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Dissenting Opinions

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DISSENTING OPINIONS

It is a settled practice in this country for judges to disagree. That is a part of our American system.

We believe the Bar and the people generally have much faith in the judges of our courts who do not join the majority. The Supreme Court of the United States has divided on Constitutional questions five to four, six to three or eight to one. Criticism of the majority or the minority under this American system of ours is not wholly justified. On the contrary, it is strong evidence that the judges who dissent are independent, and this American idea is not confined to the judiciary. Ministers disagree in the religious world and great scientific experts in the scientific world disagree. How can it be said it is a dishonor to our American system for great judges to disagree as to the application of what can be done by Congress under the provisions of the Constitution? But, on the other hand, it gives the man on the farm and the laborer a chance to debate in their own way some of these great questions; and that is not all, it has a marked tendency to educate the people as to what the power of Congress is under the Constitution.

A student of the political history of this country will find that this same great fact is always true. Many very distinguished statesmen and orators have disagreed as to state rights and federal rights and to just what could be done under our Constitution and be legal. This difference of opinion is not at all dangerous. It does not mean to destroy the Constitution. On the contrary, it gives all people a chance to do some hard thinking as to just what the Constitution of the United States really means.

No lawyer, or judge, or statesman, or great leader,

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either in the business world or any other of the many activities of life, has worked out a 100 per cent formula for the American people to follow.

In this American life of ours, we have many religions, and it is a great truth that our Constitution does not recognize a state religion, but leaves to all our people the right to worship God Almighty according to the dictates of his own conscience. What a sound doctrine that is. It is written in our fundamental law and in the constitutions of the different states of the Union, but not all our people follow the great fact laid down in our Constitution some years ago.

In this state we have had our share of dissenting opinions by the Supreme Court. I am not aware of any decision where a dissent has been later adopted by the Supreme Court as the law of the state.

All over the land there is a great growing interest as to our courts. A good judge is a valuable asset to any community; a poor judge is an awful liability. On the whole, we have been quite fortunate in having honest, upright, far-reaching judges on the bench, and it is becoming general throughout the country that when, either by appointment or by election, a good judge is found and elevated to the bench—the very highest of our positions in this country—that it is good, hard common sense to keep such a judge in the public service.

M. A. HILDRETH, President,
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SOME QUESTIONS INVOLVED IN THE APPLICATION OF THE "PUBLIC INTEREST" DOCTRINE

By DEXTER MERRIAM KEEZER

In 1876, the United States Supreme Court, in the now famous case of Munn v. Illinois, first gave sanction in this country to the doctrine that an enterprise may become "affected with a public interest," and in consequence be subject to public regulation. The doctrine has been steadily expanded, bringing within its scope an increasing range and diversity of enterprises. There is a basis for the belief that the classification of enterprises held to be "affected with a public interest" will continue to be enlarged. It therefore becomes important to see whether there is any economic pattern into which such enterprises can be fitted.

The legislatures may pass laws declaring an enterprise to be "affected with a public interest," and subject to the liabilities which may attach themselves to that classification; but this is not conclusive, for the circumstances are always a subject of judicial inquiry.

Chief Justice Taft, in the Wolff Packing Company case, divided the public interest businesses into three classes; but this classification is not complete, for it does not include all cases, nor does it exclude cases that are not clothed with public interest.

Specific Considerations Leading to Judicial Approval of Regulation in the Public Interest

In Munn v. Illinois the Supreme Court of the United States found the regulation by the State of Illinois of rates charged by grain elevators