Buffalo Law Review

Volume 8 | Number 3 Article 8

4-1-1959

Consensus and Continuity, 1776-1787. by Benjamin Fletcher Wright.

William P. Murphy
University of Mississippi

CONSENSUS AND CONTINUITY, 1776-1787. By Benjamin Fletcher Wright. Boston: Boston University Press, 1958. Pp. 60.

This little book consists of the Bacon lectures at Boston University in April, 1957, by the president of Smith College. Anyone interested in the origins of our constitutional system will find these lectures very rewarding. Written in an interesting style, the book may stand as an illustration of how much information and analysis a knowledgeable author can compress in a few pages.

In the first lecture, "The Spirit of '76 Reconsidered," Dr. Wright examines the difference between other revolutions, which were accompanied by extremism, terror and dictatorship, and the American revolution, which was not. The difference is the "spirit of '76," by which Dr. Wright refers to the basic agreement on fundamentals which manifested itself in the state constitutions which were written during this period. Thus, there was a consensus that government should be with the consent of the governed, that it should be limited by law, that there should be a written constitution with some method of amendment, that there should be a separation of powers, and that there should be a bill of rights.

In the second lecture, "The Dimensions of Agreement and the Range of Compromise in 1787," the author discusses first the principal subjects of disagreement in the Constitutional Convention and then the areas in which the delegates were in almost complete accord from the outset. Thus, they differed on such matters as the basis of representation, the counting of slaves, suffrage qualifications, legislative terms, and the election and powers of the President. The disagreement was not wide or intense enough, however, to prevent an acceptable compromise on all these matters. Actually, the subjects of disagreement were largely over matters of detail in the areas of consensus, for the Founding Fathers were virtually unanimous in regard to basic fundamentals. In addition to those listed in the first lecture, there was accord that the government should be republican, that it should be representative, that there should be a strong central government with a bicameral legislature (the lower house of which should be popularly elected), a single executive, and a separate judicial system. Dr. Wright correctly points out that in one very important respect the Constitution represented a definite break of continuity with the immediate past, i.e., the new government should operate upon individuals rather than upon states. In my judgment, these lectures would have been substantially strengthened if Dr. Wright had emphasized more fully the conscious abandonment of a system based on state sovereignty and the conscious adoption of a system based on national supremacy.

In this connection, I would disagree with Dr. Wright when he states that it is one of the paradoxes of the Convention that the supremacy clause of the Constitution originated in the New Jersey plan and was included on the motion

of Luther Martin, one of the few delegates who was opposed to a strong central government. As introduced by Martin, the clause made only laws of Congress and treaties of the United States the supreme law of the land; the Constitution itself was not to be a standard against which to measure the validity of state laws. Furthermore, it was only state laws which were subjected to national supremacy; the clause intentionally omitted any reference to state constitutions. Finally, the enforcement of this limited amount of national supremacy, with the attendant power of interpretation, was to be left to the "judiciaries of the several states." In its original form, therefore, the supremacy clause was perfectly consistent with Martin's devotion to state sovereignty. The nationalists, however, were also skilled lawyers well aware of the importance of phraseology in the drafting of written documents. Consequently, they lost no time in amending away each of Martin's concessions to the states, so that in its final form it is indeed, as Dr. Wright says, "one of the bulwarks of national power."

In the final lecture, "Was the Constitution Reactionary?", Dr. Wright takes issue with and, on the whole, effectively rebuts the view of the economic determinists who picture the Constitution as an anti-democratic instrument designed to immunize the interests of wealth and property from popular control. While I agree with Dr. Wright that the Constitution was not in this sense a *reactionary* document, I do not believe he sufficiently recognizes the extent to which the Constitution was, and is, a *conservative* document. It cannot be successfully denied that the structure and processes of government established in the Constitution are designed to protect, even though not to permanently enshrine, the status quo. While change is contemplated, and even radical change is not prohibited, the process of change has many mechanical and procedural hurdles to overcome. It is the system which it creates, rather than any of its substantive provisions, which makes the Constitution an essentially conservative instrument of government.

In one respect I would disagree with Dr. Wright that the Constitution was not reactionary. On page 51 he states: "So far as concerns the distribution of powers between states and central government, the Constitution of 1787 carried on the tendency toward a more centralized government which began even before the revolution, and was developed during those years. The government under the Articles was weak, but it was far more centralized than anything known in this country before the Revolution. . . . Fear and distrust of a more centralized governmental system was undoubtedly the chief basis of opposition to the Constitution, but it does not follow that the Constitution was for this reason reactionary." It seems to me more accurate historically to recognize that Great Britain was a strong central government supreme in law and fact to the colonies and that the Articles of Confederation, in creating a league of sovereign states, was a reaction in favor of localism. Compare the original Dickinson draft of the Articles with the version finally adopted. As

James Wilson later said in the Convention, "How different!"[1] Although the Articles were a failure, so also were all efforts to strengthen them. The Constitution, in creating a national government supreme in law and fact to the states, thus represented a retrogressive, hence a reactionary, development. And, I might add, a good thing, too.

WILLIAM P. MURPHY
Professor of Law
University of Mississippi

LABOR. By Neil W. Chamberlain. New York: McGraw-Hill Book Company, Inc., 1958. Pp. v, 616. $7.00.

As an attorney engaged for the most part in labor law matters, your reviewer does not undertake frequently to read, much less to review, a study of labor relations within an economic framework. I found completely familiar ground in but one of the thirty chapters. Although the portions of the book involving economic theory slowed the reading pace, the time, nevertheless, was gainfully spent. It was refreshing to review labor relations from an economic point of view, and other readers who are not economists should likewise profit.

Professor Chamberlain describes his book as having "originated as a series of lectures designed for an introductory course in labor. . . . The first thirteen chapters examine the organization of labor and business and the collective bargaining relationship between them. The rest of the book explores the impact of unionism on the economy. The objective is not only to acquaint the student with specific issues and problems but to permit an over-all assessment of the economic significance of unions in the United States."

It is undoubtedly the primary purpose of the author to survey, in one volume and in text-book form, the labor field in its socio-political and economic perspective and to bring the subject up to date, while at the same time to provoke in the student or other readers a desire to make further inquiry into the many controversial subjects covered in this volume.

Inasmuch as any particular facet of labor relations, be it collective bargaining, automation, union power, or any other, often is itself subject matter of many volumes the book may appear to be a prodigious undertaking.

After some 600 instructive and well-organized pages Professor Chamberlain distills the volume and cites six major developments: the growth of unions and their accumulation of power; the imposition of responsibilities on unions; the increase in size of the bargaining unit; the power of the largest bargaining units to initiate trends which will be followed by smaller units; the widening of the subject matter of collective bargaining; the development of the grievance procedure.

1. See this reviewer's article, *State Sovereignty Prior to the Constitution*, 29 MISS. LAW JOURNAL 115 (1958).