

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 7: The Republican Era – Foundations/Scope/Extra-Territoriality

*Finley Peter Dunne (Mr. Dooley), The Supreme Court's Decision (1901)*¹

Finley Peter Dunne (1867–1936) was the leading political humorist in the United States during the Republican Era. Millions of Americans looked forward to reading Dunne's fictional Irish character, Mr. Dooley, expound on the issues of the day. That column included such gems as, "An appeal is when you ask one court to show its contempt for another court," and "A man that would expect to train lobsters to fly in a year is called a lunatic; but a man that thinks men can be turned into angels by an election is a reformer & remains at large." As the excerpt below indicates, all of these comments were delivered in a thick Irish brogue.

*Mr. Dooley's most famous observation was made in the context of the Insular Cases. As was the case with many readers, Mr. Dooley had a good deal of difficulty following the opinions. Nevertheless, he believed he grasped the bottom line: "The Supreme Court follows the election returns." Was Mr. Dooley correct in this case? What is the relationship between the judicial decision in *Downes v. Bidwell* (1901) and the Republican Party platform? To what extent is Mr. Dooley's observation more generally accurate?*

"I see" said Mr. Dooley, "Th' supreme coort has I decided th' constitution don't follow th' flag."

"Who said it did?" asked Mr. Hennessy. "Some wan," said Mr. Dooley. "It happened a long time ago an' I don't raymimber clearly how it come up, but some fellow said that ivrywhere th' constitution wint, th' flag was sure to go. 'I don't believe wan wurrud iv it,' says th' other fellow. 'Ye can't make me think th' constitution is goin' thrapezin' around ivrywhere a young liftnant in th' ar-rmy takes it into his head to stick a flag pole. It's too old. It's a home-stayin' constitution with a blue coat with brass buttons onto it, an' it walks with a goold-headed cane. It's old an' it's feeble an' it prefers to set on th' front stoop an' amuse th' childher. It wudden't last a minyit in thim thropical climes. 'T wud get a pain in th' fourteenth amindmint an' die before th' doctors cud get ar-round to cut it out. No, sir, we'll keep it with us, an' threat it tenderly without too much hard wurruk, an' whin it plays out entirely we 'll give it dacint buryal an' incorp'rate oursilves under th' laws iv Noo Jarsey. That's what we'll do,' says he. 'But,' says th' other, 'if it wants to thravel, why not lave it?' 'But it don't want to.' 'I say it does.' 'How 'll we find out?' 'We 'll ask th' supreme coort. They 'll know what's good f'r it.'"

...
"F'r awhile ivrybody watched to see what th' supreme coort wud do. I knew mesilf I felt I cudden't make another move in th' game till I heerd fr'm thim. Buildin' op'rations was suspinded an' we sthud wringin' our hands outside th' dure waitin' fr information fr'm th' bedside. . . . I'd about made up me mind to thry an' put th' thing out iv me thoughts an' go back to wurruk when I woke up wan mornin' an' see be th' pa-aper that th' Supreme Coort had warned th' constitution to lave th' flag alone an' tind to its own business.

"That's what th' pa-aper says, but I've r-read over th' decision an' I don't see annything iv th' kind there. They 'se not a wurrud about th' flag an' not enough to tire ye about th' constitution. 'Tis a matther iv limons, Hinnissy, that th' Supreme Coort has been settin' on f'r this gineration—a cargo iv limons suit fr'm Porther Ricky to some Eyetalian in Philydelphy. Th' decision was r-read be Brown J., him bein' th' las' justice to make up his mind, an' ex-officio, as Hogan says, th' first to speak, afther a crool an'

¹ Finley Peter Dunne, *Mr. Dooley's Opinions* (New York: R.H. Russell, Publisher, 1901), 21–26.

bitther contest. Says Brown J.: 'Th' question here is wan iv such gr-reat importance that we've been sthruugglin' over it iver since ye see us las' an' on'y come to a decision (Fuller C. J., Gray J., Harlan J., Shiras J., McKenna J., White J., Brewer J., an' Peckham J. dissentin' fr'm me an' each other) because iv th' hot weather comin' on. Wash'n'ton is a dhreadful place in summer (Fuller C. J. dissentin'). Th' whole fabric iv our government is threatened, th' lives iv our people an' th' pro-gress iv civilization put to th' bad. Men ar-re excited. But why? We ar-re not. (Harlan J., "I am." Fuller C. J. dissentin', but not f'r th' same reason.) This thing must be settled wan way or th' other undher that dear ol' constitution be varchue iv which we are here an' ye ar-re there an' Congress is out West practicin' law. Now what does th' constitution say? We'll look it up thoroughly whin we get through with this case (th' rest iv th' coort dissentin'). In th' manetime we must be governed be th' ordnances iv th' Khan iv Beloochistan, th' laws iv Hinnery th' Eighth, th' opinyon iv Justice iv th' Peace Oscar Larson in th' case iv th' township iv Red Wing varsus Petersen, an' th' Dhred Scott decision. What do they say about limons? Nawthin' at all. Again we take th' Dhred Scott decision. This is wan iv th' worst I iver r-read. If I cudden't write a betther wan with blindhers on, I'd leap off th' bench. This horrible fluke iv a decision throws a gr-reat, an almost dazmlin' light on th' case. I will turn it off. (McKenna J. concurs, but thinks it ought to be blowed out.) But where was I? I must put on me specs. Oh, about th' limons. Well, th' decision iv th' Coort (th' others dissentin') is as follows: First, that th' Disthricht iv Columbya is a state; second, that it is not; third, that New York is a state; fourth, that it is a crown colony; fifth, that all states ar-re states an' all territories ar-re territories in th' eyes iv other powers, but Gawd knows what they ar-re at home. In th' case iv Hogan varsus Mullins, th' decision is he must paper th' barn. (Hinnery VIII, sixteen, six, four, eleven.) In Wiggins varsus et al. th' cow belonged. (Louis XIV, 90 in rem.) In E. P. Vigore varsus Ad Lib., the custody iv th' childher. I'll now fall back a furlong or two in me chair, while me larned but misguided collagues r-read th' Histry iv Iceland to show ye how wrong I am. But mind ye, what I've said goes. I let thim talk because it exercises their throats, but ye've heard all th' decision on this limon case that 'll get into th' fourth reader.' A voice fr'm th' audjeence, 'Do I get me money back?' Brown J.: 'Who ar-re ye?' Th' Voice: 'Th' man that ownded th' limons.' Brown J.: 'I don't know.' (Gray J., White J., dissentin' an' th' r-rest iv th' birds concurrin' but fr entirely diff'rent reasons.)

"An' there ye have th' decision, Hinnissy, that's shaken th' intellicts iv th' nation to their very foundations, or will if they thry to read it. 'T is all r-right. Look it over some time. 'T is fine spoort if ye don't care f'r checkers. Some say it laves th' flag up in th' air an' some say that's where it laves th' constitution. Annyhow, something's in th' air. But there's wan thing I'm sure about."

"What's that?" asked Mr. Hennessy.

"That is," said Mr. Dooley, "no matther whether th' constitution follows th' flag or not, th' supreme coort follows th' iliction returns."