BACKGROUND OF NEW DEAL DECISIONS

THE COINAGE CLAUSE, NATIONAL BANKS, AND A NATIONAL CURRENCY.

By JAMES H. GILBERT

If a central bank had been in operation at the outbreak of the Civil War the financial position of the country would have been much stronger. Following the dissolution of the Second United States Bank state banks were multiplied and in certain sections of the country, particularly in the West, regulation was ineffective. By 1861 there were 1600 loosely regulated state banks, each with a note issue of its own.

In the confused currency situation it took an expert armed with the latest copy of the bank-note reporter to tell whether an issue was genuine of a counterfeit, and if it was genuine whether it was worth face value or figty cents on the dollar or just worthless.

The unstable currency situation, coupled with reverses on the battlefield and the prospect that France and England might take a hand on the side of the Confederacy, led to a complete breakdown of the banking and credit situation late in 1861.

February, 1862, saw the issue of greenbacks and the beginning of the fiat money confusion. Only on the Pacific Coast did gold and silver remain the standard.

In the midst of the monetary confusion Secretary Chase came forward with his proposal for a national banking system. Two objects he had in mind, one temporary, the other destined to be of far-reaching and permanent importance.

In the first place, the Secretary sought to stimulate the sale of bonds with which the war was to be financed. National banks chartered under the new law were compelled to buy a certain amount of bonds and must back their note issues with bonds as collateral security.

The added demand for bonds was not significant. The new banks came into being slowly and at the end of the war held only four per cent of all bonds sold to finance the struggle. The arrangement had enabled Secretary Case to sell but one dollar out of every twenty-five in the wartime issue.

The second objective proved to be of permanent importance. Chase planned through the national banks to provide a currency uniform in design and value throughout the country. In accomplishing this program new legislation became necessary and this law gave rise to one of the fundamental questions of constitutionality and of federal functions versus the functions of the commonwealth governments.

As long as the state banks continued to issue hundreds of varieties of state bank notes under verying regulations no uniformity could be achieved. No direct prohibition of state bank notes could be expected to meet with the approval of the courts.

In the case of Augusta Bank vs. Earle the Supreme Court had declared that the right of state banks to issue notes was a common law right which could not be taken away.

Some device had to be found for leaving this common law right intact but making the exercise of the right unprofitable.

The act of July 13, 1866, imposed a ten per cent tax on the note issues of state banks. Since the prevailing rate of interest was only five or six per cent no state bank could afford to issue notes and lend them while paying a tax of ten per cent.

It was expected that state banks would cease to issue notes or surrender state charters and become national banks. Whichever alternative were chosen a uniform national currency would result.

But state banks that had found note issues profitable would not forego the privilege without a contest. Veazie Bank, chartered by the State of Maine, brought suit in the United States Circuit Court to recover the tax paid under protest, alleging that the tax was an unconstitutional exercise of power by Congress.

Salmon P. Chase, Secretary of War under Lincoln and now Chief Justice of the Supreme Court, delivered the opinion. In this famous case the Court expanded the coinage clause of the Constitution to a currency clause and made it extend not only to issues that emanate from the Federal Government but to the regulation of any currencies that may conflict or confuse the currency situation.

Congress may authorize the emission of bills of credit and suit them to use "by those who see fit to use them in connection with commerce." Congress had undertaken in the exercise of its constitutional powers to provide a currency for the whole country and must secure the full benefits to the country by appropriate legislation.

"Congress may (therefore) restrain by suitable enactments the circulation as money of any notes not issued under its authority," Chase reasoned.

Among these "suitable enactments" might be a regulatory tax which might be levied at any level deemed necessary to accomplish the purpose. With the ten per cent tax on state bank notes in effect, only national banks continued to issue notes and for the first time in our history uniformity in bank currency was achieved.

Although the currency was uniform and sound it was soon found to be inelastic. It did not adapt itself to changing needs of business.

There was also a deplorable lack of cooperation between banks and the independent treasury established under the stress of emergency failed to function properly under present day conditions.

To meet these needs the Federal Reserve System was formulated in 1913. Twelve "banks of banks" were created in as many districts, all national banks were forced to take membership in the system and a large measure of control was given over banking to the Federal Reserve Board made up entirely of representatives of the government.

More recently the "New Deal" banking and currency legislation has extended still further the Congressional control of banking operations and welded the entire system into a nation-wide organization for the insurance of deposits.

It's a far cry from the coinage clause to the guarantee of bank deposits but the Constitution is not what the Constitution makers thought it was but what generations of judges have made it.

Is there such a thing as judge-made constitution as well as judge-made law?

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JUDGES AS A SOURCE OF CONSTITUTIONAL RIGHTS.

By WAYNE L. MORSE

These are days in which many people are urging us to go back to the constitution. But I am afraid that for the most part they are uttering an unintelligent cry.

Go back to what constitution? Or to what conception of the constitution?

If what is meant is that we should go back to a conception that the constitution is static, then I would say that we are being asked to revivify a mummy because that constitution has long since been dead.

As the supreme court itself has said, "The constitution was made for an undefined and expanding future."

Thus, it behooves us as intelligent citizens to give some thought to the nature of our constitution. As Corwin points out:

"The constitution contains about 3500 words. Reading time, about twenty minutes, but hardly two per cent of this phraseology is of major significance to the student of constitutional law. A large proportion of the thousands of cases in which the constitutional law is embodied stem upwards from the foundational document in three or four slight phrases, the due process clause, commerce clause, the obligation of contracts clause."

Unpleasant as the thought is to the conservative, the truth is that the federal constitution as a document does not fix the constitutional rights of Americans. If you want to know what the American constitution provides and means, you must read hundreds of constitutional law decisions.

And that is not enough. You must also be able to read the minds of nine distinguished justices of the United States supreme court at any given time, in order to predict as to what extent and in what way a majority of them may differ with constitutional decisions already rendered by the court.

This is necessary because constitutional law, as Corwin points out, is one field in which the doctrine of stare decisis plays a minor role.

As to the influence of precedent, especially in the field of constitutional law, Justice Cardozo has written:

"In these days there is a good deal of discussion whether the rule of adherence to precedent ought to be abandoned altogether. I would not go so far myself, I think adherence to precedent should be the rule and not the exception. . . . I am ready to concede that the rule of adherence to precedent though it ought not to be abandoned ought to be in some degree relaxed. I think that when a rule, after it has been duly tested by experience has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal and full abandonment. We have had to do this sometimes in the field of constitutional law."

There are those who believe that our constitutional rights depend more upon the personnel, now and in the future, of the United States supreme court than upon the language of the constitution, or the decisions in the books.

They cite such cases as the recent gold clause decision in support of their position, pointing out that had there been one more McReynolds on the court, a significant congressional act would have been declared unconstitutional and the cost to this country, material and psychological, would have been stupendous.

They suggest that such clauses as the due process, commerce, and contract clauses do not and cannot have fixed meanings—that they are highly relative terms and the meanings given them in any constitutional controversy will be determined, to a large extent, by the political, social and economic philosophy of the members of the court.

They classify the judges as liberals and conservatives and they point to the number of five-to-four and split decisions on constitutional questions dealing with great social and economic problems; such as child labor, taxation, commerce, property vested with a public interest, interference with contract.

These critics contend that time after time the judges seem to divide in accordance with their known social and economic views.

Unquestionably, the writings and decisions of the so-called liberals on the court show a difference in emphasis to the social ends and philosophy from those of the conservatives.

Thus we find Cardozo, in his book, The Nature of the Judicial Process, writing with an objectivity so characteristic of him, "that the adaptation of rule or principle to changing combination of events demands the creative action of the judge."

After discussing the influence which procedent exerts on any judge, we find him admitting that subconscious forces influence judicial decisions. His discussion of this matter is so frank and honest that I feel justified in quoting from it at some length:

"Deep below consciousness are other forces, the likes and dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge . . . The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass the judges by . . . Marshall's own career is a conspicuous illustration of the fact that the ideal is beyond the reach of human faculties to attain. He gave to the constitution of the United States the impress of his own mind; and the form of our constitutional law is what it is, because he moulded it while it was still plastic and malleable in the fire of his own intense convictions."

Cardozo quotes with approval the words of Theodore Roosevelt to the effect that "The chief lawmakers in our country may be, and often are, the judges, because they are the final seat of authority. Every time they interpret contract, property, vested rights, due process of law, liberty, they necessarily enact into law parts of a system of social philosophy; and as such interpretation is fundamental, they give direction to all law-making."

Other members of the court have written in a similar vein. Thus, Holmes declared shortly before he retired:

"I can discover hardly any limit but the sky to the court's present power in disallowance of state acts which may happen to strike a majority of this court as for any reason undesirable."

If Holmes is right, then the sky is the limit for the court in sustaining legislation which may strike the members as desirable.

In the case of Burns Baking Company v. Bryan, the majority decision written by Pierce Butler declared unconstitutional a Nebraska statute requiring that bread be sold in pound and a half loaves. Butler held that the act was unreasonable and arbitrary.

Brandeis in commenting upon the decision of the majority characterized it as "an exercise of the powers of a super legislature."

In an even stronger vein, Hughes, while Governor of New York, wrote these words, "We are under a constitution, but the constitution is what the judges say it is."

But such language should not be interpreted too literally, nor should we form the conclusion that constitutional decisions of the court are naught but rationalizations in legal language of the prejudices and personal philosophy of the judges.

The record of the court for fearless, independent decisions uninfluenced by waves of popular clamor stand to its everlasting credit and the decisions of the court on constitutional questions have for the most part been works of art in moulding the constitution to changing social demands.

Nevertheless, it is well to recognize the fictitious features of the oft repeated maxim that our government is one of laws and not of men, because, as the realists point out, a study of law in action shows our government to be one of laws and men.

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Oregon Women Plan Own Extension Work Program

Oregon homemakers who are Members of home economics extension units are just a bit ahead of those in most other states in that they have an active part in deciding just what projects each group will carry each year, Mrs. Miriam Birdseye of Rogue River, president of the State Home Economics Extension council, told some 50 members of that organization at its annual summer meeting at Oregon State college August 5 and 6.

She pointed out that instead of the college handing each county a cut-and-dried program each year, representatives of the local units meet with the state leaders and the county home demonstration agent and decide what sort of work in clothing, cookery, canning, parent education and other projects will best meet the needs of that group. The home economics extension staff then makes every effort to provide such a program.

It was voted during the session that the State Home Economics Extension council will offer a scholarship of $25 each year to a senior or graduate student in home economics at O. S. C. who wishes to better qualify herself for extension work. The fund is to be raised by voluntary contribution of Oregon homemakers interested, and the scholarship will be awarded at the annual spring honor convocation as soon as sufficient money is available.

Counties represented at the meeting were Clackamas, Columbia, Deschutes, Jackson, Josephine, Lane, Multnomah, Benton, Douglas, Linn, Marion and Morrow.

CARD OF THANKS.

We wish to express our deepest gratitude to all those whose many kindnesses have helped to sustain us during our recent loss.

Mrs. W. O. King and Family.

WAS UNABLE TO EAT NOW FEELS FINE!

Iowa Man Tells of Wonderful Relief From Stomach Trouble.

Here is a letter of interest to many residents of Heppner and vicinity. Elza E. Beck, Mt. Ayr, Iowa, writes:

"I have suffered from catarrh of the stomach for a long time. I was unable to eat without food souring on my stomach and my stomach seemed raw. I had severe gas pains and was constipated. While I was in the drug store they asked me to try a bottle of Williams S. L. K. Formula and after I had taken just one bottle I could eat almost anything and did not have those awful gassy pains and soreness in my stomach. I've tried many other medicines but no other has done the work as has Williams S.L.K. Formula.

This wonderful medicine is the prescription of a physician for stomach, liver and kidney disorders, associated with constipation, sour or gassy stomach, distress after eating, sick headache, neuralgia, rheumatic pain, neuritis, biliousness, dyspepsia, heartburn, general weakness and loss of vitality.

If you suffer, don't wait. See your druggist today at Patterson & Son. Satisfaction or your money back.