

THE FEDERAL GOVERNMENT IS A TRUSTEE

Senator Reed Smoot's Speech at Recent Conference Shows Dangers of Federal Control and Points Out Great Need of Development of Latent Resources of West by Privately Owned Plants.

BY REED SMOOT, United States Senator. (Address delivered before Western States Water Power Conference in Portland, September 22.)

BEFORE the adoption of the Constitution of the United States and the inauguration of President Washington, this country did not have in a true sense a national government. The actual governments were the governments of the original states. For purposes of defense against British oppression there was indeed, among these states, a common interest and purpose of action which were finally and formally announced to the world in the Declaration of Independence, and glorious achievements by the war of the Revolution.

Subsequently, under the articles of confederation, an effort was made to provide a central government for this union; but it signally failed, for the simple reason that the chief powers of government—the power of taxation, the power of eminent domain in a broad sense, were withheld from it. Chief among these powers, the law of which well-remembered, was the power of taxation, and the power to regulate commerce with foreign nations and among the several states.

First Articles of the Constitution. In the first article of the constitution created a league of sovereign states and not a nation. Its Congress, as the name originally implied, was an assembly of delegates from the states. It was a deliberative and advisory body, rather than a legislative body. It could make recommendations to the states, but it had no power of collecting them. It could not act directly upon individuals at all. It remained, therefore, for the constitution to create a national government and to provide for it a national government with sovereign powers.

It is very interesting and important to note that the first effective step which led to the calling of the Philadelphia convention which framed the constitution was the action of the commissioners of the states of Virginia and Maryland at Mount Vernon in 1787, for the purpose of settling the jurisdiction over waters dividing the two states. This was followed in 1786 by a resolution of the Virginia Legislature proposing a conference of the states to discuss the best means of securing a uniform treatment of commercial questions.

Constitution Grants Powers. As you all know, it was in conformity with the call of the Annapolis convention, and under the auspices of the delegates from the states, that the great convention met at Philadelphia in 1787 and evolved the constitution under which we live and have grown to be the foremost nation in the world.

Dual Form in Heritage. There was thus created a dual form of government, one operating directly upon the same individuals—a thing unknown before in the history of the world. It served that form of government in its integrity, both as respects the states and the nation, should be the prayerful purpose not to destroy the heritage of all patriotic citizens. It is a sacred heritage, transmitted to us in all its vigor and grandeur.

Water Property of States. The first of the enumerated powers of Congress under the constitution are the power to raise money by taxation and loans, and the power to regulate commerce—powers, the lack of which rendered the old confederation lame and impotent.

Position Based on Right. It is contended, however, that, because the Federal Government happens to own the technical title to vacant land some of our Western states it may dictate the terms on which that land may be used in connection with the beneficial use of water; that as

the Secretary of the Interior has recently said, he may, as the custodian of such lands, consent or dissent to such use, and thus override the laws of the state. The subject of eminent domain and use of water. Such a government—if it can be called a government—would be a government of might and not of right. And it should be here noted and remembered that if this novel assertion of arbitrary power by the Secretary or of Congress would be necessary for any use of water involving easements over the public land, whether for domestic, municipal, mining, agricultural or other uses. This would place the settlement and development of our arid states entirely in the mercy of one man or set of men—a thing utterly abhorrent to our ideas of a free republican government.

Admission to Union Complete. One of the conditions of the confessions, in the deed from Virginia, and of other states following her unselfish example, was that the territory so ceded should be faithfully disposed of. The entire members of the Union, and that the states so formed shall be distinct republican states and admitted members of the Federal Union, having the same rights of sovereignty, freedom and independence as the other states.

Our fathers were careful to make the distinction between full and jurisdiction, between the proprietary right of a state and the rights of a state as admitted into the Union. It becomes vested with all the governmental powers, but the proprietary right of the soil remains subject to the rules and regulations made or authorized by Congress, the jurisdiction over it remains in the state, and the United States may reserve or purchase lands for Federal use within the state, for the erection of forts, magazines, arsenals, and other military and naval buildings; but in those cases its jurisdiction rests upon cessions by the states, and not upon the true of the District of Columbia.

Uniform Taxation Required. Taxation is the highest exercise of governmental power. It is the taking of property from individuals for the support of the government and its institutions; but under the Federal constitution, it is subject to the limitation that it shall be uniform throughout the United States. The taking of private property for public or quasi-public uses, and the regulation of rates and service of public utilities, are the highest exercise of a governmental power, or eminent domain; but the exercise of this power is subject to the limitation that it shall be the payment of just compensation.

Speculation on Sites Feared. This explains the promoter's desire to obtain title in order that he may have a right of sale, and the financial transactions. He wishes the public to supply his credit. All this might be blocked except at the expense of buying out the speculator at any price which he might fix.

Charges Are Considered. The regulating body can deal only with the present owner, and unless development and property are to be confiscated must permit earnings not only upon the purchase price but also upon the increase in value of the property taken place since the present owner came into possession.

Protection Seen in Lease. All the protection that capital needs, all the capital that development requires can be obtained under a proper lease system. All leases should be for a fixed term, probably not less than 50 years, in order that full opportunity may be given to realize upon the investment.

Leases should be renewable to the holder upon expiration except only

which will be the destruction of the rights of a sovereign state, even if it is under the pretense of taking care of the people of the state, will be resentment of the people, and unless they become informed of such a programme.

Good Motives Possible. "There is nothing," said James G. Blaine, "of which a public officer can be so easily persuaded as of the enlarged jurisdiction which pertains to his office."

Federal Power Supreme. When the governmental power of the state comes into conflict with the proprietary interest of the Federal Government, which should prevail?

What is the rule which the Federal Government appropriates and dedicates to the uses of commerce one of our rights of the state or the right of the public domain. Do you want your public lands to be used for the benefit of the state or for the benefit of the people?

It is precisely like manner, the technical right to the public land is held by the state, but the right of eminent domain or police power of the state to control and regulate the appropriation of the public land for public purposes except navigation, for which otherwise the public-land states might not be stripped of all governmental powers, but their sources of revenue would be dried up, and their industrial progress arrested.

Capital Thought Available. No one can honestly say that such a form of tenure coupled with reasonable conditions of occupancy, there would be any objection in securing upon favorable terms all the capital that the necessities of the Western States require.

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representatives and governing bodies of the people whom they serve. It is the contrary, are broad-minded enough to see that their interests and the interests of the people are mutual, and that the prosperity of both goes hand in hand.

There is no industry in the world more deserving of encouragement than hydro-electric power. Not only are the manifold uses of electricity becoming more and more a necessary part of our social and industrial life, but the use of cheap electric power in pumping for irrigation, in the manufacture of fertilizers by the fixation of atmospheric nitrogen, may become an important factor in solving the pressing problem of the high cost of living, and its use in the manufacture of nitrogen explosives may become a factor in our national defense.

Profits Disapproved. In discussing a somewhat similar measure in the United States Senate in 1832, Senator Benton, of Missouri, said:

But there was a new feature to be introduced in the report. The measure was to be introduced into the measure by the offer of a slice from their own territory. He had a right to object, and he did so.

When an appropriator of water digs his trench, constructs his dam or other means of utilizing water on or across the public domain, he pays the expense of locating and installing the works, and he pays all the expenses incident to the construction of the works, and he pays the expense of maintaining them.

States Regulating Rates. Such matters, however, are without the province of Federal legislation or administration. The states have the power to regulate the rates of interest, and the Federal Government would be both unnecessary and unwise.

Co-operation Is Cited. As you have been told that there is an irreconcilable conflict between the Nation and the states because the former claims to own the land and the latter claims to own the water, and power cannot be developed without the use of both.

Rates and Costs Reviewed. No one would have the temerity to argue that an increase of a few thousand dollars in the taxes paid by the State of California would result in an increase in street-railway fares, or that a corresponding reduction would result in reduced rates.

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argument, that Congress has the constitutional power to tax and regulate an industry under the guise of leases or easements over the public land—an assumption which I most emphatically deny. The American people are not to be deceived by the government's insidious suggestion that it is to be protected by exorbitant power? Uncertain tenure, arbitrary control, burdensome taxes, and restrictive legislation are no invitation or inducement to capital to invest in any industry so conditioned, but quite the contrary.

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the water were required for some higher use under the guise of leases for domestic use, for example, or for irrigation or municipal uses? If the United States should, under the option contained in the lease, acquire the property leased, and all other property dependent for its usefulness on the leased premises, where would its right to regulate the rates and service of a plant owned and operated by the United States?

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minded, discreditable, mean and unworthy. And in another place he says: "The man who sought for religion warred against a cause as evil and as capable of inflicting lasting harm as the doctrine of the divine right of kings."

Centralization Tendency Feared. And speaking of the withdrawal of public lands from sale—a question which has been appearing in analogy, but really no connection whatever with the question assigned to me, for one reason, the disposal of the land, a purely political question, and one of other concerns taxation, eminent domain and regulation, which are questions involving the exercise of governmental power.

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GOLDENDALE FAIR PLANNED

NEW HIGH SCHOOL OPENS

Position Based on Right.

Capital Thought Available.

Kenewick Budget Fixed.

Dayton Club Reorganizes.