JUDICIAL DECISIONS ON PUBLIC LAW

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Banking Corporations—Liability of Stockholders. Yoncalla State Bank v. Gemmill. (Minnesota. November 3, 1916. 159 N. W. 798.) Where a state constitution expressly provides that a stockholder of a banking corporation shall not be liable beyond the unpaid par value of the shares of stock owned by him, a subsequent amendment of said provision, imposing a double liability, cannot be construed to embrace those who became stockholders prior to the adoption of the amendment. The right to regulate and control banking business under the police power cannot go to the extent of imposing an additional personal liability upon stockholders.

Chiropractic Treatment—Regulation. State v. Fite. (Idaho. October 9, 1916. 159 P. 1183.) Defendant, who is a chiropractor, had obtained no license to practice medicine and surgery. He administered chiropractic treatments and charged and received compensation therefor. These treatments consisted in the manipulation of the region of the patient's spinal column with the hands of the practitioner, and no instruments were used, nor were any drugs or medicine prescribed or given. The defendant did not hold himself out to be a physician and surgeon, nor did he recommend or prescribe any drug, medicine, means or appliance for the relief of sickness. The court held that a statute regulating the practice of medicine was intended to prevent the use of drugs, medicines, surgical instruments and appliances by persons unskilled in their use, and could not be held to apply to the practice of chiropractic.

Congressmen—Regulation of Election. State ex rel. Davis v. Hildebrant. (Ohio. April 18, 1916. 114 N. E. 55.) While the federal Constitution commits to state legislatures the right to prescribe the times, places and manner of holding elections, it also expressly reserves to the congress full and complete control of that subject. If there be

any conflict between the legislative and congressional provisions upon that subject, the latter control, and the law of congress supersedes any law or regulation upon the subject made by the state legislature.

Constitutions—Character of Proposed Amendments. State ex rel. Linde v. Hall. (North Dakota. September 11, 1916. 159 N. W. 281.) The proposal of constitutional amendments, whether by resolution of the legislature or by initiative petition, is not legislation, and involves no legislative act or province, or power of state sovereignty, but is merely a duty, ministerial in character, fixed by and to be exercised only under and by compliance with the terms of the constitution. Whether proceedings to amend a constitution are valid as performed within such constitutional limitations is a proper subject for judicial inquiry, and its determination by court decision is not an invasion by the judiciary of the constitutional functions, province and legislative duties of the legislative department of the government.

Constitutions—Effect of Nonself-Executing Provisions. Leser et al. v. Lowenstein. (Maryland. September 16, 1916. 98 A. 712.) Where a new constitutional provision is not self-executing, an existent state statute is not thereby necessarily superseded. All statutes which are actually inconsistent with a new constitution or constitutional provision are repealed by implication. The failure of the legislature to discharge a duty imposed upon it by constitutional mandate leaves valid existing laws not in conflict with its provisions.

Convicts—Terms of Imprisonment—Cruel and Unusual Punishments. Williams v. State. (Arkansas. July 10, 1916. 188 S. W. 826.) A court may not, in order to punish for contempt a convict, serving a life term, who has refused to testify against an alleged accessory after the fact, set aside his conviction, sentence him to solitary confinement for contempt, and order his return to court after serving that sentence, for further proceedings in the original cause, since the law takes into account no parts of a term of sentence, which continues from beginning to end as one term. There can be no higher punishment for contempt than that which has already been imposed for his conviction of a felony. There is no such punishment known to our law as solitary confinement. In that sense, it is an unusual punishment which is expressly prohibited by the constitution. That provision of the constitution is directed against cruel or unusual character of punishment and

not against the duration of the punishment. Where misdemeanors are punishable by fine or imprisonment any other character of punishment must be necessarily regarded as unusual.

Divorce—Domicile—Jurisdiction. Perkins v. Perkins. (Massachusetts. October 17, 1916. 113 N. E. 841.) Where the parties are married in one State and there establish a matrimonial domicile, which is retained by one spouse who is innocent of any marital wrong and who is abandoned by the other who is guilty of marital wrong, the courts of the State of the matrimonial domicile have jurisdiction over the marriage relation. A decree of divorce by a court having jurisdiction of one party, but not of the matrimonial domicile nor of the other party, is not entitled to recognition in the State of matrimonial domicile under the full faith and credit clause of the federal Constitution, but depends upon comity. Hence, a wife guilty of no marital wrong and remaining within the matrimonial domicile is not debarred from suing for divorce for desertion where the husband, guilty of a marital wrong, has, without fault on the part of the wife and without justification, abandoned the matrimonial domicile, removed to another State, obtained a domicile there, and secured a divorce.

Ecclesiastical Law—Adoption in America. Hodges v. Hodges. (New Mexico. September 5, 1916. 159 P. 1007.) When the colonies separated from Great Britain, they kept so much of the common law as was suited to their condition. But they neither brought here nor kept the ecclesiastical courts, our institutions being founded upon an entirely different theory so far as the relations of church and state are concerned. Assuming that the ecclesiastical law was a part of the common law, as commonly conceded, necessarily only so much of the same as was suited to our conditions was adopted here. There is much divergence of view as to how much, if any, of the ecclesiastical law was adopted in this country. A divorce *a mensa et thoro* originated with the ecclesiastical court of England. Whatever the theory may be as to the adoption of the ecclesiastical law in this country, it is well established that the powers of courts in matrimonial matters are to be determined entirely upon the terms of statutes conferring the jurisdiction. These statutes necessarily embody many of the principles contained in the ecclesiastical law, and resort may be had to that law for definitions and interpretations of these statutes; but the ecclesiastical law, as a system of substantive and remedial law, has not been bodily adopted in this

country as a part of our common law, because many of its features are entirely inconsistent with our institutions, and many of its principles and doctrines are unsuited to American beliefs and practices.

Family—Head of—Defined. In re Opava. (United States. October 5, 1916. 235 Fed. 779.) A family is a collection of persons living under one roof, having one head or manager; and the head of a family is one who controls, supervises and manages the affairs of the household. Within this definition, a priest of the Roman Catholic Church who lives with his sister, whom he induced to come from a foreign country and live with him, agreeing to pay over to her all his income except his personal expenses, on condition the sister maintain the household, is head of a family. He maintains a home; he is the wage-earner; he is the manager of the home; he is under moral and legal obligation to maintain her during her life; and his relations with his sister are permanent. It is her home now and will be in the future.

Foreign Corporations—Regulation. Commonwealth et al. v. United Cigarette Mach. Co., Limited. (Virginia. September 14, 1916. 89 S. E. 935.) An act which provides that corporations, chartered or organized under laws of other States or countries and authorized to manufacture articles made from metal, cotton, or wood, and to mine ores or coals, shall for all purposes be deemed and treated as domestic corporations, is not invalid as an attempt by the legislature to domesticate foreign corporations. The act merely authorizes such corporations to do business within the State, and provides that, if they do, they shall be subject to the same rules that govern domestic corporations.

Former Jeopardy. Crowley v. State. (Ohio. February 29, 1916, 113 N. E. 658.) Where a person has been in jeopardy upon an affidavit filed with the mayor of a city, the plea of former jeopardy is insufficient as a bar to a prosecution by indictment for a felony, although the facts alleged in the indictment would have warranted a conviction on the charge made in the affidavit. An acquittal or conviction for a minor offense, included in a greater, will not bar a prosecution for the greater, if the court in which the acquittal or conviction was had was without jurisdiction to try the accused for the greater offense.

Indians—Rights under Treaty with State. Kennedy v. Becker. (United States. June 12, 1916. 241 U. S. 556.) The Big Tree treaty

of 1797 reserved to the Seneca tribe of Indians hunting and fishing privileges on the lands conveyed by that treaty. Under a claim that the Indians of that tribe are not subject to the fish and game laws of the State of New York, it was held that the power to preserve fish and game within its border is inherent in the sovereignty of the States; that the reservation in the treaty was one in common with the grantees and others to whom the privilege might be extended, but subject to the necessary power of appropriate regulation by the State having inherent sovereignty over the land; and that such Indians are subject to the fish and game laws of the State, notwithstanding the reservation in the treaty. The fact that the Indians are wards of the United States under the care of an Indian agent does not derogate from the authority of the State to enforce its fish and game laws as against Indians on territory within the State and outside of any Indian reservation.

Laundry Business—Regulation. Yee Gee v. City and County of San Francisco. (United States. July 20, 1916. 235 Fed. 757.) A municipal ordinance prohibiting persons owning or employed in public laundries to do laundry work between the hours of 6 p.m. and 7 a.m. is void as an unreasonable interference with the liberty of citizens in the prosecution of a legitimate occupation, where the provision applies to all laundries maintained in the entire territory embraced within the city limits, without regard to differing conditions existing in different sections or districts thereof, the density of population or character of buildings, or the situation or relation of the laundry to other structures or premises, as calculated to cause danger of fires or other objectionable considerations. A municipality under authority of the constitution and statutes of a State may, in the exercise of the police power, regulate the conduct of any business in any respect as to that which may involve the public health, safety, or welfare, provided the regulation is reasonably adapted to their protection; but it may not, under the guise of a police regulation, interfere with the constitutional right of a citizen to carry on a legitimate business, harmless in itself, beyond a point reasonably required for the protection of the public.

Legislature—Scope of Term. State ex rel. Davis v. Hildebrant. (Ohio. April 18, 1916. 114 N. E. 55.) The law-making body, the legislature, as defined by lexicographers, comprehends every agency required for the creation of effective laws. It cannot be claimed that the term "legislature" necessarily implies a bicameral body. When

the term was originally embraced in the constitution, the legislatures of Pennsylvania, Georgia and Vermont consisted of but a single house, with a second body in each, called an executive council. The provision of the federal Constitution, relating to the election of congressmen, conferring the power therein defined upon the various state legislatures, should be construed as conferring it upon such bodies as may, from time to time, assume to exercise legislative power, whether that power is lodged in a single or in a two-chambered body, or whether the functions of the latter be curbed by a popular vote or its enactments approved by a referendum vote.

Marriage Settlements—Validity When Made According to Tenets of a Religious Faith. Goldstein v. Goldstein. (New Jersey. July 14, 1916. 98 A. 835.) A betrothal and a nuptial contract, made according to the Hebrew faith, whereby the husband bound himself and his heirs for the payment or contribution to the dower of an amount equal to that brought in by the wife, and as security therefor pledged all of his present and after-acquired possessions, without disclosing to whom or when the dowry was to be paid, is not an enforceable obligation between the husband and wife, nor does such contract create a trust in favor of the wife.

Medicine, Regulation of Practice—Treatment under Christian Science Church. People v. Cole. (New York. October 3, 1916. 113 N. E. 790.) The purpose of the statute regulating the practice of medicine is to protect persons from being treated by those who are without adequate training or education. A recognized practitioner of the Christian Science Church, who, within the rules of that church, and at his office, and for a fee charged, gives a treatment by interposing by prayer that the disease, or inharmony between the Divine Being and the sufferer, might be adjusted, it being a tenet of the Christian Science Church that such prayer could completely cure disease, gives treatment within the meaning of the statute; but if in good faith he is practicing the tenets of a church, which are the beliefs, doctrines and creeds of the church as an organization, as distinguished from an individual, he is not guilty under the provisions of this statute excepting the practice of the religious tenets of any church, and under the constitutional provision for the free enjoyment of religious professions and worship. The question whether the accused is in good faith practicing the tenets of a church and is within the exception is a question for the jury.

Military—Enlistment of Minor. Ex parte Avery. (United States. July 14, 1916. 235 Fed. 248.) The enlistment of a minor in the army is valid as to him, but is voidable at the instance of his parent or guardian, who has not consented, and he is entitled to the discharge of the minor on habeas corpus, unless there are pending charges against him which give a court-martial priority of jurisdiction.

Military and State Courts—Jurisdiction. In re Wulzen. (United States. August 25, 1916. 235 Fed. 362.) A paramount remedy for the punishment of a member of the military is provided for by punishment by the military authorities where such member, charged with disorderly conduct, has violated a state law or municipal ordinance. And this is especially so during a state of war, or during a condition of affairs when war is imminent, and the detention of the offender by the state or municipal authorities would interfere with the discharge of his duties as a member of the military. In determining the jurisdiction, the court will also take into consideration the fact that the accused was in the performance of his duties at the time of the alleged disorderly conduct, and that no malice, wantonness, or criminal intent has been shown.

Milk—Regulation of Sale. State v. Latham. (Maine. September 9, 1916. 98 A. 578.) A statute, which requires milk dealers to pay for purchases semimonthly and provides for punishment by fine on default, is unconstitutional as class legislation, and as without the police power of the State. The statute does not apply to all classes of debtors, but to one class. It does not apply to all debts incurred by purchase of products, but to one class. It requires the purchaser of milk who is a middleman or manufacturer of milk products to pay, but does not require him to pay who buys for other purposes. It gives the milk producer a strong club to aid in the collection of debts which is not given to other creditors. The discrimination is not based on any real differences in condition, or situation, or necessities concerning the public health, welfare, etc., and offends against "the equal protection of the laws" clause of the federal Constitution.

Milk—Regulation of Supply. City of Chicago v. Chicago & N. W. Ry. Co. (Illinois. October 24, 1916. 113 N. E. 849.) A city can regulate the kind of milk sold within its limits, and adopt rules and regulations indirectly affecting the production of milk outside the city

limits, by requiring the milk to be cooled immediately and kept cool during transportation. However, an ordinance regulating the transportation of milk must be practicable; and where an ordinance requires milk to be transported in sealed cans which may not be opened en route, a provision penalizing a common carrier for transporting milk in such sealed cans at a temperature of more than 55° F. is unreasonable, it being practically impossible to ascertain the temperature of the contents of sealed cans.

Municipal Corporations—Control—Powers. Booten v. Pinson. (West Virginia. December 17, 1915. 89 S. E. 985.) Municipalities are but political subdivisions of the State, created by the legislature for purposes of governmental convenience, deriving not only some but all of their powers from the legislature. They are mere creatures of the legislature, exercising certain delegated governmental functions which the legislature may revoke at will. In fact, public policy forbids the irrevocable dedication of governmental powers. The power to create implies the power to destroy. The legislature may incorporate a city even against the will of the inhabitants. Consent or acceptance is not required. It may also, without the consent of a city, change its form of government, determine the number and character of its officers, and define their powers and duties. It may provide for the qualifications of its officers, and may provide for their appointment by authority without the limits of the municipality, as by the executive of the State. It may even prescribe the mode of procedure to be observed in passing its ordinances. A municipality has no inherent political rights, for all its powers are delegated by the legislature.

Municipal Corporations—Delegation of Powers. Moll v. Morrow. (Pennsylvania. April 17, 1916. 98 A. 650.) Under a provision of the constitution which prohibits the delegation to any special commission of any power of a municipal corporation, an act, providing for the creation of a bureau of public morals in cities of the second class for the purpose of investigating and acting upon all questions and conditions affecting public morals, is invalid, where such a bureau is given the municipal powers to investigate conditions, to enforce laws, and to prosecute violations. Such a board is created to administer a part of the police affairs of the city, and is a special agency for the performance of a municipal function.

Municipal Corporations—Effect of the Adoption of a Home Rule Charter. Park v. City of Duluth et al. (Minnesota. October 20, 1916. 159 N. W. 627.) Where the constitution and general laws of a State confer upon the people of a city the power to frame and adopt its own charter, the adoption of such a charter is legislation. The authority which it furnishes to city officers is legislative authority. The people of a city, in adopting such a home rule charter, have not power to legislate upon all subjects, but as to matters of municipal concern they have all the legislative power possessed by the legislature of the State, save as such power is expressly or impliedly withheld.

Municipal Corporations—Power to Provide for Referendum. Mills v. Sweeney. (New York. October 31, 1916. 114 N. E. 65.) The provision of a city charter giving authority to the common council to enact ordinances for good government, protection of property, preservation of peace and good order, the suppression of vice, the benefit of trade and commerce, the preservation of health, the prevention and extinguishment of fires, the exercise of its corporate powers, and the performance of its corporate duties, does not confer upon the common council authority to enact an ordinance providing for a referendum on public policy questions. Such a general clause was not intended by the legislature to confer such a power upon the common council; it has been the policy of the legislature, since the recognition of the referendum in the political system, to deal with it directly and in expressed terms.

Municipal Corporations—Powers as to Public Improvement Contracts. City of Milwaukee v. Raulf. (Wisconsin. October 24, 1916. 159 N. W. 819.) A city has such powers as are expressly granted to it, and such others as are necessary and convenient to the exercise of the powers expressly granted. In the absence of statutory restriction, a city has, incident to its power to contract for the construction of public works, the same power to prescribe the conditions under which the work shall be carried on within the city that the State has. And as a part of such power, a city may limit the hours of labor on public work and may enforce the limitation by ordinance.

National Guard—Power of President to Call Out. Sweetser v. Anderson. (United States. October 18, 1916. 236 Fed. 161.) The Dick law of 1903, which authorized the President to call into the national service the national guards of the various States, was not super-

seded by the national defense act of June 3, 1916, as regards the power of the President to call out and use the organized state militia as a military force to help repel invasion and suppress insurrection. Under the act of 1916, it is left altogether at the election of members of the organized militia to sign a new enlistment contract or not, and to take an oath of allegiance to the United States or not, and to obey the orders of the President and of the governor or not, and in the event of an election not to sign a new enlistment contract and to take the oath, a militiaman is not mustered out and relieved from obligation to respond to the federal emergency call under his oath as originally taken under the Dick law. While there was doubtless no thought that the act of 1916 should be used to coerce enlistment into broader fields, it is quite as obviously clear that there was no thought that a failure to do so would operate to free the organized militia from the military service upon which its members had already entered.

Neutrality Laws—Peoples Affected. The Lucy H. (United States. May 16, 1916. 235 Fed. 610.) Section 11 of the United States Code, which makes it a criminal offense to fit out and arm, within the jurisdiction of the United States, any vessel with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, was designed to secure the neutrality of the United States, not only in wars between other nations recognized, and between contending parties recognized as belligerents, but also between warring factions, although there has been no political recognition of either as sovereign or of a state of belligerency. This intent was emphasized by the fact that the words "colony, district or people" were inserted by an amendment in 1818.

Neutrality Laws—Prizes. The Appam. (United States. July 29, 1916. 234 Fed. 389.) The provisions of the treaty with the kingdom of Prussia, which provides that the vessels of war of both parties shall carry freely, wheresoever they please, prizes taken from their enemies, and that such prizes shall not be arrested, searched, or put under legal process when they enter the ports of the other party, but may freely be carried out again at any time by their captors, apply only to prizes brought into port for necessary temporary purposes, as

in case of stress of weather, want of fuel or provisions, or necessity of repairs, and contemplate their removal to a port of the captor country as soon as the cause of their entry has been removed. Neither under such treaty nor under the doctrines of international law as generally accepted by civilized nations at the present day may a prize be taken alone by a prize crew into a port of a neutral country for indefinite asylum. Title to a prize does not become vested in the captor by the mere fact of capture, and not until lawful condemnation is had by the proper court of the captor country. An uncondemned prize, taken into a port of a neutral country for asylum in violation of its neutrality, is subject to proceedings by its owner for restitution in the admiralty courts of that country irrespective of the action of the prize courts of the captor country.

Pensions—Validity of Police Pensions. People ex rel. Kroner v. Abbott. (Illinois. June 22, 1916. 113 N. E. 696.) Pensions to officers of municipal police systems are regarded by the courts in the nature of compensation for services previously rendered, for which full and adequate compensation was not received at the time of the rendition of the services. They are, in effect, pay withheld to induce long-continued and faithful service. The public benefit accrues in two ways: by encouraging competent employes to remain in the service, and by retiring from the public service those who have become incapacitated from performing the duties as well as they might be performed by younger or more vigorous men. Such pensions generally are not considered donations or gratuities. The rule is, in the majority of jurisdictions, that the legislature has power to require municipalities to pension their employes and to raise the funds for that purpose. Therefore, a police pension fund act does not violate constitutional provisions forbidding extra compensation to a public officer after service has been rendered or contract made, or providing that the fees and compensation of public officers shall not be increased or diminished during their terms.

Practice of Medicine—Unprofessional Conduct. State Board of Medical Examiners v. Macy. (Washington. August 29, 1916. 159 P. 801.) A definition of unprofessional conduct in the medical profession, as contained in an act regulating the practice of medicine, read as follows: "All advertising of medical business which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, and so be harmful or injurious to public morals or safety."

The court held that this definition was not unconstitutional, as being so vague and uncertain as to leave the acts constituting unprofessional conduct subject to the mere personal opinion of the members of the state board of medical examiners, before whom the question of the unprofessional conduct was to be tried, and as furnishing no standard for the guidance of the board in determining what the unprofessional conduct so defined would be. The court further held that a person tried for violation of the statute was not entitled to a trial by jury; that the provision in the constitution providing for a trial by jury applied only where the right existed prior to the adoption of the constitution, so that, no provisions as to the licensing of physicians and the revocation of licenses having existed before the adoption of the constitution, a person accused of unprofessional conduct had no right to a trial by jury but might be tried before the state board of medical examiners and his license revoked by that board.

Privilege Taxes—Shoe-Shining Business. Barlin v. Knox County. (Tennessee. October 24, 1916. 188 S. W. 795.) The imposition of a privilege tax upon shoe-shining parlors, by a statute which exempts barber shops where shoe-shining is carried on, is not an arbitrary and capricious classification because of the exemption of barber shops; nor the suspension of a general law; nor the granting of rights and immunities to individuals, to wit, those conducting barber shops. The conducting of a barber shop, where shoe-shining is also done but only as a mere incident of the business, is not a shoe-shining parlor. The exemption as to barber shops in the statute is a mere surplusage. If it had been omitted, the privilege tax imposed upon shoe-shining parlors could not be exacted from one conducting a barber shop, unless the shining of shoes in the barber shop was conducted to such an extent as to become the main business there conducted.

Public Amusements—Regulation of Dancing. City of Chicago v. Drake Hotel Co. (Illinois. June 22, 1916. 113 N. E. 718.) A city, under a legislative grant of power to license, tax, regulate, suppress and prohibit theatricals, shows and amusements, has no power to prohibit by ordinance dancing in restaurants by the patrons thereof, where no fee is charged for the privilege. Such prohibition is a clear invasion of the property rights of individuals. There is nothing necessarily harmful in permitting the patrons of a restaurant to dance while the restaurant is open to the general public. On the contrary, as the evi-

dence in this case shows and the municipal court found, dancing, as conducted in public places of refreshment in the city of Chicago, has always been orderly, dignified, etc., and is in no sense a public nuisance, and is a reasonable and harmless method of amusement for the public in said city.

Public Officers—Recall. Wigley v. South San Joaquin Irr. Dist. et al. (California. July 26, 1916. 159 P. 985.) A legislature, in the absence of constitutional provision, has the power to pass acts for the recall of public officers. A constitutional provision that officers may be tried for misdemeanors in office in such manner as the legislature may prescribe does not deprive the legislature of power to provide for the recall of such officers by the electorate. Nor is an express provision of the constitution that the legislature may pass acts for the removal of certain specified officers exclusive nor does it prevent the legislature from providing for the recall of officers not specified therein.

Sunday Laws—Observance of Other Day. Krieger v. State. (Oklahoma. October 18, 1916. 160 P. 36.) The Sabbath law proceeds upon the theory that the physical, intellectual and moral welfare of mankind requires a periodical day of rest from labor, and, as some particular day must be fixed, the one most naturally selected is that which is regarded as sacred by the greatest number of citizens, and which by custom is generally devoted to religious worship, or rest and recreation, as this causes the least interference with business or existing customs. To require persons observing another day than Sunday as a Sabbath to refrain from work on Sunday prevents such persons from working six days of the week, and from obeying the provisions, of the religious commandment which provides that there be one day of rest and six days of labor in seven.

Sunday Laws—Works of Necessity—Barbering. Gray v. Commonwealth. (Kentucky. September 29, 1916. 188 S. W. 354.) The enactment of the statute prohibiting work or labor upon the Sabbath day is not an attempt to enforce any religious duties, but is a civil regulation, authorized by the legislature in the exercise of the police power, and where the statute excepts works of necessity, the necessity which must exist to bring the doing of any work within the exception is not an absolute, unavoidable physical necessity, but is that which the common sense of the country in its ordinary modes of doing business regards

as necessary. While the shaving of a particular person by a barber, under exceptional circumstances upon the Sabbath, may be a work of necessity, yet where a barber is simply doing his work of shaving and cutting hair of his customers and doing for them the regular service of a barber, it is not a work of necessity and does not lie within the exception of the statute. The fact that a great many of the legislatures of the States have adopted statutes making it unlawful to engage in the business of barbering on the Sabbath day would indicate conclusively that the common sense of the country, in its ordinary modes of doing business, does not regard the business and work of barbering as a necessity.

BOOK REVIEWS

Politics. By HEINRICH VON TREITSCHKE. Translated from the German by Blanche Dugdale and Torben De Bille, with an introduction by the Right Hon. Arthur James Balfour, and a foreword by A. Lawrence Lowell. In two volumes. (New York: The Macmillan Company, 1916. Pp., Vol. I, xliv, 406; Vol. II, vi, 643.)

An ultimate judgment of Treitschke will be long delayed. Like Machiavelli's, his is the sort of work about which controversy will doubtless continue to rage for many a decade. It is inherent in his method, in his *Weltanschauung*, in his specific conclusions and principles, that they should arouse the widest difference of opinion. To temperaments of one cast he will continue to be looked upon as the virile and prophetic expounder of the only true and sound principles of political action—true and sound because based upon the reality of historical fact; to minds tuned to another key he will remain the evil genius of an irrational and immoral system of crass militaristic imperialism which has cursed the world with the pestilence of senseless war and turned the wheels of civilization backwards generations in time. There is much in the point of view, in the outlook on life, with which one approaches the fundamental problems of politics. "The kind of a philosopher one is depends upon the kind of a man he is," says Fichte; and this is perhaps preëminently true in the field of political philosophy. Idealism or realism in politics is chiefly a matter of temperament.

Treitschke's work is indeed not devoid of idealism; it is rather from beginning to end the embodiment and elaboration of a single idea, the idea of the state as "the objectively revealed will of God." But this Hegelian idealization of the state is so absolutely intolerant of any other ideal; so uncompromising in the ethical conclusions which it enforces, conclusions which in many cases run counter to the present trend of thought in England and America; and so specific in its justification of political acts which appear revolting to the majority of Anglo-Saxons, that the fundamental idealism of the work is likely to be entirely lost in its character of a masterpiece of *Realpolitik*. Says August