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Book Review (reviewing Lindsay Rogers, *The Postal Power of Congress: A Study in Constitutional Expansion* (1916))

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ject provoke our expectations for the next installment where the author will stand upon ground more familiar to his American and English readers.

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THE POSTAL POWER OF CONGRESS: A STUDY IN CONSTITUTIONAL EXPANSION. By Lindsay Rogers. Baltimore: The John Hopkins Press, 1916. Pp. 189.

The author, who is adjunct professor of political science in the University of Virginia, has written an interesting and valuable account of the development of the postal powers of the United States, from the timid early days, when it was doubted if the federal government could do more than carry the mail over such highways as it might find already in use, down to the bold claims of today that the country's entire railway system may be publicly acquired under the postal clause. Of course, the span between these extremes of doctrine represents not only a vast change in social needs but an even greater one in the conception of the relation between the federal government and the states, and under half a dozen appropriate chapter heads the course of this development has been adequately traced in both its legal and historical aspects.

The author is particularly to be congratulated upon the use he has made of the debates in Congress at various periods to show the emergence and growth of certain theories of the postal power. The constitutional views of members of Congress do not of course have the authority of the utterances of courts, but in many cases they have significance in marking out the battlefields of doctrine where a generation later a Supreme Court decision has sealed the victory, and almost always they embrace a wider field of legal conjecture than a court dealing with a concrete case would think permissible. In governing bodies composed largely of lawyers, like those of America, legislative discussion in a host of constitutional questions has pointed the way to judicial interpretation, and few plausible doctrines escape exploitation in such debates. The writer who first has the time and patience to go through the annals of Congress and bring together what has been said there about the commercial clauses of the Constitution will rescue from oblivion a wealth of useful and interesting material for the lawyer and historian.

Professor Rogers examines all of the more promising possibilities of the postal clause except the expedient of raising the weight limit so as to include most articles now sent by freight. If carload lots may be carried by parcel post, and such carriage made a government monopoly, federal acquisition of the railroads will only add form to what in substance would already be a governmental operation.

In a few minor points it is possible to disagree with the learned author: as for instance that the construction of a government railroad in the territory of Alaska can be regarded as an exercise of

the postal power granted by the Constitution: (p. 80); that the Chinese Exclusion Cases: (*Chae Chan Ping*, 130 U. S. 581; *Fong Yue Ting*, 149 U. S. 698) were decided upon the theory that the United States possesses powers inherent in sovereignty and not incidental to any granted powers: (p. 108); that Attorney-General Bonaparte's opinion to President Roosevelt in 1908, upholding the Postmaster-General's power to exclude from the mails publications counseling serious crimes, sanctioned the lodging of *arbitrary* discretion in the latter: (p. 120); that the federal government has greater power to exclude articles from interstate commerce than from its own mails: (pp. 128, 174); and that, because some foreign governments with unlimited powers use their postoffices for purposes quite unconnected with the transmission of goods, credit, or intelligence, these purposes are therefore logical parts of the modern *postal* power: (pp. 33, 34, 154). The reference to *Boyd v. U. S.*, 116 U. S. 616, for the history of the fourth amendment (p. 124) should be supplemented by references to later cases and authorities greatly modifying some of the views there expressed. See *Hale v. Henkel*, 201 U. S. 43, 71-74, and cases cited, and 3 Wigmore, "Evidence," Secs. 2263-64, 5 *ibid.*, Sec. 2264.

Of special interest is chapter VII upon the extension of federal indirect control by exclusion from the mails. Whether one agrees with the author's conclusions or not, his discussion of the problems involved is acute and candid and will help clear thinking upon the subject. More monographs like Professor Rogers's are needed in the field of public law.

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THE SOCIAL LEGISLATION OF THE PRIMITIVE SEMITES. By Henry Schaeffer. New Haven: Yale University Press, 1915. Pp. xiv, 245.

This book is a comparative study of certain legal institutions of the primitive peoples of Arabia, Babylonia, and Israel. The institutions studied are indicated by some of the chapter headings: Agnation; The Goel or Next of Kin; Slavery; Interest; Pledges and Security; Poor Laws; Sabbatical Year; The Year of Jubilee; Taxation and Tribute. A comparative study of each of these institutions among the Hebrews, the Babylonians, and the Arabian tribes is made by the author. For example in the chapter on the "Goel" or Next of Kin, the function of the Hebrew next of kin in the inheritance of property is first considered and the narratives of the sale of Hanameel's field and of Boaz and Ruth are especially discussed. The right of redemption as disclosed in Babylonian mortgages and deeds is then adverted to, and finally the "wali" or next of kin of Arabic literature is treated. So in the chapter on the Hebrew year of Jubilee, which the author regards as representing a transition stage between primitive communism in land and the beginnings of private land ownership, he cites, for com-