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Book Reviews

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BOOK REVIEWS

FEDERAL POWER, ITS GROWTH AND NECESSITY. By Henry Litchfield West, Former Commissioner of the District of Columbia, New York: George H. Doran Company, 1918; pp. xiv, 216.

This little book makes no pretense of exhaustive, scholarly treatment. It is without notes, citation of cases or authorities, or index; nevertheless it is a work which could be read with interest and benefit by every thoughtful citizen. The purpose of the author is to show the enormous expansion of federal power and actual control, a development, as Mr. West says, which was inevitable if "We the People of the United States" were to become a nation or long endure even as a union of states. But the conditions and circumstances which have produced this extraordinary accretion of power to the federal government are more obvious in the retrospect than they were in that vision of the future which lay before the men of 1787; and so it may be doubted whether Mr. West is wholly justified in saying, as he does (pp. 36, 37) that when Hamilton declared that a contest between the Union and the State governments "will be most apt to end to the disadvantage of the Union", he (Hamilton) "deliberately misled the people in his overwhelming desire to secure the ratification of the Constitution", or else that "his political acumen has been over-rated". Had Washington and Hamilton and Adams not dominated our first government, and especially had it not been that the masterful mind and statesmanly nationalism of John Marshall directed the Supreme Court during the critical years, 1801 to 1835, a very different tendency and development might well have marked the first century and more of our political life. However, the historical chapters in the book are avowedly only "sketchy" and the minor statements, about which opinions might differ, are not such as to invalidate the larger conclusions to which the author leads.

The outstanding Congressional legislation, and the principal decisions of the Supreme Court, especially of the last forty years, of centralizing tendencies, are, of course, familiar to lawyers, but it is doubtful if even most of them realize the enormous development of federal power and the recent great acceleration of that development, marked by the creation and functioning of the Inter-State Commerce Commission, the Federal Trade Commission, the Federal Reserve Board, to mention only a few of the most striking assertions of national power. When one thinks of how epoch-making was the decision in *Gibbons v. Ogden*, of how the great Chief Justice labored the point in that first easy advance, as it now seems to us, of how even the nationally-minded Chancellor Kent doubted the paramountcy of the Congressional Navigation Act over a license issued by the State of New York, and then reflect upon the almost debonair ease with which the same court today sustains the Congressional Lottery Act, the multitudinous and far-reaching acts of inter-state commerce legislation, the Pure Food Act, the White Slave Act, he gets some realization of how great, how extended and how

portentous has been the swift march not toward Federalism, merely, but toward Nationalism. All this Mr. West's book brings before one vividly and on the whole fairly. One may differ from the author as to the legitimacy with which the courts have played their part in this development. Mr. West is clearly of the view that a great deal of the judicial interpretation has been strained, artificial, forced by the over-whelming demand of the people and the plain necessity for federal control. But to the reviewer the Supreme Court decisions, interpreting the Constitution, with some notable exceptions, seem fairly within the canons which should control courts in dealing with organic law. The Constitution was not made for a day, it is phrased in general and terse outline, and the gradual departure from early political, and in some instances, from early judicial theories and views, is but the legitimate exposition of the principles of the Constitution as conditions and necessities have changed. But there can be no dissent from the conclusion which Mr. West states, nor from his opinion that this extreme nationalization, inevitable and desirable as he freely concedes it to be, is fraught with grave possible dangers to our body politic. Especially Mr. West fears the concentration of power in the hands of the President, and we must not be blinded to the obvious fact that the world has seen no such formidable centering of vast powers in the hands of a single Constitutional ruler as we have given to, even thrust upon, our national executive in the war now ending.

For remedies Mr. West proposes abolition of the veto power, diminution of federal patronage, and the creation of a responsible cabinet. The discussion of these proposals is for a political science, rather than a legal journal, but it may not be amiss to remark that except for some of our politicians the country is practically unanimous in the opinion that federal patronage, as we know that institution, seriously interferes with the proper performance of the presidential duties, and constitutes a menace to our political welfare. Events of the last few years have doubtless increased the body of opinion demanding that cabinet members have some measure of responsibility directly or indirectly to the people; but the grafting of a responsible ministry like Great Britain's upon a government like ours would involve mechanical and other difficulties which should be "pondered long and carefully."

HENRY M. BATES.