JUDICIAL DECISIONS ON PUBLIC LAW

ROBERT E. CUSHMAN

University of Illinois

Appropriations to Sectarian Schools—Constitutionality. Trost v. Manual Training School for Boys (Illinois, February 20, 1918, 118 N. E. 743). The plaintiffs in this case asked for an injunction to restrain the payment of county funds to certain Catholic institutions to which the county courts in accordance with the statutes have committed dependent children. Both Catholics and non-Catholics are sent to the schools; and while all the children are taught the Catholic catechism, only the Catholic children are required to attend the regular Catholic religious services. It was alleged that these appropriations were in violation of the clause of the state constitution forbidding the appropriation of public funds in the aid of sectarian institutions. The court decided that since the amount of money paid by the county to the schools in question for the support of each child was less than the actual cost of maintaining that child at a state institution the appropriations could not be said to be in aid of the sectarian school. The court seems to have been influenced in part by the fact that there were available no other suitable institutions to which these dependent children could be sent and that such schools could be erected and maintained by the county or state only at great expense. The case seems to be in conflict with the earlier Illinois case of County of Cook v. Industrial School for Girls (125 Ill. 540; 18 N. E. 183).

Compulsory Taking of Private Property for Use in Work on Public Roads. Galoway v. State (Tennessee, March 23, 1918, 202 S. W. 76). This case holds that persons who have wagons and teams may be compelled by law to allow their use by the county for work upon the roads for a specified number of days each year. Such compulsory use of property is justified upon the same principle as that which underlies the time-honored custom of compelling the citizen to give his labor directly for the same purpose. Laws which make service upon the roads compulsory have frequently required the citizens to provide

the tools with which to do that work. The law in question is a less drastic exercise of governmental authority than such a law. The long line of cases sustaining the compulsory service acts and culminating with the decision of the United States Supreme Court in the case of Butler v. Perry (240 U. S. 328; 36 Sup. Ct. 258) are, therefore, authorities in support of the statute involved in this case. The property thus taken for use on the roads cannot be said to be taken by the taxing power, nor by the power of eminent domain, but by the police power of the state. That portion of the act, however, which compelled the owners of the teams so commandeered to feed them while they were being so used was held void as a taking of private property for public use without just compensation. The taking of the feed was distinguished from the taking of the horses on the ground that the latter taking was merely temporary and in the nature of a loan which would not work severe hardship, while the feed thus provided was entirely appropriated by the public authorities.

Congressional Districts—Power of Legislature to Reapportion Frequently. People v. Voorhis (New York, February 15, 1918, 119 N. E. 106). In this case the New York court of appeals lays down the interesting rule that when the legislature of a state reapportions the congressional districts of that state after a decennial census it does not thereby exhaust its power or completely discharge its duty. It is under a continuing obligation to keep on redistricting the state as often as the shifting of population may make it necessary or advisable. The state of New York was redistricted in 1911. In 1916 a congressman was elected to represent the seventh district and he resigned in January, 1918. In June, 1917, the legislature redistricted the state, altering the boundaries of the seventh district in the process. The governor issued a call for a special election to fill the vacant seat. Should the election be held in the seventh district as constituted by the apportionment of 1911 or in the new seventh district created by the act of 1917? The court upheld the validity of the last apportionment and declared that the seventh district marked out by the statute of 1911 no longer existed. It was pointed out that when Congress in 1911 called upon the states to create new congressional districts based upon the census of 1910 it used the words "the representatives to the Sixty-Third and each subsequent Congress shall be elected by districts composed of a contiguous and compact territory, and containing as nearly as practicable, an equal number of inhabitants." This shows clearly

that "Congress in its enactment took into consideration the fact that after a state had once been divided into congressional districts, by reason of shifting population, it might become necessary to redistrict it in order fully to comply with the intent and purpose of the act."

The position of the majority of the court was vigorously attacked in two dissenting opinions. It was pointed out that ever since 1842, when Congress first directed the creation of congressional districts based upon the federal census, state legislatures have assumed that such districts were to be changed only when a new census had been taken. This, it was urged, was the clear intention of Congress. To hold that congressional districts must be continuously reshaped to conform to the rapid shifting of population would make necessary the frequent enumeration of the population of the state in order to determine the amount and character of such shifting. It was not the purpose of Congress to lay upon the states any such obligation to take frequent censuses. It was further urged that even if such frequent reapportionments were legitimate they could be made to apply only to the regular elections held after their enactment. Otherwise a man might be elected to Congress only to find himself representing a "migratory" district, or perhaps a district which, by some act of redistribution, had ceased entirely to exist. Such a result is clearly contrary to the intention of Congress.

If the New York court of appeals has correctly interpreted the congressional act governing the decennial reapportionment of congressional districts it would seem highly important that that law be modified to prevent the enormous increase of gerrymandering which the rule in this case would make possible.

Criminal Law—Criminal Syndicalism—Advocacy of Sabotage. State v. Moilen (Minnesota, April 19, 1918, 167 N. W. 345). This case involved the question of the constitutionality of the Minnesota statute of 1917 defining and punishing the crime of "criminal syndicalism." Criminal syndicalism was declared to be the doctrine "which advocates crime, sabotage (this word as used in this bill meaning the malicious damage or injury to the property of an employer by an employee), violence or other unlawful methods of terrorism as a means of accomplishing industrial or political ends." Teaching this doctrine by spoken or written words or attending, instigating or aiding meetings for the purpose of advocating it was made a felony with a maximum penalty of ten years imprisonment, five thousand dollars fine, or both.

The statute was held by the state supreme court to be constitutional. It did not abridge the privileges or immunities of citizens of the United States, since there could be no constitutional right to advocate a doctrine so menacing. It was not a denial of the equal protection of the law in penalizing methods of carrying on industrial struggles alone because it is well established that the problems of labor may properly be treated by special laws without creating arbitrary classifications. Finally, the penalties provided for do not exceed the limits of legislative discretion so as to constitute cruel and unusual punishments.

Elections—Bribery at Presidential Elections. United States v. Bathgate (U. S. Supreme Court, March 4, 1918, 38 Sup. Ct. 269). A conspiracy to bribe voters at a general election at which presidential electors and members of Congress are to be chosen is not punishable under any statute now on the statute books of the United States. It is not a conspiracy to "defraud the United States" as defined by section 19 of the Criminal Code, nor is it a conspiracy to prevent or hinder the free exercise of any right or privilege secured by the Constitution or laws of the United States as defined in section 37 of the same code. This case does not in any way involve the question of the power of Congress to enact a statute which would effectively punish such bribery. The fact is that Congress has not done so. A review of the history of the two sections of the Criminal Code under which it was attempted to bring these indictments indicates that they were not intended to apply to bribery in elections. There are no common law crimes against the United States, and the United States can punish a man only when it has been able to show that he has committed an offense which falls clearly within the provisions of an act of Congress.

Elections—Right of Convict to be Candidate in State Primary. State v. Schmahl (Minnesota, May 17, 1918, 167 N. W. 481). An injunction was asked for to restrain the secretary of state from placing upon the primary election ballot the name of a man who, since filing his affidavit as a candidate, had been convicted of felony in a U. S. court and who was, therefore, disqualified from holding any office under the constitution of the state. The court refused to give the relief sought. The office of United States senator is a federal office and the qualifications for holding it are fixed by the federal Constitution. The fact that United States senators are elected by the state election machinery does not make applicable to the candidates for that office the restrictions upon the right to hold office found in the constitution of the state.

Governor—Power to Issue General Amnesty and Remit Civil Penalties. Hutton v. McClesky (Arkansas, February 11, 1918, 200 S. W. 1032). In January, 1918, the governor of Arkansas issued a proclamation reducing to the sum of one dollar all penalties against delinquent taxpayers for the year 1917. The supreme court held that in so doing the governor overstepped his constitutional power. This was true for two reasons. In the first place, the power of the governor to pardon applies only to criminal cases and does not extend to the remission of penalties which are civil, remedial, or coercive in character. This clearly follows from the fact that the clause of the constitution defining the power of pardon stipulates that it be used "in all criminal and penal cases . . . after conviction." Only those may be pardoned by the governor who have been duly convicted by a court of law. In the second place, the proclamation was in excess of the governor's power because it amounted to a general amnesty. The constitutional provision already quoted indicates an intention to have the pardoning power used only in the case of individually convicted criminals and not for purposes of general amnesty; and the same intent is apparent in a further clause of the constitution providing that "no power of suspending or setting aside the law or laws of the state shall ever be exercised except by the General Assembly."

Minimum Wage—Constitutionality. Larsen v. Rice (Washington, April 3, 1918, 171 Pac. 1037). This is the fourth in an unbroken line of favorable state supreme court decisions upon the constitutionality of minimum wage laws applicable to women and children. These laws have all been substantially the same. The Washington statute of 1913 created an industrial welfare commission which had power to investigate the conditions in any industry in which women and minors were employed and to issue a mandatory order regulating those conditions and fixing a minimum wage. In upholding this law the state supreme court merely cited with approval the opinion of the supreme court of Oregon in the case of Stetler v. O'Hara (69 Ore. 519; 139 Pac. 743) without reviewing the arguments contained in that opinion.

Mothers' Pensions—Constitutionality. Rumsey v. Saline County (Nebraska, March 16, 1918, 167 N. W. 66). The case upholds the validity of the Nebraska mothers' pension act of 1915. Three objections were urged against the constitutionality of the statute: first, that it contained more than one subject; second, that, as an amendment to

the poor laws of the state, it should have repealed entirely the section which it was intended to amend; third, that it would necessitate an overstepping of the county tax limit set by the constitution. The court found no virtue in any of these contentions.

Naturalization—Grounds upon Which Certificates May be Canceled. United States v. Kamm (U. S. District Court, January 3, 1918, 247 Fed. 968). The defendants in this case had made their final application for naturalization before the date of the declaration of a state of war with Germany, but the statutory period of ninety days which must elapse between the application and the granting of final papers had not expired until after that date. The United States district court in which they had filed their petitions took the view, however, that the naturalization statute permitted their naturalization provided the applications were made before they became alien enemies. They were accordingly naturalized. The naturalization law provides that a United States district attorney may bring suit in any district in which a naturalized person resides to cancel his certificate of citizenship on the ground of fraud or on the ground that it was "illegally procured." Such an action to cancel the naturalization certificates of the defendants was brought on the ground that they were "illegally procured," inasmuch as the court which issued them had misinterpreted the statute and had issued the certificate when it had no authority to do so by reason of the fact that the defendants were alien enemies at the time of receiving their final papers. The question raised may be stated thus: Has one district court the power to cancel as being "illegally issued" the naturalization papers issued by another district court because the second court disagrees with the first upon the interpretation of the naturalization laws? The district court in this case holds that it does have this power. The decisions of the United States Supreme Court indicate that the words "illegally procured" are not to be construed in a narrow sense, but should be made to cover any irregularity or illegality which is apparent to the court regardless of the good motives of any or all of the parties involved.

Police Power—Sterilization of Defectives. Haynes v. Lapeer Circuit Judge (Michigan, March 28, 1918, 166 N. W. 938); In re Thomson (Supreme Court, Albany County, N. Y., March 5, 1918, 169 N. Y. Supp. 638). A Michigan statute of 1913 provided for the sterilization of persons confined in state institutions who had been adjudged mentally defective

or insane by a court of competent jurisdiction. There were adequate procedural requirements to prevent abuse of the power granted, and the operations were to be performed upon the approval of two qualified physicians. This act was held invalid on the ground that it violated the protection against the denial of the equal protection of the law, inasmuch as it applied only to such defectives as were confined in state institutions. Even the attorney general filed a brief attacking the law upon this ground. The court did not indicate what its attitude would have been toward a law providing for the sterilization of criminals and defectives which did not involve an arbitrary classification. In the case of In re Thomson practically the same issue was raised. The New York statute of 1912 was somewhat broader in scope than the Michigan act, but it also applied only to criminals and defectives in state institutions. The court regarded this classification as arbitrary and therefore a denial of due process of law. It furthermore regarded the whole scheme of the law as arbitrary and unjustifiable in character and a violation of due process of law. It reviewed with obvious approval the testimony of several physicians and scientists who for various reasons disapproved of the policy of sterilization of defectives and concluded that the proposed operation "is not justified either upon the facts as they today exist or in the hope of benefits to come." The court did not regard the law as a proper exercise of the police power.

Taxation—Public Purpose—Validity of Seed Grain Law.—State v. Wienrich (Montana, February 1, 1918, 170 Pac. 942). A suit for injunction was brought to restrain the holding of a county election to pass upon the issuance of $300,000 worth of bonds to be loaned to needy farmers in accordance with the provisions of the Montana seed grain law of 1915. Inasmuch as the amount of this proposed bond issue was in excess of the limit set by law the injunction was granted. The state supreme court took the opportunity, however, to examine carefully the question of the constitutionality of the seed grain law in its broader aspects. While, strictly speaking, the discussion of these constitutional questions may be regarded as *obiter dicta*, it seems clear that it was intended by the court to be an authoritative pronouncement upon those questions. The law was held to be constitutional. The statute provided for the loaning of money to "needy farmers who are unable to procure seed," and made such loans a lien upon the crops and land of the farmers who received them. This does not involve an exercise of the taxing power for a nonpublic purpose. The constitution

of the state permits the counties to provide for "those inhabitants, who, by reason of age, infirmity or other misfortune, may have claims upon the sympathy and aid of society." This is broad enough to include farmers who, by reason of the failure of their crops, are brought to the edge of ruin and who without help will become charges upon public charity. Loans of public money to such persons are for a public purpose. The conflicting view expressed by the supreme court of Kansas in 1875 (State v. Osawkee Township, 14 Kan. 418; 19 Am. Rep. 99) merely "shows how even mighty minds are circumscribed by the spirit of their time." The statute in the present case confined the benefits of the act to those needy farmers who were resident freeholders, and thereby raised the question of arbitrary discrimination against homesteaders and renters. On the theory that the court should so construe a law as to validate it if that can be done without violence to its language, the court held that both the tenant farmer and the homesteader could take advantage of the provisions of the law, such an interpretation being in harmony with its general purpose. This case is in harmony with decisions handed down by the supreme courts of North Dakota and Minnesota. See State v. Nelson County (1 N. D. 88; 45 N. W. 33) and Deering and Co. v. Peterson (75 Minn. 118; 77 N. W. 568).

War Problems. *Alien Enemies—Nonresident—License Under Trading With the Enemy Act.* Hungarian General Credit Bank v. Titus (New York, Appellate Division, April 5, 1918, 169 N. Y. Supp. 926). The plaintiff was a Hungarian corporation. It held the defendant's promissory note for $5000. In accordance with the provisions of the Trading With the Enemy Act the attorney for the plaintiff corporation applied to the alien property custodian and secured from him a license permitting the prosecution of an action to collect the note. It is here held that there is no authority in the statute for the issuance of such a license. The act provides that under certain conditions the President may authorize the licensing of nonresident alien enemies to carry on business in this country, and that such licensees may sue in any cause of action arising out of the business they are licensed to carry on. The plaintiff had no such license to do business in the United States and could not, therefore, be given a license to sue in the courts of this country. The action was accordingly stayed until the close of the war.

Alien Enemies Resident in United States—Right to Sue—Trading With the Enemy Act. Tortoriello v. Seghorn (New Jersey, Chancery, March 12, 1918, 103 Atl. 393); Krachanake v. Acme Mfg. Co. (North Carolina, April 24, 1918, 95 S. E. 851); Arndt-Ober v. Metropolitan Opera Company (New York, Supreme Court, 169 N. Y. Supp. 304; also New York, Appellate Division, April 5, 1918, 169 N. Y. Supp. 944). These three cases all involve the question of the rights and privileges of resident alien enemies under the Trading With the Enemy Act. In the New Jersey case an unnaturalized German had entered into a contract to sell real estate before the passage of the act. He resisted an action brought for a writ of specific performance to compel him to sell in accordance with the terms of his contract, on the ground that he was forbidden to engage in such a transaction by the provisions of the law. The other two cases involve the right of resident alien enemies to institute suits in the courts of this country. In each case it was pointed out by the court that the Trading With the Enemy Act makes the test of enemy character residence and not nationality and that the only enemy aliens living in this country who are to be regarded as enemies within the meaning of the statute are those that have been interned for the period of the war. Accordingly a German citizen living in New Jersey could be compelled to carry out his contract, and other enemy aliens resident here have the same right of access to the courts that American citizens have.

Articles of War—Scope—Persons Accompanying the Armies of the United States. Ex parte Gerlach (U. S. District Court—December 10, 1918, 247 Fed. 616). Gerlach was employed by the United States shipping board and was sent by them to Europe. He was there discharged and sent back on an army transport. On the return voyage he volunteered to stand watch but finally, as the ship was passing through the danger zone, refused to do so. He was thereupon court-martialed and sentenced to five years imprisonment for disobedience of orders. He appealed from this conviction on the ground that he was not subject to the jursdiction of a military court. The Articles of War, as amended August 29, 1916, make subject to military jurisdiction "All retainers and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States, etc." The court decided that the Articles of War applied not only on land, but in any place where military operations

were being conducted. Gerlach was a person accompanying the armies of the United States and voluntarily serving in connection with them. He was accordingly amenable to military discipline. Furthermore, the captain of the vessel had the right, apart from the authority bestowed by the Articles of War, to compel all on board to help protect the ship from imminent peril. The court-martial accordingly had exclusive jurisdiction in this case.

Conscription Act—Constitutionality—Stare Decisis. Cox v. Wood (U. S. Supreme Court, May 6, 1918, 38 Sup. Ct. 421). The appellant in this case claimed that the Selective Draft Law is unconstitutional because its avowed purpose is to compel men to serve in the army which is to be sent out of the country. It was argued that while Congress could draft men into the national militia it could use the militia thus organized only "to execute the laws of the Union, suppress insurrections and repel invasions." This precise point had not been considered by the court in its opinion in the Selective Draft Cases (245 U. S. 366; 38 Sup. Ct. 159) upholding the constitutionality of the conscription act. The opinion in this case, however, states that the earlier decision had rested upon grounds broad enough to meet this argument. The right of Congress to create a conscript army rests upon the constitutional authority which it enjoys to declare war and raise armies, and this broad authority is not hedged in by any "limit deduced from a separate and for the purpose of the war power wholly incidental if not irrevelant and subordinate provision concerning the militia found in the constitution."

The court was requested by the counsel for the government to strike from the files the brief presented by the appellant's counsel, Mr. Hannis Taylor, on the ground that it contained passages which were "scandalous and impertinent." The court agreed that the passages "justify the terms of censure by which they are characterized in the suggestion made by the government," but refused to grant the motion to strike on the ground that "the passages on their face are so obviously intemperate and so patently unwarranted that, if as a result of permitting the passages to remain on the files they should come under future observation, they would but serve to indicate to what intemperance of statement an absence of self-restraint or forgetfulness of decorum will lead, and therefore admonish the duty to be sedulous to obey and respect the limitations which an adhesion to them must exact."

Conscription Act—Desertion—Persons Subject to Military Law. Franke v. Murray (U. S. Circuit Court of Appeals, February 14, 1918, 248 Fed. 865). A conscientious objector on religious grounds, whose claim for exemption was denied and who was ordered to report for transportation to training camp, refused to do so and was arrested and tried by a court-martial for the crime of desertion. He alleged that he was not a deserter since he had never joined the army, that he was merely subject to civil prosecution for whatever offense he may have committed, and that the conscription act was invalid because it delegated legislative power to the President. The court found no virtue in these arguments. The Selective Draft Act clearly makes a man subject to military law from the time he is drafted, certainly from the time he is accepted for service and receives notice to report. Failure thus to report makes him a deserter therefore. The rules regarding voluntary enlistment do not apply, and a man is a member of the national army even before he takes an oath at the time of actual induction. The conscription act, furthermore, specifically exempts from the jurisdiction of the civil courts those persons which are made subject to military law. The contention that the law is void because it delegated legislative power to the President has been effectively disposed of by the decision of the Supreme Court in the Selective Draft Cases (245 U. S. 366; 38 Sup. Ct. 159).

Conscription Act—Who Are Declarant Aliens Within Its Terms. United States v. Mitchell (U. S. District Court, February 27, 1918, 248 Fed. 997); Gazzola v. Commanding Officer of Ft. Totten (U. S. District Court, March 6, 1918, 248 Fed. 1001); United States ex rel. Warm v. Bell (U. S. District Court, February 27, 1918, 248 Fed. 1002); Halpern v. Commanding Officer at Camp Upton (U. S. District Court, February 27, 1918, 248 Fed. 1003); United States ex rel. Pfefer v. Bell (U. S. District Court, February 19, 1918, 248 Fed. 992). The conscription act provides for the exemption from compulsory military service of aliens, but makes liable to such service aliens who have declared their intention to become naturalized and who have taken out their first papers. In the Mitchell case a Russian citizen who had taken out his first papers had allowed a period of more than seven years to elapse, so that at the time he was drafted he had lost his right to become naturalized. It was held that he was still a declarant and therefore subject to draft. The fact that his first papers had lapsed did not create any presumption that he had resumed his old allegiance to a foreign

country, and as long as he remained in this country he retained the status of a declarant. Gazzola was an Italian who took out first papers in 1909 but was refused final papers because of his conviction for the illegal sale of liquor. The court decided that he was still a declarant and liable to draft, inasmuch as he was not precluded from reapplying for citizenship at some future time. Warm and Halpern were both Austrians who had taken out their first papers at the time they were drafted. It was held that they could not subsequently be released by the courts on the ground that after their induction into the army they had become alien enemies by reason of the declaration of war on Austria. Their induction was entirely lawful at the time it occurred, and the conscription act provides no method of discharging alien enemies from the ranks by any judicial process. In the Pfefer case, after considering some of the familiar arguments against the validity of the draft act and answering them in the usual way, the court considered the contention that the statute was void because it violated certain provisions in the treaties between the United States and foreign nations, in this case Russia, and the further argument that it violated rules of international law by which Congress is bound. The court replied by saying that any treaty could be overriden and repealed by a subsequent act of Congress, and that "the rules of international law, like those of existing treaties or conventions, are subject to the express acts of Congress, and the courts of the United States have not the power to declare a law unconstitutional, if it be within the authority given to congress as to legislation, even though the law itself be in contravention of the so-called law of nations."

Courts-Martial—Review of Decisions by Civil Courts. People v. Stotesbury (New York, Sup. Ct. App. Div., April 5, 1918, 169 N. Y. Supp. 998). An officer in the New York National Guard was convicted by court-martial of disobedience of orders and neglect of duty. This conviction was reversed by the appellate division of the supreme court, after a review of the evidence in the case, because the court "discovers no evidence whatever of either refusal or neglect, and therefore considers itself competent and enabled to review and to reverse the findings of the court-martial."

Espionage Act—Disloyal Utterances as Violation of. U. S. v. Hall (U. S. District Court, January 27, 1918, 248 Fed. 150). The defendant in this case was charged with a violation of the Espionage Act of June

15, 1917. He had made slanderous remarks about the President, impugned the motives of this country in entering the war, and expressed the hope that Germany would win. The court decided that he had not violated any of the provisions of the Espionage Act. He had not circulated false reports because the things he had said were expressions of opinion and not statements of fact. He had not tried to cause insubordination in the military and naval forces of the United States, because no specific intention to produce such a result could be shown, and because there were no armed forces within reach to be influenced by his remarks. "It is as if A shot with a .22 pistol with intent to kill B two or three miles away." Finally there was no willful obstructing of recruiting or enlistment, because it could not be shown that the defendant's utterances had actually influenced anyone against enlisting. The court expresses its conviction that "the more or less public impression that for any slanderous or disloyal remark the utterer can be prosecuted by the United States is a mistake." The defendant could doubtless have been convicted had the amended Espionage Act of May, 1918, been in force at the time the remarks complained of were uttered.

Internment—Liability of Declarant Alien. Ex parte Graber (U. S. District Court, January 15, 1918, 247 Fed. 882). A citizen of an enemy country, who has taken out his first papers but has never completed his naturalization, is subject to internment for the period of the war if the government decides that the public safety demands it. Such a person has not renounced his allegiance to a foreign country, but has merely declared his intention of doing so at a future time. He has not yet ceased to be an alien and the outbreak of war has made him an enemy alien. The President acting through properly constituted authorities is the final judge as to the necessity of detaining any enemy alien. The courts will not review his action.

Vice—Power to Suppress Near Military Posts—Constitutionality. United States v. Casey (U. S. District Court, January 11, 1918, 247 Fed. 362); United States v. Scott (U. S. District Court, February 28, 1918, 248 Fed. 361). The defendants in these two cases denied the constitutional authority of the secretary of war to issue a proclamation in pursuance of section 13 of the Selective Service Act making it a penal offense to establish or maintain a house of prostitution within five miles of any military post or station. It was alleged that this was

an unconstitutional invasion of the police power of the states. In each case the court sustained the validity of the statutory provision and the proclamation. These restrictions were not imposed as an exercise of police power but as an exercise of the war power of Congress. The power to raise and equip an army carries with it by implication the power to protect the morals of the soldiers composing it. Nor was there any unconstitutional delegation of legislative power to the secretary of war. He did not make the law nor decide what its policy and scope was to be. He merely gave effect through an administrative regulation to the law which was already complete when it left the hands of Congress.

War—Incomplete State of—Criminal Liability of Mexican Soldiers for Killing American Soldiers. Arce v. State (Texas, Court of Criminal Appeals, April 17, 1918, 202 S. W. 951). The four defendants in this case were soldiers under the military authority of the Carranza government in Mexico. As such they participated in an attack upon United States troops at San Ygnacia and were captured. They were tried for the murder of the American soldiers whose lives were lost in the encounter and were convicted and sentenced to be executed. This decision reverses the conviction. The court recognized that at the time of the fighting, a state of war existed between the United States and Mexico, even though it might be regarded as an inchoate and incomplete state of war. This being true the Mexican soldiers engaged in such war were amenable to the rules of international law, or perhaps to our national law, for acts committed in this country, but not to the law of the state of Texas. If they were guilty of crime they should have been tried in the federal courts. But even if the state had jurisdiction in this case the conviction of the defendants must be reversed because in their conduct they had been subject to the authority of their superior officers, so that no criminal liability could attach to their acts done in pursuance of the orders of those officers.

NEWS AND NOTES

EDITED BY FREDERIC A. OGG

University of Wisconsin

The American Historical Association will meet in Cleveland next December at about the same time as the American Political Science Association and the American Economic Association. Professor W. F. Willoughby, director of the Institute for Government Research at Washington, has been appointed chairman of the American Political Science Association's committee on program.

Dr. Edward S. Corwin has been appointed to the McCormick professorship of jurisprudence at Princeton University in succession to Professor W. F. Willoughby, who has severed his connection with the university in order to devote his time exclusively to the Institute for Government Research. The McCormick professorship is the chair formerly held by President Wilson.

Dr. Lindsay Rogers, adjunct professor of political science in the University of Virginia, has been made an associate professor. Mr. Tipton Ray Snavely, of Harvard University, has been made instructor in economics and political science, and will take over the work of Professor Thomas Walker Page, who has leave of absence to serve on the Federal Tariff Commission. Mr. S. J. Hart has been appointed instructor in political science. During Professor Page's absence, Professor Rogers will have charge of the department.

Professor Raymond G. Gettell, of Amherst College, is engaged in administrative work for the priorities division of the Shipping Board at Washington.

Mr. Rinehart J. Swenson, who received the doctor's degree at the University of Wisconsin in June, has been appointed instructor in political science at New York University.