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NOTES

Fair Trade—Economics and Constitutionality

One of the basic postulates of the democratic system of the United States Government is that the governmental powers delegated by the people should be separated to the greatest practicable extent. Since the founding of this country great concentrations of governmental power have been regarded with suspicion, and, for the most part, avoided by the division of our government into administrative, legislative, and judicial branches. This division has raised problems of an overlapping of functions. The ultimate solution of these problems lies with the judiciaries of our state and federal governments.¹ For this reason it is desirable that courts exercise restraint in defining the area within which they can constitutionally act. If such restraint is not exercised the concept of a separation of powers will soon lose its significance. Recently some state courts have upset state legislation permitting resale price maintenance by manufacturers. This result has been reached by declaring their states' fair trade statutes unconstitutional. It would seem that the courts which have taken this action have not exercised the restraint prescribed by the doctrine of the separation of powers.

During the 1930's fair trade laws were enacted by forty-five states. These statutes, usually conforming to a general pattern,² affect trade-mark

¹ U.S. CONST. art. III.

² See 1 CALLMAN, UNFAIR COMPETITION AND TRADE MARKS § 22.2, and model statutes in 5 CALLMAN 2250 (2d ed. 1950).