Review of “Constitutional Dictatorship: Crisis Government in the Modern Democracies,” By Clinton Rossiter

Elmer E. Hilpert

Follow this and additional works at: http://openscholarship.wustl.edu/law_lawreview

Recommended Citation
Available at: http://openscholarship.wustl.edu/law_lawreview/vol1950/iss1/21
BOOK REVIEWS


Constitutional Dictatorship is a comparative and analytical study of the extraordinary methods by which democratic governments effectively safeguard their existence in times of stress—especially in times of war and rebellion but also, and more recently, in times of economic or other social upheaval. The author takes as his thesis that every democracy must have within itself the means of resorting to strong measures in times of crisis. The thesis is an old one; and yet, particularly in the United States and in these days of atomic war, it needs re-examination and restatement.

The author first defines what he means by “constitutional dictatorship.” It is the delegation to the executive of extraordinary powers to meet a crisis and the return of these extraordinary powers to the normal governmental agencies when the crisis has been met. One may quarrel, as several reviewers have, with the use of the term “dictatorship”; one may question, as some reviewers have, whether the essential conditions for an effective meeting of crisis through the use of emergency powers are not the political capacity and morality of the people governed rather than the forms and methods devised for the exercise of these emergency powers. Still, the fact remains that the author has delineated very carefully (considering the brevity of his work) and very trenchantly an age-old problem of democratic government and exposed it as one of the acute governmental problems of today.

The author gives a thumb-nail sketch of the role of the Dictator in the ancient Roman Republic—from whence, very obviously, the author hit upon the use of the word “dictatorship” in his terminology. He next sketches very briefly the use of emergency powers in the German Republic (1918-1933) under the vexed Article 48 of the Weimar Constitution; the rise and growth of the “state of siege” in France, from the Revolution to its statutory elaboration after the Franco-Prussian War, and the use of general enabling acts and delegated legislation, during the first World War, in addition to the “state of siege”; the doctrine of “martial law,” as it early developed in England, and the various emergency measures, DORA and the several Emergency Powers Acts, as well as delegated legislation, as these were employed in Great Britain during the two World Wars and the intervening economic crises; and the use of “emergency” powers by President Lincoln in the first days of the Civil War, by President Wilson during World War I, and by President Franklin Roosevelt during the Great Depression and World War II.

It is true, as some reviewers have suggested, that the author subsumes too many different things under the same rubric. The control over the Dictator in ancient Rome was merely the control of public opinion and the political morality of the Dictators. The political and social traditions
and the economic conditions of Germany, 1918-1933—in brief, the continu-
ance of "the crisis"—probably contributed more to the failure of Article
48 of the Constitution to permit a restoration of normal government after
a crisis than did the lack of "forms" and "methods" devised under that
Article. The essential difference between the French "state of siege" and
the Anglo-American "martial law" stems more from a fundamental differ-
ence in the legal systems of the two nations than from basically different
postulates. Delegated legislation, and even enabling acts (in France and
England) are not merely "emergency" techniques, they are relatively long-
established techniques for meeting the legislative difficulties of a modern,
industrial society. And, again (but the author recognizes this) except
possibly for Lincoln's "Ninety Days," there has been no "constitutional
dictatorship" in the United States, within the author's own definition of
that metaphoric term, despite the exercise of "martial law" upon occasion
in some of the states.

Still, the author did not propose to write a treatise, either on compara-
tive constitutional law generally or even on this narrow phase of it. He
proposed to examine the techniques of "crisis government in the modern
democracies," to demonstrate anew the urgent need for preparing now for
the governmental techniques to be used in future crises, to show that the
very existence of democracies in these modern days depends on taking
such steps within time, and to propose the outlines of a solution. In these
purposes, Mr. Rossiter succeeds very well, given the small compass of his
book and the vastness of his subject. That he has fallen into some his-
torical error is no doubt true; that some of his analyses will not stand
up because based on necessary over-generalization is to be expected; that
his understanding of the law, and especially of the function of the courts,
is hazy and perhaps limited results from the fact that he is not a trained
lawyer; that he is somewhat overpowered by the results of his own
laborious researches is an obvious function of his youth. But the field
of political science and public law has been much enriched by his en-
deavors—and not only because he seems to have provoked many of the
members of the species Reviewer.

Elmer E. Hilpert*

LEARNING THE LAW. By Glanville L. Williams. London: Stevens & Sons,
Ltd., 1946. Pp. xii, 161. 7s 6d.
A FIRST BOOK OF ENGLISH LAW. By O. Hood Phillips. London: Sweet

It is surprising, no doubt, to review in an American legal journal these
two volumes published for the guidance of English law students. The study
of law in England is utterly different from that in this country; the Amer-
ican law student needs no vade mecum; if he does need one there is always
Morgan or some of the recent, more ambitious, course materials.

But it can always be interesting to see how things are done elsewhere,

* Professor of Law, Washington University.

http://openscholarship.wustl.edu/law_lawreview/vol1950/iss1/21