Dumbauld: The Constitution of the United States

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Since formulation of the rules by which men govern themselves, whether these rules are fundamental or derivative, is largely a matter of compromise, the meaning of the finished product can better be understood when the ingredients of the compromise are made known.

Edward Dumbauld analyzes the potpourri that is the background for our basic document. In his introduction he sets forth in general terms the essentials for free government, the extent to which these essentials were possessed by the people before and during the Articles of Confederation, and the major philosophies, plans, and compromises of the Constitutional Convention itself.

He then, in sequence, sets forth each specific provision of the Constitution as adopted, each provision being followed by an explanation of the initial proposal, its origin, counterproposals, amendments, and deletions. He briefly explains the workings of the Committee of Detail, the Committee of Style, and other committees fashioning each completed clause. Sometimes there is displayed a touch of humor. Benjamin Franklin’s account of selecting judges in Scotland by the lawyers who always pick the most successful of their group in order to rid themselves of him and then share his practice is one of the lighter aspects. Finally the current meaning of the clause as interpreted by the United States Supreme Court is analyzed. Such an approach helps succinctly answer the question of why this is the end product by explaining how it was formulated.

The volume is somewhat like an annotated constitution with its copious footnotes. Yet, in each instance, in giving the constitutional history in back of the constitutional command along with its present interpretation, the book combines constitutional history with constitutional law toward greater understanding. This approach is somewhat novel in summarily delineating the political and economic processes that effected the compromise and then briefly showing the meaning of that compromise in terms of present day legal interpretation, the meaning sometimes varying substantially from what was seemingly originally intended.

The amendments to the Constitution are ignored except where on occasion oblique references are made to some of them. This would seem to render the volume incomplete. How can one discuss the basic document and virtually ignore the amendments? The author only partially explains this when he says that this work is designed to compliment earlier books by him on the Declaration of Independence and the Bill of Rights.

The treatment of certain clauses is too brief in some instances and too detailed in others, considering their current importance. The consequences of impeachment are described with nineteen words of history and twenty-six words of interpretation. Thirty pages are devoted to the important commerce clause. Seventeen pages cover the obligation of contracts requirement even though the author says this requirement is now “of slight practical importance being largely overshadowed by the due process clause.” This last mentioned clause is only incidentally treated notwithstanding the knowledge that it accounts for more adjudication than any other portion of the Constitution.

Some of the author’s positive statements are questionable, although his attempts to compress so much into so few pages may account for his incomplete exposition. He says, for instance, “it may be safely concluded that the right to
BOOK REVIEWS

popular representation in the legislature and the right to jury trial are indispensible ingredients in the free government." At the time the book was published the right to popular representation was not fully established as a constitutional principle. The right to a jury trial on the state level has not been assimilated into the fourteenth amendment, and the legal literature is not as positive as is Mr. Dumbauld on the indispensability of jury trials.

The author says that for diversity purposes "a corporation is to be deemed a 'citizen' of the state where it is incorporated." He ignores citizenship at its principal place of business.

In spite of the volume's shortcomings, the student of constitutional law will find useful the combination "in quick reference fashion" of the how and why of the various individual portions of our fundamental law along with the law itself.

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Vance Packard, author of The Hidden Persuaders, The Status Seekers, The Waste Makers and The Pyramid Climbers, examines privacy in The Naked Society. In searching detail, Packard examines surveillance practices of big government, big business and big education. Everywhere, Packard finds the right of the individual to be let alone consumed or threatened by the wire tap, the tape, the personality test, the credit, crime, marital and loyalty investigator, the mail order house, the census taker, the police informer, the post office, the transistor, the tax collector and the optical industry. Peeping Tom has gone public. In fascinating particularity, Packard describes the most sophisticated of surveillance equipment commercially available. There is, for example, the wrist-watch mike, the men's room camera (to detect wall poets), the spike mike, the snooper button and the anti-snooper button. For the curious child (or parent) no family should be without "Little Miss Echo," a cute little children's doll with a tape recorder hidden in her tummy.

In society today, Packard writes, facts, names and the personal histories of individuals are regularly traded, sold or rented to the mail house, the insurance company or just about anyone interested enough to pay for another's personal or private records. Some information, like an individual's arrest record, is cheap ($10). Except for very unpopular individuals, an income tax report is more expensive ($1,000). In respect to fact trading, the United States Census Bureau is a prime offender. The bureau makes available (for a fee) its compulsory1 "Household Questionnaire" (165 questions), which lists neighborhood figures on such items as bathrooms, stillbirths and clothes dryers.

There are, of course, no census statistics on neighborhood religious preferences.

In one lively chapter, Mr. Packard traces the rise of the now truly giant private detective industry. Today, many job applicants and in-company promotion prospects face the most personal scrutiny by a host of detectives and investigators whose number grows much faster than their salary. Individuals