

Constitutional Conservatism: The Kansas Press and the New Deal Era as a Case Study

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ROBERT G. McCLOSKEY in his excellent study, *The American Supreme Court*, divides American constitutional history into three distinct periods.¹ The first, extending from 1789 to 1865, was characterized by a continuing debate over the nation-state relationship. The second, the period from 1865 to 1937, was characterized by another debate over the nature of the business-governmental relationship which accompanied the emergence of the American industrial state. The third, from 1937 to the present, has been filled with yet another debate about the nature and scope of individual civil liberties in an age of personal crisis which seems to be continuing.

This study attempts to examine one significant aspect of American thought, conservative constitutionalism, in the closing years of the second period of American constitutional development, a time when a depression-created emergency caused increasing debate about the relationship of business and government. It seeks to reconstruct and analyze one manifestation of that position through the examination of the editorial treatment of the constitutional issues of the New Deal period which appeared in 46 selected Kansas newspapers in the period 1934-1935.²

Research into the personal backgrounds and organizational affiliations of the editors of the newspapers used in this study provides convincing evidence that the editorial response of the Kansas press to the New Deal was the product of the Republican backgrounds and probusiness attitudes of these men. A composite picture of the Kansas editors constructed from a survey by Eleanor A. Duram proves conclusively that the alliance between

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1. Robert G. McCloskey, *The American Supreme Court* (Chicago, University of Chicago Press, 1960), p. 24.

2. See Table I for a list of the 46 newspapers and their editors used in this study. Criteria for selection of these newspapers included geographic distribution, membership in the Kansas Daily Newspaper Association, and availability of back copies in the Kansas State Historical Society collection in Topeka. The Kansas Daily Newspaper Association, originally organized as a semifake organization to promote a soap advertising campaign, was resurrected in November, 1935, to promote the distribution of campaign materials for the Landon presidential campaign.—Interview with Rolla A. Clymer, editor of the *El Dorado Times*, March 8, 1973.

Kansas editors and the Republican party in the 1930's was, with few exceptions, a firm one.³ All but two of the editors regarded themselves as Republicans. Furthermore, the survey illustrates that the nature of that relationship in the 1930's went far beyond mere deference to the pervasive climate of opinion reflected in the long established Republican domination of the Jayhawk state. Many of the editors were, in fact, members of the power structure which shaped the party's policies in Kansas. Among their group, the editors counted several who had served as Republican national convention delegates, one (Arthur Capper) who was a United States senator, two former congressmen, one former secretary of the Republican state committee, two ex-governors, and a number of former members of the Kansas legislature. In addition, several served on various state boards as appointees of Gov. Alfred M. Landon and previous Republican governors.⁴

Evidence of the probusiness orientation of the editors comes from many sources. Most, because of the small size of their operations, were directly involved in the managerial as well as the editorial aspects of the newspaper business.⁵ In addition, most belonged to the fraternal and social clubs dominated by members of the business community in their respective towns and cities. Many also held positions such as directors of banks and other businesses.⁶ Many had also invested in oil and agribusiness enterprises. Existing correspondence between the editors and the complaints in their editorial columns indicates that they chafed under what they regarded as the onerous demands and bureaucratic regulations of the NRA newspaper code.⁷ Many felt highly uncomfortable with what they regarded as the reckless experimentation in the fiscal and economic policies of the Roosevelt administration.

One of the clearest manifestations of the symbiotic relationship between economic and political interests of the Kansas editors during the 1930's appeared in their enthusiastic support of the

3. This survey (hereafter cited as Survey) was compiled from mailed questionnaires, obituaries, *N. W. Ayer & Son's Directory of Newspapers and Periodicals, 1936* (Philadelphia, N. W. Ayer & Son, Inc., 1936), pp. 311-340, and *Who's Who in America, 1936-1937* (Chicago, the A. N. Marquis Co., 1937). See Table II for a summation of some of its more important findings. For an example of a typical Republican editor, see James D. Callahan, ed., *Jayhawk Editor, a Biography of A. Q. Miller, Sr.* (Los Angeles, Sterling Press, 1955).

4. Survey.

5. Callahan, *Jayhawk Editor*, p. 253; "Rolla A. Clymer Papers" and "Jess C. Denious Papers," 1934-1935, *passim*, Kansas State Historical Society.

6. Survey.

7. See, for example: Rolla A. Clymer to Ellina C. Murdock, January 16, 1934, and Roy F. Bailey to Rolla A. Clymer, February 2, 1934, "Clymer Papers," K.S.H.S.; *Abilene Daily Reflector*, November 9, 1934; *Columbus Weekly Advocate*, January 10, 1935; *Independence Daily Reporter*, January 14, 1935; *Iola Daily Register*, January 19, 1934.

policies of Republican Gov. Alfred M. Landon, a graduate of the University of Kansas Law School who had prospered in the oil business prior to his election in 1932. Once in office, he created an administration which emphasized a businesslike, "no nonsense," pay-as-you-go approach to state government.⁸ His oft repeated belief that American business and agriculture could find their way out of the depression without extensive government controls and economic experimentation struck a responsive chord with the hard-pressed editors. Such policies, statements, and the close personal ties which Landon had established with many of the newspapermen translated into enthusiastic support in the editorial columns of the Kansas newspapers.⁹

Rolla A. Clymer of the *El Dorado Times* provided a clear picture of the depth of that support in a letter to a fellow editor written shortly after Landon's reelection in 1934.

As to the campaign, the proof of the pudding is in the eating thereof. We won, hence our work must have been fairly satisfactory. We held to one regular standard, to play the game, not to throw mud and to hold to the issue. Will Beck [Republican state chairman] and I were in accord on this all along. We had Landon's fine record to expound and we had the most loyal support by Kansas newspapers I have ever seen.¹⁰

Additional evidence supporting the argument that the probusiness mentality of the editors played a major role in the shaping of their attitudes toward constitutional issues can be seen in the timing of the emergence of opposition to the New Deal in the Kansas newspaper editorials. The crystallization of the anti-New Deal position in the Kansas press occurred in the five months immediately following the congressional elections of 1934, a period when strong organized business opposition to the New Deal was developing nationwide.¹¹ Writing two days after the 1934 election, the editor of the *Abilene Daily Reflector* presented a classic expression of this attitude toward government that lay at the heart of that opposition: "Business recovery will not come from more wildeyed legislation. The depression cannot be licked

8. Donald R. McCoy, *Landon of Kansas* (Lincoln, University of Nebraska Press, 1966), see especially chs. 7 and 8.

9. *Ibid.*, p. 220; Rolla A. Clymer to Mrs. Buist, February 5, 1934, Alfred M. Landon to Rolla A. Clymer, March 20, 1934, Rolla A. Clymer to Alfred M. Landon, May 4, 1934, Alfred M. Landon to Rolla A. Clymer, June 27, 1934, Rolla A. Clymer to F. W. Brinkerhoff, November 26, 1934, "Clymer Papers," K.S.H.S.; Jess C. Denious to Alfred M. Landon, April 2, 1935, F. W. Brinkerhoff to Jess C. Denious, April 4, 1935, Alfred M. Landon to Jess C. Denious, April 6, 1935, Jess C. Denious to R. T. Anderson, August 16, 1935, "Denious Papers," K.S.H.S.; see also: *Arkansas City Daily Traveler*, August 28, 1934; *Atchison Daily Globe*, January 14, 1935; *Concordia Blade-Empire*, January 17, 1935; *Garden City Daily Telegram*, November 7, 1934; *Independence Daily Reporter*, January 12, 1935; *Manhattan Morning Chronicle*, November 8, 1934.

10. Rolla A. Clymer to F. W. Brinkerhoff, November 26, 1934, "Clymer Papers," K.S.H.S.

11. William E. Leuchtenburg, *Franklin D. Roosevelt and the New Deal* (New York, Harper and Row, 1963), pp. 146-147.

unless business is given a chance to right itself and costly experiments in business are put in the discard."¹² Moved by their long established probusiness, political, and economic beliefs, the Kansas editors joined the majority of their brethren throughout the country in mounting an attack on what they characterized as excessive regulation of business, wild spending, socialistic concepts, dangerous experimentation, and the hastily drawn legislation of the New Deal.

One of the major themes in this continuing critique in both the Kansas and the national press was an attack on the New Deal based on its constitutional inadequacies. Such criticisms were greatly stimulated by the supreme court's invalidation of numerous pieces of New Deal legislation from January, 1935, to June, 1936. It is in the editorial reactions to these cases that the Kansas editors developed their discussions of the constitutional issues of the New Deal. The editorials in the Kansas press thus provide a means of examining both the substance of the position developed by constitutional conservatives and the historical context in which it developed. Moreover, they provide insights into the process of rationalization which enabled the American business community to relate its economic and political values to the constitutional developments of the 1930's.¹³

The initial discussion of the constitutionality of emergency legislation in the Kansas press occurred in the editorials treating *Home Bldg. and Loan Association vs. Blaisdell*, more commonly known as the Minnesota debt moratorium case.¹⁴ In this case, the court upheld by a five to four vote the constitutionality of a debt moratorium passed during the depression to forestall wholesale mortgage foreclosures for economically distressed Minnesota citizens. The supreme court, emphasizing constitutional flexibility, upheld the law on the grounds that the depression emergency permitted the states to exercise reserved powers to preserve the order of society and because that value took precedence over the normal restraints which the contracts clause of the constitution placed on such legislation.

Occurring as it did in 1934, before the crystallization of anti-New Deal opinion in the American business community, the editorial treatment of the Minnesota case in the Kansas press differed in two important ways from that of subsequent cases.

12. *Abilene Daily Reflector*, November 9, 1934.

13. S. Alexander Ripa, "Constitutionalism: Political Defense of the Business Community During the New Deal Period," *Social Studies*, Philadelphia, v. 56 (October, 1965), pp. 187-190.

14. *Home Bldg. and Loan Association vs. Blaisdell*, *U.S. Reports*, v. 290 (1934), p. 398.

First, the number of papers commenting on the decision was much smaller. Only eight of the 44 editors examined in this study bothered to comment on the decision. This contrasts with the 22 who discussed the subsequent "hot oil" decision and the 43 who commented on the court's invalidation of the NRA. Second, the response of those editors who did comment was marked by a great deal of diversity. Two of the editors expressed outright praise of the decision. The editor of the *Dodge City Daily Globe*, for example, reprinted the editorial of the *St. Paul Pioneer Press* which hailed the decision because it ". . . in effect declares that the Constitution is not to be regarded as a dead hand of the past on the shoulder of legislative authorities, but a living body of fundamental law which shall adapt itself to the necessities of the times. . . ." ¹⁵ In a similar vein, the editor of the *Wichita Eagle*, noting that the court's suspension of the contracts clause was "limited" and "temporary," enthusiastically characterized the decision as ". . . a major forward judicial step in the nation's history." ¹⁶ Three of the editors assessed the decision in terms of its implications for the New Deal. The *Fort Scott Daily Tribune-Monitor* asserted: "In view of recent court decisions supporting government recovery measures, it would seem likely that the supreme court in question will see to it that a precedent is established giving some teeth to code enforcement." ¹⁷

The *Neodesha Daily Sun*, dwelling on the constitutional interpretation in the decision recognized that the Minnesota decision had "opened the way to hold valid" New Deal emergency legislation but emphasized ". . . that the only way these measures could be squared with the federal constitution was through a liberal construction of 'emergency' power of government." ¹⁸ The *Lawrence Daily Journal-World* admitted that the decision strengthened the NRA but only "within limits" because ". . . The court decision upheld the moratorium as an emergency measure but not as a permanent policy as was desired by some of the administration higher-ups." It then expressed hope that the moratorium would not become permanent because ". . . such a development . . . would tend to make things go hard for tomorrow's borrowers." ¹⁹

Two of the editors pointed out what they felt were ironic aspects of the case. The *Topeka Daily Capital* cited an editorial

15. *Dodge City Daily Globe*, January 24, 1934.

16. *Wichita Eagle*, January 14, 1934.

17. *Fort Scott Daily Tribune-Monitor*, January 19, 1934.

18. *Neodesha Daily Sun*, January 13, 1934 (reprint of editorial from *Parsons Sun*).

19. *Lawrence Daily Journal-World*, January 12, 1934.

from the Arkansas City *Daily Traveler* which had pointed out that Calvin Coolidge and Herbert Hoover had appointed four of the five justices who sustained the debt moratorium and asserted: "It is ironic that President Hoover, damned the length and breadth of the land as a reactionary, was responsible for this revolutionary change in the highest court."²⁰ Similarly, the Pittsburgh *Sun* reminded its readers that the Westerners on the court had opposed the moratorium while the Easterners, including Chief Justice Hughes, had supported it and concluded that: "At least it proves that opposing a nominee because of his geographical location is an unsound reason."²¹ Finally, the editor of the Hutchinson *News* pointed out that the differences between the Minnesota and Kansas debt moratorium legislation were so great that the court's approval of the former did not guarantee the validity of the latter.²² Consequently, he urged Governor Landon to forego a special legislative session to consider an extension of the Kansas law. Both the limited response and the diversity of the commentary among those who did respond suggests that unified opinion among the editors regarding the wisdom of New Deal legislation was lacking in the early part of 1934. If the content of their editorial columns is indicative, the depression emergency and local affairs were uppermost in the minds of the editors.

The first piece of New Deal legislation reached the supreme court in January, 1935, when the court in *Panama Refining Co. vs. Ryan* struck down sec. 9(c), the so-called "hot oil" provisions of the National Recovery act, by an eight to one vote.²³ The "hot oil" provisions had, as Prof. Alfred H. Kelly said, ". . . authorized the President to prohibit the transportation in interstate commerce of oil produced . . . in excess of the limitations imposed by states in order to bolster faltering oil prices and to conserve oil resources."²⁴ The court held that the provisions were an unconstitutional delegation of legislative powers to the President.

Evidence of a sharply changed attitude among Kansas editors towards the New Deal and their increasing interest in constitutional interpretation appears in their editorial discussions of the "hot oil" case. Though the editors decried the potentially destructive effects which the invalidation of the production code

20. Topeka *Daily Capital*, January 14, 1934.

21. Pittsburgh *Sun*, January 16, 1934.

22. Hutchinson *News*, January 16, 1934.

23. *Panama Refining Co. vs. Ryan*, *U.S. Reports*, v. 293 (1935), p. 388.

24. Alfred H. Kelly and Winfred A. Harbison, *The American Constitution: Its Origins and Development*, 4th ed. (New York, W. W. Norton & Co., 1970), p. 744.

posed for the Kansas oil industry and called for federal and state efforts to continue production quotas and price stabilization, none directly criticized the court for the crisis which its decision created in the oil industry.²⁵ Many, on the other hand, reflected increasing interest in the ominous implications of the decision for pending New Deal cases. Typical was the prediction of the *Kansas City Kansan* that: "If it is the temper of the court that extraordinary delegation of legislative powers to the executive department is unconstitutional, then it is easy to foresee a scrapping of a wide range of New Deal legislation."²⁶ It is apparent from the editorials that preoccupation with the constitutionality of federal regulation had displaced concern for economic emergency as the major motif among Kansas editors.

In discussions of the technical aspects of the case, the editors emphasized their disapproval of excessive delegation of legislative authority. In so doing, the editors initiated a technique which was to appear repeatedly in subsequent editorials, the use of discussions of the points at law in the decisions to accentuate the constitutional shortcomings of the New Deal. The editor of the *Winfield Daily Courier* exemplified the use of this technique in his discussion of the improper delegation of power in the oil code.

This is the kind of a decision long expected by those familiar with constitutional law and constitutional precedent. The fathers framed the constitution as they did to avoid the concentration of authority in the hands of the executive. . . . New Deal Washington has gone far from the pattern laid down. In many instances a New Deal congress had handed over the powers and duties assigned to it to the president.²⁷

The editors initiated what was to become another important theme when they hailed the "hot oil" decision as a victory for the constitution and American liberties. Insisting that the court had averted a dangerous tendency by requiring the New Deal to remain within constitutional limits, the editors emphasized the fundamental, unchanging nature of the constitution and praised

25. *El Dorado Times*, January 8, 1935; *Independence Daily Reporter*, January 11, 1935; *Neodesha Daily Sun*, January 12, 1935; *Newton Evening Kansas-Republican*, January 12, 1935; *Ottawa Herald*, January 8, 1935.

26. *Kansas City Kansan*, January 9, 1935; see also: *Arkansas City Daily Traveler*, January 8, 1935; *Burlington Daily Republican*, January 10, 1935; *Lawrence Daily Journal-World*, January 8, 1935; *Leavenworth Daily Times*, January 11, 1935; *McPherson Daily Republican*, January 17, 1935; *Manhattan Morning Chronicle*, January 9, 1935; *Newton Evening Kansan-Republican*, January 12, 1935; *Ottawa Herald*, January 8, 1935; *Salina Journal*, January 8, 1935; *Topeka Daily Capital*, January 9, 1935; *Wichita Eagle*, January 9, 1935; *Winfield Daily Courier*, January 8, 1935.

27. *Winfield Daily Courier*, January 8, 1935; see also: *Arkansas City Daily Traveler*, January 8, 1935; *Kansas City Kansan*, January 9, 1935; *Lawrence Daily Journal-World*, January 8, 1935; *Leavenworth Daily Times*, January 11, 1935; *McPherson Daily Republican*, January 17, 1935; *Manhattan Morning Chronicle*, January 9, 1935; *Salina Journal*, January 8, 1935; *Topeka Daily Capital*, January 9, 1935; *Wichita Eagle*, January 9, 1935.

the court for revitalizing the workability of traditional checks and balances in the American political system. One of the best expressions of this attitude appeared in the *Topeka Daily Capital*:

It at least definitely points to the fact, however, that constitutional government still reigns, contrary to some sensational expressions that the executive has taken over by bureaucracy full domination of the government. The court stands, as ever, as the guardian of the constitution, the rights of Congress, of the President, of the states and of the individual citizen.²⁸

The attitude towards the judicial process expressed by the editors in their discussions of the "hot oil" case is also significant. The rejection of the notion of a flexible constitution was accompanied by a similar rejection of any notions of flexibility in the court's interpretation of it. Emphasis was placed on the mechanical, nonpolitical nature of the judicial process in which the court merely acted as a neutral arbiter of the constitution whose sole function was to compare the law at issue with the constitution. The editor of the *Manhattan Morning Chronicle* reflected this view when he said:

The supreme court decision is significant beyond its effect upon the oil industry. It indicates that the court still maintains its traditional independence, and that it is not governed by a blind frenzy for the new deal. Other questionable new deal legislation will have only its constitutional merits as a defense.²⁹

The definition of the judicial process cited above became another of the continuing themes in the discussion of constitutional issues in the Kansas press. Adherence to it provided the editors with a means to reject the charge of the supreme court's critics that the justices were permitting their personal attitudes toward the New Deal to influence their decisions.

The editors thus used their editorials on the "hot oil" case to initiate what soon proved to be an all-out attack on New Deal legislation on the grounds that it was unconstitutional in its details and un-American in its assumptions. Such an attack, however, required much more persistent editorial attention to constitutional issues; and, even more importantly, a far different conception of the nature of the constitution and the role of the supreme court than they had espoused during the first two years of the New Deal. The exposition of "constitutional fundamentalism" in the editorials on the "hot oil" case symbolized the

28. *Topeka Daily Capital*, January 9, 1935; see also: *Columbus Weekly Advocate*, January 10, 1935; *Garden City Daily Telegram*, January 9, 1935; *Lawrence Daily Journal-World*, January 8, 1935; *Leavenworth Daily Times*, January 11, 1935; *Manhattan Morning Chronicle*, January 9, 1935; *Salina Journal*, January 8, 1935; *Wichita Eagle*, January 9, 1935; *Winfield Daily Courier*, January 8, 1935.

29. *Manhattan Morning Chronicle*, January 9, 1935; see also: *Salina Journal*, January 8, 1935; *Topeka Daily Capital*, January 9, 1935; *Wichita Eagle*, January 9, 1935; *Winfield Daily Courier*, January 8, 1935.

emergence of the new approach. The honeymoon between the New Deal and the American business community, represented in this instance by the Kansas press, was over.

The next New Deal legislation to come before the supreme court did so in the so-called gold clause cases in February, 1935. In a series of four cases, the supreme court dealt with the right of the congress to nullify the gold clause in private and public contracts as it had in a joint resolution of June 5, 1933.³⁰ Refusing to accept the contention of the plaintiffs that the abrogation of the gold clause had impaired contracts, the court upheld the government under a broad definition of the federal money power in the three cases before it dealing with private obligations and held that although congress had no power to abrogate the clause in its own bonds no harm had been done by that act. The result then was a clearcut judicial victory for the Roosevelt administration and the removal of a major cause of economic apprehension in the financial community.

The decision in the gold clause cases caught the Kansas editors between their desire to continue their nascent constitutional-economic critique of New Deal policies and their awareness of the steadying effect of the decisions on business conditions. Consequently, the 22 editors who assessed the decision failed to develop a unified position in the treatment of the cases. Although the individual editors discussed a variety of specific aspects of the cases, they divided into three groups with regard to the treatment of their significance.

Six of the editors hailed the decision as a pragmatic one based on a sensible, flexible application of the constitution to a very complex problem. As the editor of the *Wichita Beacon* put it:

Confidence in our institutions of government is restored. The way of recovery is made so plain only the blindly obstinate cannot see. FULL STEAM AHEAD! Let that be our unflinching aim, as we proceed to the newer heights of the happier days that have arrived.³¹

Emphasis in this group of editors was on the importance of solving the immediate economic crisis facing the country.

Eleven of the editors viewed the cases in longer range perspective and shared a less optimistic assessment of their ultimate consequences. All of the editors in this group admitted that the

30. *Norman vs. Baltimore and Ohio Railroad Co.* and *United States vs. Bankers Trust Co.*, *U.S. Reports*, v. 294 (1935), p. 240; *Nortz vs. United States*, *ibid.*, p. 317; *Perry vs. United States*, *ibid.*, p. 330.

31. *Wichita Beacon*, February 19-20, 1935; see also: *Atchison Daily Globe*, February 19, 1935; *Coffeyville Daily Journal*, February 19, 1935; *Dodge City Daily Globe*, January 24 and February 20, 1935; *Garden City Daily Telegram*, February 19, 1935; *Parsons Sun*, February 19, 1935.

decision would encourage business stability in the short run. They further agreed that the court did the best it could in light of the emergency created by the depression and the Roosevelt administration's ill-conceived currency policies.³² The editor of the *Chanute Tribune* aptly summarized this point of view when he concluded that "the Supreme Court laid down its oars rather than to swamp the boat."³³ The members of this group also shared the concern of the editor of the *Winfield Daily Courier* who asserted: "What its ultimate effects will be on the confidence of the people in the sacredness of contracts, both public and private, remains to be seen."³⁴

Five editors roundly condemned the court's action. While not all of them shared the opinion of the *Goodland Daily News* that ". . . the decision was about the most cockeyed thing that one could imagine coming out of what is supposed to be a tribunal of justice,"³⁵ all felt that the gold cases gave the federal government too much power to manipulate freely. Moreover, all shared in varying degrees the concern expressed in Justice McReynolds's dissenting opinion that the decision foreshadowed impending legal and moral chaos because it permitted the government to ignore the sanctity of contracts that lie at the heart of property relationships. The editors were bitterly disappointed that the court had not moved to protect that crucial element.

It is apparent that the anti-New Deal posture which the court assumed in the "hot oil" case was much more to the editors' liking than its equivocation in the gold cases. The issues involved in those cases were simply too complex to allow a clearcut perception of business interest on the part of the editors. On May 27, 1935, the supreme court struck down the National Industrial Recovery Act, one of the two major legislative props of the New Deal, in a unanimous decision in *Schechter vs. United States*.³⁶ Chief Justice Hughes, rejecting the contention that emergency conditions created emergency powers, held that the act violated the 10th amendment, that it was an unconstitutional delegation of legislative power to the executive, and that it exceeded the limits

32. *Chanute Tribune*, February 19, 1935; *Independence Daily Reporter*, February 21, 1935; *Iola Daily Register*, February 19, 1935; *McPherson Daily Republican*, February 25, 1935; *Manhattan Morning Chronicle*, February 19, 1935; *Neodesha Daily Sun*, February 19, 1935; *Pittsburg Sun*, February 19, 1935; *Wichita Eagle*, February 19, 1935; *Winfield Daily Courier*, February 19, 1935.

33. *Chanute Tribune*, February 19, 1935.

34. *Winfield Daily Courier*, February 19, 1935.

35. *Goodland Daily News*, February 19, 1935; see also: *El Dorado Times*, February 20, 1935; *Fort Scott Daily Tribune-Monitor*, February 19, 1935; *Leavenworth Daily Times*, February 19, 1935; *Newton Evening Kansan-Republican*, February 20, 1935.

36. *Schechter vs. United States*, *U. S. Reports*, v. 295 (1935), p. 495.

of the federal commerce power. In so doing, the court hastened the end of the NRA recovery program which was already collapsing because of its own inconsistencies.

The response of the Kansas editors to the destruction of the NRA, the heart of the government regulatory structure for business, was one of unconcealed joy.³⁷ Welcoming the end of what they regarded as a period of dangerous experimentation, the editors expressed confidence that business, freed from the fetters of government regulation, would lead the country back to prosperity through its own devices. As the editor of the *Topeka State Journal* put it:

With the removal of the various threats which hang over finance and industry and commerce, Mr. Roosevelt might find himself concerned, a few months hence, about some way of stopping a boom, so enthusiastic might the people become.³⁸

The identification of an economic system based on as little business regulation as possible with sound constitutional government was a main feature of the editorials in the Kansas press. The editor of the *Newton Evening Kansan-Republican* summarized this attitude well when he said:

Comfort and encouragement is given to industry and those able to finance business loans. . . . No matter how far the administration may desire to swing to the left, we find the Supreme court standing firmly upon steadfast principles. Again, those with money to lend may feel willing to take a chance on real estate loans, and business concerns may feel free to operate their own affairs without dictation from a federal government with a tendency to rule rather than serve.³⁹

The editors used their discussions of the technical aspects of the decision to propound the idea that the court had placed a fundamental check on the New Deal. They emphasized that the New Deal had been found constitutionally deficient, both in terms of improper delegation of power and because it invaded powers reserved to the states. They also used the unanimous

37. The supreme court's invalidation of the Railroad Pension act two weeks prior to its NRA decision had caused predictions by 11 of the Kansas editors of the imminent demise of the NRA regulatory structure. See, for example: *Arkansas City Daily Traveler*, May 8, 1935; *Kansas City Kansan*, May 7, 1935.

38. *Topeka State Journal*, May 28, 1935; see also: *Chanute Tribune*, May 28, 1935; *Cherryvale Republican*, May 28, 1935; *El Dorado Times*, May 28, 1935; *Garden City Daily Telegram*, May 30, 1935; *Hiawatha Daily World*, May 29, 1935; *Hutchinson News*, May 28, 1935; *Newton Evening Kansan-Republican*, May 29, 1935; *Pittsburg Sun*, May 29, 1935; *Salina Journal*, May 28, 1935; *Wichita Beacon*, May 28, 1935.

39. *Newton Evening Kansan-Republican*, May 29, 1935; see also: *Cherryvale Republican*, May 28, 1935; *Council Grove Republican*, June 10, 1935; *Dodge City Daily Globe*, May 29, 1935; *Garden City Daily Telegram*, May 30, 1935; *Goodland Daily News*, May 31, 1935; *Hiawatha Daily World*, May 29, 1935; *Independence Daily Reporter*, May 28, 1935; *Iola Daily Register*, May 28, 1935; *Lawrence Daily Journal-World*, May 28 and May 29, 1935; *Leavenworth Daily Times*, May 28, 1935; *McPherson Daily Republican*, May 30, 1935; *Ottawa Herald*, May 28, 1935; *Pittsburg Headlight*, May 28, 1935; *Pittsburg Sun*, May 29, 1935; *Salina Journal*, May 28, 1935; *Wichita Eagle*, May 28, 1935.

decision of the court as evidence that any future attempts at economic experimentation involving regulation of business activity would be ill advised.⁴⁰ The editors expressed particular pleasure with the unanimous decision for another reason. They felt it would remove the opportunity of the court's critics to point to a divided court as proof of the subjectivity of the judicial process as they had so often after earlier New Deal decisions. On this last point the editor of the Coffeyville *Daily Journal* commented:

When court judges divide 5 to 4 as did the Supreme Court justices in the recent gold clause cases, laymen have ample justification for wondering whether a different personnel might not have ruled differently. But when the justices are unanimous as in the decisions rendered yesterday, there is no alternative. The opinions must be accepted as dethronement of unwise, unsafe and unsound legislation.⁴¹

The treatment of the constitution and the judicial process in the NRA case editorials was essentially an amplification of that developed in the previous "hot oil" editorials. Again, emphasis was placed on the fundamental, unchanging nature of the constitution. The editors maintained that the court had used the NRA decision to remind the New Dealers and the people of the existence of constitutional fundamentals, not the least of which was the limited nature of federal government power. The editor of the Pittsburg *Headlight* typified this view when he stated:

The Constitution of the United States was designed not to give powers to a federal government so much as to protect the states and the people of the states from the domination of the federal government. The federal government has only those powers specifically delegated to it by the Constitution.⁴²

The editors thus placed particular stress on the idea that the constitution stood above men as the guardian of American liberties and that it was the basic law to which all others had to conform.

Again, as in their treatment of previous anti-New Deal decisions, the editors propounded a very mechanical view of the judicial process. They emphasized that the court did not legislate,

40. See, for example: Fort Scott *Daily Tribune-Monitor*, May 28, 1935; Iola *Daily Register*, May 28, 1935; Kansas City *Kansan*, May 28, 1935; McPherson *Daily Republican*, June 4, 1935; Pittsburg *Headlight*, May 28, 1935.

41. Coffeyville *Daily Journal*, May 28, 1935; see also: Abilene *Daily Reflector*, May 31, 1935; Arkansas City *Daily Traveler*, May 28, 1935; Chanute *Tribune*, May 28, 1935; Independence *Daily Reporter*, May 28, 1935; Kansas City *Kansan*, May 28, 1935; Leavenworth *Daily Times*, May 28, 1935; McPherson *Daily Republican*, May 30, 1935; Pittsburg *Headlight*, May 28, 1935; Wichita *Beacon*, May 28, 1935.

42. Pittsburg *Headlight*, May 28, 1935; see also: Columbus *Weekly Advocate*, June 6, 1935; Dodge City *Daily Globe*, May 29, 1935; El Dorado *Times*, May 28, 1935; Emporia *Weekly Gazette*, May 30, 1935; Newton *Evening Kansan-Republican*, May 29, 1935; Topeka *Daily Capital*, May 29, 1935; Winfield *Daily Courier*, May 28, 1935.

that its sole function was to match the contested laws with the constitution through an absolutely objective process. In one of the clearest characterizations of this point of view, the *Arkansas City Daily Traveler* asserted:

The court was not engaged in trying the NRA on its merits as a recovery program. It was not in its decision interested in whether the NRA had improved working conditions, minimized cut-throat competition and made more secure the foundations of American industry. These are matters on which there has been endless dispute. . . . But these arguments were not taken into consideration by the court. It looked at the Constitution and it looked at the NRA and it decided that the two were in conflict. The Constitution is fundamental. Therefore the NRA had to go.⁴³

The constant recurrence of this theme in the press points to the convenience with which the editors adapted it to their needs.

Obviously, the supreme court occupied an important place in the constitutional constellation as perceived by the Kansas editors. As the *Emporia Weekly Gazette* noted in its discussion of the NRA decision:

Through the generations since it first assembled it has been the one dependable, unquestioned branch of government; the clear, wise, brave, honest voice of the people. Because it is just that, it needs no force back of its mandates. The dicta of our court are so deeply based in the American common sense that a Supreme court decision is more powerful than an army with banners. It is always our present help. It is always the refuge of free men, the bulwark of American liberty. Today again it stands forth in the strength and beauty of its wisdom.⁴⁴

The creation of a respectful attitude toward the court was an important element in the perpetuation of a climate of opinion supporting the unquestioned acceptance of its decisions. What better way to do this than to portray the court as a "bulwark" of liberty?

The editorial treatment of the NRA case represents the maturation of one of the major lines of argument developed by the business community against the New Deal. Underlying the exposition of specific aspects of this critique was a basic assumption, that the regulatory aspects of the New Deal were inherently

43. *Arkansas City Daily Traveler*, May 28, 1935; see also: *Chanute Tribune*, May 28, 1935; *Coffeyville Daily Journal*, June 1, 1935; *Dodge City Daily Globe*, May 29, 1935; *El Dorado Times*, May 28, 1935; *Kansas City Kansan*, May 28, 1935; *Newton Evening Kansan-Republican*, May 29, 1935; *Pittsburg Sun*, May 29, 1935; *Salina Journal*, May 28, 1935; *Wellington Daily News*, June 3, 1935; *Wichita Beacon*, May 28, 1935; *Winfield Daily Courier*, May 28, 1935.

44. *Emporia Weekly Gazette*, May 30, 1935; other examples of this view appear in *Abilene Daily Reflector*, May 31, 1935; *Columbus Weekly Advocate*, June 6, 1935; *Hiawatha Daily World*, May 31, 1935.

un-American, unconstitutional, and dangerous.⁴⁵ The unanimous decision of the court in the NRA case provided the editors with a magnificent opportunity to propound these charges, one which they did not hesitate to exploit. The symbiotic interaction of their economic and constitutional values provided a powerful rationale which the editors used thereafter with increasing confidence.

The lack of any attempt on the part of the editors to disguise their probusiness perspective in their NRA editorials is significant. It suggests that the Kansas newspapermen, long used to identifying their own economic beliefs with what they regarded as sound constitutional doctrine, were blinded to the fact that many Americans did not accept the wisdom or the relevance of this identification. Ironically, the very weapon which they relied upon so heavily soon worked, as did their close ties to Alfred M. Landon, to distort their sense of political perspective at a crucial time. That fact, however, should not be permitted to obscure the intensity of the faith which the editors placed in conservative constitutionalism as a political weapon in mid-1935. The Roosevelt landslide of 1936 and the judicial revolution of 1937 which proved their beliefs to be first politically and then constitutionally obsolete were yet to come.

Finally, the treatment of the constitutional issues in the Kansas press stands as strong evidence against those who would overemphasize the uniqueness of Western regional development in the 20th century. The motives behind the constitutional arguments of the Kansas editors, their economic conservatism, and their probusiness attitudes were essentially the same as those of their counterparts throughout the nation during the New Deal era.⁴⁶ The origins and uses of such arguments were unquestionably related to casual forces which transcended specific locales. They emerged instead from a particular perception of economic and political needs shared by conservatives throughout the United States in the face of what they regarded as the dangerous expansion of the American welfare state.

45. Burlington *Daily Republican*, May 28, 1935; Coffeyville *Daily Journal*, May 28, 1935; Concordia *Blade-Empire*, May 31, 1935; Fort Scott *Daily Tribune-Monitor*, May 28, 1935; Independence *Daily Reporter*, May 28, 1935; Iola *Daily Register*, May 28, 1935; Leavenworth *Daily Times*, May 28, 1935; McPherson *Daily Republican*, May 30, 1935; Newton *Evening Kansan-Republican*, May 29, 1935; Salina *Journal*, May 28, 1935; Topeka *State Journal*, May 28, 1935; Winfield *Daily Courier*, May 28, 1935.

46. For comparative purposes, see: James C. Duram, "The Shaping of Constitutional Conservatism: The Michigan Press and the New Deal Era as a Case Study," *Michigan History*, Lansing, v. 56, no. 3 (Fall, 1972), pp. 247-268; James C. Duram, "Press Attitudes Towards the Supreme Court During the 1930's" (Ph.D. dissertation, Wayne State University, 1968), pp. 173-283.

TABLE I. FACT SHEET REGARDING THE KANSAS NEWSPAPERS USED IN THIS STUDY *

<i>Newspaper</i>	<i>Editor</i>	<i>Circulation in 1936</i>
Abilene <i>Daily Reflector</i>	Charles Moreau Harger . . .	1,832
Arkansas City <i>Daily Traveler</i>	Oscar Stanley Stauffer . . .	5,502
Atchison <i>Daily Globe</i>	Gene Alexander Howe . . .	6,344
Augusta <i>Daily Gazette</i>	Chester K. Shore
Burlington <i>Daily Republican</i>	John Redmond	2,216
Caldwell <i>Daily Messenger and News</i>	Harold A. Hammond	1,296
Chanute <i>Tribune</i>	Clarence W. Moody	4,675
Cherryvale <i>Republican</i>	Will R. Burge
Clay Center <i>Dispatch</i>	Ray Breitweiser	1,700
Coffeyville <i>Daily Journal</i>	Hugh J. Powell	7,208
Columbus <i>Weekly Advocate</i>	L. M. Knock	757
Concordia <i>Blade-Empire</i>	Raymond Snowden Green . . .	3,024
Council Grove <i>Republican</i>	J. B. Lawrence	2,031
Dodge City <i>Daily Globe</i>	Jess C. Denious	5,739
El Dorado <i>Times</i>	Rolla A. Clymer	5,280
Emporia <i>Weekly Gazette</i>	William Allen White
Fort Scott <i>Daily Tribune-Monitor</i>	George W. Marble, Jr.	4,050
Garden City <i>Daily Telegram</i>	Robert B. Reed
Goodland <i>Daily News</i>	Charles L. Bigler	1,263
Great Bend <i>Tribune</i>	M. D. Spencer	3,606
Hiawatha <i>Daily World</i>	Ewing Herbert	3,164
Hutchinson <i>News</i>	John P. Harris	15,107
Independence <i>Daily Reporter</i>	Charles Spencer	5,119
Iola <i>Daily Register</i>	Charles Frederick Scott . . .	2,941
Junction City <i>Union</i>	Harry E. Montgomery	3,838
Kansas City <i>Kansan</i>	William Arthur Bailey	17,942
Lawrence <i>Daily Journal-World</i>	Wilford Collins Simons	5,338
Leavenworth <i>Daily Times</i>	D. R. Anthony, III.	5,884
Lyons <i>Daily News</i>	Paul A. Jones	2,269
McPherson <i>Daily Republican</i>	William J. Krehbiel	2,150
Manhattan <i>Mercury</i>	Fay N. Seaton	2,298
Manhattan <i>Morning Chronicle</i>	Fay N. Seaton	1,960
Neodesha <i>Daily Sun</i>	C. C. Bunger	1,490
Newton <i>Evening Kansan-Republican</i>	Mrs. J. C. Mack	3,500
Ottawa <i>Herald</i>	Sidney F. Harris	4,808
Parsons <i>Sun</i>	Clyde Martin Reed, Sr.	5,957
Pittsburg <i>Headlight</i>	F. W. Brinkerhoff	5,223
Pittsburg <i>Sun</i>	F. W. Brinkerhoff	6,826
Salina <i>Journal</i>	Roy F. Bailey	12,953
Topeka <i>Daily Capital</i>	Arthur Capper	44,678
Topeka <i>State Journal</i>	Arthur Jay Carruth, Jr.	22,144
Wellington <i>Daily News</i>	H. L. Woods	2,503
Wichita <i>Beacon</i>	William Charles Shanklin	78,888
Wichita <i>Democrat</i>	Molly Warren Wilcox	1,500
Wichita <i>Eagle</i>	Victor Murdock	47,735
Winfield <i>Daily Courier</i>	W. G. Anderson	4,923

* Compiled from *N. W. Ayer & Son's Directory of Newspapers and Periodicals, 1936* (Philadelphia, N. W. Ayer & Son, 1936), pp. 311-340.

TABLE II. SURVEY OF KANSAS NEWSPAPER EDITORS IN 1936 °

<i>Ages in 1936:</i>		<i>Newspapers' Political Affiliation According to N. W. Ayer & Son's Directory to Newspapers and Periodicals, 1936:</i>	
In their 20's	2	Republican	23
In their 30's	6	Democratic	1
In their 40's	6	Independent	17
In their 50's	15	Ind.-Rep.	5
In their 60's	9		
In their 70's	5		
Unknown	1		
	<hr/>		<hr/>
Average age: 53	Range: 26-76		46
	44		
<i>Place of Birth:</i>		<i>Highest Level of Educational Achievement:</i>	
Kansas	27	Grade school	3
Midwest	11	Attended high school	3
East	4	High school graduate	5
Southwest	1	Attended college	11
Unknown	1	College graduate	18
	<hr/>	Unknown	4
	44		<hr/>
			44
<i>Religious Affiliation:</i>		<i>In addition to this (included in "College graduate" total):</i>	
Protestant	41	Attended graduate school	3
Catholic	0	Master's degree	2
Jewish	0	Law school degree	1
None	2	Air force intelligence school degree	1
Unknown	1		
	<hr/>		
	44		
<i>Military Experience:</i>			
No	29		
Yes	9		
Unknown	6		
	<hr/>		
	44		
<i>Editors' Personal Political Affiliation:</i>			
Republican	36		
Democrat	1		
Ind.-Rep.	1		
Ind.-Dem.	1		
Independent	2		
Unknown	3		
	<hr/>		
	44		

° NOTE: 46 newspapers were used in this study. Fay N. Seaton, Manhattan, and F. W. Brinkerhoff, Pittsburg, were counted only once in this survey although they each edited two newspapers. All 44 questionnaires were returned.