

Dietze: America's Political Dilemma

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BOOK REVIEWS

America's Political Dilemma. By GOTTFRIED DIETZE. Baltimore, Maryland: The Johns Hopkins Press, 1968. Pp. 298. \$7.95.

This book would make an excellent primer for members of the John Birch Society. It has little more to commend it.

The author's stated thesis is that the Constitution, as interpreted today, has been so wholly distorted that it no longer even faintly reflects the intention of the Founding Fathers to protect the individual against governmental encroachment. The growth of popular government, which is anathema to Professor Dietze, at the expense of what he calls "free government"—protection of the individual from government—and the consequent erosion of such safeguards as federalism, the separation of powers and judicial review has created a dilemma for the American political system of such proportions that we are on the point of executive dictatorship, acquiesced in by a craven judiciary and spurred on by a collusive Congress. In a remarkable, but not uncharacteristic sentence, the author decries the influence which the extension of popular government has had on the selection of our Presidents. Thus he states:

High class themselves, the Founding Fathers wanted the Chief Executive to be selected by class rather than mass in order that he might be class independent of mass, class incorruptible by power, class that would intrepidly pursue the aims of a free, rather than democratic government.¹

The principal ingredient of free government, according to Dietze, is the right to own, hold and dispose of property.² The whole book is an effort, largely through historical and constitutional citations and arguments, to buttress this conclusion and demonstrate the extent to which we have departed from the original aim of the Founding Fathers. The first few chapters are devoted to a historical discussion of the beginnings of American government, and the reader, who at this point is not made fully aware of the author's purpose and direction, is for a time seduced by repeated references to early constitutional works and papers into thinking that what is unfolding is a dispassionate and scholarly treatise on some fragment of American constitutional history.

The seduction is fortified by the fact that there is much legitimate discussion and concern today about the proper role of a greatly enlarged federal apparatus as it relates to state and local government. Anyone who has turned his attention to this matter is doubtless open to any available historical assistance, and one might have thought in reading these first few chapters that some light would be shed on the question. It quickly becomes apparent, however, that these chapters are merely the

¹ DIETZE, *AMERICA'S POLITICAL DILEMMA* 226-227 (1968).

² In support of this conclusion, Dietze asserts, without documentation, that for Thomas Jefferson the "pursuit of happiness" in large measure consisted in the protection of property rights. For a writer who attempts to document every piece of minutiae, the failure to document this particular opinion is significant. The author's mania for documentation even extends to his effort to support by footnote his gratuitous and irrelevant opinion that Andrew Wyeth is American's greatest painter because his art, in Dietze's judgment, reflects the philosophy of *America's Political Dilemma*.

author's effort to find, or create, an aura of legitimacy for his own personal judgment about what this country ought to be. Dietze's judgment is that we are no longer a free government, as we were meant to be, but a popular, democratic government which was never envisioned and which is corrosive and destructive.

The author finds that the shift from free government to democratic government began with the Civil War and came to full flower after the Depression of the late 1920's and 1930's. These events, according to him, resulted in the gathering of great power in the federal government, and as to this he is undoubtedly correct. However, he treats the Civil War and the Depression as historical mistakes which, since they were not part of the Founding Fathers' original conception, are somehow not to be accorded any significance except as mischievous departures from that conception. These singular and deeply affecting events, which shaped and forged the American character and the American form of government almost as fundamentally as the American Revolution, are dealt with by the author as unintended and unacceptable aberrations which sully his tidy, storybook notions of how this country was meant by its founders to develop. Accordingly, the thirteenth, fourteenth and fifteenth amendments to the Constitution are treated as immigrant appendages which really have no business being where they are. And the American judiciary, which he feels undermined economic rights after the Depression by refusing to exercise its power of judicial review (which, interestingly enough, is not an enumerated power in the Constitution—an omission which the author must find most shocking) has abdicated its role as a defender and protector of free government, *i.e.* property rights.³

The author's personal bias, and the purpose of all his historical legerdemain, does not become fully clear until the book's last two chapters. At this point the whole concoction degenerates into a political and personal diatribe. Thus, he writes:

As things turned out, Professor Bemis was as deluded by Kennedy's oratory as he was disillusioned by Eisenhower's feats. Under Kennedy, things went from bad to worse. His administration demonstrated that if old age is no guarantee of wisdom, youth is even less wise. The foreign policy of the New Frontier started out with a fiasco. The invasion of the Bay of Pigs made evident that the new United States government not only was unwilling to "pay any price, bear any burden, meet any hardship, support any friend, oppose any foe to assure the survival and the success of liberty," but was unwilling even to pay the low price and to bear the light burden of providing air cover for friends of liberty. . . . Rather than paying any price for the success and the survival of liberty, the Kennedy administration paid a high price for the real and potential subversion of liberty. The Alliance for Progress was paralleled by a dalliance for recess.⁴

Whether or not one agrees with this and other similar deprecations of contemporary American foreign and domestic policy, it is apparent that the present state of affairs is what really prompted the author to write his book, and, as with others of his ideological persuasion,⁵ he looks to the illusive purity of the past for justifica-

³ The author amplifies this view: "Therefore, it is hard to believe that judicial review is emerging from its period of decline as long as the Court has not demonstrated its courage to face unpopularity not only in a few states, but throughout the nation by challenging legislative action not only for the sake of non-economic, but also for that of economic, rights. The different evaluation of non-economic and economic rights appears to be arbitrary. It is absurd to maintain that the rights of criminals are more important than freedom of contract and the right to work." *Supra* note 1, at 158.

⁴ *Supra* note 1, at 235-36.

⁵ "Among American politicians, Barry Goldwater is one of the greatest profiles in cour-

tion of his current dogma, instead of fully and frankly attempting to deal with current problems in terms of the reality of the present. As a result, the book is at best an irrelevancy—largely of interest to the best minds of the eighteenth century.

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age. Here was a presidential candidate who told the voters what he believed in, irrespective of how many votes it might cost him." *Supra* note 1, at 241 n.95.

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The Leo Frank Case. By LEONARD DINNERSTEIN. New York: Columbia University Press, 1968. Pp. 248. \$6.95.

The subject matter of this documentary is a tragedy that lawyers would like to believe could never happen. In 1913 Leo Frank, a man of Jewish descent, was accused of the rape and murder of Mary Phagan, a thirteen-year-old female employee of the factory he managed in Atlanta, Georgia. He was convicted in a trial that was a mockery of due process of law, the rules of evidence, and many of the other fine principles that law students are taught to believe exist in our democratic republic. After several years during which every legal channel of appeal was exhausted, Frank's death sentence was commuted by the Governor of Georgia to life imprisonment. Shortly thereafter Leo Frank was lynched by a mob of "upright" citizens who disagreed with the Governor's decision.

In this highly readable narrative, Leonard Dinnerstein delves into Leo Frank's case and attempts to separate the facts from the fictions that surround his conviction for murder. Mr. Dinnerstein is not a lawyer, but his examination of the evidentiary materials, the trial, and the subsequent appeal proceedings is a thorough and workmanlike job. He is at his best, however, when he goes beyond the legalistic injustices perpetrated upon Frank and examines the sociological causes and background of southern anti-Semitism. This discussion is central to the case, since it reveals the prejudice on the part of many southerners that led not only to the verdict of guilty by the trial court, but ultimately to Frank's lynching.

Mr. Dinnerstein presents a myriad of questions regarding the state of criminal justice in the United States, both in 1913 and at the present. This historical study of an actual case in which an innocent man was deprived of his life, in light of recent Supreme Court decisions,¹ indicates how far our legal system has come from its early barbarous stages. Many may castigate the Court for "coddling" criminals, but upon reading Mr. Dinnerstein's well documented study of the state of criminal law in 1913, the reasons for many recent rulings become apparent.

As Mr. Dinnerstein so vividly shows, the Frank case was first and foremost a trial by newspapers. When the murder first exploded upon the Atlanta public, it was given the "sensational" treatment by the press. The papers decried the hideousness of the crime and screamed for a conviction. When the police brought in Leo Frank for questioning, that was all the newspapers needed; he was immediately declared to be guilty by the press. In the period following the murder, the public

¹ See, e.g., *Miranda v. Arizona*, 384 U.S. 436 (1966); *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Witherspoon v. Illinois*, 391 U.S. 510 (1968).