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Book Review. The American Doctrine of Judicial Supremacy, 2nd ed. by C. G. Haines

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Students and teachers, particularly those of the latter who are beginning their instructional work in constitutional law, will nevertheless find the volume a handy desk-book.

OLIVER P. FIELD.

University of Minnesota.

The American Doctrine of Judicial Supremacy. BY CHARLES GROVE HAINES. (Berkeley, California: Publications of the University of California at Los Angeles, Social Sciences, Vol. I. 1932. Pp. xiv, 705.)

In 1914, Dr. Haines published, through the Macmillan Company, a book by the same title. The present volume is designated as a "second edition revised and enlarged." The original volume, however, has been so thoroughly revised and rewritten, with addition of so much new material, that it is entitled to be considered a new book.

"The principles of law and political practice," says Dr. Haines by way of definition, "which place the guardianship of the expressed and implied terms of written constitutions primarily in courts of justice, and the dominance of judge-made law in accordance with common-law standards and principles, constitute the basis of what may appropriately be termed 'the American doctrine of judicial supremacy.'" The generally accepted opinion, he points out, that the case of *Marbury v. Madison* made the doctrine of judicial review of legislative acts a feature of the federal system of constitutional law is in error; in his assertion that the right to declare laws invalid was "an indispensable function of the federal judiciary," Marshall merely formulated and announced well-defined and generally accepted notions. Opposition to the doctrine of judicial supremacy from Jefferson's and Jackson's time to the present is traced in great detail. In spite of all the hostility which the doctrine and its application has aroused, "opponents of judicial review," Dr. Haines declares, "have gained little headway in convincing the American people that judicial supremacy is based upon a usurpation of authority." Popular distrust of legislative bodies has strengthened the courts in the exercise of this important power in the states as well as in the federal government. Dr. Haines concludes that "as the justices have in large measure taken upon themselves the function of judicial censorship of legislative acts, they also hold in their hands the most effective and satisfactory remedy."

Three useful appendices are added to the volume. One gives a list of sixty cases in which the Supreme Court has declared acts of Congress void. Another contains the provisions of written constitutions relating to the review of legislative acts by the courts in foreign countries. The third is a select bibliography of the subject.

Dr. Haines has given what is perhaps the best connected account of the

origin and development of judicial power in the United States. His book is, in fact, an excellent treatise on the development of constitutional government in this country.

FRANK E. HORACK.

University of Iowa.

The French Political System. By W. L. MIDDLETON. (New York: E. P. Dutton and Company. 1933. Pp. 296.)

This is not a systematic treatise on French government. Mr. Middleton tells us nothing about the civil service or the judiciary or the commune, and very little about the details of electoral and parliamentary procedure. He is concerned with national politics in the narrower meaning of the term—with the currents of opinion, the problem of leadership, and above all the play of party. Over that somewhat murky area he has shed a welcome light. He has succeeded, better than any one else, in explaining the elusive peculiarities of the French party system.

The electoral organizations which he describes have changed little since the war. Of the seven effective parties, only the Communists are really new; the Popular Democrats carry on the tradition of the Catholic A.L.P. There are too many parties, Mr. Middleton believes, and too many *nuances* within them. Certainly the district ticket, with its second ballot, "tends to check the dispersion of force" and "to encourage the formation of the larger groupings which most observers regard as necessary for the proper working of parliamentary institutions." (This conclusion emerges from an interesting study of the transfer of votes at the second ballot.) But while tendencies toward consolidation can be observed, "it is improbable that these larger groupings will ever harden into two permanent *blocs*. . . . In their hearts the French do not desire the crushing of intermediate groups between rigid formations of Right and Left. They prefer an elastic system allowing play for varied forces of opinion."

Mr. Middleton explores "these varied forces of opinion," giving a chapter to the geographical distribution of party strength; and he also looks for the explanation of such pronounced diversity. It is the misfortune of France, as compared with England, that her political revolution occurred so late and coincided with the beginning of the industrial revolution. "To be judged fairly, the Third Republic must be regarded as the hybrid product of two distinct revolutions going on at the same time. The purely political revolution presented difficulties enough." The task of the new régime in seeking to dominate or conciliate rivals required freedom from any other preoccupations of the first magnitude. But the portentous growth of the social movement introduced fresh discords. "The nation was split up on two different and competing principles of division."