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2009

### Owen J. Roberts

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#### Publication Information & Recommended Citation

Friedman, Richard D. "Owen J. Roberts." In *Yale Biographical Dictionary of American Law*, edited by R. K. Newman, 461-2. New Haven, Conn.: Yale Univ. Press, 2009.

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**Roberts, Owen Josephus** (1875–1955). Lawyer and U.S. Supreme Court justice. Roberts was born in Philadelphia and graduated from the University of Pennsylvania in 1895 and from its law school in 1898. He taught there part-time beginning almost immediately until 1919, reaching the rank of full professor in 1907. While operating a profitable dairy farm, Roberts practiced law privately, punctuated by a three-year stint beginning in 1901 as first assistant district attorney of Philadelphia County. Tall and robust, he made a striking figure in both classroom and courtroom.

In 1918, Roberts served as special U.S. attorney, successfully prosecuting local foreign-language newspaper editors and publishers under the Espionage Act of 1917. In 1924 he became the Republican counsel for the United States in the Teapot Dome scandal. Though frustrated at times by the impairment of his law practice, Roberts acted vigorously and earned fa-

vorable national attention. He and his Democratic counterpart brought successful actions to cancel the oil leases at the heart of the scandal, which had been procured by bribery—Roberts's persistence resulted in uncovering one large bribe—and they achieved mixed but substantial success in criminal prosecutions.

In 1930, President Herbert Hoover nominated Roberts to the Supreme Court. He was confirmed without opposition. His ascension along with that of Chief Justice Charles Evans Hughes almost simultaneously moved the Court substantially toward receptivity to governmental efforts to regulate the economy. At first, the shift was limited, however. In disputed cases, four justices were reliably hostile to such regulation, three were willing to uphold it, and Hughes and Roberts were in the middle, with Roberts more likely in most contexts to give the conservatives the fifth vote they needed.

Nevertheless, in some crucial cases decided before the crisis of 1937, Roberts and Hughes both joined the liberals. One of the most important of these was *Nebbia v. New York* (1934), in which Roberts wrote a strong, synthetic opinion holding that a state's power to regulate prices was not limited to a closed class of industries "affected with a public interest." In 1936, however, even while articulating a broad conception of Congress's power to tax and spend in *United States v. Butler*, he refused to hold that the power supported the Agricultural Adjustment Act, a cornerstone of the New Deal. Roberts's opinion has been caricatured as articulating a mechanical conception of the judicial role; in fact, he meant only to emphasize that the Court, in determining "its considered judgment" on constitutional questions, was not free to impose its own vision of ideal policy. Of greatest significance, he joined a bare majority in *Morehead v. New York ex rel. Tipaldo*, invalidating a minimum wage law.

Less than a year later, after public outcry against that decision and after Franklin D. Roosevelt's landslide reelection and unveiling of his Court-packing plan, Roberts provided the crucial fifth vote to uphold a similar law in *West Coast Hotel v. Parrish* (1937). The widespread perception was that he had changed sides on this issue and also suddenly taken a broader view of federal powers to help defeat the plan; thus the witticism, "A switch in time saves nine." In fact, Roberts had cast his vote in *Parrish* before the plan was unveiled and had indicated his inclination to vote that way before the election. And indeed this was the result one would have expected from the author of *Nebbia*. The anomaly is his vote in *Morehead*, which he later claimed was motivated by the state's failure to ask explicitly for reversal of an apparently binding prece-

dent. The explanation is incomplete at best, but Roberts proceeded by his own light, often unfathomable to others.

With the appointments of New Dealers to the Court, Roberts steadily became less relevant; he memorably wrote in dissent of one 1944 decision as treating precedent like "a restricted railroad ticket, good for this day and train only." To the end, he was generally sensitive to civil liberties issues. Perhaps his most notable contribution in his last years on the Court was as chairman of a commission appointed by Roosevelt to investigate the Pearl Harbor attack; the report, filed only five weeks after the commission was appointed, was sharply critical of the military and naval commanders in Hawaii.

When Roberts resigned in 1945, his colleagues failed to agree on a farewell letter after Chief Justice Harlan Fiske Stone suggested that "fidelity to principle" had guided him. Among other public activities, Roberts served three years, without compensation, as dean of his old law school, returning also to the classroom. Always a hearty companion, he died on his farm.

RICHARD D. FRIEDMAN

Charles A. Leonard, *A Search for a Judicial Philosophy: Mr. Justice Roberts and the Constitutional Revolution of 1937* (1971); Memorials, *University of Pennsylvania Law Review* 104 (1955).