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Obiter Dicta

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"An *obiter dictum*, in the language of the law, is a gratuitous opinion, an individual impertinence, which, whether it be wise or foolish, right or wrong, bindeth none—not even the lips that utter it."*

RENDER TO CAESAR

Man is essentially a religious creature, and usually rather tolerant of his fellows' religious beliefs. This is evidenced in the Constitution of the United States, Article VI, which provides that ". . . no religious test shall ever be required as a qualification to any office or public trust under the United States"; and Amendment I which requires that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." As in many states, the New York Constitution provides that "The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall forever be allowed in this state to all mankind. . . ." N. Y. CONST. (1846) Art. 1, § 3.

This doctrine of religious freedom was recently invoked in a rather novel manner in the case of *People v. Sandstrom*, 167 Misc. 436, 3 N. Y. Supp. (2d) 1006 (1938). The defendant, a member of a religious sect which subscribes to the belief that to salute a flag contravenes the law of God, was convicted of having violated the Education Law [N. Y. EDUCATIONAL LAW (1928) § 627] which requires that parents shall send their children to school. He refused to do so, and claimed that § 712 (I) of the Educational Law making it the duty of the Commissioner of Education to prepare a program providing for a salute to the flag was unconstitutional, in that it unlawfully restricted the defendant's right to religious liberty, guaranteed by Art I, § 3 of the N. Y. Constitution and the Fourteenth Amendment of the U. S. Constitution.

Is it Lawful to Give Tribute to Caesar?

The precise question presented had never before been decided in New York State. In rendering its decision against the defendant, the New York court dismissed the contention that the act of saluting the flag of the United States was a religious rite. Similar decisions on this point have been given in several other states of the Union: *Nichols v. Mayor and School Committee of Lynn, Mass.*, 7 N. E. (2d) 577, 110 A. L. R. 377 (Mass. 1937); *Hering v. State Board of Education*, 117 N. J. L. 455, 189 Atl. 629, *aff'd*, 194 Atl. 177 (1937); *Leoles v. Landers*, 184 Ga. 580, 192 S. E. 218 *appeal dismissed*, 58 Sup. Ct. 364 (1937).

In the case of *Gobitis v. Minersville School Dist. of Pa.*, 21 F. Supp. 581 (E. D. Pa. 1937) the court takes a viewpoint opposite to that of the New York decision and declares that the Pennsylvania statute compelling students to salute the flag is unconstitutional. It is argued that the individual concerned should be the judge of the validity of his own religious beliefs and that the state should intervene only when the acts of the individual are prejudicial to the welfare of society as a whole.

The Things That Are Caesar's

The majority of the courts seems sound when it holds that by no stretch of a reasonable imagination can the act of saluting the flag of the United States be held to constitute an act of idolatry or a religious observance. If every one were permitted to object to a law and have it held unconstitutional on the grounds that it violated his religious beliefs, such a condition would permit every citizen to become a law unto himself. Instead of one Supreme Court, we would have thousands.

The guarantees in the Federal and State Constitutions grant to every citizen the right to hold any belief as to the nature of God. The Congress was deprived

of all power over mere opinion. Yet there is no provision that any citizen may practice his religious beliefs in any manner he may see fit. Obviously the Federal and State governments may prohibit a person from performing an act, on religious or other grounds, which would be prejudicial to the safety, health, property, or personal rights of the people. The Constitution of the United States does not contain a definition of religion. One by our highest court, however, is found in the case of *Davis v. Beason,* 133 U. S. 333, 342 (1889): "The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the cultus or form of worship of a particular sect, but is distinguishable from the latter." It is to be remembered, that just as the Federal and State governments owe a duty to the people under its jurisdiction to protect them and enforce the laws, so do the citizens owe the reciprocal duty to support this government of their own choice and its laws.

Whose Image and Inscription Is This?

It is at least questionable that the mere mechanical lifting of an arm or the rote recitation of an oath of allegiance can inculcate patriotism. Nor would one unqualifiedly say, that an outward manifestation of fealty shows a heart and mind appreciative of the values of our democracy. Yet the flag of the United States is a symbol of its ideals. The salute to the flag is purely a patriotic gesture designed to show an appreciation and respect for the ideals for which it stands. There is no question of a manifestation of obeisance to a Supreme Being involved in this act. To claim so, would seem to the majority to be a perversion of the true notion of religious liberty.

THE POOR RELATION

There is turmoil in New Jersey over the recent attempt to disenfranchise relief recipients by securing the enforcement of Article II, § 1, of that state's constitution. The section disables paupers from exercising the right of suffrage. Both a legal and a politico-ethical problem seems to be raised by the situation. N. Y. Times, Sept. 7, p. 27, col. 3.

Considering the former, is the relief recipient a "pauper" within the meaning of the constitutional section? Attorney-General David T. Wilentz of New Jersey recently braved the wrath of those who would exclude the poor from the voting booth and declared that before anyone could be considered a pauper, appropriate legal proceedings must be held by a judicial officer adjudging him a pauper. N. Y. Times, Sept. 13, p. 25, col. 4, Mr. Wilentz relies upon *Sayres v. Springfield,* 8 N. J. L. 166 (1825), as his authority. In that case it was held that adjudication by a magistrate is a prerequisite to receiving relief. However, the statement by the court appeared as the construction of a statute in effect at the time and which has since been repealed. It should be noted that this case was decided in 1825, and deals with the Revised Laws, c. 40, §§ 11 and 12 of the Act of 1774, for the relief and settlement of the poor. Even if that statute were still in effect there would be ample room for the argument that the stated case merely required an adjudication of pauperism as a condition precedent to the actual receipt of aid, and has no bearing in determining the status of pauperism, preventing the exercise of the right of suffrage under the present New Jersey constitution. This argument is made unnecessary, however, by the fact of the subsequent revision of that statute.

A Threadbare Cloak

In the New Jersey statutory revision of 1924, c. 132, § 19 declares that a poor person is one who is unable to maintain himself or those dependent upon him.

Section 31 of the same chapter empowers the Overseer of the Poor to determine who are to be relieved by him. Chapter 123, Laws of 1938, gives the Director of Welfare the power to determine who is to secure "emergency relief."

Prince or Pauper

Now, do not these sections, indicating that giving emergency relief and determining pauperism is the office of the Director of Welfare or the Overseer of the Poor leave us in a disconcerting dilemma? If the determination of these officials is not an adjudication, then adjudication is no longer necessary in order to be a pauper in New Jersey; and if that determination is an adjudication, then all those presently receiving relief are adjudicated paupers.

In other states it seems that legal adjudication is unnecessary to the condition of pauperism. *People ex rel. Wehle v. Weissenback*, 60 N. Y. 385, 391 (1875), cites with approval the statement that to render one a pauper in law, there need be no legal proceedings declaratory of, or producing that state, but if one is a pauper in fact and applies for relief and receives it, he is a pauper within the meaning of the statutes. The case of *Alleghany County v. The City of Pittsburgh*, 281 Pa. 300, 127 Atl. 72 (1924), declares that the term "poor" as used in the law is synonymous with "pauper" which means one so poor that he must be supported at the public expense. An application of these standards would make New Jersey relief recipients paupers.

Government by the People

As a matter of American political philosophy it is difficult to understand the disenfranchisement movement. In all probability, the major impetus for this drive has been from political expedience. Are the intelligence, opinion, and desire of poor people to be stifled by their economic position? If relief recipients are to be disqualified because they are supported by the government, may not the next group be barred because their low income exempts them from supporting the government? And also the succeeding group, which in proportion to its relative size, is paying an insignificant share of our national carrying cost? But follow this trend and the bulk of the population has lost its vote.

The Paupers' "Might"

Ethically too, consider the morality of denying the franchise to those with the status of relief recipients. Should this country become involved in a military struggle they would have no voice in the choice between war and peace although they will gladly be granted the opportunity to submit to draft, bear arms, and face death. In a land committed to representative government, is it moral to impose such a burden on those who are not represented at the decision?

The entire dispute could be instantly settled by following the example of Massachusetts which amended c. 51, § 1, of their Annotated Laws, wherein qualifications of voters are stated, the addition exempting from the classification of paupers those persons who have attempted to provide for themselves, and who have fallen into need through no fault of their own.

Placer Mining—New Style

Gold Fever

As Europe suffers from a severe case of war fever, we on this side of the ocean are afflicted with a malady, which although not as fatal as the European disease, has its serious complications. It strikes people of advanced age and low income particularly. "Pensionitis" is what we have in mind. But no one is really immune. Climate does not seem to have any influence upon it as it is now epidemic in widely separated parts of the country. In sunny California the local species

of the ailment seems to be the type most puzzling to the medicine men of an already troubled financial world.

Gold Is Where You Vote it

A proposed amendment to the California Constitution calls for the payment of "Thirty Dollars Every Thursday" to unemployed persons, fifty years of age or older, who have resided in California for at least one year. Art. XXXII, the California State Retirement Life Pension Plan § 9. According to § 7 of the proposed plan, these pensions are not to be paid in regular United States currency but in State Warrants of $1.00 each which are to pass as currency until redeemed. To make them negotiable, these warrants require the addition of a 2 cent weekly stamp purchased with national coin. At the end of the year, each warrant would bear $1.04 in stamps Thus the state has taken in enough to redeem the warrant and still have money left over wherewith to pay administration expenses of the plan. The government of California would be obligated to accept these warrants in payment of taxes and fees. Proposed Art. XXXII § 13. Publicly owned utilities and political divisions of California would be similarly obligated. The state would also have the power to pay 50% of the salaries of governmental employees or other contractual obligations with these warrants. Proposed Art. XXXII, §§ 14, 15. The plan has by petition become a proposed amendment to the California Constitution and on November 8, ballots may make it law. N. Y. Times, Sept. 1, p. 1, col. 5. Barring any interference, if the plan is adopted it will go into effect on January 1, 1939.

However, the United States Supreme Court may be called on to review this ballot-born alchemy. In *Crummer v. City of Fort Pierce,* 2 F. Supp. 737 (S. D. Fla. 1932) it was held that a city could discharge its bonded indebtedness in lawful money only referring to U. S. currency of course. Thus it would seem probable that an argument could be made against the plan as unconstitutional in so far as it declares that the warrants shall be used in payment of debts of the state or its subdivisions.

According to the U. S. Constitution, Art. 1 § 8 (5), Congress alone has the power to coin money and regulate the value thereof. In *Veazie Bank v. Fenno,* 8 Wall. 533, 549 (1869) and in the *Legal Tender Cases,* 12 Wall. 457, 545 (1870), it was pointed out that such power belonged exclusively to Congress. Is the California plan an invasion of this power? If not so held, the condition resulting from permitting each state as well as the National state to coin its own currency would be chaotic indeed.

The provision of the plan permitting the state to pay its contractual obligations to third parties in warrants seems also to indicate an undue interference with the right to contract. *Fletcher v. Peck,* 6 Cranch 86 (1810); *Trustees of Dartmouth College v. Woodward,* 4 Wheat. 518 (1819). Would it not be forcing people to accept highly ornamented documents of questionable value rather than the more commonplace but more valuable currency used in the United States? It appears at this time to be a deprivation of property without due process of law, which is contra to the Fourteenth Amendment to the U. S. Constitution.

Iron Pyrites ?

However, pending the decision of the constitutionality of the proposed amendment the State of California should prepare itself for an influx of mild and middle aged folk come to seek its bounty. Although they will probably arrive by motor and trailer with nary a docile burro to bear the picks and shovels, nor whirling sluice-pan to trap the shining nuggets, may they yet come to a brighter fleece than their ancient sire, Jason, or their fathers of "49."

The "Thirty Niners"