

1-1966

Issue Editor's Preface

John E. Wahl

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Recommended Citation

John E. Wahl, *Issue Editor's Preface*, 17 HASTINGS L.J. 419 (1966).

Available at: https://repository.uchastings.edu/hastings_law_journal/vol17/iss3/1

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Issue Editor's Preface

"Preemption," according to Webster, is derived from the past participle of a Latin verb which means "buy beforehand," and generally has two meanings today—a prior right to buy, and a taking possession before others.¹ This issue of the *Hastings Law Journal* is primarily concerned with the second meaning, insofar as it concerns relationships between local, state, national, international, and moral laws. Whenever there is a claim made that a law (ordinance) of a municipality does not have to be obeyed because it conflicts with a state law, or that a state law conflicts with a national law, or that any of these laws conflict with international or moral "law," that claim raises the issue of preemption.

This issue begins with a symposium devoted to "Moral Preemption." Professor Harrop Freeman of the Cornell faculty, who has defended a number of persons involved in civil disobedience, Father Joseph Farraher, theologian and canon lawyer and President of Alma College, and United States District Judge William Sweigert give three different answers to the question "When, if ever, in a democracy, does an individual have the right and/or duty to disobey the law of the state?"

Turning from the issue of preemption by international and/or moral law to the issue of preemption of state law by federal law, Professor Updegraff of our faculty (and an active arbitrator) thoroughly examines the problems inherent in the labor law "no man's land" concept, which problems are caused by federal statutes that do not clearly define the areas intended to be preempted. Whether the reader agrees or disagrees with the Professor as to which powers should be given to each level of government (federal and state), it will be the rare reader who will not agree that there is a need for new and comprehensive legislation by the Congress in the field of labor law.

Preemption of fields of activity which local ordinances purport to regulate has been a subject of increasing comment in California since the 1962 decision, *In re Lane*.² Mr. Coleman Blease, American Civil Liberties Union lawyer and member of the Berkeley faculty, carefully traces the history of the California law of preemption, and he demonstrates that there are two standards which the courts have developed—*implied conflict with general law* and *conflict with implied general*

¹ WEBSTER, THIRD NEW INTERNATIONAL DICTIONARY 1786 (1961). Compare BLACK, LAW DICTIONARY 1341-42 (4th ed. 1951).

² 58 Cal. 2d 99, 22 Cal. Rptr. 857, 372 P.2d 897 (1962).

law—which should be valuable in understanding subsequent preemption decisions.

Mr. Jack Howard, California Department of Public Works attorney, examines the California law of preemption as it affects the current San Francisco freeway problems. Particularly interesting is his suggestion that an irate motorist might bring mandate to compel action to end the current impasse.

The two student comments and five notes deal with federal-state and intrastate preemption, with the exception of the first student comment. Mr. Gilbert Kruger's comment is concerned with Webster's first meaning for "preemption"—a prior right to buy—as it affects stockholders in close corporations. The right to have the first chance to buy any stock sold in a close corporation is essential to the implementation of the desires of most stockholders in such "incorporated partnerships," and Mr. Kruger proposes a statute to fill the hiatus, in almost every state's corporations code, concerning close corporations.

Mr. James Allen and Mr. Laurence Sawyer, in the second comment, examine the apparent inconsistencies in the two most discussed recent California preemption decisions—*Lane* and *In re Hubbard*³—and point out the factors which reconcile the apparent contradictions.

Mr. Stephen Jones' note deals with federal-state preemption in the regulation of interstate commerce when the purpose of both the federal and the state regulation is to affect the economic health of an industry. Mr. Ronald Harrington discusses the need for a preemptive federal definition of "racial imbalance" if Congress should act to eliminate *de facto* school segregation, and he proposes a definition based upon an analogy to the standards established in the reapportionment cases.

Mr. Brown Smith's note concerns intra-California preemption in the State prohibition on municipal income taxes. Mr. Smith demonstrates that the State statute prohibiting these taxes may be unconstitutional. Mr. Kenneth Granberg examines municipal ordinances which purport to regulate the length of time for which a train may block a railroad crossing, and, in terms of this limited fact situation, he indicates that the State public-utilities-control power preempts the field of regulation of public utilities matters of statewide concern; therefore he concludes that any attempted municipal regulation is ineffective. Mr. Gary Snyder analyzes the San Francisco ordinance which prohibits all but emergency vehicle repairs on the city streets. He shows that such an ordinance invades an area preempted by the State.

³ 62 Cal. 2d 119, 41 Cal. Rptr. 393, 396 P.2d 809 (1965).

The book reviews include Professor Lewis Asper's review of John Flynn's *Federalism and State Anti-Trust Regulation*, Professor Robert Covington's review of Ronald Horn's *Subrogation in Insurance: Theory and Practice*, and Professor David Smith's review of Martin Anderson's *Federal Bulldozer: A Critical Analysis of Urban Renewal*.

The *Law Journal* is grateful for the advice of Professors Amandes, Cox, Lattin, Madden, Newman, Nottelmann, Powell, Simes, and Steffen of our faculty, Professor Dykstra of the Stanford faculty, and Professor Sato of the Boalt faculty. Certainly, however, none of our mistakes are their responsibility.

I am personally grateful for the special assistance of Mr. Griffith Humphrey, Mr. Leland Jarnagin, Mr. John McGlynn, and Mr. Robert Wellington of the *Journal* Board and Staff, and Mr. James Allen and Mr. Laurence Sawyer, *Journal* Participants.

JOHN E. WAHL
Issue Editor

