

BOOK REVIEWS

THE NEED FOR CONSTITUTIONAL REFORM. By WILLIAM YANDELL ELLIOTT. New York: McGRAW-HILL BOOK Co., INC., 1935. pp. x, 286.

Political scientists have been far less articulate and influential than economists in this depression of "economic" life. Many political scientists have been called into active or consultative posts in connection, not only with T.V.A., a game preserve of political purity, but with several branches of administration. When men are out of work, rent, profits and dividends, it is plausible to discuss their plight in economic language. Hence the vogue of the academic skill group named economists in the councils of state and marketplace. They tell us that recovery depends upon restoring the parities between "administratively controlled" prices which are inflexible and administratively uncontrolled prices which are flexible. We are told that reconstruction depends upon the separation of deposit from investment. We are told a great many other things about gold, goods, and prices. . . .

In this arresting book Dr. Elliott has sought to focus the attention of thoughtful men upon defects in governmental routine which imperil recovery, reconstruction and harmonious national development. He discerns the root of evil in this: executive leadership depends on patronage rather than upon threat of legislative dissolution. The President is now compelled to hold his party in line by the expert division of the loaves and fishes; he cannot crack the whip of election and put Congressmen to the cost of defending themselves before constituencies on questions of pressing national concern. Occasionally there does arise some profound sense of emergency when the President occupies the center of attention and when policy can be executed without crippling delay. But when death takes another holiday, the psychology of acquiescence passes away; party leaders grow intractable; Congress is petulant; tension heightens between the White House and the Hill. Hence the President resorts to patronage to pacify the insurgents and to preserve the executive power commensurate with executive responsibility to the nation as a whole. The President, urges Dr. Elliott, needs the power to force the House of Representatives to stand one general election during his term of office. The Senate should be given the power to delay the passage of money bills for only a month, but in no case beyond the end of the session, and it should lose the power over bills appropriating money or raising revenue.

Until the President is exempted from the need to use patronage to keep party discipline, no genuine civil service reform can be anticipated. Nor can there be a dependable focus of national will, either before or during crises, until the President has the power in fact which today depends upon tactics which stultify policies which are truly national.

The book goes on to consider sound principles of economic, legal, administrative and foreign policy. The basic view is that "Democracy, today, must not make a frontal attack on all property rights unless it wishes to sign its own death warrant." "Democracy, therefore, must find a way to control industry without being pushed so far toward socialism as to invite ultimate fascism." But a government can only be entrusted with control when it has been exempted from the distorting effects of the patronage system, and this calls for constitutional reform.

It is clear that Dr. Elliott shares some of the traits of the type of intellectual who has risen to influence in the early stages of the present emergency. He has

transcended the characteristic limitations of his specialized colleagues in political science, even as Dr. Tugwell and Dr. Means ignore certain orthodox restrictions upon the scope of economists, or as Dr. Berle goes beyond the occupational abstinences of corporation lawyers. Such men are separated from their colleagues less by the intensity of their power drives than by the breadth of their intellectual interests. Not details, but facts, they desire; and facts presuppose concepts of the whole.

Since Dr. Elliott is unmistakably a man of perspective, it is regrettable to discover that his thought does not traverse the path between plan and practice. His reforms call for the clumsy machinery of a constitutional convention, and this calls for a vast concentration of motive on the part of interested and sentimental groups. Which are the special interest groups already prepared to believe that this project fits into their conception of self-advantage? What are the phraseologies best calculated to stir them to affirmative action? Which are the special interest groups opposed to reform? How can they be distracted, divided or won over? What are the slogans capable of arousing the enthusiasm of less differentiated layers of the population?

We are confronted by many lines of possible political action, and our choice among them in part depends upon estimates of their probable acceptance. It is only reasonable to suggest that an alternative of action requires careful consideration of its relation to present and potential group attitudes. Pertinent political thought, as distinguished from magical political thought, requires some clear indication of the intermediate steps between a symbol of the end and the end itself. Dr. Elliott does not seem to have considered how to speak of his project, for there is to be found in the book no terse name which conveys the essential demand. The organization of support leading up to an overt act depends upon applying appropriate symbols to those necessary for the final act. If the potent symbols are difficult to devise, it is probable that the proposed policy is not feasible, and that energy had better be expended on other alternatives.

These considerations apply with special force to the present proposal, since the adaptation of parliamentary government to American government has been repeatedly and hopelessly suggested for years. Classes in civics and political science, to say nothing of countless debaters in colleges and secondary schools, have long proclaimed the virtues of parliamentary government. The adaptations proposed by Dr. Elliott are clear, timely, provocative; but the act of program making is incompletely executed when the ways of appeal do not appear.

The same reluctance to bridge the gap between plausible plan and overt act appears in the treatment of substantive policy. Dr. Elliott favors some merging of government and business, some third term between "individualism" and "socialism." All this is very close to the hearts of many members of the "Brain Trust." Their search for "strategical points of control" includes the expedient of majority stock purchase which is warmly endorsed by Dr. Elliott as an alternative to public corporations. The thought of many of the advisors of the present administration has advanced to the problem of organizing support. Dr. Tugwell speaks of the "Third Economy." Dr. Means writes of "administrative control" of prices, hoping no doubt to keep the path open for the consideration in the individual instance of the precise degree of official and unofficial control to be tolerated. Such men have not, publicly at least, examined the social groups and the sentiments upon which they hope to rely in implementing congenial public policy. The hiatus of thought (or, at least, of expression) is equally evident in the case of Dr. Elliott.

Here is some familiar language (especially familiar to those who followed German social theory immediately after the War) about the "government" or the "state" as "umpire" and "partner." There is no analysis of the nature of the social classes or the skill groups which are supposed to sustain the umpire-partner; and there is little consideration of the symbols which are capable of eliciting and perpetuating desirable overt acts. A vocabulary capable of expressing the general and special goals of American life is not enriched by Dr. Elliott's book. Evidently the flexible and fertile mind of the author has been crippled by certain surviving conventions of academic analysis. Or possibly the difficulty is inseparably connected with some forms of liberalism, which revel in language about the "many," but shrink from specifying the potent few. If the costs and benefits of social action are to be differentially distributed, just who is supposed to get what? Who runs the "umpire-partner?"

The pages of the book which allude to the Supreme Court argue in favor of requiring at least a majority of two-thirds when the Court decides against the constitutionality of an act. In forecasting the judicial fate of N.I.R.A., Dr. Elliott appears to conclude that emergency measures will be sustained, but that permanent measures will be viewed with suspicion, unless popular sentiment is running strongly in their favor when the issue is joined. Among the provocative and pregnant comments made by the writer appears this statement about *Nebbia v. New York*:¹ "Behind the majority view lies . . . an organic concept of social and economic security: society can function healthily only when all its parts and classes prosper."

It is clear, even from these running comments, that the present volume is the strongest bid for serious public attention which has been offered to the country in this emergency by a professional student of government.

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PLANS OF CORPORATE REORGANIZATIONS (WITH FORMS). By PHILIP M. PAYNE. Chicago: THE FOUNDATION PRESS, INC., 1934. pp. vii, 652.

The subject of this book is unquestionably one of the most difficult in the law for text book treatment. So much depends upon the experience of the practitioner under procedures which, while following established general lines, vary so materially according to the circumstances of a particular case that any general discussion must be open to the charge that it is diffuse. However, it seems to the writer that possibly somewhere between the apposite generalities of the Stetson-Byrne-Cravath Bar Association lectures (*Some Legal Phases of Corporate Financing, Regulation and Reorganization*) and the unorganized, though encyclopedic, technical discussion contained in the textual portion of this book, there must lie a middle ground.

Mr. Payne apparently completed most of his research in advance of the passage by Congress of Section 77B of the Bankruptcy Act. The book was published at the end of the year 1934 at a time when there were substantially no decisions under Section 77B. The book is, nevertheless, largely focused upon the provisions of that statute (and of Section 77) and contains a detailed though considerably repetitious outline of the provisions of the statutes and Mr. La Guardia's memorandum of procedure under Section 77.

¹ 291 U. S. 502 (1934).

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