THE FEDERAL POWER OVER CARRIERS AND CORPORATIONS

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649289240

The federal power over carriers and corporations by E. Parmalee Prentice

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

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E. PARMALEE PRENTICE

New York

THE MACMILLAN COMPANY

LONDON: MACMILLAN & CO., LTD.

1907

Set up and electrotyped. Published January, 1907.

Norwood Press
J. S. Cushing & Co. — Berwick & Smith Co.
Norwood, Mass., U.S.A.

PREFACE

THE present work deals, as its title indicates, with the nature and extent of powers belonging to the general government, not with Congressional legislation. One statute, however, the Act of July 2, 1890, popularly known as the Sherman Anti-Trust Act, so closely concerns the principles of government that it has required a full consideration.

It is common in discussing these questions largely to disregard the purposes which influenced the formation of our government and for a century directed its administration. Present questions, it is urged, are new, beyond the contemplation of the statesmen of a century ago, and new meanings must therefore be given to the Constitution. This is surely a most dangerous and mistaken notion.

The nature of man and the principles of government are not changed. Personal liberty is as precious as of old, and its preservation is still of first importance. The influences which endanger free government, and, if unrestrained, lead to the license of the mob or to arbitrary rule, are present in our, as in all other peoples. That so many persons are

ready, without very serious consideration of the structure of government, to approve any method which seems to promise effective control of corporations, shows that the American people have so long lived in consciousness of complete safety for all private rights, that the methods by which, in the formation of the Constitution, individuals were protected against arbitrary power, seem no longer to demand attention. And yet it is perhaps in the light which history throws upon the science of government, that the past makes its most valuable contribution to the present. When this contribution is disregarded, when the past offers no guide, the future, in the words of one of the greatest American publicists, offers no security.

The Constitution is a historical document. Its meaning, and the interpretations it has received as the final adjudications of time and authority, can be determined only by taking the decisions which have construed its terms in connection with contemporaneous conditions, and by study of constitutional practice of States and Congress.

Cases of latest date, however, are commonly those which carry greatest authority. There has been a tendency, therefore, in reading opinions of the Supreme Court to accept each decision as a new point of departure. In consequence, some of the earlier

cases, upon which it is now sought to build further extensions of Federal power, — as, for example, the famous case of Gibbons *v.* Ogden, decided by Mr. Chief Justice Marshall in 1824, — have been quoted as establishing doctrines which their illustrious authors would have been first to deny.

This method of construction has never received the approval of the Supreme Court. The Constitution "speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers and was voted on and adopted by the people of the United States." This statement by Mr. Chief Justice Taney has lately been reaffirmed, when the Court, speaking by Mr. Justice Brewer, said, " The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted it means now. . . . Those things which are within its grants of power, as those grants were understood when made, are still within them, and those things not within them remain still excluded." To depart from a constitutional rule, Mr. Justice Harlan said, delivering the opinion of the Court in another recent case, " is to endanger the safety and integrity of our institutions and make the Constitution mean not what it says, but what interested parties may wish it to mean at a particular time and under particular

circumstances. The supremacy of the law is the foundation rock upon which our institutions rest."

Constitutional construction can be accomplished, then, only by a full understanding of constitutional history. For such success as may attend the present effort to define powers of government, much is owing to the counsels of Mr. George Welwood Murray and Mr. Charles P. Howland.

E. P. P.

15 Broad Street, New York,
December, 1906.

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