Taxing Power

Article I, sec. 8 first sentence

Child Labor Tax Case (1922) 217

Shortly after Hammer v. Dagenhart, the Child Labor Case. This one Child Labor Tax Case. The taxing not the commerce power.

1. Facts. 10% tax of annual net profits on any employer of children. Argued whether a genuine tax or a way to regulate use of children. If children, under the then prevalent, Pre-1937 way of arguing, it was a state and not a federal matter. Ct.: pretext.

2. Ct: Pretext. Difference pretextual and a legitimate tax? Here the court says it is plain from he face of he statute. And parade of horribles. 217 4/5.


4. Nor the triviality of the amount. A $1.00 on manufacture, sale or importation of narcotics. Would have seemed clearly a pretext to registration and control of drugs. bottom 218, bottom 219.

5. OWH, note 2 p. 219: “Congress may have what ulterior motives they please” if the act was within Cong power.

6. Post 1937 approach has tended to the Holmesian. See Kahringer 220 at ** x 2. The Ct. Has not found a tax to be a penalty since 1937.

* * *

Spending Power 221 bottom

Art. 1 sec. 8. To lay and collect taxes ... to pay the debts and provide for the common defense and general welfare of the US.” Some pre-1937 question about what and how much power delegated by this language. Post 1937 cases very different. E.G. conditional spending, If the state will do this, then the U.S. will pay for that.

South Dakota v. Dole (1987) 230

Read 230, 231 at * + 232 * + 1 1 1 1 1...
Will return to when get to p. 360 and Separation of powers and legislative / executive powers in time of war, and the Hamdan Case, the most important case the Ct. Decided at its last term. So this is just a preliminary look limited to the role war and foreign affairs play in federalism.

Const.: Art. 1, Sec. 8 spending then 11-16.
Art. 2, Sec. 2, cl. 1 (room for statesmanship, to Pres. Power to those who use
Art. 1, Sec. 10. Last section [sentence]

Woods v. Cloyd (1948) 236


2. Why? War over. Local law. Ct upholds,
War over. How come? Continuing effects. Where stop? 10th?

3. Warning and dis-ease: Jackson 237

Foreign affairs 238

Art. 1 sec. 8 CC
Art. 2 sec. 2, par. 2 (treaties, ambassadors appt, senate)
3, 2d to last clause
Art. 6
[Not states Art. 1, sect 10 1st sentence and last par.

Missouri v. Holland (1920) 238

2. OWH. Supremacy clause. Read excerpts.
3. On possible limits, see esp. n. 2 p. 240 on he Bricker amend. controversy and n 3. on the Reid case
4. Note 5, p.242: a power in Cong. to regulate for affairs?