BOOK REVIEWS

Constitution-Making in a Democracy; Theory and Practice in New York State. By Vernon A. O'Rourke and Douglas W. Campbell. Baltimore: Johns Hopkins Press, 1943. Pp. xiii, 286. $2.75.

The purpose of the authors is to present an objective description of the processes by which the New York State Constitutional Convention of 1938 was brought into being and performed its work and ". . . . to reveal this instrument in the context of the democracy of which it is a part."[1] They go far toward attaining their objective.

Their analysis of the forces operating vis-à-vis the convention is from the point of view of comparing the convention with the legislature as an instrument for expressing the "voice of the people." They state their conclusions succinctly:

> . . . . a critical observer attending meetings of the convention could easily have imagined himself witnessing the proceedings of the state legislature. The similarity was substantially marred only by three notable differences: the convention was a unicameral body; its leadership was less potent; and it was legally unlimited as to subject matter. In practically every other respect—motivations, directive forces, techniques, and accomplishments—it adhered to the usual legislative pattern. Patronage politics, inter-party struggles, divisions within parties, rural-urban cleavages, personal political ambitions, pressure group operations with and without the convention membership, consideration and adoption of legislative matter and end-of-session legislative jam were inextricable constituents of the constitutional convention. In brief, all the attributes enjoyed and suffered by American representative assemblies, attributes perhaps inseparable from the democratic process, were constantly in evidence.[2]

The authors found no general demand for responsible political leadership. "The public acquiesced in, even applauded, the parade of democratic myths, while leadership, by default, was lodged in the hands of groups and shifting combinations of groups powerful enough to exert the proper pressure at the proper time."[3] The position is taken that "A constitutional convention, then, is an institution which is in and of the politics of democracy, subject to those ills that democratic flesh is heir to. It does not operate *in vacuo*, but is rather a function of the problems and institutions of its time."[4] The authors assert that

> a better informed public, by affording a more independent check upon the political leadership, could lead to greater responsibility, while conceding that the "people" do not act without leadership. One problem is that of pushing those who will actually lead in constitutional revision into earlier, more frank and more complete acceptance of responsibility.[5]

Certain limitations of this monograph may be noted. The authors in restricting their analysis almost exclusively to the convention of 1938 can hardly be said to have fulfilled the promise of even the subtitle of this book. The sources from which material for the study was drawn appear to have been unnecessarily limited. This observation is particularly applicable to discussion of submission of proposed amendments for ratification.[6] This reviewer seriously doubts that the term "politics" has become suffi-

[1] P. 2. [3] P. 95. [5] P. 273.
[2] Pp. 205–6. [4] Pp. 60–61. [6] Ch. VIII.

ciently well and generally understood even by political scientists so that it can be employed to advantage throughout the book without a suggestion of a definition.

The excellence of style with which this monograph is written makes one regret that it was not employed in further analysis especially with reference to the nature and influence of public opinion on the work of the convention. Despite limitations in techniques and scarcity of facts,[7] more could have been done in this area.

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Digest of International Law. By Green Haywood Hackworth. Vols. V, VI, VII. Washington: Government Printing Office, 1943. Pp. v, 851; iv, 655; v, 709. $2.50, $1.50, $1.75.

These three volumes complete the substantive part of the series—the index volume is still outstanding—which in the main represents the official position of the Government of the United States on the basic problems of international law. Volume V deals with the subject of treaties, hemispheric security, state responsibility, and international claims. Volume VI embraces modes of redress, war, and maritime war, while interference with neutral commerce, prize, and neutrality are treated in the last volume.

Mr. Hackworth as the legal advisor of the Department of State has labored under an inevitable handicap in compiling these volumes. On the one hand, he chose as his task the continuation of the classic work of John Bassett Moore, that is, the writing of a digest of international law, which is more than the mere compilation of official documents under chapter headings, but, to use Judge Moore's own words, "contains much that is of an expository nature, in a form suitable to a treatise." On the other hand, the publication of a digest of a subject as controversial as international law implies of necessity the performance of a creative task, revealing the personal point of view of the author, and such a task one of the highest officials of the Department of State cannot perform. Consequently, the Hackworth *Digest* fulfills a somewhat different function from Judge Moore's work. The latter was largely a treatise of international law, appearing in the form of a collection of documents and cases. The former, to quote Professor Hyde, "offers food for thought rather than directions for thinking." It illustrates through documents and excerpts from theoretical writings certain problems of international law with which the reader is supposed to be already completely familiar.

A typical example of this method of presentation is paragraph 511.[1] This section, dealing in the beginning with the *Clausula rebus sic stantibus*, starts with an excerpt from the Harvard Research in International Law, followed by five bibliographical references. Then mention is made of the declaration which certain signatories of the Optional Clause of the Statute of the Permanent Court of International Justice made after the outbreak of the present war to the effect that they did not regard their signature operative with respect to events connected with the war. As an example, the note of the Union of South Africa is reprinted, together with reservations by the Swiss and Swedish governments. An excerpt from the decision of the Permanent Court in the case of the Free Zones follows. After this, we find a brief excerpt from Brierly, *The Law*

[7] P. 245.

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[1] Vol. V, p. 349.