1-1-1950

Book Review: The Strengthening of American Political Institutions

Thomas I. Emerson

Yale Law School

Follow this and additional works at: http://digitalcommons.law.yale.edu/fss_papers

Part of the Law Commons

Recommended Citation

http://digitalcommons.law.yale.edu/fss_papers/2789

This Article is brought to you for free and open access by the Yale Law School Faculty Scholarship at Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship Series by an authorized administrator of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.
collection of material on the importance of inventory profits, the desirability and limits of the Last In First Out (Lifo) plan, a comparison with the traditional lower of cost-or-market method and various modifications and combinations of inventory schemes. If you are stuck with an inventory problem, this is the book.

Revenue Act of 1948 is a compiled sourcebook, setting forth all the drafts, statutory revisions, committee reports, final enactments which became the Revenue Act of 1948. The book is the first in an intended legislative history series to give the practicing lawyer needed reference material, usually not widely available outside Washington, as to tax laws as adopted.

Barton's Federal Income, Estate and Gift Tax Laws Correlated complements the author's earlier correlation of the Revenue Act from 1913 to 1943 and covers the period 1944 to 1949. The plan of the book is to take each important code section, set it forth as it exists in 1949 in the left of six columns and then in the other five show the section as it appeared in 1948, 1946-7, 1945, 1944 and before 1944. The book reports only the statutes; no reference is made to cause of change, committee reports and like material. The index is good. The price, many will find, is high.

Harrop A. Freeman*

Ithaca, New York


The essays printed in this volume were originally delivered as lectures in the Cornell Symposium on "America's Freedom and Responsibility in the Contemporary Crisis." They all deal with topics of present importance, though it would not be hard to think of other subjects that would probe more deeply into the crisis in American political institutions than do several of the topics chosen. The essays are neither profound nor particularly original but, coming from a group of active participants in the current political scene, they make a worthwhile contribution.

Congressman Mike Monroney, writing on Congressional organization and procedure, contributes an excellent appraisal of the objectives and achievements of the Legislative Reorganization Act of 1946. His assessment of the actual operation of that legislation is interesting. He estimates that reorganization of the committee system (though it did not undertake to deal with the seniority problem) has been 90 per cent successful; that the effort to supply Congress with more adequate staff assistance has achieved 75 per cent of the goal; and that the attempt to reform procedures for handling fiscal matters has been a total loss. Congressman Monroney goes on to suggest additional needed reforms. Unfortunately he makes no attempt to reach more fundamental issues, such as the basic function of the legislature in a complex modern service state.

Weakest contribution to the symposium is by Thomas J. Hargrave, former chairman of the Munitions Board, who discusses industrial mobilization plans in preparation for possible future war. The essay is a superficial, uncritical summary of the official policies of the armed services. The level of treatment

* Professor of Law, Cornell Law School.
can be appreciated from Mr. Hargrave's statement concerning cooperation from business interests: "All they wanted last time, all they would want another time, is a clear understanding of what is needed." Those of us with longer memories may have a faint recollection that repeal of the statutory profit limitations was also involved. Again the deeper issues are largely passed over: whether or not the official industrial mobilization plans are based upon fighting World War II rather than World War III, the relation of the war plans to our peacetime economy, and many others.

Don K. Price, Associate Director of the Public Administration Clearing House, has an interesting chapter on the President's office and its capacity for taking effective leadership in guiding the intricate operations of modern government. Primarily a defense of the Hoover Commission proposals, the essay appears to assume continued economic stability at a relatively high level. Measures that might be necessary in a period of severe economic stress, when government would be forced into a more aggressive role, are not considered.

Edgar Ansel Mowrer, well-known foreign correspondent, contributes a piece on the formulation of American foreign policy. Mr. Mowrer's observations are flavored with the keen realism of a first-rate reporter, particularly in his discussion of the influence of the military on foreign policy. But again one wishes that Mr. Mowrer had taken the occasion to develop some additional problems, including the role of the public in the formation of foreign policy and the question whether persons trained in the provincialisms of our domestic policy can successfully grapple with the issues of a rapidly changing world abroad.

By far the liveliest chapter is Thurman Arnold's paper on the Federal loyalty program. It is the only essay that vigorously attacks an important feature of our present political institutions. Mr. Arnold's flat conclusion is that "with our loyalty program we are destroying rather than strengthening American political institutions and ideals." It is perhaps worthy of note that the editors saw fit to include in the volume an answer to Mr. Arnold by Professor Arthur E. Sutherland, Jr.

Wielding his customary satirical sledgehammer, Mr. Arnold swiftly and effectively demolishes the loyalty program. He makes very graphic the injustice of its procedure, the vagueness of its standards, its sweeping investigations that inevitably pry into personal opinions and associations, its devastating effect in destroying initiative and independence of thought. And delving into the underlying issues he asserts, quite correctly in my judgment, that "our danger does not come from the Communists but from ourselves." In the short space at his disposal Mr. Arnold does a handsome job of mauling.

Professor Sutherland in his "brief postscript" ("not a rebuttal," say the editors) complains that Mr. Arnold "would throw out the baby with the bath." To some extent the criticism is justified. Yet to me at least Mr. Arnold captures the reality of the loyalty program, perhaps because he resides in Washington and has seen it in operation, far more clearly than does Professor Sutherland. Thus Professor Sutherland views the program as merely "irksome" and considers its injustices only "sporadic and infrequent." He also appears to misread the Executive Order which establishes the program, stating that "disloyalty" consists of seeking to change the form of government by unconstitutional means or serving the interests of another government. Actually this misses the main point of the Order, which was to include among the disloyal those who have "membership in, affiliation with or sympathetic association with any . . . organization . . . group or combination of persons, desig-
nated by the Attorney General as totalitarian, fascist, communist, or subversive.” Nor does Professor Sutherland attempt to state just what limits, if any, he would impose upon the pervasive and never-ending search for “disloyal” government employees.

On the other hand, as I have said, Mr. Arnold leaves himself open to attack by in effect refusing to recognize any problem at all. In this I think he is wrong. Protection against espionage, the reliability of government employees who have access to highly secret data, and possibly the very hysterical temper of Congress and a good part of the public, raise questions which are hard to ignore. Unfortunately neither proponent comes to grips with these issues. The average reader will doubtless be left with some feeling of frustration and confusion by the interchange.

Thomas I. Emerson*

New Haven, Connecticut

War Time Experiences of the National Labor Relations Board 1941-1945.


To most students of labor and industrial relations, it will come as a distinct surprise to learn that the National Labor Relations Board played a significant role in minimizing and expediting the settlement of war time labor disputes.

Both to the casual observer and the professional follower of events in the area of labor activity, it appeared that from 1941 to 1945 the National Defense Mediation Board and later the National War Labor Board completely dominated the scene and the NLRB had been relegated to a role of inactivity.

Mr. Witney attempts valiantly to dispel that notion. In his work he analyzes and trenchantly sets forth the accomplishments of the Board in attempting to effectuate the purposes of the original Wagner Act against its divers opponents in the ranks of Labor, in the halls of Congress, and among employers.

The book is divided into four sections. The first deals with the effect of war time legislation on the operations of the NLRB; the second with the relationship of the Board to other federal labor agencies; the third with the problems arising apart from federal legislation and agencies, and the last section contains Mr. Witney’s conclusions as to the over-all operations of the NLRB during the period he purports to cover.

An instructive chapter in the first section pertains to war time legislation which took the form of riders to the appropriation bills for the Board. The purpose of this legislation was to prevent the Board from expending any of its funds to investigate and prosecute unfair labor charges under a collective agreement more than three months old. The antecedents of this legislation stemmed from the efforts of the AFL to prevent the CIO from organizing the Kaiser shipyards on the West Coast. Mr. Witney believes that the significant fact about this rider was that it represented the first amendment to the Wagner Act and that it came at the insistence of a major labor organization and not any employer group.

To this reviewer this chapter illustrates what legal scholars such as Jerome Frank would call the doctrine of “rule skepticism.” This denotes how rules or principles of law are ignored or changed obliquely. Here there was no

* Professor of Law, Yale Law School.