

the British system of government, in which the active power center allays possible internal conflicts by permitting fresh elements to ascend from the "passive periphery," and to take their places among the dominators.

Timasheff, as a sociologist, is more concerned with showing the nature of the law as a social institution than he is with evaluating that institution. The latter function he leaves to the philosopher. Nevertheless, the author would not allow us to believe that the institution of law could be postulated on a theory of natural law. This is most emphatically shown in his description of international law. International law is not a superstate law, but consists merely in the overlapping of similar rules of different states regarding interstate relations. It involves no more than a mutual recognition of such rules. We are led to believe that any other recognition of the rights of other states would have to be classed as "international morality."

The author directs his most severe criticism towards neo-realist thinkers, who emphasize the unpredictability of rules of law. They fail to recognize, says Timasheff, that there are both constant (abstract rules) and variable factors in judicial decisions. Legal disequilibrium or uncertainty is merely the result of disharmony between real forces and verbal formulas "expressing" the law.

It is difficult for one to measure the value, to the lawyer and judge, of such a sociological study as this. An understanding of the sociological basis and the component elements of the law should serve to bring sociologist and lawyer closer together in their attempt to grasp both the functioning and the function of law. The most pressing need, as pointed out by President Robert Hutchins of the University of Chicago, is for someone to "strike some mutual sparks" in the liaison between sociologist and lawyer in order that the science of sociology might produce more practical benefits for the legal profession.¹ Whether or not the present work meets his test, its basic nature and its precision constitute a step in the right direction.

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THE CONSTITUTIONAL HISTORY OF THE UNITED STATES 1826-1876. *Homer Carey Hockett*.¹ *The Macmillan Company, New York, N. Y., 1939. \$3.00.*

It is interesting as well as profitable to view the two published volumes of Professor Hockett's planned three-volume work on *The*

¹ Hutchins, Robert M., *Autobiography of an Ex-Law Student* (1933), 7 *Am. L. School Rev.* 1051, 1053.

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Constitutional History of the United States in relation to their sub-titles taken from the preamble of the Constitution. The first volume of the series, reviewed in a previous issue,² is sub-titled *The Blessings of Liberty*. It tells a story of fifty years under the Constitution which were marked by an evolution of constitutional principles in an atmosphere of acute discord. The present volume, labeled *A More Perfect Union*, is a graphic description of the impact of sectional, political and economic interests upon this early constitutional thought. At first glance, the phrase *a more perfect Union* placed on the title page of a volume which depicts an era of unrest, secession and civil war appears ironic. But second-thought brings a realization that a more perfect Union did emerge from the cross-fire of conflict and debate.

Framers, ratifiers and academic theorists disagreed fundamentally at two vital points in their construction of the Constitution: (1) the nature of the Union, (2) the final authority to maintain the distribution of power. The first century under the Constitution settled these problems—if not to the satisfaction of all contending groups. This, briefly, is the theme of Mr. Hockett's first two volumes.

In the present volume, he sketches a half-century of conflict during which these theoretical propositions were subjected to more than searching analysis. Mr. Hockett treats the more significant problems of an era of stress and strain in which the almost unbearable weight of sectional interests, personal ideals, intellectual egoism, economic pressure and political prejudice was hurled against the whole body of tentatively (even tenuously) reasoned constitutional principles. The persistent desire to preserve the Union at any cost was submerged by tides of bitter disagreement. The taut cords of argument and debate frayed and snapped. Theoretical problems were resolved only after civil war and reconstruction.

Physically, the text has been set forth in four sections. The first, *The Reaction Against Nationalism*, treats a period before the Civil War when the Supreme Court was the object of much criticism. Many vitriolic comments were directed toward decisions viewed as encroachments upon state sovereignty. This period also saw a growing discontent in the South, and the advent of the nullification theorists. Part two deals with *The Democratization of the Federal Government* under President Jackson. It picks up the thread of culture from Mr. Hockett's earlier volume and weaves a more complete pattern of democratic development. One chapter offers a provocative analysis of the effect of

²THE CONSTITUTIONAL HISTORY OF THE UNITED STATES 1776-1826, Homer Carey Hockett. The MacMillan Company, New York, N. Y., 1939. \$3.00. Reviewed in (1940) 6 O.S.L.J. 248.

a changing Supreme Court personnel upon the shaping of new constitutional principles. Part three discusses *The Constitutional Aspects of the Slavery Controversy*, giving brief attention to factual background. A final section presents the problems of *War and Reconstruction*.

Mr. Hockett's work suggests more than it describes the background of the struggle involved in developing *a more perfect Union*. Factual and historical details have been deliberately omitted. While the volume might fairly be called an abstract of the most salient ideas of an era, the dynamics of political purpose, significant events, and personal ambitions have been skillfully related to the constitutional problems of the time. Extracts from contemporary speeches have been used by Mr. Hockett to implement his discussion of the more vital issues. He appears to have discovered the essence of a fine bibliography, and presented it with care and perspective.

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