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The Possible Check to Federal Encroachment.

There is a notable article by JAMES M. BECK in the *Harvard Law Review* concerning the gradual destruction of the reserved rights of the States and the undelegated rights of the people by the perversion of Federal power. This process of "nullification by indirection," tending to the complete subversion of our dual system of government, is traced by Mr. BECK from its origin in the doctrine of the Supreme Court, first announced in the case arising from the use of the Federal taxing power to destroy State bank circulation, that the judiciary is without power to prescribe to Congress limitations upon the exercise of its acknowledged powers. The constitutional question presented is second to none in importance to the people of this country at the present time, and the line of reasoning here is out of the rut of much of the contemporary discussion of Federal encroachment.

We print that part of Mr. BECK'S brilliant and original article which brings him to the conclusion that if dual government is to be preserved there must be a return to the earlier doctrine of Chief Justice MARSHALL and his associates, who said in the case of McCullough vs. Maryland:

"Should Congress, *under the pretext of exercising its powers*, pass laws for the accomplishment of *objects* not entrusted to the Government it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land."

It is hardly fair to segregate a portion of so closely reasoned and consecutive a piece of writing, but we think that all lawyers and other citizens interested in this momentous subject will thank us for directing them in that way to the full text of Mr. BECK'S article in the *Harvard Law Review* for April.

The Greek National Assembly.

The convocation of the Greek National Assembly, for which King GEORGE issued on Wednesday a royal proclamation, should command the favor of the Military League that since August 15 has been practically in control of the affairs of the country. The military dictatorship that this body has exercised has resulted in the deposition of four Governments, while its amateurish endeavors at politics brought on such a tangle that it could not advance on account of an opposing Chamber and could retreat only by the humiliating confession of defeat in dissolution. It saved its face by making its dissolution conditional upon the call for a National Assembly.

There is no reason to believe that King GEORGE was opposed to the measure, for it disposed of two most troublesome questions: the Military League goes out of existence and the Cretan difficulty is temporarily settled, as leaders of the most influential party on the island recommended the revision of the Constitution, which the Assembly will undertake. To have agreed to the measure earlier would have increased his popularity with the league, but his yielding might have given cause for the animosity of the politicians. As for the people, it is doubtful if a majority of them know what the measure means. It is a pleasant sounding term that has been used by politicians, and they have been led to believe that it is a way out of the present unhappy state of affairs.

The last meeting of the Greek National Assembly was held in 1862, when it was called to draft a Constitution. It is convened only to discuss affairs of the greatest moment, such as alterations in the form of government or changes in the Constitution, the general legislation for the country being left to the Parliament, which consists of only one house, the Chamber, or Boulé. It is formed of the new Parliament, which will consist of about 175 members, chosen from seventy-one districts, and an equal number of elected delegates. As the life of the present Chamber is almost ended it is thought that the election will take place in May.

The revision of certain clauses of the Constitution is the matter which the Assembly will undertake. No fundamental clause can be altered, and the present Chamber must clearly define the clauses to be revised. This is necessary before the Assembly can act; in fact it is held by some Grecian publicists that the present proceedings are irregular in that by the Constitution "two Parliaments by a vote of three-quarters of its full members" must ask for the revision by special resolution. Only one Parliament, the present, has expressed an opinion on the revision, but as all parties seem intent upon it the irregularity is overlooked.

The question of a Cretan representation has been overcome by excluding delegates from abroad. At the Assembly forty-eight years ago there were representatives present from many big Greek communities all over the world. It is apparent that if representatives outside of Greece are admitted Turkish communities would be represented, and if the Turkish Government permitted delegates from Salonica or Constantinople they could not oppose a representation from Crete. It would be impossible to prevent the island from sending deputies to Athens, and this, according to Turkish authorities, would be a cause for war between the two countries. The exclusion of representatives from foreign communities thus removes apparently the risk of war as a result of the measure.

One of the questions that may be discussed is the establishment of a Senate, or an upper house. At present Greece is the only European country that has but one chamber, and by many it is considered there is an urgent need for a second, as the King is made to bear the blame of unpopular measures. He is expected to approve any bill passed by the Chamber, and if it should not meet popular favor he is held responsible for not withholding his signature. The main business of the Assembly, however, will be to change those provisions of the Constitution that during the last fifty years have proved ineffective. It will endeavor to curtail the powers of the small politicians who on account of their venality and untrustworthiness have been the curse of Greece. It faces a formidable task in undertaking to purify the State and devise means for the prevention of the abuses of administration that have so long seriously hindered the progress and development of the country.

The Vacancy in the Supreme Court.

While geographical considerations should not always be controlling in filling vacancies in the Supreme Court of the United States, they ought not to be ignored by the President in appointing a successor to Mr. Justice BREWER.

The Second Judicial Circuit is entitled to the appointment. In the Federal judicial system the Second Circuit comprises the States of Vermont, Connecticut and New York. Here the bench and bar represent as high a degree of ability as can be found in the Union. The country is divided into nine circuits for the purposes of the national judiciary. This most important circuit, which includes within its limits the great city and port of New York, is without a representative on the Supreme Court bench since the recent death of Judge RUFUS W. PECKHAM. President TAFT selected Circuit Judge HORACE H. LURTON to succeed him, but Mr. Justice LURTON comes not from New York, but from the Tennessee circuit. This was all wrong. The President when he was on the Federal bench himself had been associated with Judge LURTON and liked him, but that was not a sufficient reason for ignoring the claims of New York and giving a Tennessee man a place that ought to have come to New York. We deeply regret that a new vacancy has occurred by reason of the death of so admirable a Judge as Mr. Justice BREWER, but we do insist that the most worthy successor can be found and should be found in this circuit and in this State.

At the present writing we name no names as indicative of our own preference. It was conjectured when Judge LURTON was promoted that the President would like some day to appoint Attorney-General WICKERSHAM to the Supreme Court, but thought the time was not yet ripe. We doubt whether the Senate would deem the time ripe enough yet. The newspapers have already mentioned Senator ROOT and Governor HUGHES as probabilities. It is well understood, however, that Mr. ROOT could have had the appointment which went to Secretary MOODY, but declined it, and there is no reason to suppose that he would accept a place now which he refused before he was Senator. The appointment of Governor HUGHES would deprive the Republican party of his services in the approaching political campaign in this State, when they will be most sorely needed; and furthermore, it would put the State Government for the time being into the hands of Lieutenant-Governor HORACE WHITE, whose domination would be far from acceptable to the reform Republican element. Mr. TAFT will therefore have to go further afield.

If the President were willing to appoint another Democrat we could suggest an ideal nomination in two minutes, but perhaps that is too much to expect. All that we now desire to emphasize is the right of New York to the appointment. Our Senators, our Representatives and our bar associations ought to be heard from in this matter, and with no uncertain sound.

Let Tottenville Be Restored.

There is a practical as well as a sentimental reason why the respectable and significant name of Tottenville should be restored to the Staten Island post office which the Post Office Department has just changed to Bentley Manor. There was in the United States up to the time this unfortunate change was ordered only one community bearing the designation Tottenville. There was only one other post office having a name in any way similar to Tottenville. This was the village of Totten in Warren county, Virginia. The possibility of mistake in addressing mail matter was reduced almost to the vanishing point.

On the other hand there were seven Bentleys, besides a Bentley Springs, a Bentleyville and three Bentlys, on the list of post offices. Adding to these Bentley Manor will increase appreciably the probability of improper addressing and mistakes in handling mail matter, a fact that might be expected to have some weight with a business administration of the Post Office Department. Has this received the attention of the authorities in Washington?

On other grounds the erasure of Tottenville from the map in favor of Bentley Manor is as deplorable as it is ridiculous. The first name has a historic significance, indicating the change worked by the success of the Revolution and giving a glimpse of the men of that time. Bentley Manor means nothing to the present generation, unless it reveals the art of the real estate boomer or the silly affectation of stupid persons longing to be "elegant." No ancient landmark is interesting or sacred to either. Honest, meaty, natural names they delight to cast aside for vain and empty compoundings of their own. Lanes are transformed into avenues, roads become boulevards, commons are turned into plazas, without rhyme or reason and at the sacrifice of accuracy and good taste. Boards of Aldermen, Boards of Selectmen and Common Councils lend themselves freely to this traffic, but the argument of practical efficiency should have influence with the administrators of the United States Post Office.

Digges Could Have Done Better.

If we had had a good strong hold on Mr. DIGGES'S large, receptive ear at the time when he was concocting his little plan we could have told him of a thimblerig worth ten of his for working purposes. Of course it would not work long. It lasted only through one election in Louisiana away back in the '70s, where it was born of real genius and cradled by inspired hands. The Wheeler Compromise had just been consummated and the Democrats had been in power in the Legislature only long enough to make them wish to stay there permanently, when some heaven born mind conceived the idea of ordaining an "official ballot," a ballot to be printed on a certain kind of paper, the paper to be furnished to the cities, towns and rural neighborhoods by the State. No other ballots would be legal, none other counted. The parishes had to apply to the State Government; and if anything happened to the freight, why, that parish didn't vote. Pretty soon, when the lottery company broke the deadlock by purchase in open market, when the Packard Legislature melted away and the Democrats got full control of the machinery of government, the almost unearthly beauty of the official ballot scheme began to dawn upon awakened minds. Stricken carpetbaggers were seen wandering about, dozing on benches in Jackson Square, and muttering over ten cents worth of shrimps and coffee in the French Market, "Why, oh, why, did we never think of it in the days of our opulence?"

Of course it did not last long, and for the very good reason that under its operation four or five men could have held Louisiana for themselves and their followers and henchmen for all time. For a single dash, however, it was the very balmiest device that ever ran a tuck in politics. What could not the Hon. DIGGES have done with such a rig upon the machinery of a general election upon a constitutional amendment? In comparison with that roseate and rainbowed proposition the Digges plan seems Boeotian.

The Great Metamorphosis.

Local knowledge of vicinal celebrities is always useful and not infrequently interesting. Thus the following statement of a correspondent of the Rochester *Post-Express* throws considerable light upon a puzzling local phenomenon:

"Some of Boss ALDRIDGE'S friends are going about the streets saying, 'Oh, well, GEORGE needs the money.' Others go about and say, 'He wants vindication.'"

The GEORGE WASHINGTON ALDRIDGE whom the people of a grateful State easily recall always wanted the money. He has changed mightily, however, if he even thought of the vindication.

The Hon. WILLIS L. MOORE should not be hard upon, still less speak despitefully of, his fellow prognosticator, the groundhog. He has been doing a good deal in this line recently and it affects us disagreeably. We understand, of course, that the groundhog often fails in his forecasts. He did it this year. He hits the mark quite often, to be sure, but that is natural enough, since his so-called prophecy covers a period of six weeks following February 2, a period almost always inclement and cantankerous in these latitudes.

We realize also that the groundhog predicts only once a year, whereas the Hon. WILLIS L. MOORE predicts every day. It is natural enough that the failures and shortcomings should be in proportion. It is borne in upon us, however, that the professor exhibits bad taste in reproaching the groundhog because of its immunity from the criticism he incurs. He ought to reflect that the groundhog is a modest and retiring "varmint," seeking no favor or adulation from mankind and asking only a sufficiency of food and reasonable opportunity of siesta. He doesn't want to preside over geographic societies or dictate scientific corollaries or expeditions, nor yet does he bare his breast to hurtling bouquets and inhale the perfume and flowers that lightly rain from ladies' hands. He deserves some consideration on this score, and in our opinion he ought to get it.

We really wish the professor would let up on the groundhog. With some reservations, we believe in the square deal.

The promise that there will be another professor of oratory at Albany will hardly gratify the apprehensive soul of the Hon. DEMOSTHENES DAVENPORT.

We fail to see any signs of a genuine popular interest in the investigation of the cost of living which a Senate committee is conducting in Washington, and yet it is not to be doubted the subject was one of engrossing concern before the investigation began. If there was a demand for full reports of the testimony taken they would be printed. But a profound and general indifference seems to prevail. The explanation, we suppose, is twofold—the high prices are very real, but the people have been surfeited with the causes given by the analysts, some of whom have interests to serve and others of whom are mere theorists or ill informed; in the second place the impression prevails that the politicians will sum up the results of the investigation in majority and minority reports and no progress will have been made.

Long live the *Dimanche sec!*

Boston Cries for Rest.

TO THE EDITOR OF THE SUN—*Sir:* We're quite willing to retire the sacred codfish and the grasshopper on Faneuil Hall as rear admirals provided we can hear a little less hereafter about Eugene Foss and the Hon. Daniel Blake Russell.

BOSTON, March 30. G. NOSLE.

THE YERKES PICTURES.

The collection of pictures formed by the late Charles T. Yerkes will be sold under the hammer of Thomas E. Kirby at Mendelssohn Hall Tuesday, Wednesday, Thursday and Friday evenings of next week. This event, important artistically, was unforeseen at the time of the owner's death. Such a dispersal of paintings, gathered seemingly haphazard, has set buzzing the tongue of the town. It is difficult to recall a similar sale. After perusing the catalogue or examining the collection now at the American Art Galleries the chief impression is wonderment over the catholicity of Yerkes. It would be idle to deny him the possession of this quality. Not that he admired everything in a frame—he achieved considerable powers of selection—but that he could buy an Alma-Tadema and, say, a Mabuse, and hang them in the same gallery. He evidently admired the French, Dutch and Flemish Primitives and the seventeenth century Dutchmen: yet he sought the early Englishmen and the Barbizon group. In the upper gallery you will find Corots not far from a Meissonier, Millet within hailing distance of Bouguereau. All this is distinctly confusing, and when you consider the palpable fact that taking the gathering by and large the average of the canvases is excellent, the case is further perplexing. It would seem that Charles T. Yerkes always secured good examples, even if his taste did not always aspire to the supreme masters. Therefore prospective purchasers need not fear to buy a pig in a poke at the forthcoming sale. Though there are many perilous attributions, each picture tells its story for those who can read.

There are nearly two hundred pictures in the catalogue, the number of artists represented being about one hundred and twenty. They may be apportioned in the following manner: Rembrandt, four examples; Franz Hals, four examples; De Hooch, three examples; Hobbema, four examples; Metsu, two examples; the Van Ostades, five examples; Paul Potter, four examples; Jan Steen, four examples; Teniers, four examples; Van Goyen, four examples; Rubens, two examples; Guardi, four examples; Van Dyck, one example; Millet, two examples; Corot, five examples; Troyon, four examples; Rousseau, two examples; Diaz, four examples; Daubigny, six examples; Dupré, five examples; Turner, four examples, and specimens of the work of Murillo, Dürer, Ruisdael, the two Holbeins, Clouet, Luini, Memling, Reynolds, Lawrence, Romney, Harlow, Burne-Jones (two), Alma-Tadema, Boucher, Greuze, Watteau, Monticelli, Cazin, Meissonier, Detaille (two), Delacroix (two), Decamp, Gérôme, not forgetting the august names of Raphael and Botticelli. Certainly a galaxy of names to conjure with.

The *clou* of the collection is for us the portrait by Hals of a woman, known at the exhibition of the Old Masters, Royal Academy, 1885, as "A Dutch Vrow." She is an old lady, calmly regarding the world from her high backed chair. It would be hardly fair to Vrow Bodolphe at the Metropolitan Museum to compare this country woman with her own wonderful paint, but the pair would make fit company hung side by side. The three other pictures by Hals are not so superior either in paint or psychology, but they are solid Hals, all the same: "The Singers," a boy and a girl, and two diamond shaped panels, "The Violin Player" and "The Singing Girl," executed with that carelessly perfect brush of the Dutchman. Of the four Rembrandts you may take your choice from at least two: the portrait of a rabbi, charged with character, or the portrait of Joris De Coulery, an authentic painting, interesting, though without the mysterious magnetism of the rabbi's head. The Van Dyck is not attractive. It lacks divination, it lacks quality. To the other Dutchmen we shall return presently. Let us follow the catalogue.

Alma-Tadema is represented by "Spring"; for his admirers it contains all that is Tademesque and artificial. Achenbach (Andreas) is a bore. If you like Vermeer transposed by a modern brush, then Joseph Bail's "Servants Lunching" ought to please you. Yet the light that comes through the windows is not the magical light of Holland. Van Beers we may slip by, also Berchem, with his Italianate landscape. Ferdinand Bol's portrait of a man might easily pass for a Rembrandt to those who don't understand the latter. Bonvin is always interesting. Not so Both (we prefer him engraved). The circular Botticelli will be familiar to visitors at the Uffizi Gallery. François Boucher's "Toilet of Venus" has some of his charm, of his voluptuous color. It is good Boucher. The Bouguereau is unmistakable; its title, "Invading Cupid's Realm." At Dirck Bouts's "The Adoration of the Magi" you stare, then pass on to Bronzino's portrait of a lady. Not bad. Four Pieter Breughels, all saturated with his coarse, acid humor. They are worth while, if not remarkable specimens. The Burne-Joneses, of course not at his best, are dreary reminders of a school that deliberately chose a false road. The Cazin is attractive. Clays, Charlemont are excellent. We leave the Clouet to the experts. It is hardly convincing, though not to be missed.

The Corots are Corots (something in these troubulous times). We prefer—who doesn't?—"Environs of Ville d'Avray." Avray was indeed his beloved territory. Courbet's "Silent River" is a solitary example. Of Cuyp we have seen better examples; Dagnan-Bouveret is agreeable, and the six Daubignys are bound to please. One only caught our eye. You will see immediately which it was. Gerard David is a dangerous name to play with: "At Bruges" is his best work. We haven't much to say of the "History of St. Augustine." Two of Decamps. Three of De Hooch, one being of superior quality. The two Delacroix are characteristic, the tiger, in particular, very strong. Denner's old woman was a steady model of the German painter's, that is judging from the number of times he painted her. Detaille—what can be said of this generally popular artist? He is well represented, as is Diaz. The Gerard Dous are not entrancing. Dupré we do not care for in his best estate, but in this collection he attracts those who miss his insincerities. As to the Albrecht Dürer, we may say without fear of contradiction that if Mr. Yerkes liked it he may find imitators. We do not admire the attribution, not to mention the picture.

Flameng—a Hussar. Govaert Flinck, "Tobias and the Angel," in the key of Rembrandt. Gelder, another Biblical anecdote. The Gérôme studio with "Pygmalion and Galatea" ought to fetch a fancy price. It is both sentimental and sensual, and as paint wholly disagreeable. Ghirlandajo (Domenico), portrait of a young girl. Charming whether genuine or not. One of the four Van Goyens is capital. The Greuze is indifferent. We liked one of the four Guardis. Harlow's portrait of a boy is full of distinction. Old De Heem and his oxidized still life—the galleries of Holland are sprinkled with his stuff. The Hobbemas—let us admit one of them. The Holbeins are interesting even if you don't take them seriously. Inness—he has become almost celebrated. A good Josef Israels. Also Jacque sheep. Knaus will appeal to a certain audience, as will Landseer. Sir Thomas Lawrence has a portrait, that of Canova the sculptor; two second rate artists in intimate collaboration. Bastien Lepage's "The Forge" is satisfying. Baron Hendrik Leys is as mannered as Tadema. The Claude Lorraine is dry. Luini of Milan has a "Mystic Marriage of St. Catharine." We like the little Mabuse, a "Madonna and Child." It has quality even though it may lack a pedigree. Meissonier, of course. Memling? Metsu, two examples. Mieris, same number. Mignon, always fruit.

The two Millets bring you up with a start. "The Pig Killers" is as realistic as Morland and much more beautiful. The sleeping Diana is a specimen of the compositions Millet turned out when he was painting nudes for money. The Monticelli is not the great colorist at his top notch. Murillo, a "Madonna and Child in Glory," is evidently of the school. From the two Van der Neers there is moonlight and twilight and a lady with a child. The Ostades (Adrien and Isack Van) are well to the fore, seven examples. It is curious to come upon a Joachim Patinir, with a characteristic enough subject, "The Apostles After the Crucifixion Worshipping in a Cave." Peruzzi, Pinturicchio, Previtali, Raphael—here's richness for the collector avid of great names. The Paul Potters are average. We admired Sir Joshua Reynolds's portrait of Lady O'Brien, and found the two Rousseau landscapes not of especial quality. The Rubenses, "Ixion and Hero" and "Two Apostles," are, the former particularly, excellent examples. We cannot say we were entranced by the Jacob Ruisdael. The Stevens (Alfred of Brussels) has a "Lady With Cherries" in his clever vein. Four Jan Steens like the Teniers and Ter Borch attract attention. Poor old St. Anthony is again tempted in the Teniers canvas, an example of which may be found in every picture gallery of Europe.

Troyon makes a good showing, and the Turners, four in number, are in two examples brilliant. The "Grand Canal" is fairly a-glitter, but the Italian landscape is not remarkable. There are four unknowns, some marines by William Van De Velde, the younger, and a comical Vibert, "The Sacrilegious Monkey." If you can't smile in the presence of this anecdote, set it down to spring fever. Verrocchio's "Madonna and Child" would melt the heart of a Fifth avenue dealer. The Watteau "Garden Party" is not too convincing. After Willems, Wouverman and Wynant, the catalogue ends in a Z—Felix Ziem, the "Grand Canal, Venice." With all its lacunæ, its attributions and its mediocrities, this Yerkes collection is extraordinary.

THE STATE OF MANHATTAN.

Some Objections To Cutting the Rural Districts Adrift.

TO THE EDITOR OF THE SUN—*Sir:* "Manhattanite" in his advocacy of the withdrawal of Manhattan from the State of New York and its erection into a separate commonwealth has not given thought to some vital objections. Many of the voters of New York, Kings, Queens, Nassau and Suffolk counties would fear to hazard the chances of a return of Tammany domination with enlarged opportunities for choice pickings, which are in a measure restrained by the "hayseeds" who, "Manhattanite" says, "have nothing under the sun in common with us."

The Manhattan and The Bronx boroughs derive their fresh water supply from beyond the geographical limits of the proposed State, and that of Brooklyn is to be augmented from the same source. Hence we need New York State legislative assistance to protect it. As the commerce of the city is largely nourished and fed by State products and transportation we wish a voice in the encouragement of manufactures, the control of transportation by rail, canal and natural water courses, as well as the protection of forests, fish and game.

Unfortunately, the constant accession to our voting population is foreign born, which Tammany with its splendid organization enlists under its banner; and once more in control, the excise, insurance, and banking departments, Public Service Commission and other administrative branches would afford it excellent fields for augmentation of power and enrichment.

Now the "hayseed" vote preponderates to the extent of over 200,000 ballots and its representation in the Assembly in the majority of eighteen members, and may such proportions ever be preserved or increased, because such preserves us from the iniquities of an organization from which we are to have at least the relief of four years.

NEW YORK, March 31. GRATITUDE.

The Assault on Baseball.

TO THE EDITOR OF THE SUN—*Sir:* George Zob is surely right about the downward revision of baseball, but, my word, what a rough game it would still be! For instance, just think of one of the gentlemen participating in the game being struck by a flying tennis ball. Awful, awful!

I suggest a soap bubble, or at most a nice piece of fried mush. Also make it imperative that the pitcher before delivery make an announcement somewhat on these lines: "Gentlemen, I shall now precipitate the bone of contention." This would also serve as a warning, and the players could all retire from the field and thus avoid any chance of collision with the murderous missile.

George thinks that wicker chairs should be substituted for the bases too. Why, George, how could you? Indeed, the gentlemen should have Oriental divans on which to rest their weary limbs.

A Sis Is not! The endearing terms with which the spectators intersperse their remarks might just as well be left unsaid. Such expressions as "Oh!" and "Ah!" might be allowed, and in case of intense excitement "Goody, goody!"

WILLIAM SHERRY 3d.

NEW YORK, March 31.

Troubles of a Pedestrian.

TO THE EDITOR OF THE SUN—*Sir:* A pedestrian and a follower of the Mayor, I find that there is not room enough to enjoy walking over the Brooklyn Bridge. Twice as many persons walk now as walked a year ago. Why don't they open the Manhattan Bridge?

Another thing, there are signs to keep to the right on the bridge. This rule is all right until you strike Manhattan and then people walk as they please. Why don't they have these signs on the streets of Manhattan?

Why don't they stop having these short men carrying signs on the sidewalks? They are generally short men, and the signs are just high enough so that you have to dodge them every time you pass them or you will get hit.

Why don't the police stop the pushcarts from blocking the crossings so we sha'n't have to walk around them, and why don't they keep the candy peddlers and other kinds off the sidewalks?

Why don't they enforce the law by stopping people, especially on busy streets, from sweeping their sidewalks after 8 o'clock?

NEW YORK, March 31. A PEDESTRIAN.

Independent Investigation of the Subway.

TO THE EDITOR OF THE SUN—*Sir:* While so many complaints against the subway service are daily heard it may be of interest to some of the "kickers" to know that on the evening of March 29 I timed up and down town express trains at Seventy-second street and found the headways to average, for about fifteen minutes, one minute twenty-one seconds and one minute thirty-three seconds respectively. N. K.

NEW YORK, March 31.

The Camel Mother.

TO THE EDITOR OF THE SUN—*Sir:* Every student of life should hear the croon or cry of the mother camel in Druid Hill Park. It is a revelation in the poetry of maternity. It is the saddest, most weird and world absorbing sound I ever heard. C. P. S.

BALTIMORE, Md., March 28.

Nothing Whatever.

TO THE EDITOR OF THE SUN—*Sir:* Is there anything wrong with the name of Steve Stubblefield? He lives on Route 3, Richmond, Mo.

ST. JOSEPH, March 29. OZA SWEARINGEN.

England's Nemesis.

'Round few the Stick and all the people shouted
While Tartaria upon his hind legs spouted.
Blundering, he walked where angels never trend,
And the Big Stick came down on the wrong head.

NULLIFICATION BY INDIRECTION.

Is the Judiciary Powerless to Limit Federal Power by Invalidating a Clear Misuse of Such Power?

From an article by James M. Beck in the Harvard Law Review.

In a noteworthy speech delivered at Pittsburg October 14, 1902, the then Attorney-General, Mr. Knox, urged that Congress may deny to a corporation whose life it cannot reach the privilege of engaging in interstate commerce except upon such terms as Congress may prescribe to protect that commerce from restraint.

This statement was much quoted and much misunderstood. Mr. Knox, who is a very conservative interpreter of the Constitution, simply meant that Congress could prescribe the terms of participation in interstate commerce when Congress deemed such terms necessary "to protect that commerce [i. e., interstate commerce] from restraint."

This statement was accepted by many as an affirmation of the power of Congress to deny the facilities of interstate commerce to any State corporation, except upon such terms as Congress deemed proper, even though such terms had no legitimate relation to interstate commerce or any Federal purpose, a view which Mr. Knox vigorously disavowed in the Senate when the commodities clause was under discussion. Nevertheless, if the judiciary is powerless to place any limitation upon any Federal power by invalidating a clear misuse of such power, was the misinterpretation of Mr. Knox's statement without some sanction from the Supreme Court itself?

The doctrine of nullification by indirection having received judicial sanction, it is not strange that many plans are now openly advocated to have the Federal Government exercise the police powers of the State by a perversion of its own powers. Of such a plan Senator Beveridge's child labor bill is an instance. Here is a subject beyond question exclusively within the police power of the State. There is not a pretence that Congress has any power to determine the conditions with respect to age under which employment can be had in the States, but it is sought by Federal statute to prevent such child labor by denying to any product that had been manufactured by such labor access to the channels of interstate trade; and, remarkable as the suggestion must seem to old fashioned lawyers and destructive as it unquestionably is to our dual system of government, it must be admitted that the proposition may be within the doctrine that the judiciary cannot question the purpose and motive of the exercise by Congress of a Federal power. It is enough that Congress in its wisdom has concluded that a certain class of commodities should not be carried from State to State or in foreign commerce.

During the discussion of the child labor bill this doctrine was sought to be reduced to an absurdity by Senator Gallinger, who gravely inquired of Senator Beveridge whether Congress could prohibit the interstate transportation of milk which had been milked by a red headed girl. Consistency required Senator Beveridge to answer in the affirmative, but he ignored the question. While the Titian like tresses of the milkmaid can have no legitimate reference to the safety or welfare of the people in the interstate transportation of milk, yet, on the authority of Vesey vs. Fenno and McCray vs. the United States, how could the judiciary review the purpose or motive, however unconstitutional, of Congress in providing that milk produced in a certain way should not be carried from State to State?

Perhaps the most remarkable suggestion to nullify the reserved rights of the people by an indirect use of Federal power was that made by Mr. Roosevelt on Georgia Day at the Jamestown exhibition. The President had advocated a bill providing that all employees should receive compensation from employers for any accident suffered in the course of their employment, even though the accident happened without any negligence on the part of the employer and with the grossest neglect on the part of the employee. Except so far as the employers were engaged in interstate traffic, these questions of the relative rights of the employer and employee were peculiarly within the reserved rights of the States, but the President said:

There should be the plainest and most unequivocal statement by enactment of Congress to the effect that railroad employees are entitled to receive damages for any accident that comes to them as an incident to the performance of their duties, and the law should be such that it will be impossible for the railroads successfully to fight it without thereby forfeiting all right to the protection of the Federal Government under any circumstances.

Mr. William J. Bryan is, of course, not far behind his illustrious rival in the drastic character of the remedies that he advocates. In his magazine debate with Senator Beveridge several years ago Mr. Bryan says:

Congress has power to control interstate commerce, and the decision of the Supreme Court in the lottery case leaves little doubt that that power can be so exercised as to withdraw interstate railroads and telegraph lines and the mails from the corporations which control enough of the product of any article to give them a virtual monopoly.

Putting together the two remedies, it must be admitted that they are sufficiently drastic, for if one of the prescribed corporations can neither sue in the Federal court, transport its freight on interstate railroad lines, telegraph a message, mail a letter, nor enjoy the Federal banking facilities, its outlawry would be complete.

The effect upon contemporary politics of this new principle of constitutional jurisprudence is forcefully shown by the new corporation tax law, the main justification of which was that it would enable the Federal Government to investigate exclusively domestic corporations, which otherwise would be beyond the Federal inquisitorial powers.

The logical application of these doctrines would be that in a time of general confiscatory legislation Congress could shut the doors of the Federal courts to any railroad which sought to invoke the Fourteenth Amendment if it venture to question the constitutionality of an act of Congress.

The States also have taken up with destructive effect this doctrine. In some, no insurance company can do business unless it first practically waives its right under the Federal Constitution to sue in the Federal courts, and after some indecision the Supreme Court has sustained this form of nullification by indirection. The logic of this is that any State can compel a foreign corporation not engaged in interstate commerce or some other Federal activity to waive all its rights under the Federal Constitution if it desires to do business in the State. This results from Paul vs. Virginia, easily one of the two most mischievous decisions the Supreme Court ever announced.

While this article was in preparation the Supreme Court indicated for the first time in several decades its purpose to modify the doctrine of Paul vs. Virginia. Kansas vs. Western Union Telegraph Company and the Pullman Palace Car Company, decided during the present term of the court, held that if a State imposes, as a condition precedent to the right of a foreign corporation to do business wholly within the State, a condition that is a burden upon the right of this corporation to engage also in interstate commerce, such condition is void. In these cases the State of Kansas required the two foreign corporations to pay a tax upon their entire capital stock as a condition of the right to do business wholly within the State of Kansas, and this was adjudged unlawful. Unfortunately, as in so many important cases of recent years, a majority of the court could not join in the same reasoning, for, while five Justices united in the judgment, one of them (Mr. Justice White) placed his decision upon narrower grounds. These decisions, however, indicate a significant departure from previous decisions and make it probable that in the future a State cannot so exercise its right as to exclude a foreign corporation from engaging in a business which is non-Federal in character except upon conditions which burden the rights of such foreign corporation under the Federal Constitution. If this be so, why should the Federal Government be permitted, so far as judicial interference is concerned, to nullify indirectly the reserved rights of the States by the exercise of Federal powers?

The very serious question suggests itself as to whether it is reasonably possible for the judiciary to determine whether a Federal power has been exercised for a Federal end or for some ulterior purpose. Undoubtedly this task, if ever assumed by the judiciary, would be even more delicate and embarrassing than the ordinary exercise of the power of adjudging a statute unconstitutional. In many instances it would be beyond the power of the judiciary to determine that a Congressional act was not what on its face it purported to be, and it is wholly probable therefore that this nullification by indirection could never be wholly prevented, especially where a taxing statute is used for unconstitutional purposes. Nevertheless, unless our dual system of government is to be subverted the Supreme Court must return to the doctrine of Marshall that

should Congress, under the pretext of exercising its powers, pass laws for the accomplishment of objects not entrusted to the Government, it would become the painful duty of this tribunal * * * to say that such an act was not the law of the land.

To this conclusion, it is the belief of the writer, the court will, indeed must, come. It moves with caution, and yet, when the necessity arises, it does not hesitate to recede from a fatally destructive position. Let Senator Beveridge's child labor bill ever come before the court as a statute, and it is believed that that tribunal will modify that which it said in Vesey vs. Fenno and the other cases cited. It is not only "the living voice of the Constitution," but it is also the conscience of the nation. To the doctrine of judicial impotence will yet come some saving qualification.

PASS AND TACKLE.

The Game That Is Always Going To Be but Never Is Reformed.

TO THE EDITOR OF THE SUN—*Sir:* The football rule makers appear this time to have fooled themselves as well as everybody else. Their intention seems to have been honest, but the revision of 1910, as it now takes definite shape, is a snare and a delusion. Their surgery is fearless but foolish. Where a limb should have been lopped off they have bolstered it up in splints. They would sacrifice the mother to save the child, the good old game for the new.

Take the forward pass as an illustration. The play is undeniably dangerous. Tinker as you will with the rules, the single man who enters the enemy's territory to receive the ball is exposed to attack while the attention necessary to his self-preservation is concentrated on the reception of the pass. It is unfair to him to allow the opposing side to block, unfair to the opponents to allow him to make his catch free from interference—a gift of yards conditional only upon the execution of an accurate throw and catch, a basketball performance.

The use of passing the ball from player to player of the attacking side should be left to the discretion of coaches, not the decision of the lawmakers. Double and triple passes behind the line of play offer tremendous opportunities for strategy of the best type and add yards of gain at little expenditure of force. The forward pass has been tried and found a failure. It should be recognized that the fault is fundamental and calls not for alteration but for eradication. As long as it is allowed, with whatever definitions and limitations for the protection of the receiving player, the defence must be distributed, the secondary defence must be held well back, and the tackle is open to the constant cruel hammering that resulted in so many injuries last year. How a tackle of former years returning to the game of the new rules would miss on the defensive the support of the back who used to brace up the line at the point of assault! The forward pass should share the well merited fate of the "neutral zone."

The college authorities who are hailing with delight the latest patchwork of the rule makers are short sighted. A chunk of meat dropped by the fleeing footballers has held up the pursuing pack temporarily, but the chase will go on. The game has another year's lease of life, but next season will end with the same old senseless, half hearted protests and empty threats. Football is like certain candidates for membership in a little country Methodist Church I once knew, converted each year and each year backsliding—permanently on probation.

How can the flying tackle possibly be regulated by rule? It might be wise to substitute "tagging" for tackling; and if the elements of basketball are to be borrowed, why not go to the children, the true masters of the art of play, and copy their good old game of "cross tag"? Perhaps, too, the variety known as "squat tag" might be introduced; the runner about to be tagged could squat, and while in that dignified posture could not be made "it." T. N. E.

NEW YORK, March 31.

MR. AGASSIZ'S SERVICE.

One Incident of His Career Which Benefited the Whole World.

TO THE EDITOR OF THE SUN—*Sir:* Alexander Agassiz, the one man in geology who maintained the proposition that native copper could be found in conglomerate rock, has passed away. Yet he made by his persistence and ability in argument the development of the Lake Superior copper territory on Keweenaw Point (and now later traced to the mainland) a certainty. To him all men should bow in the development of present transportation. It is a well known fact that sulphate of copper is not ductile. The native copper is that is the pure copper found in the conglomerate rock, including quartzite, which possesses it. Agassiz was the foremost expert in the field. He recognized the element and devised the simple means of stamping the rock to powder, driving off the powdered rock and earth by water and allowing the copper to sink to the bottom of the troughs, which process is used at the present time. Of course he gained this knowledge from his experience in handling placer (gold) claims in California.

The disposition of the product of both gold placer (gravel) and pure copper (where it occurs in the conglomerate or pure fissure veins being the same) is identical, water being used to flush away the dirt.

GOSHEN, N. Y., March 30. W. McB.

The Spoon in the Cup.

TO THE EDITOR OF THE SUN—*Sir:* Leaving the teaspoon in the tea cup is an ancient barbarity common in the kitchen in England and usual in the parlor in America. There is absolutely no reason for the custom; in fact, there is no reason for a spoon at all. Tea should be drunk plain without sugar or milk. In that it differs from coffee, which ought to be as hot as Hades and as sweet as honey. The leaving of the spoon in the cup is not far removed from pouring the tea into the saucer, and a man or woman who does that is—it is worthy