

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

Mid-West Quarterly, The (1913-1918)

Mid-West Quarterly, The (1913-1918)

1914

Legislation by the Courts

W. G. Hastings

University of Nebraska-Lincoln

Follow this and additional works at: <https://digitalcommons.unl.edu/midwestqtrly>



Part of the Arts and Humanities Commons

Hastings, W. G., "Legislation by the Courts" (1914). *Mid-West Quarterly, The (1913-1918)*. 22.
<https://digitalcommons.unl.edu/midwestqtrly/22>

This Article is brought to you for free and open access by the Mid-West Quarterly, The (1913-1918) at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Mid-West Quarterly, The (1913-1918) by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

LEGISLATION BY THE COURTS

It is remarkable that in this second century of the republic our courts should be so vehemently assailed for interference in legislation. One who knew of our duplex governments only by study of their written constitutions would open his eyes when told that there is any such thing under them as legislation by the courts. The citizen of Nebraska lives under a constitution which devotes an entire article to declaring, not only that the executive, legislative, and judicial departments of its state government are and must be kept distinct, but that no person in any one of them, except as specially authorized, shall exercise powers properly belonging to another department. The federal constitution does not go quite so far. It merely provides that "all legislative power" shall be vested in Congress, "the executive power" in a President, and "the judicial power" in one supreme court and such inferior ones as Congress shall provide, each in a separate article of that venerated instrument.

The first of state constitutions, the one with which the colony of New Hampshire started out in March, 1776, was too brief and provisional to do much more than simply to provide a new executive on the "sudden and abrupt departure of his Excellency, John Wentworth, Esq., our late governor." The other institutions of the colony were left pretty much as they were and no mention was then made of the courts. But when the good citizens of that colony found as one of the results of Governor Wentworth's "abrupt and sudden departure" that they were wholly freed from any danger of his return or of the coming of any other royal successor, they proceeded to make a constitution which was a real instrument of government, and not a mere provisional arrangement formed on the recommendation of the Continental Congress "to secure peace and good order during the continuance of the dispute with Great Britain."

In that constitution of 1784 we find: "In the government of this state, the three essential powers thereof, to-wit, the legislative, executive, and judicial, ought to be kept as separate from and independent of each other as the nature of a free government will admit or as is consistent with that chain of connection that

binds the whole fabric of the constitution in one indissoluble bond of union and amity." It is clear that when our constitution making began in 1776 Montesquieu's doctrine that such a separation of the three great powers was necessary to the preservation of liberty was, on paper at least, fully accepted. The Virginia constitution of June, 1776, declared: "The legislative, executive, and judiciary departments shall be separate and distinct so that neither shall exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time; except that justices of the county courts shall be eligible to either house of the assembly." Something of the same kind, often in identical or equivalent phrases, exists in all the original constitutions prepared under the suggestion of the Continental Congress, which had recommended the form of state governments and "the suppression of English royal authority" as early as November 4, 1775.

Not only did these constitutions contain such a declaration of intention to keep the powers separate, but nearly all of them contained a clause that reads as if it were specially aimed at an authority since then universally asserted by and allowed to our courts, that of declaring laws void because unconstitutional. The Virginia declaration of rights of June 12, 1776, declares: "All power of suspending laws or the execution of laws by any authority without consent of the representatives of the people is injurious to their rights and ought not to be exercised."

Unquestionably this was in fact intended to assail the authority of the English crown and of a parliament in which the colonists were not represented, to change fundamentally the legal system under which the colonies had been formed. It reads, however, precisely as if intended to forbid the voiding of laws by the courts, whether for unconstitutionality or other reason. Such an interpretation is further suggested by the declaration just preceding: "The legislative and executive powers of the state should be separate and distinct from the judiciary, and that the members of the two first may be restrained from oppression by feeling and participating the burdens of the people, they should at fixed periods be reduced into that body from which they were originally taken and the vacancies supplied by frequent, certain, and regular elections——." The election of a fresh legislature to repeal, not a court to annul, is the suggested remedy for wrongful legislation.

Notwithstanding all this, as fast as the question arose for determination in the states, and in Virginia itself before 1787, their highest courts determined that their constitutions were laws, supreme laws, to be interpreted by the courts whenever a litigant's personal or property rights were involved, and so the courts were converted into a means of "suspending" acts passed by the legislature. They did this with the entire approval of the mass of the citizens in all the commonwealths.

Probably the fact that at the outbreak of the dispute with Great Britain the constitutionality and therefore the validity of the acts of parliament providing for the so-called writs of assistance had been vehemently assailed by Otis before the Massachusetts judges, and the further fact that the revolution itself had been brought on in resistance to parliament rather than as rebellion against King George, made the colonists more ready to apply English precedents of successful use of legal rules against royal authority to the voiding of legislative acts. At any rate, wherever the question had arisen in the colonies before the Federal Constitutional Convention, the courts had sustained their own authority to interpret the provisions of the constitutions and had asserted the invalidity, as against private rights, of all legislation which was found to be clearly contrary to such provisions.

The view as to this matter which was current when the federal constitution was under consideration, sufficiently appears in *The Federalist*, No. 78.

Perhaps the most notable thing about that paper is Hamilton's skill in putting himself and his associates on the popular side. He shows that the judiciary are the least dangerous of governmental functionaries. They hold neither the sword nor the purse. The first is in the hands of the President; the second in those of Congress. The judiciary have only judgment and must depend on the executive arm for the enforcement of that. Farther on he calls attention to the fact that if he and his associates are insisting that the courts shall assert the provisions of the constitution against an act of the legislature even if supported by a majority of the people themselves as well as of the legislature, the supporters of the new constitution are not like their opponents denying the people's right to make changes or abolish their own constitution. "But it is easy to see that it would require an uncommon portion of fortitude in the judges to do their duty as

faithful guardians of the constitution where the legislative invasions of it had been instigated by the major voice of the community," he adds. He contends that the possessing of this power by the courts does not show any superiority of the courts to the legislatures, but only the superiority of the people to both.

In answer to the assertion that the judges would be given the opportunity to substitute their own will for the constitutionally expressed will of the legislature in holding the act bad when they merely disliked the legislation, he replies that such an opportunity always occurs when a matter is left to a court to decide; but that all experience shows that intentional and serious departures, on the part of the courts, from any clear rule of law are very rare. He might have added that the logical development of any rule in the process of applying it to new and unforeseen occasions inevitably lays over it a line of ever-widening glosses. This process is so inevitably necessary that it is safe to say that no great legal system ever developed without a great court. Such systems have been made with small help from legislation. English law is the work of English judges of whose labours we inherit the result. Of the civil law of Rome, which divides with English law the sway of the globe, is it the prætor's edict or the fragments of legislation by comitia and senate which furnish the backbone?

The English courts backed by their royal organisers first created the body of common law. They had it well under way before parliaments began. Then they added with royal assistance and approval the stately jurisdiction of equity. This latter was well advanced when they took up the law merchant and its rules and made that, too, a part of their polity. Still parliament was occupied with politics and administration and had given small attention to legislation. It had, however, discovered by this time that such a great instrument of authority could no longer be safely left wholly with the king. In providing for his successors by the act of settlement, though leaving the power of appointment with the king, they made the judge's office one for life subject to removal on a joint resolution of the two houses of parliament.

The non-exercise of this power during almost a hundred years seems to have caused it to have been ignored by the constitution-makers at Philadelphia in 1787. It seems not to have been mentioned in their deliberations, though it is referred to by Madison

in *The Federalist* and had been inserted in the Massachusetts constitution of 1780. There it has been carried in reserve, like the extra tire of an automobile, without once coming into use from that day to this. So completely has it been forgotten that the current agitation as to the recall has scarcely brought it into view.

With such a history of their judicial ancestry behind them, brought into existence by the colonial struggle against parliament, supported by the overflowing individualism of current public sentiment as well as by the complete success of the new state constitutions in their field of local government, the assertion of the judicial power to pass on the constitutionality of legislation was inevitable. For years no attempt was made to answer Hamilton's question-begging proposition that such a power is inseparable from written limitations on powers of government.

Indeed, it was apparently not foreseen even by Hamilton what a potent instrument towards fashioning legislation it could be made and was destined to become. Blackstone's notion that the common law had been perfected and was entirely adequate to the needs of society, that most of it had come down from time immemorial, and with the slight changes he suggested would remain intact and sufficient for still longer ages to come, seems to have been pretty generally the view held in those days and shared in even by the writers of *The Federalist*. They affirmed in No. 62 of that work that "facility and excess of law-making seem to be the diseases to which our governments are most liable." In No. 48 Madison quotes Jefferson's *Notes on Virginia* to show that experience in that state evinced encroachments by the legislature on the domain of the judiciary, "and the direction of the executive during the whole time of their session is becoming habitual and familiar." With such feelings toward legislatures, the constitution-makers naturally relied upon the courts to maintain that natural law of property which the constitutions recognised. The courts did not disappoint them, but assumed the new jurisdiction with all alacrity and have sometimes pushed it beyond bounds.

Of course, it was after all only an extension of the task of interpretation and application by which from time immemorial the courts have built up legal systems. The modern legislator, to be sure, finds his best intentions thwarted by unsympathetic

courts which say that his employer's liability law interferes with the constitutional rights of the employed to sell his labour on his own terms; or which declare the combination in restraint of interstate trade which his law punishes can only be the unreasonably restrictive combination which common law pronounces illegal. His most ancient brother, however, had similar troubles. Solon himself, says Plutarch, was so troubled by those who called upon him for interpretations of his code that he sailed away for ten years to permit his fellow-citizens, who had sworn to observe it for a hundred years, time to get used to its provisions before his return. His troubles on that score were not renewed. His laws were too far gone in abeyance when he came back. Aristotle tells us that equity must be resorted to in order that those things wherein the enacted law fails because of its too great generality may be corrected in the individual cases. Did not Justinian forbid any commentary on his code and find the prohibition vain? Did not Napoleon on learning that a commentary on his code was soon to appear, exclaim, "My code is lost"? His anticipations were in a large degree well founded. A distinguished French judge declared in Paris: "No judge today in 1904, not even the presiding one in the High Court of Cassation, would say that his sole duty is to examine persistently as to what is the meaning which a hundred years ago the framers of the code attached to this or that article. He ought to say that in the presence of all the changes which during the nineteenth century have taken place in the ideas, institutions, economic conditions and social status of France, justice and reason command a liberal and humane adaptation of the text to the realities and requirements of modern life."

Doubtless, wherever we might go throughout the history of lawgiving, we should find the lawgiver colliding with the judge; for time will keep turning up new combinations, at least new to that lawgiver and to those administering his rules. The new point must be passed upon; and when that is done, something will have been added to the rule or taken from its possibilities. For the next case will under any system, or all of them, be considered not merely in the light of that rule, but in that of the former application of it as well.

Why, indeed, should the case of two parties litigating over railroad rates be settled, or why should any attempt be made to settle it, by a clause of Napoleon's code published before

Stephenson's locomotive was so much as thought of? The truth is that genuine justice is deaf as well as blind. She neither sees with her own eyes nor hears with her own ears, but with those of the parties before her. It is not a question of what code-drafters or precedent-makers of preceding centuries who had neither knowledge nor anticipation of these parties or of their situation, thought or intended. The question in reference to codes or precedents, which justice asks, is, what did these parties at the time of the transaction out of which the dispute comes, fairly and reasonably understand and expect from those provisions and precedents and the situation as modified by them? If justice and its ministers are to have any respect among live and thinking men, that is the question which they must answer. That the answer is liable to be something startlingly unlike what was in the original lawgiver's mind, is a simple result of the eternal flux of sublunary things.

"Time like an ever rolling stream
Sweeps all its sons away."

Let us hope and believe that it brings better in their places.

That the unintended consequences of any considerable social adjustment are much more important than the intended ones, is one of the commonest of commonplaces. Beyond all doubt it will remain so, as long as in those matters about which men concern themselves, the portion which can be definitely foreseen and controlled is small, compared with that which cannot. Witness the fourteenth amendment to the federal constitution. Observation of results from the income-tax provision, and from that for popular election of senators, in our new sixteenth and seventeenth ones, gives a fresh interest to existence. Indeed, the difficulty of the judge's task of clearly apprehending the changes which time has already made in former legal conceptions and relations ought effectually to deter him from trying to introduce any of his own.

An accentuation of the difficulty which has always beset the legislator arises when his countrymen have for ages lived under a system derived from the judicial application, adaptation, and supplementing of spontaneous customs with small interference of the legislator so that the doctrine that precedent makes law is thoroughly wrought into the social fabric. When to this is added the crowning judicial authority to declare legislative

enactments unconstitutional, the modern legislator who wants to enact laws, some of which are in fact infringements upon constitutional provisions, takes not to the woods, as the authors of *The Federalist* and the other constitution-makers seem to have intended and expected, but to the referendum.

Those who cite constitutions and decisions are taken at their word. Their adherence to the letter of the constitution is "not putting courts above legislatures, but merely putting the people above both." Very well, let us have the people's own say-so as to whether or not these changes shall be made. The referendum and the initiative are a well-planned effort to develop a legislative force that shall not be shackled by constitutional restrictions. This modern legislator is even more impatient of the judicial curb than have been his predecessors, but he is bound to feel it, and his work, too, will go into the judicial hopper.

In truth, his own advantages and energy are augmented as compared with those of his predecessors even more than the judicial opposition has been strengthened. If de Tocqueville were still alive, his "sort of religious terror" at the irresistible advance of democracy and at the way in which every discovery and invention, from that of gunpowder to the telephone, help it on, would certainly be deepened. Social consequences, as distinguished from the material and the intellectual ones, of those discoveries are only beginning to show themselves, and they are giving the legislator his opportunity and responsibility.

He is at outs with the constitutions along two main lines. Those constitutions are framed upon the basis of a civil law that recognised a natural right of property which was not derived from government and which government itself was bound to respect. They were based upon the idea of a criminal law which was set up to preserve the public peace, King's peace it had been, as a substitute and satisfaction for personal vengeance for wrongs. Its fundamental conception was retribution upon the wrong-doer. The conception and feeling under both civil and criminal law and its administration have changed. Both are now justified on the basis of social necessity and welfare.

The basis of property is no longer, if it ever was, the one which Adam Smith adopted, the individual's right to himself and to the product of his own activities. Rather it is prior legitimate possession admitted and upheld for the good of society. The

modern legislator wishes to modify in many ways the legal status of property and finds the constitutions and the courts in his way.

In 1893 Congress enacted an income tax. A similar one had been laid during the civil war and upheld. The federal court, however, changed its ruling and held the law bad because it provided for a direct tax and was not apportioned as federal direct taxes are required to be. The sovereign people thought that the decision was unduly influenced by the fact that small incomes were exempt and by fear of further steps towards throwing the burden of taxation upon large incomes. The dread popular sovereign, whose slumber Dicey said it took the cannon of the civil war to break, came forth and wiped off the decision by means of the sixteenth amendment to the federal constitution. He can almost be heard from Washington asking the judges if the income tax in the new tariff bill is not beyond their reach.

The ground for complaints of excessive interference by the courts in the domain of legislation is thus explained in part, at all events, by the qualities of human nature which in all times and all countries have produced legal tribunals and induced their activity and did so long before like qualities developed formal legislation. In part such interferences are due to the special characteristics of a judge-founded, if not a judge-made system, where precedent has the force of law, a system in which a great judge was able to say with applause instead of rebuke, "I recognise nothing as an authority in the law except such a case so decided," a system in which the introduction at a political crisis of written constitutions attempting to set the courts wholly apart from legislative activity was only an occasion for a further extension of the powers of the tribunals. Made by those constitutions a co-ordinate branch of the government, they were bidden by the prevailing individualism to enforce the guaranties of private rights in the same constitutions and to declare void any legislation infringing them.

Then came the shifting of public sentiment in both the domain of property rights and that of criminal justice; and it would seem that the discontent with lawyers and courts who naturally continue on the old course until it reaches an *impasse* is pretty well explained.

Nevertheless something more remains to be said. . . . Once upon a time a social party of guests fell to talking of personal

appearance as exhibiting age. One of them with a tacit claim of youth, gave a number of explanatory circumstances to account for the visible marks of wear in his case. His recital of special hardships, trying employments, anxiety, and sickness, seemed fully to account for his condition till one of the others impolitely asked: "Haven't you left out one important reason for your aging appearance?" "I think not. What one?" "Why, the fact that you are pretty blessed old."

It is possible, notwithstanding the many other good means of accounting for the complaints about the courts' presence in the field of legislation, that they may have sometimes been there unwarrantably. As to this, let a few additional facts be submitted to a not always candid world.

In 1819 came up in the United States Supreme Court the question of the right of the state of Maryland to put a special stamp tax on the notes taken within its boundaries by a branch of the Bank of the United States. This bank had a branch making loans and taking deposits in Baltimore. A state law required all banks not chartered by Maryland to put a state treasury stamp upon every note taken. This was aimed at the United States bank. The latter's manager, McCulloch, disregarded such requirement and was sued for the penalty. The state court assessed that penalty upon him. The State Supreme Court affirmed it and he appealed to the United States Supreme Court in the case of *McCulloch v. Maryland*. It was held not merely that this special requirement of a tax not laid upon the Maryland banks was bad, but that Maryland could not tax the United States bank at all.

When the present system of national banks was organised Congress found this rule established and provided that such banks should pay the same taxes to state and local authorities as should be assessed upon other similar property in the localities. This provision was held to be constitutional. That is, there was no constitutional difficulty in the way of making a United States corporation, voluntarily locating itself and its business within a state, pay its share of local taxes. Only the consent of Congress to such taxation must be first obtained. Of course, if Congress had authority to incorporate the bank, it could adjust the terms; but state and national governments were intended to work together and surely there could be no good reason for freeing these national corporations from local taxes, unless it

was expressly so provided as in the case of national bonds or other United States securities.

A fear that Congress would not adequately protect national corporations from state legislation is the only rational ground for stretching the constitution so as to make it impliedly forbid such taxation by the states. Similar provisions in the constitution of the Australian commonwealth were, on the authority of our decision, held by the Supreme Court of the commonwealth to exempt the salary of a post-office official from state tax at Melbourne, but on appeal to the Privy Council that great court promptly held that *McCulloch v. Maryland* was not a good precedent, and that as long as no special exaction was made, the commonwealth official should pay his income tax with other people. In other words, the Privy Council found that the commonwealth Supreme Court, as well as our own, had legislated an exemption to the federal officer instead of applying the constitution.

In 1824 in *Gibbons v. Ogden*, the United States Supreme Court was called upon to say whether the Fulton and Livingston franchise for the exclusive steam navigation of New York waters, granted to them under nearly a dozen acts of the New York legislature, empowered their assignee, Ogden, to enjoin Gibbons from running his steamship from Elizabeth, New Jersey, into New York harbour. Gibbons had a coaster's license under federal law to make such trips. Chancellor Kent held that New York had the right to make any regulations of New York waters that it pleased, so long as they did not contravene any regulation by Congress, and also held that the coasting license was a mere permission on the part of the United States to make the voyage without any interference on the part of the federal government, and gave no rights as against the New York franchise. His brave language does not, however, conceal his uncertainty on this latter point. He granted the injunction.

On Gibbons' appeal Chief Justice Marshall found that the Fulton exclusive franchise was inconsistent with the congressional provision for coasting licenses and as the power of Congress over interstate navigation was admittedly supreme, he dissolved the injunction on this ground. He says, however, that there is great force in the argument that the constitution alone, in granting to the federal Congress power to regulate, excludes, without any action by Congress, all direct action upon interstate or

foreign commerce by the states; and he adds, "the court is not satisfied that it has been refuted." The case on this basis is constantly cited as holding that the constitution of itself precludes the states from regulations affecting commerce. Marshall seems to have intended it should.

Meanwhile the opinion itself recognises that no important police regulation can be adopted by any state without liability of affecting foreign and interstate commerce. Indeed, the whole function of policing such commerce is primarily thrown on the state within which it occurs, as well as is the duty to provide against the endangering through such commerce of the safety of the community. Over the wholly internal transactions of the people of the state, the federal government has no authority. Over the purely foreign and interstate commerce, the state on this doctrine has none. But such commerce carried on within a state consists precisely in the foreign article or person entering into relations with native articles and persons. These latter cannot be subjected to local authority, while the commerce is going on, without affecting the former. There you have the situation. What is the remedy? Manifestly and simply, to make the authority of the two governments concurrent and make the national one supreme if they conflict.

This is the practical solution in commercial matters as it was in taxation. The doctrine of exclusive regulatory power in Congress has established a neutral zone wherein there can be no effective legislation except by identical exactments by both state and federal governments, as in the case of the pure food laws. Chancellor Kent in *Ogden v. Gibbons* expressed the belief that not only the language but the purpose of the federal constitution was satisfied by holding the power of the state unimpaired except where Congress had acted. In case of any really injurious action by any state the complete remedy was in the hands of Congress. Not the paralysing of the state, but supremacy in Congress if they clash, was all that was called for.

In 1888 the state of Iowa had in force a law forbidding the sale of malt liquors. A. J. Hardin, a constable at Keokuk, seized some barrels and cases of beer in that town which Gus Leisy & Co., of Peoria, had sent there under charge of an agent for sale. Leisy & Co. brought suit for their beer and got judgment for it on the ground that the Iowa law under which it had been seized was unconstitutional. Hardin appealed to the

Supreme Court of his state which rendered judgment in his favour, and Leisy & Co. appealed from this to the federal Supreme Court. That court held that Leisy & Co. were engaged in interstate commerce with which Iowa could not interfere. It set aside Hardin's judgment and reinstated the first one in favour of Leisy & Co. Again, as in the taxation matter, Congress upheld the state's action. It provided in the Wilson act of 1891 that any one, taking liquors into a state, shall be liable to state laws as soon as the liquors are offered for sale. The judicial extension converting a grant of authority into one of exclusive authority, was not found to work well.

Of course, there was more litigation. The liquor-sellers and their lawyers were prompt in urging that if the respective fields of authority of the states and of Congress were fixed in the constitution, and the states excluded by it, Congress could not let them in. Judge Marshall, however, had remarked that Congress could adopt state legislation. It was concluded that this could be done in advance. The liquor-dealers' contention was therefore not upheld.

Unquestionably a leading, if not the leading motive to the adoption of the federal constitution, was the clearing of commerce from the burden of troublesome restrictions by the states; but it is at least equally true that the intention was to leave the authority of the states in all respects as little impaired as possible. Prohibitions are somewhat liberally applied to the states in Section 10 of Art. I. of the federal constitution and elsewhere with none as to this regulating of commerce. The clause itself which makes acts of Congress supreme refers to and anticipates state legislation. It would seem that the critics of the courts have some ground for saying that this whole line of decisions and the practical troubles over them grow out of anxiety lest Congress would not by proper legislation maintain the free intercourse between the states, and out of a more or less conscious determination of the court to do so itself. In all of these great constitutional cases, the doing of the true work of a court, the securing of genuine justice for the particular parties before it, seems to have been the least of its concerns.

Into the turbid waters stirred up by the Dred Scott case, it is not worth our while to go. There is not space here for leaving even a new misunderstanding. That case and the fate of the great judge who contributed the most to it ought to be a sufficient

warning against conscious attempts on the part of the tribunals of justice to effect political adjustments. How about the relative importance of foreseen and of unanticipated results in that case? How much concern was there in the minds of either the concurring or the dissenting judges as to Scott's own fate? The income-tax cases have been mentioned. Others might be, if space permitted.

What has been said might lead to the conclusion that the federal courts have been especially notable for pushing into the legislator's field. Nothing of the kind is intended or would be justified. The United States Supreme Court, having to apply a new constitution and aid in establishing a new polity by means of a judicial authority new in the world, was necessarily drawn towards, if not into, political questions. The state courts have been as much so with far less ground, or excuse, if we take the condemnatory view. If political discussions in this country, as has been often remarked, take on the legal form, for instance the constitutional right to take slaves into the territories, judicial opinions too often become a mere consideration of consequences to flow from the precedent which will result from the decision.

In truth, the difficulty, under such a system, of getting a tolerable regard for the rights and interests of the individual litigants within any reasonable time, is one of the main grounds of complaint. The remedy seems to be plain. Make in this country as distinct a separation between the administration of justice to individuals, based on their past transactions, and the political adjustment of affairs for the future, as has been secured in England, and we may hope for good sense, honesty, and public spirit enough to exhibit at least an equal degree of success in our own courts. In that event the arrival of the popular sovereign with the initiative and the referendum to take politics and legislation in *some degree* out of the tribunals of justice, will certainly not prove an unmixed evil.

W. G. HASTINGS.

University of Nebraska.