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Book Review

BOOK REVIEW

STATE AND NATIONAL POWER OVER COMMERCE

By E. D. G. Ribble, Professor of Law at the University of Virginia. Columbia University Press, 1937. pp. 266.

To paraphrase Mr. Ribble's own words, the purpose of his work, State and National Power Over Commerce, "is to view the division of power (between federal and state governments) in the present, in the light of . . . evolution through the past."[1] In a word, this book is an attempt to discuss the effect of history— economic, scientific, social— on the Supreme Court. In this effort the author succeeds in large measure and helps to explain, if not to justify, what often appear to be arbitrary legalistic conceptions. Unfortunately, however, the objective of the writer is rendered difficult and, at times, almost impossible because of the fact, as the book recognizes, that constitutional law "is to a striking extent the product of judicial manufacture,"[2] and the reflection of social, economic, and political views of the varying personnel of the court. There is too much of constitutional law that cannot be traced convincingly to mere evolution and which, to use the words of Mr. Ribble, may be characterized as "arbitrary."[3] Even so, Mr. Ribble's work is a valuable contribution in so far as history has influenced court decisions.

In discussing the origin, development, and meaning of the term "direct" as used in the *Schechter Case,* Mr. Ribble perhaps assumes too freely the propriety and clarity of the application of the term by the Supreme Court. Especially does this seem true in the light of the recent *Wagner Act Cases.* It is submitted, with all due respect to his efforts, that the author's "evolutionary" explanations are not very persuasive as to the necessity and significance of the requirement of "directness" and that his efforts to distinguish between what is "direct" and what is "indirect" is of little utility so far as application to future cases is concerned. The author glibly states that the question "depends upon the Court's determination of the intimacy of connection between the aspects of the activity regulated and interstate movement, that intimacy being normally judged in the light of practical business or economic considerations."[4] But *what* business or economic considerations? How great must the "intimacy" be? Why was there

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[1]See Preface.
[2]See page 114.
[3]See page 134.
[4]See page 154.

more "intimacy" in the *Wagner Act Cases* than in the *Schechter Case* or *Guffey Coal Act Case*?[5]

The suggestion is advanced that in the division of power between the federal and state governments the general tendency has been to leave matters which can be most advantageously handled by the states to the states and to consign to the central government those matters which can be dealt with by it more effectively. This proposition is no doubt true in a large measure. The author fails, however, to give an "evolutionary" explanation regarding those constitutional cases in which the Court has denied the existence of both federal and state power to regulate and which heretofore have raised a "no-man's-land."

Professor Ribble properly seems to suggest that the evolution of constitutional law has been a constant "groping in the dark" to achieve a balance of power between the state and federal governments even though the lines have not always been carefully drawn. In this groping, historical developments have no doubt influenced the choice of direction. As indicated in the foreward by Robert B. Tunstall, the effect of the Supreme Court on history has been related elsewhere. Mr. Ribble makes a commendable and skillful attempt to show the influence of history on the Supreme Court.

D. J. Farage

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[5]The reviewer has indicated more at length his views on this problem elsewhere in this issue of the Dickinson Law Review.