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Loewenstein: Political Power and the Governmental Process

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Crosskey or that, knowing of him, felt incompetent to do battle with him—hardly seem plausible.

The book's omissions, contradictions and inconsistencies could be multiplied almost endlessly. The longer Kilpatrick writes, the more straw he strews about his pages, the deeper he cuts into the underpinning of the very position he outwardly defends. James Jackson Kilpatrick is clearly an intelligent man. He was a protégé of the late Douglas Southall Freeman and is now the editor of a large daily newspaper. His several hundred footnotes and citations are evidence of considerable research and laborious writing. Could such a learned and well-trained man have been unaware of the deficiencies in his overt arguments? Did he not realize that careful readers would immediately heap ridicule on his stated conclusions? Or did he have a deeper design? Perhaps his opening sentence points to a hidden purpose. He writes:

"Among the more melancholy aspects of the genteel world we live in is a slow decline in the enjoyment that men once found in the combat of ideas, free and unrestrained. Competition of any sort, indeed, seems to be regarded these days, in our schools and elsewhere, as somehow not in very good taste."³⁵

This could be a warning that the writer (who subtitles his book *Notes of a Citizen of Virginia*) dares not openly oppose the ideas prevalent in his home state; that we are witnessing a courageous southern editor who has chosen his own form of social protest for other men, less affected by emotion, to read and understand.

WALTER F. MURPHY†

POLITICAL POWER AND THE GOVERNMENTAL PROCESS. By Karl Loewenstein. Chicago: The University of Chicago Press, 1957. Pp. ix, 442. \$6.00.

BASED on six lectures given at the University of Chicago in 1956, this book is the pilot study for a much larger work which, when completed, should be a significant contribution to the study of comparative government. This is not to say that Professor Loewenstein has at this time served only an hors d'oeuvre with the main course reserved for the future; for this book contains the substance of the author's thesis. Its present importance—the presentation of his concept of power as the key to the analysis of government—may even appear more sharply in this condensed form.

Loewenstein is striving for a framework which expresses the "reality" of the political process, rather than its philosophical or conceptual basis. His premise is that "power" can be used as a unifying "conceptual framework" against which to compare one nation's government with another's.¹ In his

35. P. ix.

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1. Pp. vii, viii.

view, all society is a system of power relations; hence, to know society, one must look to the power structure within it. The predominant organization within society, the state, can be meaningfully and realistically studied by examining the interaction between the government (the "power holders") and the governed (the "power addressees").²

Superimposed on this theory, however, and implicitly or explicitly recurrent throughout the book, is the author's belief in the demonic nature of power. Uncontrolled power, he says, is "evil as such," for man's nature cannot accommodate absolute power with moderation and self-restraint.³ This is a moral judgment, and the author in making it goes beyond the "reality" he avows. His major division between forms of government, then, becomes one between autocracy and constitutionalism. In autocracy, power is concentrated without effective restraint in a single power holder, while the constitutional state is distinguished by its multiple power holders. This sharing of power in the constitutional state necessarily controls its exercise, preventing man's dangerous, inherent lust for power from complete self-realization.

The main portion of the book is devoted to a detailed discussion of those forms and techniques of government which operate to control power. To this discussion Professor Loewenstein brings an amazing knowledge which, rather than appearing pedantic, is effectively used to provide comparisons. And this is truly a comparative study. His source material includes feudal Aragon and contemporary Ethiopia, the ancient Greek polis state and the modern United States. References are sharp and precise and always in balance with the format of the book, so that they become illustrations, not overwhelming ends in themselves. In these comparisons lies the primary usefulness of his analysis in terms of power. His framework permits him to use his material without regard to time and space, and thereby to avoid the nation-by-nation approach which often compares units so large as to be incomparable.

Loewenstein's analysis is most successful when applied to those forms and techniques of power control which have become more or less institutionalized—formal "interorgan" controls such as exist between the executive and the assembly, and "intraorgan" controls such as bicameralism or a collegiate form of executive. There are areas, however, where one must go beyond descriptive terms to understand what a particular "control" means. For example, Loewenstein treats guaranties of individual liberties as a "vertical" control, limiting the exercise of power on all levels of the governmental structure. He does not adequately explain why a nation may choose to respect civil liberties at one time and not another, or why a nation may protect one area of individual liberty but not another. These are essentially sociological questions, and Loewenstein barely scratches the surface.

Emphasis on the forms and techniques of government results in a more serious deficiency in the book as a whole. The means of power control discussed are

2. P. 6.

3. P. 8.

essentially abstractions. They are examined, it is true, in terms of the "reality" of their role in the governmental process—what they accomplish, rather than what they are supposed to accomplish. But the discussion lacks major references to one essential element in that process, the people who govern and those who are governed. Early in the book, the author rejects a purely sociological or socio-psychological method of classifying states.⁴ One may argue with some of his reasons. In any event, it can hardly be denied that personalities have an effect on how power is shared, and that a people's sociological makeup, temporary though it may be, can explain why the power relationship in one state differs from, or is similar to, that in another. One cannot really analyze American federalism without discussing Franklin Roosevelt (Loewenstein makes but a passing reference to the "Roosevelt court"⁵); nor will contemporary France be explainable without an understanding of DeGaulle. Comparison of power concentrations in Nazi Germany and Soviet Russia can, on the surface at least, be easily made. Even an elementary treatise on comparative government can show that power does not really reside where the Soviet constitution seems to place it. The contribution of comparison rests in the discovery of causal factors influencing government, and these rarely can be found in the governmental institutions themselves. The comprehensive work might well supply some of the missing material.

A few specific comments for the lawyer-reader may be in order. Professor Loewenstein has himself had legal training, and he has included sections of more than routine interest to the lawyer concerned with the judiciary's role in government. The chapter on "Interorgan Controls of the Judiciary Over the Government and the Parliament" contains a comparative study of the problem of designating judicial personnel. It sketches the basic forms from the charmingly simple practice of purchasing the office (in prerevolutionary France) to election and appointment, and discusses the complicated but apparently successful system of "in-service cooptation" (in Italy and France), under which a professional elite rises through the ranks of the judiciary on the basis of merit, initial entry having been obtained through a competitive process of training and selection. The chapter includes also a good comparative treatment of judicial review, although it is unfortunately marred by a surprising naivete about the United States itself. Professor Loewenstein considers the protection of civil liberties a "legitimate" area of judicial review and states that as such it presents a "none-too-difficult" task where, as in the United States, "the fundamental rights are guaranteed unconditionally" instead of being related to the needs of government.⁶ While the reader is trying to fit the due process clause into that formulation, Loewenstein advances the view, stated as fact, that "no genuine policy decision was involved" in the Segregation Cases. What the Supreme Court did was merely to reinterpret its own previous jurisprudence in *Plessy*

4. Pp. 5-6, 26-28.

5. P. 294.

6. Pp. 246-47.

v. Ferguson and to harmonize it with the substantive and literal intent of the Constitution."⁷ He errs, also, at least in the light of recent Court decisions, in overemphasizing the doctrines of judicial restraint and the avoidance of "political questions" as ameliorating counterweights to the problems judicial review raises in a democracy. Such errors and oversimplifications, however, are more annoying than crucial to the worth of the book. And they, too, may be corrected in the larger work.

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AMERICA AS A CIVILIZATION. By Max Lerner. New York: Simon and Schuster, 1957. Pp. xiii, 1036, Index. \$10.00.

IN his introduction to De Tocqueville's *Democracy in America*, Henry Steele Commager observes that "of all the thousands of books on America, perhaps less than two score are of lasting value."¹ "Why," Professor Commager asks, "is the average so low, why is so much of the stuff mediocre or worse? Why, especially, have men and women otherwise thoughtful, learned, and observant, failed so signally to understand and interpret the United States?"² He answers his own question by pointing out that "many, if not most, of those who wrote about America, came here with a closed mind, came not to learn but to confirm preconceived notions. They assumed . . . that the Old World was the norm and interpreted every deviation from that norm as quaint, vulgar, or eccentric. . . . Few of those who wrote so glibly on America saw the whole of it . . . [T]hey wrote [for] . . . an audience notoriously uncritical and credulous in everything concerning America. . . . [O]nly a handful were intellectually competent to the task . . ."³ Although Professor Commager's comments are directed at European visitors writing about the American character and experience, they are not altogether inapplicable to the vast majority of Americans whose books analyze their native United States.

Just as De Tocqueville's book is one of the very few foreign exceptions, so Max Lerner's *America as a Civilization* is an American exception which promises to take its place alongside the very few of lasting value. One can sense in these pages an emulation of de Tocqueville, for Lerner wrote neither with a closed mind nor to confirm preconceived notions. Instead, he has undertaken a comprehensive analysis which attempts boldly to portray the whole while respecting the importance of detail. In so doing, he has challenged many conventional views, such as the Turner frontier thesis which, Lerner says, "has been used subtly to bolster the argument from individualism—and therefore

7. P. 247.

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1. DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* ix (Commager ed., Reeve transl. 1947).

2. *Ibid.*

3. *Id.* at ix-x.