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### Book Reviews

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## BOOK REVIEWS

*Legislative Problems.* By Robert Luce. Boston: Houghton-Mifflin, 1935. Pp. 762. \$6.00.

Americans impressed by the publication of such able works as Edouard Herriot's *Life and Times of Beethoven* frequently feel that continental parliaments must be filled with men of broad background and scholarly attainments, while members of the American Congress are a trifle submarginal in intellectual capacity. It is unfortunate that such Americans are not aware that, coincident with the bold admission by the Executive Department that it uses brain-trusters in its work, there has developed a considerable amount of evidence that several members of Congress can lay claim to intellectual distinction. Offhand, one thinks of Senator Bennett Champ Clark, whose *John Quincy Adams* is a competent biography of the "Old Man Eloquent"; of Sol Bloom, who has given a vigorous direction to the collection and publication of much Washingtoniana, and now is with equal enthusiasm, no doubt, plunging into the historical documents bearing on the framing of the Constitution; of James M. Beck, who, as the Justice McReynolds of the House of Representatives, has contributed encomia and jeremiads to our political literature through *The Constitution of the United States* and *Our Wonderland of Bureaucracy*; of Robert Luce, whose *Legislative Procedure*, *Legislative Assemblies*, *Legislative Principles*, and now *Legislative Problems* entitle him to his place as our most distinguished example of the politician in scholarship.

Mr. Luce's fourth and concluding volume in his study of "The Science of Legislation" is a scholarly and illuminating analysis of the practical problems involved in the application of the doctrine of separation of powers. It is no academic subject which he treats, for the separation dogma is part and parcel of our national and state constitutions, and the task of statesmen is to reconcile the constitutional mandate with the obvious unworkability of the system in all its rigor. Legislative bodies do not merely make general rules to apply to all future fact situations of a given type. They pass special legislation; they validate past acts of the executive; they issue subpoenas and warrants of arrest; they imprison for contempt of the legislative body. So too, executive and administrative officers are not mere automatons carrying out the clearly expressed legislative will. They themselves make rules and regulations having the force of law; they hear "cases" and "controversies." Judicial officers do not simply apply the pre-existing law to given fact situations presented to them in the form of a suit by *A*

against *B*. They make their own rules and regulations, appoint their own clerks, administer receiverships, and, some would say, legislate in reviewing acts of the legislature. These are facts which must be faced by the realistic student of government. His approach must be three-fold: What is the value of a particular mixture of powers (e.g. administrative legislation)? What are the essential values in the theory of separation of powers which we should try to preserve? What is the formula by which the courts can pretend that a mixture of powers found necessary and desirable from the practical point of view is constitutional because not a violation of the separation of powers clause of the constitutional? Mr. Luce in treating the various topics with which he is concerned tends to follow this method of approach, though he exhibits a disposition to probe somewhat extensively into the historical origins of the modern legislative problems.

The topics dealt with include special legislation, budget and appropriation procedure, determination of contested election cases, judges as legislators, recall of judicial decisions invalidating legislative acts, advisory opinions, cabinet responsibility, impeachment, confirmation of appointments, executive removal power, ratification of treaties, executive veto, delegated legislation, and similar subjects deserving discussion in connection with the separation of powers. The general competence with which these matters are handled makes one regret more than he would otherwise the defects of the book.

To one more interested in the question, "Where do we go from here?" than in the question, "Where have we been?" it would seem that Mr. Luce has considerably overworked the historical analysis. Encountering descriptions of the governmental practice in each of the thirteen colonies on almost every point that arises in the book does undeniably persuade the reader that he must be reading a magnificent piece of scholarship, for there are so many pages he wants to skip. If, however, he is a reader who finds it disconcerting to have to drop his eyes to the bottom of the page whenever a footnote is signalled by an appropriate symbol in the text, he will find little to disconcert him. The footnoting is haphazard: often minor statements of fact are footnoted, while direct quotations may be without any indication of source. On far too many of the topics dealt with, Mr. Luce fails to reveal his own opinions. Dogmatic preaching would, of course, be objectionable, but from a person of such a wealth of legislative experience as Mr. Luce, one may justly expect definite expressions of mature judgment on matters legislative.

Every once in a while Mr. Luce comes to a topic on which he apparently has a file of quotations from, as he puts it, "men of known

experience and recognized authority," and these he proceeds to present, oftentimes multiplying them to such an extent that the thread of his own argument seems lost for several pages. Of those persons quoted it may be observed that there is a noticeable reliance upon men writing in the late nineteenth and early twentieth centuries, and a fairly consistent lack of reference to more recent students of government. Occasionally when he does venture to quote a contemporary, Mr. Luce selects poorly. Ogden L. Mills should not have been chosen as the principal quotable advocate of abandonment of the separation of powers.

Mr. Luce's efforts to have the book up-to-date at the time of its publication were rather spotty. Although a letter of President Roosevelt's dated July 6, 1935 is referred to and quoted, no reference is made to the earlier Rathbun-Humphreys decision (May, 1935) in connection with discussion of the President's removal power, no reference is made to the Schechter Case (decided in May, 1935) in connection with discussion of the Panama Refining Company Case's ruling on delegation of legislative power, and no reference is made to President Roosevelt's delivery of messages to Congress in person—the impression being given that the Wilson-Harding practice has been completely abandoned.

Americans prone to disparage the competence of American legislators should read *Legislative Problems*. Not only does it frequently recur to a convincing defense of our law-makers, but is itself persuasive evidence of the scholarly talents of its author-Congressman.

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