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Book Reviews

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BOOK REVIEWS

CONSTITUTIONAL POWER AND WORLD AFFAIRS, Columbia University Lectures, on the George Blumenthal Foundation, for 1918, by George Sutherland. New York, Columbia University Press, 1919, pp. vii, 202.

This book is one of the most interesting and thoughtful commentaries on certain phases of our Constitution which has appeared in many years. During his two terms in the United States Senate Mr. Sutherland came to be recognized as one of the ablest constitutional lawyers of the country, and his retirement in 1917 was a distinct loss to our public life. The present book is the product not only of exact, scholarly study of the subject, but is enriched by the varied experience of its author in the actual moulding of our governmental institutions during an important period. This appears particularly in the chapters on the treaty-making power.

As indicated by the title the book is concerned chiefly with those provisions of the Constitution dealing with the powers relating to foreign relations, including the power to acquire and govern territory. Senator Sutherland is very frankly a believer in a strong national government in all external relationships, and contends that the so-called reserved powers of states are not limitations upon the war and treaty powers of the federal government. It is difficult to understand how the old states-rights doctrine as applied to our foreign affairs, has survived the numerous decisions of the Supreme Court sustaining treaties containing provisions at variance with certain state laws in question, affecting matters ordinarily within the police power of the several states. (See, for example, *Ware v. Hylton*, 3 Dall. 199, 1 L. ed. 568; *Chirac v. Chirac*, 2 Wheat 259, 4 L. ed. 234; *Hauenstein v. Lynham*, 100 U. S. 483, 25 L. ed. 628; *Geofroy v. Riggs*, 133 U. S. 258, 33 L. ed. 642. But theories not infrequently are more stubborn than facts, particularly when they are, or have been, the weapons in political controversy; and the "states-rights" theory of our treaty-making power has survived, at least in dialectical discussion, and has been only recently, ably presented in Henry St. George Tucker's "LIMITATIONS ON THE TREATY-MAKING POWER" published in 1915. Senator Sutherland agrees in the main with the sounder view presented by Professor Edward S. Corwin in his book, NATIONAL SUPREMACY, 1913, reviewed in 13 MICH. L. REV. 65.

An interesting and logically unassailable passage, pp. 128-132, contains the author's dissent from the view of the majority of the Senate that the arbitration treaties negotiated in 1905 by President Roosevelt and in 1911 by President Taft, were as presented to the Senate, unconstitutional in that they authorized the President to adjust certain kinds of international differences of a legal nature, without the advice and consent of the Senate. It is unfortunate that the broader and sounder view of Senator Sutherland did not prevail. On the other hand, the author sustains the now pretty generally

accepted view that the Senate's granted function of advising the President in relation to treaties is a genuine grant of power, which authorizes the Senate to advise concerning pending treaty negotiations. Senator Sutherland would scarcely approve of the method adopted by our Government, perhaps perforce, in the recent negotiations at Versailles.

There is a very good statement in Chapter III of the real basis of the power of the United States to govern territories. Concerning this power even the Supreme Court, has at times, seemed inexcusably confused. The true source of the power is to be found not in Art. IV. Sec. 3, providing that "The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory of the United States," but rather in the inherent sovereignty of the United States in all external relationships.

In his final chapter written before the present unfortunate controversy relating to the Covenant of the League of Nations, Senator Sutherland expresses his preference for a development of international arbitration and the principles of The Hague Conferences, to the more complicated, and as he believes dangerous and impracticable scheme of a League.

The book is printed substantially as it was prepared for oral delivery as lectures and is without an apparatus of supporting cases and other authorities, for the most part; it is nevertheless the result of careful research and is a fruitful and timely discussion of matters of profound interest to the nation.

HENRY M. BATES.

BRITISH LABOR CONDITIONS AND LEGISLATION DURING THE WAR. Monograph by M. B. Hammond, Professor of Economics, Ohio State University, No. 14 in the series of Preliminary Economic Studies of the War, Edited by David Kinley, Professor of Political Economy, University of Illinois, for the Carnegie Endowment for International Peace. Oxford University Press, New York, 1919.

The ten chapters of this work may be roughly divided into three parts:

A rapid survey of legislation and conditions affecting the workers in the decade preceding the war, with especial emphasis on the situation immediately before its outbreak;

A narrative account of legislation with accompanying statistical data from August, 1914 to June, 1918; and

A resume of the causes of industrial unrest arising out of the war conditions and of the measures proposed for satisfying those aspirations of the workers which appeared to underlie the unrest.

The student will feel that he may not omit any portion of this work, though the last two chapters, comprising the third of the above divisions, will doubtless be of much greater interest to the general reader. One rather questions whether the great detail of figures which accompany the narrative portion will prove to be of such permanent value as to justify the labor that must have been expended in their compilation and inclusion in the text. They

undeniably make it more difficult to keep clearly in mind the sequence and trend of events. After all, statistics are perhaps the information most susceptible to the demands of relativity and for that reason to be treated by themselves. Yet we should not be censorious, even by implication. The author's task was moral, as is sufficiently evidenced in the multiplicity of references to sources.

In the two concluding chapters on unrest and reconstruction, the author feels free to dispense with the impedimenta of figures and places before the reader in clear and lucid manner, the aims and measures which will at least mark the British industrial trend in the first years of the peace. Without apparent effort he, in effect, summarizes the previously recited historic background of the new measures, but so skilfully is it done that the reader's memory is refreshed without a feeling of being told of what he should have remembered. A valuable addition is a digest of the reconstruction program of the Labor Party and of the report of the committee on adult education.

The coming of peace and the acceptance of the Labor Party as the official opposition in Parliament emphasize the editor's prefatory note that the entire work is a preliminary study. At the same time, so far as it has been possible for it to go, it will no doubt prove sufficient for all save the most exacting bookworms. It is probable that even for these, the comprehensive index and the wealth of references, not less than the text itself, will be an invaluable guide to any further understanding of the complexities of the British situation, as disclosed and aggravated by the war.

For the American student a prime interest lies in the sharp contrast presented to American legal and social development. Of necessity the conditions confronting some forty-five millions of people of homogeneous culture, save for only some 270,000 aliens, living on a total area of about 200,000 square miles and compelled to depend on foreign trade for their support, will be very different from those surrounding 110 millions of utterly diverse cultures, inhabiting three millions of square miles and whose foreign trade is and needs be but casual. Hence the necessity and minuteness of regulations which with us are either absent or more or less nominal.

The characteristic British quality of asking only a free-for-all and no favor under the rules, sticks out through the whole narrative. The workers and the employers are both expected to organize and fight out their differences, with the government as umpire. It is an expression of the practical idealism of the Britisher. Anything is acceptable that works. *Per contra*, the most beautiful plan is junk unless it is acceptable. He will use any reasonable road leading to the end of a higher self-expression.

Of equal interest and in some ways perhaps the most important contribution of this study is that it shows a marked trend towards decentralization. In spite of all the newspaper talk of nationalization, the Whitley Councils are a long step towards the reorganization of industry on the basis of autonomous groups, conducting their own affairs in their own way within the broad scope of a national policy formulated by the national government in

its proper role of expressing the total group sentiment. It is evident that their development must be in opposition both to Guild Socialism and the general socialist movement.

The work is replete with minor, yet in themselves consequential details, such as the entrance of women into industry, and the "dilution" of labor caused by the introduction of labor saving machinery operated by non-skilled workers. This is a phenomenon that began here over twenty years earlier and was originally fought by American skilled workers as vigorously as it is disliked by their English brethren. It is a high tribute to the patriotism of the powerful British unions that they should have agreed to even a war truce on this point.

The work should commend itself particularly to students of labor problems and social economics, both from their social and legal aspects. Especially might the editor's preface be "read, marked and inwardly digested" by that considerable group which is wont to advocate the search for happiness by faster methods than the time tested, albeit prosaic, plan of step by step trial and error.

ERNEST F. LLOYD.