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A CONSTITUTIONAL QUESTION SUGGESTED BY THE TRIAL OF WILLIAM D. HAYWOOD

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LONG before the trial of William D. Haywood actually began, the attention of the entire country had been attracted by the questions involved in his appeal to the Supreme Court of the United States, relating to the manner in which he was arrested in the state of Colorado and brought within the jurisdiction of the state of Idaho. From the standpoint of both lawyer and layman, these questions are among the most interesting and important raised by the case.

The cases of Pettibone *v.* Nichols, Moyer *v.* Nichols, and Haywood *v.* Nichols presented the same facts and questions of law, and the decision of the Supreme Court in the first named case, reported in Volume 27 of the *Supreme Court Reporter* at page 3, governs in all three. The principle, that a person forcibly abducted from one state, and brought to another, by parties acting without warrant or authority of law, and held for a criminal offense in the latter state under valid process issuing from its courts, is not entitled, under the Constitution and laws of the United States, to release from detention by reason of such forcible and unlawful abduction, has long been too well settled to to merit any discussion. Mahon *v.* Justice, 127 U. S. 700, 32 L. Ed. 283, 8 Sup. Ct. Rep. 1204, Ker *v.* Illinois, 119 U. S. 436, 30 L. Ed. 421, 7 Sup. Ct. Rep. 225. In Cook *v.* Hart, 146 U. S. 183, 36 L. Ed. 934, the Supreme Court uses the following language: "The distinction between cases of kidnapping by violence of unauthorized persons without the semblance of legal action, and those wherein the extradition is conducted under the forms of law, but the governor of the surrendering state has mistaken his duty, and delivered up one who was not in fact a fugitive from justice, is one which we do not deem it necessary to consider at this time."

In his answer to the return of the sheriff, in the Circuit Court of the United States for Idaho, the petitioner Haywood raised practically the same question suggested by the words above quoted. He stated in substance that the governors of Idaho and Colorado and the respective officers and agents of those states, conspired together to have him taken from Colorado to Idaho, under such circumstances and in such way as would deprive him, while in Colorado, of the privilege of invoking the jurisdiction of the courts there for protection against wrongful deportation from the state; also that he was not present in the state of Idaho on the date the alleged crime was said to have been committed, nor for months prior thereto, nor thereafter, and was therefore not a fugitive from justice, and that these facts were all known to the governor and other officials of the demanding state. Pettibone *v.* Nichols, *supra*, at page 113.

The fact that the petitioner was given no opportunity to invoke the jurisdiction of the courts in Colorado is disposed of by the Supreme Court as follows: "No obligation was imposed by the constitution or laws of the United States upon the agent of the state of Idaho, to so time the arrest of the prisoner and so conduct his deportation from Colorado as to afford him a convenient opportunity, before some judicial tribunal sitting in Colorado, to test the question whether he was a fugitive from justice, and, as such, liable, under the act of Congress, to be conveyed to Idaho for trial there." This same point had been raised in Ker *v.* Illinois, *supra*, but was not specifically passed on by the court in that case.

The important question remains: Is there a legal distinction, so far as the constitutional rights of the accused are con-

cerned, between the cases where he is abducted by private individuals and the case where he is abducted by the officers of the state under the forms of law? In either case he will be released on *habeas corpus* if he succeeds in invoking the jurisdiction of the courts prior to the time he is brought within the jurisdiction of the demanding state. Once within the jurisdiction of that state and held under legal process issuing from its courts, he cannot, in the former case, base any right under the Constitution and laws of the United States, upon the method of his abduction; can he do so in the latter case? In Pettibone *v.* Nichols the court holds on page 119, that the difference in fact between the two cases is of no consequence as to the principle involved; that the method by which the accused man was brought within the jurisdiction is immaterial. Mr. Justice McKenna dissents upon this point, holding that the difference in fact above set forth brings the case outside the doctrine of Mahon *v.* Justice, and Ker *v.* Illinois. He states on page 120 that the difference is not merely one of circumstances in the manner of the abduction. Again on page 121 he says: "I submit that the facts in this case are different in kind and transcend in consequences those in the cases of Ker *v.* Illinois and Mahon *v.* Justice, and differ from and transcend them as the power of a state transcends the power of an individual. No individual or individuals could have accomplished what the power of the two states accomplished; no individual or individuals could have commanded the means and success; could have made two arrests of prominent citizens by invading their homes; could have commanded the resources of jails, armed guards, and special trains; could have successfully timed all acts to prevent inquiry and judicial interference." Therefore, from his own statement of the case, the conclusion seems irresistible that the difference is merely one in the circumstances of the abduction. It is difficult to see how such a difference of itself can create a right under the Constitution and laws of the United States. The justice says that the distinction is recognized by the court in Mahon *v.* Justice, *supra*. He probably refers to the sentence in the opinion in which the court says that the state of Kentucky did not authorize the unlawful abduction of the prisoner from West Virginia, 32 L. Ed. at page 286. The context, in the light of which this sentence must be read, shows that the court is here considering whether or not the abduction was brought about by any statute of the state of Kentucky which violates the Fourteenth Amendment of the Constitution of the United States, and finds that such is not the case. The reasoning certainly does not establish the distinction in question. In making and defining a distinction between civil and criminal cases, some courts have said that, in a civil case, a party guilty of fraud or violence in bringing the defendant within the jurisdiction, cannot take advantage of his own wrong; whereas in a criminal case, the state, that is the people, is guilty of no wrong. State *v.* Ross, 21 Iowa 467. Possibly these expressions throw light on the theory of Mr. Justice McKenna. His idea seems to be that the state is barred by its own wrong, consisting of the wrongful acts of its officers, a doctrine somewhat analogous perhaps to that of estoppel. Possibly, in a civil action, the state may be estopped by the erroneous or wrongful acts of its officials, if such acts are clearly within the scope of their authority as fixed by law. Salem Improvement Company *v.* McCourt, Oregon, 41 Pac. Rep. 1105. The writer has been unable to find any case in which the doctrine of estoppel, or any bar after the analogy of an estoppel based upon the unlawful acts of officials, has been raised to defeat the state in a criminal prosecution. It is clear that the Supreme Court did not evolve a new rule of law for the cases of Moyer, Haywood, and Pettibone, but applied to them an old and well established doctrine.

A consideration of the case of Pettibone *v.*

Nichols brings to mind most forcibly the fact that there is a great weakness in the provisions of the Constitution and Statutes of the United States relating to interstate rendition of fugitives from justice. This matter has been discussed by text-writers and courts in the past, but is surely of sufficient importance to warrant further discussion. The second paragraph of Section 2 of Article IV of the Constitution reads as follows: "A person charged in any state with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another state, shall on Demand of the Executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime." Section 5278 of the Revised Statutes of the United States, passed pursuant to the above named provision of the Constitution, provides that "whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any state or territory to which such person has fled, and produces a copy of an indictment found or an affidavit made, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from which the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. . . ." The Supreme Court of the United States in Hyatt *v.* New York, 188 U. S. 691, 47 L. Ed. 657, holds that one who was not within the state when the crime in question was committed, cannot be deemed a fugitive from justice within the meaning of the section of the Revised Statutes above quoted, because if not within the demanding state at that time, he cannot be said to have fled from it. The writer realizes that the question of jurisdiction, where a person, while without the boundaries of a state, commits acts which result in a crime within its boundaries, is by no means simple, but on the contrary raises many intricate problems in conflict of laws. It is not necessary for the purpose of this article to go deeply into the intricacies of this subject. It will suffice to refer to certain well established and universally accepted principles. It is the general rule both at common law and by universal statute law that when a person puts into operation a force, which, without the aid of any intervening agency, produces a result within the limits of a state, which constitutes a crime under its laws, he is liable to prosecution and punishment at the hands of that state, if jurisdiction can be obtained of his person, although he was not within its boundaries when the force was put into operation or the result accomplished; this is also true when the force is carried out and the result accomplished by means of an innocent agent within the state. To this effect see the cases cited in an article by the well known text-writers, H. C. Underhill and W. L. Clark, in Volume XII of the "Cyclopedia of Law and Procedure," at page 208, notes 96 and 97. For instance, suppose that a person, X, makes certain false pretenses in state A, by means of which, through the medium of the mail or of an innocent agent, he obtains money or property in state B, there is no question but that the jurisdiction to try him for the crime of obtaining money or property by false pretenses is in state B; Adams *v.* The People, 1 New York 173, and other cases cited in the article just above mentioned, at page 211, note 18. Yet state B cannot get custody of X under the statute relating to interstate rendition, because he was not physically present within the state at the time the crime was committed. In order to be a fugitive from justice within the meaning of the statute

he must have fled from the demanding state, and in order to have so fled, he must have been physically present within that state at the time the crime was committed; constructive presence will not suffice; Hyatt *v.* New York, *supra*. Again suppose that X, standing in state A, fires a shot across the boundary at Y standing in state B, which results in the death of Y. It certainly cannot be denied that the jurisdiction to try A for homicide is in state B, both at common law and under prevailing statute law; State *v.* Hall, 114 North Carolina 909, 28 L.R.A. 59, and other cases cited in the note to the last named report of the above case. Yet state B cannot get custody of X under the statute, for the reason above stated; State *v.* Hall, 115 North Carolina 811, 28 L.R.A. 289; Hyatt *v.* New York, *supra*. Further instances readily come to mind, but the above are surely sufficient to show that there is an inexcusable weakness in the law. It seems evident that the defect cannot be remedied by an amendment of the statute, for the reason that the same defect is inherent in the Constitution itself. The use of the words "on demand of the executive authority of the state from which he fled," in the constitutional provision makes it clear that it is subject to the same construction as the statute, and contemplates only persons who were physically present within the demanding state, and fled in the physical sense.

In view of the difficulty of securing an amendment to the Constitution of the United States, the question naturally arises: Can the defect be regulated by state legislation? It may be noted at the start that such legislation could not be entirely effective. Suppose that the state of Maine had a statute empowering the governor to surrender fugitives from justice upon demand of other states, that the Governor of California demanded the surrender of a person as a fugitive, and that such person was delivered up in accordance with the Maine statute to the agent of the state of California. The moment that the agent left the state of Maine with his charge, his authority to hold the latter would cease. This difficulty would be met in every state traversed on the journey back to California. If all the states traversed had similar statutes, the agent could legally hold his prisoner only upon complying with the statute of each state as he entered it. If any one of them had no such statute, it is clear that he could not legally hold his charge within that state. State legislation would be absolutely effective only in a case where the demanding and surrendering states immediately adjoined each other. This difficulty is pointed out and enlarged upon in a note to the case of *In re* Robb, reported in 9 Sawyer at page 560. Aside from its practical significance it may possibly have some bearing on the question of the constitutionality of such legislation, and in this connection it will be noticed later.

The constitutional question involved may be put as follows: In view of the fact that the Constitution of the United States makes it obligatory upon a state to surrender as a fugitive from justice a person who is charged with a crime in the demanding state, and who has fled from that state in a physical sense, has a state the power to pass a law providing for the surrender of a person so charged, irrespective of the question whether or not he has fled from the demanding state? To begin with it is clear that such a law would not be objectionable on the ground that it invaded the constitutional rights of the person surrendered, for the Supreme Court has held, in Mahon *v.* Justice, *supra*, and in Lascelles *v.* Georgia, 148 U. S. 537, 37 L. Ed. 549, that a person accused of crime in one state has no right to an asylum in another state under the Constitution and laws of the United States. If it were objectionable, it would be on the ground that under the Constitution the power to pass laws

concerning interstate rendition is exclusively granted to Congress and impliedly prohibited to the states. Would it be objectionable on the latter ground?

It will undoubtedly be conceded that the power to surrender fugitives from justice existed in the several states prior to the adoption of the Constitution, as an attribute of sovereignty. To this effect is "*In re* William Fetter," 23 New Jersey Law 311, also State *v.* Hall, 115 N. C. 811, 28 L. R.A. 289. In Prigg *v.* Commonwealth of Pennsylvania, 16 Peters 535, 10 L. Ed. 1060, at page 1092, Mr. Justice Story states that the right to surrender fugitive slaves as a matter of comity existed in the several states before the adoption of the Constitution; and the power to surrender fugitives from justice is clearly analogous in this respect. It is probably true, as stated by Chief Justice Taney and Mr. Justice Daniel in the last named case that, subsequent to the adoption of the Constitution, the right of a state to surrender either a fugitive slave or a fugitive from justice could not be logically based upon the police power of the state. But, if the power existed before, as an attribute of sovereignty, then it subsisted after, the adoption of the Constitution, upon the same ground, unless it was surrendered by the states. Whether or not it was so surrendered is the important question. Of course in this connection the writer is speaking of the power to deliver up a fugitive as a matter of comity, and not the power to demand such delivery. The latter power is not an attribute of sovereignty, and never existed in the states until it was created by the provision of the federal Constitution.

There is some authority to the effect that a state has the power to provide for the surrender of a person charged with crime in another state. In State *v.* Hall, *supra*, the court says, at page 292, "But in the exercise of its reserved sovereign powers, the state may, as an act of comity to a sister state, provide by statute, for the surrender, upon requisition, of persons who, like the prisoners, are indictable for murder in another state, though they have never fled from justice. If it shall be proved that the prisoners were in fact in North Carolina and the deceased in Tennessee when the fatal wound was inflicted, a law may still be enacted giving the Governor the authority to issue his warrant and deliver them on requisition." Mr. Spear, in his work on Extradition and Interstate Rendition, at page 316, speaking of the case where a person is charged with a crime in a state from which he has not fled, says: "The Constitution may be amended, and then the laws of the United States may be amended so as to cover such cases; or state laws may be enacted to furnish a remedy which is not now supplied by either. Either method is possible, and there certainly should be some method for awarding justice in this class of cases."

"Prigg *v.* Commonwealth of Pennsylvania," *supra*, bears upon the question. The court holds that a statute of Pennsylvania in regard to fugitive slaves is unconstitutional, for the reason that it impedes the absolute right of the owner to recapture his slave, and is thus in conflict with the provisions of Section 2 of Article IV of the Constitution. Mr. Justice Story declares that the states have no power to legislate in regard to the surrender of fugitive slaves, that the Constitution confers such power exclusively upon Congress and prohibits it by implication to the states. His declaration to this effect is *dictum*, as shown by Taney, Chief Justice, and Daniel, Justice, in their separate opinions. Mr. Justice Story classes legislation concerning fugitives from justice with that concerning fugitive slaves, and concludes that the former kind of legislation is also prohibited to the states. On this point it is very clear that his opinion is *dictum*. He holds that the power to legislate upon these subjects is exclusive in Congress for two reasons: First, because the right to retake slaves, (or

obtain custody of fugitives from justice), and the duty to deliver them in any part of the United States, derive their whole validity and obligation exclusively from the Constitution of the United States; second, because the nature of the subjects requires that they should be controlled by one and the same will, and act, uniformly by the same system of regulations, throughout the Union. Taney, Chief Justice, Thompson, Baldwin, and Daniel, Justices, dissent from Story's views as to the exclusive power of Congress. The first reason assigned by him does not seem valid. It is admitted that a state cannot force other states of its own power to deliver up fugitives from justice; this power resides exclusively in the national government. But this fact of itself constitutes no reason in logic or necessity why the states should not be allowed to act voluntarily on ground of comity so long as they do not conflict with the express right and duty prescribed by the Constitution. With reference to the second reason assigned by Story, Mr. Justice Thompson remarks that the mere fact that congressional legislation might be the more appropriate remedy does not render state legislation unconstitutional; to have that effect the case must be so strong that state action is absolutely inappropriate. The strength of this second reason, as applied to the particular kind of legislation treated in this article, will be further considered a little later. Taney, Chief Justice, uses the following language: "Moreover the clause of the Constitution of which we are speaking does not purport to be a distribution of the rights of sovereignty, by which certain enumerated powers of government and legislation are exclusively confided to the United States. It does not deal with that subject. It provides merely for the rights of individual citizens of different states, and places them under the protection of the general government, in order more effectually to guard them from invasion by the states. There are other clauses in the Constitution by which other individual rights are provided for and secured in like manner; and it has never been suggested that the states could not uphold and maintain them, because they were guarantied by the Constitution of the United States." These remarks may be applied with equal force to the provision of the Constitution concerning interstate rendition of fugitives from justice; the only difference being that this provision confers certain rights upon states instead of individuals.

In United States *v.* McClay, 26 Fed. Cas. 1051; *In re* Robb, 19 Feb. 26; *Ex parte* McKean, 16 Feb. Cas. 186; and Degant *v.* Michael, 2 Ind. 396, there are expressions, *arguendo*, or by way of *dictum* to the effect that the power of legislation over interstate rendition of fugitives from justice is exclusive in Congress, the court in each case relying upon the *dictum* of Mr. Justice Story. On the other hand many states have passed statutes auxiliary to the federal statute, providing for the manner of arrest and detention of fugitives and other matters of detail. These statutes have been held constitutional by the courts of last resort in those states, contrary to the views of that judge. For cases on this point see Com. *v.* Tracy, 5 Metc. 536; *Ex parte* Rosenblatt, 51 Cal. 285; Kurtz *v.* State, 22 Fla. 41, 1 Am. St. Rep. 175. In Moore *v.* People of the state of Illinois, 14 How. 13, 14 L. Ed. 306, the Supreme Court, through Mr. Justice Grier, states that the court merely held in Prigg *v.* Com., that any state law which interrupts or impedes the right of the owner to the immediate possession of his slave is void, and makes no mention of the views expressed in that case by way of *dictum*. It seems not unlikely that those views would not receive the sanction of the courts in our day, in the light of this tendency to ignore them.

So far we have assumed for the sake of argument that the provisions of the Constitution and of the state legislation under discussion cover the same ground and

might come into conflict. As a matter of fact this is not true. The Constitution limits congressional legislation to the cases of persons who have fled from the demanding state. It seems clear that Congress could not, in the face of this limitation, pass a statute touching persons charged with crime in a state, from which they have not fled. If it were true that Congress had power to pass such a statute, then the argument of Mr. Justice Story to the effect that the subject is one peculiarly for federal legislation, and the added fact that state laws must be subject to the defect before mentioned in this article, might constitute a formidable objection to state action. But, if, as it seems, Congress has no power to act, then there is no force in that objection. If Congress has not the power, then the fact that Congressional action would be an apt remedy, and that state laws are subject to an inherent weakness, however serious, is entirely immaterial.

In speaking of a case where Congress, in pursuance of powers conferred upon it by the Constitution, has passed certain statutes, Mr. Justice Story says: "In such a case the legislation of Congress in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter. Its silence as to what it does not do is as expressive of what its intention is, as the direct provisions made by it." Without expressing any opinion as to the correctness of the specific rule above stated, the writer suggests that, in order to hold the state legislation in question unconstitutional, the rule would have to be extended somewhat as follows: "Since the Constitution treats as fugitives from justice only persons who have fled from the demanding state, therefore it manifestly indicates the intention that all legislation concerning the interstate rendition of persons charged with crime shall be confined to persons of that class." The above argument certainly does apply to limit the legislative power of Congress. It cannot apply to limit the power of the states. Such a doctrine of implied prohibition would surely be in conflict with the rule that the states retain all powers not delegated to the federal government, as laid down in Gibbons *v.* Ogden and a long line of famous cases; it would practically wipe out the doctrine of reserved powers, in violation of the provisions of Articles IX and X of the Amendments to the Constitution of the United States.

Section 1 of Article IV of the Constitution of the United States provides "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the effect thereof." Congress has passed a statute to this end. Many of the states have passed statutes requiring less by way of certification or other proof, than is required by the Act of Congress. The constitutionality of these statutes has never been questioned, for they do not impair the constitutional obligation. The Supreme Court of the United States has held that a judgment in an action *in personam*, based upon service by publication, need not be given due faith and credit under the Constitution. Haddock *v.* Haddock, 50 L. Ed. 857, and other cases there cited. But while so holding the court says that it intimates no doubt as to the power of a state to give a judgment of that character "such efficacy as it may be entitled to in view of the public policy of that state." 50 L. Ed. at 884. If a state may act outside of the mandate of the Constitution in regard to the judicial proceedings of a sister state, so long as it does not violate its constitutional obligation, why may it not so act in regard to rendition of fugitives from justice?

In closing, the writer desires to notice two cases which have sometimes been said to

be the strongest authorities against the constitutionality of state legislation. The first is People *v.* Hyatt, 172 N. Y. 176, 60 L.R. A. 774. In that case the only question before the court was whether or not a man could be held as a fugitive from justice under the federal statute, when he was not within the State of New York at the time the crime was committed. A determination of this question simply required an examination of the statute and the Constitution, and, upon such examination, the court holds that the case does not come within the statute. For some unknown reason, the court goes out of its way to say: "No person can or should be extradited from one state to another unless the case falls within the constitutional provision, and the power which independent nations have to surrender criminals to other nations as a matter of favor or comity is not possessed by the states." There was no claim or argument made that the prisoner was held by virtue of any power inherent in the state of New York; in fact it does not appear that there was any statute under which the right to so hold him could be claimed, and, in the absence of a statute, it is elementary that the power could not be exercised; State *v.* Hall, 28 L.R.A. 289, Cyclopedia of Law and Procedure, Volume XIX, page 53, note 3. The court denies to the state a right which was not raised or involved in the case. The reason assigned is that where a prisoner has been surrendered under the constitutional provision and brought within the jurisdiction of the demanding state, the surrendering state cannot procure his release as a matter of right, even though its process has been abused in the proceedings; Mahon *v.* Justice, *supra*; and Lascelles *v.* Georgia, 37 L. Ed. 549. But all this proves is that the states do not act on the ground of comity in cases arising under the statute of the United States. This is freely conceded; it needs no further proof than the mere wording of the constitutional provision. The question still remains: Have the states relinquished all power to legislate concerning interstate rendition, simply because they have made it obligatory upon themselves to deliver up persons as fugitives in certain cases? The question whether the rule of Mahon *v.* Justice and Georgia *v.* Lascelles would apply in a case where a state delivered up a person as a fugitive on the ground of comity, does not concern us here. It might well be that a different rule would be applied, and that the complaint of the surrendering state that its process had been abused would prevail in the demanding state, as a matter of comity. If so, there would be no conflict with the provisions of the Constitution of the United States, for the Constitution would not be involved in the slightest degree. It is conceded that the states act under obligation, and not as a matter of comity, in cases arising under the Constitution; to say that for this reason the states have surrendered all power to act, in cases not covered by the Constitution, seems to be begging the question. The court cites in support of its contention Lascelles *v.* Georgia, *supra*. In that case also a person was delivered up as a fugitive under the statute of the United States. It was argued on behalf of the prisoner that he could not be tried in the demanding state on any charge except the one designated in the rendition proceedings, and, as premises for this conclusion, it was stated that this was the rule in cases of extradition from foreign countries, and that the relations between the states in such matters were similar to those between independent nations. The court holds that the second premise is false, and that for this reason the analogy does not hold. The only relations before the court for consideration are those existing between the states with reference to the delivery of fugitives from justice under the Constitution. The decision is that these relations are not like those between independent nations. This is manifestly true. But it does not answer the question whether

the states have a reserved power to act concerning fugitives from justice, in cases entirely outside the scope of the constitutional provision. Whether, in case of rendition under state legislation, the rule concerning the charges on which the prisoner may be tried would be the same as in cases of interstate rendition under the federal Constitution and statute, or the same as in cases of extradition from foreign countries, is not material. If the rule were different from that applied under the federal statute, there would be no conflict with that statute or the Constitution, for neither would have any bearing on the case. In both the last named cases, nothing is considered but the obligation of states to deliver up fugitives under the Constitution, and their relationship in the light of such obligation. It is submitted that the opinion of the court on these matters throws no light upon the question of the right of a state to act in a case entirely outside the obligation imposed by the Constitution.

In the absence of much direct authority upon the constitutional question here treated, the matter must necessarily be argued from analogy. The examination here given is of course but slight and cursory, in view of the vast field from which such arguments may be drawn. It would appear that the only complete remedy for the defect discussed is an amendment to the Constitution of the United States. Since this remedy is so difficult to apply, the proposed remedy by state legislation should be carefully considered.

BOISE, IDAHO, October, 1907.