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Book Reviews

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BOOK REVIEWS

THE POLITICS OF AMERICAN DEMOCRACY. By Marian D. Irish and James W. Prothro. Englewood Cliffs, New Jersey: Prentice-Hall, Inc. [Publication date: March,] 1959. Pp. xiii, 606; 18 (bibliographical essay; 3 (The Declaration of Independence); 12 (The Constitution of the United States); and 18 (index). With tables, charts, illustrations, and annotations. \$6.95.

In the opening sentence of the majority opinion for *Petty, Administratrix v. Tennessee—Missouri Bridge Commission* (October Term, 1958, No. 233; 79 Sup. Ct. 785, 787), decided on April 20, 1959, Associate Justice William O. Douglas makes reference to the writing at hand. Such an auspicious launching at the hand of a foremost justice and legal scholar of this generation bears wholesome testimonial to the importance and value of the labors of Professors Irish and Prothro as embodied in *The Politics of American Democracy*.

Well in advance of the objectives of this volume, it would appear, is a demurral from the stylistic patterns of theoretical composition in the field of American political science; alternatively, to produce a book which realistically portrays federal government in action. Of particular pedagogical import is the upsetting of the idea that theory and practice in government cannot be separated. The results show impressively that the teaching or reading of political science theory is of little value unless it explains actual practice. In short, the interspersing of descriptive materials with the analytical.

As a textbook on American government, primarily at the federal stage, it divides itself into several avenues of information, inquiry, and analysis. By way of prologue to the well-established divisions of books in the field, the authors have concerned themselves with the cultural context as well as the context of ideas within the framework of American politics. In historical retrospect, and commencing with the beginnings of national status, the reader will encounter a lively and stimulating approach to an understanding of the framing of the Constitution. Of special interest within this area of inquiry are the views touching the intentions of the framers of the document, the influence of federalism, and national-state cooperation.

The whole field of civil rights is treated with a fine sense of proportion, completeness, and perspicacity. The mainstay of textual utilization consists of the decisions of the United States Supreme Court. These range from *Barron v. Baltimore* (32 U. S. [7 Pet.] 243; 1833) through the *Civil Rights Cases* (109 U. S. 3; 1883) to *Watkins, Yates, Kremen*, and *Jencks* (354 U. S. 178; 298; 346; and 657) of the 1957 sittings of the Court.

Directing attention to the political process in action, the authors have dealt with public opinion and voting behavior; as well as political parties, pressure groups, and public relations as unofficial agencies in political performance. In dealing with the official agencies in the political process, the authors have added a fourth agency to the standardized tripartite nature of federal governmental functions; namely, bureaucrats and the public service. Such descriptive and provocative headings as: The President: Director, Actor, Script-Writer, Prompter; The Congressional Stage: Organized confusion; and, The Rulers of Law, as pertaining to the Supreme Court, readily attest to the freshness of pursuit and seasonableness of *The Politics of American Democracy*.

The quality and quantity of United States Supreme Court decisions—there are some one hundred and sixty leading cases—ranging from the February Term, 1793, in the form of *Chisholm v. Georgia* (2 U. S. [2 Dall.] 419) to the conclusion of the

October Term, 1956, with *Jencks v. United States* (353 U. S. 657; 1957) should make the book particularly attractive to students of constitutional law, of the judicial function, and of present polemics relating to our chief bench.

To teacher and student of political science, the reviewer would recommend most highly the appendix material styled, "A Bibliographical Essay." Once again, in circumvention of the usual practice of dry enumeration, Professors Irish and Prothro have worked their bibliographical materials into a highly readable, intelligential, and serviceable compilation of primary and secondary source materials.

Precisely a half-century ago, the eminent American legal philosopher, teacher, and jurist, Dean Emeritus Roscoe Pound, delivered a paper before the Maryland State Bar Association significantly entitled, *Law in Books and Law in Action* (Report of the Fourteenth Annual Meeting of the Maryland State Bar Association, pp. 298-323 [July 9, 1909]; 44 *American Law Review* 12-36 [January-February, 1910]). It may not be beyond the mark to write that the philosophy of realistic assessment which the Pound paper brought to the realm of American law finds, in our day, its counterpart in the compass of American political science. For concerning the notion that schools can produce good Americans only if they present a depolitized picture of our first great politicians the authors have this to say. "Perhaps a somewhat romanticized version must be presented at the secondary level, but to give students a false picture of democratic government is misguided patriotism. Countless Americans still have an image of a George Washington, Thomas Jefferson, Alexander Hamilton, James Madison and Patrick Henry and others marching forward in perfect unison, shoulder to shoulder into the sunrise. Pictured as being above petty politics, these leaders are supposed to have been followed by all-right thinking men in adopting the Constitution (which Patrick Henry called 'the most fatal plan for the enslavement of a free people!') and to have launched the ship of state on calm waters without bickering over mere political differences."

From the foregoing coin of vantage one may safely venture to suggest an alternative title for *The Politics of American Democracy*; it is—*Politics in Books and Politics in Action*. As a book which has been constructed with a view to accuracy of relation, clearness of language, and unity of thought it is to be hoped Irish and Prothro's *The Politics of American Democracy* will do its part in developing a stronger, more intelligent, wiser, and more effective citizenship.

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FOREIGN COMMERCE AND THE ANTITRUST LAWS, THE TRADE REGULATION SERIES. By Wilbur L. Fugate. Boston: Little, Brown & Company. 1958. Pp. 384. \$16.00.

There are only a few good books in the field of antitrust and foreign commerce, and, fortunately for this reviewer, this is probably one of the best of them all. The author of this book has practiced his profession well in behalf of his Government as a Trial Attorney in the Antitrust Division of the United States Department of Justice. As a former associate of his in that Division, although not assigned to the same matters, this reviewer can say that Mr. Fugate is very well versed in his field, qualified to comment on this broad but pioneer field.

For those readers who are not directly interested in foreign commerce, but rather are more concerned with the domestic aspects of commerce, the book is also of in-

valuable assistance since much of the discussion in it is based upon interstate commerce cases; and those rules the author has attempted to place in the context of the foreign commerce situation. As the author points out, the application of the antitrust laws to interstate commerce is clear, but their application to foreign commerce is not so clear. Therefore, the jurisdictional questions raised by the antitrust laws are without doubt the most important aspect of the applicability and effect of the antitrust laws to foreign commerce, and the author deals with them well.

The Sherman Act, which is the crux of the antitrust laws of the United States, reads in pertinent part:

"Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal."

In applying the antitrust laws to foreign trade, three preliminary questions are raised by the author:

1. Whether the United States, as a sovereign power, has power to deal with acts or agreements outside of its borders;
2. Whether Congress has power under the Constitution to deal with such acts;
3. Whether Congress intended that the Sherman Act and other antitrust laws should apply to the foreign commerce situation.

Interrelated to all of the legal questions which surround the application of the antitrust laws to foreign commerce are such basic principles of international law as territorial principles, comity, sovereign immunity, and conflict of laws. The author points out that the territorial principle, taken literally, could mean that all acts and agreements, including conspiracy and other crimes, must have a particular situs within one country in order for any nation to have jurisdiction.

However, all of these problems are taken up in turn by the author in this illuminating book; and he comes to the conclusion that the guiding jurisdictional principle in antitrust, when applied to the foreign commerce situation, is whether or not the acts or contracts have a substantial effect upon our foreign commerce, or operate within United States territory. This jurisdictional question also expresses itself in this country, where foreign corporations have offices of various sorts in the United States. Here, the doctrine of sovereign immunity is extremely important, since frequently these business concerns may be branches of a foreign government; and this is especially true where a socialistic or communistic government is involved. The necessity for protocol and delicate handling of this situation by the State Department, even though one not strictly within the definition of "foreign affairs," can easily be recognized.

The problem is further accentuated by the Grand Jury situation regarding the production of documents and witnesses to determine whether jurisdiction exists over the foreign commerce situation when the antitrust laws are applied. Obviously jurisdiction must always exist over foreign companies before the determination of the applicability of the antitrust laws can be made. Again the author states the rule to be that a United States court has the power to order the production of documents abroad, if it has *in personam* jurisdiction over their custodian or over a foreign corporation having control over a foreign subsidiary doing business in this country.

Additional problems are also raised where the orders of American courts are involved. One such problem is whether a foreign government will permit a foreign defendant company to comply with such orders, and another is whether the foreign courts will enforce any American judgment issued against that defendant.

In addition, the author discusses related problems of importing, trademarks, patents,

foreign investments, foreign distribution through subsidiaries and agents, and joint ventures abroad.

In all, the author of this treatise has done a monumental work in a gigantic field in which the precedents are few. In this he justifiably deserves a great deal more credit than this inadequate review can give.

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INTERNATIONAL PROPAGANDA: ITS LEGAL AND DIPLOMATIC CONTROL. By L. John Martin. Minneapolis: University of Minnesota Press, 1958. Pp. vii, 284. \$5.75.

Prior to World War I, the subtle art of diplomacy had little use for the aggressive ways of propaganda. Its role in international affairs was so negligible that none of the arbitration conventions of the early century put it on their agenda. A warning against journalistic excesses, made at the World Press Conference of Chicago in 1893, remained a sole and unofficial statement on the subject. During the war propaganda was employed by both sides to raise home front morale and the sympathies of the neutrals. Afterward, several factors coincided to retain propaganda on the diplomatic scene. The coarsening effects of the war took the finesse out of the diplomatic metier; moreover, the people themselves, disgruntled with secret diplomacy, demanded publicity in international relations. Revolutionary movements, like Bolshevism, Fascism, Nazism, spread their lure across the borders, evoking criticism and counter action. Two rapidly growing sciences, psychology and mass communications, combined to create the Advertising Age. Propaganda—another phase of advertising—became an accepted part of everyday's activities.

To the political field, it has contributed the "war of nerves", "brain washing", the "battle of the air waves"; it is responsible for phenomena like Tokyo Rose, Lord Haw Haw, Quisling. It has given a new twist and a new edge to the concept of intervention. Invasion is no longer the only means of interference; the struggle for a nation's territory can be prepared, and even won, by a struggle for its soul.

But just as advertising, for all its exaggerations, is not an unrelieved evil, so international propaganda cannot be judged by its sinister aspects alone. Mr. Martin's study brings out the distinction between legitimate and pernicious propaganda. It traces the history of both from its slow beginnings in World War I, through the hectic inter-war period, up to its present unabated crescendo. The author discusses various efforts to correct abuses. Four major approaches exist: International agreements; individual state laws; extra-territorial control; diplomatic measures. In the absence of a definitive U. N. action, international cooperation must rely on bi- or multilateral treaties, and their execution depends on attitude and spirit of the contracting nations. The same applies to the adoption of restraining laws by individual states. The fate and the final disappearance of Comintern and Cominform show that Russia too, when political expediency dictates it, will voluntarily curb its propaganda agencies. One may pause to consider that such restraints pose bigger problems in democracies, where freedom of expression is a basic rule. "Extraterritorial control" implies that a state claims jurisdiction over actively hostile residents of foreign countries; "diplomatic measures" include the establishment of information centers abroad. It is obvious that the latter methods, although not initially wrong, carry the germs of added conflicts.

The author could have pinpointed more strongly the issues which arise from the attempts at propaganda control. His presentation is more descriptive than critical. As

such, it is an interesting narrative supplemented by bibliographical references, judicial decisions, and a useful topical index. This book, while not a primary teaching tool in international law, should be welcomed, as a rich information source, by everyone interested in foreign affairs and their legal and diplomatic implications.

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