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Book Reviews

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Book Reviews

A TREATISE ON THE LAW OF CRIMES. Fourth Edition. By James J. Kearney.
Chicago: Callaghan and Company, 1940. Pp. lxiii, 724.

The present textbook on the substantive criminal law is the fourth edition of the well-known *Clark and Marshall on Crimes*. The first edition, which was by William L. Clark and William L. Marshall, appeared in 1900; the second edition by Herschel B. Lazell, in 1905; and the third edition by Judson A. Crane, in 1927. The present edition emerges after forty years of use by the practicing profession and the law schools. It has been cited often by the courts as well.¹ A lapse of thirteen years following the third edition, together with the publication of Miller on *Criminal Law* in 1934 and the fourth edition of *May's Criminal Law* by Sears and Weihofen in 1938, doubtless warranted another edition.

But though a new edition was warranted, it is not clear that Professor Kearney has answered the need for it. The present edition is in fact simply another *edition*. It is not a radically new approach to the criminal law. The third edition ran to 723 pages excluding the index, while the present edition runs to 705 pages excluding the index. The third edition had 498 sections,² and the present one 520. Both editions have ten chapters and these have identical headings with the main subheadings identical in all except two or three instances.

The reviewers of the third edition were not particularly enthusiastic.³ Professor Perkins' statement that the author of that edition labored under the impression that bringing the treatise down to date meant "adding recent citations in support of old rules, with little effort to keep pace with the development of new principles"⁴ might equally be applied to the present edition.

It seems to the reviewer that in a number of cases the author has failed to cite law review articles, notes and books which might have been helpful. At page 41 with respect to strict construction of statutes he might have cited Livingston Hall, *Strict or Liberal Construction of Penal Statutes*.⁵ At page 112 with respect to responsibility of married women he might have cited Perkins, *The Doctrine of Coercion*,⁶ although he did cite it at page 107 under the heading of compulsion or command. At page 115 with respect to responsibility of infants he might have cited Woodbridge, *Physical and Mental Infancy in the Criminal*

1. See the quotation by Justice Letton in *Skidmore v. State*, 80 Neb. 698, 700, 115 N. W. 288, 289 (1908), as to constructive presence in the law of accessoryship. The court quoted Section 173 of the second edition.

2. The last section of the third edition was numbered 514, but the section numbers skipped from 99 to 116.

3. Rollin M. Perkins, (1928) 13 IOWA L. REV. 364; Norman D. Lattin, (1928) 26 MICH. L. REV. 837; and A. B. Cox, (1928) 76 U. OF PA. L. REV. 477.

4. (1928) 13 IOWA L. REV. 364.

5. (1935) 48 HARV. L. REV. 748.

6. (1934) 19 IOWA L. REV. 507.

Law,⁷ although he did cite it at page 122 under the heading of insanity. At page 250 under the heading of negligence in assault cases it was doubtless too late for him to cite Livingston Hall, *Assault and Battery by the Reckless Motorist*.⁸ At page 443 under the heading of embezzlement he might well have cited the excellent note on *Criminal Breaches of Trust—A Statutory Survey*.⁹ At page 462 under the heading of false pretenses he might have cited Jerome Hall, *Theft, Law and Society*.¹⁰ At page 701 under the heading of exclusive and concurrent jurisdiction he might have cited Warren, *Federal Criminal Laws and the State Courts*,¹¹ and Grant, *The Scope and Nature of Concurrent Power*.¹²

The reviewer does not deny that the present textbook represents an improvement over earlier editions of *Clark and Marshall*. But for the kind of enlightenment which can be gained from reading a short textbook he will prefer to turn to Miller and to the fourth edition of *May* by Sears and Weihofen.

University of Nebraska College of Law

LESTER B. ORFIELD

THE CONSTITUTION RECONSIDERED. Edited by Conyers Read. New York: Columbia University Press, 1938. Pp. xviii, 424.

This volume includes a collection of twenty-seven essays read before the American Historical Association in Philadelphia, commemorating the sesquicentennial anniversary of the framing of the American Constitution.

The book is divided into three parts, the eleven essays in part one setting forth the background of political, economic, and social ideas behind the Constitution. Part two embraces six essays dealing with the Constitution and its influence upon American thought. Part three is composed of nine essays dealing with the repercussions and influence of the Constitution outside the United States, and is followed by an epilogue of so-called afterthoughts on constitutions.

It is hardly possible within the normal limits of a book review to analyze in detail all of these worthwhile essays, yet several of them deserve something more than mere passing comment.

Charles H. McIlwain, in his *Fundamental Law Behind the Constitution of the United States*, finds a background for our constitutional system of government in the various limitations on English, medieval European, and even ancient governments, and emphasizes the distinction between limitations upon what governments may legally and legitimately do, and the weakening of government to the point of inability to furnish adequate protection to its citizens and its institutions.

In *The Constitution and the Courts: A Reexamination of the Famous Case of*

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7. (1939) 87 U. OF PA. L. REV. 426.
 8. (1940) 31 J. CRIM. L. 133.
 9. (1939) 39 COL. L. REV. 1004.
 10. (1935) 10 *et seq.*
 11. (1925) 38 HARV. L. REV. 545.
 12. (1934) 34 COL. L. REV. 995.

Dr. Bonham, by S. E. Thorne, the writer expresses the conviction that Bonham's case was really a matter of statutory interpretation, not based on any theory of higher law, binding upon Parliament and making acts that contravene it void, and that it was not Coke's words, but later mistaken interpretation placed upon them, that furnished a background for our doctrine of judicial review.

John U. Nef in his *English and French Industrial History after 1540 in Relation to the Constitution*, comes somewhat uncertainly to the conclusion that the financial and economic provisions of the Constitution were influenced in some measure by the framers' impressions of English and French industrial history, though possibly more so by what appeared to favor the immediate financial and economic advantage of the framers themselves.

Concepts of Democracy and Liberty in the Eighteenth Century, by Gaetano Salvemini, traces the influence of writers such as Locke, Montesquieu, Burlamaqui, Rousseau and others on the political institutions developed in this country, and points out that our ideas of universal suffrage had no part in the teachings of these eighteenth century Europeans.

It is also pointed out that the concept of liberty was intimately tied up with the rights of private property. It is emphasized, however, that the *laissez faire* of the eighteenth century was very different from that of present day big business, and was rather that of the small landowner, manufacturer, and merchant. Eighteenth century political philosophy which formed so important a part of our political background, is asserted to have regarded excessive wealth as a danger to be guarded against and to be suppressed where it existed, and that the concepts of liberty and property, worked out in the eighteenth century for the use of a society which supposedly should be formed of men more or less equal in wealth, have been perverted in an effort to justify an economic and social system in which those concepts have acquired a meaning very diverse from those for which they were originally devised. The writer asserts that the doctrine which denied to the sovereign the power to alter the natural operation of economic laws and to interfere with individual initiative in the use of property was the revolutionary force of that day, but has become the bulwark of conservatism of the present.

The Appeal to Reason and the American Constitution, by Roland Bainton, asserts that reason as a faculty of man lies behind the essential theory of the Constitution, which is a government by consent—the federal theory of the consent of the states, the compact theory of the consent of the individual. The state is conceived of as a voluntary society composed of those who yield certain alienable rights in order to safeguard the inalienable. Such, it asserts, is the root of government based on individual consent. And yet it is pointed out that because of a certain distrust of the capacity of men's reason, the convention was in constant search for checks and balances both upon the departments of government, and upon the irrational tendencies of man.

In his *Puritan Background of the First Amendment*, William Haller asserts that the First Amendment but reflected the spirit of individualism in religion prevalent in this country—the various groups of colonists coming for religious freedom. Religion was from the start a local affair, representing differences and

conflicts between sectional cultures and interests. And while complete freedom was far from present in most colonies, any attempt of a national government to cast all in a common mold would have been distasteful to all. Puritanism, though perhaps not Puritanism alone, emphasized an individualism in religion and popularized and encouraged the study of the Bible. Widespread individual study of the Bible in turn enhanced the forces of individualism in American life that set itself against any attempt that might have been made to interfere with the right of every man to read and quote Scripture for his own purposes, and embrace such religious doctrine as he might see fit.

This first part of the volume concludes with a very interesting essay on *Philosophical Differences Between the Constitution and the Bill of Rights*, by Herbert W. Schneider. According to this writer, the intellectual background of our Constitution and our Bill of Rights is essentially that of seventeenth century England. Much emphasis is placed upon (or influence ascribed to) the writings of James Harrington whose idea was to so construct a constitution that private interest and public interest would be identical, and power would be distributed in such a way that no particular interest could dominate. The various classes and interests would so check and balance each other as automatically to do justice to all. That idea, reasserted by John Adams and others in this country, had great influence on the formation of the Constitution. On the other hand, a fear of the tyranny of legislatures by such men as Jefferson prompted an insistence on a Bill of Rights as a legal check for the protection of the individual. much as the Bill of Rights of 1689 in England came from the insistence by the Levellers and Independents upon their birthright as Englishmen, their ancient liberties, etc. These two are set forth as somewhat inconsistent and conflicting philosophies, both playing an essential part in the formation of our governmental system.

Part two begins with one of the most interesting and valuable essays of the volume, by Charles A. Beard, entitled *Historiography and the Constitution*. Mr. Beard here performs the highly useful service of pointing out that every discussion of the Constitution proceeds on some level of competence, with reference to some conception or conceptions, and is necessarily conditioned by personality, time, and circumstance. It is only by discovering the affiliation of personalities and ideas with interests that we can understand what prompted the formation of the Constitution as it was formed and its interpretation and construction as it has been interpreted and construed at different times in our history.

In the main he finds two schools of thought have been responsible for the development of our constitutional theories. The first he calls, for convenience, the Federalist-Whig-Republican school, whose interests have been, in the main, commercial, industrial, and financial. He finds its conception of the Constitution in respect of federal powers has been broad or narrow, according to its conception of interests temporarily affected, favorably or adversely.

The second school he labels Jeffersonian-Jacksonian-Democratic, whose interests were originally principally agricultural, but with some others embraced later, and which took a narrow view of national powers at the outset, but has

since taken either the narrow or wide view with reference to pertinent interests.

Any realistic history of our constitutional development, Mr. Beard points out, must constantly unite constitutional ideas with their relevant interests as the latter affect those whose constitutional ideas play a part in the development. It is important to know, for instance, that Hamilton was a New York lawyer, Jefferson a Virginia planter, and Webster affiliated with northern merchants, industrialists, financiers, *etc.*

Just as the outlook of statesmen with respect to constitutional problems is dependent upon the economic interests with which they are associated, so also is it with members of the judiciary whose function it is to interpret the Constitution. As illustrative of this, he refers to the majority and minority opinions in the New York Minimum Wage Case, written by Justices Butler and Stone, respectively. With reference to the former, he asserts: "We read in old court records that he was formerly counsel for great corporations. We read in the reports of the American Bankers Association that, in addressing a branch of that society, thirteen years before his opinion in the wage case, the learned justice said: 'The businessman in America today feels that he is doing business with a minion of government looking over his shoulder with an upraised arm and a threatening scowl. . . . Are we to go into a state of socialism, or are men like you, prepared to go out, take off your coats, and root for good old-fashioned Anglo-Saxon individualism?' We read in a dissenting opinion in the same wage case the words: 'It is difficult to imagine any grounds other than our personal economic predilection for saying that the contract of employment is any the less an appropriate subject of regulation than are scores of others.'"

This reviewer has often asserted that it cannot be too often emphasized that if one is to understand fully constitutional construction one must know something of the point of view of the individual judge who, as in the case of all men, is controlled by his interests, environment, associations, and experience.

Equally interesting and equally arresting is *The Path of Due Process of Law*, by Walton H. Hamilton.

In his initial pages he discusses the opinions in the *Slaughter-House Cases*¹ and the *Crescent City Case*.² In the dissenting opinion in the former and the concurring opinion in the latter he finds the origin of the modern doctrine of due process. He then recounts the argument of Roscoe Conkling in the San Mateo County railroad tax case in 1882,³ giving rise to the conspiracy theory of the Fourteenth Amendment by which "person" came, by mere *dictum*, to be interpreted to include corporate as well as natural persons.

The court activities of the 90's are discussed, ushered in by the case of *Chicago, Milwaukee and St. Paul Ry. v. Minnesota*,⁴ where the Court laid the

1. 16 Wall. 36 (U. S. 1872).

2. *Butchers' Union Slaughter-House v. Crescent City Live-Stock Landing Co.*, 111 U. S. 746 (1884).

3. *San Mateo County v. Southern Pac. R. R.*, 116 U. S. 138 (1885).

4. 134 U. S. 418 (1890).

groundwork for its later complete taking over of the substantive due process doctrines.

The development of the due process conception is traced through cases like *Allgeyer v. Louisiana*,⁵ and *Lochner v. New York*,⁶ adding liberty of contract to its content, and completing the authority of the court to fully scrutinize all legislation as to substance.

Mr. Hamilton points out that "the opinion of the Court" in the latter case "was intended to be an apostolic letter to the many legislatures in the land, appointing limits to their police power and laying a ban upon social legislation." The dissents of Mr. Justice Harlan (concurring in by Justices Day and White), and Mr. Justice Holmes, helped to limit the effect of this decision and to lay the foundation for departure therefrom in later years.

Referring to these decisions culminating in the full recognition by the Court of the substantive theory of due process, it is asserted that, "a constitutional doctrine contrived to protect the natural rights of men against corporate monopoly was little by little commuted into a formula for safeguarding the domain of business against the regulatory power of the state."

The writer suggests that if the 5 to 4 decision of the Court in the *Slaughter House Cases* had gone the other way, bringing the rights there seeking protection under the clause protecting privileges and immunities of United States citizens, the corporation would probably as easily have become a "citizen" to bring it within that protection, as it did become a "person" to enable it to become a recipient of protection under the due process clause. And yet, he asserts, it is significant that its protected status never quite became fully complete, and is even now being put to more severe questioning than at any time since its first embrace within the folds of due process.

Perhaps the most challenging essay of this whole volume is that of Max Lerner entitled, *Minority Rule and the Constitutional Tradition*.

Mr. Lerner finds the power of the Court under the doctrine of judicial review the great bulwark of the minority interests against real democratic majority control. This result is accomplished, he asserts, by the process of the Courts standing in the way of majority mandates by giving to the Constitution a restrictive effect it need not have been given. Judicial restrictive power he sees as the "natural outcome of the necessity for maintaining the rule of a capitalist minority under the forms of a democracy." Such judicial power "has been the convenient channel through which the driving forces of a developing business enterprise have found expression and achieved victory."

He points out that the conservative economic interests of those who framed the Constitution dictated the creation of a strong central government, while the prevailing political ideas of the time and their own fear of democracy made them place that government of expanded powers in an intellectual framework of limited powers, and that the courts still adhere to this notion when for practical

5. 165 U. S. 578 (1897).

6. 198 U. S. 45 (1905).

purposes it can no longer be carried out. He further suggests that the notion of a higher law and the idea of natural rights of the individual, *etc.*, which prompt the necessity of disobedience to a government that violated these rights—ideas which formed the backbone of the struggle for parliamentary control in England and the French Revolution—the sparkplug of majority movements aimed at limiting the powers of minority governments of a dying class, have here been taken over and, by the process of judicial review, turned to the function of placing severe limitations upon democratic majority control in the interest of minority rule.

The writer purports to find the outline of a conflict between what he terms “minority-rights liberalism” on the one hand, and democracy on the other, the issue being, which shall prevail, so-called freedom (such as freedom of contract) and rights of the individual and the minority, or the will of the majority. Our paradoxical task has been one of squaring majority will with minority rule—or democratic forms with capitalist power. But the writer believes it is a serious mistake to pose an antithesis between the Constitution as such and the democratic impulse; that the real antithesis is between the democratic impulse and judicial power. It is Mr. Lerner’s thesis that it has been an important task of the propertied minority to turn back the thrusts of democratic majority will in the form of social and economic legislation, and that, in that task judicial supremacy manning such weapons as due process and freedom of contract has greatly smoothed the way. Chief among the processes by means of which the Bill of Rights and the Fourteenth Amendment have been converted by the judicial power from a charter of liberties to a charter of property protection, says Mr. Lerner, are what he terms “two major intellectual somersaults—twisting due process of law from a procedural meaning to a substantive meaning, and endowing the corporation with all the attributes of human personality.”

Whether there is not some definite prospect that the Court may partially correct the effect of these “intellectual somersaults” is a matter of no small interest just at present.

What has happened in the past, Mr. Lerner admits, is not to be blamed on the Constitution. He poses, however, what he characterizes as the most important and dangerous question facing the Constitution since pre-Civil War days, “Does the economic interest of the corporate groups so far outweigh their sense of commonwealth as to make them ready either to keep their minority rule or scrap the whole democratic framework?”

Whether one agrees with Mr. Lerner’s thesis, or shares his fears, his essay is full of stimulus and challenge for everyone interested in the problems of constitutional government, both past and future.

If somewhat less challenging than the essay of Mr. Lerner, of no less interest for all students of Government, the Constitution, and the Supreme Court, is W. Y. Elliott’s, *The Constitution as the American Social Myth*. Mr. Elliott points out that under our Constitution we have emphasized Locke’s doctrine of the protection of life, liberty, and property—the greatest of which was property—at the expense of the principle of majority rule.

Somewhat like symbolic myths revered in other countries, our Supreme Court has become the "epic symbol" of our whole system, being regarded rather widely as, in effect, the personification of the Constitution itself, and the measure of Americanism being interpreted in terms of loyalty to the Court's pronouncements.

This position of the Court he does not wholly condemn, asserting that our federal system needs an umpire, and so long as it plays that role, and not the role of censor of social policy, it is safe. But, says Mr. Elliott, "we need a tradition of the judicial function like that of Justice Holmes—ably carried on today by Mr. Justice Stone . . . which imposes upon the judges the honest and not merely the professed respect for the coordinate branches of government and their motives. What is required is judicial self-restraint, as opposed to the maxim too long honored: *boni iudicis ampliare jurisdictionem*." Happily for this point of view, that judicial tradition so ably expounded by Justices Holmes and Stone has now become the dominant tradition, or guiding principle, of the Court.

Sharing much the same point of view and containing somewhat similar emphasis is Henry Steele Commager's *Constitutional History and the Higher Law*.

This writer finds the influence of natural law concepts, or the higher law, throughout our history in the functioning of the United States Supreme Court. Such so-called higher law he defines as intuitive or personal law, first brought into the law as a substitute for written law, but later embodied in the latter in such provisions as due process, the interpretation of which has given us a body of judicial legislation and judge-made constitutional doctrine, the explanation of which can be found alone in the training, judicial inheritance, environment, and experience controlling the social and economic outlook of the individual judge. Decisions passing on the constitutionality of social and economic legislation, which form a great body of our constitutional doctrine, are not to be explained by the wording of the Constitution or by precedent, but in every instance, the writer asserts, by "considerations of the higher law imported into the Constitution by the judges themselves."

In a realistic way he reminds us that most of our judges have been recruited from the bar, and that it is not inconceivable that the tendency of the bar to become an adjunct to corporate business, has carried over some influence upon the judicial view of economic questions.

Part three, dealing with "Repercussions of the Constitution Outside the United States" is the most difficult part of the volume to review satisfactorily, and contains, perhaps, the least valuable material.

Robert C. Binkley, in his *Holy Roman Empire Versus the United States: Patterns for Constitution-making in Central Europe*, undertakes to compare the American Constitutional system with that of the Holy Roman Empire and to trace the influence of both upon later world developments. He finds that the Emperor under the latter, as symbol and legend, was to Central Europe what the written Constitution became in the United States. He appears to believe that the Empire pattern is likely to be drawn upon more extensively in the creation of any new world order than our own constitutional system, but that both will be influential.

Hajo Halborn finds *The Influence of the American Constitution on the Weimar Constitution* for Germany in 1919 to have been extremely great. It was through the work of Max Weber, leading German student of the American system, that this influence was made effective. The Constitutions of France and Switzerland were also studied and were not without their influence. By the combination of the presidential and parliamentary systems under the New German Constitution, the influence of both the French and the American system was made clear. The writer believes that the quality of political leadership at the time, permitting certain amendments to the Constitution, such as that for election of the first president by parliament, laid the basis for its failure.

W. Menzies Whitelaw, in his *American Influence on British Federal Systems*, indicates in its broader aspects the far-reaching influence of the American example upon the formation and development of similar federal systems in Canada and Australia. The rather closely parallel development in these three federated states is conceived to have been due partly to similarity of initial local problems and local experience, partly to conscious imitation, and partly to other factors. Not only did the similarity of local problems exert a potent influence, but the founding fathers in all three brought to their constitutional tasks practical political experience tracing its roots back into the same English past.

Despite the great similarities, such as previously existing states with their jealousies between large and small, the previous unsuccessful attempts at union in all three, and fear on the part of individual states from their own weakness when standing alone, to mention a few, there were equally great differences. Both Canada and Australia embraced the principle of ministerial responsibility which was difficult to reconcile with the principles of federalism: especially with any notion of parity between the upper and lower houses, the former representing the federated states while to the latter must run responsibility of the cabinet.

On the part of Canada the writer found little or no evidence of any conscious borrowing or imitation, due, at least in part, to the fact that during the Canadian formative period in the sixties our Civil War was in progress and the United States was far from popular with Canadian leaders. However that may have been, the actual example of a government across the border operating on federal lines is thought to have exerted a powerful influence. Yet there was provision made for a much closer unity and a more definitely centralized control, to the extent of a power in the Canadian federal government to disallow any provincial statute. This was due to a conscious effort to avoid what was conceived to be our mistake of leaving too much power in the states.

Australia, in contrast, is found to have turned consciously to the United States Constitution as its model, and so closely does the Australian Constitution follow our own that not infrequently their High Court uses decisions of the United States Supreme Court as highly persuasive authority in the determination of its own constitutional issues.

The writer finds that the later developmental period in Canada has seen a much greater influence of the now stronger and more friendly nation to the South, particularly through the effect of its social and economic policies and

practices, upon her constitutional life. During this process the Canadian government has tended to become less centralized, while the opposite tendency with us has brought the two federal systems into a much closer similarity than existed at the outset.

In the case of Australia, the original similarity, born of intended imitation, has largely continued. While a decision of the High Court in the Engineers' Case in 1920 is pointed to as changing the principle of judicial interpretation to a strict one, viewing their Constitution as an act of the British Parliament rather than a federal constitution, the practical nature of High Court decisions since then has largely been as before, and like our own, by way of limitation on state power and a concentration of central power.

In many other respects, not entirely traceable to constitutional similarity, parallel developments have been quite striking in the three countries.

C. P. Wright's brief essay, *The Judicial Interpretation of the Canadian Constitution*, presents an interesting study of the interpretation of the Canadian Constitution (British North America Act of 1867), as it relates to Dominion and Provincial powers, at the hands of the Judicial Committee of the Privy Council in England.

The first and most salient feature attracting the attention of an outside observer is the authority of the central Dominion government to appoint and remove provincial lieutenant governors and to disallow provincial legislation. This, the writer asserts, as well as the original resolutions of the Quebec (1864) and London (1866) conferences indicating such a purpose, seemed to establish a federal system in which the province within the dominion would be not greatly unlike our counties within our states.

By specific authorization all matters not exclusively assigned to the provincial legislatures are exclusively delegated to the Dominion Parliament, and its power extends to all matters coming within "Regulation of Trade and Commerce," among others. The legislature in each province is authorized to legislate exclusively with respect to certain matters, including "Property and Civil Rights in the Province," and "Generally all matters of a merely local or private nature in the Province." It is further laid down that provincial powers are to be deemed to be wholly subordinate to any and all of the powers specifically given to the Dominion Parliament, and to the latter is given the general power in relation to "peace, order, and good government."

Under such a set-up it would be natural to expect an interpretation at the hands of the courts exalting Dominion power and leaving little for the provincial legislatures to control. The actual construction at the hands of the Judicial Committee of the Privy Council, strangely enough, has been exactly to the contrary, with the result that Dominion control over "Trade and Commerce" appears to be much more restricted than the corresponding power of the American Congress. As the authority of our Congress has been gradually enlarged and extended by the process of judicial interpretation, as needs for such power have been made clear, by a similar process the authority of the Dominion Parliament has been whittled away to a mere shadow of that originally intended. Such is

the conclusion of this writer, which he sums up in his last sentence by saying that "the guilt for the judicial murder of the Canadian Constitution . . . rests primarily upon the judicial committee itself."

The Frontier and the Constitution in South Africa, by C. W. De Kiewiet, indicates that while the individualism and the distinct separateness of the different colonies in South Africa seemed to mark it logically and inevitably for the adoption of a federal constitution, the government developed is one of the most unitary of all the British self-governing dominions. The influence of the American example, while great, was largely negative rather than positive.

Before a central government had been achieved, the practical demands of railways, commerce, and the natives had given rise to problems with which it was obvious that the individual communities could not deal effectively. Under such conditions both the regime of separate states and the power of the courts to review acts of legislatures were regarded as weaknesses of the American system to be avoided. A unitary, as opposed to a federated, government permitted the strongest guarantees in favor of the politically powerful whites against possible encroachment by the natives. Though the constitution was written, and sought to be definite, it was placed under the control of parliament itself.

The remaining essays in this volume, save for the epilogue, deal with the development of federalism in Central and South America as influenced by the example of the American Constitution. In *Federalism in Latin America*, C. H. Haring lists four states as federal republics, two of which, Mexico and Brazil, are separately discussed. Argentina has been rather genuinely federalistic, while in Venezuela, the fourth state, the principle of federalism has been imposed on paper without any very real acceptance in practice. It is emphasized that none of the Latin-American nations were prepared for an effective federal organization when independence was achieved, but that the example of the United States was a potent factor in its attempted development.

Argentina is cited as the most successful example of a federalist state, the one whose constitution is patterned most closely on that of the United States, though a continuous process of increasing centralization has been its most noticeable aspect. This aspect is not, however, entirely unlike our own development, and one means by which it has been largely achieved—federal financial assistance in social, economic, and educational development in the provinces—strikes a familiar theme in the minds of all Americans.

J. Lloyd Mechem, in his *Origins of Federalism in Mexico*, points out that that country has had three constitutions under which approximately one hundred years of her less than a century and a quarter of independence have been spent. All three have been modeled quite largely upon the Constitution of the United States, and have provided a federal organization, yet the actual government of Mexico has always been definitely centralistic. During the whole of her independent existence the influence of the example of the United States has been quite strong, and the early conviction that a federal system was essential for the protection of liberty, while a centralist organization would be destructive thereof, has prevailed.

Federalism in Brazil, by Percy Alvin Martin, indicates that the influence of the American Constitution and of American federalism has been quite potent almost since the initial formation of our Constitution. It was not until 1891, however, that a republic was first established, based on a constitution largely patterned on our own. Conscious as was the imitation, distinct differences existed from the outset, one of the most important of which was the centralization of power in the hands of the national executive to the consequent weakening of the federal principle.

The Constitutions of 1934 and of 1937 saw further concentrations of power in the executive, the latter being promulgated after the establishment of the Vargas dictatorship. From the colonial days to the present a certain adherence to the principles of federalism is found to exist, but at no time has it been fully successful, and the outlook for the future as seen by this writer is for further abandonment of the principle in actual practice, due at least in part to the necessity for a strong central government capable of regulating or controlling the economic life of the nation—a phenomenon not especially peculiar to Brazil.

Finally, Carl Becker's *Afterthoughts on Constitutions*, with its interesting comment on the pragmatic approach to constitutions and their interpretations as means of adjusting our machinery to shifting social change, rings down the curtain on what must be classed as a brilliant performance.

All of the essays in this volume, including those not specially mentioned in this review, are well worth reading, and the volume as a whole should be a valuable addition to the library of every student of Constitution or government.

University of Missouri School of Law

ROBERT L. HOWARD