lated with the care that is unmistakably evidenced by the substance of the book. No one quarrels with the form of the notes of a lecturer or of a trial judge. They may be couched in the vernacular of Maxwell Street, or of LaSalle Street. One may pardon the form of statements made under the pressure of modern life, as, for example, "Hell and Maria, no — we shot it along," but in a book designed as a model for students one should not find such expressions as the following: "Why a statute of frauds altogether?",[1] "Are they breached by the same acts?",[2] "Is it possible to draft a clause that will stick which enables the vendor to withdraw for any or no reason?",[3] "The interesting question, however, is what the possession, assuming its sufficiency, gives notice of."[4]

In spite of these limitations, however, the book should prove to be of great value not only for instructors of law but also for judges and practitioners confronted with problems of the law of Vendor and Purchaser.

SHELDON TEFFT*

The American Doctrine of Judicial Supremacy (Second edition). By Charles Grove Haines. Berkeley, California: University of California Press. 1932. Pp. xviii, 705. $6.00.

Too many new editions of valuable works seem to have little justification save to swell the revenues of their publishers. This observation can in no sense apply to Dr. Haines' new edition of a book which since its publication in 1914 has been a standard work in its field. The issues with which the two editions deal in so able and scholarly a fashion are of perennial interest to students of law and political institutions and of vital importance to every citizen and resident of the United States. Much water has run under the bridge since the publication of the first edition. As the author observes in his preface, new material throwing light upon hitherto unexplored phases of the origin and evolution of this peculiarly American doctrine has come to light through the research of scholars, and a national political campaign has been fought with judicial review one of its outstanding issues. This is ample justification, were justification needed, for bringing his work up to date.

The general plan of the present volume is not materially different from the earlier one, but several of the original chapters have been substantially rewritten, and valuable new chapters have been added which illuminate English procedure in relation to the review of colonial acts, the theories and ideas involved in the establishment of the American doctrine of judicial review, the inter-actions of politics and federal constitutional law, and analysis and criticism of the assumptions and premises commonly underlying thinking in relation to judicial review. There is also extremely interesting material regarding the adoption of the theory of judicial review and its practice in varying degrees in certain foreign countries, and the movement in others looking to its reception. In addition, the author has incorporated the substance of several important articles which he has published in recent years in various law reviews.

The book is certain to appeal to readers who are looking for careful and exact infor-

[1] Page 8.
[2] Page 677.
[3] Page 294.
[4] Page 655.

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mation relative to a subject with regard to which all too much of the discussion has contributed heat rather than light. It is not so likely to appeal to extremists, whether they be of the school which regards judicial review as judicial usurpation, or the perhaps more numerous group which tends to accept as sacred dogma the Constitution and its Hamiltonian gloss. Dr. Haines is not a propagandist for a point of view. He is a careful historian, weighing dispassionately the evidence relevant to the origin of this American doctrine, its development, and the effect of its exercise in a large number of cases, federal and state, upon public opinion and the prestige of the courts. If he is not convinced of the historical accuracy of the charge that the power is the outgrowth of judicial usurpation, he likewise does not hesitate to point out the many cases in which there is substance to the criticism that the courts by their judgments of unconstitutionality have gone beyond the proper limits of judicial power and have read their own ideas of policy into vague and formless constitutional limitations. The result has too often been to thwart in the inception promising and significant legislative experiments in the field of social and economic regulation. Particularly does he find these abuses of judicial power in cases involving labor legislation and disputes. These criticisms of specific decisions are almost invariably supported by reference to dissenting opinions of judges themselves.

There is little in the way of unfavorable criticism one can make of so admirable a book. If a perusal of the summaries of long series of decisions at various points in the book becomes at times monotonous and wearisome, the fault is not due to the author's style, which is clear and precise, but to the character of the material with which he deals and to the fact that his task is the construction of a history, not of a persuasive argument. There are a few omissions that the reviewer found somewhat surprising, such as the lack of reference to the well known case of *Massachusetts v. Mellon*[1] in connection with the author's discussion of the principle of self-limitation in the form of an extension of the doctrine of the political question as a safeguard against the unwise use of the power of judicial review, and the absence of discussion of the relatively recent controversies in the Senate over the confirmation of the appointments of Charles Evans Hughes and John J. Parker as members of the United States Supreme Court. The fact that the formidable but unsuccessful opposition in one case and the successful opposition in the other were based almost altogether on the supposed economic views and social attitudes of the nominees seems to the reviewer one of very great historical importance, worthy of a section in the chapter dealing with proposals to remedy the defects in the American practice of judicial veto of legislation.

Dr. Haines, as indicated above, is quick to seize upon the language of dissenting opinions accusing the majority of judicial amendment under the guise of interpretation of constitutional provisions and of implications of powers or restrictions on powers not warranted by any language the Constitution contains. He frequently identifies the dissenting judges by name. He is perfectly correct in the suggestion he makes that the bitter criticisms directed at the courts by politicians and laymen can generally be matched by the language of judges themselves when in the dissenting mood. But his historical study would have been still more illuminating had he taken the trouble to compare systematically the performances of the same judges in a series of cases. Such a comparison would have revealed striking inconsistencies. We have had few judges with the philosophical and emotional detachment of Justice Holmes. How many can

[1] 262 U.S. 447, 43 Sup. Ct. 597 (1923).

escape the charge of rendering mere lip service, at one time or another in their decisions, to the presumption of constitutionality of legislative acts?

There are three appendices containing material which greatly enhances the value of the book. The first is a list of cases in which the validity of an act of Congress has been directly in issue and the judgment of the Supreme Court has been unfavorable to constitutionality. The reference to each case is followed by a summary of the court's holding and the alignment of judges where the court was divided. *Evans v. Gore*[2] is included in this list but *Miles v. Graham*[3] is missing. Following is a classification of the acts declared void. The second appendix sets forth, with explanatory notes and comments, provisions of written constitutions relating to judicial review of legislative acts in foreign countries, first in those countries where guardianship of the Constitution is conferred in some degree upon the courts, and second in those nations where such guardianship is left primarily to the legislative or executive departments. The third appendix contains a well selected bibliography of books and articles, American and foreign, relating to judicial review. A table of cases and an index complete the volume.

So far as the author reveals his own position, it seems to accord rather closely with that of James Bradley Thayer in his classic essay.[4] He accepts as sound many of the criticisms directed at the doctrine and is remorseless in exposing the many fictions and question-begging arguments which have been advanced in its support. He has little patience with the mechanical jurisprudence that has colored so many of the opinions holding welfare legislation unconstitutional. Yet he does not advocate, much less regard as feasible, proposals for the abolition of judicial review. When all is said and done, the justification of judicial review must be a functional one. If its practice continues to accord with the prevailing sentiment and desires of the people of the United States, it will survive as the most significant and unique feature of our political system.

There is much force in Dr. Haines' observation in the last paragraph of his book that the judges hold in their own hands, in the form of greater prudence and caution, the most effective and satisfactory safeguard of the perpetuity of their power. In the critical days that lie ahead, when so much that has been regarded as settled in our institutions, doctrines, and points of view seems certain to be subjected to renewed examination and possibly fundamental revision because of the necessity of satisfying the changed demands of a new day upon the resources of government, a continuance of the too severe application of the Fifth and Fourteenth Amendments and the Commerce Clause such as was witnessed during the ten years after the World War, may well result in an attack upon the powers of the courts far more formidable than any we have yet witnessed. Dr. Haines' careful and exhaustive researches should assist greatly in providing chart and compass to steer a safe course through the troubled waters which may lie ahead.

ARTHUR H. KENT*

[2] 253 U.S. 245, 40 Sup. Ct. 550 (1920).

[3] 268 U.S. 501, 45 Sup. Ct. 601 (1925).

[4] The Origin and Scope of the American Doctrine of Constitutional Law, 7 Harv. L. Rev. 129 (1893).

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