



2-1-1929

Editorial Comments

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Recommended Citation

John P. Berscheid & Ben Schwartz, *Editorial Comments*, 4 Notre Dame L. Rev. 327 (1929).

Available at: <https://scholarship.law.nd.edu/ndlr/vol4/iss5/3>

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EDITORIAL COMMENTS

IS THE RATE FIXING POWER OF THE INTER-STATE COMMERCE COMMISSION CONSTITUTIONAL?

Congress passes an act requiring inter-state passenger and freight rates to be reasonable and vests the Inter-State Commerce Commission with authority to decide whether prevailing rates are reasonable and further to authorize changes at the discretion of the Commission in accordance with the act.

The question to be determined is whether or not this act of Congress is constitutional.

Under Article I, Section 8, Paragraph 3, of the Constitution of the United States we find this provision: The Federal Government is given power to regulate commerce with foreign nations, among the several states, and with Indian tribes. This clause, then, is a grant of power to the Federal Government by the several states. Upon this provision hinges the right of Congress to make laws governing commerce. Upon this provision and the interpretation thereof hinges the right of the Interstate Commerce Commission to function.

No doubt the fathers of the Constitution would be surprised to find what interpretations have been placed upon the wording of Article I of the United States Constitution. The far reaching scope of that article as today applied probably was not foreseen; at least not the broadness of its application. But with the expansion of commerce, the growth of internal and foreign business relations, the phenomenal building up of industries of national and world-wide scope and the complicated network of railroads, the interpretation of Article I becomes of utmost importance.

Basing the right of the Legislature to enact laws governing commerce between the several states on the aforementioned article, Congress in 1887 passed an act creating an Inter-State Commerce Commission. The members were appointed by the President with the advice and consent of the Senate. The Commis-

sion was to consist of five members. Later, in 1917, the Commission was enlarged to nine members and the salaries raised.

At its inception the Commission did not have the right or full power to fix and regulate rates charged by the railroads in inter-state traffic. At this time the Commission could only determine rates when there was some protest made concerning the prevailing rates and when the question was brought before the Inter-State Commerce Commission. But by amendments made in 1906 and 1910, the powers were enlarged and extended. By these amendments the Commission was given power to regulate, examine, determine and fix rates on its own initiative and instigation. The amendment of 1906 is commonly known as the Hepburn Act. The constitutionality of the right of the Commission to fix rates to be charged by a railroad was upheld in the case of *L. and N. R. Co. v. Inter-State Commerce Commission*, 184 Fed. 118, decided in April, 1910.

We must determine whether the Legislature having the right to control commerce between the states, may delegate this power to another body. In volume 12, page 852, section 338 of Corpus Juris we find: The establishment of rates for railroads and other public utilities is properly a legislative function which involves the exercise of the species of judgment or discretion used in making laws. *Western Union Telegraph Co. v. Myatt*, 68 Fed. 335. The legislature may not delegate to a commission this discretionary law-making power, which has been intrusted to the legislature itself. *Idaho Power Co. v. Blomquist*, 26 Ida. 222. But the legislature may empower a commission with the right to exercise discretionary power when the legislature sets the principles to be followed and declares that rates shall be fixed in accordance with these principles. To make such a delegation of power unconstitutional, the power conferred must be one that appertains exclusively to the legislature and not merely one that might rightfully be exercised by the legislature. *Milwaukee v. State Railroad Commission*, 162 Wis. 127, 155 N. W. 948. The reasoning of the ruling is that if it were not possible for the legislature to put into the hands of a commission or administrative body the enforcement of an act or the manner of its enforcement, the police powers would be unable to cope with many problems of modern life.

The true distinction to be drawn is that the legislature cannot confer the power to make a law upon a commission or other body but it may confer the authority or discretion to determine and enforce matters of detail under or in pursuance to a law once made by the legislature. *Cincinnati R. Co. v. Clinton County*, 1 Ohio St. 77; per Ranny J. quoting *Nall v. Kelly*, 120 Ark. 277-286. And in the case of *Inter-State Commerce Commission v. Goodrich Transit Co.*, it was stated that matters of detail in carrying out the law may be left to a commission.

From the above citations and discussion it appears that the delegation of rate fixing powers to the Inter-State Commerce Commission is not unconstitutional.

J. P. B.

THE LEGAL PROFESSION IN SOCIAL SERVICE

In the present age when old moorings are being cast off, when new problems confront everyone, and when the question that is being asked in connection with all professions and trades is not what you have done, but what you are doing now, there is a greater place for the legal profession in the field of social service than ever before. Service, according to the proverb, is the rent we pay for the space we occupy in the world, and social service by the legal profession should receive our consideration because of the necessity for such service, and the usefulness of such service.

There are three fields which especially commend themselves to me as being open for this work in every community. Each of these fields covers a place that is now open to a great extent, and each of them is important.

The first of these fields is encouraging an understanding of the fundamental principles of law, and why it should be respected. The school societies dealing with debates on public questions, the forums, and the clubs of any community perhaps offer the best opening for work of this kind, and the member of the legal profession who can and will devote some of his time to this work will be performing a social service that is well worth while.

Many people, especially of the younger generation, look on law as merely a series of "thou shalt not" commandments. A

member of the legal profession who will explain the growth of the laws governing the relation of man to man, who will go back into the history of the past to bring forward the causes for various laws, and the provisions which are made to safeguard the individual from unjust laws and assure a fair trial, will to my mind be doing a great work along the lines of social service. I firmly believe that those who carelessly or thoughtlessly flaunt the laws of the country do so more from a lack of understanding than from any other cause, and I think that with understanding would come a greater respect for the laws and a greater obedience to them.

Another phase of social service which lawyers could do a great deal to clear up is in explaining just what the Constitution of the United States is. Among a certain class of people, those who believe in direct action to remedy social problems, the Constitution is known only as something on paper. The lawyer who has the opportunity, or makes the opportunity, to bring the organic law of the United States to the people in a way in which they can understand will be doing a service that will mean much to the country. The man who believes in direct action—when his attention has been called to the fact that the Constitution was adopted largely to prevent that, to see that no man lost his life, goods, or anything belonging to him except by due process of the law—would change his viewpoint. There are, I am sure, no citizens of this country who would like to see the days of the Star Chamber come back. No one would want a man punished without an opportunity to defend himself. And if the facts of the building of the Constitution were placed before him he would be a supporter of it in theory and practice.

Again and again we hear those who favor direct action saying this man and that man should be in jail, that the courts are falling down, and that our judicial system is breaking under the strain of modern conditions. These complaints are made by those who fail to understand that under our Constitution a man is innocent until he is proven guilty, that he is entitled to full recourse of the law before he is sent to prison. So as one of the most important things that the legal profession may do in social service, I would put bringing to the layman an understanding of the Constitution; what it is and what it is not. It is my thought that

with an understanding of this great document there would come a much greater respect for it among all classes.

And the third thing that the legal profession may do along the lines of social service is to stand firmly for the enforcement of the law. American justice is notorious all over the world for its slowness. There are many causes that bring this about, chief among these being technical questions of law, procedure, and the almost unlimited right of appeal which is enjoyed by those who face our American Courts. However, if respect for the law is to continue as a part of our American ideals, if the belief in our judicial system is to continue, we must realize that they rest on enforcement of the laws. Inasmuch as the legal profession is weighed on an exact par with the respect that our laws and our courts command in the minds of our people, we have a selfish and personal, as well as an unselfish general interest in this question. For this reason every member of the legal profession should be a champion of law enforcement. He should be a person who believes that the law should be impartially enforced on the rich and poor, on those high in the community and those who have not such a standing. We may not favor all of the laws that are enacted; we may even vigorously oppose them personally; we may feel that in our judgment they are unwise and unsound, but as long as they are on the statute books, we must, of necessity, support their enforcement. For with disregard for one law will come disregard for another, and this in time will tend to break down our whole judicial system. So from a social service standpoint the legal profession can render a great service by being wholeheartedly for law enforcement in its broadest sense.

There are undoubtedly many other ways in which members of the legal profession can render service to the community in which they reside, ways in which their services both as individuals and as a whole may be of increased usefulness along the lines of social service. Lawyers individually can find plenty of social service that they can render which will have great effect along these lines. All of them are good, but it appears to me that the three that I have mentioned are three lines of work for the betterment of social conditions in the country which may appeal to every member of the legal profession, regardless of where he may be located, or the size of the town or city in which he makes his residence.

B. S.