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Review: THE PUBLIC AND ITS GOVERNMENT. By Professor Felix Frankfurter

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BOOK REVIEWS

THE PUBLIC AND ITS GOVERNMENT. By Professor Felix Frankfurter. New Haven: Yale University Press. 1930. P. 170.

This latest work, by an outstanding scholar, consists of four addresses delivered at Yale during the month of May, 1930, upon the William E. Dodge Foundation. Under the general headings of "The Demands of Modern Society Upon Government," "Does Law Obstruct Government," "Public Services and the Public" and "Expert Administration and Democracy," Professor Frankfurter expounds his juristic and political philosophy. It shall be our purpose to interpret some of the more salient tenets of his creed.

(1) Professor Frankfurter has a profound sympathy and respect for the "constitutional conscience" of Mr. Justice Holmes. "Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine."¹ "When we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation."² "There is nothing that I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several states, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect."³ Professor Frankfurter believes that "with the great men of the Supreme Court, constitutional adjudication has always been statecraft."⁴ "The great judges are those to whom the Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people."⁵ He inveighs against the attempt to "stereotype ephemeral facts into legal absolutes,"⁶ and presents an effective attack on the extremely static school of constitutional construction. But he is not an extremist in his adherence to the dynamic approach. He is not so completely under the spell of the idea that we are living in a dynamic world that he would deny the possibility of formulating any principles whatsoever on the theory that words uttered yesterday could not have the same meaning today. In his eagerness to demolish the static conception, he will not give aid and comfort to the dilettantes who seem to think that a written constitution is a futile thing, that all is flux and that with every breath of the American people, there is born a new Constitution.

¹Missouri, Kansas & Texas Ry. Co. v. May, 194 U. S. 267, 270 (1904).

²Missouri v. Holland, 252 U. S. 416, 433 (1920).

³Dissenting in *Truax v. Corrigan*, 257 U. S. 312, 342, 344 (1921).

⁴P. 75.

⁵P. 76.

⁶P. 45.

(2) Another significant contribution in his emphasis on "extra-constitutional co-operative inventions established for the purpose of eliminating some of the defects that naturally grow out of a federal system of government. In recent years, the pressure of practical necessities has led to the devising of new machinery for the settlement of problems transcending state lines. Of special significance are the Conferences of Governors, the National Conference of Commissioners on Uniform State Laws, grants-in-aid, reciprocal state legislation and auxiliary federal legislation.

(3) Somewhat closely related to the above is the growing recognition of the importance of the "compact clause"⁷ in the original Constitution of the United States. In the complexity of our present day civilization, many problems are no longer state problems and because of diversity of conditions, they are not national problems. They can only be characterized as regional problems and demand regional solutions. The potentialities of the "compact clause" are being recognized in the fields of taxation, utility regulation, water power and the conservation of natural resources.

(4) Professor Frankfurter is keenly interested in the growth and development of another "new political invention responsive to the pressure of new economic and social facts," to wit, the administrative commission. The determination of utility rates and the ascertainment of the rate base are essentially economic problems to be worked out by the utility expert. The expert commission surpasses the judicial tribunal in the solution of these perplexing problems. But "in this country we have been so anxious to avoid the dangers of having the expert on top that we suffer from a strong reluctance to have him on tap."⁸

We recommend this book in the highest terms to every intelligent citizen interested in the problem of government. It is a worthy addition to the series of Yale Lecturers on the Responsibilities of Citizenship contributed by such leaders as James Bryce, Arthur Twining Hadley, Elihu Root, Charles Evans Hughes, and Graham Wallas.

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⁷Art. I, sec. 10.

⁸Pp. 161-162.