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THE DOCTRINE OF THE SEPARATION OF POWERS AND ITS PRESENT-DAY SIGNIFICANCE, by Arthur T. Vanderbilt. The University of Nebraska Press, Lincoln, 1953. Pp. 144. $2.50.

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This short volume comprises the three lectures delivered in 1952 as the Second Lectures of the Roscoe Pound Lectureship Series at the University of Nebraska by the distinguished and versatile Chief Justice of the Supreme Court of New Jersey. In substantiating his conclusion that "On respect for the doctrine of the separation of powers, not as a technical rule of law but as a guide to the sound functioning of government, rests not only the stability of this nation but of every other nation and the freedom not only of our own citizens but of the citizens of every other country," (pp. 143-144) Chief Justice Vanderbilt draws upon the experience of governments, the growth of federal functions, and the concentration of power in the executive. Although he does not go so far as to suggest that strict adherence to the American doctrine of separation of powers would have preserved individual liberty in lands where it has been lost or has never existed (p. 35), he approximates this position when he asserts that "no authoritarian regime can tolerate the limitations on its powers that are implicit in the doctrine of the separation of powers" (p. 13) and then immediately suggests that defects in the Weimar Constitution "paved the way for the despotism of Hitler." Such views probably attribute to governmental forms and mechanics a greater efficacy than they possess in fact as does his belief (p. 9) that "The independence of the judiciary in any system of law is the best test of the actuality of the rights of the individual." In periods of tranquility when established traditions of liberty and justice are strong governmental forms may be of importance. But in periods of stress, when traditions have crumbled and determined men with a will to power emerge an independent judiciary and a formal separation of powers are likely neither to deter nor even postpone the destruction of liberty and least of all when it is equated with juridical liberty.

The demonic trinity of serpents which creep through Chief Justice Vanderbilt's paradise of limited government is the growth of federal authority, the concentration of power in the executive, and the deference of the judiciary to legislatures, administrative agencies, and executive officials. Statistics are evoked to depict the growth of federal agencies and personnel, taxation and expenditures, landholding and purchases. The Chief Justice appar-

ently fears that the growth of federal authority will lead to national control over the schools and to socialized medicine (p. 62), as though these would be unmitigated evils. The author is convinced that the non-national functions of the federal government are much more numerous than those which are unquestionably national and could be as well or better exercised by state or local governments. "The first great step in overcoming our national imbalance," he argues, "is to return to the state and local governments that which is truly theirs and to free their functions from the influence of grants by the federal government. This could be done either by legislation, by judicial decision, or conceivably by constitutional revision." (p. 66) Whether he would repeal the Sixteenth Amendment which he regards as one of the major stimulants of national power is not made clear (p. 57), but he does advocate the extension of judicial review to curb the spending power under the general welfare clause (p. 137) which is his second *bête noire* in the expansion of federal activity.

Judge Vanderbilt also laments the growth of presidential power, particularly that derived from statutory delegations in legislation and adjudication, without, however, looking with complete equanimity upon the growth of the President's constitutional powers. Frustrated Presidents will be amused to read (p. 79) that "the President has acquired the powers of the English prime minister over the introduction of legislation without the correlative duties to the legislative branch imposed on the prime minister under the English practice." However comforting to harassed Presidents such statements may be they are hardly conducive to an understanding of the office of President. In the first place the President, unlike the Prime Minister, has no power whatsoever to prevent the introduction of a bill. Second, as Mr. Lawrence Chamberlain has shown in *The President, Congress, and Legislation* (New York, 1946) the positive influence of the President on the enactment of legislation is not nearly so great as the author suggests.

That Chief Justice Vanderbilt should contemplate paradise when he thinks of courts is not surprising (see, e.g., pp. 55, 105, 108, 131-132). Nor is it surprising that he looks askance at administrative adjudication and narrow court review of administrative decisions. However, it is somewhat startling, especially for a strict advocate of the separation of powers, to urge relaxation

to the point of abandonment of the restraints which the Supreme Court has imposed on itself in the exercise of judicial review. The Chief Justice's concern with this problem has led him to state erroneously (p. 135) that in the *Ashwander* case "stockholders were denied an adjudication of the validity of a contract between their corporation and the Tennessee Valley Authority." The Supreme Court did adjudicate this issue, although four judges found ample reasons for dissenting to the holding that there were adverse interests between the preferred stockholders and the Alabama Power Company. Judge Vanderbilt is even more concerned with those cases which hold that a state or a taxpayer has no standing to challenge the expenditure of money from the general funds of the Treasury and those which expand political questions to include the methods of nominating candidates and the apportionment of representatives in Congress and state legislatures.

Although it is not pleasant to take issue with a man so full of good works in so many fields of human endeavor as Judge Vanderbilt, his book overlooks many important conditions of our national life. In asserting that the state or local governments could perform many functions as well or better than the federal government he fails to take into account the ugly fact that the states are unwilling or unable to do so. The adverse reactions of extreme states' rights governors to Secretary Benson's plan for returning soil conservation services to the states in the autumn of 1953 is a vivid illustration among many others of the tendency of the states to shirk responsibilities they possibly could perform. Because of antiquated constitutional provisions governing taxation and borrowing, a poorly trained civil service, and official deference to pressure groups the governments of most states are unable either to embark upon governmental programs comparable to those of the national government or administer them adequately once they are initiated. He overlooks the fact that the wealth accumulated in one section of the American Republic is derived from the conduct of business in all sections and this wealth can be taxed and the tax revenues spent only by the national government. Illiteracy, disease, and malnutrition in the poorer states have national effects not only in high rates of rejection for service in the armed forces but also upon the character of our national political life in the way of the influence of these states whose Senators and Representatives become chairmen of congressional committees through the rule of seniority and whose

demagogues occasionally frighten men of good will in all sections of the country. Chief Justice Vanderbilt has presented well one side of the argument on governmental power, federal-state relations, and the separation of powers, but he has presented only one side. There is another side founded not on lurid data taken from reports of the Tax Foundation and Fortune magazine that is equally important. Men of the prestige of Chief Justice Vanderbilt could render better service if they concerned themselves with the whole picture of government. What is needed now is not an indiscriminating assault on governmental policies but an understanding of them and of the political, economic, and social environment which constitutes the crucible in which public policy is formed.

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HOLMES-LASKI LETTERS: THE CORRESPONDENCE OF MR. JUSTICE HOLMES AND HAROLD J. LASKI, 1916-1935, edited by Mark DeWolfe Howe. Harvard University Press, Cambridge, 1953. Pp. xvi, 1650. 2 vols. $12.50.

How does one review a collection of letters?

As one reviews a life, or, rather, where both sides of the correspondence are published, a pair of lives. When we read not mere epistolary essays composed with a view to publication as the face is composed with a view to a studio portrait, but true letters, that is what is laid bare to us. Not quite that, of course, for in letters, as in other personal intercourse, indeed perhaps in most conscious introspection, not all our selves have speaking roles—only those whom we believe, or believe that those with whom we are dealing believe have appropriate parts in the cast.

To change metaphors, letters at best are no chart by which we can circumnavigate a personality; but, if ample in volume and relaxed in tone, they approach it as nearly as can be done. If they reveal small or even middle-sized islands, a description of the landmarks and coastal features, *alias* a review of the letters, may call attention to items of interest, beauty, or amaze but is still a fairly simple undertaking. With continental masses it is otherwise. With them one cannot in reasonable compass

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