



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 30 | Number 1

Article 10

12-1-1951

Book Reviews

North Carolina Law Review

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Recommended Citation

North Carolina Law Review, *Book Reviews*, 30 N.C. L. REV. 105 (1951).

Available at: <http://scholarship.law.unc.edu/nclr/vol30/iss1/10>

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BOOK REVIEWS

Leviathan and Natural Law. By F. Lyman Windolph. Princeton: The Princeton University Press, 1951. Pp. ix, 147. \$2.50.

The principal propositions upon which Mr. Windolph erects the structure of his thought appear to the reviewer to be these: In every political society some person or group has absolute, unlimited power. This person or group is the sovereign. The aggregate of sovereign and subjects is the state. The sovereign creates the government. Politically speaking, only those rights which originate with the sovereign and are effective against the government are liberties. States may be classified according to whether sovereign power is held by one, a few, or many. Essential to a democratic sovereignty is like-mindedness on fundamentals; mere majority rule will not work in the absence of such like-mindedness. Law is, with rare exceptions, a body of rules and determinations originating with the government, as distinguished from the sovereign. Morality, or right, or reason, which constitute natural law, are not ingredients of sovereignty or law, but are a basis on which sovereignty and law are judged.

This reconciliation of the idea of the state and its absolute sovereign with the existence of natural right and justice suggests the title of the book, "Leviathan and Natural Law." Leviathan is, of course, the state; the metaphor is borrowed from Hobbes.

This little book deserves highest praise. Its shortcomings, and they may be shortcomings only to the reviewer, arise from the author's too rigid adherence to his thought structure or mental house of cards above briefly sketched. For example, his concept of sovereignty, a principal element in that thought structure, seems of dubious validity to begin with, and leads the author to some even more dubious conclusions. The first chapter is devoted to proving that in every state there is in some person or group absolute and unlimited power. The kernel of the chapter is in the words, "If you live in a political society at all, some man or group can confiscate your property and forfeit your life." The author refutes the view that "the precise merit of a democracy is that the citizen is protected from the exercise of arbitrary power." This view he disposes of by pointing out that although, if the President of the United States were to proceed by arbitrary fiat against the lives or property of his political opponents, his act would be declared void by the Supreme Court, still if the constitution were amended to authorize him so to proceed, then he could condemn his opponents to death, and

they could look nowhere for protection. Sovereign power, therefore, could be exercised in amending the constitution. This is artificial reasoning, divorced from reality. Power and will cannot in the actual life of a people be disentangled from the history, convictions, and character of the people, which make their will what it is. Only in theory could anything like such an amendment of the constitution take place in the United States now. The day may come when such an amendment would be possible, but if so the explanation will be found in a change in American life, not in the existence all the while of despotic power somewhere.

The author applies his theory to reach a bad result when he refutes the bitter statement of a returned soldier that he had given one of his legs but that the diplomats would not give up any of their sovereignty. Windolph answers that if sovereignty is a fact the soldier is in no better position than if he had said that he had given a leg but the scientists would not give up any of their law of gravity. It is the reviewer's view that the soldier spoke a truth of critical importance in a manner such that the truth he spoke was well understood, even though the expression did not fit in with Windolph's scheme of thought. Perhaps the soldier's utterance would have fitted that scheme of thought if the soldier had said, "I gave my leg, but the diplomats are unwilling to take any steps looking toward the support by their sovereigns of a world organization capable of preserving peace." But was not the same truth visible in what the soldier did say?

Equally unsatisfactory to the reviewer is Mr. Windolph's discussion of proposed world government. He holds that nearly all the proposals for a world federation are founded on one or the other of two conflicting assumptions, either that it is possible to form a state in which irresistible power is located in several places at once, or a state in which such power is nowhere to be found. The proposal therefore does not fit Mr. Windolph's scheme of thought any better than did the utterance of the soldier who had lost his leg but not his vision. The reviewer believes that the world government proposal fits realities better than it does theories. Granted persuasion and conviction, there is nothing to prevent constitutional amendments, in countries governed under constitutions, enabling each such country to participate in a world government. In the absence of a constitution the "sovereign," whoever is such by Mr. Windolph's definition, could do, or assent to doing, likewise. Perhaps at some future date a war like the American Civil War would have to be fought to determine where supreme and unquestionable power actually would reside—but perhaps not. At any rate theoretical future wars do not contain the same deadly menace to our survival that actual and presently threatened wars do in the existing condition of interna-

tional anarchy. Mr. Windolph also points to lack of like-mindedness among the peoples of the world on fundamentals as an obstacle to world government. The reviewer would point to unity on the one necessary fundamental—the desire for peace. The world government should, in the beginning, be limited to the function of keeping the peace. After all, systems of law, in primitive times, originated for that purpose.

To criticise Windolph for too rigid an adherence to his own scheme of thought is by no means to condemn his book. Such a criticism can be made of even the giants of jurisprudence, such as Austin, Bentham, Savigny, and others. Law and politics have to do with life; life is infinitely varied; and the varied truth about it cannot all be corralled in one point of view or scheme of thought. Granted inevitable limitations on the author's thought structure, the question remains how well he has written; with what insight, wisdom, and skill he has filled in the outline he has contrived. Windolph's book as a whole is superb. Some of the first pages of the book, in which the author is concerned largely with his concepts, particularly his concept of sovereignty, might discourage many readers. But these pages make up, so far as the reviewer is concerned, a sort of fence which must be climbed in order to get into the author's watermelon patch. The patch is worth the climb. For one thing Mr. Windolph is what many authors in the field of jurisprudence are not, namely a first rate writer. Good ideas badly presented are almost characteristic of juristic writing. Windolph is not only a thinker, he knows how to find words to express his thoughts with remarkable nicety and clarity. As is the case with other first rate writers, his search for brevity and clarity in expressing a large scale idea occasionally results in a gem such as this one, ". . . where there is no will to obey there can be no liberty in obedience."

The author is obviously widely read, but that is not all. Where less skillful writers insert in their work chunks taken from others, Windolph weaves into his thought the thought of men of other ages to make a smoothly blended whole. In so doing he leaves an impression of the timelessness of ideas. The author not only has a strong sense of history, he wants to create in his readers the same vivid feel for history he himself has. Thus to make alive his point that the great pageant of American history has been condensed into a brief period of time he writes, "I have eaten dinner with a man who in his youth had eaten dinner with a man who had seen George Washington and Benjamin Franklin talking together on the steps of Independence Hall."

Especially valuable, in connection with the problems of the world today, is the chapter entitled, "Popular Sovereignty." It should be mentioned that at the head of each chapter the author has placed a

whimsical little jingle which admirably summarizes the principal idea of the chapter. For the chapter on popular sovereignty the theme jingle reads,

"Popular rule, as history discloses,
Depends on unity, not counting noses."

Windolph argues that popular rule means something more than majority rule; that a democracy must be cemented together by general agreement on matters of basic importance. One of the applications he makes of this idea is that India (including Pakistan, apparently) could not be governed by majority rule in view of the bitterness between Moslems and Hindus. The minority would refuse to be bound. Conversely, in the United States we abide by majority rule because we are united on fundamentals, including freedom of speech, the belief that democratic government is better than monarchy or aristocracy, that a system of private property is better than communism, that there should be a separation of church and state, and many others. Such a fundamental as free speech we would not submit to majority vote.

The author's greatest contribution is his insistence that there is such a thing as right, as distinguished from wrong. True, the same contribution has been made by innumerable other thinkers, from ancient times to the present, but that does not mean that there was no necessity for Windolph to write what he wrote. In our day a powerful movement in juristic thought has insisted that right and wrong are creations of the imagination, having no reality. To this ancient contention Windolph gives the ancient answer, that good and evil, justice and injustice, are discernible realities. But although the answer is ancient, the brilliance with which he elaborates it is the author's own. It is, of course, obvious that as to this basic matter the reviewer is on the author's side. In a world where it is denied that there are any such things as right and justice, it could hardly be expected that right and justice would be achieved. If we are to escape the crude, raw, and bloody regime of naked power into which the world is sinking, we must have Windolphs to insist that right is as real as the atom bomb.

FRANK HANFT.

Professor of Law
School of Law
University of North Carolina
Chapel Hill, N. C.

The Formation of the North Carolina Counties 1663-1943. By David Leroy Corbitt. Raleigh: State Department of Archives and History, 1950. Pp. xix, 323. \$0.50 (shipping charge).

This book is but one of the many valuable publications of the State Department of Archives and History which all too frequently receive little publicity and hence fail to attract the eye of the general reading public. In it the author traces the formation of the counties of North Carolina from 1663 through 1943. North Carolina has in time had one hundred and sixteen precincts or counties. This work gives the dates of the formation of these counties, the precincts or counties from which they were formed, descriptions taken from legislative acts creating them or changing their boundary lines, and surveyors' descriptions of boundary lines when such were available.

A brief but interesting introduction sets forth the historical development of the early settlement of North Carolina; the formative stages of its government; the provisions of the Fundamental Constitutions of Locke which provided for separate and distinct counties and their government; the disputes that arose over the location of precinct or county boundary lines and the erection of court houses; and the enactment of laws by the legislature in the attempt to settle boundary disputes.

Following this introduction the author makes a detailed study of the formation of each of the one hundred counties of North Carolina. The counties are studied in their alphabetical order rather than chronologically with reference to the time of their establishment. Whenever possible the date of the formation of each county is given together with a brief historical sketch of its formation and the derivation of its name. Then follows a detailed description of the county lines or boundaries along with the changes thereof which were made from time to time. In this part of the book these descriptions were taken from the various legislative enactments concerning county boundary lines.

In Appendix I are found detailed surveyors' descriptions of the county boundaries.¹ The purpose of their inclusion in the appendix is explained by the author: "I realize, of course, that the surveyors' descriptions . . . would have been much more valuable, if I had been able to procure all of them. Such descriptions were available only in a few cases . . . I believe that the use of this information in the main

¹ The material in Appendix I consists of reports of commissioners and surveyors who were acting under specific acts of the General Assembly or who were acting under instructions issued by justices of the peace of the counties, who, in turn, were authorized to determine boundary disputes by Chapter III of the Public and Private Laws of 1836-37 of North Carolina. Today, boundary line disputes between counties are settled by the boards of county commissioners of the disputant counties, or, if they refuse to act, by the resident judge of the district wherein the counties lie or by the judge holding the courts of such district. See N. C. GEN. STAT. §153-11 (1943).

part of the book, when all descriptions were not available, would be misleading." However, the inclusion of such material will prove most helpful in the determination of boundary lines especially where changes have been made.

Appendix II contains a series of charts showing the approximate county divisions within the present state boundaries from 1700 to 1912. Also included is a valuable chart showing the origin of North Carolina counties, with instructions for its use in determining the origin of any desired county. On the margin of this chart is found a list of the counties and the years in which they were formed.

This book is obviously the result of much careful study and meticulous research. If, due to lost or destroyed records, it does not contain information concerning all boundary changes, it does contain enough to help substantially in locating definite boundary lines. In this respect it could help settle the occasional disputes which arise concerning the proper county in which a citizen may vote or pay his taxes. It should also prove of assistance to attorneys who examine titles and prepare abstracts especially of those lands lying in the mountainous western counties and in the swampy eastern counties where boundary lines of particular tracts are not always definite or certain.

Already, considerable use has been made of the book not only by schools, genealogists, historians, and county officials, but also by the Soil Survey Division, United States Department of Agriculture, the North Carolina Experimental Station, and the Tennessee Valley Authority. The United States Government found the book particularly valuable when it began to abstract titles in connection with the acquisition of land for the Great Smoky Mountains National Park in western North Carolina. This valuable study should also find a welcome place in the library of every practicing attorney.

FRED B. McCALL.

Professor of Law
School of Law
University of North Carolina
Chapel Hill, N. C.