BOOK REVIEWS


This book is one among the long list of books published since de Tocqueville remarked on the role of the judiciary in our American political society which have attempted to interpret the Supreme Court and constitutional law to the non-professional. The story of this book is that of the constitutional revolution which has occurred since the defeat of the "court-packing" proposal of President Roosevelt in 1937. The first chapter, entitled "The Court and Constitutional Revolution," gives us the background and description of the revolution and the last, entitled "Anatomy and Pathology of the Court," gives us a general summary of the author's own views on the institution. In between are chapters on specified areas of constitutional controversy where in the author describes and criticizes such areas of dispute as the power of Congress, the presidency, administrative agencies, supervision of courts, federal-state relations, the relation of government to the individual and the problems of war, both hot and cold. I found the book readable and in this sense I thought the author lived up to his objective of avoiding "the arid pedantry all too often characteristic of the legal treatise."

I have reviewed a number of law books for laymen and each time I am puzzled by the role which a "professional" reviewer ought to adopt toward such a book. Obviously the reviewer ought not to require technical precision in such a book; on the other hand it is questionable whether the professional reviewer is able to determine whether the book communicates the broad sweeps of constitutional law which it intends the lay audience to grasp. Assuming that it does properly communicate the broad sweeps of constitutional law, the question is: has the author selected adequately the constitutional law problems which should be communicated to the lay audience?

Schwartz has drawn heavily on Professor Corwin's "Constitutional Revolution, Ltd." and Mr. Justice Jackson's "The Struggle for Judicial Supremacy," both published in 1941, for his approach to the problem. This may help explain how Schwartz gets involved in cliches. His only modification of the cliches of the 1930's is to add a few more modern ones. In a publication for laymen, it is necessary to treat with such cliches; one's objective ought to be to help the layman understand them and if possible to see that a glib statement of neither problem nor conclusion is possible. In many areas, the author has not accomplished this objective. For example, in his section "Dissentio ad Absurdum,"
the author is highly critical of the number of dissents in the present court. He emphasizes the paucity of dissents in the good old days of Holmes, J., dissenting and asserts this to be an ideal which has been departed from. While our author recognizes that "the questions which the Supreme Court is called upon to resolve are such that reasonable men may well differ in their answers," he implies in his treatment that they are no more difficult or that the percentage of difficult questions is the same as in the period of 1934-1936. Nor does he tell the lay audience that the "self-restraint" against dissenting opinions, which Schwartz calls for, might even be dangerous for the certainty which he desires. Nor does he help the lay audience see that the prevalence of dissent and concurring opinion may result from a practice of opinion writing about which professional writers on the court are critical—the practice of generalized pronouncements on the state of the law generally without any strong effort to give reasons for its application to a particular case.¹

The author also suggests to his lay reader that the cause of the constitutional battle in 1937 was the issue of judicial self-restraint in passing on legislation and that the result of the battle is that "judicial self-restraint" is now the dominant approach of the modern court. Here again it would appear that the author is more concerned with fitting modern problems into this nice-sounding, problem-solving phrase than he is in helping the modern reader see modern problems. If an area of modern controversy is the interpretation or construction of a federal statute, does the doctrine of judicial self-restraint operate the same way if the problem is the application of the statute to individual action as it does when the problem is the effect of the statute on state law? Professor Schwartz not only seems to approve of *Gerouard v. United States* (p. 258),² but he also omits treatment of this case in connection with his main thesis. If the issue is in reality a conflict between two kinds of personal freedom, how does a court exercise "self-restraint?"

Professor Schwartz does make helpful contributions to understanding the Supreme Court. He quite properly advises the public to forget about the "liberal" and "conservative" classification of judges. He also attempts to note a possible modern distinction between "activist" judges and judges who maintain an attitude of self-restraint. If I had been the author I would have developed this point further. Reading one's personal predilections, if based on a broad philosophy, into the constitution is not as shameful intellectually as reading predilections into the constitution or statute to obtain results in particular cases and to do this without enunciating a philosophy as the basis of decision. This may be the problem of the modern court more than the problems causing the 1937 revolution. Considering Schwartz's objective, he has done his job skillfully and has been reasonably fair. Schwartz does not, to his credit, divide

² 328 U.S. 61 (1946).
the court into "good guys" and "bad guys," depending on his own predilection as to particular issues. His book is a valuable contribution to Supreme Court literature for this reason, if for no other.

ALLISON DUNHAM*


Twenty-four of Hans J. Morgenthau's essays have been bound together and given the title Dilemmas of Politics. The essays, which have appeared previously as articles over the last two decades, are given what unity they have by the author's self-styled "unchanged philosophy and intellectual preoccupations" (p. vii). Mr. Morgenthau has done something to bring certain of the essays up to date; he has partially rewritten them in order to emphasize their common concern with what he describes as "the dilemmas of politics."

I

The author refers to the history of political thought as a dialogue between the teachings of tradition and the demands of the contemporary world. He believes that our own time tends to throw all tradition overboard. In contrast to our time, he assumes "not only the continuing values of the tradition of political thought . . . but also the need for the restoration of its timeless elements" (p. 3), thus recognizing the need to test the contemporary relevance of traditional ideas and institutions. This modest affirmation raises the crucial question: What is the difference between truth and opinion? Mr. Morgenthau hopes that something of an answer to that question may emerge from his essays: that is, from a piecemeal examination of the concrete issues.

Political scientists do take note of what is occurring in fields of thought other than their own, and Morgenthau refers to the fact that modern thought says that what parades as truth in political matters is but a delusion or a pretense, masking interests of class or individual selfishness. To refute modern thought Morgenthau simply raises his voice. Admitting that truth, sometimes or even often, is but a delusion or a pretense, he concludes that "the whole history of the race and our own inner experience militates against the assumption that it is so always" (p. 4). Therefore, he argues, political science is correct in presupposing the existence and accessibility of objective truths. He writes that great political scientists of the past were compelled to separate in the intellectual tradition at their disposal that which is historically conditioned from that which is true regardless of time and place . . . to reformulate the perennial truths of politics in the light of contemporary experience [p. 39].