

# The Oregon Statesman

"No Favor Sways Us; No Fear Shall Awe"  
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## The Constitution Redefined

It used to be said that international trade was a fairly easy thing to teach or to learn. Everything was based on a single standard of value, gold. International balances of trade could be figured out in the twinkling of a goldpiece. Then Hitler and Schacht came along and invented trade by barter and the system of blocking marks, lira, or whatever happened to be on hand, so that one man's guess about the "value" of anything was as good as the next man's; and an understanding of international trade came about as easily as a conversational acquaintance with the fifth dimension.

The same thing has come to apply, during about the same number of years, to the understanding of the American constitution. It used to be that certain things were pretty clear: the supreme court, as in *Marbury vs. Madison*, had authority to declare acts of congress unconstitutional so that they stayed unconstitutional; the states couldn't tax the federal government and the federal government couldn't tax the state, because "the power to tax is the power to destroy," and ours is a dual system of sovereignty; and even that most indefinable of terms, "interstate commerce," had a fairly clear and workable definition for most uses.

In those days the principal cases in constitutional law could be mastered, and the whole subject more or less put away and forgotten. Forgotten, at least, until 1937 and thereafter, when the supreme court began to redefine most of the terms in the federal organic law.

In those days the principal cases in constitutional law, most of which were fairly well established, could be mastered and the whole subject considered as reasonably static. Static, at least, until 1937. As Kenneth Culp Davis put in an *Atlantic Monthly* article last summer.

It is no exaggeration to say that during the past three years we have given a new constitution. Since that hot summer of 1877 when fifty-five men gave us our original constitution, we have in truth had many constitutions, although the document itself has been only slightly changed. During the first third of the nineteenth century John Marshall gave us a constitution largely different from that created in 1787. If Spencer Roane had been Chief Justice in Marshall's place, the Marshall constitution, with its strong central government, might never have been established. . . . The real constitution draws its lifeblood not from the document but from the men who give the document its meaning.

Ever since Justice Black became a member of the supreme court as the first to disturb the god-like equanimity of the "nine old men," the process of redefinition of the old constitutional terms has gone on, as they say, apace, until the old constitution of Marshall, with its sharp division between federal and state power, has been pretty well rewritten in the terms of legal pragmatism which Chief Justice Holmes introduced into American law and which has had popularity in certain schools since.

The most recent example of this redefinition is the decision Monday of the supreme court upholding the wages and hours act in terms which greatly broaden the old definition of "interstate commerce." That the act was upheld was hardly surprising—had it not been, the explosion would have been deafening in this day of Justices Douglas, Black, Murphy, Stone and Frankfurter—since the regulatory provisions of the act governing wages and hours of workmen and the employment of children are wholly in the spirit of social improvement and legal pragmatism which the present court was appointed to champion.

It is much too soon to put a final value judgment on this decision, the legal theory by which it was arrived at, or the practices and motives of the administration which sponsored both the court or the act. In the end, one is inclined to think, the question will be answered not so much in terms of the special reform of the Roosevelt era as in the legal theory which lies behind them. The pragmatic doctrines of the present court gather manifold new power to the federal government at the expense of the state governments and of the individual. If they serve also to protect what remains of the individual's liberty, and to expand it in some spheres where it has been previously contracted, we shall have a highly advanced democracy. If not, we will have an American version of the fascist corporate state, in which the monopoly of power and of freedom is with the state.

## Peter, Paul, Power and Pensions

A number of ingenious schemes for raising new taxes or diverting portions of present tax money, all to the end that old age assistance grants may be more adequate, have been presented to the legislature. At least a dozen bills dealing with pensions have been introduced or are in process of introduction.

Something approaching a climax is achieved in the measure which would levy an 8 per cent tax on the general public's electric and gas bills. Essentially this is a sales or consumers' tax limited to one commodity. It would be well-nigh universal because of the near-universality of electric service, except for the exemption of electric bills up to \$3.

Sponsors of this scheme are all democrats, mainly liberals heretofore identified with the public power movement. They or their associates in this movement have at times argued that lowering people's power bills by a few cents a month was a tremendously vital issue, the key to general prosperity. Now they are arguing, in effect, that people can well afford to pay a few more cents for electricity without noticing it.

At other times they have argued that it was not the saving on electric charges that was important, but rather the possibility of increased use of electricity. Now they propose to discourage the greater use of electricity by making its limited use less costly, contrary to the trend in power rate schedules.

Legislators and others interested in liberalizing pensions may profitably keep two non-resilient facts in mind. (1) State and local budgets are for the most part tightly drawn, permitting no leeway for diversion of present revenues to pension use. (2) Because of the 6 per cent limitation, any proposal to levy new taxes must be referred to the people; thus liberalizing pensions is in the last analysis up to the voters.

This being true, it is not an ingenious Rob-Peter-to-pay-Paul scheme that is needed, but rather the most equitable system of apportioning the cost. Obviously the utility consumers' tax is not the most equitable formula because, to list just one item of unfairness, it would tax more heavily those electricity users who live where power rates are higher.

## Clackamas Pinball Raids

It is to be presumed that in several respects the pinball situation in Clackamas county, culminating in a gigantic raid on Monday when 21 police officers hauled in more than 100 machines alleged to be operating illegally, is somewhat different from the Marion county situation. It is obvious that the method of dealing with them was different.

News dispatches from Oregon City assert that the machines seized all "had slots for payoffs." Presumably they paid off automatically in cash, although this is not clear. The operators are to be prosecuted under the Hannah Martin law, which specifies that such machines are illegal only if something of value is offered to the winner.

If it develops however that the machines, like those in Marion county, paid off only in "hickies" which might or might not be redeemable in cash or merchandise, the impending prosecutions will be of particular interest here where the difficulty of proof has been emphasized. If such proof is produced in the Clackamas county cases, it may be further pre-

## Bits for Breakfast

By R. J. HENDRICKS

Charles Craft assisted in erecting some of the first residences in Salem; contractor for Santiam ditch: (Continuing from yesterday.) J. W. P. Huntington became one of the most popular residents of Salem; a member of the fire department, etc., etc., his home at present 238 North Front street, the Renksa Swart home, and, when he died one of the greatest funeral processions for the capital city up to its time followed the body to the grave, in the Odd Fellows cemetery, Hon. A. Bush, founder of The Statesman and of the Ladd & Bush bank, when visiting in the east, ordered an iron fence for the Huntington grave, where his husband and wife and several children. That fence is in good repair.

Strangely, the body of Charles Craft was not laid to rest in Lee Mission cemetery, of which he was an incorporator and a trustee. The reason makes a long story, rather involved. The body of Charles Craft was laid to rest in the Odd Fellows cemetery; that is, near the Thurston and Willson and Cooke and Ford and other early pioneers' final resting places.

The Charles Craft family were living in the Jason Lee house, first residence erected (in 1840-41) on the site of Salem, during the last days of 1846. How do we know? Well, they were there to receive Grandma Tabitha Brown and her party when they arrived at that house, in a snow storm, ily clad, on foot, on Christmas day, 1846.

That house, erected and maintained for the headquarters of the Jason Lee mission, the mother station of that mission, generally, from the first, housed four families, two on the first and two on the second floor.

The house stands as it stood 100 years ago, with the original foundations and materials, with only the L added, and the old fashioned upper front porch eliminated. It is at present 960 Broadway. In the beginning it was not a street but street numbers did not come till over 50 years later.

In that house the first white child was born in what became the city of Salem and one of the very first girl children. That house became unofficial and official postoffice, Marion county court house, place where was held the first meeting that led to the founding of Williamette University, the Oregon territorial treasury, etc.

Let's have a little sketch of the happenings of that Christmas day, 1846, taken from the written record of Grandma Tabitha Brown.

When the Pringle family (accompanied by Grandma Brown, mother of Mrs. Pringle) reached the top of the last hill (the present exclusive residence district of Salem), overlooking the site of the city of Salem, I immediately saw the three-story Oregon Institute (that by change of name became Williamette University), and the parsonage, both painted gleaming white, surrounded by the lovely valley, they really felt as if they had a view of Paradise. This was Christmas day, 1846.

(They saw not the parsonage but the mission house which had been the residence of Jason Lee and some of his assistant missionaries. The "parsonage" of that day was the building now standing at 1325 Ferry street, and stood to the southeast of that point, likely out of sight from one looking from the hill behind (west of) West Salem.)

Any way, the Pringle family, with Grandma Tabitha Brown, walked into what had been the Lee house that Christmas afternoon of 1846. We know this from several sources. We now know it from the fact that the Charles Craft family was in that house to help welcome the footsore and ily clad stragglers from off the plains. They could sympathize with their destitute condition, and be proud of their heroic bearing.

We know it from another absolutely reliable and a truly romantic source. Fabritus R. Smith had been a member of the 1846 immigration. But he had taken the route from Fort Hall, the Colababba river route, and had arrived several weeks before that Christmas day.

He had secured a job in the mission mill; had been dragging saw logs with an ox team from near the present Marion square.

He had been given quarters in a small building just south of the Lee house; probably one that had been used as a shelter for the workmen when they were erecting the Lee house.

Fabritus R. Smith was naturally very much interested in the walkers arriving next door, passing his front door. He was especially interested in Fabry free young man, in Virgilia Pringle, granddaughter of Grandma Brown, whom he was to afterward marry.

(Concluded tomorrow.)

## Senate Holds up Forestry Bills

Two forestry bills were indefinitely postponed in the senate Wednesday.

One of these related to willfully and maliciously setting fires in the forests.

The other provided for the collection of assessments for fire patrol and for foreclosures of liens resulting from such assessments.

## Two Die in This Midair Plane Crash



Wreckage of one plane. Two persons were killed and another landed his plane safely in a collision in midair between two biplanes over Palmyra, N. J. Pilot Harley River and a passenger, John Norman, died in the wreck. Harold Longenderfer landed his damaged plane safely.

## Wotan's Wedge By Francis Gerard A Prelude to Blitzkrieg

(Chapter 16 (Continued)) It was a clear cold morning with a wintry sun when General von Wallenfels emerged from the front door of the big house he was occupying in Stralsund. He paused at the top of the steps and pulled on his kid gloves. He was in uniform, the field-grey uniform of the modern German army. He wore a single decoration, the Iron Cross. The hard face, beneath the flat forage cap, was as impassive as the day long ago when he killed Ulrich von Tarnsheim in that memorable duel.

He glanced up at the fair morning sky and nodded with short approval. He spoke over his shoulder to his aide-de-camp: "It is a fine day for the Herr Reichminister's visit of inspection."

The general walked down the stone steps to his waiting car and returned the salute of the orderly holding open the door. His A.D.C. got a careful scrutiny by the general's eyes as he stepped into his place at the side of the soldier driver, and the big car moved forward. They headed out of the town and swung right onto the greater bridge which spanned the straits separating Rugen from the mainland. The car crawled to a halt with its throbbing bonnet not six inches from the barrier which barred the bridge-head and waited.

The under-officer, in a steel helmet, in charge of the post stepped up to the car, peered inside, satisfied himself as to its occupants, and then he turned to the orderly immediately the barrier swung up on its pivot and the auto shot across more, at the opposite end, once more, at the opposite end, they were again its occupants were subjected to careful scrutiny by a sharp-eyed under-officer.

## Your Federal Income Tax

EXEMPTIONS ALLOWED COUPLES MARRIED DURING TAXABLE YEAR

The credit for dependents as well as the personal exemption is required to be prorated during a change of status occurs during the taxable year, and these credits are allowable not only for the purpose of computing the normal tax but also the surtax. A fractional part of a month is to be disregarded unless it amounts to more than half a month, in which case it is considered a month.

For example, a single man and a single woman who were married on July 30, 1940, and lived together during the remainder of the year would be entitled to a personal exemption of \$1768.67 in a joint return for the calendar year 1940, which amount is seven-twelfths of \$800 for the husband and seven-twelfths of \$800, plus seven-twelfths of \$200 for the wife.

THE HAMILTON APPOINTMENT Appointment of Ralph S. Hamilton as circuit judge of Oregon's 18th judicial district, to be made shortly by Governor Charles A. Sprague, will be generally approved. Laymen, as well as members of the bar, recognizing Ralph Hamilton's eminent qualifications for the position, will have confidence that he will prove a worthy successor to the late T. E. J. Duffy.

Let us be a successful practicing member of the legal profession. Mr. Hamilton's knowledge of the law and of procedure has been constantly augmented in the school of experience. Early in his career ability was rewarded with a position on the faculty of the University of Oregon law school. Years have been spent in the courts of central Oregon and still other years as a partner in one of the better known law firms of Portland, at the same time that he, practiced law, he learned also how laws were made and his services as a legislator earned for him the speakership of this house of representatives of the state.

Another highly important qualification is in his possession of what is known as the judicial temperament. Shrewd in his analysis, able to see both sides of an issue with equal clarity, he has the discernment and the poise to enable him to preside with fairness and to maintain without ostentation the proper dignity of the court.

The district will be fortunate in his appointment. —Bend Bulletin.

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## Editorial Comments From Other Papers

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## News Behind Today's News

By PAUL MALLON

WASHINGTON, Feb. 5.—Congressional dilatoriness on the British aid bill have been strictly a publicity show. It is an unpleasant duty to report no serious consideration of what the congressional bill means and what it will do, has been contributed by either side.

The committee hearings, which usually produce such public evidence, developed this time into a contest in presenting big names, rather than enlightenment. The opposition got Lindbergh, Kenned, et al, while the conventional bill means and what it will do, has been contributed by either side.

The big names in turn, talked about everything except the bill but chiefly about the war and aid to Britain, as a result upon which the administration and opposition differ only on methods and degrees.

No real explanation of the bill was presented by anyone. House and senate committees have not been able to find anyone who could explain its legal significance. Nearest approach was made by War Secretary Stimson. He submitted a list of war department laws which he thought the new act would repeal. Naval Secretary Knox was unable to furnish even such a suggestion of the scope of the proposal on his department.

Treasury Secretary Morgenthau was asked to give a rough idea of the financial aspects. He pleaded he did not know details because he was not the author. When asked who the author was, he indicated President Roosevelt had taken the initial idea up with Speaker Rayburn and the final draft was "the product of many minds." None of these aids, however, had been called to the witness chair.

At Mr. Morgenthau's elbow at the time was his general counsel, Edward Foley, who is presumed privately within congress to have contributed most of the legal draft in collaboration with Green Hackworth, legal adviser to the secretary of state, and men on the congressional drafting committee.

The congressional committees have not been able to find out anything with the public does not know about a secret session was called to hear State Secretary Hull but this developed only some added details concerning the plight of Britain and no added light on the legislation.

The administration's position has been to lay down a general policy in this bill without disclosing any details. After the policy is adopted, details will come along through requests for specific appropriations and executive acts. Whether the president intends to institute a corporation or to do the job himself through the secretaries of navy and war, or let—as has been reported without confirmation—Mr. Morgenthau direct the aid through an inter-departmental committee, is not clear yet. The figure of \$2,000,000,000 as an appropriation has been mentioned, but only by the opposition in a substitute proposal. Little has been said about the most important subject of collateral for the materials to be loaned or leased.

WASHINGTON, Feb. 4.—(P)—Franklin D. Roosevelt suggested yesterday that "everyone getting a raise because of the defense program should lend it to Uncle Sam as an investment."

## Radio Programs

- These schedules are supplied by the respective stations. Any variations noted by listeners are changes made by the stations without notice in this newspaper.
- 6:30—Sunrise Salute.
- 7:30—News.
- 8:00—Popular Music.
- 9:00—News.
- 9:30—Breakfast Club.
- 10:00—Popular Music.
- 10:30—Musical Horoscope.
- 11:00—Dr. S. B. Longhills.
- 11:45—Yale Parade.
- 12:00—Market Reports.
- 12:15—Sunrise Salute.
- 12:30—News.
- 1:00—Popular Music.
- 1:30—News.
- 1:45—Melody Mart.
- 2:00—News.
- 2:15—Norelites.
- 2:30—Popular Music.
- 3:00—Musical Horoscope.
- 3:15—Dr. S. B. Longhills.
- 3:45—Yale Parade.
- 4:00—Market Reports.
- 4:15—Sunrise Salute.
- 4:30—Willamette Valley Opinions.
- 4:45—Popular Music.
- 5:00—News.
- 5:15—Sunrise Salute.
- 5:30—News.
- 5:45—Yale Parade.
- 6:00—Market Reports.
- 6:15—Sunrise Salute.
- 6:30—News.
- 6:45—Yale Parade.
- 7:00—Market Reports.
- 7:15—Sunrise Salute.
- 7:30—News.
- 7:45—Yale Parade.
- 8:00—Market Reports.
- 8:15—Sunrise Salute.
- 8:30—News.
- 8:45—Yale Parade.
- 9:00—Market Reports.
- 9:15—Sunrise Salute.
- 9:30—News.
- 9:45—Yale Parade.
- 10:00—Market Reports.
- 10:15—Sunrise Salute.
- 10:30—News.
- 10:45—Yale Parade.
- 11:00—Market Reports.
- 11:15—Sunrise Salute.
- 11:30—News.
- 11:45—Yale Parade.
- 12:00—Market Reports.
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- 1:00—Market Reports.
- 1:15—Sunrise Salute.
- 1:30—News.
- 1:45—Yale Parade.
- 2:00—Market Reports.
- 2:15—Sunrise Salute.
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- 2:45—Yale Parade.
- 3:00—Market Reports.
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- 4:00—Market Reports.
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- 5:00—Market Reports.
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- 12:45—Yale Parade.

At no time has the administration offered a justification for this particular legal text as against any other. The only convincing testimony on the subject was by Mr. Knudsen, the production director, who said the issue is all-powerful, vague and justifiable because the president wanted to coordinate production. Stimson hinted something along the same line when he said the measure would give the president control of the distribution of materials.

The opposition has been squirming and squawking some because it cannot find out what the proposal is all about. Main protests along this line have come from Senators Hiram Johnson and Clark. But otherwise the opposition has heaved strictly to the same line of generalities, or conjured such wild prospects as the president giving away the navy. Not knowing what he is going to do, they do not know what to fight.

Big point stressed by the cabinet officers was that the British fleet may be captured and lay the United States open to invasion. They forgot State Secretary Hull last September 3 obtained from Prime Minister Churchill an official promise that the British fleet would never be surrendered. When this was called to Mr. Stimson's attention, he whittled his point down to the possibility that the British government might change and another prime minister might not carry out the promise. But this demolition of the point passed unnoticed, while the threats got the headlines.

As a matter of fact headlines are about all the whole affair has yet produced. In the trust possible sense, congress is legislating in the dark a dark full of weird noises of possible disaster to Britain and invasion of this hemisphere.

Only Mr. Roosevelt apparently knows what it all will mean. That appears to be enough for a strong majority of congress and perhaps of citizens. Maybe, they say, this is the best law ever written, maybe it offers the best way to aid Britain. The only thing sure up to now is that it is a unique case of legislating, unparalleled in the history of the oldest capital ever.

## Free Church Has Quarterly Meet

The district quarterly meeting of the Salem area of the Free Methodist church will open tonight at the local church, corner Market and Winter streets, and continue throughout the week.

In addition to business sessions in the afternoon, preaching services have been arranged for 10:30 Friday and Saturday mornings with Rev. L. H. Ensey preaching Friday morning, and Rev. J. L. Archer, Saturday morning. Meetings are being held in connection with a series of evangelistic services which are being conducted with Rev. Richard Traver of Winona Lake, Ind., as the evangelist. Rev. Traver preaches each night and will also preach at 11 a.m. on Feb. 14, 15 and 16. A public missionary service will be held Sunday afternoon at 2:30, in charge of Mrs. Leona Shoup.

## Would Ban Boat Fishing

The senate game committee Wednesday introduced a bill which would close the McKenzie river above Belknap Springs to boat fishing.