IV

Federal-State Relations

NOTE

The Supreme Court in *Coyle* v. *Smith,* decided in 1911, affirmed the principle that Congress in admitting a state to the Union cannot impose conditions which deprive the new state of equality with other states.

It was proposed at the convention of 1787 that new states should be admitted 'on the same terms with the original States.'[1] Gouverneur Morris moved the deletion of this provision because he did not wish 'to throw the power' into the hands of future western states. This was seconded by Langdon of New Hampshire, who declared that 'he did not know but circumstances might arise which would render it inconvenient to admit new States on terms of equality.'[2] The motion was carried. As adopted, the Constitution provides simply that Congress shall admit new states into the Union.[3]

The policy of Congress has been to admit new states on a basis of equality with the old. Vermont and Kentucky were admitted as 'new and entire' members of the United States, while Tennessee was declared 'to be one of the United States of America, on an equal footing with the original states, in all respects whatever. . .'

One circumstance led to the imposition of conditions. The United States early acquired a large public domain. After the Revolution such states as Virginia, Massachusetts, Connecticut, South Carolina, and Georgia claimed lands as far west as the Mississippi. These claims were challenged by New Jersey, Delaware, and Rhode Island; and Maryland refused to ratify the Articles of Confederation until the great land-owning states should relinquish their claims. Between 1780 and 1802, the states mentioned above, and North Carolina, ceded their western lands to Congress either under the Articles or the Constitution.[4] Thus the public domain originated. By conquest, annexation, and purchase, this domain was enlarged, and that part of the lands over which the United States acquired dominion and which was not in private ownership at the time of acquisition became the property of the United States.[5] Public lands made possible a policy of land-grants to new states.

There were conditions attached to the land-grants. Ordinarily they were to be used or sold by the state for certain purposes—the use of schools, the support

[1] *The Records of the Federal Convention of* 1787, ed. by Max Farrand, New Haven, 1937, II, p. 454.

[2] Ibid.

[3] There is a qualifying clause: no new state may be created within the jurisdiction of another state, nor may a state be created by the junction of two or more states or parts of states, without the consent of Congress and the state legislatures concerned.

[4] Georgia did not cede her western territory until 1802.

[5] However, title to unappropriated lands in Texas was retained by the state. 5 Stat. 797 (1845).

of universities, public buildings, and capitol grounds. These grants, however, were part of a bargain. In return for the land, the state agreed that each and every tract of land sold by Congress should be exempt from any tax laid by authority of the state for a period of years. This policy was in part due to the early efforts of the Federal government to reduce its war debt. To the Secretary of the Treasury, Albert Gallatin, it was 'a matter of considerable importance to make certain that no new state created in the Northwest Territory should be in a position to impose burdens upon the federal lands within its borders that would render them unsalable or diminish their value.' [6]

Such agreements relative to exemption from state taxation of lands sold by Congress have been upheld by the Supreme Court. In *Stearns* v. *Minnesota* [7] a provision in the act admitting Minnesota to the Union which limited its legislative power over Federal public lands was upheld, Mr. Justice Brewer saying 'that a State admitted into the Union enters therein in full equality with all the others, and such equality may forbid any agreement or compact limiting or qualifying political rights and obligations; whereas, on the other hand, a mere agreement in reference to property involves no question of equality of status, but only of the power of a State to deal with the nation or with any other State in reference to such property. The case before us is one involving simply an agreement as to property between a State and the nation.' [8]

Congress has imposed upon new states conditions other than those relating to the sale of public lands. Louisiana entered the Union upon condition 'that the river Mississippi, and the navigable rivers and waters leading into the same, and into the Gulf of Mexico, shall be common highways, and forever free.' [9] Missouri was admitted on condition that a certain clause of the constitution submitted 'shall never be construed to authorize the passage of any law . . . by which any citizen, of either of the states in this Union, shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the constitution of the United States. . .' [10] Utah was admitted on condition that polygamy would be forever banned, although the regulation of marriage is among the reserved powers of the states. Arizona entered the Union only after a clause providing for the recall of judges was removed from her constitution.[11]

The enabling act of 1906, under which Oklahoma was admitted to the Union, provided that 'The capital [sic] of said State shall temporarily be at the city of Guthrie, and shall not be changed therefrom previous to' the year 1913. The

[6] Orfield, Matthias Nordberg, *Federal Land Grants to the States with Special Reference to Minnesota*, Minneapolis, 1915, pp. 84-5.

[7] 179 U.S. 223 (1900).

[8] Ibid. 245.

[9] A somewhat similar condition was imposed upon Alabama. This was upheld by the Supreme Court, not on the basis of compact, but as a regulation of commerce. *Pollard's Lessee* v. *Hagan*, 3 How. 212 (1845).

[10] This precaution was constitutionally unnecessary, such privileges and immunities being already safeguarded by the Federal Constitution.

[11] That Arizona after admission amended her constitution to provide for the recall of judges was acting within her constitutional rights is unquestioned.

act required 'That the constitutional convention provided for herein shall, by ordinance irrevocable, accept the terms and conditions of this act.' The Oklahoma constitutional convention accepted, and the people ratified, the terms and conditions of the enabling act. In 1910 the state legislature by law removed the capitol from Guthrie to Oklahoma City. Coyle, a property-owner in Guthrie, commenced an action against Smith, Secretary of State of Oklahoma, to test the validity of the removal. The removal act was upheld by the state supreme court. Coyle appealed to the Supreme Court of the United States.

COYLE v. SMITH
221 U.S. 559 (1911)

MR. JUSTICE LURTON delivered the opinion of the court. . .

The only question for review by us is whether the provision of the enabling act was a valid limitation upon the power of the State after its admission, which overrides any subsequent state legislation repugnant thereto.

The power to locate its own seat of government and to determine when and how it shall be changed from one place to another, and to appropriate its own public funds for that purpose, are essentially and peculiarly state powers. That one of the original thirteen States could now be shorn of such powers by an act of Congress would not be for a moment entertained. The question then comes to this: Can a State be placed upon a plane of inequality with its sister States in the Union if the Congress chooses to impose conditions which so operate, at the time of its admission? The argument is, that while Congress may not deprive a State of any power which it *possesses,* it may, as a condition to the admission of a new State, constitutionally restrict its authority, to the extent at least, of suspending its powers for a definite time in respect to the location of its seat of government. This contention is predicated upon the constitutional power of admitting new States to this Union, and the constitutional duty of guaranteeing to 'every State in this Union a republican form of government.' The position of counsel for the appellants is substantially this: That the power of Congress to admit new States and to determine whether or not its fundamental law is republican in form, are political powers, and as such, uncontrollable by the courts. That Congress may in the exercise of such power impose terms and conditions upon the admission of the proposed new State, which, if accepted, will be obligatory, although they operate to deprive the State of powers which it would otherwise possess, and, therefore, not admitted upon 'an equal footing with the original States.'

The power of Congress in respect to the admission of new States is found in the third section of the fourth Article of the Constitution. . .

But what is this power? It is not to admit political organizations which are less or greater, or different in dignity or power, from those political entities which constitute the Union. It is, as strongly put by counsel, a 'power to admit States.'

The definition of 'a State' is found in the powers possessed by the original States which adopted the Constitution, a definition emphasized by the terms employed in all subsequent acts of Congress admitting new States into the Union. . .

The power is to admit 'new States into *this* Union.'

'This Union' was and is a union of States, equal in power, dignity and au-

thority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself. To maintain otherwise would be to say that the Union, through the power of Congress to admit new States, might come to be a union of States unequal in power, as including States whose powers were restricted only by the Constitution, with others whose powers had been further restricted by an act of Congress accepted as a condition of admission. Thus it would result, first, that the powers of Congress would not be defined by the Constitution alone, but in respect to new States, enlarged or restricted by the conditions imposed upon new States by its own legislation admitting them into the Union; and, second, that such new States might not exercise all of the powers which had not been delegated by the Constitution, but only such as had not been further bargained away as conditions of admission.

The argument that Congress derives from the duty of 'guaranteeing to each State in this Union a republican form of government,' power to impose restrictions upon a new State which deprives it of equality with other members of the Union, has no merit. It may imply the duty of such new State to provide itself with such state government, and impose upon Congress the duty of seeing that such form is not changed to one anti-republican,—*Minor* v. *Happersett*, 21 Wall. 162, 174, 175,—but it obviously does not confer power to admit a new State which shall be any less a State than those which compose the Union.

We come now to the question as to whether there is anything in the decisions of this court which sanctions the claim that Congress may by the imposition of conditions in an enabling act deprive a new State of any of those attributes essential to its equality in dignity and power with other States. In considering the decisions of this court bearing upon the question, we must distinguish, first, between provisions which are fulfilled by the admission of the State; second, between compacts or affirmative legislation intended to operate *in futuro*, which are within the scope of the conceded powers of Congress over the subject; and third, compacts or affirmative legislation which operate to restrict the powers of such new States in respect of matters which would otherwise be exclusively within the sphere of state power.

As to requirements in such enabling acts as relate only to the contents of the constitution for the proposed new State, little need to be said. The constitutional provision concerning the admission of new States is not a mandate, but a power to be exercised with discretion. From this alone it would follow that Congress may require, under penalty of denying admission, that the organic laws of a new State at the time of admission shall be such as to meet its approval. A constitution thus supervised by Congress would, after all, be a constitution of a State, and as such subject to alteration and amendment by the State after admission. Its force would be that of a state constitution, and not that of an act of Congress. . .

It may well happen that Congress should embrace in an enactment introducing a new State into the Union legislation intended as a regulation of commerce among the States, or with Indian tribes situated within the limits of such new State, or regulations touching the sole care and disposition of the public lands or reservations therein, which might be upheld as legislation within the sphere of the plain power of Congress. But in every such case such legislation would derive its force not from any agreement or compact with the proposed new State, nor by reason of its acceptance of such enactment as a term of admission, but solely because the power of Congress extended to the subject, and, therefore, would not operate to restrict the State's legislative power in respect of any matter

which was not plainly within the regulating power of Congress. . .

No such question is presented here. The legislation in the Oklahoma enabling act relating to the location of the capital of the State, if construed as forbidding a removal by the State after its admission as a State, is referable to no power granted to Congress over the subject, and if it is to be upheld at all, it must be implied from the power to admit new States. If power to impose such a restriction upon the general and undelegated power of a State be conceded as implied from the power to admit a new State, where is the line to be drawn against restrictions imposed upon new States. The insistence finds no support in the decisions of this court. . .

In *Escanaba Co.* v. *Chicago,* cited above [107 U.S. 678], it was contended that the control of the State of Illinois over its internal waters had been restricted by the ordinance of 1787, and by the reference to that ordinance in the act of Congress admitting the State. Concerning this insistence, this court, speaking by Mr. Justice Field, said:

'Whatever the limitation upon her powers as a government whilst in a territorial condition, whether from the ordinance of 1787 or the legislation of Congress, it ceased to have any operative force, except as voluntarily adopted by her, after she became a State of the Union. On her admission she at once became entitled to and possessed of all the rights of dominion and sovereignty which belonged to the original States. She was admitted, and could be admitted, only on the same footing with them. The language of the resolution admitting her is "on an equal footing with the original States in all respects whatever." 3 Stat. 536. Equality of constitutional right and power is the condition of all the States of the Union, old and new. Illinois, therefore, as was well observed by counsel, could afterwards exercise the same power over rivers within her limits that Delaware exercised over Black Bird Creek, and Pennsylvania over the Schuylkill River. . .'

We are unable to find in any of the decisions of this court cited by counsel for the appellants anything which contravenes the view we have expressed. *Green* v. *Biddle,* 8 Wheat. 1, involved the question as to whether a compact between two States, assented to by Congress, by which private land titles in Kentucky, derived from Virginia before the separation of Kentucky from Virginia, 'should remain valid and secure under the laws of the proposed State of Kentucky, and should be determined by the laws now existing in this (Virginia) State.' By subsequent legislation of the State of Kentucky these titles were adversely affected. This court held that this legislation impaired the obligation of a valid contract within that clause of the Constitution forbidding such impairment. Neither does *Virginia* v. *West Virginia,* 11 Wall. 39, have any bearing here. The question there was one of compact between the two States, assented to by Congress, concerning the boundary between them. Both the cases last referred to concerned compacts between States, authorized by the Constitution when assented to by Congress. They were therefore compacts and agreements sanctioned by the Constitution, while the one here sought to be enforced is one having no sanction in that instrument.

Beecher v. *Wetherby,* 95 U.S. 517, involved the validity of the grant of every sixteenth section in each township for school purposes. The grant was made by the act providing for the organization of a state government for the Territory of Wisconsin, and purported to be upon condition that the proposed State should never interfere with the primary disposal of the public lands of the United States, nor subject them to taxation. The grant was held to operate as a grant taking effect so soon as the necessary surveys were made. The conditions assented to by the State were

obviously such as obtained no force from the assent of the State, since they might have been exacted as an exertion of the proper power of Congress to make rules and regulations as to the disposition of the public lands. . .

The case of the *Kansas Indians,* 5 Wall. 737, involved the power of the State of Kansas to tax lands held by the individual Indians in that State under patents from the United States. The act providing for the admission of Kansas into the Union provided that nothing contained in the constitution of the State should be construed to 'impair the rights of persons or property pertaining to the Indians of said territory, so long as such rights shall remain unextinguished by treaty with such Indians.' It was held that so long as the tribal organization of such Indians was recognized as still existing, such lands were not subject to taxation by the State. The result might be well upheld either as an exertion of the power of Congress over Indian tribes, with whom the United States had treaty relations, or as a contract by which the State had agreed to forego taxation of Indian lands, a contract quite within the power of a State to make, whether made with the United States for the benefit of its Indian wards, or with a private corporation for the supposed advantages resulting. Certainly the case has no bearing upon a compact by which the general legislative power of the State is to be impaired with reference to a matter pertaining purely to the internal policy of the State. See *Stearns* v. *Minnesota,* 179 U.S. 223. . .

If anything was needed to complete the argument against the assertion that Oklahoma has not been admitted to the Union upon an equality of power, dignity and sovereignty with Massachusetts or Virginia, it is afforded by the express provision of the act of admission, by which it is declared that when the people of the proposed new State have complied with the terms of the act that it shall be the duty of the President to issue his proclamation, and that 'thereupon the proposed State of Oklahoma shall be deemed admitted by Congress into the Union under and by virtue of this act, *on an equal footing with the original States.*' The proclamation has been issued and the Senators and Representatives from the State admitted to their seats in the Congress.

Has Oklahoma been admitted upon an equal footing with the original States? If she has, she by virtue of her jurisdictional sovereignty as such a State may determine for her own people the proper location of the local seat of government. She is not equal in power to them if she cannot.

In *Texas* v. *White,* 7 Wall. 700, 725, Chief Justice Chase said in strong and memorable language that, 'the Constitution, in all of its provisions looks to an indestructible Union, composed of indestructible States.'

In *Lane County* v. *Oregon,* 7 Wall. 76, he said:

'The people of the United States constitute one nation, under one government, and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence. The States disunited might continue to exist. Without the States in union there could be no such political body as the United States.'

To this we may add that the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized. When that equality disappears we may remain a free people, but the Union will not be the Union of the Constitution.

Judgment affirmed.

MR. JUSTICE MCKENNA and MR. JUSTICE HOLMES dissent.