rights that held that the plaintiffs had property rights in their professions.

Another series of cases involved legal tender legislation. During the war greenbacks were issued as an emergency measure, but Chief Justice Salmon Chase, who had acquiesced in the practice while serving as Lincoln’s secretary of treasury, now sought a return to specie payments. In Hepburn v. Griswold (1870) the Court voted 4-3 to strike down a provision of the Legal Tender Act that applied it retrospectively to debts contracted before its passage. A year later an expanded Court reversed the decision 5-4 in the Legal Tender Cases (1871). Field condemned the practice in a lengthy dissenting opinion that adopted a natural rights position. The controversy culminated in United States v. Jones (1884) with the Court’s acceptance of a peacetime issue of paper money. Field’s lone dissenting opinion is a classic statement of the theory of limited government, warning of evil to follow if hard money principles were abandoned.

Finally, a series of cases involving state regulation of business provided Field the opportunity to establish a laissez-faire judicial philosophy through a doctrine of substantive due process. The Court had traditionally treated the due process of the Fifth
Amendment as a procedural rather than a substantive limitation of government power. This began to change with the Dred Scott decision of 1857, when the Court first connected due process with the concept of vested rights. While early hints of substantive due process may be detected in the test oath and legal tender cases, the doctrine was given impetus by two dissenting opinions in the Slaughterhouse Cases (1873). The Court upheld a Louisiana law that chartered a New Orleans slaughterhouse monopoly and confined butchering to a single district for reasons of public health. In one of the dissents, Field held that the Fourteenth Amendment enacted “the sacred and inalienable rights of man,” although he also acknowledged the importance of state police powers. Citing Adam Smith, he found that among these rights is the individual’s right to pursue a lawful profession. Justice Bradley took an even bolder step when he insisted on the priority of national over state citizenship and claimed that the federal government must protect a wide range of citizenship rights that the state may not invade, including what he called “substantive due process.” Together, Field and Bradley agreed that the Fourteenth Amendment gave ample scope for federal intervention in defense of economic liberty.

The doctrine was not readily accepted at first. Only after repeated dissents by Field in cases involving Granger laws and railroad rates did it begin to take root. It reached the apex of its development when linked with freedom of contract in Allgeyer v. Louisiana (1887). Although it subsequently fell into disrepute, the Warren Court revived it in all but name, using it to support a host of claims to personal autonomy and social liberty.

Field’s ambitions led him to later years to make unsuccessful bids for the Democratic presidential nomination in 1880 and for appointment as chief justice in 1888. But his tenure was marred by a sensational confrontation involving a one-time judicial colleague and unsuccessful litigant who attacked Field aboard a train and was shot and killed by a bodyguard protecting Field. The affair revived old controversies and placed the Court in an unfavorable light.

Field served more than thirty-four years before he retired in December 1897. His legacy consists primarily of 1,042 opinions, personal reminiscences of the early days in California, and a penchant for judicial activism that has survived him.

—STEVEN ALAN SAMSON

**Further Reading**


See also: due process; Reconstruction

**First Things**

In its premier issue (March 1990), the editors of the monthly journal *First Things* announced that the magazine would be devoted to fostering an intellectually rigorous conversation about “religion and public life.” The most fundamental assumption of that conversation would be that public life must point beyond itself to the “first principles” that ground it. Those first principles are grounded, in turn, in culture, which the editors described as nothing less than “the cognitive, moral, aesthetic, and emotive air that we breathe.” Lastly, the magazine would be guided by the conviction that “at the heart of culture is