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North Dakota Law Review

Volume 30 | Number 3 Article 13

1954

Book Reviews

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Recommended Citation

Crum, Charles Liebert and Murray, William S. (1954) "Book Reviews," *North Dakota Law Review*: Vol. 30 : No. 3 , Article 13.
Available at: https://commons.und.edu/ndlr/vol30/iss3/13

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BOOK REVIEWS

ROBERT M. LA FOLLETTE. By Belle C. La Follette and Fola La Follette. New York: The MacMillan Company, 1953. In two volumes. Pp. xx, 1305.

It is vivid evidence of the impact of Robert M. La Follette's personality on the popular imagination that this biography of the famed Wisconsin senator should have aroused widespread public interest on its appearance late last year. La Follette died in 1925 shortly after his unsuccessful try for the presidency as a third party candidate. Normally after such a lapse of time a public figure passes into obscurity. But the reason why La Follette has been remembered is clearly apparent from the pages of these volumes.

In bare outline, this is the history of a young lawyer who commenced his practice as many others have done, by winning election to the office of District Attorney. He proved to be both able and intelligent, as well as extremely hard working, and rapidly rose to a position of prominence and respect in the Wisconsin bar. At the close of his first term in office, he was re-elected as the only Republican to survive a Democratic sweep in his county, and this fact brought him into consideration two years later for a nomination to Congress. Thereafter, he was in public life almost constantly during the remainder of his career. His career as a member of the House of Representatives was abuptly cut short by an unexpected defeat after three terms during a general political shakeup. In the ten years which followed, he built up a successful and remunerative practice and distinguished himself by his ability as a trial counsel.

He also continued his interest in political matters, becoming associated with a reform group in his state party organization. There followed ten years of hard and bitter political infighting, during which he sustained many defeats and at times found himself a political outcast. But gradually he gained an ascendancy, and in 1900 he won the governorship.

He was a vigorous and progessive governor, and he had a positive program; these were elements in his favor. But he also had many political enemies, and his program was highly controversial. During his first term in office, most of it was rejected by the legislature. Once again he commenced to fight, this time for a legislative majority which would permit the enactment of the

measures he supported. It took him three election campaigns, but eventually he won, and the record of his legislative achievements remains impressive even today: a primary election law; taxation of public utilities on the basis of actual physical valuation; a railway commission law which provided for regulation and control of telephone and telegraph companies; a civil service law; anti-lobbying measures; labor laws; a state bank law; and conservation and water-power franchise laws.

It was this distinguished record which constituted the solid foundation for his later spectacular career. At the beginning of his third term, he was named to the United States Senate by the state legislature, and thus commenced one of the most renowned senatorships to ever illuminate the national scene. La Follette quickly aligned himself against what he considered the conservative elements in the senate, and in consequence was coolly received there. His personal quality was such, however, that long before his first term ended he had become recognized as a force to be reckoned with nationally.

From 1906 until 1925 he served continuously in the Senate. He participated importantly in most of the debates on the important measures to come before the Senate during that period. In addition, repeated speaking tours, his own ability as an orator, and his record won him nationwide support as a leader of what he referred to as the "progressive" element in the Republican party.

He had, it is plain, a continuing ambition to win the presidency. However, he never managed to gain sufficient strength to win the Republican nomination, though he campaigned several times. During World War I, a speech he made in St. Paul aroused a public controversy which led to proceedings for his expulsion from congress. But he won that fight, as he had won so many others.

La Follette was one of the leaders in the famous "Teapot Dome" investigation which formed the chief feature of the Harding Administration. His work in connection with it, as well as his long-continued advocacy of progressive measures, won him the nomination for president of a third party which formed about him in the campaign of 1924 when it became clear that neither the Republican nor Democratic candidates could meet the wishes of his followers. He was defeated, but he nevertheless made a highly respectable showing.

In essence, these are the major achievements of his career.

They indicate quite clearly how often he went to the political wars, and why he was nicknamed "Fighting Bob." But it is the picture of the man himself which dominates this biography from beginning to end, and makes it fascinating reading.

The portrait of La Follette which emerges is a mixed one. He was, beyond question, an extremely gifted lawyer. His preparation for trial was always meticulous, and he reinforced it with a fine ability to sway men in a courtroom. As a public figure, he was tempestuous, controversial and probably hard to get along with; a senator who spends his summers delivering Chautauqua lectures on the iniquities of his opponents in their home states could not have been very popular with his colleagues. He must have moved them to mingled exasperation, anger, and indignation — combined in all probability with a rueful respect, because he was surprisingly successful in defeating his enemies when they sought re-election. This is a fact the biography makes plain with ill-concealed glee, but coupled with it is a pointed emphasis on the assertion that his main weapon was usually nothing more than an objective and detailed listing of the roll-call votes of his opponents on important issues.[1]

But he was far more than merely a controversial personality. His history reveals him as a warm-hearted man who was close to his family. It discloses a solid, pugnacious courage which made his resounding nickname entirely apt and appropriate. And most clearly of all is displays a quality of personal integrity which is entitled to genuine and unstinted admiration.

Some of the incidents mentioned almost in passing give the clearest picture of the sort of man he was: his stubborn battle for a bill to improve the lot of merchant seamen — something in which he could have had no personal stake as a senator from an inland state except an inherent desire for fairness and justice; the way he risked and temporarily suffered personal ruin by reporting an attempt at bribery when he was a young man at the threshhold of his career; his determined filibusters when pieces of legislation which seemed to him to give away public property came to the

1. La Follette employed this device many times, both in Wisconsin politics and nationally. In the portion of this biography written by his wife, she remarks, "I have sat on the platform many times and felt the audience 'freeze' as he began to read the ayes and nays disclosing the record of senators and assemblymen to their constituents." She adds her own conclusion, which seem to be justified in view of the fact La Follette used the device so often, that "Because he never dealt in personalities and held strictly to the record, which told its own story impartially, the roll call carried conviction and was as practically effective as it was dramatic." Volume 1, page 172.

Senate floor; and most of all, one particularly unforgettable little vignette about an agitated fellow committeeman during his service in the house of representatives who whispered to him in ineffectual panic, "Bob, you don't want to interfere with that provision. *Those are your home corporations.*"[2] Add these things up, combine them with the record he made as governor and senator, and they total to a portrait which at times becomes inspiring; it is scarcely to be wondered that a man like that gained the influence he did.

For the people of this particular area, the book possesses a special interest above and beyond La Follette's career on the national scene. Because of his views, he found himself closely associated with the rural dissatisfaction which eventually resulted in the formation of the Nonpartisan League in this state. Sprinkled through the two volumes of the work are names which will be familiar to many North Dakotans: Lemke, Townley, Frazier, Amidon, Gronna, and the like. His standing in this state is indicated by the fact that he won the country's first presidential primary here, defeating Theodore Roosevelt — who had no small claim to be regarded as a favorite son — to do it. Indeed, it is possible to discover in this biography the origin of many of the attitudes and much of the thinking on public matters which persist in this state to the present time. La Follette's influence has been very lasting here.

The two volumes themselves consitute a technically excellent piece of writing, though of uneven quality. The biography labors under the handicap of being written by his family, having been commenced by his wife and completed by his daughter. This probably results in a somewhat idealized picture of La Follette, though the portions written by his daughter are notable for the thoroughness of their documentation. The book has received favorable notices from historians.

All in all, however, it is worth reading for its intrinsic worth, not simply because it is well written. It is the story of La Follette himself — sometimes wrong and sometimes right, intractable, honest, stubbornly fighting tooth and nail for the public interest as he saw it — that carries the reader along. One need not necessarily agree with everything he did to recognize La Follette as a public

2. Volume 1, page 82.

servant, lawyer, and human being who was well above the average. This is a fine and significant biography of a man who fought his way up to a position of leadership and historical importance.

CHARLES LIEBERT CRUM.*

SUPREME COURT AND SUPREME LAW. Edited by Edmond Cahn. Pp. 250. Indiana University Press, Bloomington, Indiana, 1954. $4.00.

The field for books about the Constitution is a broad one. In this case a group of specialists in constitutional law[1] were gathered together to participate in a sort of panel discussion on the topic of judicial review. After an initial statement of views by one of their number, the panel argued the subject. The result is productive of some original and thought-provoking discussion.

In an initial introductory chapter, the editor traces judicial review as we know it in America. For a starting point to proceed both backward in history and forward to today, he takes *Marbury v. Madison* as a mid-point rather than a beginning:

> "Beginning with Oliver Cromwell's[2] "Instrument of Government" adopted in 1653, the modern history of written constitutions covers a period of three centuries. At the precise half-way point in 1803, John Marshall delivered his judgment in *Marbury v. Madison.* Now after the lapse of another century and a half we propose to take stock of the various consequences his doctrine has brought about; and by way of prologue this chapter will suggest why the decision itself represented an important departure in the progress of American government."

The doctrine of judicial review is a reaction to absolutism and in opposition to it. Historically it stemmed from the original concept that there was a divine or supernatural law with which man-made laws in conflict must fail. Later, in accordance with the secularization of thought in the field of government, it became "natural law" which was the measuring stick to judge if a law was valid or not. Ultimately — and this is the real "American contribution" the editor meant when he titled the first chapter — con-

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1. In addition to the Editor, they are Ralph F. Bischoff, John P. Frank, Paul A. Freund, Willard Hurst and Charles P. Curtis.

2. This is a logical chronological measuring stick, even if the reader finds the association of Cromwell with the concept of constitutional rights a difficult mixture to swallow.

stitutional review of laws was conceived not as based upon source, divine or human, but on the basis of written constitutional ground.

It is only chauvinism to assume that this concept sprang suddenly to life when the American colonies separated from the authority of the English crown. This thought is quite concisely put in the book:

> "The general history of English legal institutions before the adoption of our Constitution may be competent and relevant evidence for the construction of constitutional terms that have reference to that history"

In any event, the principle of judicial review of legislative acts was soon confirmed by the decision of an American appellate court. On November 2, 1782, the Virginia Court of Appeals passed on the constitutionality of an act of the state legislature. One of the three appellate judges who participated was George Wythe, who was: "(John) Marshall's only law teacher."

For Marshall was reserved the role, twenty years later, of converting "essence into existence," in *Marbury v. Madison*.

Among the topics conversationally chewed by the capable participants in this panel discussion is that embodied in Chapter IV: *Review and Federalism.* The concept of Federalism is one of those least understood about America abroad. Federal states or, strictly speaking, nations with a federal type of government exist elsewhere, for example in Switzerland or Australia. But American Federalism is different, even distinguishable in concept from that in Canada. And the history of juridicial review is interwoven throughout with the struggle for power between the states and the federal government. The concept of state's rights is older than, and superior to, any specific issue. Yet it is ironical that some of the best constitutional debate in Congress, say the authors, has been embodied in leisurely filibusters by Southerners on civil rights legislation.

The book is characterized throughout by original thinking. The authors were practical enough to point out that judicial review does not save us from all the evils that threaten. It is even advanced at one point that judicial review has done little or nothing in our constitutional history to aid or assist in sustaining basic liberties. In one period, the authors note, judicial review sustained the interests of human slavery. It has, he continues, done nothing to check waves of repression when they arrive in periods of public hysteria.

Legislative bodies, too, are wily in circumventing the courts. Does judicial review, it is asked, deter a legislative body from un-

wise and unconstitutional enactments, or does it simply stimulate legislative ingenuity to evade constitutional safeguards?[3]

In fact, say the authors:

"It is distinctly possible that judicial review has encouraged a tendency to congressional irresponsibility (A) by proliferating the law through so many decisions that Congress cannot be expected to cope with it; and (B) by giving an appearance of a judicial veto in the field of liberty when in fact there is almost none. The average Congressman would be surprised to know how little actual restraint the Court puts upon him. The repeated episodes of buck-passing exemplify Congress' refusal to trouble itself about legal issues in a comfortable, if mistaken assurance that the judiciary will correct the worst errors."

Despite the selection here of several quotations which might leave an inference that the authors entirely discount the value of judicial review, it would seem they appreciate its value and essential nature in our form of government. Judicial review plays its part largely in restraining the majority, which as pointed out by Madison, is the chief source of oppression:

"The real power lies in the majority of the Community, and the invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the Constituents."[4]

Although thoroughly case-annotated and indexed, this book purports to be neither a textbook nor a comprehensive study of constitutional history. For those interested in reading a thought-provoking work in the field of constitutional theory, with many inteesting overtones of political and governmental interest, this work is recommended.

WILLIAM S. MURRAY.*

3..As an example, the author then cited a controversial law with roots in North Dakota, and the economic plight of the farmer n the 1930's. "The Brandeis opinion invalidating one Frazier-Lemke Act because a model for design of the next."

4. Letter to Jefferson, Oct. 17, 1788.

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