

BOOK REVIEWS.

The Spirit of American Government. By James Allen Smith, Professor of Political and Social Science, University of Washington. (New York: The Macmillan Company, 1907, 409 pp., \$1.25.)

In his remarkable book, "The Spirit of American Government," Professor Smith has done in an exceedingly brilliant way what is bound to win the hearty approval and enthusiastic applause of every close student of our constitutional system and of American politics. His exposition of the constitution and political development under it should be read by every intelligent American citizen, certainly by every student of history, politics or economics. In a masterly way Professor Smith shows the undemocratic character of the constitutional machinery of our government, and his plea for democracy as over against the order of aristocracy and privilege safeguarded by our undemocratic constitution is splendid in its logical clearness and its humanitarian ring.

The author shows in a convincing way that it was the aim of the constitution of 1787 to frame a constitution, the democratic form of which would assure its ratification, while it should be so constructed as to guard the government as much as possible from the supposed tyranny of the majority, and be also so capable of elastic construction as to enable the federal party to strengthen the central government and to limit effectually the power of the people. "It may be said without exaggeration that the American scheme of government was planned and set up to perpetuate the ascendancy of the property-holding class in a society leavened with democratic ideas" (p. 298). "While honestly believing that we have been endeavoring to make democracy a success, we have at the same time tenaciously held on to the essential features of a political system designed for the purpose of defeating the ends of popular government" (p. 303).

In his opening chapter Professor Smith gives a brief but clear and adequate characterization of the development of the system of checks and balances in the English government, show-

1832. The next chapter discusses the democratic influence of the Revolution on colonial government, the significant mark of which influence was the tendency toward supreme legislatures. The conservative Loyalist element, rendered ineffective by the

political reorganization following the Declaration of Independence, asserted itself after the Revolution. Upon the return of peace this element of conservatism, representing so largely the wealth and culture of the colonies, regained some measure of its influence, swept away by the Democratic wave of 1776. The strength of this class was augmented, too, by that part of the Revolutionary party that did not subscribe to radicalism. Then too hard times resulting from the economic disturbances of the time, in part at least one of the fruits of the war favored reaction. Distress and discontent were abroad in the land, consequently any change was apt to receive a popular welcome. Thus can be explained the reaction from the democratic tendencies of the Revolution—a reaction that found expression and embodiment in the federal constitution, which even today, because of its non-democratic nature, forces upon us a continued tolerance of abuses that belong to the aristocratic order of privilege and blocks the path of American democracy in its march toward the goal of social improvement. Consequently, at the present time, as Professor Smith so well says, "We are trying to make an undemocratic constitution the vehicle of democratic rule (p. 31)."

The constitutional convention desired not only to establish a strong and vigorous central government, but also a stable one that would not be dangerously responsive to public opinion, a government that would restrain democracy. Hence they placed in the constitution only such features of popular government as they deemed necessary to assure its adoption. Among the non-democratic features of our fundamental law is its difficult provision for amendment. Difficulty of amendment makes for conservatism and tends to thwart popular desire for change—change demanded by general social progress. The history of our attempts at amendment is ample proof that those conservors of property and propertied interests in the convention did their work well in so far as the power of amendment is concerned.

Our author points out clearly the non-democratic character of the federal Supreme Court. The absolute presidential veto to operate directly on acts of Congress and indirectly on State legislation, proposed by Hamilton, has become vested in our Supreme Court, whose powers are unique in the history of government. This power of our courts was not granted, however, by the constitution. It was developed by interpretation under Federal party rule. The Supreme Court itself established its own autocratic authority, which makes it impossible for the people

to enact effective laws without the consent of the judiciary, if any one by suit disputes a law. Men favorable to the federal ideal of centralized and more or less aristocratic rule were our first justices and so the Federal party was able to carry out the spirit of the constitution, the spirit of the protection of property and vested interests against the rule of the majority. By judicial interpretation, not by constitutional grant, the Supreme Court has become in our political system what Professor Burgess has called "the aristocracy of the robe," possessing a veto power on legislation and a power of amendment that the constitution denies to the people. Under a democratic government the people have the right to both secure such legislation as they want and to prevent such as they do not want. In our system, however, the veto power of the judiciary makes this impossible, in which veto power survives the monarchic principle of supreme power and supreme wisdom. In connection with his able discussion of our judicial system, Professor Smith asks this pertinent question: "One may well ask, after viewing these decisions (legal tender, interstate commerce, income tax and insular cases) if constitutional interpretation as practiced by the Supreme Court is really a science in the pursuit of which the individual temperament, personal views and political sympathies of the justices do not influence the result? Have we gained enough under this system in the continuity and consistency of our legal policy and its freedom from class or political bias to compensate us for the loss of popular control?" Our whole legal and judicial development characterized by its extremely tender regard for property and vested interests has furthered alliance between our legal class and corporate power, and the reviewer is not certain that Professor Smith is right in implying that our legal policy has been free from class bias and from political bias in so far as politics have been related to class interests.

As to the system of checks and balances in our constitution, "It is to be observed, then, that what originally commended the system to the people was the fact that it limited the positive power of the king and aristocracy, while the framers of the constitution adopted it with a view of limiting the power of the people themselves."

It is significant, as Professor Smith points out, that the executive is not bound to execute the laws of Congress. His oath of office is to "execute the office of President * * * and preserve, protect and defend the constitution of the United States."

With Richard Henry Lee we may say that "The only check to be found in favor of the democratic principle in this system (of checks and balances) is the House of Representatives, which, I believe, may justly be called a mere shred or rag of representation."

The constitution marked off the limits of federal and State jurisdiction, without specifying how the federal and State governments were to be kept within their respective boundaries, but the federal government found a means of protecting itself by calling into being the judicial veto, which made operative checks upon the authority of the States, but where was the power of checking the federal government? As Professor Smith says, "To carry out in good faith what appeared to be the purpose of the constitution, i. e., to limit the authority of the general government as well as that of the States, it would seem to be necessary to make each the judge of the other's powers (p. 169)." The author quotes the significant observation of Von Holst, "Calhoun and his disciples were not the authors of the doctrine of nullification and secession. That question is as old as the constitution itself, and has always been a living one, even when it has not been one of life and death. Its roots lay in the actual circumstances of the time, and the constitution was the living expression of these actual circumstances."

Not only was our government undemocratic in the beginning, but popular control over the only element in the government representing the people, the House of Representatives has become less and less effective as our political system has developed. A newly elected house does not meet in regular session until thirteen months after its election. Its second regular session does not begin until after the succeeding Congress has been elected. Consequently a Congress often legislates for a people by whom it has been repudiated (p. 189).

Our party system is in complete rapport with the irresponsible character of the government. A strictly party system is repugnant to minority rule. Such a system enforces a rule of the majority. The American political party, however, while professing to stand for majority rule, has become an additional and powerful check on the majority. The constitution has so checked the power of the majority that the American political party makes promises knowing that it will probably never have power to carry them out, whereas an English political party makes promises that it knows it will be expected to fulfill, and finds itself

able to do so if elected. Hence, while the English party is responsible, the American party is not. Consequently American citizens are not enthusiastically interested in their parties, whose promises so often mean nothing; while the office-seeker and the franchise grabber is interested in what the party may be able to get for him. Our party system thus discourages unselfish, public-spirited party interest, while it appeals to those who use politics for selfish ends. The machine politician and his corporate allies tend to dominate our party politics, an evil condition that is traceable to the checks of the constitution on the will of the majority. The evils of our party system "are the outcome, not of too much, but of too little democracy."

The State constitutions also reflected the reactionary movement that was given such clear expression to in the federal constitution, the judicial veto being established and difficult processes of constitutional amendment being adopted. In a State, a political party may conceivably secure a two-thirds majority in the Legislature, but its lack of responsibility to the people and its connection with national politics make it an untrustworthy instrument for amending a constitution. The reactionary changes in the State constitutions were due in part to the non-democratic reaction and in part also to an emulative spirit in the people, who were deluded into believing that the constitution was a perfect embodiment of the principle of democracy. This emulative and venerative spirit did not, however, lead the States to adopt indirect election of Governor and Senate. Furthermore the State conservative reaction was followed by a new democratic movement, resulting in making the State judiciary more amenable to the people than the corresponding branch of the federal government. However, "the relatively long term for which judges of the State supreme court are elected, and the plan of gradual renewal makes this body the most conservative in the State government. The State government differs from the federal in having a multitude of executives, in local officers and State boards and commissions, a condition of divided responsibility that invites corruption and corporate control. The city, the home of so much of our political shame, has been denied home rule and has been made the subject of exploitation by party machines. While some steps have been taken by way of constitutional amendments to reduce State control of municipal affairs, yet even the provisions granting considerable home rule embody limitations and restrictions that put a great check on majority rule.

Besides, judicial interpretations of these constitutional provisions have robbed them of much of their democratic force, since the courts have held that cities must govern themselves in conformity with the constitution and laws already enacted and to be enacted. Professor Smith makes a powerful plea for a larger measure of municipal freedom in the matter of taxation and indebtedness, a measure of just freedom that has not been allowed even by State constitutions most friendly to home rule (p. 272). The purposes of debt limitation are discussed by the author in a most interesting and enlightening way, showing in particular how these limitations were intended to protect the propertied and capitalistic classes and that they constitute another expression of the distinguishing feature of the spirit of American government, distrust of majority rule. The author shows the tendency in municipally owned water and light plants to a policy of profit for the benefit of the taxpayers at the expense of the general users of the water or light. These arguments are supported by interesting statistics (pp. 278 ff). The establishment of universal suffrage has worked against home rule in cities by making the conservative element in control of state politics anxious to control the cities also. This desire has been furthered by corrupt politicians and grasping business interests so that our municipal conditions are the natural result of an alliance between conservatism and corruption. Although he does not call it by that name, Professor Smith points out that it is "the business man's government," not the influence of the ignorant and vicious, except the reviewer would add in so far as they have been used by the "business man," that is the source of our city fraud and corruption. It is "the big graft," as Dr. Frederic C. Howe calls it, that makes our cities a political disgrace. "The evils of municipal government are not the evils of democracy, but the evils of a system which limits the power of the majority in the interest of the minority (p. 290)."

In his chapter dealing with individual liberty, the author gives a splendid discussion of the eighteenth century doctrine of individualism in its political bearings, both in England and in America after the Revolution. With splendid clearness Professor Smith repeats that whereas once "the many advocated the limitation of the power of king and aristocracy in the interest of liberty," the conservative classes in 1787 advocated the limitation of the power of the many for the protection of the propertied few. The extreme and too often unjustifiable tenderness of the

courts for property and vested interests is discussed in a telling way.

The next chapter contains a splendid discussion of the tariff, the contract labor law and immigration in relation to labor. There is a protest against the greed that secures a tariff and with a cry of pretended humanitarianism and democracy clamors for free immigration—in order that American labor may be cheap, an immigration, beginning with that of African slaves, that has given us most serious political, social and economic problems, and has made easier the way of the political boss and the grasping corporation in its greedy pursuit of gain.

Hope of amending the constitution lies in the development of democracy in the States, since Congress must upon the application of two-thirds of the State legislatures call a convention to propose amendments. Such a convention may well throw overboard the present constitution as the fathers did the Articles of Confederation and propose a constitution that will ensure majority government. This possibility may at least serve to frighten the interests profiting by the present order into allowing some constitutional concession to democracy.

In State and local politics, broadening of the suffrage, secret voting and the direct primary make conditions less undemocratic, but there is needed in addition to these some means of insuring the responsibility of public offices after election. This may be secured by the recall, while the initiative and the referendum will bring in much democracy into our State and municipal governments. "It is through our State governments that we must approach the problem of reforming the national government. Complete control of the former will open the door that leads to eventual control of the latter. Democratize the State governments, and it will be possible even to change the character of the United States Senate. With a State Legislature directly nominated and subject to removal through the use of the recall, it will be possible to deprive that body of any real power in the selection of United States Senators. Under these conditions the Legislature would merely ratify the candidate receiving a majority of the popular vote just as the electoral college has come to ratify the popular choice of the President. In this way direct nomination and direct election of United States Senators could be made really effective, while at the same time preserving the form but not the substance of election by the State legislatures (p. 357)."

The author discourses in a most enlightening way on the effect upon morality of a transition from minority to majority rule. Much of the apparently greater immorality of today is due to our higher ethical standards, while the means of discovering offenses against society are far greater and more effective today than in the past. There is of course some increase in evil because of the abandonment of the old superstitious belief in future rewards and punishments, but this increase is but temporary and need give us no great concern. Our whole system of business fraud and political corruption is an effect of the struggle between the old system of minority rule and the coming system of majority rule,—corruption is used to combat majority rule. The widespread disregard of law that characterizes American society today is explained by the struggle between the minority and the majority principles of government. We are not declining in morality; we are struggling toward a higher plane of existence.

In his concluding chapter on democracy of the future, Professor Smith discusses democracy and the leaven it brings into society. Democracy is as an intellectual or a moral movement according to our viewpoint; intellectual, in that it presupposes a more or less general diffusion of intelligence; moral, in that its aim is justice. Everywhere democracy stands for political and social reform. On its economic side it protests against the small share that the masses have received of the results of our great material progress and demands control of the State in order that economic justice may be achieved.

Our author shows that in our artificial social environment, survival is too often of the unfit, an idea that in the opinion of the reviewer cannot be too vigorously and persistently proclaimed. Under present conditions those who survive are but too often fit only for their immoral or unjust environment, which worship of success too often mistakes for a natural or at least desirable environment. "Success is a matter of adaptation to the environment, or the power to use it for individual ends,—not the power to improve and enrich it. The power to take from, is nature's sole test of fitness to live; but the power to enrich is a higher test, and one which society must enforce through appropriate legislation. * * * The problem which democracy has to solve is the problem of so organizing the environment as to assure progress through the success and survival of the best (p. 402)."

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