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Book Review: Constitutions and Constitutional Trends Since World War II

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BOOK REVIEW

CONSTITUTIONS AND CONSTITUTIONAL TRENDS SINCE WORLD WAR II. Edited by Arnold J. Zurcher. New York: New York University Press, Second edition (revised), 1955. Pp. ix, 357. \$5.00.

Constitution making and revision have occupied a great deal of the time of statesmen throughout the world in the past decade. Since 1945, over fifty nations have provided themselves with organic law that is either wholly new or radically revised. These changes well deserve the attention of students of politics, and there is a need for systematic analysis and interpretation of their causes, contents, and portents for the future. This symposium only partly meets this need. It was first published in 1951, and this second edition has been brought up to date by inclusion of the 1954 amendments to the constitution of the French Fourth Republic, together with a discussion of them. The book includes ten essays by well-known specialists in the field of comparative law and government along with texts of Western European constitutions and significant amendments.

In the introductory essay ("The Political Theory of the New Democratic Constitutions"), Professor Friedrich presents a thoughtful analysis of the political theory underlying postwar constitutional developments in Italy, France, and West Germany. The changes are a product of "negative revolutions" against Communism and dictatorship on the one hand and liberalism and "anarchy of the free market" on the other. Thus the new constitutions are designed to protect against reoccurrence of pre-war authoritarianism and provide constitutional sanction for socialization and planning. Despite the negative character of the motivating theory, Professor Friedrich is optimistic about the revival of "constitutionalism" in Western Europe. He sees as "the most startling novel aspect of these new constitutions" the "abandonment of the idea of national sovereignty as a central presupposition of their political theory" which, he believes, reflects a long-range trend toward "Europeanization." The provisions for limiting sovereignty, protection of individual rights, and similar re-

strictions upon the power of the state are "animated by a spirit of reconstruction" and reflect a "groping for workable principles of social order with genuine theoretical concern."

Professor Lowenstein, in the concluding essay ("Reflections on the Value of Constitutions in Our Revolutionary Age"), challenges Friedrich's optimism. He views the postwar constitutions as products of a "tired, neurotic, cynical, disenchanted society of the West" who returned to constitutions because there was no alternative. "Constitutions function well so long as the competition for power is confined to different groups of the same social class; but they are strained to the limit, and often break, when their rules become insufficient to accommodate the power ambitions of a class excluded by its very rules." The prewar constitutions failed because they did not provide for an adjustment between the *bourgeoisie* and labor and the "dispossessed lower classes." Yet, the new constitutions are "strangely restrospective" and offer no new solutions for this adjustment. Thus, they are likely to be short-lived in the dynamic setting of the twentieth century.

Unfortunately, the remaining essays are somewhat disappointing. The contributors are aware that "the reality of a specific functional arrangement of powers depends to a large measure on the sociopolitical environment to which the pattern is applied." However, no effort is made to analyze the sociopolitical forces. Instead, the essays adhere to the customary legalistic and functional analysis. Professor Lewis' "Electoral Changes After World War II" and "The Position of the Representative Legislature in Postwar Constitutions" are in particular descriptive and legalistic. Much of Lewis' discussion of the representative legislature is repeated in Professor Dunner's "Stabilization of the Cabinet System in Western Europe." In his "Functional Autonomy After World War II," Professor Hermens proceeds to eschew a field "almost entirely eschewed by the two oldest and largest democratic countries." The author demonstrates that postwar efforts in this direction (in France and Italy) have been ineffective, which suggests that more significant topics could have been discussed in the space allotted for this essay. The same objection can be made with respect to Professor Neumann's "Constitutional Documents of East-Central Europe" in which the writer readily admits that the

constitutions are facades behind which the Communist parties exercise arbitrary power.

Professor Ulam ("The British Commonwealth as an Example of a Multinational State System") does attempt to get at the "substance" of constitutionalism. His thesis is that the twin forces of nationalism and democracy have undermined the British Empire and led to the British Commonwealth. The Commonwealth is a "developing and dynamic thing" and not something that can be put down in "hard and fast legal formulas." While the statutory arrangements "reduce the strain on the relationships within the organization," they are apt to be transitory. Only history will tell whether the Commonwealth can effectively "rally those forces and ideas that today are everywhere threatened by a more insidious and incomparably more oppressive imperialism;" however, its success must depend on the "inherent strength of the idea of representative and responsive government that has guided its growth."

There are always limits to this kind of production, and perhaps repetition and lack of central focus are inherent. In view of the imminence of the contributors, this reviewer can only wish that more attention had been given to the economic, sociological, political, and psychological forces which give real meaning to constitutional documents. Despite its faults, however, this study does bring some order to the morass of postwar changes in organic law. For this reason, it deserves the attention of all concerned with the role of constitutions in resolving the never-ending problems of social living.

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